

The LEGAL MONITOR

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COST-FREE

‘I will not quit’

HARARE-Embattled Deputy Agriculture Minister-Designate Roy Bennett has vowed not to give up politics despite his continued ‘persecution and harassment.’

“I am here for as long as I can serve my country, my people and my party to the best of my ability. Basically, I am here until we achieve the aspirations of the people of Zimbabwe,” said Bennett in an interview on Saturday, quashing any likelihood that he would leave politics soon.

He added: “I have often thought of it (quitting) and it is an easiest thing to do, by the way. But if you have a constituency you have stood in front of and together you have suffered, there is no easy walking away from that constituency. So basically I am there until we return democracy and freedoms to Zimbabwe.”

Bennett, Movement for Democratic Change (MDC) treasurer-general, was speaking after the State represented by Chris Mutangadura had consented before Justice Lavender Makoni at the High Court in Harare to postponing his trial to allow the defence time to prepare for the trial. The trial was supposed to resume this Monday in Mutare at the High Court in Circuit.

His lawyer Beatrice Mtetwa, a member of the Zimbabwe Lawyers for Human Rights (ZLHR) said the defence wanted time to prepare for the trial.

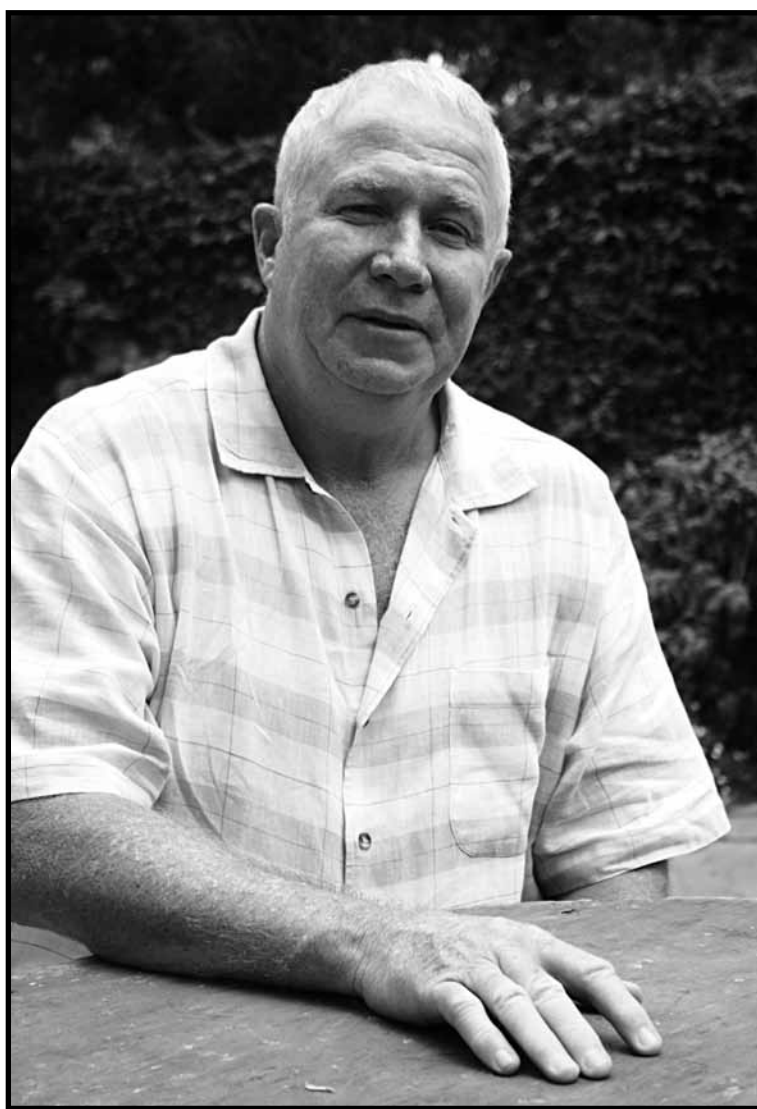
“The High Court rules are very clear that there must be at least 10 working days of notice before the trial commences,” said Mtetwa. “We really want him tried, but we want everything to be done in terms of the law.”

“We consented because we did not give the defence the mandatory period of 10 days,” State lawyer, Mutangadura, told journalists outside the High Court.

Bennett is facing charges of being illegally in possession of weapons with the intention to commit insurgency, sabotage, terrorism and banditry which carries death sentence and another charge of inciting to committing insurgency, sabotage, terrorism and banditry which carries a life imprisonment sentence.

A High Court Judge in Mutare will on Monday decide Bennett’s trial date following these developments.

But Bennett says the charges are trumped up and he will be acquitted. He accused Zanu PF of being behind the plot of fabricating charges.



Deputy Agriculture Minister-Designate, Roy Bennett after his release

He added: “Evidence is there. We know we are dealing with selective justice system and selective rule of law. It is part of the struggle and standing up for what is right. I have to be annoying someone so much for that persecution to continue. I have to say it must be President Robert Mugabe, himself.

“He has serious issues with me and has serious racial problems. The fact that I have a constituency and that I have a following annoys him immensely he would want to discredit me and get me out of the way.” Bennett was arrested in February and was granted a US\$5 000 bail by the Supreme Court in March.

He was ordered to surrender his passport and title deeds of one of his properties and not to interfere with witnesses. His trial was supposed to start last week on Tuesday at the Magistrate Court, only to be told on the day that the State was applying to indict him to the High Court. The application was granted the following day by Magistrate Lucy Mungwira and he was committed to prison.

On Friday, Justice Charles Hungwe reinstated his bail granted by the Supreme Court in March, resulting in his release.

“It is good to be out again, it is not a nice place (prison) to be. There are a lot of lice,” said Bennett. He said he had hoped that with the transitional government in existence he would not continue to be ‘persecuted and harassed’.

Asked why that was still happening, Bennett said: “Only ZANU PF can answer that. I have no idea. One would think that with the coming of the transitional government all this persecution and victimization would stop, but it would appear that they continue. The best for this is to get a trial and eventually for the matter to get over and done with.”

On prison conditions, the Deputy Minister of Agriculture-Designate said: “I noticed a marked improvement in prison, since I was last there, thanks to organizations like Doctors Without Borders (France) which provided blankets, food and medical supplies to the inmates.

“There are now ARVs for inmates who are HIV positive. There are three meals now, thanks to the humanitarian assistance which has come since the formation of the coalition government. One of the reasons, we in the MDC went into the transitional government was to bring humanitarian aid to the suffering people and eventually change that is tangible.”

He said : “Part of the persecution against me is not against me personally but it is against the MDC because I stand for the party in everything I do. I am happy to step aside the moment the people say I am the problem.”

“I am only there to deliver change to my comrades and my people. I am a small cog where there are many outstanding issues where ZANU PF and President Mugabe have treated us as a junior partner, given us absolutely no respect. At some point, we had to stand up,” he added.

NYAZURA-A Mutare Deputy Sheriff last week evicted Luke Tembani (72), a successful pioneer indigenous commercial farmer from his Nyazura farm in Manicaland in defiance of a Southern African Development Community (SADC) Tribunal ruling barring his eviction.

The SADC Tribunal ruled recently that the repossession and sale of the farm by State-run Agricultural Bank of Zimbabwe (Agribank) formerly known as Agricultural Finance Corporation (AFC) in order to recoup an outstanding loan was “illegal and void”.

Evicted

The Windhoek based Tribunal also ordered the government to take all the necessary measures through its agents not to evict Tembani or his family from the property and to stop interfering with his use and occupation of the farm.

The Tribunal ordered the government to stop subjecting the property to any further sale, disposal or transfer pending the proper determination of Tembani’s debt by an independent and impartial court or tribunal.



Dejected, Luke Tembani and his wife

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Zim journalists still endangered-MISA

HARARE-Continued arrests and prosecution of journalists, and the monopoly of the State over the airwaves are an indicator of how the transitional government has failed to free the media environment, eight months after its formation.

An alert released by the Media Institute of Southern Africa (MISA) Zimbabwe Chapter exposes how the transitional government has been strong on rhetoric, but short on action regarding reforming the country's media environment. Local and international media watchdogs such as Reporters Without Borders have perennially ranked Zimbabwe's media environment as one of the most repressive and dangerous in the world.

"While cases of media violations, arrests and harassment of journalists have comparatively declined following the formation of Zimbabwe's inclusive government, the environment is nevertheless still not conducive for free journalistic enterprise," read part of MISA's monthly digest. "The media environment remains restricted with no new private players having been licensed to enter both the print and broadcasting sector in an environment in which the ZBC continues to enjoy monopoly of the airwaves."

Prime Minister Morgan Tsvangirai and President Robert Mugabe bound themselves to an overhaul of the media environment in the Inter-Party Agreement (IPA), but have so far failed to implement meaningful reforms.

Journalists, particularly those working for the private and foreign media still face harassment, arrest, and prosecution.

Only last week, State security agents arrested and detained freelance photo-journalist, Anne Mpumbe, for visiting Marange diamonds fields.

Mpumbe is being charged with trespassing and faces two years in jail if convicted. She returns to court on 26 October.

"Political commitment without requisite reforms will not curb the harassment of journalists. This is evidenced by the outstanding criminal cases against Vincent Kahiya, Constantine Chimakure

and Davison Maruziva, editors with ZimInd Publishers. The other cases involve freelance journalist Andriison Manyere and former Zimbabwe Broadcasting Corporation (ZBC) bureau chief for Manicaland, Andrew Neshamba.

"The fact that Maruziva is being jointly charged with Deputy Prime Minister Professor Arthur Mutambara - a signatory to the Inter Party Agreement, on the basis of an opinion piece penned by the latter - which appeared in the weekly edited by the former, speaks volumes about the undemocratic nature of Zimbabwe's media and freedom of expression environment," noted MISA.

Mangwana turns lecturer

HARARE-Pronounce 'women'. Sounds like your grade five primary school teacher? But no, that was Hon. Paul Mangwana, the ZANU PF legislator for Chivi Central teaching fellow ZANU PF Member of Parliament, Hon. Mabel Chinomona to pronounce the word that stands for her gender.

Hon. Mangwana, part of the Standing Rules and Orders Committee (SROC) panelists interviewing candidates to serve as commissioners to the Zimbabwe Human Rights Commission (ZHRC) did not take kindly to Hon. Chinomona's alleged difficulty to differentiate the pronunciation of the words 'women' and 'human'.

"Can madam Chinomona pronounce the word women properly because it is sounding out like she is saying human. There is need for emphasis on the pronunciation of the word 'women'," said Hon. Mangwana.

Hon. Mangwana's comments were triggered after Hon. Chinomona had posed the last question of the seven set questions to one of the prospective candidates Kwanele Jirira, a women and gender activist and a lecturer at the University of Zimbabwe, which read: "What are women's and children's rights? What is their relevance to the human rights discourse?"

However, Senate President Hon. Edna Madzongwe who was chairing the interviews intervened to save Chinomona the embarrassment by stating that;

"I will not allow any interjection from the right (where Mangwana and members of the SROC were seated) to the left (where the interviewers were seated)."

But when everyone thought that the embarrassment was over ZANU PF chief whip Hon. Joram Gumbo chipped in and responded to Hon. Madzongwe's order by stating "It's not an interjection. It's just to assist."

However, Chinomona continued among the five member panel who included Senator Obert Gutu, Senator Chief Fortune Charumbira, Hon. Tabitha Khumalo and Hon. Edward Mkhosi.

Thirty-three out of 37 short-listed candidates who intend to serve as commissioners on the ZHRC attended the interviews which were held last Monday in the Senate Chambers at Parliament Building and were open to members of the public although they were not allowed to make any contributions besides just following proceedings.

The 33 interviewees included Kucaca Ivumile Phulu, Philip Manyanye Bohwasi, Susan Changawa, Stewart Nyakotyo, Nomathemba Nesen, Stanley Mbona, Dr Ellen Sithole, Dr Joseph Kurebwa, Dr Douglas Gwatidzo, Rev/ Dr Sebastian Bakare, Dr Donald Chimanikire,



'English tutor' Hon. Paul Mangwana

Dr Mavis Chidzonga, Professor Carol Temba Khombe, Nancy Saungweme, Joshua Malinga, Stanley Moyo, Sethulo Ncube, Peter Baka Nyoni, Petinent Muleya Ndlovu, Japhet Ndabeni-Ncube, Eunice Velepini, Casper Khumalo, Irene Sithole, Sheila Matindike, Jacob Mudenda, Grace Jessica Chapfiwa, Forbes Matonga, Benhilda Makomva, Elasto Mugwadi, Kwanele Jirira, Jacob Sigodo Mabonde Moyo, Samuel Tawanda Mhiribidi and Sanyaduru Mutepe.

Professor Geoff Feltoe and Helena Jester Charewa excused themselves while Dr Langtone Maunganidze and Petronella Nyamapfene did not turn up for the interviews.

The panel of experts comprised of Canaan Dube of Dube Manikai and Hwacha (DMH) Legal Practitioners, Job Sibanda of Job Sibanda and Associates, Tendai Bare of the Public Service Commission (PSC), Lucia Masuka from the Legal Resources Foundation (LRF) and Priscilla Madzonga of Costa and Madzonga Legal Practitioners.

The SROC chairman, Speaker of Parliament Hon Lovemore Moyo, his deputy chair Senate President Hon Madzongwe, the deputy Speaker of Parliament Hon. Nomalanga Khumalo, deputy Senate President Senator Naisson Ndlovu and Clerk of Parliament Austin Zvoma were in attendance.

Other SROC members present included Vice President Joice Mujuru, Deputy Prime Minister Arthur Mutambara, Minister Patrick Chinamasa, Hon. Paul Mangwana, Hon. Joram Gumbo, Hon. Eric Matinenga, Hon. Tongai Matutu, Hon. Tapiwa Mashakada, Minister Welshman Ncube and Minister Priscilla Misihairabwi-Mushonga.

Some of the questions posed to interviewees were;

- What do you understand by human rights?
- What experience do you have which would make you a suitable candidate?
- What do you think are the challenges that a human rights commission would face in Zimbabwe?
- Human rights commissions are often referred to as watchdogs. What does the term watchdog suggest to you?
- What is your understanding of an independent commission and how do you ensure the independence of the commission in the exercise of its mandate?
- What performance indicators would make the human rights commission a first class institution?
- What are woman's and children's rights? What is their relevance to the human rights discourse?

Muchadehama case resumes

HARARE-Prominent rights lawyer, Alec Muchadehama, has pleaded not guilty to charges of contempt of court at the start of his trial at the Harare Magistrate Courts.

Muchadehama's trial commenced before Magistrate Munamato Mutevedzi last week as prosecutors battled to nail him since his arrest in May.

Muchadehama, who is a member of Zimbabwe Lawyers for Human Rights (ZLHR), is jointly charged with Constance Gambara, the clerk of High Court Judge Justice Chinembiri Bhunu for allegedly conniving and securing the unlawful release of his clients.

The three clients are freelance photo-journalist Andriison Manyere and two Movement for Democratic Change (MDC) officials Kisimusi Dhlamini and Gandhi Mudzingwa who are all facing charges of sabotage, banditry and terrorism.

The State is charging Muchadehama and Gambara with contravening section 182(1) of the Criminal Law (Codification and Reform) Act which deals with contempt of court charges. The charge arises from the two's involvement in the alleged improper release and committal to bail of Manyere, Dhlamini and Mudzingwa.

The allegations are that Muchadehama - who is represented by Beatrice Mtetwa, connived with Gambara to facilitate the unlawful release of the three from Chikurubi Maximum Prison in April. The State alleges that Muchadehama and Gambara did this despite knowing that a subsequent court order had been granted giving the State leave to appeal against the granting of bail to Manyere, Dhlamini and Mudzingwa.

"The trial is resuming on 22 (of October) and it continues the following day. We hope it will end in those two days, since there is not much stuff," said Mtetwa.

Last week, Chris Mutangadura, a law officer with the Attorney General's Office who was the prosecutor in the case against the three accused persons was the first State witness. Mutangadura said there was a different opinion on the interpretation of the law between Muchadehama and the State, which might not necessarily amount to an offence being committed.

Lawyer Denford Halimani is representing Gambara.

The two were remanded out of custody to this Thursday when the trial resumes.

US Senate concerned

WASHINGTON-Statement by the Chairman of the Senate Foreign Relations Subcommittee on African Affairs, Senator Russ Feingold on the indictment and jailing of Roy Bennett

"I am deeply concerned by the jailing of Roy Bennett. This appears again to be a selective use of Zimbabwe's justice system by Robert Mugabe and his allies to undercut democratic reformers.

Bennett's detention casts a dark cloud over the Global Political Agreement and threatens to disrupt the progress that has been made by the transitional government. His prosecution and the arrest of more than a dozen MDC Parliamentarians over recent months call into question ZANU-PF's commitment to genuinely sharing power and implementing democratic reforms. ZANU-PF should immediately take steps to demonstrate a genuine commitment in that regard. If they do not, I will work with the Obama administration to explore ways we and our international partners can ramp up pressure on those hardliners in the government obstructing the Global Political Agreement."

Senator Feingold has been actively engaged on the situation in Zimbabwe since he visited the country in 1999. He was blocked by the government from returning in 2002. Feingold chaired a hearing on 30th September entitled "Exploring US Policy Options toward Zimbabwe's Transition".

Lawyers applaud court

HARARE-Zimbabwe Lawyers for Human Rights (ZLHR) is greatly encouraged by High Court Judge, Justice Charles Hungwe's order reinstating the Supreme Court's bail ruling on behalf of Deputy Agriculture Minister-Designate and Movement for Democratic Change (MDC) Treasurer-General Roy Bennett.

Justice Hungwe on Friday 16 October 2009 granted an urgent application made by Bennett's lawyer and ZLHR member, Harrison Nkomo for reinstatement of bail, which had been unlawfully disregarded by State agents on Wednesday 14 October 2009 when he was recommitted to Mutare Remand Prison following his indictment for trial in the High Court by Mutare Provincial Magistrate Lucy Mungwari.

The State representative, Michael Mugabe (a law officer in the Attorney General's Office) immediately attempted to invoke Section 121 of the Criminal Procedure and Evidence Act (CPEA) which the AG's Office has religiously abused to suspend bail orders granted by the courts in favour of legitimate human rights defenders and political activists.

However, Nkomo argued that Section 121 of the CPEA can only be invoked where a fresh bail order is made by a High Court Judge and not under the circumstances in which a bail order

already exists. This was the case in Bennett's matter, where the Supreme Court had granted bail on 11 March 2009 and Justice Hungwe was asked to adjudge the lawfulness of the revocation of the bail order.

Justice Hungwe then ruled that Section 121 of the CPEA cannot be invoked where the State wishes to appeal a point of law. The judge cautioned Mugabe not to throw invocations around here and there, as this practice only made a fool of him (Mugabe).

As a result of Justice Hungwe's judgment, Bennett's existing bail order stands.

The terms and conditions imposed by the Supreme Court when it granted him bail in March were such that he deposited the sum of US\$5 000 with the Clerk of the Mutare Magistrates' Court, is continuing to reside at his Harare residence and surrendered the title deeds of his Stand No. 901 Umtali Township property to the Clerk of Court.

Bennett surrendered his passport, agreed not to interfere with State witnesses, and before his incarceration was reporting at the Harare Central Police Station's Law and Order Section three times a week, on Monday, Wednesday and Friday between the hours of 0600 and 1800 hours.

ZLHR condemns the actions of the AG representative in the proceedings culminating in today's (Friday's) positive judgment. It is clear that law officers are failing or refusing to exercise their discretion and their minds to the laws of Zimbabwe in order to make reasoned and justifiable decisions.

They continue – whether willfully or negligently – to misinterpret the laws and to utilize nefarious provisions of the criminal law such as Section 121 (the constitutionality of which is currently being challenged) as if they were automatons, rather than professional legal officers who are able to apply their minds to the facts and laws relating to cases, particularly those of a political nature.

Whilst ZLHR is heartened by today's (Friday's) events, we are under no illusion as to the disrespect and contempt which is regularly shown by representatives of the executive to orders made by the judiciary. We urge authorities to refrain from further persecuting him and others through abuse of the law.

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As it happened

But the Deputy Sheriff only identified as Dzobo evicted Tembani from his Remainder of Minverwag of Clare Estate Ranch, which he has occupied since 1983 to make way for Takawira Zembe who claims to have bought the farm from Agribank.

Dzobo started evicting Tembani at around 06:00 am on Tuesday before the lapse of a minimum of 48 hours notice given to the commercial farmer before any execution which should have been around lunch time Wednesday.

The Deputy Sheriff was assisted by Zembe, who brought two trucks, two police officers from Nyazura Police Station and some youths.

Tembani's property was taken for storage at Zembe's residence about 40 kilometres from the farm where he is being evicted.

Tembani took his case to the Windhoek based regional court of the SADC in June, seeking to keep his farm.

Tembani, who became one of Zimbabwe's first black commercial farmers shortly after independence in 1980 first faced eviction in May this year after Agribank sold his farm to recover a loan he had borrowed more than a decade ago to expand his farm.

He asked the Tribunal to allow him to keep his land, saying the bank had reneged on a deal to allow him to sell part of his farm to settle the loan and that the farm was also sold at an unreasonably low price due to inadequate advertisement of the sale.

According to court documents, Tembani defaulted on part of his repayments when interest rates soared in 1997 as Zimbabwe's economic crisis unfolded.

Documents filed with the Tribunal stated that the bank had sold the farm in 2000, without any court hearings, even though Tembani was still living on it.



Deputy Sheriff Dzobo (centre) advises Tembani (right) of the eviction as 'new owner' Zembe looks on



Mr and Mrs Tembani in front of some of their property



Homeless, Mrs Tembani and her two children

Zim torture probed

HARARE-A United Nations expert on torture will next week visit Zimbabwe to “gather first-hand information about torture and ill-treatment in the country”.

The visit comes at a time when several government ministers and State intelligence operatives are facing lawsuits for their role in the abduction and torture of scores of human rights and political activists last year.

Manfred Nowak, the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, will visit Zimbabwe from 28 October to 4 November, the office of the UN High Commissioner for Human Rights said in a statement.

The statement said the visit was at the invitation of the Zimbabwe government, the first time Harare has issued an invitation to an independent UN Human Rights Council expert.

“This mission is a positive sign of the Government of Zimbabwe’s willingness to engage with the UN Human Rights System and permit open and unfettered access to places of detention,” Nowak said in the statement.

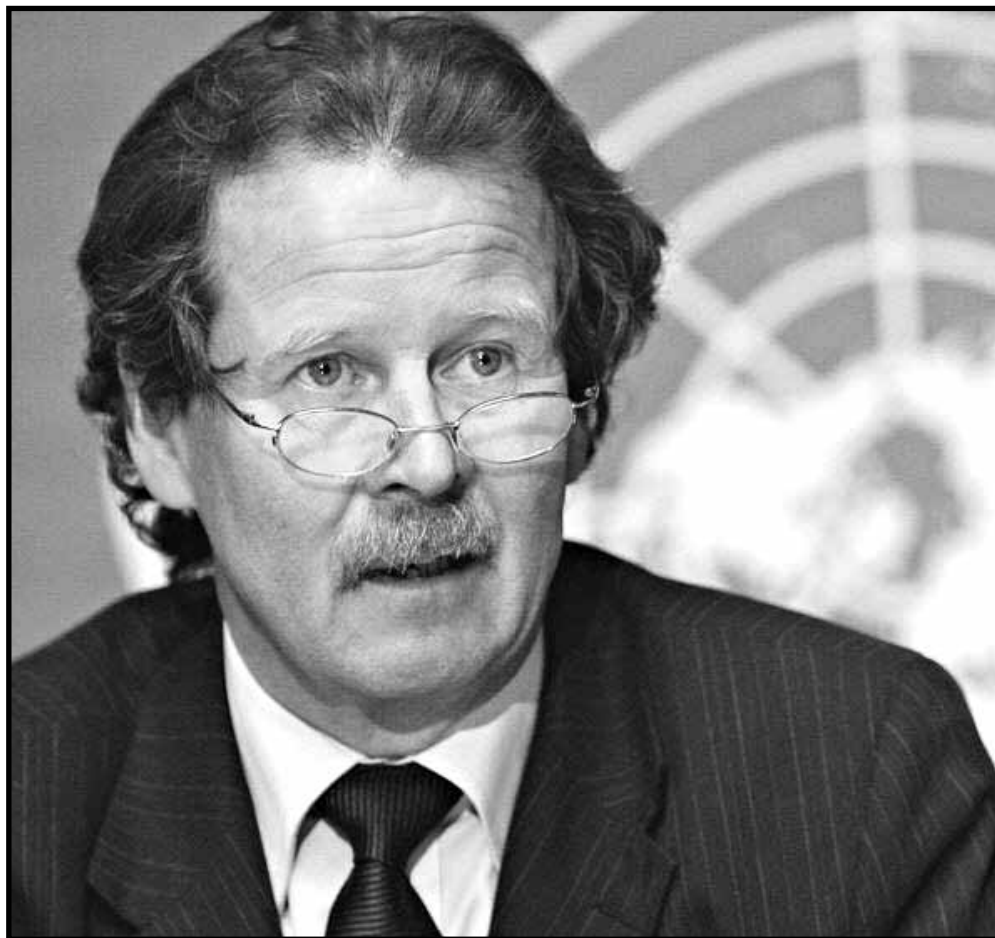
The Human Rights Council is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe. The Council was created by the UN General Assembly on 15 March 2006 with the main purpose of addressing situations of human rights violations and make recommendations on them.

As part of his mission, the independent expert will meet with government officials, national human rights institutions, civil society members and representatives of UN agencies and other international organisations.

“He will also visit places where persons are deprived of their liberty, including prisons and police stations,” the UN said.

Nowak will visit prison facilities which High Court Judge President Rita Makarau once said had ‘crumbled to almost being non-existent’.

“We had a number of deaths in our prisons because health facilities had become almost non-existent. And for us in the justice delivery system, sentencing an accused person became an agonising exercise because you knew you were sentencing a person to death. Even if it was a three-year sentence, it would still seem like a death sentence because of prison conditions,” Justice Makarau told a Zimbabwe Lawyers for Human Rights (ZLHR) workshop in July.



Zim bound: Manfred Nowak, UN Special Rapporteur on Torture

Prison officials said at the same workshop that they had in the last three years recorded the “worst and highest death rate in the history” of the country while the “entire prison population is walking half naked”.

Zimbabwe’s 72 jails have a total holding capacity of 17 000, but are carrying about 13,000 prisoners, according to prison officials.

“I see this visit as a real opportunity to engage in dialogue with both the State and civil society, as Zimbabwe builds its democratic institutions,” said Nowak.

Based on the information obtained during the visit, Nowak will present a report containing his conclusions and recommendations to the Human Rights Council.

Nowak, appointed Special Rapporteur in December 2004 by the UN Commission on Human Rights, is independent from any government and serves in his individual capacity. He has previously served as member of the Working Group on Enforced and Involuntary Disappearances, the UN expert on missing persons in the former Yugoslavia, the UN expert on legal questions on enforced disappearances, and as a judge at the Human Rights Chamber

for Bosnia and Herzegovina. Nowak is Professor of Constitutional Law and Human Rights at the University of Vienna, and Director of the Ludwig Boltzmann Institute of Human Rights.

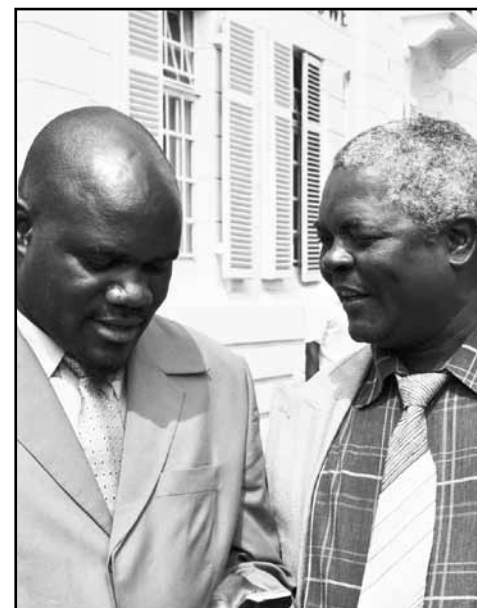
The UN expert’s visit comes at a time when more than 16 human rights and political activists are demanding US\$1.2 million each from co-Ministers of Home Affairs, Kembo Mohadi and Giles Mutsekwa, Justice Minister Patrick Chinamasa and former State Security Minister Didymus Mutasa, police chief Augustine Chihuri, prisons commissioner Paradzai Zimondi and Central Intelligence Organisation director-general Happyton Bonyongwe for their alleged abduction, unlawful detention and deprivation of liberty last year.

The activists are suing also Superintendent Magwenzi, Attorney General Johannes Tomana and Brigadier General Asher Tapfumaneyi. Tomana is targeted for his failure to order the arrest and prosecution of the alleged kidnappers.

The 16 allege that they were subjected to different forms of torture during their illegal detention. The activists include Manuel and Concillia Chinanzvavana, Andrison Manyere, Broderick Takawira and Jestina Mukoko.



Jestina Mukoko



Andrison Manyere (left) and Broderick Takawira



Manuel and Concillia Chinanzvavana

WOZA protests to continue

BULAWAYO-Women of Zimbabwe Arise (WOZA), one of the country’s most active civic groups, has said it will continue with regular street protests to press for speedy democratic reforms despite the continued harassment of the organisation’s members through the courts.

In a statement, WOZA said many of its members, including leaders Jenni Williams and Magadonga Mahlangu are going

through court cases for exercising their right to peaceful protest.

Last week, the Bulawayo Magistrates Court further postponed a court hearing for Mahlangu and Williams to 7 December. Mahlangu and Williams were arrested in October last year for leading demonstrations calling on the government to provide food to starving citizens. The pair, together with hundreds of their members, has

been repeatedly arrested for street protests targeting draconian government policies.

Woza said the continued postponement of Mahlangu and Williams’ case showed that the State did not have evidence against the activists, but was abusing the court system to intimidate and restrict rights campaigners.

“This ongoing demonstration of State harassment and intimidation against the human rights defenders is further proof of how little has

changed for pro-democracy activists in Zimbabwe,” said the organisation, whose brave membership has continued with demonstrations despite constant violent reaction from the police.

Mahlangu, in her personal capacity and WOZA will next month receive this year’s Robert F. Kennedy (RFK) Human Rights Award for her “courageous and selfless struggle to defend human dignity”.