ZIMBABWE LAWYERS FOR HUMAN RIGHTS
Fostering a culture of human rights

The Legal Monitor

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Judge orders water supply

…as residents risk death and diseases due to erratic water supplies amid COVID-19 pandemic



Relieved...Residents of Penhalonga with their lawyers from ZLHR after the court victory



EU Head of Delegation to Zimbabwe Timo Olkkonen bidding farewell to Speaker of Parliament Advocate Jacob Mudenda. Olkkonen and Mudenda discussed several issues including the proposed Private Voluntary Organisations Amendment Bill and electoral reforms. *Picture Credit: @TimoOlkkonen via Twitter*

PENHALONGA-A High Court judge has brought relief to residents of Penhalonga, a mining area in Manicaland Province, after ordering the local authority to ensure supply of adequate, constant, clean and potable water.

The residents, through their lawyer David Tandiri of Zimbabwe Lawyers for Human Rights (ZLHR), approached the High Court after the local authority responsible for water supply ignored several requests for reliable supply of water from the residents.

Justice Isaac Muzenda recently ordered that the Mutasa Rural District Council, which is the responsible local authority, should ensure adequate and reliable water supplies within 60 days of his ruling.

"Respondent (Mutasa Rural District Council)'s failure to ensure supply of adequate, constant, clean and potable water be and is hereby declared to be a violation of the nine Applicants' right to clean, safe and potable water as provided for under section 77(a) of the Constitution of Zimbabwe, 2013," ruled Justice Muzenda.

He ordered the council to pay for the costs of the legal action. ZLHR said it intervened in the case to "teach local authorities invaluable lessons about respecting and fulfilling people's economic, social and cultural rights enshrined in the Constitution." Amid the outbreak of the COVID-19 pandemic, Mutasa Rural District Council stopped providing residents with constant and uninterrupted water supply without notice, putting the lives of residents at risk. Residents were forced to scrounge for water from unsafe sources (see page2).

The local clinic and some schools were not spared from the water shortages, with students at Tsvingwe Primary and Tsvingwe High School being requested to bring their own water for use at school. At the local clinic, expecting mothers and patients were also requested to bring their own water thereby exposing the community to diseases. Instead of owning up to its responsibilities, the council ignored request for water from the residents.

In January this year, ZLHR lawyers wrote to Mutasa Rural District Council reinforcing the requests of the residents. "We do wish to advise that the right to water is a fundamental human right and is protected under section 77 of the Constitution. Water is a prerequisite for the realisation of other rights such as the right to food and livelihoods and that adequate amount of safe water is necessary to prevent death from dehydration, to reduce the risk of water borne disease and to provide for consumption, cooking, personal and hygiene requirements. The right to water is indispensable for leading a life in human dignity," reads part of the letter written by ZLHR lawyers.

Mutasa Rural District Council ignored the demand, forcing Tandiri to approach the courts. In court, the council sought to deflect attention from its failures by claiming lack of financial resources to provide reliable and adequate water to residents. It also claimed that the residents who had brought the matter to court were not qualified to do so because they did not reside in the area.

Justice Muzenda scoffed at the defence, saying the local authority was trying to "technically hide behind the proverbial finger by seeking to disqualify applicants from exposing its shortcomings."

"Even if a non-resident had raised such a complaint…a court would have looked at the grounds to justify intervention on behalf of the voiceless, who are affected by the breach of section 77 of the Constitution," ruled Justice Muzenda.

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Water shortages: A ticking time bomb

MUTARE-Life has been hell for Clinton Masanga and about 5 000 other residents of Tsvingwe Township, situated in Penhalonga, on the outskirts of the city of Mutare due to life threatening water shortages.

Before September 2021, the residents received constant water supply daily. They were not experiencing any water cuts. Then, without notice or explanation, the responsible authority, Mutasa Rural District Council started supplying water twice a week only.

"The water is supplied at night on the said two days. The water is, however, not enough for primary and domestic purposes," lamented Masanga. The erratic supply of clean and potable water to the suburb has left residents exposed to the COVID-19 pandemic and other diseases.



ZLHR lawyer David Tandiri

"The water from these sources is unclean and contaminated and thus not fit for domestic purposes. There are illegal miners who are polluting the water through the use of cyanide and other chemicals which they are disposing into the rivers.

Hence, we are exposed and vulnerable to waterborne diseases and the COVID-19 pandemic. No one is spared the agony. School children, the elderly, pregnant women, hospital patients and people living with disabilities all have been forced to seek water from unsafe and unprotected sources like rivers, streams, wells and springs.

"The consequences are too ghastly to contemplate… The situation in Tsvingwe is dire," said Masanga. Students at Tsvingwe Primary School and Tsvingwe High School are being requested to bring own water for use at school. At the clinic, expecting mothers and patients are also requested to bring own water.
Masanga cited the World Health Organisation COVID-19 guidelines which specifically encourage individuals to regularly wash their hands using running water and including having hand washing facilities "within five metres of the toilet."

"It is clear that the supply of adequate, clean and potable water to residents will help them to take precautionary and preventive measures against the spread of the COVID-19 virus and other diseases. Conversely, the council's failure to supply residents with adequate, clean and potable water is exposing us to the COVID-19 pandemic and other diseases," said Masanga.

He warned that "Tsvingwe is a ticking time bomb for the spread of the virus and other diseases" if the council fails to supply adequate water supplies. Another resident, Catherine Sithole, lamented that people living with disabilities are some of the hardest hit by the situation.

"We are now resorting to drawing water from unsafe sources like rivers and unprotected spring. Since I am disabled, I find it extremely difficult to access these sources of water," she said.

UN raps govt over MOPO

United Nations Special Rapporteur on Freedom of Association and Peaceful Assembly Clement Nyaletsossi Voule recently called on President Emmerson Mnangagwa's government to allow citizens to exercise and enjoy fundamental rights such as the right to freedom of assembly and demonstrate enshrined in the Constitution. Below, *The Legal Monitor* publishes part of Voule's report;

51.The Special Rapporteur wishes to thank Zimbabwe for its collaboration with the work of the mandate, and the efforts it has made to ensure greater respect, protection and fulfillment of the rights to freedom of peaceful assembly and of association to date. The below points highlight several areas raised by concerned parties, in which further steps may be taken in support of fuller enjoyment of the rights.

A. Assembly

52. In his report, the Special Rapporteur called on Zimbabwe to "[a]dopt a clear presumption in favour of holding peaceful assemblies and demonstrations" and to "[e]ndorse a prior notification regime for all peaceful assemblies and demonstrations with a view to protect and facilitate peaceful assemblies and demonstrations" (Rec 124(a)(i-ii). In November 2019, Zimbabwe adopted a new law governing assemblies, the Maintenance of Peace and Order Act. The framework under the act violates the right to freedom of peaceful assembly in several ways, however, as detailed in the Special Rapporteur's report.

53. Closely related to the above, the Special Rapporteur also called on Zimbabwe to "[r]ecognize and provide for the facilitation of spontaneous peaceful assemblies and demonstrations in law, which should be exempt from notification" (Rec 124(a)(iii)). Zimbabwe's new law fails to recognize spontaneous peaceful assemblies, however. In May 2021, workers attempting to attend a Zimbabwe Congress of Trade Unions event in Chitungwiza were dispersed by the police, in violation of this recommendation and the State's obligation to respect the right to freedom of peaceful assembly.

54. The Special Rapporteur also called on Zimbabwe to "[r]evise … sanctions so as not to dissuade the holding of future peaceful assemblies and demonstrations" and to "[u]phold the principle of individual liability, rather than vicarious liability, of [assembly] participants" (Rec 124(a)(v-vi)). The Maintenance of Peace and Order Act still imposes vicarious liability, however, as well as imposing penalties on assembly organizers where no harm has taken place, with the apparent intent of dissuading the holding of peaceful assemblies in practice.

55. The Special Rapporteur has received reports suggesting that Zimbabwe's law on assemblies is selectively applied. Onerous and unjustified conditions have reportedly been applied to assemblies disfavoured by the authorities, while participants in such assemblies have been arrested and charged with public disorder. Members of the Citizens Coalition for Change, for example, were arrested and reportedly assaulted while protesting in Harare in January 2022.

56. The Special Rapporteur also called on Zimbabwe to "[e]nsure that the definition of the use of force by law enforcement officials complies with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" (Rec 124(a)(vii)) and to "[d]evelop and revise law enforcement protocols with a view to ensuring their compatibility with international human rights norms and standards on the proper management of assemblies" (Rec 124(d)). Unfortunately, reports suggest the recommended reforms have not taken place. In practice, it appears police forces frequently use excessive force against peaceful protesters.

57. The Special Rapporteur further called on Zimbabwe to "[e]nsure that all allegations of excessive use of force against protesters by the security forces are promptly, thoroughly and independently investigated, that the alleged perpetrators are prosecuted and sanctioned and that adequate remedy is provided to the victims" (Rec 124(f)). The Special Rapporteur has not received any information suggesting this recommendation has been complied with.

58. The Special Rapporteur also called on Zimbabwe to "[e]nsure that those monitoring assemblies, including journalists, media workers and human rights defenders, are allowed to do so and are protected at all times during assemblies and that violations are duly investigated" (Rec 124(g)). The Special Rapporteur has received reports that journalists have been arrested while pursuing their work, however, including while covering the Zimbabwe Electoral Commission Stakeholders Meeting in September 2021.

59. The Special Rapporteur is also concerned that COVID-19 rules have been applied in a discriminatory manner in Zimbabwe, including by being used to prohibit gatherings of oppositional political parties, but not ruling party events.

60. The Special Rapporteur also wishes to reiterate the grave concern expressed by himself and other mandate holders with reports concerning the arbitrary detention, enforced disappearance, torture and ill-treatment of members of the MDC Alliance Youth Assembly in 2020, when they were planning to attend an assembly, an issue addressed in a previous communication. As observed in the communication, those allegations were not isolated, but rather part of a broader pattern. The Special Rapporteur stresses that any such actions must cease, accountability must be ensured and full remedies must be provided to individuals whose rights were violated.

61. The Special Rapporteur also underscores his concern with the arrest of human rights defenders following their calls for demonstrations against corruption and human rights violations.

B. Association

62. In his report, the Special Rapporteur called on Zimbabwe to "[a]dopt a regime of declaration or notification whereby an organization is considered a legal entity as soon as it has notified its existence to the regulating authorities" and to "[e]nsure that the registration procedure for national and international organizations is more simple and expeditious" (Rec 125(a)(i-ii)). Zimbabwe has not adopted a notification regime, however, nor have the registration procedures been simplified.

63. The Special Rapporteur also called on Zimbabwe to "[e]nsure that all administrative authorities at the national and local levels that are responsible for implementing the right to association receive training on international human rights standards in order to create a favourable and enabling environment for civil society" (Rec 125(b)) and to "[a]bolish the practice of using memorandums of understanding that render the operation of associations burdensome and limit their autonomy and independence" (Rec 125(a)(iii)). No trainings on international human rights standards appear to have taken place, nor has the practice of using memorandums been abolished.

64. The Special Rapporteur is concerned with reports of State agents seeking to infiltrate associations' meetings, and with interference in the form of spot checks and raids. The Zimbabwe Congress of Trade Unions, for instance, has reportedly experienced many cases in which unidentified individuals as well as police officers have sat in their meetings and/or harassed, interfered with or attacked workers attending. The Special Rapporteur is also concerned that associations in Zimbabwe appear to operate under ongoing threat of deregistration, with 450 associations reportedly included on a list of associations which have received indications they might be deregistered by the authorities by March 2021, reportedly because they had been dormant. The Special Rapporteur is further concerned to have heard that the Harare Metropolitan Provincial Developments Coordinator called for associations to register with his office and submit their workplans and details relating to their work to his office by 9 July 2021, though that directive was subsequently nullified by the High Court.

65. The Special Rapporteur is seriously concerned the authorities are considering restrictive amendments to the Private Voluntary Organisations Act. When hearings on the bill took place in February 2022, persons raising concerns were reportedly heckled, harassed and attacked. The content of the bill, as gazetted on 5 November 2021, does not comply with the obligation to respect the right to freedom of association. The bill does not provide for a notification regime; adds onerous registration and re-registration requirements; allows for the discretionary imposition of enhanced reporting requirements; creates a governance structure that could be readily politicized; allows for illegitimate interference with associations' internal functioning; imposes illegitimate limits on access to foreign funding; appears to unduly limit judicial appeal; and would back various of these elements with disproportionate and in many cases illegitimate criminal penalties. In this context, the Special Rapporteur reemphasizes the points made in the joint communication sent by himself, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on this issue.

66. The Special Rapporteur also underscores the points he has previously made in a communication concerning actions taken against representatives of the Chitungwiza Residents Trust.

C. Freedom of Peaceful Assembly and of Association at Work

67. In his report, the Special Rapporteur called on Zimbabwe to "[i]ncrease efforts to promote the rights to form and join strong trade unions that could assist workers in claiming rights and better working conditions" (Rec 125(h)) and to "[r]evise the sanctions so as not to dissuade the holding of future peaceful assemblies and demonstrations" (Rec 124(a)(v)). Zimbabwe's labour law still imposes a strict authorization framework, however, requiring workers who want to strike to notify the authorities in advance, with trade union decertification and criminal penalties imposed on those who don't comply. Both 2021 and 2022 saw members of Zimbabwe's Amalgamated Rural Teachers Union arrested during the course of strikes.

68. In addition, Zimbabwe has not yet complied with the recommendations of the ILO's Committee on Freedom of Association, which has challenged the effects of Section 45 of Zimbabwe's Labour Act, a provision that allows registered trade unions to challenge the registration of other unions. In its decision, the ILO Committee on Freedom of Association also called on Zimbabwe to "ensure that the conditions for the granting of registration are not tantamount to obtaining previous authorization from the public authorities for the establishment of a workers' or employers' organization."

In his report, the Special Rapporteur called on Zimbabwe to "ensure the full implementation of the recommendations laid out in the reports of the ILO Committee of Experts on the Application of Conventions and Recommendations [and] the Conference Committee on the Application of Standards" (Rec 125(h)). The Special Rapporteur

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Flashback

For decades, Zimbabwe Lawyers for Human Rights (ZLHR) has fought to compel authorities to deliver on their constitutional obligations to provide basic services that ensure people enjoy and realise their economic, social and cultural rights.

The right to water enshrined in section 77 of the Constitution is one such fundamental right that authorities such as both urban and rural councils constantly neglect. Below, ZLHR showcases highlights of some cases in which the organisation intervened to enforce enjoyment of the right to water.





We value water and in April 2020 at a time of the outbreak of coronavirus, ZLHR secured a court order compelling City of Mutare and government to provide residents of Dangamvura high-density suburb with clean potable water. The residents had gone for 15 years without receiving water from City of Mutare. In compliance with the court order, City of Mutare began providing mobile water bowsers to alleviate the water shortages.

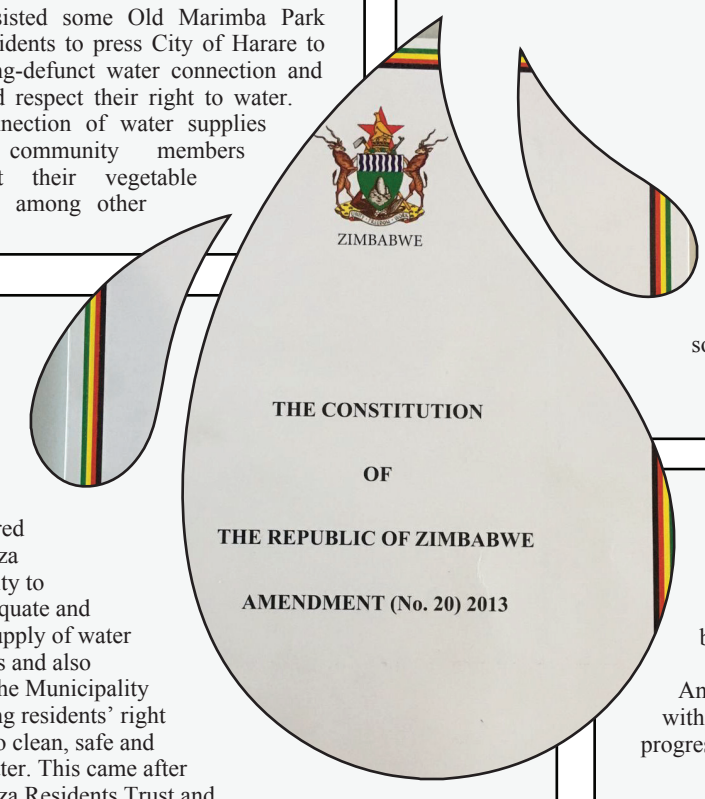




ZLHR assisted some Old Marimba Park suburb residents to press City of Harare to restore long-defunct water connection and supply and respect their right to water. The reconnection of water supplies allowed community members to restart their vegetable production among other



In 2014, City of Harare was forced to restore running water supplies to Old Marimba Park suburb, where residents had spent several months without receiving water. This came after ZLHR instituted legal proceedings against City of Harare to enforce the rights of residents including the elderly to water as a socio-economic right guaranteed in the Constitution.





On 6 April 2020, High Court Judge Justice Owen Tagu ordered Chitungwiza Municipality to ensure adequate and constant supply of water to residents and also criticised the Municipality for violating residents' right to access to clean, safe and potable water. This came after Chitungwiza Residents Trust and Alice Kuvheya represented by ZLHR, filed an urgent chamber application at Harare High Court raising complaints in court that there were acute water shortages in Chitungwiza with there being no running tap water for several years. Because of lack of running tap water, Chitungwiza residents had been forced to resort to fetching water for their domestic use from community and privately owned boreholes with some residents being forced to purchase water from private boreholes. ZLHR intervened as a public interest matter in order to enforce some fundamental rights of Chitungwiza residents.

Section 77: 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 realisationof this right.

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Section 77 of the Constitution

The Right to Safe, Clean and Potable Water

1 Why have a right to water?

Everyone must access safe, clean drinking water and sanitation for them to live a dignified life. Water is very important for a healthy life. No one can exercise other rights (to work, to life, to education etc) if they do not enjoy their right to water.

2 What is the right to water?

- It is a basic human right that is essential for a healthy life
- The right to water is the right of everyone to access sufficient, safe, accessible and affordable water for personal and domestic uses.
- This water must be;
- Available;
- Good quality,
- Accessible (you must be able to get it)

3 The Constitution on the 'Right to Water'

- Section 77 (a) of Constitution of Zimbabwe (Amendment No. 20) guarantees the right to safe, clean and potable water
- This provision reflects Zimbabwe's obligations to provide water to people in Zimbabwe as required in the human rights instruments that the country has accepted that include;
- The African Charter on the Rights of the Child
- Protocol to the African Charter on the Rights of Women in Africa

The United Nations also passed a Resolution in 2010 recognising that water and sanitation is a human right. Other laws include the Water Act of 1998, National Water Authority Act of 1998 Provision of Clean and potable water is essential for the full enjoyment of the right to life and other rights like right to health.

This means that the government of Zimbabwe must provide water to everyone - boys, girls, women and men. Every year 22 March is set aside to commemorate water; it is the **'World Water Day!'**





4 What must the government do?

The government must;

1. Respect the right to water by not interfering with the enjoyment of this right
2. Protect the right to water by preventing any interference that makes it impossible to enjoy this right to water
3. Fulfil the right to water by taking action to ensure that everyone enjoys this right
4. The central government and local authorities have a duty to provide clean and potable water in Zimbabwe.

UN raps govt over MOPO

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reiterates his call on Zimbabwe to comply with these recommendations.

69. The authorities continue to interfere in the free functioning of associations in the labour sector, moreover, by vetting collective bargaining agreements on the basis of unclear standards. In addition, the authorities have the power under law to remove union officials without court approval. These powers enable inappropriate interference with the right to freedom of association.

70. Rather than ensuring the right to strike, amendments to the law under consideration in Zimbabwe would enhance the penalties potentially imposed on workers undertaking strike actions. In contrast, Zimbabwe should take steps to ensure all workers enjoy the right to strike to its full extent.

D. Protection and Inclusion of it Risk Groups

71. In his report, the Special Rapporteur called on Zimbabwe to "[c]ontinue enlarging the civic space for a wide range of civil society actors by combating hate speech and incitement to hatred, and condemn the use of discriminatory or threating statements in public discourse, including those by public figures" (Rec 125(f)). Reports suggest that hate speech, including on the part of government officials, remains common, however.

72. In his report, the Special Rapporteur also called on Zimbabwe to ensure "that there is no discrimination in the application of the laws governing the rights to freedom of peaceful assembly and of association, in particular regarding the groups most at risk and those expressing dissenting voices" (Rec 123(d)). Information from several sources suggests those expressing dissenting views—including journalists, members of civil society, those supporting opposition political parties, and human rights defenders—are subjected to prosecutions, surveillance and harassment, however.

73. The Special Rapporteur also wish to underscore his concern with the apparent arbitrary arrest, detention and levying of charges against human rights defenders, journalists, student unions leaders and politicians, following their attempts to gather information concerning, to denounce and to organize to oppose human rights violations.

E. Other Issues

74. In his report, the Special Rapporteur also called for Section 210 of the Constitution, requiring the establishment of an independent complaints mechanism in respect of security forces, to be complied with (Rec 123(c)). While the Special Rapporteur is encouraged to learn that a bill implementing Section 210 was gazetted in 2020, the Special Rapporteur is concerned with the inordinate delay in the process of its enactment.

75. The Special Rapporteur also called for "the observations and recommendations made by the Zimbabwe Human Rights Commission in relation to respect for human rights and particularly the rights to freedom of peaceful assembly and of association" to be implemented (Rec 123(j)). This recommendation appears not to have been complied with; as such, the Special Rapporteur reiterates this call.

76. The Special Rapporteur also called for the recommendations of the Motlanthe Commission to be implemented (Rec 124(c)). The recommendations of the Motlanthe Commission have not been fully implemented and as such the Special Rapporteur reiterates this call.

77. The Special Rapporteur also called for the "withdraw[al of] all criminal charges and [the] release [of] all those arrested because of their exercising the rights to freedom of peaceful assembly and of association, in particular those arrested in connection with the August 2018 and January 2019 protests" (Rec 123(g)). While some individuals were reportedly released, the State reportedly maintained the right to proceed should they desire to do so, limiting the ability of the individuals in question to exercise their rights to freedom of peaceful assembly and of association in future. In other cases, the charges in question appear not to have been dropped. The Special Rapporteur therefore reiterates this recommendation.

78. Going forward, the Special Rapporteur has called on Zimbabwe to "[e]nsure that no one is criminalized for exercising the rights to freedom of peaceful assembly and of association, nor subjected to threats, harassment, persecution, intimidation and reprisals" (Rec 123(f)). This recommendation has not been complied with. Numerous members of the Amalgamated Rural Teachers Union of Zimbabwe, for instance, have been charged with 'promoting public violence, bigotry and breaches of the peace' due to their participation in peaceful protests.

The Special Rapporteur therefore reiterates his call that no one be criminalized, or otherwise penalized, for exercising their rights. In addition, the Special Rapporteur would like to underscore the ILO Committee of Experts on the Applications of Conventions and Recommendations' call for Zimbabwe to remove those provisions of law that allow forced labour to be imposed as a punishment.