

The LEGAL MONITOR

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A newsletter published by Zimbabwe Lawyers for Human Rights for members & human rights defenders

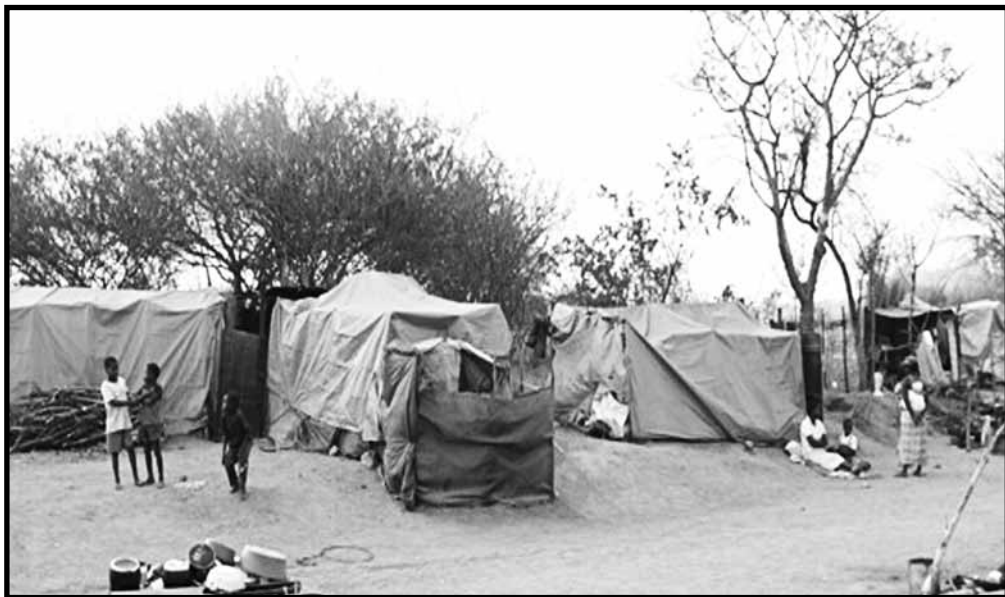


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COST-FREE

Real victims of land reform



These children are part of the families who were staying in makeshift tents in Odzi along the Harare-Mutare highway
Pic: GAPWUZ

HARARE-Farm workers suffered a hundred times more for every abuse meted on a single farmer during Zimbabwe's turbulent land reform programme, according to a new report by the General Agricultural and Plantation Workers Union (GAPWUZ).

Widespread deaths, beatings, displacements and torture endured by farm workers have largely gone unnoticed, as the media and lobbyists focus more on the plight of 4 500 commercial farmers, according to the report, which noted that "quantitatively, farm workers as a group outnumber farmers by a factor of 100 to 1".

The report, titled: 'The invisible suffering of commercial farm workers and their families due to Land Reform', highlights the torment that farm workers have gone through at the hands of

the State and pro-government civilian militias driving a land reform programme characterised by violence, corruption, and general chaos.

Without the financial muscle to lobby for their case, farm workers, now mostly migrant and displaced in the ongoing wave of violent farm invasions, have become the forgotten victims.

"International media around the world focussed on pictures of white farmers being attacked, murdered or evicted, whilst their workers were barely mentioned. However, for every one white farmer there were over a hundred workers who suffered more violations of a worse nature than their employer did," read the 56-page report.

Most of the more than 1.8 million farm workers and their families did not benefit from the land



Some of the farm workers who were living in the open in Chegutu
Pic: GAPWUZ

reform programme, despite representing 12 to 16 percent of Zimbabwe's total population. New owners lack the capacity to farm productively to retain the services of farm workers, leaving them jobless.

In addition, the sustained and systematic psychological and physical assault has continued as new owners intensify evictions of farm workers whom they suspect to be sympathetic to former dispossessed commercial farmers.

Displacement of farm workers is still rampant, leaving thousands, including children and pregnant women destitute and risking disease and life, according to the report. Ongoing displacements, the report notes, have a xenophobic focus and migrant workers with no rural homes to retreat to are hardest hit.

"It is the view of this report that the significant proportion of farm workers with historical family links to other countries has been one of the causes for the entire group of farm workers being treated as second class citizens, and has served as justification to their oppressors for their disenfranchisement, exclusion, physical and psychological assault," read the report.

The GAPWUZ report notes that "all" perpetrators of land reform abuses "are connected to the State, directly or indirectly".

The police, which was supposed to stop the abuses, was actively involved in the harassment of farm workers. A significant percentage of violations were committed by the police or unformed security personnel, according to the report.

Halt State violence-EU

BRUSSELS-The European Union (EU) has raised concern over high levels of intimidation targeting civil society and political activists as lawyers called for an urgent establishment of an independent Parliamentary committee to investigate the continuing 'unlawful actions' of the police.

Brussels raised the distress call following the arrest and detention of five members of the Zimbabwe Congress of Trade Unions (ZCTU) including its leader, Lovemore Matombo, last week. The labour officials were released on Thursday after the intervention of lawyers from ZLHR.

Last month, Victoria Falls police arrested, detained and charged the Chairperson and Chief Executive Officer of the National Association of

Non-Governmental Organisations (NANGO). The same week, two employees of the Zimbabwe Election Support Network (ZESN) became victims of the 'unlawful actions of the police and a justice delivery system which is failing to protect their fundamental rights and freedoms'.

"The European Union (also) finds it most disturbing to learn about the alleged torture in *incommunicado* detention of MDC member Pasco Gwezere. The EU calls for a halt to all State violence and intimidation of members of civil society and political activists in Zimbabwe," the EU said in a statement.

ZLHR said in a statement that the Zimbabwe Republic Police (ZRP) had resorted to 'malicious and unjustifiable action' against human rights defenders (HRDs) using their 'tool of selective

repression – the Public Order and Security Act (POSA) – knowing fully well that it does not apply to meetings of the labour body.

"It is in this light that the motion in the House of Assembly to introduce a Private Members' Bill to amend POSA is welcomed, and we urge all peace-loving and progressive legislators in the House to move swiftly to ensure that the provisions of POSA which continue to be selectively applied to muzzle free speech and democratic action by HRDs becomes a phenomenon of the past," ZLHR said.

"ZLHR calls for the urgent establishment of an independent Parliamentary committee of inquiry into the continuing unlawful actions of the ZRP, including the Law and Order section of the Victoria Falls and Hwange police stations, the

Officer Commanding the province, situated in Lupane, the Commissioner-General of Police, who bears overall responsibility for the actions purportedly perpetrated by his subordinates in the course of their duties, and the Co-Ministers of Home Affairs who seem unable or unwilling to bring this lawlessness to an immediate end," added ZLHR.

"This inquiry should also include an investigation into the actions of the Director of Public Prosecutions and the Attorney General who, as the legal representatives of the ZRP, have failed and/or refused to execute their constitutional and professional duty to advise the police of their continued misinterpretation and misapplication of the law, and must therefore be perceived by all reasonable people to be complicit in this continued harassment of HRDs."

Fight dictatorships

BANJUL-Ongoing human rights abuses came under the spotlight at the African Commission on Human and Peoples' Rights (ACHPR) session, where the body's commissioners leaders called for renewed efforts to fight dictators.

Non-governmental organisations (NGOs) from the continent attending the 46th Ordinary Session of the African Union organ last week in The Gambia agreed to adopt a resolution on the deteriorating human rights situation in Zimbabwe.

The resolution was adopted to be a part of the final communiqué by NGOs tabled for discussion at the ACHPR, where the current session began on Wednesday and will run until 25 November.

The ACHPR was established by African Heads of States in 1986, after the concept was adopted in 1981. Its main mandate is; the protection of human and people's rights, the promotion of human and people's rights, and the interpretation

of the African Charter on Human and People's Rights.

Zimbabwe's State-sponsored human rights abuses have featured prominently at the Commission's meetings over the past years.

In their resolution, the African civil society groups said they wanted the ACHPR to act on its own resolutions made during the previous sessions to urgently send the Special Rapporteur on Freedom of Expression to investigate violations.

They said they were taken aback by the deportation of the UN Special Rapporteur on Torture, and other Cruel, Inhuman and Degrading Treatment or Punishment, Professor Manfred Nowak, by the Zimbabwean authorities on 28 October 2009.

Part of the resolutions read:

- Concerned that the human rights situation in Zimbabwe remains fragile despite the formation of the inclusive government;

- Alarmed by a fresh wave of attacks on civil society representatives and MDC-T political party officials and the general citizenry in the form of arbitrary arrests and detention and malicious prosecutions, unjustified persecution, physical attacks and harassment;
- Recalling the commitment of the parties to the inclusive government to stop all human rights violations and to further "attend to all outstanding issues arising from the implementation of the GPA and the SADC Summit Communiqué of January 2009," as reaffirmed in the Troika delegation's statement released on 31 October 2009.

Acting Chairperson of the ACHPR, Commissioner Bahame Tom Nyanduga, signaled that the Commission would again tackle Zimbabwe's tragic rights situation when he addressed

NGOs attending the session. He encouraged NGOs to recommit themselves to fighting dictatorships, bad governance and other human rights violations, all hallmarks of Zimbabwe's political landscape. Commissioner Nyanduga said Zimbabwe presented a challenge to Africa's democratic credentials.

"The GPA (Global Political Agreement) which offered a promise to end the political and economic crisis in Zimbabwe is likely to unravel unless ZANU PF implements its part of the bargain in good faith.

"We are witnessing a redefinition of the electoral processes and democracy on the continent whereby the will of the first families is becoming the determinant of governance rather than the will of the people," he said.

Spare a thought for Tembani

NYAZURA- Mildred Tembani, the daughter of tormented Nyazura farmer Luke, has dropped out of school after authorities at Mavhudzi High School sent her home early this month, adding more woes to the beleaguered family.

zvikuru kuvaona vakagara iwo vaimboenda kuchikoro," said Tembani, who battled to contain tears.

Mildred has since joined her siblings Terrylee and Luke junior who now reside in Rusape.

The twins, Terrylee and Luke were the first to be forced out of Chimwanda Primary School, a school which their father built, after the family was evicted from their farm last month in defiance of a SADC Tribunal ruling protecting the pioneering black commercial farmer.

Besides coping with the expulsion of his children from school, Tembani also has to contend with the loss of his tractor sold by Mutare Deputy Sheriff, Mark Dzobo, ostensibly to cover costs incurred whilst evicting him from his Nyazura farm last month.

Tembani, who had occupied his farm for the past 26 years was evicted a fortnight ago by Dzobo from the remainder of his Minverwag Farm at Clare Estate Ranch, which he bought in 1983.

The new owner, Takawira Zembe, claims to have bought the farm from the Agricultural Bank of Zimbabwe (Agribank), formerly Agricultural Finance Corporation (AFC).

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

The Tribunal ordered the government to take all the necessary measures 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 orders.

Justice and Legal Affairs Minister Patrick Chinamasa recently went so far as to purport to unilaterally pull Zimbabwe out of the SADC Tribunal, a decision whose legal standing remains questionable.



Luke Tembani

Authorities at Mavhudzi High School in Nyazura, recently expelled Mildred, a Form Two student at the government-run school after the family failed to pay tuition fees amounting to \$445, part of it outstanding from last term and part of it current term's fees.

Mildred's expulsion from school is confirmed in a pass signed by the school's Senior Mistress only identified as Musa authoring her to travel to Rusape where her parents are temporarily housed.

Tembani, a pioneer indigenous commercial farmer told *The Legal Monitor* this week that he had failed to raise the school fees to allow her daughter to resume lessons.

"Handizivi kuti ndingaiteseiko kuti vana vangu vadzokere kuchikoro. Zvinhu zviriri kundirwadza

Court berates police over arrests

VICTORIA FALLS-A Magistrate here last week ordered the police to fully acquaint themselves with the country's laws as he freed Zimbabwe Congress of Trade Unions (ZCTU) president Lovemore Matombo and four others from unlawful custody.

Magistrate Richard Ramaboea refused to place the five ZCTU leaders -Matombo, Michael Kandukutu, Percy Mcijo, Dumisani Ncube and Nawu Ndlovu - on remand when they were finally brought to court on Thursday. He ruled that there were insufficient facts to suggest that the five union leaders had committed an offence.

Magistrate Ramaboea said the meeting convened by the ZCTU in Victoria Falls was a bona fide meeting of the labour union and the police must carefully read the laws before arresting individuals.

The ZCTU leaders were arrested by officers from the CID while Matombo was addressing members of the ZCTU Victoria Falls District Executive purportedly for failing to comply with Public Order and Security Act (POSA) to notify the police about an intended public meeting.

Matombo and his four colleagues remained detained in police cells at Victoria Falls police station even beyond the prescribed 48-hour period after police issued a Warrant of Further Detention without notice to the five men or their lawyers.

The ZCTU leaders were finally brought to court after their lawyers Kucaca Phulu and Matshobana Ncube of ZLHR filed an Urgent Chamber Application in the High Court in Harare on Wednesday evening seeking the immediate release of the unionists.

The lawyers of ZLHR wanted the arrest and detention of the ZCTU leaders as well as the Warrant of Further Detention declared unlawful.

The ZCTU leaders had been in police custody for more than 72 hours without being taken to court.



ZCTU President Lovemore Matombo

Meanwhile, High Court Judge Justice, Felistus Chatukuta, on Friday, directed that they proceed by way of an ordinary application on the grounds that the unionists had finally been freed before the lawyers' application could be determined.

The lawyers wanted the court to declare their arrest and detention unlawful.

Despite the release of the union bosses, ZLHR said it was proceeding with the application, in order to have the court consider the legality of the State action in relation to the interpretation of POSA to avoid further prejudice to *bonafide* activists who have continued to bear the brunt of its selective application by the Zimbabwe Republic Police.

The application cites co-Home Affairs Ministers Kembo Mohadi and Giles Mutsekwa, the Commissioner-General of the Police Augustine Chihuri, the Officer In Charge Victoria Falls Police Station, Officer In Charge CID Victoria Falls Police Station, the Officer Commanding District (Victoria Falls) and the Officer Commanding Matabeleland North District.

Khama calls for new Zim polls

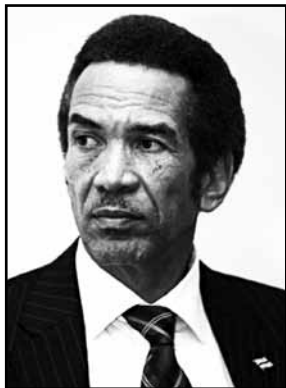
GABORONE – Botswana's President Ian Khama has called for fresh election in Zimbabwe, blaming President Robert Mugabe and his ZANU PF party for blocking full implementation of last year's SADC-brokered power-sharing agreement.

The power-sharing agreement or Global Political Agreement (GPA) gave birth to Zimbabwe's unity government that analysts say is the most viable way to end Zimbabwe's political problems.

But the GPA is yet to be implemented in full with both ZANU PF and Prime Minister Morgan Tsvangirai's MDC-T party blaming each other for stalling on the agreement.

President Khama, who won Botswana's presidential election last month, made it apparent that he believed Mugabe and ZANU PF were to blame for the slow progress in implementing the GPA and said new elections were the only solution to resolve the political stalemate in Zimbabwe.

"In the absence of genuine partnership, it would be better for all parties to go back to the people, for they are the ultimate authority to determine who should form the government of Zimbabwe," Khama told Botswana's parliament.



Concerned, Botswana President Ian Khama

He added: "I must here however express concern at the continued failure of ZANU PF in that country to fully honour the spirit of the power-sharing agreement."

However ZANU PF, MDC-T and Deputy Prime Minister Arthur Mutambara's MDC-M party are expected to resume negotiations in line with a SADC recommendation to resolve all outstanding issues from the GPA holding back the coalition government.



Participants at a Litigation workshop on Economic, Social and Cultural (ESC) Rights held in Bulawayo recently and organised by ZLHR in collaboration with SADC Lawyers Association and International Commission of Jurists.

The workshop was the first of its kind on ESC Rights and its objectives were to provide a platform for the legal practitioners and various human rights advocates to deliberate on strategies for recognition and realisation of socio-economic rights in Zimbabwe by drawing experiences from SADC region. The delegates also discussed strategies to effectively lobby for the inclusion of economic, social and cultural rights in the Constitution of Zimbabwe.

The recommendations from the workshop included;

- The need to have the judiciary to come out clearly with a position on their stand on economic social and cultural rights.
- Government and civil society need to embark on massive education programmes in order to create awareness on ESC Rights among the populace
- Civil society organisations need to continuously carry out lobby and advocacy with politicians so that they can develop a human rights culture
- Conduct follow up workshops to guarantee progress on recommendations made.

ZLHR intends to make a follow up on the recommendations made in order to develop a plan of action that will enable meaningful enforcement of ESC Rights.

MDC MP acquitted

KWEKWE-Movement for Democratic Change (MDC) MP for Kwekwe Central, Hon. Blessing Chebundo, was last week acquitted of raping and impregnating a 13-year-old minor.

Magistrate William Bhila cleared Hon. Chebundo of the charges after the complainant was found to have been an unreliable witness in the case.

Hon. Chebundo's lawyer and ZLHR board member Reginald Chidawanyika, told *The Legal Monitor* that Magistrate Bhila noted some inconsistencies in the complainant's testimony.

Magistrate Bhila ruled that the State had failed to prove its case beyond reasonable doubt since the complainant had failed the credibility test.

Bhila also observed that the complainant's version given to the police when they first interviewed her differed materially with the version she told the court.

Chidawanyika said Magistrate Bhila ruled that the complainant had taken a long time before reporting the alleged rape.

"Complainant in the instant case alleges that she was raped on 5 January 2009 but kept quiet until 19 May 2009 when she reported to her sister. Her sister also kept it to herself for about two weeks. The court also noted that the complainant was an intelligent girl who was able to answer questions well and exhibited signs of maturity in court.

It is inapplicable why complainant failed to report to her mother who she stayed with, or her father or her sister who was at her parents' home," said Chidawanyika.

The court said the complainant had also destroyed evidence when she washed the pants which she alleged had blood stains following the rape.

The complainant is also said to have lied to the court by claiming her alleged encounter with Hon. Chebundo was her first sexual experience something that was contradicted by a medical report which indicated she had been sexually active.

Hon. Chebundo was arrested in May after the complainant claimed that she had been raped by the MDC legislator near Sebakwe River. The matter only came to light when the sister of the girl allegedly advised her to report her alleged rape to the police.

Kwekwe Mayor, Shadreck Tobaiwa, and lawyer Tapera Sengweni were also arrested on charges of trying to defeat the course of justice by allegedly visiting the girl's parents to ask for an out of court settlement on the accused legislator's behalf. Both Tobaiwa and Sengweni were also later acquitted of the charges.

Torture victim denied treatment

HARARE-Private medical doctors have still not being given permission to attend to Pasco Gwezere, the Movement for Democratic Change (MDC) transport manager, who was tortured by State security agents when he was held *incommunicado* after his abduction.

The deprivation of treatment to Gwezere is in defiance of Harare Magistrate Archie Wochiunga's order which he issued a fortnight ago directing prison officials to allow doctors selected by Gwezere to examine and treat him for various injuries.

But by Saturday Gwezere's doctors had not had access to examine him.

The medical practitioners said a prison doctor identified as Dr Makanza who had agreed to accompany them to check Gwezere at Chikurubi Maximum Prison did not show up on Friday.

"We are trying to have access to our client almost on a daily basis but we have been failing. It's just a run around," the doctors said.

Gwezere's lawyer, Alec Muchadehama, criticized prison authorities for denying his client access to doctors of his own choice.

"It (denial of medical examination) is calculated and deliberate," said Muchadehama.

On Thursday, Muchadehama challenged State Prosecutor Michael Mugabe on why the police had not yet accounted for anyone who is alleged to have committed an offence with Gwezere.

Gwezere was abducted and held in secret locations for almost a week last month before appearing in court. He is accused of plotting to overthrow President Robert Mugabe's previous administration and stealing firearms at Pomona Barracks in Harare.



Villagers attending a ZLHR organised workshop in Honde Valley in Manicaland

Judge to decide on recusal

HARARE-High Court Judge Chinembiri Bhunu will today decide whether to recuse himself in the high profile trial of Roy Bennett, the Deputy Agriculture Minister-Designate.

In seeking Justice Bhunu's recusal, the defence, led by human rights lawyer Beatrice Mtetwa, said the Judge had in May 2006 handled a bail application involving the State's key witness Peter Michael Hitschmann.

The defence says Justice Bhunu made adverse remarks to the effect that the firearms dealer was a threat to Zimbabwe's national security.

Hitschmann is an alleged accomplice in the trial of Bennett although he has never been convicted on such allegations.

Said Mtetwa: "He (Justice Bhunu) said that this is a very serious case. We feel the presumption

of innocence until one is proven guilty has been taken away.

"We are saying since Hitschmann is a witness and an alleged accomplice in this case, the decisions he made in the bail hearing necessarily also apply to Bennett because, according to the State they did this together."

In a bail application for Hitschmann in 2006, Justice Bhunu said the accused faced a

'serious offence and that evidence against him was overwhelming'.

Justice Bhunu said Hitschmann had to prove that he was innocent because he was allegedly found in possession of the weapons.

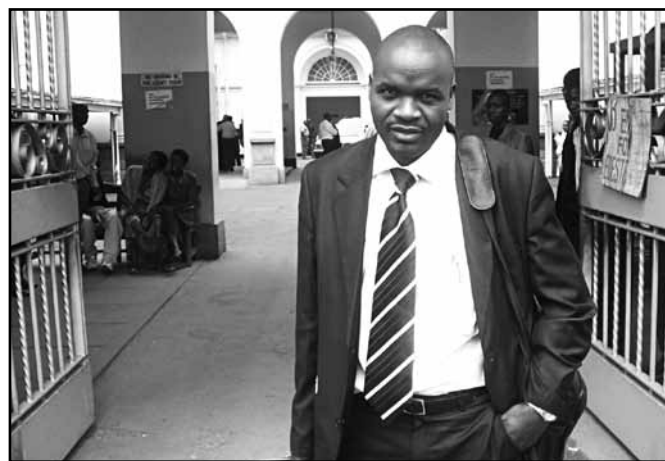
See Bennett's court appearance in pictures below



Roy Bennett leaves court



Bennett's lawyers Beatrice Mtetwa and Trust Maanda leaving court



Maanda exits court



AG Johannes Tomana and his body guards leave High Court



Bennett gives interviews to journalists



Mtetwa



Human rights lawyers Tafadzwa Mugabe and Alec Muchadehama



Vimbai Mbisva, a supporter showing solidarity to Bennett



Peter Michael Hitschmann



Bennett's wife Heather



Bennett going through security check at High Court