

The LEGAL MONITOR

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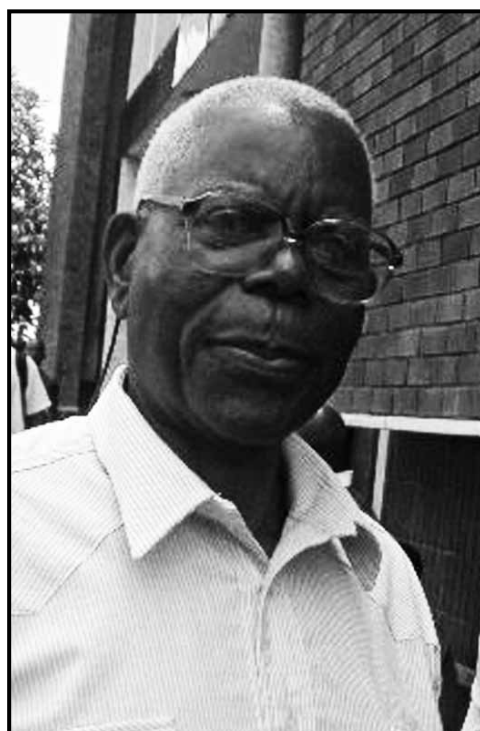
COST-FREE

Abductees want seized property back

Several Movement for Democratic Change (MDC) officials and human rights activists abducted last year have asked the Attorney General (AG) to facilitate the return of property seized by state security agents.

The abductees recently petitioned the AG's head of litigation, Tawanda Zvekare, to facilitate the return of property grabbed during searches conducted at the residences of victims of last year's State-sanctioned disappearances.

The eleven MDC officials and human rights activists are part of a group of 17 people abducted and held incommunicado in various secret locations between October and December last year.



Fidelis Chiramba, wants cameras and shoes back



Concilia Chinanzvavana, lost clothes to state agents



Audrey Zimbudzana, wants her cellphone back

"Already, 17 of the abductees have filed a lawsuit with the High Court demanding US\$1.2 million each in damages for abduction and torture"

The State is charging the abductees with sabotage, banditry, terrorism and plotting to unseat the previous government led by President Robert Mugabe.

Gandhi Mudzingwa, now Director of Infrastructure Development in Prime Minister Morgan Tsvangirai's office lost his Nissan truck, US\$310, a cell phone handset and shoes among other items.

Freelance photo-journalist Andrison Manyere lost US\$4 500, a laptop, three Nokia handsets, a digital camera and his passport.

Kisimusi Dhlamini, the MDC director of security lost US\$2 000, a Nokia handset and two sim cards, while Chinoto Zulu lost his Ford Bantam vehicle, US\$2 010, a mobile handset and a sim card.

Fidelis Chiramba (73), the oldest of the abductees lost three cameras, shoes, and a belt while Mapfumo Garutsa lost his mobile handset and a sim card.

Manuel Chinanzvavana and his wife Concilia, who were abducted from their Banket home last October, lost a desktop computer, printer, clothes,

mobile handsets, several sim cards and children's passports.

Tawanda Bvumo lost US\$135, a mobile handset and a sim card.

Broderick Takawira, a human rights activist with the Zimbabwe Peace Project (ZPP) lost his mobile handset and two sim cards, car keys and US\$295, while Audrey Zimbudzana lost a mobile handset.

"Kindly make the above property available to our clients for collection and

advise us as soon as possible when our clients can collect their property," the abductees' lawyers wrote to Zvekare.

Zvekare has not responded nor acknowledged receipt of the letter.

Lawyers for the abductees said they were also compiling a further inventory of the missing property for the other abductees who suffered the same fate as the eleven.

Already, 17 of the abductees have filed a lawsuit with the High Court demanding US\$1.2 million each in

damages for abduction and torture. In June, a Bikita Magistrate granted an order allowing seven villagers to claim about \$7 000 in damages for property looted by alleged ZANU PF activists in the run-up to last year's presidential run-off.

In a related incident, 16 villagers in Nyanga are waiting for a ruling on their application to the Magistrate Court to be granted an order allowing them to claim about \$900 in damages for their property looted by alleged Zanu PF supporters last year.

ZLHR secures release of residents

Human rights lawyers have secured the release of eleven Kambuzuma residents who had been languishing in prison for almost three weeks for allegedly refusing to vacate a disputed property in the suburb.

The 11, who included a woman and her five-month-old son were released from prison last Tuesday

after Zimbabwe Lawyers for Human Rights (ZLHR) members Innocent Maja and Gift Mtisi had successfully petitioned the High Court for their release.

Besides ordering the immediate release of the Kambuzuma residents from prison, High Court Judge Anne-Mary Gowora interdicted Memory Maripakuenda who

is claiming ownership of a disputed house from where the 11 were arrested not to interfere with their occupation of the disputed property.

Maripakuenda, who is involved in an ownership wrangle with Beauty Tiki Sande, the daughter of the late landlord, Simon Sande, claims that she bought the house from

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Kambuzuma residents released

the late Sande claims disputed by Sande's daughter, Beauty. Justice Gowora ordered Police Commissioner-General Augustine Chihuri and the Member in Charge of Warren Park Police Station to reinstate the 11 to the disputed house and stop interfering with their occupation of the property.

The eleven had been imprisoned at Harare Remand Prison and Chikurubi Female Prison after Magistrate Priscilla Chigumba issued a warrant of civil imprisonment against them early last month.

Magistrate Chigumba had ruled that the house they were living in now belonged to Maripakuenda who claims to have bought the property from the late father of Beauty, the current landlord.

The Magistrate issued the warrant for civil imprisonment in spite of a 2004 High Court interdict against Maripakuenda from interfering with Sande's peaceful occupation of the property.

Justice Gowora ordered the State, Chihuri and the Member in Charge at Warren Park Police Station and the Master of the High Court to make an inquiry into the unlawful arrest and detention of the 11 people.

The incarceration of the 11 people outraged several residents in Kambuzuma Section who last month staged a demonstration to protest against the "unfair treatment of their neighbours.

Government in breach of GPA

Local organisations monitoring the performance of the transitional government have commended progress in economic reforms, but say human rights abuses remained rife, one year after the signing of the Global Political Agreement (GPA).

Following the formation of the transitional government, civil society organisations (CSOs) formed an independent monitoring and evaluating mechanism to monitor the implementation of the GPA, called the Civil Society Monitoring Mechanism (CISOMM).

Using eleven benchmarks: economic recovery, constitutional reform, human rights, institutional transformation, humanitarian and food assistance, media reform, and freedom of expression, the CISOMM said full compliance with the GPA "has so far been rare".

"On balance, the evidence suggests that more remains to be done than has been achieved so far. In short, GPA implementation has a long way to go," read civic society shadow report on the transitional government's performance.

The report, together with a special resolution on Zimbabwe (below) was presented to the Government to the Democratic Republic of Congo (DRC) to submit to regional leaders attending last week's Southern African Development Community summit in the DRC.

The NGOs recommended government to conduct meaningful consultation with civil society and the general public before implementing economic programs. They urged a halt to the farm invasions and establish the rule of law.

See abridged CISOMM shadow report on Page 4

SPECIAL RESOLUTIONS ON ZIMBABWE AT THE 5TH PEOPLE'S SUMMIT HELD AT SHAUMBA CENTRE, KINSHASA DEMOCRATIC REPUBLIC OF CONGO (DRC) 6 SEPTEMBER 2009

We the delegates at the 5th People's Summit, being aware and cognisant of the Government of National Unity in Zimbabwe and taking note of both the opportunities and challenges which it presents to its people do hereby commit to the following recommendations:

To fulfil its obligations under the Global Political Agreement (GPA) to "respect... all persons and human rights," the Zimbabwean Inclusive Government address the following issues:

- Freedom of expression is a cornerstone of any truly democratic society and the media is key in the true realisation of sustainable development of any given society, the government must therefore explicitly guarantee media freedom in its constitution.
- We call upon the repeal of repressive laws such as Access to Information and Protection of Privacy Act (AIPPA), Public Order and Security Act (POSA) and Interception of Communication Act (ICA) among others which are hindering freedom of expression and the media
- Establish a truly independent Zimbabwe Human Rights Commission and ensure that the public is involved in the selection of commissioners.

- Report on the condition of missing political and human rights activists and, if necessary, launch an independent investigation to ascertain their whereabouts.
- Cease arresting students and others engaged in peaceful protest actions.
- Through official chains of command and through political structures, we demand that illegal farm invasions cease forthwith. Arrest and prosecute all individuals, whether uniformed officers or civilians, who engage in such activities.
- The State must give priority to training members of the ZRP in human rights to facilitate a restoration of people's dignity and entitlements.
- Conduct a legislative audit leading to repeal of draconian pieces of legislation.

SADC Tribunal and Zimbabwe

The SADC Tribunal is now an integral part of the SADC Treaty, any attempt to "pull out" of the Tribunal by the Government of Zimbabwe would amount to pulling out of SADC as a whole.

It has serious economic and other implications. In turn, this would put the integrity of Zimbabwe within the SADC region, and the SADC-brokered Interparty Political Agreement, in jeopardy. Zimbabwe and or any other SADC Member State for that matter cannot unilaterally have the privilege of opting out of voluntarily assumed commitments that they no longer like.

Zimbabwean Civil Society Organisations are reliably informed that such utterances and others attributed to the Attorney General and his underlings have fuelled mayhem and pandemonium as violations continue to occur on farms with the perpetrators claiming that the SADC Tribunal has no jurisdiction over Zimbabwe.

The utterances of government officials in Zimbabwe have the potential to cause extreme harm to the integrity of this integral organ of SADC, and endanger the protection of the rights of Member States and their subjects as enshrined in the SADC Treaty and an extensive range of Protocols.

We therefore call on the leaders of the various SADC Member States and of the Zimbabwe Inclusive Transitional Government to reflect and take action on this potentially far-reaching decision.

Zimbabwe and the Region Recommendations to SADC Member States:

- As guarantor of the September 15, 2008 GPA, ensure that the Zimbabwean government institutes promised human rights reforms.
- Promote compliance to the Global Political Agreement and monitor progress of all parties in carrying out their commitments made under the agreement.
- Resist attempts by the Government of Zimbabwe to unilaterally dismantle SADC and its subordinate institutions such as the Tribunal. Pulling out of the Tribunal on the allegation that the 2001 Amendment to the SADC Treaty amounts to alleging that SADC institutions such as the Organ on Politics and Defence among others established in the same year is also invalid.
- Reaffirm their commitment to the values and aspirations of SADC by respecting and upholding its integral institutions.

*Thus done and dated at
Shaumba Centre, Kinshasa, Democratic
Republic of Congo this 6th day of
September 2009*

Police at it again

...bars ZCTU commemorative march

Armed police on Saturday barred the Zimbabwe Congress of Trade Unions (ZCTU) from commemorating the violent suppression of workers' mass protest in September 2006.

Fifteen ZCTU leaders, including secretary-general Wellington Chibebe were hospitalised after police brutally crushed protests by workers demanding better living and working conditions.

The ZCTU had planned to mark the violent suppression of their protest and the assault of their leaders at Zimbabwe Hall in Harare's Highfield suburb.

But Japhet Moyo, the ZCTU acting secretary-general said police lined up water cannons, while officers armed with guns and baton sticks cordoned off roads to stop commemorations planned for Harare's Highfield suburb.

In a letter served to the ZCTU leaders on the day of the commemorations the Officer Commanding Harare South District, Chief Superintendent Titus Chagwedera said the commemoration would evoke memories from the past.

"Having reviewed the objective of your intended commemoration and march, it

was resolved that the commemoration will open already healed wounds. Also we are severely strained in terms of personnel to cover the event as we are already committed to some other commitments. Therefore, the commemoration and march have not been approved," said Chagwedera.

The police action was in contempt of a court order granted late Friday by High Court Judge Tedious Karwi allowing the commemorations to proceed.

Justice Karwi had ordered the police or anyone acting through them to

allow the ZCTU members to "march towards the venue of their 13 September 2009 commemorations on 12 September 2009."

Moyo said the police action made a strong case for urgent reforms in the security sector.

"We still have the same old government even if we have new faces in it. We will be taking up the issue with the courts because the police are defying court orders. The police action confirms that political freedoms are still circumscribed," said Moyo.

Know your citizenship rights

CLAIM YOUR RIGHT TO CITIZENSHIP NOW

The Citizenship of Zimbabwe Act was amended in 2001 to reinforce the prohibition of dual citizenship. Individuals born in Zimbabwe with parents born in Malawi, Zambia, Mozambique, South Africa, Britain and other countries were required to renounce in terms of the laws of the foreign country concerned any acquired citizenship through ancestral descent.

A few people affected renounced their acquired foreign citizenship by the deadline of 6 January 2002. Those who did not renounce have been denied passports, birth certificates and identity documents by the Registrar General who deems them to be non-citizens.

Zimbabwe Lawyers for Human Rights (ZLHR) is concerned at the implementation and interpretation of the citizenship laws by the Registrar General's office resulting in denationalisation of people. Section 9 Citizenship of Zimbabwe Act has been wrongly interpreted to exclude certain classes of persons born in Zimbabwe who have never claimed foreign citizenship from being recognized as citizens.

KHETHA ILUNGELO LAKHO LOKUZALWA!

ICitizenship of Zimbabwe Act yaguqulwa ngo2001 ukuze iqinise ukwenqabelwa isizwalane sabazwe amabili. Abantu abazalelwa eMalawi, Zambia, Mozambique,

South Africa, Britain lakwamanye amazwe kwathiwa balahle ilungelo labo lokuba yizizalwane zalawo amazwe.

Abantu abalutshwane balahla lelo lungelo mhlaka 6 Zibandlela 2002. Labo abangazange balahle lelo lungelo sebencitshwa ama passport, birth certificates, lezithupa ngu Registrar General yena othi abayisizo zizalwane zeZimbabwe.

IZimbabwe Lawyers for Human Rights (ZLHR) iyakhathazeka ngalamanyathelo ehofisi kaRegistrar General, atshiya abantu sebengaseyizizalwane zeZimbabwe. Isahlako a, se Citizenship of Zimbabwe Act sesichasiswe ngendlela evimbela ezinye izizalwane zeZimbabwe ezingakaze zithathe lawo malungelo okubayizi zalwane zakwanye amazwe, ukukhangelwa njengezizalwane zeZimbabwe ngokomthetho.

KOZEDZERO YAKO YEKUNZI URI CHIZVARWA CHEZIMBABWE!

Mugore ra2001 hurumende yeZimbabwe yakanhadzirisa mutemo yezvi zvizvarwa zveZimbabwe inonzi Citizenship of Zimbabwe Act. Mutemo uyu unoti hazvisi pamutemo kuti munhu ave chizvarwa chenyika mbiri panguva imwe chete. Mutemo uyu waive wakatarisana nevanhu vakazvarirwa muno asi vabereki vavo vakazvarirwa kune dzimwe nyika dzakaita seMalawi, Zambia, Mozambique, South Africa, Britain nedzimwewo.

Vabereki ava vaive vatamira muno mazuva ekupambwa kweZimbabwe.

Mutemo uyu waisungira munhu aive ambowana kodzero yekuve chizvarwa cheimwe nyika kuti anoramba kodzero iyi musiwa 6 Ndira 2002 kana achida kuramba ari chizvarwa chemuZimbabwe. Munhu aisungirwa kuramba aifanira kuve akambowana kodzero iyi mune imwe nyika.

Zvisinei, veZimbabwe Lawyers for Human Rights (ZLHR) vari kushushikana nemaverengero arikuitwa mutemo uyu namahofisi anoona nekupa zvizvarwa zveZimbabwe magwaro anoita seeku fambisa (passport), ekuzvarwa (birth certificates) nezvitupa (identity documents). Vanoshanda kumahofisi akwa Kasekera arikuramba kupa vanhu vaka zvarirwa muno magwaro aya vasina kumbova zvizvarwa zvedzimwe nyika magwaro aya. Magweta eZLHR anoti hazvisi pamutemo, zvadaro tiripo kubatsira veruzhinji vakatarisana nedambudziko iri. Mahofisi edu ari pakero iri pazasi pagwaro rino.

YOU HAVE A RIGHT TO CITIZENSHIP

Did your parents come from Malawi, Mozambique, South Africa, Zambia or any other country and settle in Zimbabwe before independence?

Where you born in Zimbabwe?

As a result, are you having problems obtaining a birth certificate, passport or national identity document?

If your answer is positive to these questions contact Zimbabwe Lawyers for Human Rights for information and assistance on your right to citizenship.

UNE KUDZERO YEKUNZI URI CHIZVARWA CHEZIMBABWE!

Vabereki vako vakatama vachibva ku Malawi, Mozambique, South Africa, Zambia makore apfuura Zimbabwe isati yawana kuzvitonga?

Wakazvarirwa muZimbabwe here?

Nokudaro, urikunetsekana here nekutora chitupa, birth certificate kana passport?

Kana urikunetseka nezvarehwa izvi shanyira ve Zimbabwe Lawyers for Human Rights vakubatsire.

ILUNGELO LAKHO LOKUZALWA!

Abazali bakho beza bevela eMalawi, Mozambique, South Africa, Zambia loba kwelinye ilizwe ukuzosebenza loba ukuhlala eZimbabwe ngemva kukuthola uzibuse?

Wazalelwa eZimbabwe na?

Uyakhathazeka na ukuthola isithupa, passport, loba ibirth certificate?

Tshanya ucingo kuZimbabwe Lawyers for Human Rights ukuze uthole uncedo ngelungelo lakho.

For more information, please contact:
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Abridged Six Month Shadow Report on the Performance of the Inclusive Government of Zimbabwe

Economic Recovery

Findings on Compliance

- The Reserve Bank of Zimbabwe (RBZ) announced that it would end all quasi fiscal activities. In May the government agreed to amend the RBZ Act to ensure that the Central Bank sticks to its legally defined mandate.
- The introduction of the multicurrency system tamed hyperinflationary.
- The payment of wages and salaries in foreign currency helped to stem the erosion on savings.
- Exchange controls for cash limits that could be exported were relaxed thus enabling retailers to restock faster and thereby demobilizing the parallel market for commodities.
- The removal of price controls stimulated manufacturers' productivity at more competitive prices and increased stock levels for retailers.
- The preparation and launching of the Short Term Economic Recovery Plan (STERP) and the crafting and implementation of the STERP's implementation plan i.e. the 100-Day Plan were major steps in the fulfillment of Article 3 of the GPA.
- In April the Inclusive Government abolished the voucher-system of payment for civil servants, thus allowing them to collect their pay in hard currency.
- The RBZ reviewed downwards to US\$10 000 from US\$250 000 the amount of foreign currency cash exportable to prevent capital flight, money laundering and other economic crimes.
- In May, the Minister of Finance announced that credit lines of US\$ 400 million were to be made available in order to achieve increased capacity utilisation for critical sectors.
- The IG also announced moves to privatise non-performing state-owned enterprises which have been a perennial drain on the fiscus.

Findings on Non-compliance

- In the period under review, the government had not yet established the National Economic Council (NEC) as per 3.1 (c) of the GPA. The NEC is to be comprised of representatives of the three political parties and various other economic sectors and is supposed to render advice to Government formulate economic plans and programmers for approval by Government.
- Agricultural production has been severely hampered by a fresh wave of farm invasions which in many cases were led by, or done on behalf of, senior political and military officials in the transitional government.
- Prospects for comprehensive reform of the Central Bank were dented as discussions over the fate of RBZ Governor, Gideon Gono became a hotly contested and partisan issue.

- Whilst launching a blitz on defaulters on tax and customs duty to plug leakages in the fiscus can be considered compliant with goals of economic recovery, the manner in which this exercise was handled by ZIMRA in specific areas can equally be considered inimical to the objective of dealing with poverty and unemployment.

Recommendations

- Immediately establish a National Economic Council including representatives from the manufacturing, agriculture, mining, tourism, commerce, financial, labor, and academic sectors.
- Conduct meaningful consultation with civil society and the general public before implementing economic programs.
- Halt farm invasions and establish the rule of law.
- Create the conditions required to receive international aid by establishing the rule of law and full compliance with the GPA.

Constitutional Reform

Findings on Compliance

- In April, the Speaker of the House of Assembly announced a 25-member Parliament Select Committee (PSC) in line with Article 6 of the GPA which requires the Committee to be set up within the first two months of the inception of the transitional government.
- The Parliamentary Select Committee held provincial consultative meetings in the country's ten provinces from 24-27 June 2009 in order to identify stakeholders who would attend the First All Stakeholders Conference as stipulated in the GPA.
- In July the First All Stakeholders' Constitutional Conference was held in Harare as per 6.3 of the GPA. It was however marred by physical disturbances orchestrated by ZANU-PF partisans. The three GPA principals wisely reigned in their supporters and the process was brought back on track.
- Eighteen constitutional thematic committees were established but are not yet functional.

Non-Compliance

- The government inexplicably did not ensure that the Article (on the Constitution) was included in Constitutional Amendment Number 19 hence the constitution making process is not legally mandated. Given the entrenched distrust among the three political parties, this was a major flaw and inexcusable omission.
- The Parliamentary Select Committee has not established subcommittees which are listed by the GPA as its first task thus dampening prospects

for consideration of diverse voices as an input into the constitution-making process.

- There were disruptions to some of the provincial consultative meetings, with many meetings being subject to outright skirmishes and outbursts of violence among the participants.
- President Robert Mugabe heightened tension in the constitution-making process by stating categorically that his party would not be swayed from the contents of the Kariba Draft Constitution as the reference document in constitution-making. These remarks were in direct contravention of the GPA's call for the Zimbabwean people to write a constitution for themselves as a fundamental right and duty.
- There were vivid signs of intent for the First All Stakeholders' Constitutional Conference to be a political party-led and parliament-driven process, rather than a national process as was shown by political party representation which accounted for 40% of the total number of delegates, while NGOs only had an 8% representation.
- There was absolutely no consultation beyond politicians around the substance and intent of the First All Stakeholders' Constitutional Conference, the proposed programme and the selection of chairpersons.

Recommendations

- Immediately establish subcommittees to the Select Committee of Parliament.
- Incorporate the public into the constitution-making process by appointing an independent chair of the Select Committee of Parliament, allowing civil society representatives to chair subcommittees, and developing guidelines to govern public consultations.
- Remove from Parliament final authority for determining the content of the draft constitution that will be submitted to a referendum. This could be done by allowing the Second All Stakeholders Conference to be the final authority on this matter.

Respect for Human Rights

Findings on Compliance

- The respect for human rights during the review period was mostly in the realm of political gatherings and meetings. In April local human rights organizations reported that they often had improved access to the public in rural areas, with police officers readily offering permission and even protection for their gatherings.
- In April, the Inclusive Government promised the imminent establishment of a constitutionally-mandated Human Rights Commission but has failed to make significant progress on ensuring that human rights are respected on the ground.

Findings on non-compliance

- The rule of law was not respected leading to the arbitrary arrest, detention, and prosecution of many human rights defenders, political activists, and journalists.
- The government has not taken any measures to establish the whereabouts of seven MDC activists who were abducted in November 2008 and are still missing.
- The repressive Public Order and Security Act (POSA) and other oppressive legislation continued to be used by police officers to arrest students and detain individuals exercising their right to assembly.
- The situation in the diamond fields in Manicaland received considerable attention in May and June, with various organizations in the province having collected detailed evidence linking the army to mine-related violence and killings.
- The legitimate right to organise as civic society was also under threat.

Recommendations

- Ensure the freedoms of association and assembly by allowing all groups, political or otherwise, to hold rallies, public meetings or workshops without political interference.
- Repeal repressive laws such as the POSA and the Access to Information and Protection of Privacy Act (AIPPA), which violate the rights of Zimbabweans.
- Establish the Zimbabwe Human Rights Commission and ensure that the public is involved in the selection of commissioners.
- Report on the condition of missing political and human rights activists and, if necessary, launch an independent investigation to ascertain their whereabouts.
- Cease arresting students and others engaged in peaceful protest actions.
- Through official chains of command and through political structures, demand that illegal farm invasions cease forthwith. Arrest and prosecute all individuals, whether uniformed officers or civilians, who engage in such activities.
- The IG must give priority to training members of the ZRP in human rights to facilitate a restoration of people's dignity and entitlements.
- Conduct a legislative audit leading to repeal of draconian pieces of legislation.