

Land wars

...Villagers fight eviction as farming season approaches

HURUNGWE-It is a few weeks into the main summer agricultural season and Special Zambu has been counting on the prospects of good rains to make up for last season's devastating drought that left his family surviving on food handouts.

Zambu's food security is largely dependent on working his piece of land in Hurungwe's Chipoterai Village in Mashonaland province.

But recent attempts to evict him have thrown his preparations into disarray.

Together with hundreds other families; Zambu and his family have become a victim of the country's ongoing land wars that are often targeted at the poor.

The families have been served with eviction orders by the local council, leaving them at risk of losing land they have owned for decades. Their rights to shelter and food are also at risk as a result of the move by the Hurungwe District Council.

Of the affected villagers, Zambu, accused of being an opposition supporter, seems particularly targeted. He has since been served with summons.

However, there is still hope following the intervention of Zimbabwe Lawyers for Human Rights (ZLHR).

With the help of ZLHR's Kennedy Masiye, Sharon Hofisi and Dzimbabwe Chimnga, Zambu and fellow villagers are fighting the eviction plans, which they describe as blatantly illegal and inhuman.

"To the defendant (Zambu), the plaintiff (Hurungwe District Council) claim is for eviction of the defendant and all those claiming occupation through him the land which he is illegally in occupation of, in Chipoterai Village under Chief Chundu, which is a buffer zone for CAMPFIRE (Communal Areas Management Programme for Indigenous Resources) projects," reads part of the summons served on Zumba early this month.

"The defendant is occupation with consent or permission from the plaintiff. Despite several demands, defendant has refused, failed and or neglected to vacate the said land," reads the summons served by Deputy Sheriff's office for Kariba, Chirundu and Bumi Hills areas.

Zambu – through ZLHR - has since entered an appearance to defend at the office of the Registrar of the High Court of Zimbabwe at Bulawayo.

This is not the first time the land issue had flared up in the area.

Last year, village head Tuckson Chikura and 68 residents of Chundu village approached the High Court seeking to stop the Hurungwe Rural District Council from destroying their homes and evicting them from the land they have called home for generations.

"Chundu is my village. My ancestors, grand fathers and mothers settled in Chundu as far back as 1936 and I know no other roots other than Chundu where my forefathers are buried," Chikura later told *The Legal Monitor*.

"All my life I have stayed in the village. The headmanship has revolved in my family since 1972 and we have constantly paid the land levies to the rural council therefore I cannot be deemed an illegal settler," he said.

Over five hundred homesteads and thousands of people could have been affected had ZLHR not intervened. ZLHR approached the High Court then to stop the Hurungwe District Council from arbitrarily evicting the villagers and demolishing their homes.

ZLHR-turning villagers into active HRDs

HURUNGWE-When many people think of a Human Rights Defender (HRD); they visualise a city lawyer, an NGO activist or a student leader.

Zimbabwe Lawyers for Human Rights (ZLHR) has changed all that, thanks the mobile legal clinics project, a robust programme aimed at spreading human rights literacy to some of the country's remote rural areas.

Chundu village is 290 km west of the capital, Harare. An underdeveloped rural area, the village is home to some of Zimbabwe's most knowledgeable people regarding the Constitution and the human rights enshrined in the governance charter.

Like in many other parts of the country, mobile legal clinics held in Chundu have produced a new generation of rural community HRDs who actively engage fellow community members to promote and protect socio-economic rights in their communities.

In Chundu, the villagers have been putting their rights literacy to use over the years, as evidenced by their firm stand against illegal evictions.

"After conducting a mobile legal clinic in this area I can safely say this community has been empowered," said ZLHR's Kennedy Masiye. Masiye was part of the ZLHR team that braved near impassable roads to reach this community to conduct a mobile legal clinic.

The efforts are paying off now, it seems.

"It is an indigenous community with well over 500 families who were displaced without compensation by the then Rhodesian government when they built the Kariba Dam. Now in the post-independence the Hurungwe Rural District Council wants to arbitrary evict them again. But now because they know their rights, individuals from this community have engaged ZLHR to fight this oppression in court," said Masiye.

Another example is that of Chingwizi area in Masvingo province. Families displaced by flooding had been suffering gross human rights abuses by State authorities at a camp where they were being accommodated. After several mobile legal clinics in the area, villagers began fighting for their rights and successfully approached the courts in defence of several of their rights.

Many of the villagers rely on agriculture for survival.

"I survive from agriculture. I have young children and have nowhere else to take my family to should my home be demolished. The council should not be allowed to demolish the homesteads without following due process at law," Chikura said then.

Hurungwe Rural District Council has been trying to evict families in the area for a long time now using various illegal methods.

At one time, the council sent its functionaries to destroy villages that they presumed were near or around the CAMPFIRE project.

At law, the actions are illegal. Section 74 of the Constitution enshrines the freedom from arbitrary eviction. Courts have repeatedly ruled against arbitrary evictions carried without a valid court order.



Saturday: Hurungwe, Mashonaland West province

Know Your Rights

Section 74 of the Constitution: Freedom from arbitrary eviction

No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.

Section 77 of the Constitution: Right to food and water

Every person has the right to -

- a. safe, clean and potable water; and
- b. sufficient food; and the State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.

Rights under threat as health crisis deepens

HARARE-Zimbabwe's public health sector seems headed for the intensive care again, with major hospitals suffering massive underfunding that they are cutting on some crucial procedures.

The recent decision by Harare Central Hospital to suspend some critical surgical procedures due to acute shortages of painkillers amplified the crisis in the public health sector.

Health is a right guaranteed under section 76 of the Constitution (See Know Your Rights), yet the majority of struggling Zimbabweans have been failing to access quality health care at public hospitals.

For long, human rights defenders have lamented government's failure to respect the right to health, saying lack of funding shows that government has abandoned the poor.

Many of Zimbabwe's politicians have never seen the door of a local public hospital, since they travel abroad for medical services.

It therefore came as no surprise when, due to lack of government funding and support, Harare Central Hospital, one of the country's largest referral institutions announced the suspension of major surgical operations as it has run out of painkillers.

A leaked internal memo by the Harare Central Hospital's head of anaesthetics, Dr Harunavamwe Chifamba, indicated that the hospital would only perform emergency operations – life-threatening and maternity. Following public outcry and anger, the hospital later said it had resumed operations.

In an interview, Itai Rusike, executive director of Community Working Group on Health (CWGH), criticised failure to adequately fund the public health sector.

"The politicians who formulate the budget get their treatment in the private sector or abroad so they don't care. The shortage of drugs and equipment at central hospitals has reached crisis proportions, with patients going for days without proper treatment. This is also very demoralising for the health staff," said Rusike.

He said the situation was dire at all government hospitals, with Mpilo Central Hospital in Bulawayo asking patients to bring in their own linen.

"Health centres have reported shortages of equipment, inadequately equipped laboratories and many other difficulties which affect their efficiency with scarcities of essential equipment and inadequate protective clothing at some of the central hospitals. As a result of poor funding and neglect, health costs have risen too sharply especially for the urban poor," said Rusike.

A public health specialist told The Legal Monitor that the anaesthetic drugs in short supply that are used to put patients to sleep before a surgical procedure and in the recovery period cost between \$100 and \$300 for one procedure.

For long Zimbabwe's social – health and education – sector has largely depended on the financial support of the West as Harare claims bankruptcy. – never mind that cabinet ministers and other top officials drive top of the range vehicles and enjoy frequent trips abroad at the taxpayers' expense.

The State is obliged by the Constitution of Zimbabwe enacted in 2013 to provide basic care to all its citizens.

On numerous occasions, Zimbabwe Lawyers for Human Rights has been forced to intervene to ensure that poor people access public health institutions.

Know Your Rights

Section 76 of the Constitution: Right to health care

1. Every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services.

• Requirements for birthright citizenship

2. Every person living with a chronic illness has the right to

have access to basic healthcare services for the illness.

3. No person may be refused emergency medical treatment in any health-care institution.

4. The State must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the rights set out in this section.



Flashback: ZLHR in defence of Right to health

Mpilo Hospital torments children

BULAWAYO-Right to a birth certificate is one of the clearest things guaranteed to every Zimbabwean child by the Constitution, but Mpilo Central Hospital has continued to make life of some children miserable by refusing to confirm that entitlement despite it being a public funded institution.

Despite its spirited efforts to deny some children born there confirmations, human rights lawyers have continued to expose the illegal modus operandi of the State-run health institution.

Over the years, Zimbabwe Lawyers for Human Rights (ZLHR) has remained knocking doors of Mpilo Central Hospital to ensure it confirms all births there as that is needed to get birth certificates.

Mothers Sibusisiwe Mpala, Janet Mangwe and Sukoluhle Dube are some of the people who can testify to have gone through this anguish. The three mothers battled to have their children get birth certificates until they approached ZLHR to pursue their cases with Mpilo Hospital in order for their children to be able to be registered at the Registrar General Offices.

The hospital had told the three women that it would not cooperate unless they retire a debt they incurred while giving birth to their children.

"The mother has since failed to pay and is now unable to obtain a birth certificate for the child without a birth record. This violates the right to identity and to hold national documents. The hospital ought to find other lawful means to secure payment," said ZLHR of Mpala's case in a letter of demand to the hospital.

Mangwe and Dube's letters were later despatched to the health institution as well. The issue of Mpilo and United Bulawayo

Hospitals (UBH) violating children's rights has been repeatedly coming up during ZLHR's Mobile Legal Clinics programme in Bulawayo, Matabeleland North and South provinces.

Since then Nokuthula Belinda Dube and Sithembilekuhle Baloyi have been assisted after they revealed this disturbing trend taking place at UBH and Mpilo Hospital. In both cases, the hospitals withheld the birth records of the child to ensure payment of outstanding hospital fees incurred in 2011 and in 2014 by their mothers.

The child of Dube was of school going age when ZLHR chipped in. But the conduct of UBH and Mpilo negates the child's right to identity and the right to education as the child is unable to register at school without a birth certificate.

"Whilst we appreciate the services rendered by your institution ought to be paid for, we believe that withhold child's birth record to secure payment is a violation of the child's right to an identity as the mother has failed all these years to obtain a birth certificate for her child," wrote ZLHR. "She is now of school going age but has failed to secure a place because she has no birth certificate. This is now violating her right to

education and will in future violate other rights as her failure to get education will impact on the quality of life she will have."

In its letter, ZLHR offered free legal advice to UBH and said that since more three years had elapsed the claim of debt against Dube had been prescribed and the hospital had no legal basis to claim anything from her. In the case of Baloyi from Pumula, ZLHR condemned the conduct of Mpilo Hospital as it amounted to "extortion."

The lawyers gave Mpilo Hospital a seven-day ultimatum or risk a legal suit.

"The institution must adopt lawful means against the mother of the child to recover debts and not means that negatively impact on the child," ZLHR wrote to Mpilo Hospital.

The government institution then concurred with ZLHR. It responded asking Baloyi to collect birth record for her child.

After ZLHR had delivered its letter to Mpilo, it called the hospital's Chief Executive Officer who advised that Dube can proceed and collect the child's birth record.



ZLHR Programmes Manager Dzimabwa Chimba, flanked by his colleagues Rose Hanzi and Maureen Shonge Sibanda, during a meeting with the Senate Thematic Committee on Human Rights recently. At the meeting ZLHR asked the Committee to address the issue of new born babies being punished for their mothers' failure to pay user fees

ENFORCED DISAPPEARANCE = CRIME AGAINST HUMANITY

HRDs

WITNESS AGAINST VIOLENCE

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After 3 months jail, Masarira finally freed

HARARE-The High Court ruled on Monday that pro-democracy activist Linda Masarira should be released after three months of unjustifiable imprisonment.

Her lawyers Andrew Makoni, Obey Shava and Tendai Biti, all ZLHR members, approached the High Court after their bid to get her released on bail failed at the magistrates Court.



lawyers Andrew Makoni

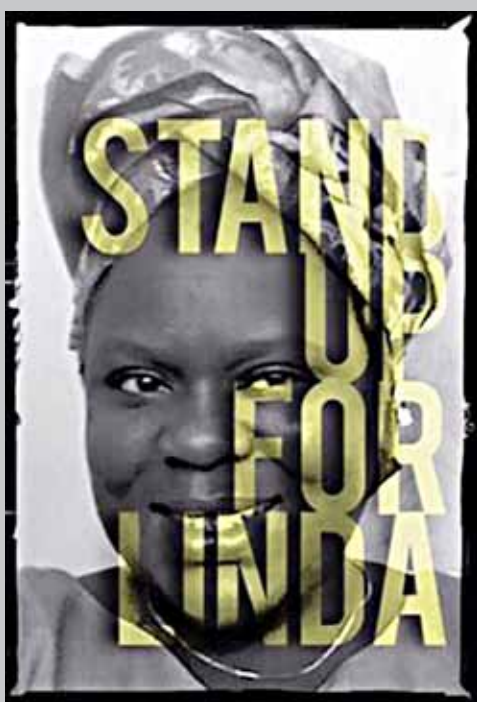
The human rights lawyers had petitioned the High Court on Wednesday 21 September 2016 seeking a habeas corpus order. This is an order requiring the detained person to be released or to be brought before the court for the lawfulness of the detention to be justified and the detention to be declared illegal and ordering the detained person's prompt release.

Masarira, who was jailed at Chikurubi Female Prison after she was denied bail by the Mbare Magistrates Court, was arrested on 06 July 2016 and charged with contravening Section 38 of the Criminal Law (Codification and Reform) Act Chapter 9:23 for allegedly obstructing or endangering free movements of persons or vehicles. This was after she participated in the highly successful #ShutdownZim2016 anti-government protests.

The pro-democracy campaigner was denied bail on the basis that she was on an outstanding warrant of arrest in another matter of which she is appearing at Mutare Magistrates Court, while nine of her co-accused persons who are currently on trial with her were all granted bail.



Jailed...Linda Masarira, wrapped in Zimbabwean flag, has been in remand prison since July 6 for her pro-democracy campaigns. Picture Credit: Linda Masarira Facebook page



The warrant of arrest was issued on 06 June 2016 after Masarira failed to attend court proceedings at Mutare Magistrates Court. In Mutare, Masarira has a pending case.

However, Masarira had failed to attend court in Mutare because she was admitted in hospital after she was arrested and assaulted on 04 June 2016 during the protest held in Harare, where she dislocated her finger among other injuries.

The human rights campaigner was only released from hospital on 07 June 2016.

In the urgent chamber application, Masarira's lawyers argued that the warrant of arrest was issued when she was in hospital, hence she was not in wilful default of the court proceedings.

The warrant of arrest could have been cancelled had she not been in hospital and allowed to travel to Mutare Magistrates Court for the default inquiry, the lawyers argued.

Home Affairs Minister Ignatius Chombo, Justice, Legal and Parliamentary Affairs Minister Emmerson Mnangagwa, Zimbabwe Republic Police Commissioner-General Augustine Chihuri, Zimbabwe Prisons and Correctional Services (ZPCS) Commissioner-General Paradzai Zimondi and the Officer-in-Charge of Mutare Central Police Station's Law and Order Section were cited as respondents in the High Court case.

The lawyers argued that as soon as the respondents were aware that her detention on account of the warrant of arrest had commenced, they ought to have brought her to court within 48 hours for the default inquiry failing which she ought to have been released.

Since her bail was denied on 09 July 2016, Masarira has unsuccessfully pleaded with the Zimbabwean authorities to take her to Mutare Magistrates Court for an enquiry into her default.

The ZPCS have failed, neglected or refused to take her to Mutare Magistrates Court for the cancellation of the warrant of arrest.

Masarira argues that the warrant of arrest must be cancelled by operation of law owing to the failure by the respondents to take her to court.

The lawyers, who argue that Masarira's liberty has been deprived arbitrarily and without just cause and that her continued detention is a gross injustice, wanted the High Court to issue an order for the release of the pro-democracy campaigner and to compel the Clerk of Court at Mutare Magistrates Court to issue a warrant of liberation for her in the pending case at Mutare Magistrates Court in which she was charged with disorderly conduct.



In Manicaland, ZLHR members Tinoziva Bere, Blessing Nyamaropa and Chris Ndlovu reacted swiftly to offer emergency legal services to 17 Zimbabwe National Students Union members who were arrested at Forestry Industry Training Center in Mutare where they were having their meeting. The student leaders spent several nights in detention before they were released on bail

High Court reprieve for activists

HARARE-Activists arrested and detained for participating in peaceful demonstrations have continued getting reprieve from the High Court after being denied bail by the Magistrates Courts.

On Monday 19 September, Justice Happias Zhou ordered the release of 18 Harare activists who had been languishing in prison since last month on \$50 bail.

The activists, who were arrested last month and charged with public violence over a demonstration against police brutality, were denied bail when they appeared before the Harare Magistrates Court, forcing them to appeal to the High Court.

The 18, who were being represented by ZLHR lawyers Jeremiah Bamu, Dorcas Chitiyo, and Denford Halimani, were asked to surrender their passports, to report to Harare Central Police Law and Order section once every fortnight and not to interfere with State witnesses.

They were also ordered not to address people during their remand until after the trial.

On September 22, Justice Happias Zhou also granted Petros Sokole and 56 others bail of \$30 each. The 57, who had been in custody for close to a month, were part of a group of people who were arrested and charged with public violence over a demonstration that took place on 26 August.

They were initially denied bail at the Magistrates court, compelling their lawyer Obey Shava, a ZLHR member, to appeal at the High Court.

One-stop justice centre

...Court help desks initiative launched as justice for all vision takes shape

MURAMBINDA-Zimbabwe is making huge strides in achieving justice for all, with a recently signed Memorandum of Understanding (MoU) on the establishment of help desks at courts providing impetus to the achievement of that goal.

The Judicial Service Commission (JSC), the Royal Danish Embassy's development agency, the Danish International Development Agency (DANIDA) and several civil society groups last week signed the MoU in Murambinda during the opening of a new courthouse in the area.

Zimbabwe Lawyers for Human Rights (ZLHR) is part of the civil society organisations partnering the JSC and DANIDA to drive the initiative. Other civil society partners are the Legal Resources Foundation, Justice for Children Trust, Women and Law in Southern Africa and Zimbabwe Women Lawyers Association.

The help desk initiative, first launched at the Murambinda Magistrates Court and to be rolled out countrywide, will assist vulnerable populations to access free legal aid as well as a comprehensive range of much needed legal services such as human rights literacy programmes.

The Murambinda Magistrates Court was officially opened on 19 September.

It is one of 22 courthouses constructed as a part of the comprehensive DANIDA-JSC partnership, which also includes the roll out of a nationwide case-flow-management system, human resource development, strengthening of physical and electronic libraries and the national anti-corruption campaign "ACT".

The official opening ceremony of the court held on 19 September was held under the theme "Access to justice – your help desks".

Secretary of the JSC, Justice Rita Makarau, said help desk initiative would help address challenges facing people without legal representation. She said such parties sometimes faced unfair and unjust practices simply because they did not have lawyers go represent them.

"Make use of the desks to be informed. Most people lose cases because they do not know the procedure followed in court and what to say when they appear before magistrates, who are naturally intimidating. I say congratulations to the civic society members who signed the MoU on legal help desks today. You have done the right thing," said Justice Makarau while officiating that signing of the MoU and official opening of Murambinda Magistrates Court.

The courts will also have victim support services, including for child survivors of heinous crimes such as rape.

"The abuse of children should stop. Give children an opportunity to pursue education. Teachers are regarded as fountain of knowledge in communities; they should know how the court works so that they can inform communities," said Justice Makarau.

Historic partnership...

The Legal Monitor captures some of the moments at the new Murambinda Magistrates Court



This court opening was particularly exciting as it also marked the beginning of a unique partnership between the JSC and a range of civil society organizations on the usage of Help Desks in the magistrates' courts. As Danish Embassy Chargé d'Affaires a.i. Signe Winding Albjerg explained

at the court opening: Danish Embassy Chargé d'Affaires a.i. Signe Winding Albjerg described the help desk initiative as "unique".

"When entering the courts built by JSC and DANIDA, citizens will find a place where

government departments and civil society organizations converge to work together as a one-stop justice centre.

The help desk will be a place where citizens can obtain free legal assistance and information on their legal rights," she said