

The LEGAL MONITOR

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COST-FREE

Pariah State

...deportation, arrests, abductions

HARARE-Zimbabwe last week confirmed its pariah status by deporting the United Nations Special Rapporteur on Torture, while a spate of arrests of human rights defenders and abduction of political activists underscored the deteriorating human rights conditions.

The deportation, arrests and abductions occurred exactly a year after the forced disappearance and torture of several rights and political activists by State agents that were later condemned by the Supreme Court.

But it was the deportation of UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak that showed how little Zimbabwe cares about ending rights abuses

Rights organisations last week demanded Nowak's return, as the divide between government and human rights organisations widened in a hectic week which saw at least four people arrested for civic society work.

Organisations under the umbrella of the Zimbabwe Human Rights NGO Forum expressed concern at the continued use of repressive legislation to curtail freedoms, adding that the infrastructure of violence remained intact.

The deportation of Nowak, "together with other retrogressive incidents such as the arrest and detention of NANGO Board Chairperson Dadirai Chikwengo and Chief Executive Officer Cephas Zinhumwe on Sunday, 25 October 2009; the continued persecution and prosecution of human rights defenders like Alec Muchadehama; the arrest in Hwange of ZESN employees, Ndodana and Thulani Ndhlovu, and the recurrence of cases of enforced disappearances are all worrying signs that ZANU PF is reverting to its culture of human rights abuses".

It added: "These incidents are reminiscent of the reign of terror that characterised 2008," the NGO Forum said in a statement.

"Of particular concern," it stated, "are increasing reports coming out of the communities that people are being mobilised in a manner similar to the run-up to the 2008 elections, and equally perturbing is the resurgence and perpetuation of hate messages in the official media."

The Special Rapporteur had been invited by the Zimbabwe government to conduct an official fact-finding mission from 28 October to 4 November 2009. On arrival at OR Tambo International Airport in South Africa, in transit to Harare, Nowak was advised that the government had, on 26 October 2009, postponed the mission because officials would be busy attending to a Southern African Development Community (SADC) team visiting to mediate in President Robert Mugabe and Prime Minister Morgan Tsvangirai's stand-off.



NANGO Chief Executive Officer Cephas Zinhumwe

Tsvangirai's attempt to revive the mission by writing an invitation letter to Nowak failed as immigration officials rejected the Prime Minister's letter. The top UN official was denied entry, detained overnight at the airport and deported to South Africa the following morning. The Zimbabwe Human Rights NGO Forum

recommended that:

- the Government of Zimbabwe complies with its international obligations by allowing the Special Rapporteur back into the country and takes all necessary steps to ensure that he is able to conduct his mission.
- the SADC Troika takes strong measures, as the guarantors of the Global Political Agreement, to ensure that all outstanding issues are resolved, and
- the international community vigilantly monitors the developments taking place in Zimbabwe.

Week of abuse

25 October 2009- Victoria Falls police arrest National Association of Non-Governmental Organisations (NANGO) chairperson Dadirai Chikwengo and Chief Executive Officer Cephas Zinhumwe.

28 October 2009- Police in Hwange arrest two Zimbabwe Election Support Network (ZESN) employees Thulani Ndhlovu and Ndodana Ndhlovu.

28 October 2009- Immigration officials detain UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, at Harare International Airport.

29 October 2009- Nowak is deported from Zimbabwe on a South African Airways flight to Johannesburg after spending the night at the Harare International Airport.

30 October 2009- Foreign Affairs Minister Mumbengegwi accuses Nowak of trying to provoke a diplomatic incident by ignoring a request to delay his trip.

D-Day for Zim diamonds

CHIADZWA-Zimbabwe's future participation on the world diamond market will be decided this week at a Kimberly Process (KP) meeting expected to start in Namibia today.

A KP review mission which was in Zimbabwe in July has recommended a ban from the group if the country refused to accept a recommendation to voluntarily suspend itself in exchange for technical assistance.

But Zimbabwe has been lobbying the KP, which governs the global diamond industry, to offer technical assistance while allowing the country to remain a KP member.

According to KP rules, a decision on Zimbabwe will be taken by consensus, after recommendations by a Participation Committee. Namibia, as the chair will be mandated to consult further among members if they fail to achieve a consensus.

Key KP members that some civic society organisations have been lobbying to support Zimbabwe's ban include India, the chair of the Participation Committee. Other influential countries are Belgium, home to a huge diamond sorting and polishing industry, Israel, the next chair of the Kimberley Process, from November, and neighbours and main diamond producers, Botswana, Namibia and South Africa.

A report to be tabled by the KP review team is, however, likely to shape opinion among members.

The 44-page report paints Zimbabwe as an untrustworthy member, where the government

deliberately lied to the KP because it is actively involved in the illegal mining and illicit smuggling of Marange stones.

"The Team believes that information provided by Zimbabwe in response to the KP Chair's queries in February 2009 and in its Annual Report for 2008 (submitted in March 2009), as well as in reports and information presented to the Team itself during the Review Mission, was false, and likely intentionally so," reads part of the report, which noted that civil society, illegal panners and witnesses had provided more credible information to the review team.

According to contents of the review mission's report, the government tried to cover up abuses and illegal diamond mining syndicates led by soldiers who are supposed to guard the Marange diamond fields.

"The Team concludes that the Government of Zimbabwe authorities are aware of these syndicates and on-going smuggling operations and have permitted them to continue.

"The Review Team has judged that certain entities within the Government of Zimbabwe are directly involved with the removal of rough diamonds from the Marange area. The Team assesses that, at a minimum, the ZMDC (Zimbabwe Mining Development Corporation) is aware of and may also participate in some aspects of this operation," the report states.

Among the review team's recommendations is an investigation into abuses by security

forces, whose use of "extreme violence" against illegal panners did not meet minimum KP standards.

The review mission raised concern that the facilitation of diamond smuggling by official government entities created loopholes for blood diamonds from other countries to be mixed with Marange stones and introduced into the official KP market.

To curb this, the team recommended the setting up of a special diamond detective unit and the implementation of "a security program that excludes the ZNA (Zimbabwe National Army), and to the fullest extent possible, the ZRP (Zimbabwe Republic Police) from responsibilities in and around Marange."

Disposal of minerals mined by ZMDC lacked effective controls. In one instance, the ZMDC in its September 2008 monthly production report submitted to the Ministry of Mines and Minerals Development, stated that it had disposed of 32.32 carats, valued at US\$6,321.55 in a "donation for traditional rituals" to "Chief Marange".

Mining contributes very little to Zimbabwe's struggling economy, accounting for only 4 percent of the Gross Domestic Product. The sector's vast potential lies in tracts of untapped mineral resources.

Suspension from the KP will mean that Zimbabwe will struggle to sell its diamonds on the world market.

Soldiers abuse schoolchildren

MARANGE-Human Rights Watch (HRW) latest investigations show military presence has increased in Chiadzwa, where brutal soldiers still use syndicates that include schoolchildren to illegally mine diamonds.

In a statement calling for the immediate suspension of Zimbabwe from the Kimberly Process (KP), HRW said Harare had failed to comply with any of the recommendations put forward in July by a review mission of the group.

“Zimbabwe has had more than enough time to put a halt to the human rights abuses and smuggling at Marange. Instead, it has sent more troops to the area, apparently trying to put a halt to independent access and scrutiny,” said Georgette Gagnon, the HRW Africa director.

The New York based organisation said a probe two weeks ago that included interviews with 23 people “directly linked” to Marange diamonds revealed that:

- The Zimbabwean army uses syndicates of local miners to extract diamonds, often using forced labour, including children.
- On September 17, a soldier shot and killed a 19-year-old member of one syndicate. The soldier stated, in the presence of witnesses, that he had shot the man for hiding a raw diamond instead of handing them over to him.
- Local miners provided information that soldiers have begun to recruit people from outside Marange to join army-run diamond mining syndicates.
- Smuggling of Marange diamonds has intensified. Scores of buyers and middlemen

openly trade in Marange diamonds in the small Mozambique town of Vila de Manica, 20 miles from Mutare. The smugglers include people from Lebanon, Belgium, South Africa, and India, who circulate Marange’s diamonds onto the international market.

HRW last June produced a report that exposed brutal abuses by soldiers, including the killing of more than 200 people under an operation to flush out illegal miners code-named Operation Hakudzokwi. The report, ‘Diamonds in the Rough’, claimed that senior military and ZANU PF officials benefited from the illegal mining of Marange diamonds.

In its statement last week, HRW cited Zimbabwe’s failure to comply with a High Court order confirming ownership of tracts of Marange diamonds fields to UK firm, African Consolidated Revenues (ACR), as another reason the country should be banned from the KP.

RBZ governor in mafia-style invasion

CHINHOYI-Central bank deputy governor Edward Mashiringwani has invaded Friedawil Farm mafia style, allegedly hiring gunmen who shot five farm workers with rubber bullets and burnt houses in a move described by a farmers’ union as meant to force owner Louis Fick to surrender the farm.

Although violence has marked the government’s land reform programme since its inception in 2000, this is the first time that gunmen have opened fire to force a takeover since the formation of the unity government in February.

The Commercial Farmers Union (CFU) said prior to the Friday incident, Mashiringwani and armed militia have constantly attacked Fick, grabbing 98 percent of the Chinhoyi farm and denying him access to his property and animals.

“Mashiringwani has continuously harassed Fick and his workers in his often violent attempts to take over the farm. Fick’s cook was shot in the chest, a second employee was shot in the head and a third sustained leg injuries. The situation regarding the other two employees is still to be confirmed. The wife of the cook is reported to have been shot in the head and her condition is believed to be serious,” CFU President Deon Theron said at the weekend.

The injured workers were rushed to Chinhoyi Hospital, while dozens of other workers were left to count their losses as houses in the farm compound went up in flames. On Friday, 12 farm workers were assaulted and 6 of them were arrested and detained at Chinhoyi police station. They are due to appear in court on today facing charges of public violence.

Fick, a South African, was away in Harare consulting lawyers when the shooting took place. He is one of 78 commercial farmers who won a landmark case in which the Southern African Development Community (SADC) Tribunal ruled that Zimbabwe’s land reforms were illegal and racist.

“Despite this landmark ruling handed down by a respected international court, ZANU PF has refused to recognise the ruling and has continued to relentlessly harass farmers and their workers across the country. Fick has met with the South African ambassador in Harare on numerous occasions to seek assistance but has received no support from either the ambassador or from the South African government,” said Theron.

Kumire evades jail again



State prosecutor Andrew Kumire

HARARE-Beleaguered State prosecutor Andrew Kumire last week evaded imprisonment for the second time after a Magistrate once again granted him bail.

Harare Magistrate Archie Wochiunga, who presided over the bail application after Magistrate Chiwoniso Mutongi recused herself from the case last Friday, granted Kumire bail on the same conditions dictated by Harare Provincial Magistrate Mishrod Guvamombe after the issuance of a second warrant of arrest against him.

The new warrant of arrest against Kumire, who recently sought sanctuary at the Attorney General (AG)’s offices to evade jail, came after High Court Judge, Justice Tedious Karwi, confirmed his imprisonment.

Justice Karwi last Monday confirmed the conviction for contempt of court, and the five-day imprisonment sentence against Kumire, the State prosecutor in the ongoing trial of prominent human rights lawyer and Zimbabwe Lawyers for Human Rights member, Alec Muchadehama after the case had been referred to the High Court for review.

Undeterred by the failure to set aside the conviction and sentence, Kumire filed an appeal against his sentence and conviction, again in the High Court.

In his application for bail pending appeal Kumire’s lawyer, Kudzaish Gama, of Madziwanzira, Gama and Associates, told Magistrate Wochiunga that Kumire, who has 24 years of uninterrupted

service for the State, would not abscond as that would jeopardize his employment.

Gama said the offence that Kumire is convicted of was not that grave as to entice him to abscond.

AG law officer Chris Mutangadura who represented the State consented to bail on the basis that “the interests of justice will not be prejudiced” by the admission of Kumire to bail.

Ironically, Mutangadura and other law officers from the AG’s Office have spiritedly opposed bail and religiously invoked Section 121 of the Criminal Procedure and Evidence Act (CPEA) in numerous cases involving several human rights defenders and political party activists who have been granted bail by the courts in other cases.

Friday’s granting of bail to Kumire by Magistrate Wochiunga’s is the second time in less than two weeks that the Chitungwiza area public prosecutor has been admitted to bail.

Kumire was first granted bail by Magistrate Guvamombe on 22 October after being slapped with a five-day prison sentence by Magistrate Chiwoniso Mutongi after he banged his hand on a desk and clicked his tongue in protest against an unfavourable ruling handed down against him by the Magistrate during the trial of Muchadehama and Constance Gambara facing similar charges of contempt of court. But instead of serving the jail sentence and in a textbook case of abuse of office Kumire fled court and sought sanctuary at the AG’s Offices.

Civil society fumes over SADC snub

HARARE-The Civil Society Monitoring Mechanism (CISOMM) has expressed disappointment over the exclusion of civic groups from the Southern Africa Development Community (SADC) ministerial team consultations on the implementation of the Inter-Party Agreement (IPA) last week.

CISOMM is an independent monitoring and evaluating mechanism meant to act as a confidence-building measure for the people and allow for public involvement in the implementation of the IPA.

It assesses the sincerity, accountability and transparency of the political parties to achieving democratic reforms following the signing of the Interparty Political Agreement (IPA) in September 2008 by President Robert Mugabe and Prime Minister Morgan Tsvangirai.

“We (CISOMM) made a formal request to the SADC secretariat for us to make our presentations but we never got a response,” said Irene Petras, Zimbabwe Lawyers for Human Rights (ZLHR) executive director. ZLHR is a member of CISOMM.

She added: “We were surprised to hear that SADC said it knew what we were going to say. Basically, we wanted to talk about the issues that relate to the Agreement that affect us. For example we

have become targets because the Agreement is not working. We wanted to discuss issues of security with the SADC ministerial team.”

Petras said the National Association of Non-Governmental Organisations and the Crisis in Zimbabwe Coalition had made the request on behalf of civic society. “If the (SADC) team met Joint Monitoring and Implementation Committee (Jomic) then there is no reason why it could not meet us.”

Besides meeting Jomic members, President Mugabe and Prime Minister Tsvangirai, the SADC team met SADC diplomats accredited to Zimbabwe, as well as ZANU PF and MDC parties.

On Friday, Mozambican Foreign Affairs Minister Oldemiro Baloi, who was heading the SADC Troika ministerial team, told journalists that SADC had not received any request from civil society to meet the fact finding mission team.

“I am not aware of any request from the civil society to meet us. In any case, we have many stakeholders, this time we came with very short time. We tried to focus mainly on the signatories to the Agreement. Of course, the civil society wants peace, economic stability and political stability. The implementation of the Agreement is far from meeting those demands,” Baloi said.



ZLHR Director Irene Petras

NGOs boycott govt conference

HARARE-The government was forced to cancel an interactive conference scheduled for Victoria Falls after civic society organisations disengaged from participation in protest against heightened harassment of human rights defenders.

The conference, which was scheduled to run from 28-30 October, was supposed to include civic society and officials from the Ministry of Justice and Legal Affairs.

The conference was meant to discuss challenges relating to access to justice and the justice delivery system in Zimbabwe.

But civic society groups last week announced that they were pulling out because arbitrary arrests of human rights defenders and harassment of non-governmental organisations continued “unabated”.

“These are clear indicators that State institutions and actors involved in justice

delivery remain insincere and lack commitment to meaningfully address the ongoing abuse of legal process and the very serious breakdown of the justice delivery system and the rule of law.”

“Such perceptions and actions impact on the credibility of our institutions and further erode public confidence in the justice delivery system,” the organisations said in a joint statement.

Police last week used draconian security laws to arrest at least four civic society employees involved in human rights work.

The Law Society of Zimbabwe, Zimbabwe Lawyers for Human Rights, Zimbabwe Women Lawyers’ Association, Zimbabwe Human Rights NGO Forum, Legal Resources Foundation, Justice for Children Trust, National Association of Non-Governmental Organisations and the Zimbabwe Human Rights Association signed the statement.

Villagers freed

NYAZURA-A Nyanga Magistrate last week removed from remand 88 villagers who were being charged with extortion for demanding the return of property looted from them by ZANU PF supporters prior to last year’s violent presidential election run-off.

Magistrate Loice Mukunyadzi dropped the case after the villagers’ lawyer Blessing Nyamaropa of Zimbabwe Lawyers for Human Rights (ZLHR) applied for their removal from remand.

Nyamaropa made the application after the State prosecutor, only identified as Weja, had told Magistrate Mukunyadzi that the police were still to tender dockets pertaining to the villagers’ cases to court.

Nyamaropa argued that the villagers could not continue reporting to court when it was clear that the State’s house was not in order.

The Magistrate ruled that the State will not suffer any prejudice from the removal of the villagers from remand as the prosecutor could still re-summon them once ready to proceed with trial.

Police arrested the villagers early this year for allegedly approaching some ZANU PF supporters in Chifambe Village under Chief Katerere, Nyanga North, demanding back property that included goats, chickens and grain.

The 88 villagers said they were beaten and ordered to give up their goats, chicken and grain to feed the very same people that unleashed violence against them based at one of the 2008 election campaign bases called ‘Chamagonahapana’.

Police ignored reports made by the villagers when property was looted from them.

Since the signing of the Inter Party Agreement (IPA) in September 2008 and the formation of the transitional government in February, attempts to reconcile perpetrators and victims of political violence have been undermined by the arrest and malicious prosecution of the same victims whom the law failed to protect during the electoral violence.

Evicted farmer's property sold

NYAZURA-Auctioneers have sold a tractor belonging to a pioneering indigenous commercial farmer to cover costs incurred when evicting him from his Nyazura farm last month.

Mutare Deputy Sheriff Mark Dzobo ordered the auctioning of Tembani's tractor, a Renault Agriculture 335 type M10 model to recover eviction costs incurred whilst effecting the eviction of the black farmer from his Remainder of Minverweg Farm at Clare Estate Ranch. Tembani was evicted from the farm despite enjoying legal protection from a regional court.

Tembani bought the tractor in 2005 through proceeds from his farm produce and has used the tractor for tillage purposes for the past four years.

But Dzobo claimed the costs included those incurred by Takawira Zembe, who seized the farm from Tembani.

Tembani, who became one of the country's first black commercial farmers shortly after independence in 1980, was evicted from a farm



Luke Tembani and his wife Tsitsi on the day of eviction

he bought in Nyazura, Manicaland province 26 years ago. Tembani's eviction from a farm he has called home for nearly three decades was in defiance of a Southern African Development Community (SADC) Tribunal ruling barring his eviction.

The Windhoek-based Tribunal had ruled that the repossession and sale of the farm by the State-run Agribank in order to recoup an outstanding loan was "illegal and void".

The Tribunal ordered government to take all necessary measures through its agents not to evict Tembani or his family from the property and to stop interfering with his use and occupation of the farm.

But the government has refused to comply with the regional Tribunal's order.

Justice and Legal Affairs Minister Patrick Chinamasa unilaterally pulled Zimbabwe out of the SADC Tribunal, a decision which was refuted by Prime Minister Morgan Tsvangirai.

Hofisi powers UZ to victory

HARARE-Zimbabwe Lawyers for Human Rights (ZLHR) paralegal and student member David Hofisi powered the University of Zimbabwe (UZ) Faculty of Law team to victory over their counterparts from the Midlands State University (MSU) in an International Humanitarian Law (IHL) Moot Court competition.

The Moot Court competition is an annual legal debate. This year it was organised by the International Committee of the Red Cross (ICRC).

Hofisi, the ZLHR paralegal who is in his final year Bachelor of Laws Honours (LLB) degree was partnered by Rudo Magundani, a ZLHR student member and Passmore Nyakureba.

The trio outwitted their colleagues from the MSU to earn the privilege of representing Zimbabwe at the Pan African IHL Moot Court competition to be held in Arusha, Tanzania this month.

The IHL Moot Court competition, the largest gathering of law students and lecturers on the African continent is a training event on IHL intended for students and aimed at "taking law out of the books".

During the competition, students are placed in mock armed conflict situation. Assuming the roles of prosecution and defence lawyers, they have to deal with allegations of violations

of IHL and to argue their case before a panel of judges (confirmed experts in IHL).

This exercise allows the students acquiring knowledge of this body of law while at the same time appreciating its practical relevance.

High Court Judge President Rita Makarau who was amongst the panel of adjudicators for the local edition of the competition expressed satisfaction at the advocacy skills of the students, though she was quick to point out the need to broaden the legal fields explored in the Moot Court competition.

Impasse affecting Zim growth

BERLIN-An international networking group known as 'Friends of Zimbabwe' has called for the full implementation of the Global Political Agreement (GPA) for the nation to get on an economic recovery path after years of decline.

"We are concerned that, eight months after the formation of the inclusive government, a number of key provisions of the GPA remain to be implemented," the group said after its meeting in Berlin last week.

"While work on the agreed GPA objectives has proceeded impressively in the financial, economic and social sectors, progress on the political track has been disappointing.

This situation has been brought about by continued obstruction originating from political forces which continue to be hostile to the implementation of the GPA," the group said.

Friends of Zimbabwe is an international networking group aimed at contributing towards the free flow of ideas, concepts and information and assisting Zimbabwe to close the information gap which hinders development and nation advancement.

The group is also known as the 'Fishmongers' and it consists of USA, Canada, Australia, Norway and the EU-countries, Germany, France, Netherlands, UK, Sweden, Finland plus the EC-Commission.

It added: "In particular, we note with concern the continuing deadlock on a range of outstanding issues. These include the unilateral appointment

of the Attorney General (Johannes Tomana) and Reserve Bank of Zimbabwe Governor (Gideon Gono), the issue of the appointment of Provincial Governors, politically inspired violence and abuse of the judiciary including politically motivated arrests, continued farm invasions.

The group noted the "delays to the land audit provided for in the GPA, the unilateral imposition of partners to owners of private wildlife conservancies, the disrespect of Bilateral Investment Protection and Promotion Agreements (BIPPAs), and the slow pace of progress on a range of issues agreed by the parties to the GPA aimed at improving freedom of the media, governance, human rights and exploitation of natural resources in accordance with internationally agreed standards" as some of their concerns.

The declaration said since the transitional government was formed in February, there have been a number of important and effective steps for the economic and social stabilization of the country.

"We welcome the progress that has resulted from these courageous measures and note that the lives of many Zimbabweans have since improved," the group said.

The group said it met in Berlin last week against the background of the temporary suspension of the proceedings of the government, which reflected 'frustration about the slow pace of implementation of the Agreement. We urge all parties concerned to ensure that the current political crisis is resolved effectively without

undue delay and in a manner consistent with the provisions of the GPA.'

It added: "We stand ready to join forces with SADC in our joint endeavour to assist Zimbabwe on its road to full recovery. As a result of the signature of the GPA, we as a group have increased our support for the people of Zimbabwe, gradually shifting from measures aimed at purely humanitarian relief to substantial longer term assistance in a number of sectors which are crucial for the rapid improvement of living conditions for the people."

"In particular, we have greatly increased our assistance in the sectors of education, health, water management, food security and rural livelihoods."

The group said it has contributed over \$630 million towards development assistance to Zimbabwe this year compared to \$580 million of last year.

It added: "We as a group are determined to continue our assistance in 2010 in order to contribute to the Inclusive Government's efforts to fully implement the GPA. We welcome the role that the UN agencies are playing and will continue to play, as both a channel of funding and of technical assistance, in support of the priorities of the Inclusive Government. We acknowledge the important role that civil society, national and international NGOs are playing in the process."



All smiles... David Hofisi

Justice Makarau suggested that having such competitions in fields of criminal law and family law would be beneficial not only to the students but to the development of law in the country.

Other members of the adjudication panel were Judge Advocate Brigadier-General Charles Tarumbwa, Counsel to Parliament and UZ law lecturer Choice Damiso and MSU law lecturer and Gweru lawyer Reginald Chidawanyika.

Thomas Merkelbach, the head of the ICRC regional delegation in Harare also attended the competition.

Hofisi and his team are expected to leave for Tanzania on 21 November 2009 to participate in the 9th IHL Moot Court competition.