

To the Regulating Authority: Chief Superintendent Newbert Saunyama

These representations are made in response to General Notice 239A of 2016, issued under your name on 13 September 2016. The General Notice invites representations from interested parties. As a citizen of Zimbabwe, I have an interest in ensuring that the Constitution of Zimbabwe, the supreme law of the nation, is upheld and respected. These representations are therefore in defence of our Constitution.

Inadequacy of consultation process

Before I get into the substantive detail of my objections, I wish to record my displeasure over the inadequacy of the period within which the consultation is being done. The General Notice was issued on 13 September 2016, but the proposed ban on demonstrations in central Harare is due to take effect from 16th September 2016. It appears to me that this consultation exercise is not sincere and has been done merely as a box-ticking exercise, to make it appear as if some consultation with the public was done before issuing the order. There is insufficient time to make these representations and for you to give them due consideration and to respond to me and others as should happen in a consultation process. Nevertheless, notwithstanding this objection, I will submit my substantive representations on a “without prejudice” basis.

Violation of section 134(B)

My first substantive objection to the proposed ban is that it violates section 134(b) of the Constitution.

Section 134(b) prohibits subsidiary legislation from limiting or infringing rights that are protected under the Declaration of Rights. I understand that the proposed order under which the ban is to be issued qualifies as subsidiary legislation. The ban limits several rights, a fact which is acknowledged in your notice which cites section 86 of the Constitution, which provides for permissible limitations of constitutional rights. You acknowledge that the order will limit rights and you are trying to justify it under section 86. However, such an order would be a clear violation of section 134(b) which does not allow subsidiary legislation to limit rights. Your efforts to justify the ban under section 86 are therefore without legal foundation.

I am also aware that the High Court has most recently come to a similar conclusion, holding that SI 101A of 2016, drafted in similar terms, was unconstitutional. You have basically reproduced the same instrument and actually extended its duration. The order goes beyond the terms of section 134(b) of the Constitution and is therefore unconstitutional and unlawful.

Excessive limitation of fundamental rights

Another objection is that the ban on demonstrations excessively limits a number of fundamental rights and cannot be justified even under section 86 of the Constitution. They include the right to demonstrate peacefully (section 59), freedoms of assembly and association (section 58), freedom of expression (section 61), freedom of movement (section 66) and political rights (section 67). These rights constitute the core of civil and political rights and the ban has drastic consequences upon their enjoyment.

While I acknowledge that all rights must be exercised reasonably and in a manner that does not unreasonably interfere with the rights of others, I am also mindful of the fact that any limitations to achieve that balance must be fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant

factors. A blanket ban on future and unknown demonstrations is arbitrary and too excessive. It does not affect one right, but several rights and freedoms as already cited. It offends human dignity which is not just a right but an important constitutional principle.

In my view, the ban imposes greater restrictions on the many rights and freedoms cited here than is necessary to achieve its purpose. There are other, less restrictive means of achieving the objectives of the order. At the very least, each demonstration must be assessed on its own merits, which makes the blanket ban too restrictive and excessive.

Source of authority

I wish to remind you that all authority, including the authority you wield, derives from the people of Zimbabwe. One of the founding values of the nation as stated in section 3(2)(f) of the Constitution is ***“respect for the people of Zimbabwe, from whom the authority to govern is derived”***. Section 88(1) also states as follows: ***“Executive authority derives from the people of Zimbabwe and must be exercised in accordance with this Constitution.”*** Section 117(1) also adds: ***“The legislative authority of Zimbabwe is derived from the people and is vested in and exercised in accordance with this Constitution by the Legislature”***. Finally, section 162 states that: ***“Judicial authority derives from the people of Zimbabwe and is vested in the courts ...”***

These common denominator in all these provisions is that authority of the state is derived from the people of Zimbabwe. You are an agent of our authority as citizens and this authority must be exercised reasonably and fairly. The ban on demonstrations is a misuse of that authority, particularly because it represents excessive interference with our fundamental rights.

Rule of law

I am also concerned that by continuing to do what the High Court has already declared unconstitutional, the proposed order seeks to perpetuate an illegality and undermines judicial authority. This represents a serious assault on the rule of law and constitutionalism, both of which are important values upon which our nation is built as stated under section 3 of the Constitution. Everything in this letter points to the fact that I am not receiving due protection from the law as I am entitled to in terms of section 56(1) of the Constitution which guarantees equality before the law and protection of the law to all citizens.

In conclusion, I do not believe that the proposed order is in the interests of Zimbabwe and its citizens. It is unconstitutional, unlawful and against the rule of law. As a citizen, I have a duty to obey, uphold and defend the Constitution as provided for under section 2. It is precisely on these grounds that I have decided to send these representations to you and I hope you will give them due consideration.

Yours sincerely,

....