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

**HUMAN RIGHTS** 

Fostering a culture of human rights

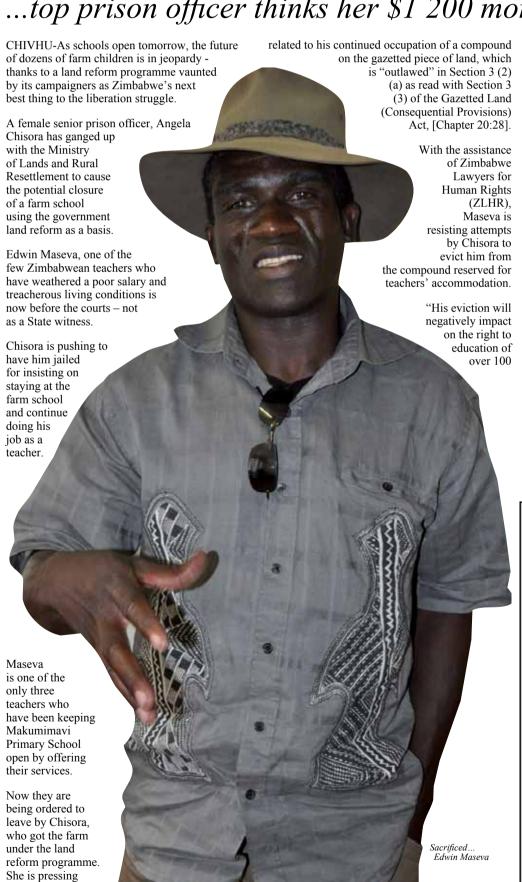
10 September 2012

Edition 160

Distributed without any inserts

## The great betrayal

...parents appeal to President Mugabe as farm school faces closure ...top prison officer thinks her \$1 200 more important than children's education



criminal charges against Maseva.

facing criminal proceedings

Maseva is

children who learn at the farm school which only has three teachers, who use the same compound for accommodation purposes," said Jeremiah Bamu of the ZLHR.

The action against Maseva directly affects more than 100 pupils - all juveniles - who are now at the risk of having no school come tomorrow.

It is like an own goal for those who tout the land reform as a panacea to the poverty deep seated among Zimbabwe's ordinary citizens.

And Chisora, who is the complainant in the case against Maseva, is not relenting.

She says she has since paid \$1 200 as part of the deal to take over the farm, where Makumimavi Primary School is situated.

A plea by desperate parents to President Robert Mugabe, Prime Minister Morgan Tsvangirai, the ministries of Sport, Education and Culture and Lands and Rural Resettlement has vielded no fruit. as Chisora seems determined to get the teachers out of the school.

Only two weeks ago - on 21 August to be exact - Maseva was issued with summons to attend court on 31 August for "refusing" to leave a farm house he has been staying in while executing his official duties

Maseva had been previously summoned to attend court in March but the summons were defective and these were quashed after the intervention of ZLHR.

ZLHR has intervened and is assisting Maseva to safeguard the right to education as enshrined in several regional and international treaties which Zimbabwe is party to.

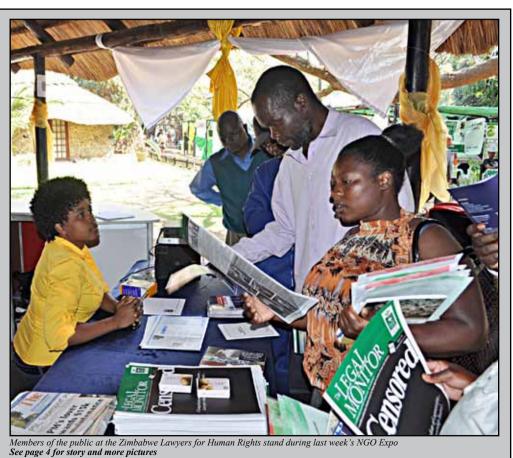
The lawyers on 31 August raised a preliminary objection on why Maseva had been charged in his individual capacity when he derived his right to occupation through the Ministry of Education, Sport and Culture.

The education ministry, the lawyers argue, is itself an organ of the State which does not require any offer letter, permit or lease within the contemplation Gazetted Lands (Consequential the Provisions) Act.

After the arguments, the State subsequently withdrew its summons and indicated that it would re-consider the persons to cite in the criminal proceedings although it insisted that Maseva would remain an accused.

The matter has been tentatively set for

Please see Page 3 for full petition sent to President Mugabe, Prime Minister Morgan Tsvangirai and other line ministries by parents of children attending Makumimavi Primary School on 13 January this year.



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#### ZIMBABWE LAWYERS FOR HUMAN RIGHTS Position Paper on the Zimbabwe Human Rights Commission Bill (c) Zimbabwe Lawyers for Human Rights

On the adoption of the Zimbabwe Human Rights Commission (ZHRC) Bill by both Houses of Parliament, Zimbabwe Lawyers for Human Rights (ZLHR) takes this opportunity to reproduce its commentary done last year after the promulgation of the Bil which should be of use to a variety of stakeholders wishing to see an independent, efficient and effective Human Rights Commission commence its work in Zimbabwe. ZLHR expects that Presidential assent will be provided swiftly and that the Commission moves quickly thereafter to establish itself and commence its operations through a strong and independent secretariat. ZLHR looks forward to interacting with the Commission and will, as always, continue to monitor its activities to assess compliance with the Paris Principles.

#### Continued from Edition 155

- · Advise Parliament and the government on accession to, ratification, domestication, and implementation of international and regional human rights instruments, and further advise the Government on steps to be taken to harmonise Zimbabwean law with international and regional human rights instruments to which Zimbabwe is
- · Scrutinise Bills and other draft or existing legislation and advise the lawmakers concerned on the effect of such draft or existing legislation on the enjoyment and protection of human rights and freedoms in Zimbabwe.
- · Other powers to be bestowed on the ZHRC must include the capacity to consider and adjudicate cases and hand down appropriate remedies for redress in relation to proven human rights violations.

Provisions must also be inserted to allow for action on all violations and not only those of the Declaration of Rights in the Constitution.

#### 2.6 Clause 5: Deputy Chairperson of Commission

The Deputy Chairperson is appointed by the President after consultation with the Committee on Standing Rules and Orders who shall act as the Chairperson in the case of a vacancy or absence of the Chairperson.

The ZLHR position in relation to the appointment process of the Commissioners as stipulated in the Constitution is known and is attached hereto. The appointment procedure is problematic, with a lot of Executive influence and possible politicisation. This is a matter of public record in relation to the irregularities in relation to the interview procedures and subsequent appointment of the current complement of Commissioners. To now seek to impose further Executive control and interference in the appointment of the Deputy Chairperson is also contestable. Further, there is no clarity on the selection criteria to be used. It is also not clear what weight the President is supposed to attach to the recommendations coming out of the consultation process with the Committee on Standing Rules and Orders, and whether the President is bound to follow the outcome of this consultation.

#### Recommendation

In order to ensure a measure of institutional and individual independence and the smooth running of the ZHRC the Commissioners must be allowed to choose their own Deputy Chairperson as this will create a high level of ownership amongst the Commissioners, and they will be able to identify the most competent person with appropriate leadership qualities amongst themselves. The current provisions of the ZHRC Bill do not cultivate independence of the ZHRC since all the leadership of the ZHRC is chosen by politicians and the Executive.

#### 2.7 Clause 6: Executive Secretary, and other staff of **Commission and consultants**

The appointment of the Executive Secretary is to be done by the Commission. The appointment of other key staff members, including consultants where necessary, is to be done by the Commission in consultation with the Minister of Justice and Legal Affairs and the Finance Minister. Functions and responsibilities of the Executive Secretary are also outlined.

It is positive that the legislation seeks to create the post of an Executive Secretary and the appointment will be done by the Commission and without the Minister, as this prevents Executive interference in this critical appointment. However, confining the responsibility for such a key appointment to the ZHRC itself, without clear provisions as to how the appointment will be done, what procedures will be used, and how this can be publicly scrutinised, owned, and thus accepted, by the various stakeholders of the ZHRC, is a matter of concern.

As the provisions exist at the moment, the Executive, in the form of Ministers, has too much influence in relation to the staffing and (by effect) operations and functioning of the Commission. Recruitment of staff members and even other contractual labour such as consultants must be done by the Commissioners and the Executive Secretary. They should be responsible for decision-making in relation to staff and operations of the ZHRC for this institution to maintain its independence and also avoid packing of the ZHRC with sympathisers of members of the Executive whose independence could then be compromised.

In relation to the responsibilities of the Executive Secretary, there appears to be separation of the policymaking role (which is the function of the Commissioners) and the implementation of policy and management of the day-to-day affairs of the ZHRC (which rests with the Executive Secretary and staff). However as the provisions currently stand they still allow for potential farreaching interference at the management level from the Commissioners, as the Executive Secretary is subject to the general control of the Commission with no clarity on how far the Executive Secretary can act in implementing policy without interference.

A glaring omission relates to the accountability of the Executive Secretary and how s/he is to be disciplined. The provisions put the Executive Secretary outside the ambit of the Public Service and its mechanisms for accountability and discipline (see clause 6(2). This (being outside the ambit of the Public Service) is not in itself necessarily a negative; however, in the absence of clear provisions relating to how issues of accountability and disciplinary procedures will be dealt with, this allows a "rogue" Executive Secretary, as well as "rogue" Commissioners, to effect the business of the ZHRC without any mechanisms of accountability and control whatsoever. This will lead to similar challenges currently being experienced in relation to scrutiny of the actions of the Attorney-General of Zimbabwe and matters of his discipline.

#### **Recommendations**

- The provision relating to appointment of the Executive Secretary by the Commissioners should be maintained. However, there is need for insertion of additional provisions which set out a clear procedure for appointment, which includes wide public advertisement of the post; qualifications required and job description; process of assessing applications; a public interview process by a panel which includes (at least) input from representatives of other independent stakeholders such as human rights organisations - even better would be representation and participation in the interview panel; and a transparent feedback on the findings of the interview panel before the eventual confirmation of the appointment. This will ensure that unqualified personnel, politically partisan nominees, and perpetrators of human rights violations are not appointed to this office and that there is public scrutiny of the procedure and person prior to appointment to this critical post.
- Staffing of the ZHRC must be undertaken by the ZHRC alone, together with the Executive Secretary following a similar public procedure as above for senior personnel, and which includes vetting to ensure that perpetrators of human rights violations are not recruited
- · The Executive through Ministers should not play any role whatsoever in the consideration of candidates to the post of Executive Secretary and other senior staff posts.
- The ZHRC must be enabled to appoint staff members in such a way that will ensure that it becomes pluralistic and representative of society as required under the
- The provisions relating to the role and functions of the Executive Secretary should be improved to ensure clear segregation of the duties and responsibilities of the Commissioners (policy-making and oversight) and those of the Executive Secretary (implementation of policy, day-to-day management).
- · Provisions need to be inserted to ensure accountability of the Executive Secretary to the Commissioners, and to outline clearly instances in which disciplinary action can be taken, and the mechanism for such discipline. If these are not inserted, there will be no method to ensure public scrutiny of the Executive Secretary and to discipline or remove an incumbent who fails to adhere to her/his

mandate (apart from contractual obligations which are not recommendations for remedial action. known to stakeholders).

#### 2.8 Clause 7: Independence and impartiality of Commission, Commissioners etc -

 $Commissioners\ or\ members\ of\ staff\ shall\ serve\ impartially$ and independently, in good faith, without fear or favour, bias or prejudice subject to Constitution and the law. State or non state actors must not interfere or obstruct the Commission or staff in the performance of their functions. The ZHRC shall be assisted by state actors in the discharge of its mandate. Commission personnel must not investigate when they have a personal interest otherwise the ZHRC can take steps to ensure a fair, unbiased and proper investigation.

As a constitutional body, provisions should exist in the Constitution which protect the institutional and individual independence of the ZHRC (particularly its Commissioners and staff) in a similar (but improved) manner to protective provisions relating to the Judiciary and to the Attorney General. This is not currently the case with the ZHRC in the Constitution. This clause seeks to address the gap in the Constitution, although it would be preferable to address it in the Constitution. As it stands the provision will enjoin Commissioners and the staff to carry out their functions independently, transparently and impartially, without undue influence from any external interference, and this is commendable, subject to enforceability.

This declaration of institutional independence will also ensure that the ZHRC is not subject to undue influence from other quarters that include but are not limited to government and other state and non-state actors

The fact that the ZHRC Bill provides that no person can conduct an investigation if there have a pecuniary interest in the matter is commendable. There is no clarity on whether the ZHRC can impose penalties on a person who fails to disclose their interest and the ZHRC Bill only provides that steps will be taken to ensure a fair unbiased and proper investigation.

#### Recommendations

- · The provisions ensuring independence should be included in the Constitution, as provisions for independence in an Act of Parliament can easily be amended by Parliament. A constitutional provision is more durable as it will not be easily amended to erode the independence of the ZHRC.
- · There must be a provision clearly outlining the action that the ZHRC can take in the event that an investigation has become compromised by virtue of non-disclosure of interest by staff members or even Commissioners.

#### 2.9 Clause 8: Reports of Commission -

The ZHRC shall submit annual reports on its operations and activities no later than 60 days after the end of the financial year to the Minister. Additionally the Commission must submit any other information required by the Minister on its operations, or submit any other report that the ZHRC considers desirable. The Minister must table the report presented to him no later than 30 sitting days after receiving the report to whichever House of Parliament sits first after s/he receives the report.

Presentation of the annual report must be primarily to the House of Assembly, or alternatively to both Houses sitting together, giving details of the yearly activities and state of human rights observance in Zimbabwe. There appear to be no guidelines on information that must be included. To ensure greater accountability some minimum requirements must be placed on the format and content of the report and this must also be periodic, on the progress being made in terms of human rights promotion and protection in Zimbabwe by the government, state actors and non-state actors. The reporting by the ZHRC must not only be on the conduct of its activities but it must be in a transparent manner that will also benefit the whole country

#### **Recommendations**

· This report must cite non-co-operation on the part of government officials and/or state institutions and give

- · This report must not just be presented but must be debated and published by Parliament. There must be provision to allow for submission of reports to Parliament upon request, whilst the ZHRC must also be able to submit unsolicited reports to Parliament on specific human rights issues.
- All reports must be made public and widely disseminated whether they relate to the financing of the ZHRC or the
- Other measures of accountability include the printing of progress reports, which can be done in the form of occasional publications by the Commission and distributed to members of the public, as this is currently not provided for in the Bill.

#### 2.10 Jurisdiction of Commission to conduct investigations -

Clause 2: In the interpretation clause, the jurisdiction of the ZHRC is restricted to violations of international instruments which are domesticated and expressly bestow on the Commission the jurisdiction to entertain complaints arising from alleged violations of the instrument.

This provision has already been previously considered and recommendations made above. This must be urgently addressed by removal of the proviso as it virtually renders the ZHRC powerless as it currently stands. There is no law in Zimbabwe which bestows on the ZHRC any jurisdiction to hear violations that are of a human rights nature. Domesticated human rights are found in a number of Acts of Parliament and even subsidiary regulations: for instance, the right to education is found in the Education Act and workers' rights are found in the Labour Act and Labour Relations regulations. However, none of the existing laws recognise the jurisdiction of the ZHRC as it was non-existent when they where promulgated. Additional problems arise in the case of law reform, where amendments to law have generally taken a long time to be promulgated and enforced over the years

Clause 9(1-3): The ZHRC has jurisdiction to investigate an actual or perceived violation, on its own initiative, or after a written complaint and request for investigation from an affected person. Where the affected person is unable to act, being dead or otherwise, a legal representative or a member of the family may act on their behalf. The Commission can also allow "such other person [it] considers suitable to represent him or her".

The first jurisdictional issue relates to the unnecessary restriction on who can lodge a complaint with the ZHRC.

Other than the victim, only a legal representative or a family member is specifically mentioned. The provision goes on to allow for "such other person as the Commission considers suitable to represent" the victim when s/he is dead or unable to act. This is too vague and indeterminate, and allows too much unchecked discretion on the part of the ZHRC in deciding who can and cannot represent a

Another limitation arises when it comes to legal representation. In its interpretation, Clause 2 defines a legal representative as the representative recognised by law of any person who has died, or is an infant or minor, or of unsound mind, or otherwise under a disability. As such it would appear that only dead people, minors or mentally unstable and people living with disabilities can be represented by a legal representative and that those who do not fall within the description to be represented by a legal representative can only be alternatively represented by family members.

This provision does not take into account the fact that many victims of human rights violations are the most vulnerable and poverty-stricken. In the event that human rights violations affect them and they are alive and cannot have legal representation, in some cases their families will not have capacity to represent them and articulate their concerns. In addition, their family members may not be willing to file a complaint on their behalf, either because they are also victims, or because they may in fact be the perpetrators. Continued next week

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### Landmark HIV case at Supreme Court

HARARE-A man who was denied life prolonging HIV drugs while in detention has filed a landmark case at the Supreme Court challenging the constitutionality of the way prisoners are treated.

With the help of Zimbabwe Lawyers for Human Rights (ZLHR), Douglas Muzanenhamo, has filed a constitutional application seeking an order compelling police and prison officials to respect the right of detainees living positively with HIV/AIDS to access medication.

"Every individual who is HIV positive, and gets incarcerated in their facilities, and who has notified them about his/her condition must also be given an opportunity to access anti-retroviral drugs (ARV) medication as prescribed by

medical practitioners," ZLHR said in a statement supporting Muzanenhamo.

ZLHR petitioned the Supreme Court after taking instructions from Muzanenhamo, an HIV/AIDS activist who was arrested in February last year and charged with committing treason.

He was arrested together with 44 other social justice, human rights and trade union activists, including University of Zimbabwe lecturer and International Socialist Organisation local leader Munyaradzi Gwisai.

Authorities claimed that the activists had plotted at a meeting to topple President Robert Mugabe from power using "Egyptian style" revolts.

Muzanenhamo says he was arrested while attending a meeting to commemorate the death of HIV/ AIDS activist Navigator Mungoni. He was later freed together with 38 other activists by Harare magistrate Munamato Mutevedzi, but the damage had already been done.

While in detention, Muzanenhamo, who is HIV positive and has lived with the condition for the past 18 years, was denied access to ARVs in contravention of Section 12 (1) of the Constitution.

Functionaries of the Zimbabwe Prison Service perpetuated Muzanenhamo's suffering when they denied him access to his medication during detention. He was denied a balanced nutritional diet commensurate with the medical regime that he was following due to his condition.

ZLHR said due to improper administration of ARVs, Muzanenhamo's health condition deteriorated rapidly and his CD4 count dropped from the normal 800 to 579.

"Had he stayed longer in the custody of police and prison functionaries, he would have suffered more damage to his health and well-being," said ZLHR.

"ZLHR takes this opportunity to remind the government, the Zimbabwe Republic Police and Zimbabwe Prison Service to safeguard citizens' right to life which is enshrined in the Constitution, in Article 3 of the Universal Declaration of Human Rights and in the Covenant on Civil and Political Rights," the group said.

### LM Sport

## humbles **US** embassy

ZLHR 4

US Embassy 1

HARARE-The Zimbabwe Lawyers for Human Rights (ZLHR) Football Club won a pulsating match against the US embassy at the University of Zimbabwe grounds on Saturday 1 September.

The match, played before a near capacity crowd, was the opening Charity Cup game before the commencement of the NGO League season.

ZLHR drew first blood and scored two goals in the first half. The US embassy reduced the arrears just after half time. However, ZLHR put matters beyond the Obama Boys by scoring a third goal. The match ended 4-1 in favour

The lawyers had a chance to grab the fastest goal when straight from the kickoff a rightfooted shot by one of their strikers grazed the right post, with the Obama Boys goalkeeper well beaten. In the 10th minute, the Obama Boys had an early chance of their own when Sizani Weza attempted to shoot at goal but his 20-metre drive missed the target by a

In the 30th minute, ZLHR initiated an enterprising move, which thrilled fans when the workhorse Tinashe Mundawarara fired a longrange drive, which went wide. It was a great move which had a disappointing finish.

The struggling Obama Boys could not penetrate the highly organised ZLHR team, which played enthralling football with their brand of attacking football.

ZLHR head coach Kennedy Masiye was pleased with his side's overall performance and was full of praise for the US embassy team.

"We played a very talented and well organised team but my team proved too strong for the embassy and I am happy for this long unbeaten run we have maintained. My strike force is getting more polished. Like I said before, we are still an improving side" Masiye said.

## Desperate parents approach Mugabe

Makumimavi Primary School P.O. Box 298 Chivhu 13 January 2012 The D.E.O Chikomba District

COMPLAIN OVER LEASING OF DONKASTEEL HOMESTEAD A AND B

Makumimavi Primary School was established in 2003 in the resettlement areas in Chikomba district. Today it has 25 pupils in Early Childhood Development (ECD), 75 pupils in primary, and 3 teachers, The school was housed in Donkasteel Homestead together with the three teachers. In 2004, a review of the school position was made by the District Administrator's office and the Ministry of Education, and the homestead in question was

reserved for teachers' accommodation while the classrooms were moved to former farm workers' cottages. The three teachers stayed in the homestead to date. Furthermore, the homestead in question has been used as a polling station in all national and local elections ever since. Again the homestead is used as a school office and for keeping Education Transitional Fund Text books that were donated to the school courtesy of UNICEF since the school has not yet developed its own infrastructure.

Donkasteel Homestead A has since been leased to one Angela C. Chisora of Plot number 30 Donkasteel farm in Chivhu by the Ministry of lands. Angela C.Chisora is a senior prison officer in Harare together with her husband, who is a senior Assistant Commissioner with the Prison Service. The homestead is leased under lease number LE265. The lessee Angela Chisora has since paid \$200 and acquired the lease agreement.

The above situation leaves the school with no

accommodation for teachers, school text books and other materials and also no more polling station. This therefore defeats natural justice in that a State property is now used to serve the interests of the individual at the detriment of about one hundred school children, three teachers and more than forty parents. The lessee owns an A1 Plot Number 30 about three plots from the school and is not in desperate need of accomodation since she has already built infrastructure at her plot.

Angela Chisora has already given eviction orders to the school and teachers. But surprisingly the notice has only targeted one teacher Mr Edwin Maseva because he stays there on a full time basis. Attached are notices and orders of eviction. The property in question is a State property in terms of the law.

We strongly believe and feel that the State can never prioritise the interests of the individual against the interests of the school children, teachers and community at large. The Ministry of Education is supposed to provide quality education from Early Childhood Development up to Secondary Education and promote development of Sports, Arts and Culture. How can these goals be achieved when resettlement school teachers do not have accommodation? If the Ministry of Lands wanted to lease out the homesteads, (natural justice and common reasoning, under the circumstances, priority was supposed to be given to the Ministry of Education or to the school as the current incumbents, this would further the interests of the public.

Interestingly, Donkasteel Homestead B was also leased out to one Mr Renias Chiwakaya, again a senior prison officer of plot number 18 Honeyspruit who has turned the homestead into a grinding mill and a beerhall in the school environment, defeating the purpose of education. Mr Chiwakaya has furthermore invaded the school yard turning it into a farming land and despite owning another plot less than one kilometre from the school. This is multiple farm ownership which even His Excellency, the President speaks unequivocally against. It is just apparent that the two have a motive to close the school and enjoy life in the homesteads, for egocentric reasons because

both Chisora and Chiwakaya are local farmers and Chisora is even a guardian of school pupils at the school. Both are quite aware of the situation prevailing at the school, that the school has no alternative accomodation for teachers but surprisingly they went ahead to apply for leases and ejection of teachers

As such we are humbly asking the powers that be to review that position to ensure that there is increased access to education hence improved achievements in the education sector, by protecting the interests of the public against these multiple farm owners who already are enjoying other government houses at their workplaces The Ministry of Education, the school in question and the teachers have the capacity to lease the said homesteads in the interest of the public and for the benefit of future leaders. We are sure in the lease agreements, there are provisions to terminate the lease agreements. For now we rest our case



SIGNED ON THIS DATE: 31 January 2012

C.C PED-MASH EAST PROVINCE

PERM SEC-MINISTRY OF EDUCATION, SPORT AND CULTUR

MINISTER-MINISTRY OF EDUCATION, SPORT AND CULTURE

PERM SEC-MINISTRY OF LANDS AND RURAL SETTLEMENT

MINISTER OF LANDS AND RURAL RESETTLEMENT

THE RIGHT HONOURABLE PRIME MINISTER OF THE REPUBLIC OF ZIMBABWE

HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF ZIMBABWE

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## NGOs expo empowers public

HARARE-In a country where paranoid State agents stalk Non-Governmental Organisations (NGOs), the just ended three-day NGO Expo provided a rare opportunity for unchecked interface.

Ahead of the NGO Expo which ended last Friday, the National Association of Non-Governmental Organisations said the exhibition offered the general public a chance for civic education on "a wide array of issues ranging from HIV/AIDS to the constitution reform process."

Since the late 1990s, the State has accused NGOs of siding with the opposition despite their tremendous efforts to alleviate Zimbabwe's humanitarian crisis. In the absence of meaningful government support,

Zimbabweans have come to rely on NGOs for humanitarian support and civic education.

The State, on the other hand, has seized every opportunity to ensure that civil society's interaction with the public is minimum or monitored.

Below are quotes from some of the NGOs that were exhibiting at the NGO Expo.

"Basically we are here as Community Radio Harare to showcase what we provide for the community which we intend to broadcast to. We are saying to the community we are there for you. We are ready to broadcast and we are only waiting for a license. Whilst we are waiting for a license, we have various programmes that we are carrying out as a radio station such as radio documentaries on various issues," Jenrod Kapisi, assistant programming officer.

"The event is about NGOs showcasing their different activities as you know NGOs have different mandates but human rights are universal.

So to claim their rights, people have to be aware of the rights first because they cannot claim what they don't know so this is part of it. The first thing is to promote human rights and our activities to members of the public," Prosper Maguchu, Projects Lawyer Zimbabwe Human Rights NGO Forum. "Basically the NGO Expo was for us to showcase

the work that we are doing as civil society. We have been getting a lot of public attention and we have many people who have visited our stand to learn about the areas. We are also generating a lot of debate and raising awareness especially in the promotion of transparency and accountability of natural resources management and development.

These are purely developmental concerns of the general public of Zimbabwe.

The Expo gives us exposure without really any interference from State security agents. Even today we have not faced any barriers. Even meeting some of the state security agents who are asking questions," Veronica Zano, legal officer for Zimbabwe Environmental Law Association.











