ZIMBABWE LAWYERS FOR HUMAN RIGHTS
Fostering a culture of human rights

The Legal Monitor

For feedback please email ZLHR on: info@zlhr.org.zw or visit: www.zlhr.org.zw Zimbabwe Lawyers for Human Rights @ZLHRLawyers

28 February 2022

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

COST: FREE

Special Edition

Distributed without any inserts

INSIDE

State humbled as anti-govt protest case crumbles

PAGE 2

ZLHR corners ZEC over IDs, voter registration blitz

PAGE 3

Leaving no-one behind

PAGE 4

Prisoners fight for vote

...as country prepares for first elections since COVID-19, prisoners are in limbo



Former Prime Minister Morgan Tsvangirai, Yvonne Musarurwa, Tungamirai Madzokere and Last Maengahama

HARARE-The election season has opened in Zimbabwe and the rush is on to ensure eligible Zimbabweans register to cast their votes in upcoming by-elections as well as during next year's general election.

But thousands of people languishing in the country's jails continue to be locked out of the electoral process. Stripped of their right to vote on account of being jailed, they are counting on the High Court to grant an order allowing them to vote.

High Court Judge, Justice Munamato Mutevedzi, on 10 February, reserved judgment in a matter in which former political prisoners Yvonne Musarurwa, Tungamirai Madzokere and Last Maengahama are seeking to assert the rights of prisoners to vote.

Musarurwa, Madzokere and Maengahama were convicted of murder in 2016 in a case largely viewed as politically motivated. They are all out of jail now but they filed the application in 2017, when they were still in prison.

The application was heard recently after the presiding Judge Justice Clement Phiri died in January 2021 after reserving judgment in July 2018. The three political activists want the High Court to issue an order compelling Justice, Legal and Parliamentary Affairs Minister Hon. Ziyambi Ziyambi, Zimbabwe Electoral Commission (ZEC) Chairperson Justice Priscilla Chigumba and ZEC as the elections management body, to register them on the national voters roll and facilitate their voting on polling day.

Musarurwa, Madzokere and Maengahama served jail time at Chikurubi Female Prison and Chikurubi Maximum Security Prison before they were acquitted in June 2021. They are represented by Advocate Tererai Mafukidze, who is instructed by Jeremiah Bamu of Zimbabwe Lawyers for Human Rights. The trio argued that since the period that they had been in prison detention from 2011, ZEC had neither carried out any voter education, including voter registration nor enabled prisoners to vote during the several general and by-elections which were held in Zimbabwe.

Continued on Page 2

Know Your Rights

Section 67 of the Constitution: Political rights

(1) Every Zimbabwean citizen has the right--
(a) to free, fair and regular elections for any elective public office established in terms of this Constitution or any other law; and
(b) to make political choices freely.

(2) Subject to this Constitution, every Zimbabwean citizen has the right--
(a) to form, to join and to participate in the activities of a political party or organisation of their choice;
(b) to campaign freely and peacefully for a political party or cause;
(c) to participate in peaceful political activity; and
(d) to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.

(3) Subject to this Constitution, every Zimbabwean citizen who is of or over eighteen years of age has the right--
(a) to vote in all elections and referendums to which this Constitution or any other law applies, and to do so in secret; and
(b) to stand for election for public office and, if elected, to hold such office.

(4) For the purpose of promoting multi-party democracy, an Act of Parliament must provide for the funding of political parties.

Victory for anti-impunity as Minister abandons appeal

HARARE-Anti-impunity won the day as Defence and War Veterans Minister, Hon. Oppah Muchinguri-Zishiri withdrew an appeal in which she was denying liability for the assault of a Harare resident during anti-government protests held in 2019.

Kudzai Makunde was among many Harare residents attacked by security forces, in violation of their rights, during anti-government protests that swept through Zimbabwe on 14 January 2019 over the hiking of fuel price. Makunde believes he is lucky to be alive after encountering a group of about 50 armed soldiers and police officers on his way home from visiting his brother on the day of the protests.

The soldiers and police officers ordered him to lie on the ground before assaulting him with wooden logs on his back and thighs while kicking him all over his body.

The security forces then forced him to remove some burning tyres, rocks and a broken down vehicle that was on the road. The ordeal resulted in him seeking hospitalisation for treatment of injuries to his body. He approached the courts for compensation with the assistance of Tinomuda Shoko of Zimbabwe Lawyers for Human Rights (ZLHR) and Advocate Taona Nyamakura, a move Hon. Muchinguri-Zishiri was fighting.

Continued on Page 2

This project is funded by the European Union

This project is implemented by Zimbabwe Lawyers for Human Rights

The views expressed in this publication do not necessarily reflect the view of the European Commission

The Legal Monitor
For feedback please email ZLHR on: info@zlhr.org.zw or visit: www.zlhr.org.zw
Follow us on Twitter @ZLHRLawyers
A newsletter published by Zimbabwe Lawyers for Human Rights for members & human rights defenders

ZLHR STATEMENT ON WORLD WETLANDS DAY

ON World Wetlands Day, Zimbabwe Lawyers for Human Rights (ZLHR) urges policymakers to prioritise the protection and restoration of wetlands in Zimbabwe.

ZLHR encourages the public to actively contribute to preserving wetlands and hold the relevant authorities accountable for their obligation to manage and protect wetlands for the collective benefit of society and the environment. World Wetlands Day is commemorated every year on 2 February in order to highlight the importance of wetlands and to encourage their conservation.

This year's commemoration is special as it is the first time that World Wetlands Day is being commemorated as a United Nations (UN) International Day. This is a result of the adoption of a Resolution by the UN General Assembly, on 30 August 2021, which proclaimed World Wetlands Day as an International Day.

This year's theme for World Wetlands Day is "Wetlands Action for People and Nature." The theme highlights the need to take concrete steps to ensure that wetlands are sustainably utilised. In addition, the theme emphasises the need for political actors to prioritise the conservation of wetlands by allocating financial resources to programmes that are designed to protect them.

The theme also highlights the need for members of the public to participate in the process of conserving and restoring wetlands, for the collective benefit of the communities we live in and the environment as a whole. Members of the public should also educate each other on the importance of wetlands to the environment, in order to complement government efforts and civil society programmes that are aimed at increasing awareness about wetlands.

Wetlands are indispensable to the environment because they are sources of freshwater and instrumental in the regulation of global climate. Wetlands also contribute to biodiversity and economic development. Despite their importance, they continue to be depleted at an alarming rate around the world, and in Zimbabwe in particular. The drastic depletion of wetlands requires urgent attention and the collaboration of all nations.

In Zimbabwe, unlawful construction activities, such as the construction of houses on protected wetlands, are contributing to the rapid depletion of wetlands in urban areas.

The improper allocation of housing stands on wetlands by some authorities has eroded the benefits that are provided by wetlands to the environment and the local communities that depend on them for freshwater.

The unlawful authorisation of construction activities on wetlands by some Zimbabwean municipalities persists despite the fact that Zimbabwe is a state party to the Ramsar Convention on wetlands, which obliges state actors to work towards the protection and wise use of wetlands. ZLHR is encouraged by the recent decision of the Supreme Court in the case of Sharadkumar Patel & Anor v COSMO Trust & Ors where the court upheld the Administrative Court's decision to revoke permits for a cluster home development on Monavale Wetland.

The wetland has been designated as a wetland of international importance under the Ramsar Convention. The court noted extensive procedural irregularities and a lack of due process, including a lack of stakeholder consultation by the City of Harare and the Environmental Management Agency in the issuance of the permits. The government of Zimbabwe has the responsibility of ensuring that its seven (7) Wetlands of International Importance, the Ramsar Sites, are effectively managed. It is therefore imperative that the relevant authorities comply with their international obligations to conserve wetlands.

On this World Wetlands Day, ZLHRurges:

- Government to further protect the Ramsar sites as nature reserves through specific legislative, policy and planning processes, to prohibit any developments, mining or other interference with the ecological character of these sites.
- The Zimbabwean policymakers to prioritise the protection and restoration of wetlands in the country;
- The public to hold the relevant authorities accountable for their obligation to conserve and manage wetlands for the collective benefit of society and the environment;
- Members of the public to complement government efforts by educating one another on the need to conserve wetlands;
- The authorities to desist from unlawfully authorising construction activities on wetlands,
- The authorities to comply with their international obligations to preserve and effectively manage Wetlands of International Importance.

Zimbabwe Lawyers for Human Rights
Kodzero/Amalungelo House
No. 103 Sam Nujoma Street, Harare, Zimbabwe
Phone: (+263 8677005347, +263 242 764085/705370/708118
Email: info@zlhr.org.zw
www.zlhr.org.zw
FOLLOW US:@ZLHRLAWYERS ON TWITTER |
ZIMBABWE LAWYERS FOR HUMAN RIGHTS ON FACEBOOK

This project is funded by the European Union
This project is implemented by Zimbabwe Lawyers for Human Rights
The views expressed in this publication do not necessarily reflect the view of the European Commission

State humbled as anti-govt protest case crumbles

… *Magistrate frees Chegutu residents*

CHEGUTU-The State has been humbled after a Magistrate set free two Chegutu opposition party supporters, who had been charged for participating in the July 2020 anti-government demonstrations.

Edward Dzekwa, who in 2020 served as the MDC-Alliance Councillor for Ward 9 and an opposition political party supporter, Isheunesu Chimunyemba, were freed by Chegutu Magistrate Noah Gwatidzo, who acquitted them after a full trial recently.

The two Chegutu residents were apparently being charged with public violence for allegedly protesting against a clampdown on pro-democracy campaigners, abductions and attempts to amend the Constitution. Councillor Dzekwa and Chimunyemba, who had been out of custody on bail, had been on trial after they were arrested by Zimbabwe Republic Police officers in July 2020 and charged with contravening Section 37(b) of the Criminal Law (Codification and Reform) Act, for participating in a gathering with intent to promote public violence, breach of the peace or bigotry.

The duo was also charged with unnecessary movement during a national lockdown, as defined in Section 4(1)(a) of the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order 2020, Statutory Instrument 83 of 2020.

However, Magistrate Gwatidzo acquitted Dzekwa and Chimunyemba, who were represented by Douglas Chikwangwani of Zimbabwe Lawyers for Human Rights, after ruling that the State failed to prove the alleged case against them and that State witnesses, who were police officers, gave inconsistent evidence during trial, which could not convince the judicial officer that they were telling the truth.

Prisoners fight for vote

Continued from Page 1

Musarurwa, Madzokere and Maengahama argued that they were asserting their constitutional rights, particularly the right to vote in elections and referendums, as enshrined in Section 67 (3)(a) of the Constitution.They argued that they are entitled to exercise their political rights regardless of their status as detainees.

ZEC lawyer Tawanda Kanengoni, argued that the case should be dismissed since the applicants were "acquitted" by the Supreme Court in June 2021. However, in their application, Musarurwa, Madzokere and Maengahama stated that they were fighting for the right to vote for all prisoners.

"While we principally approach this court to protect our own interests as prisoners, we are mindful of the fact that the relief we seek is of significant public interest and will also be of benefit to the class of persons who may be in detention during any electoral period," reads part of the former prisoners' application.

"As a result, the relief we seek as a matter of consequence, also has general application," added Musarurwa, Madzokere and Maengahama.

Victory for anti-impunity



Advocate Taona Nyamakura, Tinomuda Shoko and Idirashe Chikomba of ZLHR

Continued from Page 1

The Supreme Court had set Hon. Muchinguri-Zishiri's bid to overturn a High Court decision upholding a lower court's order regarding Makunde's lawsuit seeking compensation for the assault, before she withdrew her case.

Makunde through ZLHR filed summons at Harare Magistrates (Civil) Court in 2019 suing Hon. Muchinguri-Zishiri, Home Affairs and Cultural Heritage Minister Hon. Kazembe Kazembe and Zimbabwe Republic Police Commissioner-General Godwin Matanga for violating his fundamental rights.

In her abandoned appeal, the Defence, Security and War Veterans Minister had sought to argue that Makunde's summons did not identify the alleged perpetrators by their names and did not disclose a cause of action based on vicarious liability against her.

Hon. Muchinguri-Zishiri, represented by Advocate Lewis Uriri, argued that Makunde's alleged failure to disclose the identities of the perpetrators was fatal to his cause of action. Hon. Muchinguri-Zishiri tried to distance the soldiers from the offence, and pointed fingers at ZRP officers and criminals masquerading as soldiers as potential perpetrators.

But Makunde argued that the soldiers who assaulted him were employed by the Ministry of Defence and War Veterans and were acting within the course and scope of their employment. He insisted that Hon. Muchinguri-Zishiri, Hon. Kazembe and Matanga are in charge of deploying their subordinates, hence they should be aware of the identities of their members who operated at specific points on the day of the protests.

Makunde argued that once he made an allegation against soldiers, Hon. Muchinguri-Zishiri had a duty to investigate the issue and to identify the soldiers who perpetrated the unlawful acts as well as to discipline them. Justice Nicholas Mathonsi removed the matter from the Supreme Court roll after Hon. Muchinguri-Zishiri abandoned the case.

ZIMBABWE LAWYERS FOR HUMAN RIGHTS
Fostering a culture of human rights

The Legal Monitor

For feedback please email ZLHR on: info@zlhr.org.zw or visit: www.zlhr.org.zw

Like us on Facebook
facebook.com/ZimbabweLawyersforHumanRights

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

ZLHR corners ZEC over IDs, voter registration blitz



ZEC Chairperson Justice Priscilla Chigumba

HARARE-Zimbabwe Lawyers for Human Rights (ZLHR) has asked the Zimbabwe Electoral Commission (ZEC) to provide them with a breakdown of the number of people issued with national identity documents (IDs) per province, following its decision to commence its voter registration blitz.

ZEC suspended the exercise in November last year claiming a significant portion of Zimbabwe's population still did not have IDs and might fail to register.

The elections management body, however, announced the commencement of the programme less than a month after the suspension. In a letter written to ZEC, ZLHR questioned whether it had noted any differences from the time it had initially planned to start the voter registration blitz and the February date, which it said would see the elections management body resuming the registration exercise.

"On 24 November 2021, through a press statement the Zimbabwe Electoral Commission (ZEC) announced that it was postponing the voter mobile registration that was scheduled for 6 December 2021 to February 2022," reads part of the letter written by Paidamoyo Saurombe and Tinashe Chinopfukutwa of ZLHR.



Paidamoyo Saurombe and Tinashe Chinopfukutwa of ZLHR

"The reason ZEC gave for the postponement of the mobile registration was that there was need for inclusivity. ZEC further stated in the postponement statement that the postponement would allow all eligible stakeholders to acquire national identity cards, which are a prerequisite for voter registration.

"ZEC further went on to state that some stakeholders would be excluded if the voter registration proceeded and the postponement would allow the Civil Registry to prepare for issuance of identity documents to a large population within a specified period," said Saurombe and Chinopfukutwa.

ZEC then announced a two-phased voter registration blitz, the first running between 1 February and 28 February while the second one was set for 11 April to 30 April.

Added Saurombe and Chinopfukutwa;

"The announcement came just a month after the first announcement postponing voter registration on the basis of stakeholders in a large population not having identity documents. Our question is, what has changed from 24 November 2021 to 13 January 2022 in the issuance of identity documents to call for a blitz voter registration? We request that you furnish us with the number of people who have been issued with their national identity documents from November 2021 to date per province. We request the dates, schedule and places where the planned mobile registration exercise will be conducted per province."

A large section of the Zimbabwean population, particularly in rural areas, is not documented. Some communities in Matabeleland and Midlands provinces, where most victims of the government sponsored politically motivated violence such as the Gukurahundi massacres live, are yet to secure critical national identity documents. They stand to miss out from the voter registration exercise and voting during the impending by-elections and the 2023 harmonised elections.

Battle to acquire IDs persists in marginalised communities

TSHOLOTSHO-Villagers in some remote areas of Tsholotsho in Matabeleland North province continue battling to acquire birth certificates and other critical national identity documents from the Registrar-General's office, owing to a myriad of reasons, in what is a flagrant violation of their fundamental rights enshrined in the Constitution.

This emerged at a recent mobile legal clinic held in Tsholotsho. Testimonies by participants who attended the mobile legal clinic conducted by Zimbabwe Lawyers for Human Rights (ZLHR) revealed that marginalised villagers in Tsholotsho faced obstacles in laying their hands on these valuable documents. More than 100 villagers attended the mobile legal clinic, which ZLHR organised with support from the European Union.

According to Section 35(3), all Zimbabwean citizens are entitled to passports, travel documents, birth certificates and other identity documents issued by the State.

During the mobile legal clinic, which was attended by officials from Emthonjeni Women's Forum, an organisation currently working on curbing gender-based violence and the creation of an environment where women's rights are respected, the representatives were inundated with requests for assistance to acquire birth certificates, national identity cards and death certificates.

Through rolling out mobile legal clinics in marginalised communities, ZLHR seeks to raise awareness on human rights and provisions of the Constitution and to enhance their capacity to effectively participate in human rights discourse and assert their rights.

Cases and issues of interest which emerged from the mobile legal clinic were of;

1. A case of an expecting woman, who is undocumented and who now fears that her unborn child will also be undocumented. ZLHR advised the woman to get a duplicate health card and thereafter liaise with her maternal relatives to process the birth certificate and identity card.
2. A 42 year-old woman, who was in a customary law union with a man she had three children with. The man left for South Africa in 2000 while the youngest child was only a week old and the woman, who has raised all her three children by herself, wanted to know if she was still in a valid "marriage" with the father of her children. ZLHR advised her that since she was in an unregistered customary law union, there was no legally binding marriage, and she could go on with her life.
3. A matter with the Tsholotsho District Registrar, which ZLHR took up to secure a birth certificate for an undocumented 15-year-old child who was born in South Africa.
4. A case in which a maternal grandmother of an undocumented child who is in Grade 6, who recently tried to process a birth certificate for her grandson at Makhaza mobile registration centre but was denied as the Registry staff told her that she was busy enjoying the groceries her daughter had sent without compelling her to come home to process the documents. ZLHR advised the grandmother that it will engage the Tsholotsho District Registrar as a maternal grandmother can process the grandchild's birth certificate in the absence of the mother.
5. The case of a 54 year-old grandmother of a 7-year-old boy who is undocumented. The mother of the child lost her identity card and has not been forthcoming to replace it despite assistance being given to her. ZLHR advised the grandmother that the mother of the child has to replace her identity card in order for the grandson to be documented. ZLHR asked the grandmother to share the contact number of the mother of the child to enable lawyers to call her and stress the importance of processing the birth certificate.
6. The case of a 33 year-old woman, who is the mother of an undocumented child. The father of the child is in South Africa and refuses to let the woman process the birth certificate in her own surname as she is now married to another man. ZLHR advised the woman that she can process the birth certificate in her own surname and the father of the child can then undergo legitimation when he returns to Zimbabwe.
7. A 26 year-old woman, who is undocumented as both her parents passed away without processing her birth certificate. ZLHR advised the woman of the requirements to process her documents and asked that she gets her uncle and sister to assist her.

Know Your Rights

Section 35: Zimbabwean Citizenship

(1) Persons are Zimbabwean citizens by birth, descent or registration.

(2) All Zimbabwean citizens are equally entitled to the rights, privileges and benefits of citizenship and are equally subject to the duties and obligations of citizenship.

(3) All Zimbabwean citizens are entitled to the following rights and benefits, in addition to any others granted to them by law--

(a) to the protection of the State wherever they may be;
(b) to passports and other travel documents; and
(c) to birth certificates and other identity documents issued by the State.

(4) Zimbabwean citizens have the following duties, in addition to any others imposed upon them by law--

(a) to be loyal to Zimbabwe;
(b) to observe this Constitution and to respect its ideals and institutions;
(c) to respect the national flag and the national anthem; and
(d) to the best of their ability, to defend Zimbabwe and its sovereignty.

ZIMBABWE LAWYERS FOR HUMAN RIGHTS
Fostering a culture of human rights

The Legal Monitor

For feedback please email ZLHR on: info@zlhr.org.zw or visit: www.zlhr.org.zw

28 February 2022

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

Leaving no-one behind

INSIZA-Under the Access to Justice in Action programme, which is a consortium of five law-based organisations and supported by the European Union, Zimbabwe Lawyers for Human Rights (ZLHR) conducts mobile legal clinics across the country with the objective of strengthening the rule of law through increased access to justice. At mobile legal clinics, ZLHR programme lawyers and programme officers provide free legal aid and assistance to marginalised and vulnerable people in remote rural and peri-urban communities. ZLHR does this together with partners, namely: Legal Resources Foundation, Women and Law in Southern Africa-Zimbabwe, Zimbabwe Women Lawyers Association and Justice for Children. The assistance is meant to enhance the capacity of marginalised and vulnerable groups to assert their rights and access justice.







ZLHR programme lawyer, Paidamoyo Saurombe, takes time from the busy courts in Harare to be in Muzarabani, in Mashonaland Central province, as ZLHR seeks to increase communities' knowledge of constitutional provisions on the declaration of basic and fundamental rights of citizens.

The majority of Zimbabweans reside in rural areas, yet they are some of the most marginalised people regarding access to justice. Most people who interacted with ZLHR staff during these campaigns expressed ignorance of their basic political, social, economic, cultural and economic rights.



With support from the European Union, lawyers from ZLHR are increasing access to justice to marginalised rural communities, with a special focus on women. Despite being the majority, women continue to be shut out in decision making and are also battling the widespread violation of their sexual and reproductive health rights. In this picture, ZLHR programme lawyer Idirashe Chikomba is seen consulting with some clients in Nyavhudzi in Guruve in Mashonaland Central province.



Protecting the right to identity: ZLHR's programme officer Prisca Dube at Tshazi Secondary School in Insiza, district in Matabeleland South province, where ZLHR continues assisting people who are undocumented. Matabeleland region has one of the country's highest numbers of undocumented people. ZLHR is carrying out the campaign with its partners such as Legal Resources Foundation, Women and Law in Southern Africa-Zimbabwe, Zimbabwe Women Lawyers Association and Justice for Children and supported by European Union under the Access to Justice in Action programme.



ZLHR community outreach programmes in the form of mobile legal clinics are attracting beneficiaries from diverse political, economic and social backgrounds. ZLHR lawyers provide free legal aid as well as sensitisation on the Constitution and on people's fundamental rights during these outreach programmes.

PVO, Patriotic Bills irk EU

BRUSSELS-The European Union (EU) says it is seriously concerned by the President Emmerson Mnangagwa administration's insistence on enacting the Private Voluntary Organisation (PVO) and the Patriotic Bill, two pieces of legislation seen as intended to further restrict the democratic and civil society space in Zimbabwe.

In a statement, the EU said it was perturbed by the ruling ZANU PF's government's eagerness to railroad the two pieces of legislation and the enactment of the Data Protection Act.

"The situation in terms of respect for human rights has not improved in Zimbabwe. Intimidation of political opposition and other government critics has continued to restrict the democratic and civic space, which is under threat from shrinking further through the Data Protection Act and ongoing legislative processes such as the PVO Amendment Bill and the envisaged so-called Patriotic Act. EU is concerned by about these developments," reads part of the EU statement.

The EU also said it is closely following the electoral agenda in Zimbabwe and stands ready to continue its support of electoral reforms – an important pillar to strengthen democracy – based on the recommendations of the 2018 EU Election Observation Mission.

"The EU is preparing for a follow up mission. Moreover, the EU welcomes the reassurances given by the authorities of Zimbabwe that they will be inviting international electoral observers for the 2023 elections including an EU Election Observation Mission. As an integral element of its engagement with Zimbabwe, the EU looks forward to have a political dialogue in Harare as a matter of priority and notes the readiness of both sides to organise this dialogue in the near future. The political dialogue will provide an opportunity for regular and open discussions, on many subjects, including on economy and human rights. The political dialogue is key in fostering mutual understanding and constructive cooperation, paving the way for progress in the relations," added the EU.

The EU firmly stated that perpetrators of human rights violations should be swiftly brought to justice to end impunity, noting that the recommendations of the Kgalema Motlanthe Commission of Inquiry have not been followed substantially. The EU urged the government to implement the recommendations as a matter of priority and urgency.

"It is important that international human rights obligations are adhered to and the constitutional rights of the people of Zimbabwe respected," said the EU.



President Emmerson Mnangagwa