

The LEGAL MONITOR

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COST-FREE

Free at last

HARARE-Tormented human rights lawyer Alec Muchadehama has criticised Attorney General (AG) Johannes Tomana's Office and the police for maliciously prosecuting him on spurious contempt of court charges.

Muchadehama, who was acquitted last Thursday at the close of the State case by Bulawayo regional Magistrate Fadza Mthombeni, accused the AG's Office of acting as an extension of the dreaded Central Intelligence Organisation (CIO) in prosecuting him.

"The prosecution was malicious. The AG and the police have been responsible for what I have gone through. The AG and the police are at the forefront of violating people's rights. I have been hunted down by the police at home, at work and on the streets. (Detective Inspector Henry) Dowa has pursued me using no less than 10 officers. All these things have been a result of the AG plotting on this case," said Muchadehama. "Those two offices (AG's Office and CID Law and Order) as currently constituted are being manned by prosecutors, tormentors and torturers. The AG is operating as an extension of the President's Office," he added.

Muchadehama had been on trial since June for allegedly facilitating the illegal release from Chikurubi Maximum Prison of freelance photo-journalist Andrius Manyere and two Movement for Democratic Change (MDC) officials Gandhi Mudzingwa and Kisimusi Dhlamini, who had been granted bail by High Court Judge Justice Charles Hungwe.

In acquitting Muchadehama - and his co-accused Constance Gambara, the Clerk of High Court Judge Justice Chinembiri Bhunu, ironically on International Human Rights Day, - Magistrate Mthombeni said the State had failed to establish a *prima facie* case against the duo.

Magistrate Mthombeni said no reasonable court could convict Muchadehama and Gambara because the State's evidence which was led in court did not spell out an offence.

Magistrate Mthombeni said there were loopholes in the State's case as the prosecution did not file its appeal against Justice Hungwe's order granting bail to Manyere, Mudzingwa and Dhlamini.

Muchadehama, whose trial was marred by drama as proceedings had to be adjourned, postponed and restarted, vowed that he will not tire in providing legal representation to human rights defenders.

"In terms of human rights people must use all means necessary to defend human rights. I will have to try hard in terms of advocating for the respect of people's rights. The best way to repay is to expose them (perpetrators) and hold them accountable. People must never think that they can violate people's rights and get away with it," said Muchadehama.

Gambara, who was arrested and detained at a time when she was breastfeeding, said she felt relieved after the acquittal.

"I am happy. That is part of life," said Gambara.

Commenting on the duo's acquittal ZLHR said it feels vindicated in its belief that human rights lawyers are being unlawfully, arbitrarily and vindictively persecuted by State agents merely for carrying out their professional duties.

"The acquittal of Muchadehama proves that the police continue to effect arbitrary arrests without first carrying out investigations and establishing a reasonable suspicion that a crime has been committed," ZLHR said in a statement. *See pictures on Page 3*

'We are not there yet'

HARARE-Human rights abuses and attacks on lawyers have remained high ten months after the formation of the transitional government and this has affected the fight for democracy, Zimbabwe Lawyers for Human Rights (ZLHR) chairperson, Andrew Makoni, has said.

Makoni was speaking on Friday at the presentation of Human Rights Lawyer of the Year Award ceremony graced by Prime Minister Morgan Tsvangirai, ambassadors, lawyers and human rights defenders.

The award was co-scooped by ZLHR members Charles Kwaramba and Trust Maanda.

"What is disheartening is that the challenges faced by our profession continue despite the formation of the transitional government. Reversing the culture of gross human rights violations and the associated impunity cannot happen overnight. We acknowledge that the highly militarised nature of our institutions of justice delivery and the continued reliance on unjustifiable legislation and administrative practices which preserve the status quo exposes those seeking reforms to grave risks," said Makoni.

Prime Minister Tsvangirai, who was the guest speaker at the ceremony, said the human rights situation in Zimbabwe has been improving since February but the nation was 'struggling to find its way out of the political conflict of the past and into a new, peaceful and prosperous future'.

"If we think back to last December, we can all see we've made some progress. Though our journey is slow, and we still have to reach many of our goals, we are definitely moving forward," said Tsvangirai. "This can be said now about our



Co-winner Charles Kwaramba displays the winner's medal as Prime Minister Tsvangirai applauds

human rights movement in Zimbabwe - we know we're not where we want to be, but we're also not where we were yesterday."

He gave an example of MDC employee Pasco Gweze, who is facing charges of theft of firearms and is being denied access to medical treatment for the wounds he sustained during torture by alleged State agents, in defiance of a court order.

He added: "Human rights is not a form of moral colonisation - a subversive means of implanting Western values within our African culture to solicit benefits from the west. I view human rights as something that has existed in Zimbabwe, either active or dormant, since human beings first occupied this beautiful land.

"And the current struggle has similarities to the previous one in which our liberation heroes went to war specifically to attain recognition of human rights for all Zimbabweans - to reject and defeat the idea that such rights should exist only for a privileged few."

Makoni said the obstacles would not deter ZLHR from fighting for human rights in Zimbabwe.

"We are committed Zimbabweans and professionals contributing to the rebuilding of our society. All that we ask is that the government conclusively addresses the safety concerns of all lawyers and other human rights defenders who continue to be at risk, impacting negatively on their ability to assist in moving the country forward," said Makoni.

He said his organisation would next year compile and publish comprehensive needs assessments of the Office of the Attorney General, the Zimbabwe Prisons Service, the Zimbabwe Republic Police, and the Judiciary - at superior court level as well as magistrate court level.

He added: "The organisation will make available the training manuals which have been prepared to assist State actors in building their understanding, capacity and compliance with human rights standards and practices.

"We will publish comprehensive audits of the national legislative framework and its compliance with regional and international norms, together with recommendations for the way forward on legislative reform. This includes ratification and domestication of key human rights instruments, and over 30 domestic Bills which have been prepared as a contribution to our vision of a new society."



Prime Minister Tsvangirai hands over the medal to co-winner Trust Maanda

He said that Zimbabweans deserve free and fair elections in the shortest time possible. "Their vote and their will must be respected and enforced. This cannot and will not be achieved without a change of political culture; nor will it be achieved without comprehensive institutional reform (involving the law enforcement agencies, the security sector, the AG, the Judiciary, the Zimbabwe Electoral Commission and the public media).

As long as this cannot be achieved, the attainment of social and economic justice will remain a mirage. I end by urging us, one and all, to keep these facts at the forefront of our minds and actions as we prepare to tackle another challenging year ahead."

Mukoko shines in Germany

HARARE-Zimbabwe's leading human rights activist Jestina Mukoko has been awarded the 2009 Human Rights Award by a German city in recognition of her efforts in fighting for human rights in the country.

Mukoko received the award last week on the International Human Rights Day in Germany's city of Weimar.

"The award acknowledges Mukoko's steadfast engagement in fighting human rights abuses in Zimbabwe as director of the Zimbabwe Peace Project (ZPP). Since 2000, ZPP has uncovered and documented numerous human rights violations committed by the Zimbabwean authorities. Mukoko's recent unlawful abduction and subsequent detention has been widely noted in Germany and vividly condemned by the German government," the German Embassy in Harare said in a statement last week.

In the history of the Federal Republic of Germany, Weimar is important because after the First World War in 1918, lawmakers gathered in that State to draft the constitution of the first German republic.

The award for Mukoko, a former newscaster at the State-owned Zimbabwe Broadcasting Corporation, wraps-up a year in which she had mixed fortunes. In September, the Supreme Court cleared her of charges of plotting to topple President Robert Mugabe. She had challenged the way State agents had handled her case. On 3 December last year, State agents under the cover of darkness abducted her from her Norton home and she went missing for three weeks. During that three-week period she was held in secret locations where she was tortured in an attempt to force her to confirm that she had plotted to topple President Mugabe.



Human rights activist Jestina Mukoko

Mukoko subsequently approached the Supreme Court seeking a permanent stay of her prosecution, which was granted by the Full Bench led by Chief Justice Godfrey Chidyausiku on 28 September. The Supreme Court ruling no doubt brought to a partial end her ordeal when her freedom was temporarily taken away by the state without any involvement of the courts on allegations of

terrorism. Cases of human rights abuses remain in Zimbabwe and she continues to fight against that.

"I have a passion for human rights and I would want to do what I feel is good for me and the country. I just don't understand why anyone would charge me with terrorism. I hope to continue with my human rights work as I have

done in the past," said Mukoko as she left the court on 28 September.

In the judgment Justice Chidyausiku noted that the court had unanimously found that the State through its agents had violated Mukoko's rights to the extent that a permanent stay of proceedings against her in court was necessary.

PETITION FOR THE IMMEDIATE AND UNCONDITIONAL PROTECTION OF ALL MEMBERS OF THE LEGAL PROFESSION BY ALL THREE ARMS OF GOVERNMENT

We, the members of Zimbabwe Lawyers for Human Rights (ZLHR), being deeply committed to fostering a culture of human rights and respect for the Rule of Law in Zimbabwe and throughout the African continent, remain greatly apprehensive of the continued constricting of the operating space for lawyers carrying out their professional duties.

Lawyers in private and public practice serve as Human Rights Defenders (HRDs), in that they are the critical and last line of defence in protecting and ensuring the fundamental rights and freedoms of litigants and those charged with criminal offences. Through the course and scope of their work, lawyers aid citizens to realise their civil, political, social, economic and cultural rights. They are also a vital cog in the wheel of justice delivery, access to justice, and the enhancement of public confidence in the institutions which are constitutionally obligated to protect and promote human rights.

Despite these important roles, members of the legal profession are persistently under attack – most often by state actors or those acting with the knowledge and/or acquiescence of the state. Regrettably, this state of affairs continues unabated, negatively impacting on the fundamental right of an accused 'to be represented by a lawyer of one's choice', and other rights enunciated in the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the United Nations Basic Principles on the Role of Lawyers, and the African Union Guidelines on the Right to Fair Trial and Legal Assistance in Africa.

This pivotal role has been continually undermined over the years with the following experiences repeatedly taking centre stage:

- Lawyers in private practice have been victimised and harassed after being identified with the causes of their clients. They have, during the last year (as in previous years), frequently been arbitrarily arrested, detained and maliciously prosecuted on allegations of "obstructing or defeating the course of justice". No such prosecution has resulted in a conviction, reinforcing the perception that lawyers are being persecuted rather than legitimately prosecuted.

- Not only has this negatively impacted their own rights, but it has also adversely affected the fair trial rights of their clients, including access to legal representatives of their choice on demand.

- Denial of access to clients continues to be the norm, as do verbal and physical attacks on lawyers at police stations, in their practices, through the state-controlled media, and in the courtroom.

- Human rights lawyers often endure other physical and psychological attacks such as assaults, death threats, stalking and attempted abductions.

- Lawyers in the public sector and judicial support staff who have attempted to exhibit independence and professionalism in the execution of their duties have also been harassed – both by the police and their own superiors in the Office of the Attorney General. They are increasingly being arbitrarily charged with criminal offences such as 'committing criminal abuse of duty as a public officer', which has had a chilling effect on their ability to execute their professional duties without fear or favour.

- State actors, working in collaboration with non-state actors, undermine and denigrate the efforts of lawyers, and habitually defy court orders, especially those which are intended to promote and protect human rights. This not only tears at the very fabric of the Rule of Law, but also makes a mockery of the principle of separation of powers and impairs the integrity of the justice delivery system, and particularly the independence of and respect for the Judiciary.

- Law enforcement and intelligence agents, and judicial officers continue to deny lawyers prompt and unrestricted access to courts of law and fail to efficiently determine and finalise pending cases, particularly Urgent Chamber Applications relating to ongoing violations against HRDs. This has the effect of placing affected individuals at further risk of disappearances, torture and other cruel, inhuman and degrading treatment or punishment.

Cognisant of the urgent need, therefore, to take measures to advance the independence of the legal profession and to ensure the immediate cessation of systematic targeting of human rights lawyers during the course of their duties, we the members of ZLHR call upon the following stakeholders responsible for the proper administration of justice to take the following measures:

The Executive

- Uphold the Rule of Law and promote and protect human rights.
- Observe and respect all court orders.
- Contribute to the fight against impunity by taking stern and uncompromising action against those institutions and individuals who defy court orders.
- Promote and ensure the constitutional guarantee of an independent judiciary.
- Recognize and respect the principle of separation of powers.
- Guarantee freedom from interference in the work of lawyers in the public and the private sector.

The Judiciary

- Urgently and comprehensively amend the Rules of Procedure, in full consultation with stakeholders including members of the legal profession, to ensure:
 - unrestricted and unhindered access to all courts of Zimbabwe by officers of the court pursuing their lawful and professional duties;
 - the expeditious and transparent handling and adjudication of all Urgent Chamber Applications and all pending court cases without fear or favour; and
 - speedy determination of all contempt of court proceedings in cases of defiance of court orders by members of the executive, and any other transgressing litigants
- Ensure that any state institution and/or agent who contravenes the Declarator on the rights

of lawyers whilst executing their duties, which was delivered by the Supreme Court of Zimbabwe on 5 August 2009, and made available on 30 October 2009, is pursued for contempt of court in order to protect the integrity of the judiciary and to ensure that the judiciary proactively contributes to the protection of the rights and independence of the legal profession in Zimbabwe.

The Legislature

- Take immediate steps to deal proactively with offensive legislative provisions and malicious administrative practices implemented by the police and the Office of the Attorney General to undermine the work of the legal profession and endanger the integrity, independence and safety of lawyers in public and private practice. These steps include, but are not limited to:
 - establishing an independent parliamentary committee to expeditiously, transparently and publicly investigate attacks on the legal profession and the continued use (and abuse) of provisions of the Criminal Law (Codification and Reform) Act and other legislation by the Zimbabwe Republic Police, other state organs, and the Office of the Attorney General, including provisions relating to "obstruction or defeating the course of justice" and "committing criminal abuse of office"
 - expeditiously amending or repealing legislative provisions which are being used to persecute members of the legal profession and prevent them from executing their professional duties
- Guarantee the independence and security of the legal profession in any new Constitution and corresponding legislation.

NB. The petition was presented to Prime Minister Morgan Tsvangirai, the Supreme Court, the Speaker of Parliament Hon Lovemore Moyo and Senate President Hon Edna Madzongwe on 10 December 2009 during a march organised by ZLHR to mark International Human Rights Day.

Dowa at it again

HARARE-A senior police officer recalled from a United Nations peacekeeping mission because of alleged personal involvement in torture has threatened unspecified action against a lawyer who reminded him of the incident.

Henry Sostein Dowa, a police chief inspector, threatened to take up the matter outside the court room when lawyer, and Zimbabwe Lawyers for Human Rights (ZLHR) member Denford Halimani, asked him about the recall during cross examination in court on Thursday.

Halimani, representing Constance Gambara, a Clerk of Court accused of contempt of court, was forced to tell the court that he felt unsafe because of the fear induced by Inspector Dowa during the court proceedings.

Gambara, the Clerk of High Court Judge, Justice Chinembiri Bhunu, being tried together with prominent human rights lawyer, Alec Muchadehama was facing charges of contempt of court for causing the unlawful release from custody of freelance photo-journalist Andriison Manyere and two Movement for Democratic Change (MDC) officials Kisimusi Dhlamini and Gandhi Mudzingwa. Dowa, most known for leading political arrests, is the investigating officer in the case.

The UN dispatched Dowa back home from Kosovo in 2003 after information surfaced that he was responsible for torturing opponents of President Robert Mugabe.

Halimani made the link to Dowa's UN recall to emphasise Gambara's defence that Dowa used threats of torture to force her to admit to conniving with Muchadehama to unlawfully release the three. The three were abducted and held *incommunicado* by State security agents in 2008 on allegations of plotting to topple President Mugabe's administration.

Dowa, who was in the witness stand, threatened Halimani for questioning him about his alleged involvement in torturing human rights defenders, as well as asking about the UN recall. "I would like him (Halimani) to talk to me about it (torture allegations) later," Dowa said menacingly.

Halimani protested to Magistrate Mthombeni, who asked him to continue with his professional duties and gave assurances that the court would protect him.

Mthombeni took over the case from Magistrate Chiwoniso Mutongi, who resigned in November saying she was unsafe because the Chief Magistrate's office had failed to protect her from prosecutors abusing State power.

In her defence outline, Gambara narrated how Dowa threatened her with torture during investigations, forcing her to admit to conniving with Muchadehama to unlawfully release the three. This resulted in Halimani making the UN recall link to underscore the fact that Dowa's

past use of crude methods to force cooperation from victims of political arrests was no idle threat.

Gambara stated that Dowa harshly and bluntly told her in Shona that: "*Ukaramba mhosva tinokuisa pasi pane vakomana vakakubatabata. (We will send you to the boys underground to deal with you if you don't admit to the charge).*"

Gambara stated that she did not defy Dowa because she had previously read from the electronic and print media that the policeman was a well known human rights violator. She said she did not want to take chances with her life and was forced to admit to the charge because of Dowa's reputation for abusing the rights of accused persons under his custody.

Reacting to Dowa's actions, ZLHR said it was deeply concerned by the threat on Halimani. The organisation noted that failure to discipline Dowa, who has a record of such threats, showed that the police officer enjoyed protection from the State.

In July, Dowa threatened ZLHR member, Charles Kwaramba, for criticising him for his role in the persecution of human rights activists and Movement for Democratic Change (MDC) members. The incident was reported to the Law Society of Zimbabwe.

"ZLHR is greatly worried about the rising pattern of threats, harassment and attacks against lawyers. The threat on Halimani is deliberately meant to



Under threat, Halimani

frighten him from discharging his duties as a human rights lawyer and must be condemned. Lawyers must be protected when carrying out their professional duties, and the police have an obligation to allow them to do so unhindered and not to use unlawful actions such as threats to impede them," ZLHR said in a statement.

Acquittal in pictures



Muchadehama leaves court in the company of his lawyer Beatrice Mtetwa



A free Muchadehama chats to colleagues Halimani and Charles Kwaramba



Gambara leaves court accompanied by Halimani

UN invites ire over Marange diamonds

UNITED NATIONS-Countries unhappy with the United Nations General Assembly's failure to acknowledge illicit mining and trading of Marange diamonds say the diamond industry should redouble efforts to curb trade in illegally mined stones.

The General Assembly resolution reaffirmed strong support for the Kimberly Process Certification Scheme (KP), which is aimed at ensuring diamonds on the market are "conflict free". The KP is a voluntary organisation of major diamond producing and trading countries syndicated to stem the flow of diamonds mined in conflict zones, or whose proceeds are used to fund war or conflict. The KP system controls 98 percent of the diamond industry.

The European Union, Switzerland, Japan, Canada and United States objected strongly to the UN General Assembly's decision last week to ignore the abuse of Marange diamonds in a resolution text that did not mention Zimbabwe. This was despite the fact that a KP review team that visited the country in July found evidence of widespread use of violence and illegal trade by the military.

Local and international rights groups allege that senior government and military officials are pocketing millions of dollars in proceeds from the smuggling of Marange diamonds. Delegates who raised regret over the General Assembly's failure to make reference to Zimbabwe said Harare had failed to comply with minimum KP requirements, including the demilitarisation of Marange diamond fields.

"Switzerland's delegate was disappointed at the thrust of the resolution and feared that omitting a reference to Zimbabwe would damage the image

of the Kimberley Process, making its future work difficult. Also, the role of the private sector and civil society had not been reflected adequately. Although her Government had joined consensus, it had done so with the uneasy feeling that the Assembly had not lived up to its responsibilities.

"The United States representative expressed serious concerns about Zimbabwe's non-compliance with the minimum requirements of the Kimberly Process, particularly related to smuggling and grave violence in and around the Marange diamond fields. The United States also looked to Zimbabwe's neighbours, international trading centres, and the diamond industry to redouble their efforts against illicit diamonds from the Marange region," according to a record of the General Assembly proceedings.

Zimbabwe's ambassador to the UN, Boniface Chidyausiku, defended the country's record. He said the issue of Marange diamonds had become global because of the vast networks involved in the smuggling of stones.

"The representative of Zimbabwe, speaking in exercise of the right of reply, commented on what he called a 'charade' by countries deeming themselves to be guarantors of the Process, who had referred to Zimbabwe's supposed non-compliance with the mechanism. Zimbabwe was a victim. Diamonds were being smuggled out of the country, finding their way into markets in Israel, Canada, Antwerp, and the United States. Thus, when talking of compliance, let it be discussed from a global perspective and not simply as Zimbabwe's problem," according to a record of the discussions.

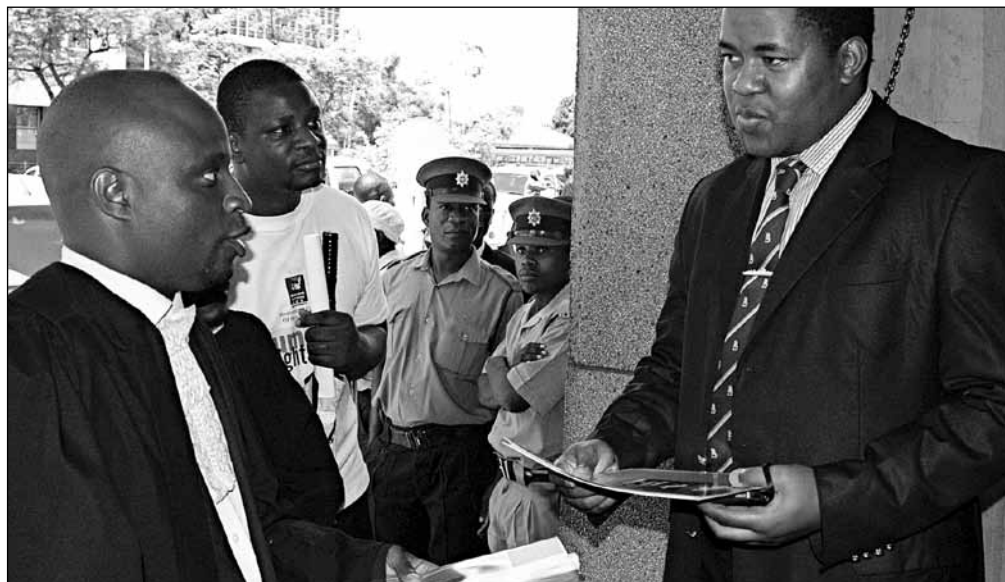


Sharon Hofisi and Austin Muzivi who led the prosecution of Muchadehama

Lawyers protest clampdown

About 100 members of Zimbabwe Lawyers for Human Rights (ZLHR) last Thursday took to the streets of Harare around lunch-time to mark International Human Rights Day and demanding an end to human rights abuses in Zimbabwe.

The lawyers marched on to Parliament and the Supreme Court where they handed over copies of a petition to the Speaker of Parliament Hon Lovemore Moyo, Senate President Edna Madzongwe and Chief Justice Godfrey Chidyausiku. The lawyers also handed over a copy of their petition to Prime Minister Morgan Tsvangirai.



Xolani Zita receives the petition on behalf of Speaker of Parliament Hon Lovemore Moyo



Deputy Justice Minister Hon Jessie Majome accepts the ZLHR petition on behalf of Prime Minister Morgan Tsvangirai



Lawyers brave Thursday's sweltering heat as they take to the streets of Harare



Beatrice Metwa needs answers



Human rights defender McDonald Lewanika sends a clear message to Florence Ziyambi, the Director of Public Prosecutions



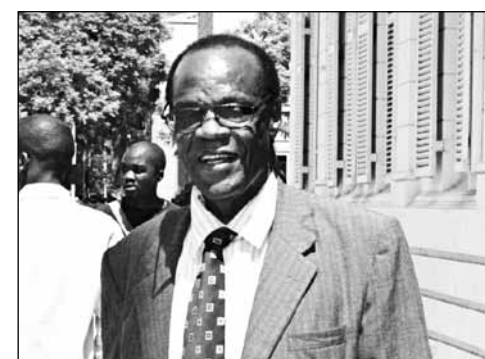
ZLHR board member Selby Hwacha leads protestors



Prime Minister Morgan Tsvangirai applauds the winners of the Human Rights Lawyer of the Year 2009 Award in Harare last Friday



Deputy Justice Minister Jessie Majome and ZLHR member covers herself from the heat during the march



Trying to come to terms with a new Zimbabwe, Registrar-General, Tobaiva Mudede, meets rights lawyers during their protest outside the Supreme Court



Musician Victor Kunonga entertains guests at the ZLHR annual human rights lecture and awards presentation



ZimRights members mark the International Human Rights Day on Thursday demanding an end to all human rights abuses and equal participation of women in all sectors that affect citizens of Zimbabwe