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

Time for answers

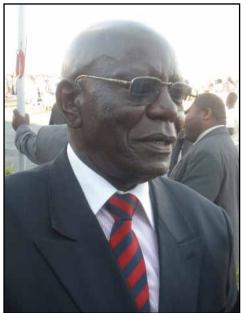
ministers in court for torture

HARARE-The high profile trial of four Cabinet ministers and several top ranking State security agents accused of authorising the abduction and torture of rights and political activists in 2008 starts today at the High Court.

Pieta Kaseke, Manuel Chinanzvavana and Gandhi Mudzingwa, now an official in the coalition government, were among over a dozen activists systematically rounded up by State security agents and held incommunicado at various locations between October and December 2008. Together with over a dozen other activists, the three were charged with committing acts of banditry and terrorism.

President Mugabe and his security sector allies were consolidating their power during the period of the abductions following the violent and disputed June 2008 presidential election runoff boycotted by first round winner, Morgan Tsvangirai.

The abductees now want those officials responsible for their ordeal to pay. They are suing the ministers and State security agents in a case



On trial... Presidential Affairs Minister Didymus Mutasa

that will be heard by Justice Tedious Karwi today. Kaseke, Chinanzvavana and Mudzingwa are demanding \$1.2 million each.

The four ministers are Presidential Affairs Minister Didymus Mutasa, who held the State Security portfolio at the time of the abductions, Justice and Legal Affairs Minister Patrick Chinamasa, co-Home Affairs Ministers Kembo Mohadi and Giles Mutsekwa. Mutsekwa has since been moved to the National Housing portfolio.

Happyton Bonyongwe, the Director-General of the Central Intelligence Organisation (CIO), Police Commissioner-General Augustine Chihuri and Paradzai Zimondi, the Commissioner of Prisons are being sued in the same case together with seven top security agents. The security agents are Chief Superintendent Peter Magwenzi, Chief Superintendent Chrispen Makedenge, Senior Assistant Commissioner Nyathi, Asher Walter Tapfumaneyi, Superintendent Joel Shasha Tenderere, Superintendent Regis Takaitei and Detective Chief Inspector Mpofu.

Apart from Kaseke, Chinanzvavana and Mudzingwa, the other abductees have filed similar lawsuits before the courts which are

yet to be heard. The abductees say they were seriously injured during the days they were held incommunicado because of various torture methods used on them. These included blindfolding, repeated beatings and being forced to sleep in wet conditions.

The enforced disappearances, which became the State's preferred tool against perceived political rivals during the 2008 tumult, were outlawed by the United Nations General Assembly Resolution 47/133 of 18 December 1992.

Lawyers say the torture was unlawful, inhumane, degrading and violated Section 15 of the Constitution and other regional and international human rights instruments such as Article 5 of the Universal Declaration of Human Rights, Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 5 of the African Charter on Human and People's Rights and Article 7 of the International Covenant on Civil and Political Rights which outlaw torture.



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Bere elected Law Society president

HARARE-The Law Society of Zimbabwe (LSZ) has elected Mutare-based lawyer, Tinoziva Bere, as its new president. Bere, an immediate past board member of Zimbabwe Lawyers for Human Rights, takes over from Josphat Tshuma.

Lloyd Mhishi, a partner with Harare law firm, Dube Manikai and Hwacha will deputise Bere.

"I stand on a platform built by many remarkable leaders. It is a solid platform and with the help of the 10 leaders from the Council and the competent full complement of the secretariat as well as an independent legal profession, I cannot fail save by my own effort. I am both excited and humbled," Bere said in his acceptance speech.

Prior to his election, Bere was the LSZ Vice President since 2009 and had been a councillor and committee chair since 2001. He is a founder and senior partner of Bere Brothers Legal Practitioners and Board chair of independent electoral monitoring group, Zimbabwe Election Support Network.

On several times he has been nominated for the Zimbabwe Human Rights Lawyer of the Year prize and won the award in 2008 as part of Manicaland Lawyers Association, which organised and offered legal assistance to victims of human rights violations perpetrated by security agents in Marange diamond fields.

Last year, he was nominated for the award and came second for his "courageous and successful defence of Farai Maguwu, a diamond activist persecuted by authorities between June and September 2010 for exposing illegal diamond mining and rights abuses by soldiers in Marange," according to the LSZ.

Mhishi, who boasts 17 years of legal practice experience, has been serving the LSZ since 2003 and also assists the Faculty of Law at the Midlands State University. He has been a lecturer of Conveyancing and Notarial Practice at the University of Zimbabwe since 1999 and now chairs the Procedural Law Department.

POSA haunts Mutare mayor

MUTARE-Magistrate Fabien Feshete last week freed Mutare deputy mayor George Jerison, who had been arrested for allegedly convening a meeting in the eastern border city without notifying the police.

Jerison, from Prime Minister Morgan Tsvangirai's Movement for Democratic Change (MDC) party, was detained for one night at Chisamba Police Station in Sakubva. He was charged with contravening Section 25 (b) of the Public Order and Security Act (POSA) Chapter 11.17.

The police accused Jerison of convening a public meeting at house number 147 Mazhambe last Tuesday without notifying the police.

The deputy mayor, who appeared in court last Wednesday, was granted \$50 bail by Magistrate Feshete after his lawyer Blessing Nyamaropa of Zimbabwe

Lawyers for Human Rights (ZLHR) applied for bail.

As part of his bail reporting conditions the deputy mayor should reside at his given residential address and must not interfere with State witnesses. Magistrate Feshete remanded Jerison to 9 February this year.

Truman Joma prosecuted for the State.

Police have over the years relied upon the draconian legislation to outlaw the legitimate activities of several civic society organisations and political and human rights activists.

On Thursday influential human rights group, ZLHR, criticised the coalition government for failing to reform repressive legislation such as POSA.

"Despite GPA provisions which oblige political parties to prioritise legislative reform, progress in this area has been minimal.

The legislative agenda for the last session of Parliament was almost entirely unattained. The executive - through the Cabinet Committee on Legislation - has continued to block all efforts at reform, effectively ensuring that Parliament remains a lame duck in efforts to improve its record on legislative reform. It is only through the introduction of a Private Member's Bill that tentative steps have been taken to facilitate the amendment of the Public Order and Security Act (POSA) in Parliament. However, this incremental and piecemeal approach is not likely to result in greater freedoms as long as POSA is not repealed and other security and media laws are not significantly amended," ZLHR said in a statement outlining the organisation's position on key political processes

COPAC circus plays out in court

HARARE-Police have summoned Harare resident, Edmore Manyofa, to stand trial this week for allegedly disrupting a constitutional outreach meeting held in Harare last year.

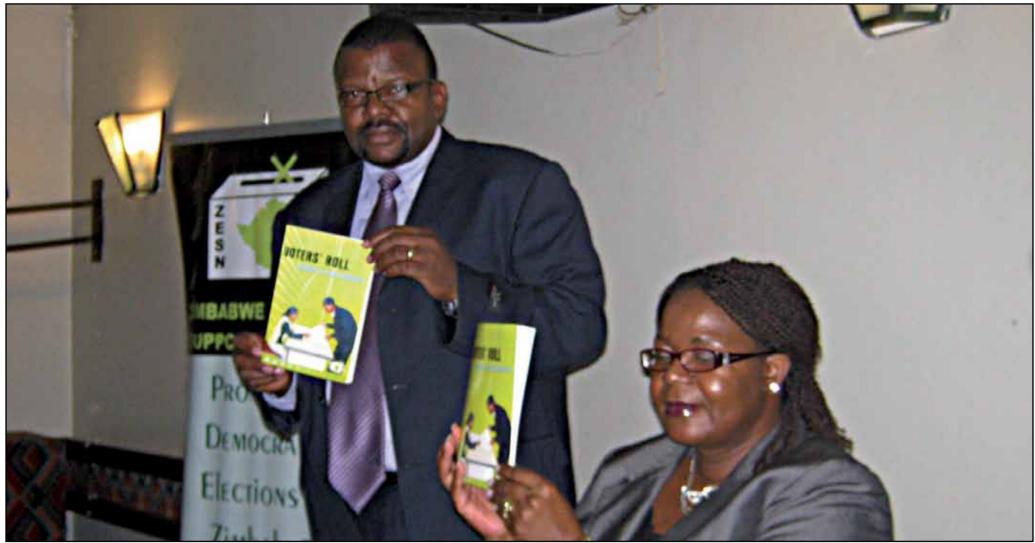
Manyofa was served with summons to appear in court on Friday at the Harare Magistrates Court, where his trial should commence.

The police accuse Manyofa of disrupting a public gathering in contravening of Section 44 (a) of the Criminal Law Codification and Reform Act Chapter 9:23.

In summons served on Manyofa on Tuesday, the police say he unlawfully and intentionally "disrupted a COPAC meeting by engaging in disorderly conduct intended to disrupt the gathering or realising that there was a real risk or possibility that such conduct could disrupt the gathering".

Manyofa, who is the organising secretary for the Movement for Democratic Change (MDC)'s Harare North District, is already on trial for allegedly assaulting a police officer. He dismisses the charge as fabricated by police officers who teamed up with ZANU PF supporters to block residents and supporters of the MDC from contributing views at the same constitutional reform outreach meeting.

Prosecutors allege that Munyofa assaulted Raymond Mufudza, a police constable on 19 September 2011 in Hatcliffe, where a COPAC outreach meeting was due to take place. The outreach meeting was one of the many outreach hearings aborted on that same day in Harare and Chitungwiza because ZANU PF militants caused commotion and violently blocked the public from offering alternative views.



ZESN Board Chair Tinoziva Bere and national director Rindai Chipfunde-Vava at the launch of the organisation's report on the state of the voters' roll. The report reveals how the voters' register used in the disputed 2008 elections needs an overhaul for any credible future elections. For example, ZESN said some of the people appearing on the voters' roll were born over a century ago

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20 January 2011 Press Statement

ZLHR'S position on key political processes and imperatives

At the start of a New Year, in light of the current visit of South African President Jacob Zuma's facilitation team to Zimbabwe, and imminent discussions on Zimbabwe at SADC and African Union (AU) level at the approaching AU Summit, Zimbabwe Lawyers for Human Rights (ZLHR) has felt it timely to comment on political processes and imperatives in our country.

Generally on the Global Political Agreement (GPA) and the Inclusive Government (IG):

ZLHR reiterates that the GPA and the IG it created have contributed to the unacceptable continental trend of compromise and subversion of the will of the people. This route has de-legitimised elections in Zimbabwe by imposing political leaders on the electorate and denying them their right to freely choose their preferred representatives. The GPA has been used, not as a tool to facilitate an environment and institutions that will ensure a genuine, free and fair election in line with the SADC Principles and Guidelines for Democratic Elections and the AU Declaration on Principles Governing Democratic *Elections*, but rather to stall the urgent imperative for an election in which the free will of the people is expressed and respected.

On the Article VI constitution-making process:

The architects of the constitution-making process have unduly politicised the exercise and have failed to ensure adequate representation of Zimbabweans in processes undertaken thus far. The IG has flouted its own timelines. It has politicised committees, outreach teams and the input of data. The operating environment during the outreach exercise was not conducive to free participation due to intimidation, violence, partisan state institutions, and the selective use and abuse of repressive laws inhibiting free expression, association and assembly. In terms of process, therefore, the Article VI constitutionmaking exercise has been fundamentally flawed and compromised, and has failed the test of constitutionalism

On the process of national healing:

The process of national healing is elusive and the Organ has been neither victim-centred, nor victim-owned. It has failed to have any impact or effect and will not be able to deliver as long as there are two centres of power - one which wishes to bury the past's excesses, and another which wishes to bring them into the open and address them in a meaningful manner.

On various state institutions and their reform State institutions do not belong to any political party and must be impartial in discharging their duty as they have a critical role in ensuring a conducive environment for, and outcome of, any free and fair election. Their partiality played a defining role in the failed 2008 elections.

The Zimbabwe National Army (ZNA) remains loyal to one political party, rather than the state, in contravention of its constitutional mandate and obligations. There is no question that the armed forces must maintain peace and security in a sovereign country. However they must not prey on the fears of civilians, and involve themselves in the activities and campaigns of one political party and dress it up as "national security"

The Zimbabwe Republic Police (ZRP) and the Office of the Attorney General (AG) - more particularly the Director of Public Prosecutions (DPP) - remain compromised and partisan in the discharge of their duties. Cases brought to their attention from the 2008 election period have not been taken up; neither have there been prosecutions of subsequent perpetrators of political violence. Both institutions, through their selective targeting and use of repressive laws against legitimate political activists and human rights defenders; their failure to prosecute known perpetrators; their malicious persecution and prosecution of the innocent; and their disregard for the rule of law, bear primary responsibility

for the continued impunity and human rights violations in the country. The latest example of the DPP's renegade action is the unconstitutional usurping by a clique of individuals in the AG's office (whose loyalties are well known), of the powers of prosecutors and law officers to exercise their constitutionally-mandated prosecutorial discretion in matters of bail.

On the legislative reform agenda:

Despite GPA provisions which oblige political parties to prioritise legislative reform, progress in this area has been minimal. The legislative agenda for the last session of Parliament was almost entirely unattained. The executive - through the Cabinet Committee on Legislation - has continued to block all efforts at reform, effectively ensuring that Parliament remains a lame duck in efforts to improve its record on legislative reform. It is only through the introduction of a Private Member's Bill that tentative steps have been taken to facilitate the amendment of the Public Order and Security Act (POSA) in Parliament. However, this incremental and piecemeal approach is not likely to result in greater freedoms as long as POSA is not repealed and other security and media laws are not significantly amended. There has been no progress on reform of laws that directly or indirectly facilitate free and fair elections. Although the government has started to look into amending the Electoral Act, there has been no urgency on their part, and the process remains piecemeal and secretive.

On the state-controlled media:

The reform of the broadcasting sector has been entirely ignored by the IG. The public broadcaster remains entirely controlled by one political party. It has not been transformed into a public service broadcaster and has been utilised almost exclusively by ZANU PF to broadcast its propaganda and views, as well as to attack and discredit its political foes. Print media has likewise suffered under continued abuse of AIPPA. Without significant and immediate reforms, AIPPA and the broadcaster will remain a critical impediment to elections.

On the constitutional commissions:

The Zimbabwe Human Rights Commission has gone for over a year without enabling legislation. It cannot monitor the occurrence of human rights violations or intervene to ensure respect for the rule of law through offering remedies to victims and sending a clear message to perpetrators that impunity will not be condoned. The silence of the commissioners in this regard is worrying. The Zimbabwe Electoral Commission has had limited visibility, has not interacted well with stakeholders, and has made no visible efforts to commence the implementation of necessary changes in relation to the management

On SADC and the AU and their role

Excluding the political party principals, SADC and the AU, as the guarantors of the GPA, bear the ultimate responsibility for any failure of the parties in the IG to adhere to the provisions and undertakings of the GPA. SADC has failed to rein in the IG on breaches and nonperformance of provisions of the GPA. It has failed to focus on core issues around reforms and democratisation, overly concentrating on outstanding power-sharing issues, and even then it has not been effective. Countless resolutions and recommendations have been made and timelines for action set at various meetings of both the SADC Troika on Politics, Defence and Security Cooperation, and the SADC Heads of State and Government. However, the principals have failed to comply with, and/or implement, these resolutions and recommendations, as well as their undertakings.

By failing to take strong action to prevent or punish breaches, SADC has encouraged - whether actively or by its own inaction - impunity and

continued non-compliance with its own deadlines and benchmarks. This calls into question SADC's political will. The regional body has also allowed the IG to unacceptably stall in taking urgent and meaningful action to implement reforms critical for a fresh election, which is the main purpose of

The AU has played almost no role although it is a co-guarantor, and must take more initiative and responsibility in ensuring adherence by the IG to the provisions of the GPA. In line with this view, ZLHR has sent a delegation to the imminent AU Summit and sideline meetings to engage various organs and stakeholders, deliver our contribution to the roadmap to elections, and highlight priority areas in which the AU must maintain greater oversight and action for the next 6 months.

Now that SADC is taking responsibility for producing a roadmap to elections there is need for stronger action and repercussions for noncompliance with benchmarks set for an election, implementation of all (not selective) provisions of the GPA, and resolution of other outstanding issues. It is necessary for SADC and the AU to have regard to the will of the people, rather than the politicians, in Zimbabwe if they are to play a critical role and be taken seriously. Failure to do so will be seen as culpability for another failed election in Zimbabwe and the ensuing regional instability, lack of peace and regional development and integration.

On the way forward:

In light of the failure of the GPA and the IG to deliver, ZLHR believes that there is now need to move towards the urgent finalisation and implementation of a comprehensive and decisive roadmap to fresh elections which are genuine, free and fair. ZLHR notes that the three political parties bear primary responsibility for the recommended action. They owe it to Zimbabwe to put the people of our beloved country first and to remember that they are servants of the people. The role and responsibility of SADC and the AU in ensuring a conducive environment for free and fair elections in Zimbabwe in the shortest time possible cannot be underestimated. There must be political will manifested through clear time-lines, and repercussions for non-compliance.

Once the conducive environment is established, the election must take place - irrespective of whether or not a new constitution has been put in place. In any event, the process leading to the crafting of this elusive constitution is fundamentally compromised and flawed. Even if a new constitution emerges before an election, it can only be a transitional document, and the struggle for a people-owned constitution must continue under a new government with one centre of power.

Short-term benchmarks to test political will and readiness for elections:

ZLHR has outlined in its Position Paper benchmarks requirements anchored in the SADC Principles and AU Declaration on Democratic Elections. Some must be implemented by the IG, whilst others will require regional commitment and cooperation. However, the following must be completed before the end of June 2011 as evidence of political will on the part of the IG, SADC and the AU:

Enactment of amendments to the Attorney General's Office Act to establish and resource an independent National Prosecuting Authority (NPA) which is separate from the AG, followed by a vigorous public selection process to appoint a Director of the NPA who is not compromised and will carry out their professional mandate without fear, favour or political allegiance against all perpetrators regardless of political affiliation.

- > Investigation and fast-track prosecution of known perpetrators of electoral-related violence in the courts of Zimbabwe which are regularly publicised.
- ➤ Issuance of a directive to the ZRP structures down to local level by the Commissioner-General of Police (which is made public) to accept and investigate all complaints of criminal acts, regardless of political affiliation (real or perceived) of the complainant. This must be in addition to a system of reporting by the ZRP which will be published on a monthly basis in order to restore public confidence in the criminal justice system.
- Measures must be taken to urgently resource the courts – particularly the Magistrates' Courts – and put in place a security plan for judicial officers and prosecutors to ensure their protection during elections and thus their independence and effectiveness.
- Enactment of legislation to operationalise the Human Rights Commission, together with immediate human and financial resourcing. The Commission must have a protective mandate empowering it to independently and effectively investigate violations and act to prevent, minimize or resolve conflict, particularly during elections. It must be entirely independent of the executive and must publicly and regularly report to Parliament.
- ➤ Immediate repeal of AIPPA and enactment of reforms to broadcasting legislation, followed by a public application process to a re-constituted Independent Broadcasting Authority which will result in the licensing of private and community radio stations. Such stations should be broadcasting before the end of April 2011 and should not be subject to persecution and interference.
- Immediate revival of an independent Mass Media Trust and publication of its operational plan to return the ZBC to its public service mandate and ensure against partisanship and hate speech. This plan should begin to be implemented before the end of March 2011.
- > ZEC must produce and publish an audit of its structures, personnel and operations. It must undertake public consultations with stakeholders on necessary electoral reforms and also publish its plan on cleaning the voters' roll to ensure its public acceptability.
- The legislative agenda for the next session of Parliament must be realistic, time-bound, and prioritise reforms of all laws impacting on elections. Urgent public consultations must be held with stakeholders. This, in addition to an audit of laws impacting on elections, must be used as the basis of this legislative agenda and the enactment of such laws and amendments must be completed within the time-frame.
- > Immediate engagement of the security sector by senior military structures in SADC and AU to establish a firm agreement on military role (or non-role) in electoral processes.

As the SADC-mandated facilitator, South African President Jacob Zuma, consults around the development of a comprehensive "roadmap" to elections, the views of the civil society and other stakeholders apart from the three main political parties must be heard and must be taken into account. After all, the impact and effects of a contested, illegitimate and violent election and its aftermath are felt by the generality of the Zimbabwean public, and they have a right to input in efforts to prevent or minimise such occurrences.

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Catholic bishops warn of violence, vote rigging

HARARE-Zimbabwe Catholic leaders have warned that conditions for violence and vote rigging remain intact because of the fractured coalition government's failure to implement agreed democratic reforms.

"Without this sincere engagement we will continue to be dogged by violence, political intolerance, hate language in the public media, injustice, rigging of elections, fear, deception, etc," said the bishops in a pastoral letter that cautioned corrupt politicians against abusing the Bible to justify injustice.

Recently, top government officials and politicians whose parties have repeatedly been implicated in violence and expropriation of private property have during State occasions and public meetings used the word of God to justify their deeds.

Some of the politicians now known to regularly quote the bible in defence of their actions are

dreaded by ordinary Zimbabweans because of their known track records in sponsoring violence against rivals.

In the pastoral letter to mark the beginning of the year titled: "Let us work for the common good. Let us save our nation", the Zimbabwe Catholic Bishops Conference said political leaders should this year prioritise the implementation of a roadmap to free elections.

The ZCBC is a grouping of Catholic bishops countrywide and a powerful arm of the Roman Catholic Church.

"One cannot be a true Christian and a perpetrator of violence at the same time," said the Bishops in the letter. "Having different political views is normal and healthy in building our nation. We do not have to fight over our different views."

Instead of abusing the Bible, politicians should work to ensure the safety of persons, particularly

human rights defenders such as civil society and the media, the Bishops said.

"We are concerned about incidences of politically motivated violence in some provinces. The liberation of Zimbabwe was achieved through the efforts of those who were inside the country (both armed and unarmed), outside the country and by the international community.

"The claim to have monopoly in the liberation struggle by any single sector or party, is therefore, false and may be the misconception solely responsible for the abuse of human rights and the erosion of the sovereignty of the citizens in Zimbabwe," the Bishops said.

The pastoral letter follows reports by rights organisations such as the Zimbabwe Peace Project of increased political activity and political harassment and violence by people claiming to

be war veterans, soldiers and youth militia in rural areas.

The violence is in anticipation of a general election that President Robert Mugabe's party wants held this year. However, indications are that the polls could be delayed until the completion of a new constitution and implementation of a Southern African Development Community sponsored election roadmap.

The Bishops implored the coalition government to "reflect deeply" on the timing of elections bearing in mind the "unhealed" state of the nation and the fragile state of the economy.

Lack of political will to implement the Global Political Agreement, the bishops said, had eroded the value of President Mugabe and long-time rival Prime Minister Morgan Tsvangirai's power sharing government formed in February 2009.

Court frees WOZA activists

HARARE- A Magistrate has freed 83 activists who were arrested last September for staging a peaceful demonstration against violence.

Magistrate Macdonald Ndirowei granted the defence's application for a refusal of further remand earlier this month.

Belinda Chinowawa of Zimbabwe Lawyers for Human Rights represented the WOZA activists.

Chinowawa initially made the application in December last year when the WOZA activists and their counterparts from the Men of Zimbabwe Arise (MEZA) appeared before the Harare Magistrates Court for further remand.

The Magistrate refused the application and further remanded the 83 members to 29 December 2010.

He however, stated that he would remove the activists from remand if the prosecution did not have their case ready by the 29th of that month.

When the activists returned to court on that date, the prosecutor who had been dealing with the case was on leave and the stand-in prosecutor said he did not have a record of the case.

The Magistrate further remanded the group out of custody to January 2011 when they were finally removed from remand.

The 83 WOZA and MEZA members were arrested in Harare on International Peace Day in September after a peaceful demonstration calling for community safety. They subsequently spent two nights in custody at Harare Central Police Station before being released on free bail.

The group had been charged under the Criminal Law (Codification and Reform) Act, Chapter 46, as read with Section 2(v) of the Third Schedule to the Criminal Code – "criminal nuisance" after being arrested marching on Parliament Building.

"WOZA is very pleased that the 76 women and seven men have finally been removed from remand. We condemn the continuous persecution through prosecution of human rights defenders exercising their constitutional right to peaceful protests," said the Jennifer Williams-led WOZA in a statement.



WOZA members demonstrating last year

Farmer holds out for justice

MVURWI-A German national who has taken the Government of Zimbabwe to the Paris-based International Centre for Settlement of Investment Disputes (ICSID) after Harare seized his properties under the land reform programme says he is still holding out for justice to be done.

In an interview in Mvurwi farming area – about 100km north of Harare – last week, Heinrich Pezold said he approached the ICSID after Harare refused to listen to his requests for fair compensation. He said he would not leave Zimbabwe until the case was finalised.

The ICSID is an arbitration centre set up to solve investments disputes. Pezold argues that his three investments are covered by a Bilateral Investment and Property Agreement (BIPPA) that Berlin and Harare signed in 1995.

"Over the years I have tried to engage the Government of Zimbabwe. Zimbabwe is a place to do productive investment, which is why we continue to invest here. We would still like to sit with the government one day and find the solution if it upholds the obligations under the investment protection agreement. But for now we want the arbitration centre to settle this matter," said the 58-year old German.

He refused to divulge how much compensation he was claiming.

An official in the Attorney General's Office confirmed that Harare was studying the ICSID papers.

"We have received the papers and we are looking at them," said the official.

Pezold said he was confident that one day Zimbabwe would honour its international obligations. He declared that he would not leave his investments until justice prevailed.

"We have no dispute with Zimbabwe. We have dispute with some policies. Many countries go through times of difficulty. We believe the current problems of this country will go. We believe it is important that investors stick out for their rights. Only if people have faith in the future will they risk their savings to build a future Zimbabwe," said Pezold.



Heinrich Pezold

Pezold has three estates under threat in Zimbabwe – one in Mvuri and two in Manicaland - which he said he bought in 1988 from a commercial farmer.

"I have invested millions of dollars in Zimbabwe and just can't let that investment go," he said.

Pezold is not new to controversy in Zimbabwe. Last year, he almost caused a standoff between Berlin and Harare when he refused to vacate his seized coffee growing estate in the eastern part of Zimbabwe that the government wanted to take for resettlement. This resulted in him being charged for disobeying the law.

The matter was only dropped after the German Embassy in Zimbabwe protested to Zimbabwe's Ministry of Foreign Affairs.

Pezold is one of the many victims of Zimbabwe's land reform programme whose haphazard and often violent implementation have been criticised for bringing down a country that was once the regional breads basket.