

The LEGAL MONITOR

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COST-FREE

Biscuit man dodges State bite

HARARE-Prosecutors that had been having a meal out of a case in which a Harare resident was accused of insulting President Robert Mugabe have come out empty.

Zebediah Mpofu, who came to be known as the "biscuit man" got into trouble after allegedly telling a ZANU PF workmate that people like him were only beginning to afford lunch because of Prime Minister Morgan Tsvangirai's entry into government.

Mpofu, 52, last week walked out of court a free man after Magistrate Reward Kwenda turned down an application for further remand by State prosecutors seeking to postpone Mpofu's trial after State witnesses failed to turn up in court, including the complainant in the matter.

The State was charging Mpofu under Section 33 (1) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23 as read with Section 33 (2) (a) of the same Act for allegedly undermining the authority or insulting the President.

According to the State outline, Mpofu was at work in October last year when he went to Gilbert Matarutse's office. Matarutse, a security officer known to be a ZANU PF supporter, was having his lunch at the time.

"The accused shouted to Gilbert through the window, saying that the biscuits and the cascade he was having were brought by MDC-T through its leader Prime Minister Morgan Tsvangirai," read the State outline.

"He went further to say that President Mugabe had ruined the country and that he was going to be dead by December 2010 then Morgan Tsvangirai would take over as President of Zimbabwe," the State charged.

Mpofu's lawyer Jeremiah Bamu of Zimbabwe Lawyers for Human Rights had argued that

the charges should not stick because the law under which Mpofu was being charged "is a negation of democratic principles."

"It is just an alarming indication of a sad state of affairs where citizens are not allowed to level any form of criticism against the President as doing so will result in prosecution. The law is a negation of democratic principles and an unnecessary gag on legitimate criticism," Bamu said then.

But it was the non-appearance of State witnesses that did further damage to

the State case.

State witnesses as well as the complainant Matarutse all failed to turn up in court for the fourth time since August when the trial was scheduled to commence.

The trial was all along being postponed to allow the witnesses and the complainant to appear in court.

Magistrate Kwenda removed Mpofu from remand and ordered the State to proceed by way of summons if they intend to pursue the matter.



Maguwu's blow

HARARE-A High Court Judge has dealt a blow to efforts by prominent diamond rights campaigner Farai Maguwu to recover property seized by State security agents last month and stop his harassment.

Maguwu's lawyer Denford Halimani of Wintertons Legal Practitioners recently filed an urgent chamber application in the High Court for contempt of court against the Minister of State Security in the President's Office, who oversees the operations of State security agents, the co-Ministers of Home Affairs, the Chief Immigration Officer, the Minister of Transport, Communication and Infrastructure Development who had refused to comply with High Court Judge Justice Samuel Kudyia's provisional order.

The respondents in the matter represented by Mr Dodo of the Attorney General's Office said they were unable to return Maguwu's property because they didn't have the property with them and knew nothing about it.

Justice Kudyia had ordered State security agents to return all the property they unlawfully seized from Maguwu, the director of Mutare-based Centre for Research and Development (CRD), and stop harassing him by restricting his movement.

The High Court Judge granted the order last month after hearing an Urgent Chamber Application filed by Halimani seeking to compel State security agents to immediately return the diamond rights researcher's property which they seized at the Harare International Airport early last month.

The property includes an Hp 625 laptop, power pack, wallet, Olympus digital camera, \$2 000, business and bank cards, personal notebooks, airline boarding passes, travel insurance, accommodation bookings, a laptop bag and all its contents.

But High Court Judge Justice Ben Hlatshwayo on Thursday dismissed the chamber application as lacking urgency.

Justice Hlatshwayo ruled that the matter was not urgent because of the "long delay between the granting of the provisional order on 12 September 2011 and the evincing of the intention not to comply there with on 14 September 2011 on the one hand and the filing of this application on the other hand after five weeks."

The human rights lawyer charged that the refusal by the State to stop the harassment of the diamond researcher bordered on contempt of court.

State security agents harassed and prevented the CRD director from attending a two-day international conference in Ireland focusing on rights violations last month.

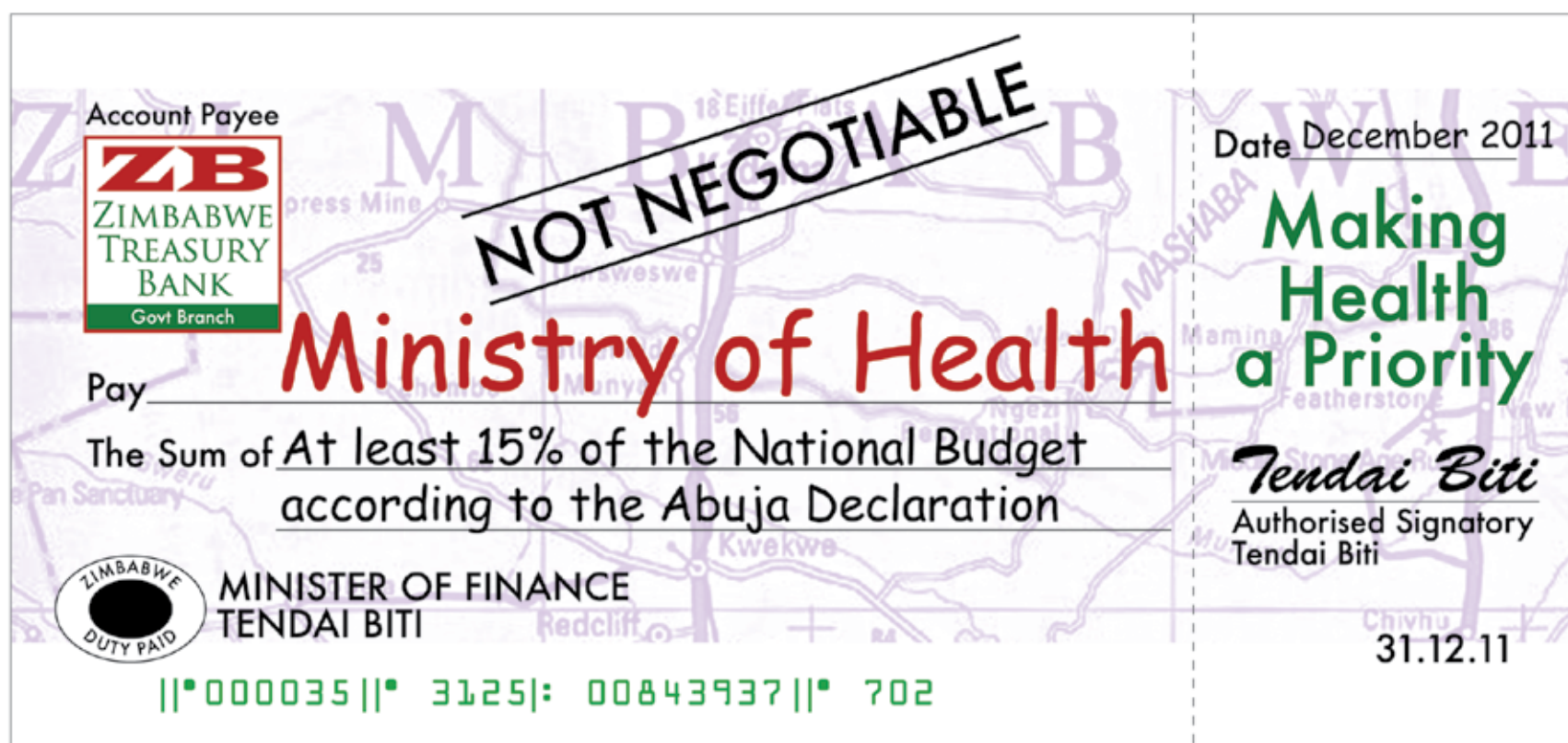
Maguwu is an ostracized person in government circles because of his extensive work in unmasking human rights abuses and illicit diamond mining and exporting by the military "guarding" vast alluvial diamond deposits in Marange.



The jury is out... What the residents of Makokoba suburb think of ZBC



Deserted... the Libyan embassy in Harare is unmanned since the expulsion of embassy staff by the government. Deposed Libyan leader Muammar Gaddafi was killed last week after 42 years in power



Zimbabwe needs more money for health!

Health care financing is a priority!

The Inclusive Government (IG)'s response to Health as regards to the national budget thus far has been admirable. However the percentage of the national budget allocated to health care still falls short of the 15% according to the commitments set by the Abuja Declaration in 2001.

Through the National Health Strategy, 2009 - 2013: Equity and Quality in Health-A People's Right, Zimbabwe's Ministry of Health and Child Welfare submitted that government desires to have the highest possible level of health and quality of life for all its citizens, and therefore defined the following Key Result Areas:

- Improving the health status of the population
- Improving the quality of care
- Health systems strengthening

Morbidity and mortality trends in Zimbabwe show that the population is still affected by common preventable and treatable diseases that include nutritional deficiencies and communicable diseases, and conditions relating to pregnancy and childbirth. For government, addressing the burden of disease should start with adequate financing of health care. The national budget should be a statement of that commitment.



Inserted by the HIV/AIDS, Human Rights and Law Project of Zimbabwe Lawyers for Human Rights: Ph 251468, E-mail: tinash@zlh.org.zw

Response to Chinamasa

By Danielle Connolly

The closing remarks delivered by the Minister of Justice and Legal Affairs, Hon. Patrick Chinamasa at the United Nations Human Rights Council in Geneva on 12 October 2011 tragically demonstrate how Zimbabwean citizens can expect to have their rights denied *in perpetuum* by this Government. In particular, Minister Chinamasa, leading the Government delegation at the Universal Periodic Review process, rejected calls to abide by the civil and political rights owed to the population by virtue of our acceptance of various international human rights norms and instruments, and even the Constitution of Zimbabwe.

Chinamasa instead says that economic, social and cultural rights should form the core of the human rights agenda. Indeed, this is where we have seen the greatest advances during the period of the Inclusive Government (IG), brought about by stabilisation of the economy and massive donor assistance to various Ministries in the rehabilitation of services such as health, education, water and sanitation. It is these same donors who he calls 'imperialists-colonizers'. There can also be no justification (not that he tries to offer one apart from the false claim that it is sponsored by 'the West') for the denial of civil and political rights to the population in this period of political transition, which encompasses a constitution-making process with a referendum and election to come. In this context, his explicit rejection of the recommendations to impartially apply the rights to freedom of expression, association, and assembly; and ensure protection against enforced disappearances, torture and political violence with impunity; are spine-chilling.

Far from reacting 'in a balanced way' to the contributions made by member states, he instead launches a tirade against so-called Western countries, refusing to acknowledge 'all recommendations that contain innuendos that Zimbabwe is a violator of human rights'. This rejection however includes recommendations made by two fellow SADC states, Zambia and South Africa, on the need to comply with the Paris Principles ensuring independence for the Human Rights Commission and investigate all credible allegations of political violence from the 2008 Presidential elections, especially around torture and enforced disappearances. The most sickening aspect of his remarks is how he attempts to completely absolve Zimbabwe's negative human rights record, by pinning the very crimes of the Government of Zimbabwe on some ill-defined imperialist offspring who 'arrest, detain, mutilate our people and plunder and pillage our resources'. Anyone with even a vague grasp of Zimbabwe's track record knows precisely who is responsible for those acts.

The Minister fails to consider the cries from Zimbabwe itself, so busy is he with a wholesale rejection of 'the West' – equated to protection of sovereignty and rejection of neo-colonialism. For example, in one sentence he decries the excessive reference to POSA and AIPPA, saying that these laws were not the inventions of Zimbabwe – which is true, they came almost intact from the previous Rhodesian regime which used these specifically to oppress the majority – followed immediately by the assertion that those Acts are here to stay. This is despite the fact that public appeals to have POSA repealed, or at the very least amended, have been sustained for over two years during which time certain actors in Parliament have deliberately stalled the Amendment Bill. The latest culprit for stalling the passage of the Bill has been Min. Chinamasa himself who spuriously tried to say that it was a matter under consideration by the Principals in the Election Roadmap, thus trying to divert the normal passage of long-awaited legislative reform¹. In addition, he suggests that these pieces do not violate any fundamental freedoms as long as their letter and spirit is followed. This is precisely the contention that civics have long raised, and presented full evidence for: that the police fail to interpret the law correctly and instead use it specifically to selectively curtail people's rights to association and assembly². It is astoundingly



Panelist Rose Hanzi of ZLHR (second from left) speaks about forced evictions at the NGO Forum preceding the 50th ordinary session of African Commission on Human and Peoples Rights underway in Banjul, The Gambia

petty to reject the 'omnibus recommendations' made by some states, even though they have merit, on the basis of who said them. Thus, Zimbabwe shows itself to be the architect of its own pariahdom on the world stage by its petulant and uncooperative stance.

The excuses made for non-implementation of the Global Political Agreement are grossly misdirected. He claims that the hindrances to implementation are: sanctions and 'pirate

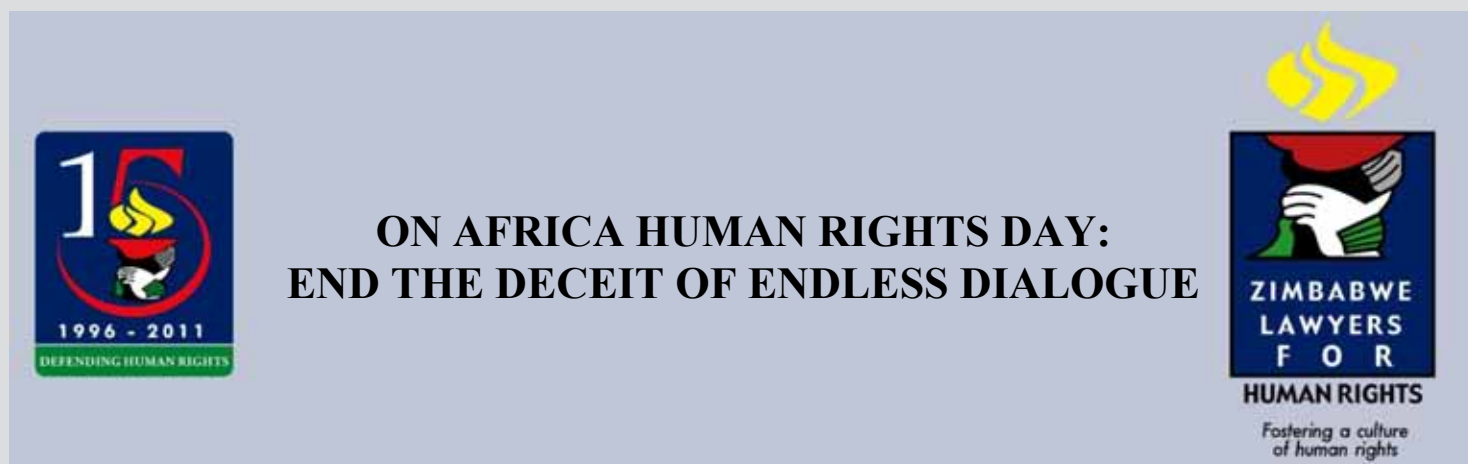
radio stations'. After 32 months of monitoring adherence to the GPA, it is actually desperate to make such an assertion. Perhaps however, we can finally take this as a confession from ZANU-PF that they are the reason behind the non-implementation of the GPA, as these are the issues which they bleat about at every opportunity while ignoring all other failed benchmarks, such as state-sponsored political violence, the illegal appointment of key Government positions including the Attorney-General, etc.

In the midst of this we wonder, where is the MDC part of the Inclusive Government? Where were their Government representatives at the UPR and what about the Deputy-Minister of Justice? Will there be any response from them as a party or do they condone the slander and lies as the official Government position? If so, then they must accept it when our outrage at the disenfranchisement of the population, by the Inclusive Government, includes them.

It is now more patently obvious than ever that those who spoke did not represent or have the legal, democratic or best interests of the population at heart. The concluding remarks instead express, exclusively, the interests of a deranged and dictatorial coterie. When the Government position regarding the UPR is such, it is quite clear that we cannot expect our Government to protect our rights. This is therefore an appeal to the African Commission on Human and Peoples Rights as well as SADC to realise the implications for the people of Zimbabwe and intervene when necessary to protect the rights that our own Government seeks to trample.

¹ See Veritas – on POSA Amendment Bill

² See ZLHR statistics on abuse of POSA and Section 121



Zimbabwe Lawyers for Human Rights (ZLHR) joins Zimbabweans and the African continent in commemorating Africa Human Rights Day on 21 October 2011. This significant day on the human rights calendar affords us an opportunity to reflect and recommit to the solemn undertaking by African leaders and African peoples to promote and safeguard fundamental rights and freedoms on our continent.

The continent has witnessed decades of numerous human rights challenges resulting from a diverse range of factors, which include colonization, racism, oppression, war, poverty, disease, corruption, and autocratic governance.

It is against this background that instruments that enforce values such as freedom, justice, equality, development and human dignity in Africa need to be implemented and respected.

While Zimbabwe initially made considerable strides towards upholding and fostering a culture of respect for human rights, particularly in relation to social rights such as education and health, it is tragic and regrettable that State and non-State actors continue to work indefatigably to deny their citizens fundamental rights which were at the core of the struggle for liberation.

Despite the existence of a power-sharing agreement, Zimbabwe still carries the dictatorial hallmarks of erosion of personal liberties, repression, torture, surveillance, an oppressive legal framework and abuse of the criminal justice system to harass, intimidate and persecute Human Rights Defenders (HRDs) and ordinary citizens caught in the crossfire.

Whilst attempts are being made to move the country forward in terms of legislative and institutional reform necessary to free the operating environment agreed under the Global Political Agreement (GPA), State security agents and other non-State actors aligned to ZANU PF continue to intentionally disrupt public hearings organised to solicit people's views on the Zimbabwe Human Rights Commission Bill, the Electoral Amendment Bill and the constitution-making process.

Similar disruptions and challenges have been faced in relation to other reform efforts. Arbitrary arrests, baseless prosecutions and persecution,

abuse of criminal defamation laws and insult laws continue to occur.

While the African Charter on Human and Peoples' Rights ensures Civil and Political Rights, Economic Social and Cultural Rights, and Peoples' and Group Rights, it is catastrophic that senior government officials such as the Minister of Justice and Legal Affairs, Hon. Patrick Chinamasa continue to reject calls to protect, promote and respect equally all rights owed to the population.

Instead, Hon. Chinamasa selectively believes that economic, social and cultural rights should form the core of the human rights agenda and explicitly rejects recommendations made by the United Nations Human Rights Council in Geneva recently to impartially apply the rights to freedom of expression, association, and assembly; and ensure protection against enforced disappearances, torture and political violence with impunity. His argument that all rights are related and interconnected therefore rings hollow.

Senior government officials and the State controlled media frequently label human rights activists as "subversive" and tools of the western colonial powers in an effort to undermine their work. These charges have made them vulnerable to attack by groups allied to government and delegitimize their critical work in the eyes of the public. This remains an unacceptable violation of commitments made by Zimbabwe to abide by the UN Declaration on Human Rights Defenders.

The deceit of endless political dialogue to stall the urgent imperative for an election in which the free will of the people is expressed and respected can no longer be tolerated.

Instead the GPA must be used 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* and allow for the credible return to electoral legitimacy which places effective popular participation at the centre of our choice of leaders. All political parties involved in the GPA must heed this, and take urgent action to move towards such necessary conditions.

National healing elusive

BULAWAYO-Genuine national healing among Zimbabwe's wounded citizens will remain a pipe dream as long as some supporters of rabid political parties continue resisting the process.

Speaking at a public meeting held at Luvave Beithall and organized by Bulawayo Agenda during the annual Ideas Festival held last week, the co-Minister of the Organ on National Healing, Reconciliation and Integration Hon. Moses Mzila-Ndlovu told residents and civil society representatives that the casual approach to national healing

by some political parties had made it difficult for his institution to achieve justice, peace and reconciliation in the country. "You cannot achieve national healing when violence is perpetrated against some sections of society. How do you heal when one of the signatories of the Global Political Agreement continues to inflict pain on people? The day to day operations of the Organ are made difficult by those resisting the process of national healing," said Mzila-Ndlovu.

Effie Ncube of the Matabeleland Civic Society Consortium told

participants that national is "a transgenerational agenda which will take many governments and many generations to achieve."

During the three day festival, ZLHR exhibited its rights literacy materials and engaged several grassroots human rights defenders and conducted a mini legal clinic.

Below, are some of the moments captured by The Legal Monitor during the festival.



Artists from Jahunda Community Arts Association perform during a theatrical production entitled 1983: The Years Before and After. The act was a moving rendition of the Matabeleland massacres, also known as Gukurahundi



ZLHR's Irene Petras and Lizwe Jamela engage visitors at the Ideas Festival



Catch them young



Even the elderly were there



Fanwell Hungwe of ZLHR distributes the organisation's weekly newsletter



Visitors queue to receive rights literacy material at the busy ZLHR stand



Hon. Mzila-Ndlovu says national healing elusive



ZLHR's Nosimilo Chanayiwa and Prisca Dube interact with visitors