

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

Tomana greatest threat

HARARE-A senior lawyer says Attorney General (AG) Johannes Tomana is the greatest threat to the administration of justice in the country and should be censured for his unparalleled persecution of human rights lawyers in the country.

Advocate Happias Zhou laid the blame on Tomana whilst making an application for refusal of remand for leading human rights and media lawyer and Zimbabwe Lawyers for Human Rights (ZLHR) member Mordecai Mahlangu last Thursday.

Mahlangu, a senior partner with Gill, Godlonton and Gerrans Legal Practitioners was arrested last month and charged with obstruction of justice after he allegedly wrote a letter to Tomana stating that his client Peter Michael Hitschmann would not give evidence in the ongoing trial of Deputy Agriculture Minister-Designate Roy Bennett because the information which the prosecution was relying upon was extracted through torture and had already been rejected by the High Court in his own trial.

Zhou, who in his application stated that Mahlangu was simply taking instructions from his client when he prepared an affidavit for Hitschmann, charged that Tomana must be censured for his actions in prosecuting the human rights lawyer.

"The AG seems to be the greatest threat now to the administration of justice and to the existence and independence of the legal profession. This court should censure the Office of the AG," said Zhou whose application was opposed by State prosecutor Edmore Nyazamba.

Magistrate Archie Wochiunga will on 13 January 2010 deliver his ruling on Mahlangu's application.

Advocate Zhou becomes the latest senior legal practitioner to add his voice to the growing calls for an enquiry into the conduct and role of Tomana in persecuting human rights lawyers.

In July, Masvingo Urban legislator and lawyer, Hon Tongai Matutu, asked the House of Assembly to investigate the AG's conduct in politically motivated and selective prosecutions of human rights activists, MP's and political activists.

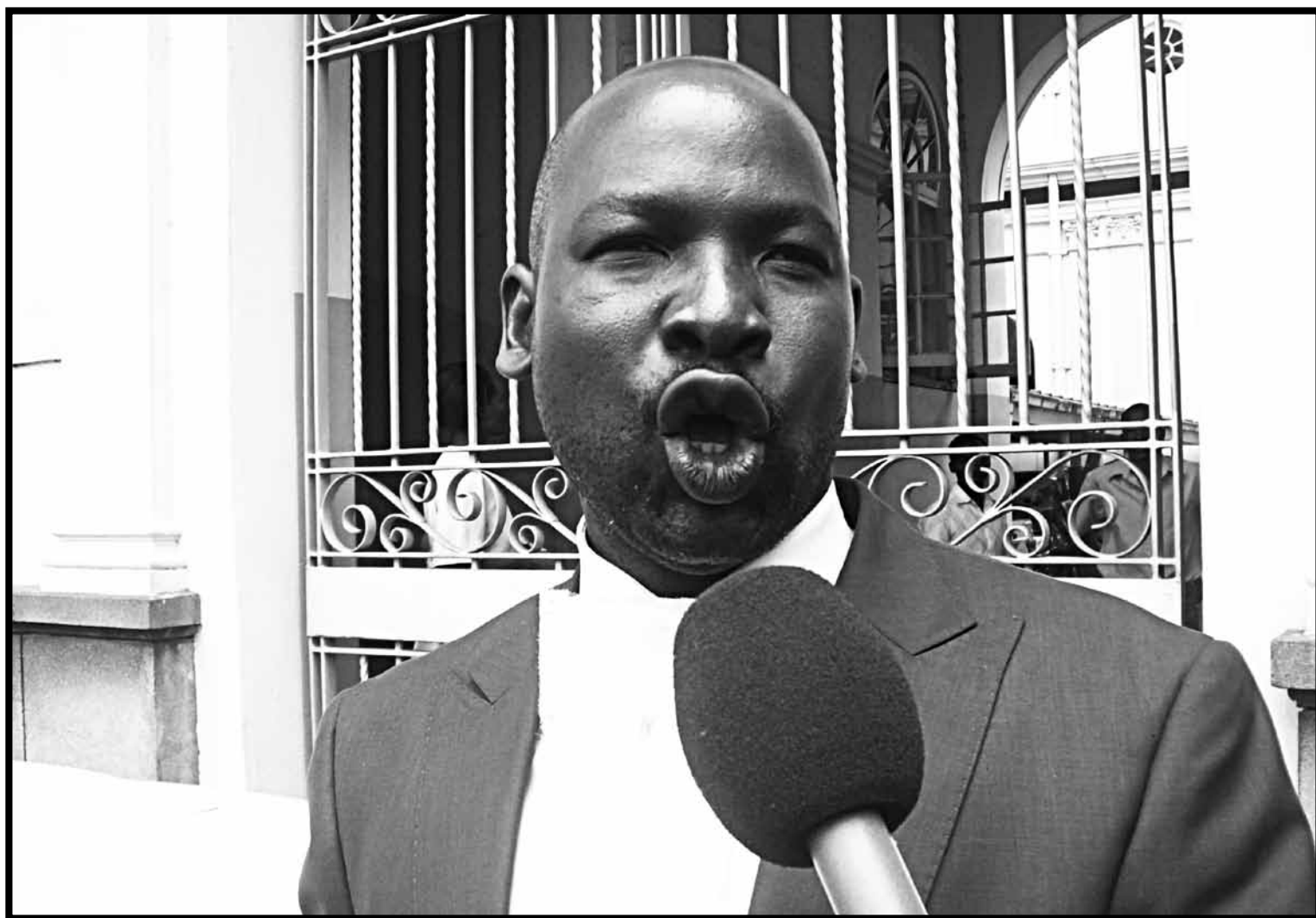
Matutu moved a motion for the establishment of a special select committee to investigate the possible abuse of office by Tomana.

In November, members of the Law Society of Zimbabwe (LSZ) signed a petition demanding that their representative council institute disciplinary proceedings against Tomana as a legal practitioner.

Recently, human rights lawyer Beatrice Mtetwa wrote to the LSZ asking the lawyers' regulatory body to investigate Tomana's conduct after senior prosecutor Andrew Kumire evaded serving his jail term when he was committed to prison by former Harare Magistrate Chiwoniso Mutongi during the dramatic trial of prominent human rights lawyer Alec Muchadehama.

Just last week Muchadehama criticised Tomana's Office and the police for maliciously prosecuting him on spurious contempt of court charges.

Muchadehama, who was acquitted at the close of the State case by Bulawayo regional



Tomana battles to defend his record

Magistrate Fadza Mthombeni, accused the AG's Office of acting as an extension of the dreaded Central Intelligence Organisation (CIO) in prosecuting him.

Lawyers in private and public practice serve as Human Rights Defenders (HRDs), in that they are the critical and last line of defence in protecting and ensuring the fundamental rights and freedoms of litigants and those charged with criminal offences.

Through the course and scope of their work, lawyers aid citizens to realise their civil, political, social, economic and cultural rights. They are also a vital cog in the wheel of justice delivery, access to justice, and the enhancement of public confidence in the institutions which are constitutionally obligated to protect and promote human rights.

Despite these important roles, members of the legal profession are persistently under attack-most often by State actors or those acting with the knowledge and/or acquiescence of the State.

Regrettably, this state of affairs has continued unabated, negatively impacting on the fundamental right of an accused 'to be represented by a lawyer of one's choice', and other rights enunciated in the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the United Nations Basic Principles on the Role of Lawyers, and the

African Union Guidelines on the Right to Fair Trial and Legal Assistance in Africa.

Although lawyers in private practice have been victimised and harassed after being identified with the causes of their clients it is worrying that no such prosecution has resulted in a conviction, reinforcing the perception that lawyers are being persecuted rather than legitimately prosecuted.

Not only has this negatively impacted their own rights, but it has also adversely affected the fair trial rights of their clients, including access to legal representatives of their choice on demand.

Not spared are lawyers in the public sector and judicial support staff who have attempted to exhibit independence and professionalism in the execution of their duties as they have also been harassed-both by the police and their own superiors in the Office of the AG.

They are increasingly being arbitrarily charged with criminal offences such as 'committing criminal abuse of duty as a public officer', which has had a chilling effect on their ability to execute their professional duties without fear or favour.

In addition, State actors, working in collaboration with non-State actors, continue to undermine and denigrate the efforts of lawyers, and habitually defy court orders, especially those which are intended to promote and protect human rights.

This not only tears at the very fabric of the Rule of Law, but also makes a mockery of the principle

of separation of powers and impairs the integrity of the justice delivery system, and particularly the independence of and respect for the Judiciary.

Last week ZLHR petitioned Parliament to take immediate steps to deal proactively with offensive legislative provisions and malicious administrative practices implemented by the police and the Office of the AG to undermine the work of the legal profession and endanger the integrity, independence and safety of lawyers in public and private practice.

The rights group wants Parliament to guarantee the independence and security of the legal profession in any new Constitution and corresponding legislation.

The Legal Monitor
wishes Zimbabwe Lawyers
for Human Rights (ZLHR)
members and rights
defenders a happy
festive season.

Our next edition
will be published on
11 January 2010.

Most abused laws

HARARE-It has been an eventful year for human rights lawyers and defenders fighting the State’s continued use of repressive legislation.

Two of the most abused pieces of legislation in 2009 have been the Criminal Procedure and Evidence Act (CPEA) and the Public Order and Security Act (POSA).

On many occasions during the year, the Zimbabwe Lawyers for Human Rights (ZLHR) sought the urgent intervention of the courts to stop the AG’s office from abusing a controversial provision of the CPEA to keep accused persons in custody.

Lawyers from the office of the AG have regularly been invoking section 121 of the CPEA where

accused persons would have been granted bail effectively keeping individuals in custody for a further seven days to allow the State time to appeal the granting of bail.

Human rights defenders, including members of the Movement for Democratic Change have been the primary targets of the selective invocation of Section 121.

A survey conducted by ZLHR, has, however, shown that in the majority of the cases recorded, the State had not filed an appeal after the expiry of the statutory seven days.

In this final issue of *The Legal Monitor* for 2009, we publish cases where these laws have been used against Human Rights Defenders.

Victim of s121	Charge/Alleged offence	Date of Invocation	AG’s invoking officer	Status
Pasco Gwezere (MDC Transport Manager)	Unlawful entry and theft	20/11/09	Tawanda Zvekare	Appeal and theft of guns filed, to be heard in Supreme Court today
Roy Bennett (Deputy Agriculture Minister Designate)	Banditry	16/10/09	Michael Mugabe	Judge dismissed attempt to invoke
Toendepi Shonhe (MDC Director General)	Perjury	18/06/09	Allen Masiya	Appeal not filed
Constance Gambara (Clerk to Judge Bhunu)	Criminal abuse of duty as a public officer	08/05/09	Public Mpofu	Appeal not filed
Andrison Manyere (Photojournalist)	Sabotage and banditry	09/04/09	Chris Mutangadura	Appeal not filed
Gandhi Mudzingwa (Director of Infrastructure Cluster, PM’s office)	Sabotage and banditry	09/04/09	Chris Mutangadura	Appeal not filed
Kisimusi Dhlamini (MDC Director of Security)	Sabotage and banditry	09/04/09	Chris Mutangadura	Appeal not filed
Chinoto Zulu (abductee)	Sabotage and banditry	19/02/09	Chris Mutangadura	Appeal not filed
Zacharia Nkomo (abductee)	Sabotage and banditry	19/02/09	Chris Mutangadura	Appeal not filed
Regis Mujeyi (abductee)	Sabotage and banditry	19/02/09	Chris Mutangadura	Appeal not filed
Mapfumo Garutsa (abductee)	Sabotage and banditry	19/02/09	Chris Mutangadura	Appeal not filed
Roy Bennett (Deputy Agriculture Minister Designate)	Sabotage and banditry	24/02/09	Chris Mutangadura	Appeal filed but dismissed
20 Mutoko Villagers	Robbery, extortion	02/2009	Katsvairo	Appeal not filed
Hon. Meki Makuyana (MDC MP for Chipinge South)	Public violence	27/01/09	Last Goredema	Appeal not filed

Govt slow to repeal repressive laws



All smiles... Tawanda Zvekare, walks out of court after successfully invoking Section 121 of the CPEA to keep Pasco Gwezere in jail

HARARE-Political changes in government have done little to stop the police from abusing the Public Order and Security Act (POSA) to clamp down on human rights defenders (HRDs) and political activists.

Despite the poor record of convictions, police continue to use the law to target government critics. This year, at least 125 people were arrested under POSA, a law enacted in 2003 to silence rising dissent against authoritarian rule.

According to information from the Zimbabwe Lawyers for Human Rights Human Rights Defenders Project, the State has not succeeded in securing a single conviction on POSA cases.

In one instance though, HRDs paid admission of guilt fines in order to secure an early release from prison cells, where conditions are gravely inhumane.

The HRDs are now challenging their forced admissions of guilt in court.

Rights lawyers say the continued use of POSA is a sign that the slow pace characterizing democratic reforms are benefiting the old order who want to maintain a grip of fear on a nation in transition.

“The culture of selective application of repressive laws such as POSA against human rights defenders and legitimate political activists has

regrettably remained despite the undertakings by political parties to the Inter-Party Agreement to address both the legislation and the lack of human rights culture in state institutions such as the Zimbabwe Republic Police. It is something which must be addressed urgently if citizens are to have increased confidence in those who are supposed to protect their rights and their integrity,” ZLHR Executive Director, Irene Petras said.

Hopes that the transitional government would move to repeal repressive security and media laws such as POSA and AIPPA fizzled after parliament failed to change such legislation.

Chances that repressive laws will get urgent attention next year remain slim because most MPs will be involved in the constitution making process.

Mutare Central MP, Innocent Gonese, has sponsored a Private Member’s Bill to amend POSA.

Observers note this could be a sign of frustration on the part of the Movement for Democratic Change, which has met stiff resistance from their ZANU PF government partners in opening the democratic space. Gonese’s Public Order and Security Amendment Bill was gazetted last week.

Spare a thought for Gwezere this Xmas



Prison guards escort Pasco Gwezere (circled) into holding cells at Rotten Row Magistrates Court



Prison guards shielding photo-journalists from taking tortured Gwezere's pictures

HARARE-Supreme Court Judge, Justice Wilson Sandura, will today preside over an appeal filed by the Attorney General (AG)'s Office opposing bail granted to Movement for Democratic Change (MDC) transport manager, Pasco Gwezere.

High Court Judge, Justice Charles Hungwe, granted Gwezere bail last month but the State, represented by the AG's head of litigation, Tawanda Zvekare, invoked Section 121 of the

draconian Criminal Procedure and Evidence Act (CPEA), which effectively suspended Justice Hungwe's bail order.

In a Notice of Hearing to both the AG and Gwezere's lawyer, Alec Muchadehama, the Supreme Court Registrar advised that the State's appeal against the granting of bail to Gwezere would be heard in chambers before Justice Sandura at 09:30hrs on Monday.

Gwezere was abducted by state security agents in October from his Mufakose home and was charged with breaking into and stealing firearms from Pomona Army Barracks.

He was also accused of undergoing military training in Uganda in 1999 for the purposes of plotting to unseat President Robert Mugabe's previous administration. However, that charge was thrown out by a Harare Magistrate.

The MDC transport manager, who first appeared in court on a weekend without legal representation is detained at Chikurubi Maximum Prison. Authorities have denied Gwezere access to medical examination and treatment for injuries sustained during torture sessions despite the existence of a court order allowing him to receive medical assistance from a private doctor of his own choice.

Mukoko honoured

BERLIN-Prominent human rights activist Jestina Mukoko (pictured right) last week received the 2009 Human Rights Award of the city of Weimar, Germany.

Mukoko was last Thursday honoured with the prestigious award at a ceremony held in Germany as the world commemorated the International Human Rights Day that is observed on December 10 every year.

The International Human Rights Day is observed in honour of the United Nations General Assembly's adoption and proclamation of the Universal Declaration of Human Rights (UDHR) on 10 December 1948.

The German rights award was given to Mukoko in recognition of her steadfast engagement in fighting human rights abuses as director of the Zimbabwe Peace Project (ZPP).

In Berlin, Federal Foreign Minister Dr Guido Westerwelle expressed his admiration for the human rights activist's work and her courage. He called upon the political leaders in Harare, particularly President Robert Mugabe, to embark finally and resolutely on the road to democratic and economic reform.

Mukoko's organisation has since 2000 documented numerous human rights violations committed by suspected members of Zimbabwean security forces. Zimbabwe Peace Project courted the wrath of security agents with its precise documentation of human rights violations over the last nine years.



Mukoko and two other ZPP workers namely Broderick Takawira and Pascal Gonzo were last year abducted and tortured by State security agents

and later charged with other human rights activists with treason for allegedly plotting to overthrow President Robert Mugabe.

Journalists fight

HARARE-The journalism fraternity was last week plunged into a crisis following an application in the High Court filed by four reporters seeking to nullify election results from a congress held at the beginning of the month.

The four, Godwin Mangudya, Frank Chikowore, Conrad Mwanawashe and Guthrie Munyuki want the court to declare "void and of no force or effect" the election of office bearers at the disputed congress.

Through their lawyer, Harrison Nkomo of Mtetwa and Nyambirai Legal Practitioners, the journalists cited as respondents, the Zimbabwe Union of Journalists (ZUJ), newly elected president Dumisani Sibanda, secretary general Foster Dongozi and seven other incoming office bearers.

"1st Respondent (ZUJ)'s retiring officers shall within 30 days of this order notify 1st Respondent's members of the date and venue at which the election of 1st Respondent's congress officials shall be held and shall so hold the election inside the said 30 days," a draft order sought by the journalists says.

"This order shall remain in operation notwithstanding the noting of any appeal against it," it says.

The applicants told *The Legal Monitor* that a countrywide consultative process on the way forward was underway.

"We are engaging in a process of consultation with all journalists. In the next few days we shall release details of how the consultative process will be carried out. Essentially we want to restore the credibility of the union, and return the union to journalists," said Mangudya, who is the first applicant.

"The High Court is seized with our matter and we shall stand guided by its decision. In the meantime we call upon union members to be calm and patient while we wait for the court's direction," he added.

The outgoing ZUJ executive led by Matthew Takaona, as president, has been accused of acting unconstitutionally in the manner they organised the elective congress.

Dark year

HARARE- Contrast. Tortured peace activist, Jestina Mukoko, is abducted and imprisoned for three months before a Supreme Court bench stops her prosecution ten months later. Andrew Kumire, a State prosecutor brazenly walks out of court soon after being sentenced to a five-day jail term for contempt of court. He never serves his time. Instead the Magistrate who convicts him is forced to resign. Kumire gets promoted.

2009 - Zimbabwe's year of miscarriage of justice. A Supreme Court ruling that the State was wrong in continuing to prosecute Mukoko on banditry charges when her rights were violated during detention was the clearest acknowledgement this year by the Bench of the Attorney General's Office's biased conduct.

Although the Supreme Court released Mukoko on the basis that her rights were violated, the AG, Johannes Tomana continues to prosecute over a dozen other political and rights activists who were abducted, tortured and charged with similar offences. Rights groups have noted that the prosecution of the abductees is just but a pattern of the AG's selective application of the law.

Take the case of Alec Muchadehama as an example. The human rights lawyer has been repeatedly in court as an accused person. On all these occasions Muchadehama would be dragged to court to answer charges related to his professional work of defending rights activists who bear the brunt of State excesses.

His latest upheaval, a long running contempt of court case in which he has since been acquitted, has resulted in at least four officers of the court, including lawyers, being arrested, harassed or threatened with torture by prosecutors and police.



Andrew Kumire landed a top post after controversially evading jail

Constance Gambara, who is Clerk to High Court Judge, Chinembiri Bhunu was the first casualty in the string of judicial officers targeted in the Muchadehama case. A young breast-feeding mother, Gambara was detained in police cells for allegedly conniving with Muchadehama to illegally release three abductees who had

been granted bail by High Court Judge, Charles Hungwe.

She later told the court in her defence outline that she had "confessed" to the crime because Chief Inspector Hnery Sostein Dowu, the investigating officer, threatened to torture her if she maintained her innocence.

Last month, Magistrate Chiwoniso Mutongi, who was presiding over the case resigned after Provincial Magistrate, Mishrod Guvamombe, failed to protect her from hawkish State prosecutors unhappy with her decision to jail Andrew Kumire, the prosecutor in Muchadehama's case, for contempt of court.

The matter provided the year's textbook example of impunity and disregard of the court by the AG's Office. Kumire, then the Chitungwiza area prosecutor, bolted out of court soon after Mutongi sentenced him to five days in jail after the prosecutor banged his hand on a desk in protest against an unfavourable ruling.

Unmoved by the ruling, Kumire stunned officials when he walked out of the court room before prison guards could take him to serve his sentence. He fled to the AG's Offices in the company of law officer, Austin Muzivi and Dowu.

Magistrate Guvamombe, later intervened to ensure that Kumire did not serve the sentence, prompting Mutongi to resign after becoming a subject of internal investigation herself. Kumire has since been elevated to the position of Area Public Prosecutor for Harare, in charge of prosecutors in Mbare Magistrates' Court, Chitungwiza and Harare.

Harassment, intimidation and prosecution of rights and political activists by the State have continued, 10 months after the formation of a transitional government that signed up to push for democratic reforms aimed at ending abuses.

Police throughout the year, at times violently, broke off peaceful protests and marches by civil society groups such as the Zimbabwe Congress of Trade Unions and Women of Zimbabwe Arise. Retribution characterised a year in which many expected the interim government to set up transitional justice mechanisms. Lawyers were kept busy defending victims of last year's unprecedented election violence and looting who were arraigned for mass trials for demanding the return of their property.

Villagers and farm workers remain affected by violence, with fresh cases linked to the constitution making campaign being reported. The General Agricultural and Plantation Workers Union (GAPWUZ) noted a surge in rights abuses as new farm owners and police joined forces to evict farm workers. GAPWUZ said farm workers, including pregnant women and children had become squatters and nomads because of the ongoing wave of farm invasions and farm workers.

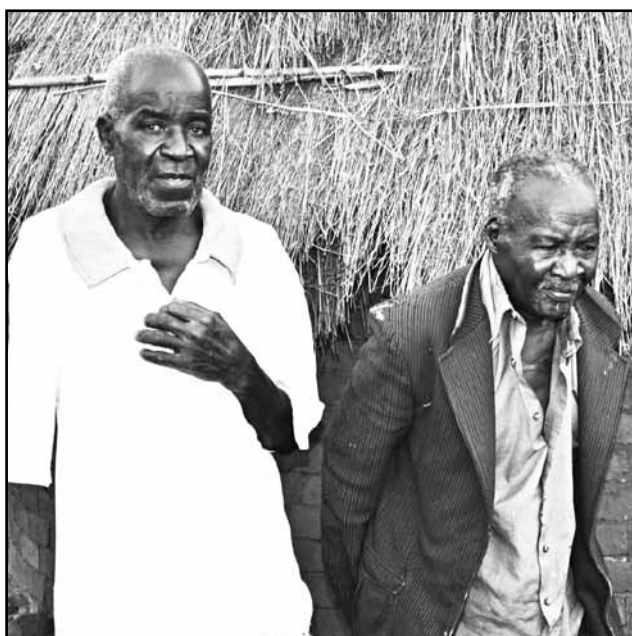
A SADC Tribunal ruling declaring farm occupations illegal has failed to protect farmers and their workers after the government refused to abide by the regional court's order.

As the country gears for a new year, there are few signs that the human rights situation will improve given the slow rate of democratic reforms.

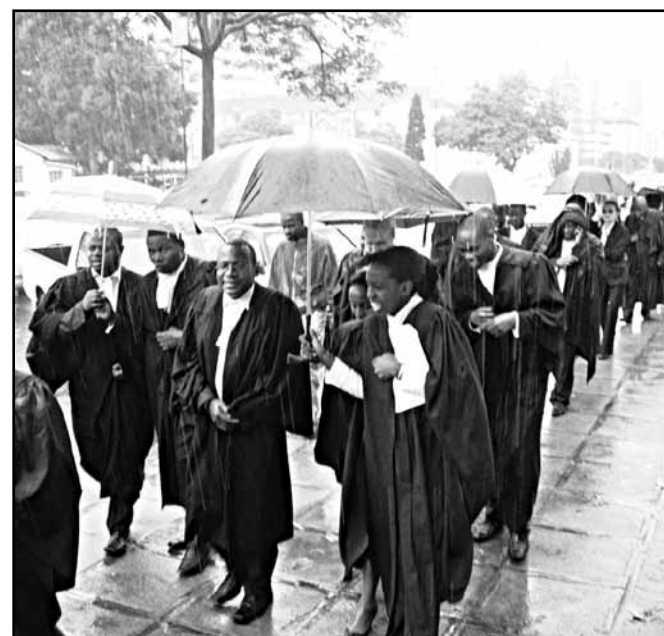
ZLHR in action



Some of the Nyanga villagers who were afforded free legal representation by ZLHR. The villagers want the courts to force looters to return their property seized in 2008



ZLHR successfully saved these elderly men from eviction in Norton. A powerful businessman had forced them off a property at which they had stayed for decades.



Lawyers brave summer rains to protest against attacks on the profession. Several human rights lawyers have been harassed, intimidated or arrested during the course of their professional duties.