

# The LEGAL MONITOR

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**COST-FREE**

## Mass trial for victims of looting

Eighty-eight villagers in Nyanga will stand trial today at the local Magistrates Court for demanding the return of their property stolen by ZANU PF supporters during the run-up to the sham June 2008 presidential election.

The villagers, who are out of custody on bail, were arrested early this year after they allegedly approached some ZANU PF supporters in Chifambe Village under Chief Katerere, Nyanga North, demanding back their property.

The villagers claimed that their goats, chickens and grain were looted from them to feed political activists and militia camped at various campaign bases set up by ZANU PF around Nyanga.

At one such base, called "Chamagonahapana" in Ward 2 of Katerere and surrounding areas the villagers were beaten and ordered to give up their goats, chicken and maize crop to feed the very same people that unleashed violence against them.

Police simply ignored reports made by the victims at the time.

Since the signing of the Inter Party Agreement (IPA) last September, and the formation of the transitional government in February, attempts to reconcile perpetrators and victims of political violence have been undermined

by the arrest and malicious prosecution of the same victims whom the law failed to protect after the electoral violence.

In several of these criminal cases, villagers who lost their property now face charges that include armed robbery and extortion while Magistrates have refused to preside over the villagers' matters, citing undue external interference.

Prosecutors have acknowledged orders from "above" to deny bail at all costs.

Meanwhile, the Magistrates' Court in Nyanga is also expected to preside over a pre-trial conference in which 16 Nyanga villagers filed civil claims against named ZANU PF supporters seeking compensation for property forcibly taken as 'fines' for supporting the Movement for Democratic Change (MDC).

The villagers are seeking US\$853 as damages for sunflower seeds, goats, maize, sorghum, guinea fowls, chicken, groundnuts, beasts and sheep.

The villagers named Tichaona Kadyamusana, Gibson Nyakuba, Loveness Nyakabobo, Martin Njanji, Chenjerai Mukoko, Peter Masenza, Fungai Nyakurega, Mike Kadyamusuma, Obert Kadyamusuma, Courage Kadyamusuma, Rhodah Biasi, Paul Teta, Samuel Sanyamwera



ZLHR lawyer Rangu Nyamurundira addressing affected villagers in Nyanga

and Richard Bulawayo as the alleged culprits. If the civil claims are successful, they will set a precedent for other people who faced similar violations during the politically charged period last year. Although Prime Minister Morgan Tsvangirai and President Robert Mugabe have since

formed a coalition government, issues of transitional justice and national healing remain emotive and unresolved. The establishment of a Ministry of National Healing, Reconciliation and Integration to address the tensions has not assisted in resolving such issues as victims have largely been ignored.

## Mukoko ruling: justice on trial?



Jestina Mukoko

In what could turn out to be a litmus test for the country's justice delivery system, the Supreme Court is today expected to deliver judgment in a constitutional challenge by Jestina Mukoko, who is seeking a permanent stay of prosecution on charges of plotting to overthrow President Robert Mugabe's previous government.

The crusading human rights campaigner filed a constitutional challenge in February which was heard before the Full Bench of the Court, sitting as a Constitutional Court, claiming her abduction by State security agents last year violated her constitutional rights. The matter was heard in June.

"Please note that the Court order in the above case will be delivered in the Supreme Court at 9:30 am on Monday 28 September 2009," read part of a letter written to Mukoko's lawyer Beatrice Mtetwa, by Chief Justice Godfrey Chidyaisiku's secretary Jean Kelly-Loughlin.

Ms Mtetwa, a member of the Zimbabwe Lawyers for Human Rights (ZLHR), had sought a determination on several of Mukoko's constitutional rights which she claims were violated as a result of her abduction, torture and *incommunicado* detention.

Mukoko argued that she was a complainant in a case of kidnapping and abduction and not a criminal.

On 3 December 2008, Mukoko was seized from her home at dawn in her night dress by unidentified armed men and tortured before being handed over to the police three weeks later. She argued that her rights were grossly violated, including being denied access to medication and a lawyer, and by being kept in solitary confinement during the three-week period of her *incommunicado* detention.

During the constitutional court hearing, State prosecutor Ms Fatima Maxwell conceded that State security agents had abducted and illegally detained Mukoko.

Maxwell, in response to a question from the Full Bench, said the State did not dispute Mukoko's evidence, but had nevertheless not questioned the security agents who had abducted her.

The ruling on Mukoko's case will impact on 16 other activists who are facing similar charges and have also applied to the Constitutional Court claiming they were subjected to similar treatment and violations by State agents.

Mukoko's case and that of several other abductees has raised tensions in the fragile transitional government formed by Prime Minister Morgan Tsvangirai and President Mugabe. The ruling by the Constitutional Court could be a test of the new administration's commitment to democratic reforms and the strengthening of institutions of justice delivery.

# Police break up march against brutality

**Mutare Police last week arrested Patrick Ochieng, a Kenyan environmental activist for allegedly inciting Zimbabweans to subvert a constitutionally elected government.**

Ochieng, the founder and executive director of the Ujamaa Centre, a Non-Governmental Organisation (NGO) whose activities include social justice, human rights and environmental rights, was arrested while attending a skills share and learning exchange programme which was being hosted by Zimbabwe Environmental Law Association (ZELA) in Mutare.

Police charged the Kenyan national with contravening section 187(1) (b) of the Criminal Law (Codification and Reform) Act for allegedly inciting Chiadzwa villagers to subvert a constitutionally elected government.

## Kenyan arrested

The police alleged that Ochieng uttered the following words; "If the police or army come to evict you, you must resist. If they come with arms, you must retaliate with arms. I know you can manage to get arms."

However, ZLHR lawyer Blessing Nyamaropa, who together with ZLHR member Trust Maanda represented Ochieng told *The Legal Monitor* that Ochieng had only queried how a government could negotiate with a community when holding guns against them since the community would be on the weaker side.

The police recorded a warned and cautioned statement from Ochieng who was released into the custody of his lawyers after surrendering his passport to the police on the same day.

On Thursday the police handed back Ochieng's passport and advised him that he was now a free man and the police were investigating the case further.

No explanation was provided for the sudden withdrawal of charges.

Police last week broke up a march by women commemorating the International Day of Peace and demanding an end to State-sponsored brutality.

The women had marched to the United Nations offices in Harare where they asked the world body to intervene and stop ongoing harassment of ordinary people by the police.

The crushing of the peaceful march by the riot police only served to emphasise their concerns and lack of meaningful reforms in this sector.

Women of Zimbabwe Arise (WOZA), which organised the demonstration, had delivered a petition to the UN calling for an end to police brutality when police pounced on them.

The activists said peace was still elusive in Zimbabwe, one year after the signing of the Global Political Agreement (GPA) that gave birth to the transitional government headed by Prime Minister Morgan Tsvangirai and President Robert Mugabe.

Demonstrators carried placards with messages such as: 'There is no peace in Zimbabwe', 'We want peace' and 'There is no education - is this what the GPA means?' Organisers said the march was aimed at "carrying a message to the inclusive government that Zimbabweans still do not have peace of mind a year after the power-sharing deal was signed".

"Life for ordinary Zimbabweans remains precarious and human rights activists continue to be beaten and harassed for exercising their constitutional right to peaceful protest. Since the power-sharing deal was signed in September 2008, 40 WOZA activists have been arrested on seven separate occasions after peaceful protests. WOZA leaders Jenni Williams and Magodonga Mahlangu spent three weeks in Mlondolozhi Prison and hundreds of peaceful Zimbabwean citizens were brutally beaten by police for merely speaking out about the hardships in their lives," read the petition.

The International Day of Peace is commemorated annually on 21 September and encourages individuals, organisations and nations to create practical acts of peace.

## Fears of fresh abductions as police hunt MDC director

A fresh police onslaught on Movement for Democratic Change (MDC) security director Kisimusi Dhlamini has raised fears that State security agents could re-launch the practice of abduction and torture of political and rights activists.

Last week the MDC said Dhlamini received a call from the police saying they wanted to interview him in connection with information he had supplied to the Attorney General. The MDC, through Dhlamini, recently submitted a dossier with details of the alleged murders of MDC supporters and officials in military-led pre and post election violence and requested the AG's Office to take action on the basis of the information.

The MDC says over 120 of its supporters were killed and thousands more displaced

between April and December last year when soldiers and militia waged a violent presidential election runoff on behalf of President Robert Mugabe.

Rights lawyers said they found it worrying that the State sought to persecute Dhlamini instead of prosecuting the perpetrators of the crimes. The case has put the impartiality and professionalism of the Zimbabwe Republic Police and the AG's Office into question.

"The crackdown against Dhlamini could substantiate fears that the State is once again bent on intensifying harassment and potentially encouraging fresh abductions of legitimate political party and human rights activists," the Zimbabwe Lawyers for Human Rights (ZLHR) said in a statement last week.

"ZLHR is incensed by the propensity of the Zimbabwe Republic Police to target victims or those people who report violations instead of investigating and arresting the perpetrators."

"Such actions deter the public from reporting violations and dent public confidence in the justice delivery system."

Seventeen of the abductees released in December last year are being charged with terrorism, banditry and sabotage. Lawyers say the State is relying heavily on evidence coerced from the abductees during torture sessions. The activists are awaiting a ruling from the Supreme Court where they sought a stay of prosecution.

# Bill Watch: ZEC interviews

## Interviews of Short-listed Applicants for Zimbabwe Electoral Commission (ZEC)

**Monday 28 September  
9 am to 5 pm in the  
Senate Chamber, Parliament**

**28 applicants have been short-listed** out of over 100 who applied for appointment to ZEC.

**Proceedings Open to Public:** The public will be permitted to attend and to watch and listen but not participate. As seating is limited, anyone wishing to attend is advised to check with Parliament's Public Relations office on Harare 700181. Admission will be through the public entrance to Parliament, Kwame Nkrumah Avenue between Second and Third Streets, and ID's must be produced.

**Selection Procedures:** Under section 100B of the Constitution it is the President who appoints the chairperson and eight other members of the Electoral Commission. The procedure for appointment of the chairperson differs from the procedure for the Media Commission where the President chooses the chairperson from the list of nominees for the commission sent to him by Parliament. For the Electoral Commission the chairperson is appointed by the President "after consultation with the Judicial Service

Commission and the Standing Rules and Orders Committee (SROC)" - he or she does not have to be appointed from the list put forward by Parliament. "After consultation" means that President has to discuss his choice with the bodies to be consulted but is free to disregard their views. The President must appoint 8, at least 4 of whom must be women, other members of the Electoral Commission from a list of not fewer than 12 nominees (it can be more than 12), submitted to him by the SROC (Constitution, section 100B(3)).

### Qualifications for appointment to ZEC

**Chairperson:** The chairperson must be a judge or former judge or a person qualified to be a judge (i.e., a registered legal practitioner of at least seven year's standing).

**Other members:** Section 100B(4) of the Constitution states that persons appointed to the Commission "must be chosen for their integrity and their experience and competence in the conduct of affairs in the public or private sector".

**Interview procedure:** The interviews will be conducted by a five-member panel using structured questions drafted by consultants. Another 8 designated members of the SROC will be putting supplementary questions after the panel has asked its set questions. All other members of the SROC are expected to attend and observe.

**Members of the interview panel** are the same as for the Media Commission interviews:

- Senator Obert Gutu (MDC-T)
- Thabitha Khumalo MP (MDC-T)
- Edward Mkhosi MP (MDC-M)
- Mabel Chinomona (ZANU-PF)
- Senator Chief Fortune Charumbira

Candidates' performance on interview will be rated by the consultants advising the SROC, the interview panel and the 8 other designated members of the SROC. The scoring of these three groups will be compared and if there is agreement the list will be finalised there and then. If the compared scorings do not produce a clear result, the final decision on which candidates will be put forward to the President will be taken by the full SROC.

**Some of the Candidates** (Note: these names were published as short listed candidates in the State press although Parliament has said the list is not being released yet as some candidates have still to be contacted)

- Ms Joyce Kazembe, Deputy Chairperson of the present Commission
- Theophilus Gambe, Member of the present Commission, a legal practitioner

- Vivian Ncube, Member of the present Commission
- Dr Goodwill Shana, Chair, Heads of Christian Denominations
- Professor Geoff Feltoe, UZ Professor of Public Law
- Mrs Bessie Nhandara, an academic
- Kenneth Saruchera

### Powers and functions of the ZEC

The Commission is a vitally important body. Its main functions outlined in the Constitution are:

- to prepare for, conduct and supervise elections at national and local level, and referendums (particularly relevant with a referendum on the draft new Constitution due next year) and to all matters pertaining to elections are conducted efficiently, freely, fairly, transparently and in accordance with the law;
- to supervise the registration of voters, and to compile and safeguard voters rolls;
- to conduct the delimitation of wards and constituencies in accordance with the Constitution;
- to conduct voter education.

Source: Veritas

# UK firm wins diamonds ownership case

The High Court has confirmed African Consolidated Resources (ARC)'s right of title to claims on the Marange diamond fields seized and allocated to State-owned Zimbabwe Mining Development Corporation (ZMDC) by President Robert Mugabe's past government.

The previous government, through the military, took control of the diamond fields in October 2006 after thousands of illegal miners descended on the vast belt.

"African Consolidated Resources plc, the Zimbabwe focused mineral exploration company is pleased to announce that at a hearing yesterday (Thursday) in the Zimbabwe High Court judgment was issued in favour of the Company's subsidiaries (the 'Group') which confirmed the Group's title to the claims previously registered in its name (the 'Claims') on the Marange diamond field. Full details of the judgment are awaited pending the publication of the transcript and further announcements will be made

as necessary," the company said in statement posted on its website.

The mineral exploration company is based in the United Kingdom, with operations in Zimbabwe, Zambia and Mozambique. ACR listed on the AIM market of the London Stock Exchange on 30 June 2006. ACR had held the Marange claim for less than a year before its confiscation.

ACR said it had "attempted to work with all elements of the Zimbabwe government in order to agree a joint venture with the Zimbabwe government or parties nominated by them".

"Following the group's success in the Zimbabwe High Court the group remains committed to dialogue with the Zimbabwe government," ACR added.

New York-based Human Rights Watch in June highlighted abuses committed by the army in the diamond area.

"Zimbabwe's armed forces are engaging in the forced labour of children and adults, and are torturing and beating local villagers on the diamond fields of Marange district in eastern Zimbabwe," the organisation said.

"The military, which remains under the control of the ZANU PF, the former ruling party, killed more than 200 people in a violent takeover of the diamond fields in late 2008," the Human Rights Watch said.

The 62-page report titled "Diamonds in the Rough: Human Rights Abuses in the Marange Diamond Fields of Zimbabwe," shows how, following the discovery of diamonds in Marange in June 2006, the police and army have used brutal force to control access to the diamond fields and to take over unlicensed diamond mining and trading.

The Kimberley Process, a diamond industry self-regulating body, has visited Marange twice this year and has released a report with recommendations which Mines and Mining Development Minister Obert Mpofu said the government was still studying.



Minister Mpofu says government studying KP report

## WHAT IS A HUMAN RIGHTS COMMISSION?

A Human Rights Commission (HRC) is a permanent, independent institution that is established by the government to promote and protect human rights. The creation of a HRC must comply with certain standards and principles that were agreed upon in 1993 when the United Nations General Assembly passed Resolution 48/134, which incorporates the Principles on the Status of National Institutions. This compliance ensures that the HRC is recognized a legitimate by other bodies that are mandated to advance human rights within the United Nations.

### The Paris Principles on National Human Rights Institutions

The role of the HRC is fulfilled by carrying out several functions such as: investigating human rights violations caused by state officials, government departments, private individuals or even companies. These investigations can be carried out after receiving complaints or on the initiative of the HRC. A HRC can also have powers that are similar to those of a court of law; it can offer remedies by making human rights perpetrators answerable for their actions. They can be ordered to pay compensation, stop the violations, or act in a certain manner to prevent further violations. Through its role a HRC strives to ensure the non occurrence or repetition of human rights violations. HRC has to be accountable for it to be regarded as efficient. HRC have to be accessible to all people for them to fulfill their important role.

### Composition of HRC

A HRC must have independent Commissioners and other staff members recruited or appointed in terms of the law. The appointment process of key staff must be open and transparent for the HRC to gain the trust of the people that it is supposed to serve. Commissioners must not be

appointed by the state officials alone without taking into account the views of the public. They must represent the various social groups in the country.

### Operations of HRC

A HRC can carry out many activities. Other than investigation and deciding on human rights violations, it can promote and protect human rights by working together with other state and non state institutions.

In order to operate effectively a HRC must have enough resources (human, material and financial)

### Functions of a HRC include;

- Reporting on the national situation of human rights to the national and international community.
- Offering guidance to Government by advising or making recommendations on improving the human rights situation.
- Making recommendations on the changes to laws that violate human rights to reflect the values of human rights as provided for in international human rights instruments.
- Carrying out awareness or education campaigns on human rights.
- Conducting visits to inspect places of detention or any institution where human rights violations are likely to occur.
- Conducting public hearings to gather information on human rights violations

### The proposed Zimbabwe's Human Rights Commission

The intention to create a Human Rights Commission is provided for in Constitutional Amendments no. 18 and 19. These provisions relate to the appointment of the key staff

members of the Zimbabwe Human Rights Commission such as the Chairperson and the Commissioners, and spells out some of the functions that the Commission will carry out. As the legal framework the constitution is however deficient as it does not have critical provisions relating to the removal from office of the Commissioners, the duration of the term of office or how the Commissioners are disciplined. The constitution does not guarantee the independence of HRC from the interference of other state institutions, officials or private individuals. It does not state the source of funding of the HRC or accountability measures to ensure that the HRC fulfills its mandate and is answerable for any transgressions.

### Why do we need a ZHRC

Zimbabweans have repeatedly experienced violations of their basic rights due to the actions or omissions of state and non state actors. These violations include the destruction of property, the disregard of the right to life, the right to education, inability to exercise their right to vote, infringements on the right to movement, freedom of expression, the right to assembly and even the right to work. Some people have been arbitrarily arrested, tortured and some have disappeared never to be seen again. These violations have been experienced since independence (and before) and they have increased during the time when the country is heading for elections.

- We need a HRC to be created as soon as possible because the justice delivery system has not been able to adequately address human rights violations.
- The courts do not have the capacity to deal with human rights violations as they have too many cases that are already pending before them; as a result those who violate human rights have not been made accountable.

- The courts do not have enough human or material resources to carry out their functions efficiently.
- Victims of human rights violations do not have confidence in the court system at times as some of the court officials and other members of the justice delivery system are not regarded as independent but partisan.
- The effectiveness of the court system has been undermined by the disobedience of certain orders by some state officials such as the police.

### Minimum demands for an independent ZHRC

- The ZHRC must,
- Maintain its independence and not be subject to any interference, it must be accountable and efficient in its role of promoting and protecting human rights.
  - Be composed of Commissioners and Chairperson who are appointed in an open and transparent manner that guarantees their independence, and they must have a positive track record in the defense of human rights/in whom the public at large has faith.
  - Enough resources must be allocated to the ZHRC for it to fulfill its mandate and to avoid corruption.
  - Carry out its duties (some of which are highlighted in this paper) without fear or favour.
  - Act effectively and efficiently in fulfilling its role as the watchdog of human rights violations.

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# Army defies yet another court order

Armed soldiers, using threats to shoot to kill, last week defied a High Court order and denied a commercial farmer his legal right to remove his movable property from a farm grabbed by an army general.

Soldiers deployed at the farm by Zimbabwe National Army Brigadier General Justin Itayi Mujaji, used guns to stop Charles Lock and the police from executing the judgment on Friday, in a case that highlights how lawlessness still underlines the country's land reforms.

The ruling, which was issued last Thursday by Justice Bharat Patel is one of several judgements, including one by the Supreme Court, that Mujaji continues to ignore with impunity.

"Armed soldiers barred me from entering the farm when I went there last week after the High Court ruling," said Lock, whose case mirrors the situation of many other commercial farmers illegally, and often violently driven off their farms by top government and security chiefs. Lock said he was in the company of the police when he went to enforce the order.

Justice Bharat Patel ordered the police to assist the Sheriff or Deputy Sheriff to ensure that Lock is able to access and control all his movable assets, including crops on Karori farm in Headlands, Manicaland.

The ruling follows an application by Lock to the High Court seeking an order to bar Brigadier-General Mujaji, from interfering with the exercise of control of the goods by the commercial farmer.

"The applicant (Lock) has full and unfettered right to remove all and any of the goods, as well as any other moveable assets, including his equipment and fittings in the tobacco barns, cattle handling facilities, household and personal effects, from the land referred to above," ruled Justice Patel.

"This order shall remain in operation notwithstanding the noting of an appeal against it. The costs of this application shall be paid by the first respondent (Mujaji) on an attorney-client scale." Lock is one of the many commercial farmers who are in dilemma as they have won several

court orders but these have been ignored and police refused to carry out their constitutional duty.

As a result many farmers have not been able to work their land.

This happens at a time when the country is facing an acute shortage of food which could be ameliorated if there were no disruptions on the farms.

In November last year, the Southern African Development Community (SADC) Tribunal ruled that farmers whose land was seized must be compensated by the government. But Justice Minister Patrick Chinamasa said the SADC Tribunal ruling would not be enforced.

Last month the Minister wrote to the Namibian based Tribunal claiming that Harare had pulled out of the Tribunal.

However, Prime Minister Morgan Tsvangirai has since said Minister Chinamasa was misdirecting the nation because he had no cabinet authority to take such action.



Charles Lock, denied access to property

## Magistrate to rule on cellphone case

Harare Magistrate Kudakwashe Jarabini will this week rule on whether Youth Deputy Minister, Thamsanqa Mahlangu and his three co-accused should be placed on their defence on charges of stealing notorious war veteran Joseph Chinotimba's cell phone.

Mahlangu's lawyer Charles Kwaramba last week filed an application for discharge at the close of the State's case arguing that the State's evidence was unreliable and had no meaningful value to the case which would warrant putting the MDC law maker on his defence.

The State last Tuesday closed its case to allow Mahlangu and his three co-accused to respond to the allegations.

All seven State witnesses, who include the complainant, Chinotimba, CID Law and Order division's Detective Inspector Henry Dowra and Youth Minister Saviour Kasukuwere testified in the matter last week.

Charges against Deputy Minister Mahlangu stem from an incident in which he and Chinotimba in July attended a conference, and were sharing a table at lunch time from where the latter's phone went missing.

Mahlangu surrendered the phone to Minister Kasukuwere six days later. He denies any intentions of stealing the Nokia 2310 valued at US\$40.

Mahlangu argues that Chinotimba's phone could have easily been mistaken for his own as the two look alike.

# Police arrest sect members

Eight members of a Mt Darwin based religious sect were last week arrested by police for alleged contempt of court.

The eight, Ruben Tapedza, Titus Tapedza, Regwess Tapedza, Crywage Tapedza, Simon Tapedza, Albert Tapedza, Kudakwashe Tapedza and Ignatius Tapedza were arrested last Friday after they had gone to Mt Darwin Magistrates Court to serve the public prosecutor with a letter in which their lawyer Tawanda Zhuwarara of ZLHR had written requesting a postponement of their trial from last Friday to any day this week.

The members of the Johanne Masowe weChishanu Apostolic sect had been summoned last Wednesday to stand trial for allegedly defying Chief Nembire's orders not to congregate and pray in small groups and to confine themselves to one homestead.

But Zhuwarara wrote to the public prosecutor at the Mt Darwin Magistrates Court protesting that the period of notice given to the sect members to appear in court was irregular, wholly inadequate and militate against



Johanne Masowe weChishanu Apostolic members listen attentively to ZLHR lawyer Rangu Nyamurundira

his clients' right to adequately prepare their defence. The eight spent the weekend in custody and are due to appear in court today.

Members of the Johanne Masowe weChishanu Apostolic Church have had several run-ins with Chief Nembire and the police in

Mt Darwin. In December 2008 Chief Nembire banned the sect's religious activities, destroyed its shrine, barred members from meeting even in small groups and issued threats of violence and murder against them.

But the church members secured two High Court orders barring Chief Nembire from interfering with the sect's activities after they dragged him to court for evicting them from their homesteads and dispossessing them of their land.

In one of the court orders Justice Tedious Karwi stated that citizens were allowed by the Constitution and the laws of Zimbabwe to worship and had a right to settle anywhere in the country.

Karwi also ruled that citizens had a right to live free from harassment and at a place they could call home and where they could peacefully till the land and look after themselves and their families.

The High Court also directed the police to ensure that Chief Nembire and any persons acting or claiming to act under his authority not to interfere with the church's rights to worship or keep occupation and use of their homes and land, and to arrest any person acting otherwise.