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The LEGAL MONITOR

For human rights and HIV news and analysis

A newsletter published by Zimbabwean lawyers for Human Rights for members & human rights defenders



27 December 2009
Edition 20

COST FREE

Oliver Tshoro (left) and Sandra Mubvumba, of the Black Rights and Human Rights Association, protesting in Harare against gender violence in Harare. See our story on p.4

Crisis escalation predicted

SHARPE and **McKENNA**, co-directors of the Zimbabwean Centre for Human Rights, have issued a warning that the current political crisis in Zimbabwe could escalate into a full-scale civil war. The authors of the report, 'Zimbabwe: A Country at Risk', state that the current political crisis is a 'tipping point' and that the country is 'on the brink of a full-scale civil war'.

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For lawyers, judges and all who work in the legal system

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

ZIMBABWE
LAWYERS FOR
HUMAN RIGHTS

08 March 2010
Edition 35

**COST
FREE**

Coup

ILAC/HRP President **Robert Mugabe** has once again been accused of plotting a coup against himself. This time, the accusation comes from the **United States**. The **US** State Department has accused **Mugabe** of plotting a coup against himself, and of plotting a coup against the **US** government. The **US** State Department has also accused **Mugabe** of plotting a coup against the **US** government.

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Hope for Zim farmers

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SADC TRIBUNAL

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EDITION 200

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For feedback please email zlh@zlh.org.zw or visit www.zlh.org.zw

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ZLHR
Zimbabwe Lawyers for Human Rights
PO Box 1000
Harare, Zimbabwe

25 March 2013

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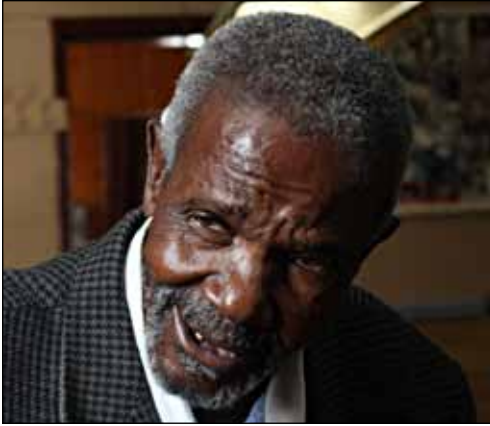
On the Cover:
ZLHR has since 22 June 2009 been providing a vital space for Zimbabwean and global citizens to express themselves.

200 weeks in pict

The *Legal Monitor* has reached the 200-Edition milestone. But, as told by the pictures below, there is not much to toast to. From the first edition of the *Legal Monitor* to the current one, human rights abuses are still dominating the pages.

This week's milestone only reminds us how human rights are still precarious

in Zimbabwe. From toddlers to the elderly, Zimbabweans are still suffering serious human rights abuses, mainly at the hands of State actors. Human rights defenders, including lawyers, remain an endangered species, while ordinary people in towns and villages everyday are at risk of falling foul to a State which continues to entrench human rights abuses.



Rwisai Nyakauru, a headman in Nyanga died after being jailed on fabricated charges in 2011



Peaceful protestors flee for safety after an attack by the police in 2011



Women activists face off with police outside Parliament



ZimRights director Okay Machisa after being released from remand prison this year



Sister Dorothy Makwarimba and Sister Plaxedes Munetei after being evicted from church premises by renegade Anglican bishop Nolbert Kunonga in an ownership battle that lasted five years



MDC treasurer Roy Bennett responds to the media after acquittal in 2010

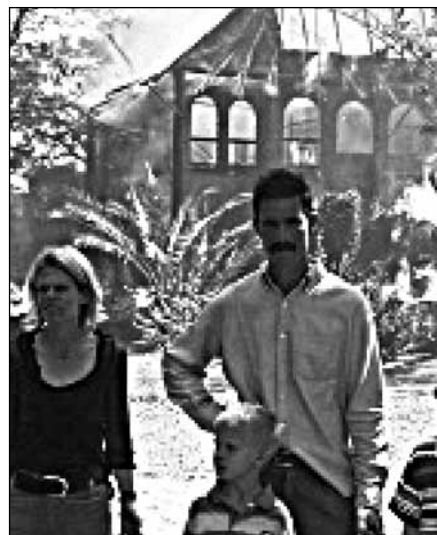


Pretoria based lawyer Gabriel Shumba (second from left) from participating in events back home this year



ZLHR's Jeremiah Bamu hands over a petition at the High Court during a protest march by lawyers and human rights defenders

against the increasing harassment at the hands of State apparatus



The Freeth family stand in front of their burning house in



Elderly prison inmate shows bug bites



Human rights activist Cynthia Manjoro was imprisoned on trumped up charges



Six year-old Nigel Mutemagawu was abducted by state security agents together with his parents in October 2008 and held incommunicado at various secret locations for allegedly plotting to overthrow President Mugabe



Farm workers facing eviction explain their situation to ZLHR lawyer Jeremiah Bamu

Features



During a WOZA demonstration in 2012



and other exiled Zimbabweans in chains symbolising how they are prevented



Happier days: Sam plays the guitar alongside his father and mentor Tuku, at a ZLHR organised event in Mutare in December 2009



in Bamu

Work suit candidate wins in court

REDCLIFF-An aspiring councillor is relieved after a High Court judge overturned her disqualification to stand as a candidate in the municipal elections scheduled for 31 July.

Lucia Levi, an aspiring candidate for ward 8 in Redcliff Town Council, was barred from filing her nomination papers as a contestant when the nomination court sat on 28 June on the grounds that she had submitted her papers out of time.

The nomination officer, only identified as Dingane, had also refused to receive Levi's nomination papers because she was improperly dressed when she filed her papers while clad in a "work suit".

This prompted Levi to engage the services of Andrew Makoni of Mbidzo Muchadehama and Makoni Legal Practitioners.

Makoni filed an appeal against her disqualification.

He successfully argued that Levi had not violated any of the nomination rules and regulations and the Electoral Act as there was no dress code prescribed under the law.

High Court Judge Justice Joseph Musakwa, who heard the matter on Friday morning in the Electoral Court sitting at the High Court, allowed Levi to stand as a candidate in ward 8 after setting aside the nomination officer's decision disqualifying her.

Levi cited Dingane, Justice and Legal Affairs Minister Patrick Chinamasa and the Zimbabwe Electoral Commission (ZEC) as respondents. ZEC consented to the order sought by the aspiring councillor as a result, Levi was declared duly nominated.

Meanwhile Eulita Govo, an aspiring MDC-T candidate for Ward 21, Chikomba District has had her nomination papers rejected on grounds that smack of gender bias.

She successfully submitted her papers, but was advised by the nomination officer that they had been rejected on account of a variance between the surname on her birth certificate and that on her national identity card.

She explained that she had changed her surname when she got married, and was told to bring a copy of her marriage certificate, despite this not being a requirement in terms of the Electoral Act.



Eulita Govo

Upon furnishing a copy of the marriage certificate, she was advised that she was out of time, and as such her nomination papers had been rejected. Lawyers said this conferred an unfair advantage on the male contenders for political office who had not been asked to produce the same.

The effect of this rejection was that the ZANU-PF aspiring candidate for the same ward would be elected unopposed, thus robbing the community of the opportunity to elect a representative of their choice.

Rights Commission, civil society partner

VICTORIA FALLS-The Zimbabwe Human Rights Commission (ZHRC) has committed to partner with civil society organizations to monitor the forthcoming harmonised elections.

ZHRC made the undertaking during a momentous interface with civil society organisations held in the resort town of Victoria Falls. The event was jointly organised by ZHRC, the Zimbabwe Human Rights Association and the Zimbabwe Human Rights NGO Forum.

The two-day conference, where ZHRC indicated the priority areas for collaboration with civil society, aimed to establish a platform for engagement with civil society on the role of the human rights monitoring body in elections.

Malawi Human Rights Commission chairperson Ambassador Sophie Kalinde, who delivered the keynote address, stressed the impact of partnerships and networking between ZHRC and civil society organisations.

ZHRC and civil society leaders formulated strategies to monitor and respond to human rights violations that might arise during the electoral period.

The conference also explored strategies to increase the visibility of ZHRC as well as enhancing confidence in its operations in the communities.

ZHRC chairperson Jacob Mudenda told participants that the human rights monitoring body will endeavor to succeed inspite of operating with inadequate financial and human resources.

"The ZHRC should become a real bridge between civil society, government and government institutions," said Mudenda.



Respected human rights advocate Eileen Sawyer chats to human rights defenders outside Harare Magistrates Court in 2011



Grassroots human rights activist till death... Vimbai Mbisva



Rebecca Mafikeni and Yvonne Musarurwa were held in solitary confinement at Chikurubi Maximum Prison



Angelo Chabwa and Jack Matope were saved from eviction from company houses by ZLHR in 2009

Finally, justice for Tembani

...as The Legal Monitor hits 200 editions

HARARE-It is cheers, not only to a successful run of 200 editions of *The Legal Monitor*, but to a man closely associated with this publication.

Luke Tembani, a pioneering black commercial farmer who turned destitute after the government ignored his right to justice, is finally having some relief – albeit in foreign lands.

Since its very early editions, *The Legal Monitor* has fought side by side with Tembani in his arduous and often frustrating legal fight for recourse after he was evicted from his farm and ignored by government.

Today, *The Legal Monitor* joins Tembani in toasting to two developments in the legal campaign to make sure that the pioneering farmer gets compensation as well as ensure that Zimbabwe is unable to escape its international law obligations.

It had been a long road before the breakthrough recorded in South African courts where Tembani had taken the matter.

Despite touting pro-black land reform as its core policy, President Robert Mugabe's government refused to honour a ruling by the SADC Tribunal restoring Tembani's rights to a farm he unfairly lost to a State institution.

He lost his Minverwag Farm at Clare Estate Ranch Farm in Nyazura in controversial circumstances, which saw him take up a single room lodging in nearby Rusape town.

His children were forced to drop out of the farm school which their father had built using a bank loan.

But Tembani can at least afford a smile now, even though circumstances are still tough.

Following a landmark ruling by South Africa's Constitutional Court, Tembani is now able to attach and auction Zimbabwe government property in South Africa to recover compensation due to him.

The Constitutional Court in South Africa dismissed Harare's appeal against South African court orders authorising the attachment of Zimbabwean government property in execution of awards by the SADC Tribunal. Tembani won his case at the now



Voice of reason... Luke Tembani (pictured): "I am an old man, a committed Christian who contributed to food security in Zimbabwe and who built a church and school on my farm for the benefit of the community."

"I am devastated by the injustice committed against me and my family in Zimbabwe which has left us destitute. I am calling for Africans and the world to raise their voices so that younger Africans in the future may be protected from the injustices that continue to take place without recourse. It's time that those who care about the poverty and hunger in Africa speak out for justice and the rule of law so that Africa's potential can be unlocked and its people can thrive."

defunct SADC Tribunal but Zimbabwe scoffed at him, saying the Tribunal's rulings had no effect locally. He is finally getting some recourse.

"Lawful judgments are not to be evaded with impunity by any State or person in the global village," South Africa's Chief Justice Mogoeng Mogoeng said while delivering the ruling late last month.

The Constitutional Court held that South Africa, like Zimbabwe itself, was bound to give effect to awards of the Tribunal. It noted that Zimbabwean farmers had lost their land without compensation pursuant to an "agrarian reform programme". It held that the Tribunal's jurisdiction was founded on the rule of law, and that the aggrieved farmers had properly had recourse to the Tribunal's protection.

Tembani, who became one of the country's first black commercial farmers shortly after independence in 1980, was evicted from his farm in 2009 in defiance of a SADC Tribunal ruling.

He had occupied the farm for 26 years.

He built a farm school in 1986, which provided free education to more than 300 pupils from Grade 1 up to Grade 7 from around his farm.

The huge cost incurred during the construction of the farm school was one of the reasons why Tembani ended up failing to service his debts to Agribank, formerly the Agriculture Finance Corporation (AFC). The Tribunal ruled that the repossession and sale of the farm by the State-run Agribank in order to recoup an outstanding loan from Tembani was "illegal and void".

The Namibian-based regional court had ordered the Zimbabwean government to take all the necessary measures through its agents not to evict Tembani or his family from the property and to stop interfering with his use and occupation of the farm.

But the government refused to comply with the regional Tribunal's order, forcing Tembani to seek recourse elsewhere.

On another front, South Africa, as a SADC member, has formally conveyed to the African Commission in The Gambia that it will not be advancing argument on the merits of the case brought by dispossessed Zimbabwean farmers before the Commission. The farmers had lodged a challenge to the decision by SADC members to suspend the Tribunal's operation following its series of awards against Zimbabwe.

The application asked for an order that would ensure the SADC Tribunal would continue to function, as established by Article 16 of the SADC Treaty. The application was filed on behalf of Tembani and Ben Freeth, son-in-law of the late Mike Campbell of Mount Carmel farm in Zimbabwe, against the SADC governments.

The two farmers argue that the closure of the SADC Tribunal deprives 250 million inhabitants of SADC countries of access to the only international law court in the region when justice systems have failed them in their own countries.

The effect of the shutting down was to prevent the Tribunal from hearing cases where governments had committed human rights violations where domestic law has offered no relief.

In a letter sent by the South African Embassy in Addis Ababa, Ethiopia, last month to the African Commission, the South African government said it would not be making any submissions on the Merits of the Communication.

The embassy confirmed that the South African government would "abide by the decision of the Commission on the Communication".

The African Commission is yet to deliberate on the issue. The case may proceed further to the African Court.

The Legal Monitor Edition 18; 26 October 2009

Tembani kids forced out of school father built

NYAZURA- Troubled Nyazura farmer Luke Tembani's two children have been forced out of school after their parents were evicted from their farm in Nyazura a fortnight ago.

Luke Tembani, a successful pioneer indigenous commercial farmer was evicted a fortnight ago by a Mutare Deputy Sheriff from his Remainder of Minverwag of Clare Estate Ranch, which he has occupied since 1983 to make way for Takawira Zembe, who claims to have bought the farm from the State-owned Agricultural Bank of Zimbabwe (Agribank,) formerly known as Agricultural Finance Corporation (AFC).

As a result of the displacement Tembani's twin children Luke and Terrylee, who were in grade three at the time of eviction at Chimwanda Primary School, have been left out of school. They are now staying with their parents in Rusape where they are temporarily occupying a single room.

So insulting and distressing is the fact that Tembani is the one who built the farm school in 1986, opening its doors in 1987 to 321 students who enjoyed free education.

Apparently, the huge costs incurred to construct the farm school is one of the reasons why Tembani

ended up failing to service his debts to AFC after he used part of the loan he obtained from AFC to purchase furniture for the school.

"In 1990 I had to purchase school furniture which cost me a lot of money. This was worsened by the national drought of 1992/1994 and as a result I became very short to service my AFC loans... It really pains me," said Tembani.

Meanwhile, Zembe has proposed an outrageous proposal to allow Tembani's children back on the farm school.

In a letter written to Tembani, Zembe asked him to first withdraw his appeal against eviction and totally cede ownership of the farm for his children to be allowed back on the farm school.

Zembe said he would be willing to accommodate Tembani's children at his farm on the condition that he provides a maid to take care of them.

Tembani, who became one of the country's first black commercial farmers shortly after independence in 1980 was evicted from his Nyazura farm in Manicaland which he has occupied for the past 26 years in defiance of a Southern African Development Community (SADC) Tribunal ruling barring his eviction.

The Legal Monitor Edition 21; 16 November 2009

Spare a thought for Tembani

NYAZURA- Mildred Tembani, the daughter of tormented Nyazura farmer Luke Tembani has dropped out of school after authorities at Mavhudzi High School dismissed her from school adding more woes to the beleaguered family.

Authorities at Mavhudzi High School in Nyazura recently expelled Mildred, a Form Two student at the school after she failed to pay tuition fees amounting to \$445.

Mildred's expulsion from school is confirmed in a pass signed by the school's Senior Mistress only identified as Musa, authorising her to travel to Rusape where her parents are temporarily occupying a single room.

The amount is outstanding balance from last term's school fees. Tembani, a successful pioneer indigenous commercial farmer told *The Legal Monitor* this week that he had failed to raise the school fees to allow her daughter to resume lessons at the school.

"*Handizivi kuti ndingaiteseiko kuti vana vangu vadzokere kuchikoro. Zvinhu zviriri kundirwadza zvikuru kuvaona vakagara iwo vaimboenda kuchikoro,*" said Tembani, battling to contain tears.

Mildred has since joined her siblings Terrylee and

Luke junior, who now reside in Rusape. The twins, Terrylee and Luke were the first to be forced out of Chimwanda Primary School, a school which their father built, after the family was evicted from their farm last month in defiance of a SADC Tribunal ruling protecting the pioneering black commercial farmer.

Besides coping with the expulsion from school of his children Tembani also has to contend with the loss of his tractor which Mutare Deputy Sheriff Mark Dzobo recently sold, ostensibly to cover costs incurred whilst evicting him from his Nyazura farm last month.

Tembani, who had occupied his farm for the past 26 years, was evicted a fortnight ago by Dzobo from the remainder of his Minverwag Farm at Clare Estate Ranch, which he bought in 1983.

The new owner, Takawira Zembe, claims to have bought the farm from the Agricultural Bank of Zimbabwe (Agribank), formerly Agricultural Finance Corporation (AFC).

The Windhoek-based Tribunal recently ruled that the repossession and sale of the farm by the State-run Agribank in order to recoup an outstanding loan was "illegal and void". But the government has refused to comply with the regional Tribunal's orders.