

The LEGAL MONITOR

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

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



30 August 2010

Edition 60

COST-FREE

Tortured woman demands millions from police ...as Ministers face spotlight today

HARARE-A woman who says she lost a foetus and will be unable to give birth again following police torture is demanding over \$3.5 million from Police Commissioner-General Augustine Chihuri, co-Home Affairs ministers and the policeman she holds responsible for her troubles.

Shamiso Nziramasanga of Mt Hampden's case comes as the High Court will today commence the case of another police torture suit that will see four cabinet ministers answering allegations of abduction and forced disappearance of Mapfumo Garutsa in 2008.

Rights groups say the shocking details of torture and impunity accompanying such cases provide a compelling case for the coalition government to undertake security sector reforms as dictated by the Inter-Party Political Agreement.

Nziramasanga, of Katosvora Farm, claims in court papers that a policeman only identified as Constable Bako based at Mt Hampden Police Station repeatedly assaulted her, including on the womb, to induce her to confess to a theft crime last year.

She says she was four months' pregnant when Bako assaulted her and forced her to admit to stealing metal poles. The policeman carried out the beating despite her warning that this could affect her pregnancy. Nziramasanga says a doctor has stated that she cannot bear children anymore as a result of Bako's assault. Bako is mentioned as the third defendant after Chihuri and the co-Home Affairs ministers Kembo Mohadi and Theresa Makone. She is also suing Shonhiwa Mungate, who operates Katosvora Farm.

Nziramasanga's ordeal began on 18 July last year when she reported to Mt Hampden police station after being told that police had visited her house looking for her. She claims she found Bako on duty. He quizzed her on the alleged offence before assaulting her and ordering her to report back to him the following day, when he then threatened her with further assault if she sought medical treatment.

"Plaintiff (Nziramasanga) initially complied out of fear but was in such pain that a few days later, she went to a clinic from where she was referred to Parirenyatwa Hospital where she eventually received treatment," read her



Mapfumo Garutsa is claiming \$190 000 as damages for abduction and torture after State security agents kidnapped him from his Norton home in 2008. Judge President Justice George Chiweshe presides over the case today

court papers. Zimbabwe Lawyers for Human Rights is representing Nziramasanga.

The torture, however, haunted her again in November of the same year. A medical report by a Harare medical doctor who attended to her pregnancy confirms that the beatings affected her pregnancy.

A doctor T L Magwali of Mbuya Nehanda Maternity Hospital confirmed attending to Nziramasanga and noted in his subsequent report: "Operation (Laparotomy) done for a ruptured uterus. Operation to remove the uterus done (hysterectomy). Date of operation was 14/11/2009."

Dr Magwali states in his affidavit to the court: "This is to certify that the above mentioned was admitted to Mbuya Nehanda Maternity Hospital on 14/11/2009. She was pregnant and her pregnancy was 31 weeks by dates at that time. Physical examination revealed signs of a ruptured uterus. She was not in labour at the time of admission. She underwent an operation on the evening at which the uterus was found to be ruptured and the baby dead. It was not possible to repair the uterus so an operation to remove the uterus was done."

Nziramasanga is demanding \$2 million for pain and suffering, \$1 million for injuries suffered as a result of the assault, \$500 000 for unlawful arrest and detention, \$5 000 for property and cash that she says was taken by Bako and \$65 for medical expenses.

Mtetwa elected to SADC lawyers' body

LUBUMBASHI- Regional lawyers have elected Zimbabwe Lawyers for Human Rights (ZLHR) board member Beatrice Mtetwa as the Vice-President of the SADC Lawyers Association (SADC LA).

Mtetwa is a prominent lawyer who has represented ordinary Zimbabweans, journalists and rights and political activists as part of her work as a human rights defender.

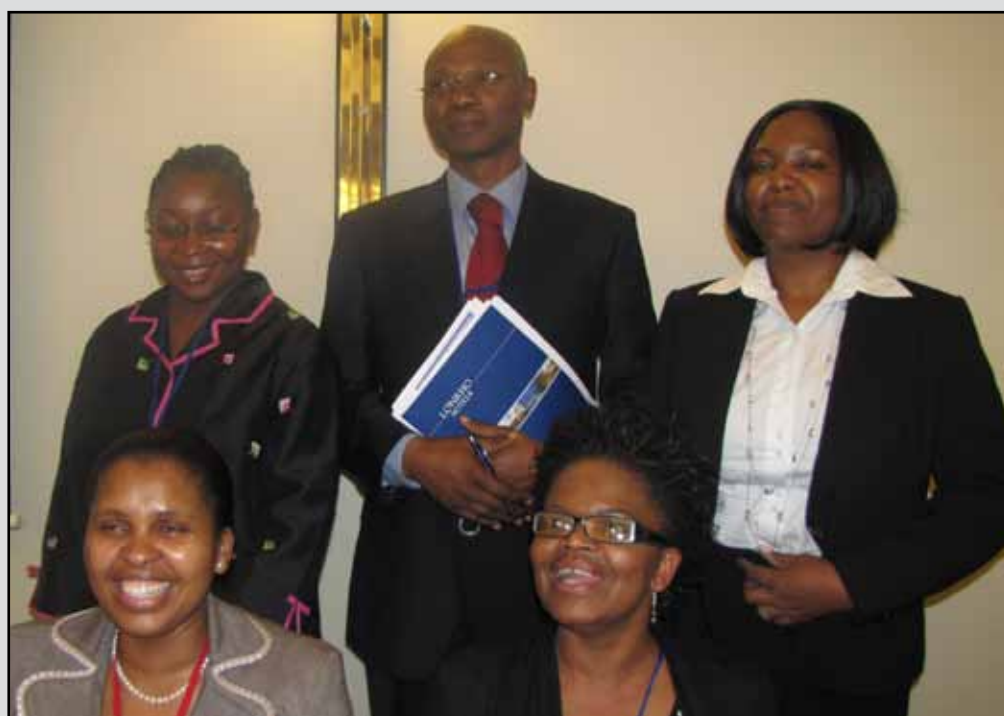
She was elected to her regional post during SADC LA's 10th General Assembly held last week in Lubumbashi, Democratic Republic of Congo (DRC).

She takes over from South African attorney, Thoba Poyo-Dlwati, who has been elected President of the SADC LA, replacing Malawi's Mabvuto Hara.

Yvonne Chilume of Botswana, Kondwa Sakala-Chibiya of Zambia and Patrick Mulowayi of the DRC were elected to the SADC LA Executive Council.

The Law Society of South Africa welcomed the election of women into the Executive Council of the SADC LA as a positive development for the profession.

"We are particularly pleased to note that four of the five members of the Executive of the SADC LA are women. This is a notable achievement for the organisation and sends a



Seated from left: Thoba Poyo Dlwati (Incoming President), Beatrice Mtetwa (Vice President). Standing from left: Yvonne Chilume (Treasurer) Patrick Mulowayi (Executive Council Member) and Kondwa Sakala Chibiya (Executive Council Member)

strong signal to legal practitioners in the SADC region of the increasingly prominent role assumed by women lawyers in leadership positions in the

legal profession," read part of a statement issued by Law Society of South Africa co-chairpersons, Max Boqwana and Peter Horn.

Multiple award-winning Mtetwa is a founding and current board member of ZLHR and has served as President of the Law Society of Zimbabwe.

Recently, the American Bar Association (ABA) awarded Mtetwa, a senior partner at Harare law firm Mtetwa & Nyambirai Legal Practitioners with its International Human Rights Award. The award recognises individuals who would have made extraordinary contributions to the cause of human rights, the rule of law and the promotion of access to justice.

The SADC LA is mainly tasked with securing for the citizens of the region independent and effective juridical services and cooperation between member organisations and lawyers from the region.

The harmonisation of the juridical systems, facilitation of juridical and legal information flows, improvement to juridical education standards and promotion of experience, are some of the functions of the regional lawyers body.

The organisation also seeks to secure exchange programmes for lawyers and law students of the region as well as facilitate the resolution of conflicts among the member countries, organisations and citizens through arbitration and alternative means.



25 August 2010
Press Statement

Police blatantly violate the right to shelter in raid and burning of Borrowdale settlement

Zimbabwe Lawyers for Human Rights (ZLHR), is greatly shocked at the unbecoming conduct of identified members of the Zimbabwe Republic Police (ZRP) who at about 00:30 hours on 25 August 2010 raided and destroyed an informal settlement at Borrowdale Race Course in Harare.

At least thirty police officers, easily identifiable due to their police uniforms believed to be stationed at Harare Central Police Station and the nearby Highlands Police Station proceeded to order the settlers to remove their possessions from the shacks and go and built homes in their rural areas. After 10 minutes elapsed, the ZRP members, some of whom were armed, and also accompanied by police dogs, ordered all the settlers to embark into the police vehicle and proceeded to torch at least a hundred shacks. This was done despite the fact that some of the settlers had not managed to remove their possessions. The settlers were then detained in the cold weather until the early hours of the morning when they were taken to Harare Central Police Station.

Most of the settlers whose shacks were torched down are victims of Operation Murambatsvina and some of them are employees of the Borrowdale Race Course. They moved to the settlement after being rendered homeless when their houses were destroyed under the widely condemned clean-up campaign while some of them started to reside at this settlement in 2000. From time to time the police were said to have raided the said settlement, arrested the settlers on the pretext of hunting down thieves and eventually releasing them without any charges being leveled against them.

ZLHR lawyers attended to Harare Central Police Station to assist the detained settlers who were not easily locatable due to the fact that the police have not made any entries in their detention book. ZLHR lawyers, managed to locate the **55 settlers** who include 5 minor children at 13:30 hours. Lawyers have since been denied access to the settlers by the Criminal Investigation Department section represented by one **Superintendent Muchengwa** who advised lawyers that the clients will be allowed legal representation once they have been formally charged.

ZLHR condemns the unlawful and unprocedural actions taken by the police. Evicting and burning down the settlers' houses without adequate notice and without providing alternative accommodation and the arbitrary deprivation of property that ensued following the illegal torching of the shacks is a violation of their right to shelter and to family life, which are guaranteed under the African Charter on Human and Peoples' Rights, to which Zimbabwe is a voluntary State Party.

It is also disheartening that the police chose to carry out such a vindictive action against the settlers during this cold spell when they don't have any powers to evict people. Only the messenger of court or Deputy Sheriff can carry out evictions on the strength of a valid court order which does not exist in the case at hand. Further, it is also sad to note that these arbitrary illegal actions were carried out after the Mayor of Harare had written a letter to residents assuring them that all informal settlers will not be evicted unless alternative accommodation is secured.

No lessons have been learned from the failures and illegalities of Operation *Murambatsvina*, and

the state – through the City Council and the Ministries concerned are urged to bring to an end such illegalities and attend to issues of lack of adequate housing in a lawful and orderly manner.

ZLHR, urges the police to carry out investigations into this illegal conduct that is tantamount to arson as defined in the Criminal Law (Codification and Reform) Act and bring those accountable for these inhumane acts to justice.

ZLHR, further wishes to remind the police to be mindful of the right of all accused persons to legal representation of their choice, and the right to be informed of any criminal charges upon arrest.

ZLHR calls upon all state actors to desist from violating the economic and social rights of innocent citizens but to work towards the progressive realization of these rights as in accordance with Zimbabwe's human rights obligations.



25 August 2010
Condolence Message

Hon. Gibson Sibanda: A symbol of Humanity

The Board, Members and Staff of Zimbabwe Lawyers for Human Rights (ZLHR) are deeply saddened by the untimely death of Gibson Jama Sibanda, a veteran of Zimbabwe's liberation struggle, committed trade unionist, and the founding Vice President of the Movement for Democratic Change (MDC).

We mourn his loss and convey our deepest condolences to his children, family, friends and colleagues.

Gibson Sibanda was a long-time ally of Zimbabwe's national democratic movement. It is to his lasting credit that he worked consistently for liberation and national independence, democracy, social justice and, lately,

national healing and reconciliation, despite the toll on his personal freedom and security.

Those who knew Hon. Sibanda could not fail to have been impressed by his deep and abiding commitment to a free and democratic society and the rights of working people in particular. He pursued this cause with a singular determination and dedication which inspired those around him and which will secure his unique place in the history of the trade union and human rights movement in Zimbabwe.

As a tireless campaigner for human and workers' rights in Zimbabwe, it was inevitable that he would play a leading role in the formation and efforts of the MDC.

His proficiency in different languages and his openness to the thoughts and ideas of others were attributes that he used to great effect. In particular, his achievements regarding the improvement of workers' welfare and freedoms, and the development of the country will long be remembered. Hon. Sibanda will also be remembered for his warmth and friendship. Indeed he was a symbol of humility.

His legacy of patriotism and service to the people of Zimbabwe will continue to inspire us and others who are committed to building an independent, democratic, peaceful and prosperous Zimbabwe.

To the Sibanda family, the workers of Zimbabwe and his long-standing



The late Gibson Sibanda

colleagues in the MDC parties, ZLHR is with you during this difficult time.

May His Dear Soul Rest in Eternal Peace

Zuma’s progress report

SADC appointed facilitator to Zimbabwe’s political impasse Jacob Zuma’s progress report as presented to the SADC Troika of the Organ on

Politics, Defence and Security Cooperation on 14 August in Namibia.

In the report Zuma sets out time frames agreed to by coalition government partners to resolve major Inter-Party Political Agreement

outstanding issues. Below is a table showing the issues and time frames set for their resolution.

Issue	Responsible Authority	Time Frame
Submission and adoption of the relevant Act in Parliament and to establish immediately the Anti-Corruption Commission	The Minister of Justice and Legal Affairs Patrick Chinamasa	Immediate
Start processes for the establishment of the National Economic Council	The Minister of Economic Planning and Investment Elton Mangoma	Within a month
Start processes for the establishment of an inclusive and balanced Land Audit Commission	The Minister of Lands and Rural Resettlement Hebert Murerwa	Within a month
Finalise the establishment of the Land Audit Commission, working together with the Cabinet Committee on Resettlement and Development	The Minister of Lands and Rural Resettlement Herbert Murerwa	Within a month
Definition of a land tenure system that would place emphasis on lease-hold, guaranteeing security of tenure and collateral value of land, without reversing the land reform programme	Principals: President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara	Two months
Implement what is defined as the Sanctions Removal Strategy which relies on the joint actions of the various party leaders, the executive party organs and the lower levels of the three political parties, as well as the Cabinet Re-engagement Committee	Principals: President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara	Immediate
Start processes to get Constitutional Amendment 19 as approved by Parliament to be gazetted and signed	Minister of Justice and Legal Affairs Patrick Chinamasa	Immediate
Pilot the completion of legislation to amend the Electoral Act	Minister of Justice and Legal Affairs Patrick Chinamasa	Immediate
Moratorium on by-election contestations between coalition government partners	Principals: President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara	Indefinite
Regularise the Broadcasting Authority of Zimbabwe Board, appointment of new Zimbabwe Broadcasting Holdings under the authority of the Minister of Media, Information and Publicity, the Parliamentary Standing Rules and Orders Committee and the Principals themselves	Principals: President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara	Within a month
Regularise the right to freedom of association and assembly and the right to freely organise political activities	Commissioner-General of the Zimbabwe Republic Police and the Co-Ministers of Home Affairs Kembo Mohadi and Theresa Makone	Immediate
Appointment of Provincial Governors, whose terms ended on the 31 st of July 2010 working within all the provisions of the GPA and to abide by the country's laws in particular those provisions reflected in Constitution Amendment Number 19.	Principals: President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara	Immediate
Find an uninterrupted path towards free and fair elections and the removal of impediments as and when they arise	Principals: President Robert Mugabe, Prime Minister Morgan Tsvangirai and Deputy Prime Minister Arthur Mutambara	Timeframe tied to the constitution-making exercise, as well as the referendum on that constitution, which should be a joint task of all the parties in the Inclusive Government. This united action will ensure a peaceful election. Under GPA the referendum should have been held in July 2010. However, the constitution-making exercise is already nine months behind schedule.

ROAD AHEAD:

It is clear that substantial progress has been made in Zimbabwe to normalise the social, economic and political situation, albeit with delays that seemed to prolong the process unnecessarily.

If the agreement on the 24 items is implemented on schedule it would lay the basis for the conviction to grow that Zimbabwe can reach her goal of holding free and fair elections, whose results would be acceptable to ail.

The critical issue is to ensure a sustained focus on developments in Zimbabwe towards the elections; the monitoring of the situation and timely interventions to deal with problems as and when they arise.

Leading to the elections, the Inclusive Government should be united in its effort to ensure everything is in place for the elections.

The constitution-making exercise, as well as the referendum on that constitution, should be a joint task of all the parties in the Inclusive Government.

This united action will ensure a peaceful election.

Should a situation arise where one of the state organs seeks to misuse its power in ways that could impact negatively on the effort to bring lasting peace to Zimbabwe, the leaders of Zimbabwe would be expected to use their collective wisdom to resolve such matters to the satisfaction of all.

The guarantors of the peace process, namely SADC and its relevant structures, including the Troika and the Facilitator, should play an active role in taking forward Zimbabwe to her ultimate goal of the formation of a government whose credentials would be beyond question.

Murambatsvina strikes again

HARARE-More than 30 police officers descended on an informal settlement near Borrowdale Race Course in Harare where they burnt down the residents' shelter. Most of the residents lost blankets, clothes, food, cash, identity documents and other accessories. Over 50 residents, five

of them minors, were arrested and detained at Harare Central Police Station.

The Zimbabwe Lawyers for Human Rights (ZLHR) made a quick intervention to fight for their release. ZLHR is taking up the case

for litigation. The demolition of the informal settlement took place despite an undertaking by Harare Mayor Muchadeyi Masunda to rights groups which he told that "no effort will be spared looking for alternative shelter for those affected

before they are removed. Every effort will be made to undertake the exercise as humanely as possible."

Below are images taken by ZLHR of what remains of the settlement.



Homeless... Residents ponder their future after police officers raided and destroyed an informal settlement near Borrowdale Race Course at about 00:30 hours on 25 August



These children find the remains of what used to be their homes useful material for making wire toys



These women are part of residents sleeping in the open



Innocent victims



The largely Christian community used this shelter as their place of worship before the police action



Burnt remains