



ZIMBABWE EZEKIEL GUTI UNIVERSITY

FACULTY OF LAW

DEPARTMENT OF PUBLIC LAW

EXAMINATION PAPER

COURSE CODE : LLB121
COURSE TITLE : **Constitutional Law**
SPECIAL REQUIREMENTS : Relevant pieces of legislation
DURATION : 3 Hours
LEVEL : 1.2
DATE : 15 FEB 2022

INSTRUCTIONS TO CANDIDATES:

1. Answer FOUR questions. Question ONE in section A is compulsory. Answer any THREE questions from section B. Each question carries 25 marks.
2. Students may bring into the exam un-annotated and clean texts of applicable legislation. Copies with notes inside shall not be allowed and may be confiscated. No student is allowed to share his/her copy with another.
3. Students are NOT allowed to carry and use electronic gadgets such as laptops and cellular phones, among other things
4. Write legibly
5. Number your answers accordingly
6. Good luck...and remember...*all is fair in love and war*

Section A: Compulsory question

QUESTION 1

The Republic of Mutambanembizi is situated in the Southern region of the African continent. Maoneke is the capital city, it is home to millions of Maoneke ethnic group who profess the Christian faith. The main language is Nda. The Mutambanembizi lies in the Gulf of Bangalla and north of the Great Tanganda Water Ocean, sharing borders with the Republic of Nyunga in the West, the Equatorial Bangwe in the North and the Republic of Mikiri in the East. Mutambanembizi covers an area of 238,535 km², spanning a diverse geography and ecology that ranges from coastal savannahs to tropical rain forests. With over 31 million people the country is the second most populous country in South Africa after the Great Pride Lands. The Republic of Mutambanembizi's neighbouring state - the Republic of Mikiri blames Mutambanembizi for its devastating economic loss that left more than 1 650 000 Mikiri people without income, 1 150 500 people without homes, as well as increased poor and hazardous living conditions as the country's infrastructure has failed miserably after the Great War that took place between them between 1943- 1952.

The Republic of Mikiri heavily depends on Mutambanembizi's ports for import and export activities. However, it is extremely rich in natural resources such as diamonds, copper, iron, uranium, and coal. It also has a very strong military tracing back to its colonial period.

An ethnic group called the Kikada, settled close to the border area East between Mutambanembizi and the Republic of Mikiri in the late 1960's. They profess the Kikada faith. From 1975, the most fertile lands near roads, trains and ports were allocated by priority to the Mutambanembizi people, whilst a few very select people professing the Kikada faith were able to secure land further away in a remote city called Chikomo. The President of Mutambanembizi, Rush Wabantu (who is Maoneke and a strong believer of the Christian faith), openly discriminates against the Kikada. These discriminatory policies led to a very clear economic divide. The majority of Maoneke people are among the wealthiest and most educated people in Mutambanembizi. They own and control at least 83% of the processing plants and industries. The situation is further aggravated by the lack of political freedom. Persons who published information critical of the government were often detained and would then be beaten by police officials. The attacks extended to members of their families which led to forced disappearances, and in some severe cases some would be executed. From the early 2000's, tension slowly built up due to this economic divide. The situation was further exacerbated by damage caused by enormous sinkholes in Chikomo. The damage led to rationing of vital services such as healthcare, water, and electricity. The partial and complete collapse of over-ground structures due to damages to infrastructure, caused high economic losses, evacuations,

displacement of residents and more than 10 090 casualties. The communities blame mining companies for their fracking activities in Taona – a town located not so far from Chikomo. The government however denies any such allegations and argues that the sinkholes are due to over flooding in the area.

Mutambanembizi's government has failed to take action on thousands of extrajudicial killings, torture, and enforced disappearances that has been occurring in the country. A lack of political will and consensus, prevailing political instability, and a lack of progress in the peace process have resulted in the government's failure to fulfil its election promises. This lack of accountability has subsequently contributed to a breakdown of law and order in many parts of Mutambanembizi. Police are untrustworthy, the court system unjust. More alarming is the fact that this environment of impunity has carried on to new crimes, thus leaving many citizens without access to a fair and proficient judicial system. In addition, corruption at many levels of the judiciary has led to many cases going either uninvestigated or simply dismissed without reason. Weak legal enforcement mechanisms allow government officials to get away with intimidation and threats of people such as journalists.

The lack of rule of law also directly ties into the problem of corruption, which is pervasive in all sectors. Indeed, Transparency International ranked Mutambanembizi 146 out 180 countries of on corruption, making Mutambanembizi one of South Africa's most corrupt countries. As corruption remains unpunished, Mutambanembizi suffer daily from its impact. For instance, large businesses bribe officials to bypass regulations, forcing local owners to shut down. If Mutambanembizi is to end impunity.

Women make up a little over half of Mutambanembizi's total population, and almost all of them suffer from exploitation, discrimination and subordination by their male family members. Strong traditional values in favour of males are generally ingrained into Mutambanembizi society. Consequently, gender disparity is inherently very wide. Despite their more recent achievements of literacy, social mobility and awareness, women still remain restricted to their traditionally prescribed and socially acceptable roles, lower status and subordination to men within the patriarchal sociocultural, economic, political and legal frameworks.

The inadequate representation of women in the national legislature has somewhat positively motivated the enactment of gender-sensitive legislation such as the women's property right bill. Mutambanembizi's Constitution contains a provision forbidding discrimination against women in regard to remuneration and social security, and calls for the enactment of laws for the protection, empowerment and advancement of the interests of women. However, in reality, discrimination against women still happens at many levels of society (with Kikada women being affected the worst) and gender justice is far from being secured. Therefore, it is essential for the Mutambanembizi government to not only encourage women's empowerment through reforms, but also to allow for the participation of women in political processes.

During 2018, the Kikada held various protests, some of which had been extremely violent in nature resulting in approximately 12 750 casualties. After months of tensions by the minority group, the leader of the Kikada, Mr Ramwai, embarked on finally staging a coup. To achieve

this end, he wrote letters to the Government of Mikiri (who sympathises with the Kikada as they share the same faith) that would expose various military secrets of Mutambanembizi. A little-known fact – Mr Ramushu was state law advisor to late President Poboka. Subsequently, Maj. General Ramushu, Minister of Defence from Mikiri invited Mr Ramwai to Mikiri to discuss the ‘plan’. The National Mutambanembizi Intelligence Service (NMIS) however soon found out about the planned military coup that was supposedly being led and sponsored by the Republic of Mikiri. On February 1 2022 and at approximately 12:00 midnight, several armed soldiers of Mutambanembizi National Army (MNA) and the National Mutambanembizi Intelligence Service (NMIS), entered the house of Ramwai, a resident of the Capital city Maoneke they brutalized Ramwai, intimidated his wife and raped one of his daughters before forcibly taking him away. His assailants never produced a warrant of arrest or gave an explanation for their action. Mr Ramwai was taken as political prisoner by NMIS and awaited trial for treason. Ramwai was kept in a solitary confinement in a converted residential house downtown Maoneke. The premises were being used by the military as a detention centre where dozens of other suspects were already being held.

Ramwai was detained for 23 days and throughout his detention, he had no contact with his family members who had no idea where to find him. His captors interrogated him for three full days non-stop, during which he was accused of conspiring with unspecified others, of provoking and inciting an uprising in the country. In the course of the detention, Ramwai was repeatedly beaten all over his body with truncheons, clenched fists and booted feet. He was gagged and blindfolded at will. He was forced to sleep on bare ground, with his hands tied up and no possibility to his physical needs. During the protracted interrogation and torture, evidence came to light that Mr Ramwai secretly led a group of guerrilla fighters in the Northern part of the country known as the Jaja Liberation Fighters (JLF). The JLF received most of its weapons from the Republic of Mikiri. Since these interrogations, Ramwai’s muscles have worn down.

Meanwhile the country continued to experience the worst economic downturn that has aggravated uncontrollably into 2021 and 2022. This dire situation has given rise to a number of strikes and public riots. The participants of these strikes and riots included vendors, civil servants and students of tertiary institutions such as universities and teachers training colleges. The government as expected, has accused the opposition of orchestrating civil unrest and tarnishing the international image of a good state. Violence escalated at the introduction of the army. A curfew was imposed, journalists imprisoned, and communication technology disabled. The intensity of violence and public demonstrations increased in defiant opposition to the crackdown on individual rights.

In an attempt to muzzle a very critical and independent media, the government has upwardly revised newspaper licencing fees to exorbitant levels and forced a good number of publications out of circulation. The Minister of State Security has also closed all internet access especially to social media platforms like WhatsApp and Facebook. The state security forces, with official sanction, have also been rounding up and detaining suspected opposition sympathisers, Mutambanembizi is now tottering on the brink of wider civil unrest.

Further, on the 1st of August 2021, the President Rush Wabantu declared a state of emergency by publishing a law to that effect in the Government Gazette. This is all the president did in respect of the Declaration. The President kept on extending the Declaration every month up to this day. All rights in the Constitution have been effectively suspended since the 1st of August 2021.

Ramwai was finally released without charge and he approaches you for an opinion.

(Names, characters, places and incidents used here are fictitious. Any resemblance to actual events or locales or persons, living or dead, is entirely coincidental.)

Apply the Zimbabwean national legal framework (system) to answer the following

- a) Making specific reference to applicable and relevant provisions of the constitution , and applying these to the facts given above , analyse the system of checks and balances in relation to the proclamation of the state of public emergency; and **(10marks)**
- b) Write a legal opinion on the violation of human rights based on the given facts above, if any, enshrined in the Constitution. In your opinion be careful to mention the forum(s) which to approach and justification thereof. **(15 marks)**

[Total 25 marks]

Section B answer any THREE questions

QUESTION 2

Analyse and comment on the importance or necessity of the value system to:

- a) the constitutional system as a whole
- b) the judicial system
- c) The legislative system

In your answer also discuss the extent the value system reflect on the challenges that the constitutional and legal system have faced since independence in 1980? **[25 marks]**

QUESTION 3

- a) "An analysis of the nature and scope of the Executive power, particularly its exercise not only suggests that Executive power is always subject to Legislative oversight and approval, but also that the constitution created a Legislature strong enough to counteract the Executive if need be." Discuss. **(15 marks)**
- b) Comment on the assertion that the history, practise and tradition of Zimbabwe's legislative system is biased against bi-cameralism and gives pre-eminence and precedence to the National of Assembly over the Senate. Your comment should clearly discuss constitutional theory on a divided legislative system as well as comparative parliamentary system. In the course of your answer also outline and define the role of Senate in Zimbabwe's constitutional framework? **(10 marks)**

[Total 25 marks]

QUESTION 4

In the case of *Zinyemba v The Minister of Lands and Rural Resettlement & Anor* 2016 (1) ZLR 23 (CC) the court said that; '*norms of greater specificity should be relied on before resorting to norms of greater abstraction.*' Examine and analyse this statement in light of the application of constitutional avoidance and related doctrines in constitutional litigation. */subsidarity*

[25 marks]

QUESTION 5

Discuss and interrogate the entrenchment of fundamental provisions in the 2013 Constitution. Comment, making references to Zimbabwe's constitutional history and past experiences in relation to constitutional amendments, on whether the entrenched provisions guarantee constitutional democracy. **[25 marks]**

QUESTION 6

- (a) Outline and discuss the most important constitutional issues that arise from the case of *Madzimbamuto v Lardner Burke* [1968] 3 All ER 561 *Rule of Law, Supremacy, Necessity* **(15 marks)**
- (b) Illustrate the political connotations of the judgment *sovereignty, intention, Heche* **(10 marks)**

[Total 25 marks]

Question 7

- a) *'Judicial independence is less at risk at the front end of the personnel process- the appointing end- if there is a strong system of judicial tenure at the back- the removal end'* per Russell; O'Brien *'Judicial Independence In The Age Of Democracy: Critical Perspectives From Around The World* at 16. Discuss the above assertion using experiences in Zimbabwe and other jurisdictions as examples. **(15 marks)**
- b) Assess forms of government assistance to the judiciary and evaluate their probable implications to judicial independence. **(10marks)**

[Total 25 marks]

****** End of examination******