

The LEGAL MONITOR

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COST-FREE

Elections: 2008 ghost haunts Gokwe

GOKWE – With a general election next year becoming more of a reality, some members of the community here say they are still traumatised by the experiences of the 2008 violent polls.

Participants at a community workshop organised by Zimbabwe Human Rights Association (ZimRights) at Huchu Shopping Centre recently said talk of elections next year had heightened fear in their area.

Gokwe was one of the areas affected by the 2008 election violence that rights groups blamed on soldiers campaigning on behalf of President Robert Mugabe.

A Zimrights bulletin on the workshop, which was attended by over 100 people from surrounding villages, noted that politicians calling for elections next year were out of sync with the public, which is yet to recover from the 2008 poll ordeal.

Both President Robert Mugabe and Prime Minister Morgan Tsvangirai, two rivals now trapped in a coalition they both describe as uncomfortable, have been hyping the possibility of elections next year.

Mugabe told a meeting of his youth supporters last week that elections would be held mid-next year, insisting he will not yield to pressure to postpone the polls.

Villagers here think otherwise, according to ZimRights, a rights group with strong rural community links.

“Participants expressed their appreciation of the organisation’s discussion on torture as this was one of the human rights violations that they had never had a chance to talk about. They added that many people were living in fear of reliving the 2008 violence in the elections that are expected next year,” said ZimRights in its report last week.

The organisation reported that participants at the workshop stated that they were tired of being manipulated by politicians for selfish gains.

“Participants agreed that they are still suffering the trauma of 2008, but the political figures they were fighting for have since disappeared. Some of the participants said they are still suffering from the torture experiences that include beating of the soles, drowning simulations in addition to emotional trauma.”

The country was engulfed in violence in 2008 in the run-up to the disputed June presidential run off. Tsvangirai says at least 200 of his supporters died in the violence.

Tsvangirai, who had won the first round, pulled out of a 27 June 2008 knock out runoff citing violence and intimidation by state agents targeting

his supporters. President Mugabe went on to declare himself winner of the polls but the African Union refused to recognise the election, forcing the negotiation of a coalition government.

The fragile coalition government’s cracks have been widened because of disagreements on how to share power.

Last week, Tsvangirai boycotted the weekly cabinet meeting in protest over what he says are unilateral appointments of senior state officials by Mugabe in contravention of their power sharing agreement.

Earlier in the week, Tsvangirai said his MDC party rejected all senior appointments -- including that of central bank governor, attorney general, six ambassadors and five judges -- made by Mugabe without consulting him.

But President Mugabe says the appointments were made in line with the constitution.

ZCTU’s Chibebe lands historic award

OSLO-Labour leader Wellington Chibebe has been named as the inaugural recipient of the Arthur Svensson International Award introduced by Norway’s workers to honour resilient trade unionists worldwide.

Chibebe, the Zimbabwe Congress of Trade Unions (ZCTU) Secretary General who has been a target of State brutality on multiple occasions for his activism, received the award in Oslo on Monday 11 October.

The award, administered by Industri Energi, Norway’s national trade union with 55,000 members, is intended to acknowledge individuals and organisations that make extraordinary efforts to promote trade union movement values and rights on behalf of employees all over the world.

The jury responsible for choosing the recipient praised Chibebe for his commitment to workers’ rights in a country whose leaders are hostile and suspicious of labour leaders’ work.

“Wellington Chibebe has received the award because he is a courageous trade union leader in a country where political opponents are subjected to torture and death threats,” said Liv Undheim, the jury’s chair and Deputy Leader of Industri Energi.

“There are people who have to conduct their union activities at the risk to their own lives.

One of these is Wellington Chibebe, Secretary General of the national trade union in Zimbabwe,” said Undheim.

The International Labour Organisation (ILO) in a March 2010 report stated that trade union representatives in Zimbabwe continued to be exposed to persecution, harassment, arrests and torture, validating Undheim’s statements about the dangers facing labour leaders in Zimbabwe.

The jury comprised of Undheim, the two former ILO presidents Gerd-Liv Valla and Yngve Hågensen, Randi Bjørgen, former President of the Confederation of Vocational Unions, Helga Hjetland, former President of the Union of Education Norway, Finn Erik Thoresen, Board Chair of Norwegian People’s Aid, and Liv Tørres, adviser.

In its citation, the jury said: “The presentation of this award is an expression of deep respect for Chibebe’s courageous commitment to trade union rights and democracy in Zimbabwe. His unrelenting efforts have led to him being arrested, tortured and imprisoned many times. The jury considers Wellington Chibebe to symbolise the global struggle for trade union rights.”

The Norwegian Confederation of Trade Unions, which has been cooperating with ZCTU since 1987, said Zimbabwe’s labour movement was a key catalyst for democracy.

“Chibebe is a trade union leader who commands respect. He is a worthy recipient of the Arthur



Wellington Chibebe

Svensson International Award. We offer our congratulations to Chibebe and the ZCTU. The trade union movement is one of the most vital driving forces of democracy, human rights and social and sustainable economic development in Zimbabwe,” said ILO President Roar Flåthen.

Formed in 1981, the ZCTU has 34 affiliated trade unions and is Zimbabwe’s largest and most effective labour federation. Chibebe took

over as secretary general in 2001 after his predecessor Morgan Tsvangirai moved into active opposition politics. Tsvangirai is now Prime Minister in a fragile coalition with long-time rival President Robert Mugabe.

The award is named after former trade union leader Arthur Svensson who was particularly concerned with international issues and solidarity.



ZLHR condemns continued harassment of lawyers

Zimbabwe Lawyers for Human Rights (ZLHR) expresses its deep concern at the continued harassment of lawyers while carrying out their professional mandate.

In the latest incident, Lison Ncube, a lawyer at James, Moyo-Majwabu and Nyoni Legal Practitioners in Bulawayo, was threatened by **Detective Chief Inspector Steven Mpofu**, the Officer in Charge of CID Homicide.

Detective Chief Inspector Mpofu threatened and warned Ncube against representing his client, Choga Njiva, who was arrested on 29 September 2010 on allegations of armed robbery and the murder of a senior police officer in Bulawayo.

On 5 October 2010, D/C/I Mpofu telephoned Ncube demanding that he return the blood-stained clothes that Njiva's father had given him. Njiva's father had been given the blood-soaked clothes by the police at the hospital where his son had been admitted after allegedly being tortured by the police.

D/C/I Mpofu kept on phoning Ncube and threatened him with arrest if he did not surrender Njiva's clothes, despite the latter indicating to the police officer that he intended to produce them in court to attest to the inhuman treatment of his client.

Ncube was denied access to his client for more than eight days by the police who claimed that that Njiva's crime was a "very serious one" which did not warrant any legal representation. The lawyer only managed to see Njiva after obtaining a High Court order which compelled the police to allow him access to his client. The police at Bulawayo Central Police Station had also refused to accept service of the court order and the court application.

On the police conduct against Lison Ncube:

ZLHR strongly condemns the unlawful actions of the police in harassing and intimidating a lawyer who is carrying out his professional duties as an officer of the Court and seeking to execute legitimate court proceedings. Obstruction against Njiva's legal representation by the police violates the constitutional right of an accused person to

be represented by a lawyer of his choice and to a fair trial.

The blatant disregard by the police of court process and a High Court order amounts to contempt of court which has become a worrisome and everyday phenomenon and cultivates a continuing culture of impunity. In addition to being an affront on the Rule of Law, no person can be safe from those who are constitutionally obliged to protect the people of Zimbabwe under such circumstances where court orders are disregarded without consequences. The police actions cannot be tolerated or condoned in a democratic society.

On the alleged torture of Choga Njiva:

ZLHR appreciates the need for the police to investigate any alleged criminal offence, particularly those involving the death of any person. However ZLHR strongly condemns police action which crosses the line and violates the fundamental rights of an accused person which are constitutionally guaranteed and protected.

The alleged torture of Njiva while in police custody, which led to his hospitalization and the

attempt to conceal such evidence through confiscating his blood-stained clothes is a contravention of the Constitution of Zimbabwe. Police must recognise that, as stated in the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "torture is a punishable offence and a crime under international law".

The police should uphold internationally acceptable standards of treatment of untried prisoners as prescribed in the UN Standard Minimum Rules for the Treatment of Prisoners, as well as the African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

ZLHR therefore urges the police to allow lawyers to represent their clients and carry out their lawful duties without hindrance in the interests of justice, and ensure that the rights of accused persons are respected at all times in order not to compromise the administration of justice and so as to promote public confidence in the justice delivery system.

Supreme Court hears Biti case today

HARARE-The Supreme Court will today hear Movement for Democratic Change (MDC) Secretary-General Tendai Biti's appeal challenging his prolonged detention on terrorism charges in 2008.

The case, coming two years after the appeal was filed, exposes the ill treatment regularly meted out to human rights defenders by police, as well as the slow pace of the justice delivery system in Zimbabwe.

Since his detention and the subsequent appeal, Biti has joined a coalition government of bitter rivals President Robert Mugabe and Prime Minister Morgan Tsvangirai as Finance Minister.

The treason case stemmed from a document police said was authored on 25 March 2008 allegedly linking Biti to an illegal change of government plot.

Further charges of communicating or publishing falsehoods emanated from Biti's announcement that his party president Tsvangirai had defeated Mugabe in an election held in March 2008.

Official results later showed that Tsvangirai had indeed defeated President Robert Mugabe in the poll, but lacked a clear majority needed to avoid a runoff election.

Both charges were withdrawn in February 2009 in what many saw as a political compromise meant to smoothen the process of the MDC agreeing to a coalition government.

Yet today, Biti's lawyers, Honey and Blanckenberg, will appear before the Supreme

Court in a matter seeking to overturn a High Court ruling made on 18 June 2008 which declared that Biti's prolonged detention was lawful.

Following an Urgent Application by Biti's lawyers on 17 June 2008 to challenge the legality of his continued detention for five court days without being brought before the courts, High Court Judge Justice Samuel Kudya ruled that the police actions in refusing to release him or bring him to court were legal. Boysen Matema and Crispin Makedenge-two top police officers regularly linked with the arrest and harassment of rights and political activists-had detained and quizzed Biti on his election pronouncements.

His lawyers filed a Notice of Appeal against Justice Kudya's ruling more than 2 years ago on 10 July 2008. Assistant Commissioner Matema and Chief Superintendent Makedenge are cited as First and Second Respondents in Biti's appeal. The Supreme Court's consideration of, and judgment on, the case - only being heard now - will therefore be academic.

It however serves to highlight the slow nature of Zimbabwe's justice delivery system, and how authorities can potentially escape liability for abuses of fundamental rights because cases take too long to be heard and finalised.

Matema and Makedenge arrested and detained Biti on 12 June 2008, 10 days before Tsvangirai pulled out of the 27 June 2008 presidential election runoff citing gross violence and abuses against his supporters, officials and civil society activists. African leaders rejected the runoff,

in which Mugabe had insisted on running as a sole contestant, resulting in the negotiated coalition government.

The warrant used by the two policemen was obtained on 6 June 2008 and authorised them to arrest Biti "immediately upon sight" and bring him before the courts on suspected terrorism and communicating falsehoods charges.

Read part of the warrant used by Matema and Makedenge: "These are, therefore, in the State's name to command you that immediately upon sight hereof you apprehend and bring the said person or cause him to be apprehended and brought before the court of a Magistrate to be examined and to answer to the said information, and to be further dealt with according to the law." Justice Kudya ruled that the word "immediately" on the warrant only served to direct the police to arrest Biti instantly upon sight.

"A reading of the command in the warrant places emphasis on the immediacy of the arrest on sight of the applicant only. The word immediately does not govern the arraignment of the applicant at court," ruled Justice Kudya.

Biti's lawyers, Sarudzayi Njerere and Lewis Uriri argue that Matema and Makedenge were obliged by section 34 (3) of the Criminal Procedure and Evidence Act (Chapter 9:07) to take Biti to the place specifically mentioned in the warrant, adding that the warrant, on the face of it, directed that Biti be brought "immediately" before a Magistrate.



Movement for Democratic Change Secretary-General Tendai Biti

"Even if it held that the warrant authorised detention for so long as was reasonable in the circumstances (ie, even if a reasonable time were to be in excess of 48 hours), five court days was not a reasonable time. Five court days is twice the period of detention allowed in cases of arrest without warrant.

"Where the arrest is made with a warrant, a reasonable period of detention should, if at all different, be shorter than that in cases of arrest with warrant, because by the time sworn information as to the suspect's guilt is available, investigations would surely be advanced or even nearing completion.

"Even if the detention was impliedly authorised by the warrant, such detention could not have lawfully exceeded 48 hours. The appeal must therefore succeed with cost," stated Uriri in his heads of argument.

GALZ ruling delayed

HARARE-Verdict on Ellen Chademana, the Gays and Lesbian of Zimbabwe (GALZ)'s receptionist facing a charge of contravening Censorship and Entertainment Control Act, seeking a discharge after the State closed its case is now expected this Wednesday after the presiding magistrate failed to turn up.

Magistrate Donald Ndirowei was supposed to make the ruling on whether Chademana must be discharged on Friday.

But prosecutor Rufaro Mhandu told a packed court that Magistrate Ndirowei was not coming to work on the day.

"We have been given Wednesday 20 October as the tentative date for the ruling," said Jeremiah Bamu, from the Zimbabwe Lawyers for Human Rights (ZLHR) who is leading the defence team of Chademana.

At the end of the State's case last month Bamu, asked Chademana to be discharged since the prosecution failed to establish a *prima facie* case against her.

Chademana rise from when police raided GALZ offices and reportedly found pornographic material in a file at the organisation's reception where the accused works.

The State then built a case saying the material was in possession of Chademana, which the defence argued given that the reception of GALZ was an open space, which any employee there has access to.

The defence further argued that the general search at the GALZ premises did not happen in Chademana's presence, raising a possibility that the file, which had pornographic material, could have been taken from some other source and planted at the reception area. Bamu said this is so given that Chademana cannot account for what happened in her absence.

In her submissions oppose the defence's application to have Chademana discharged after the State closed its case last month Mhandu admitted that the State was not on strong grounds.

"The State has managed to establish a *prima facie* case against the accused... The (State) witnesses,



President Robert Mugabe has repeatedly described gays as worse than pigs and dogs while South African President Jacob Zuma's government allows gays and lesbians to marry legally

though confused about what is possession proved to be credible witnesses," said prosecutor Rufaro Mhandu in her submission to. Zimbabwe is

one of the countries where gays are a target of harassment by the State and the public.

Torture damages case on hold again

HARARE--The High Court has again postponed a case in which Emmanuel Chinanzvavana, a multiple victim of state brutality, is demanding US\$1.2 million in damages for the abduction and torture he suffered at the hands of state agents in 2008.

The case has been postponed several times now for different reasons.

Charles Kwaramba, a member of Zimbabwe Lawyers for Human Rights representing Chinanzvavana, said the matter will now be heard on 5 November.

"This time High Court judges were attending a workshop so the matter was not even heard. What we want is for the matter to go for trial so that it is concluded," said Kwaramba.

Chinanzvavana is demanding the damages from four cabinet ministers and eight top police, intelligence and prison commanders whom he says were responsible for state security agents who abducted him on 3 November 2008 and kept him incommunicado until 23 December 2008. He claims "defendants then conspired as they had been doing all along to detain Plaintiff at Avondale Police Station".

Chinanzvavana says he was tortured during this period as state agents sought to force him into admitting to sabotage and banditry accusations. Police only brought Chinanzvavana to court on 29 December 2008.

Chinanzvavana was part of a group of rights and political activists abducted, tortured and



Emmanuel Chinanzvavana with his wife Concillia

charged with banditry in 2008 when state agents clamped down on activists and ordinary people perceived to be anti President Robert Mugabe.

Chinanzvavana has cited ministers Kembo Mohadi (home affairs), Giles Mutsekwa, a former co-home affairs minister and now responsible for housing and social amenities, Patrick Chinamasa (justice and legal affairs) and Didymus Mutasa, (presidential affairs).

Police commissioner-general Augustine Chihuri, commissioner of prisons Paradzai Zimondi, central intelligence organisation (CIO) director-general Happyton Bonyongwe, CIO assistant director Ashley Walter Tapfumaneyi, police chief superintendents Crispin Makedenge and Magwenzi, police assistant commissioner Nyathi and detective chief inspector Mpofu are cited as the other defendants in the compensation claim.

Chinanzvavana states that state security agents, with the active assistance, or in connivance

with members of the Zimbabwe Republic Police abducted him on 3 November 2008. He was taken to Harare Central Police Station for questioning by officers from the law and order section before being taken to an unknown location. There he was denied basic human rights such as access to lawyers of his choice, access to medication, access to family, friends and relatives among other rights protected by the Constitution and international instruments which Zimbabwe is party to.

"During the same period, Plaintiff was subjected to assaults, torture, and other cruel, inhumane and degrading treatment at the hands of captors, who include and/or were acting in concert or in connivance with one or more of the defendants, either directly or indirectly through their agents/subordinates," reads part of Chinanzvavana's claim.

He has broken down the claim as follows:

- payment in the sum of US\$500 000 as damages for unlawful abduction, enforced disappearance, unlawful detention incommunicado, unlawful arrest and unlawful deprivation of liberty
- payment of US\$100 000 being damages for assault
- payment of US\$300 000 being damages for torture, pain, shock, suffering and psychological trauma, contumelia and loss of amenities of life and payment of another US\$300 000 being damages for malicious prosecution.

CSO's denounce COPAC

BULAWAYO-Leaders of civil society organisations last week unanimously denounced the Constitution Select Committee (COPAC) for leading a flawed process to draft a new governance charter for the country.

Speaking at a leadership symposium organised by Bulawayo Agenda last week, Christian Alliance national coordinator Useni Sibanda said the chaotic constitution making process lacked an important ingredient because it commenced in an environment where the structures of violence had not been dismantled.

"The fact that the issue of national healing hasn't started is still a problem for the constitution making process," said Sibanda.

Dumisani Nkomo of the Matabeleland Civil Society Consortium said it was highly likely that the draft constitution to emerge from the outreach process would be a negotiated one. ZLHR Irene Petras, representing ZZZICOMP at the symposium said although her organisation recorded high turnouts at some COPAC meetings, active participation by the public was questionable.

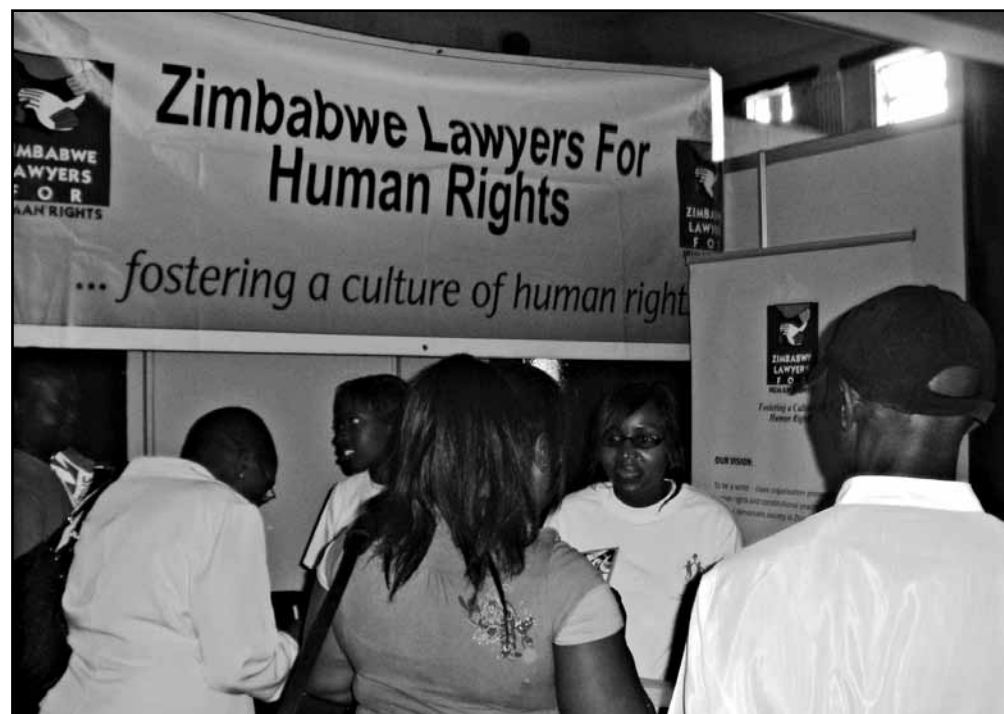
"This constitution outreach process has been a politicised process rather than a nation building exercise," said Petras.

The leadership symposium ran concurrently with the Ideas Festival from 8 to 9 October, where organisations exhibited their materials and interacted with members of the public.

Pictures of the symposium below.



Christian Alliance coordinator Useni Sibanda, Copac co-chair Douglas Mwonzora, ZLHR's Irene Petras representing ZZZICOMP and Dumisani Nkomo of the Matabeleland Civil Society Consortium



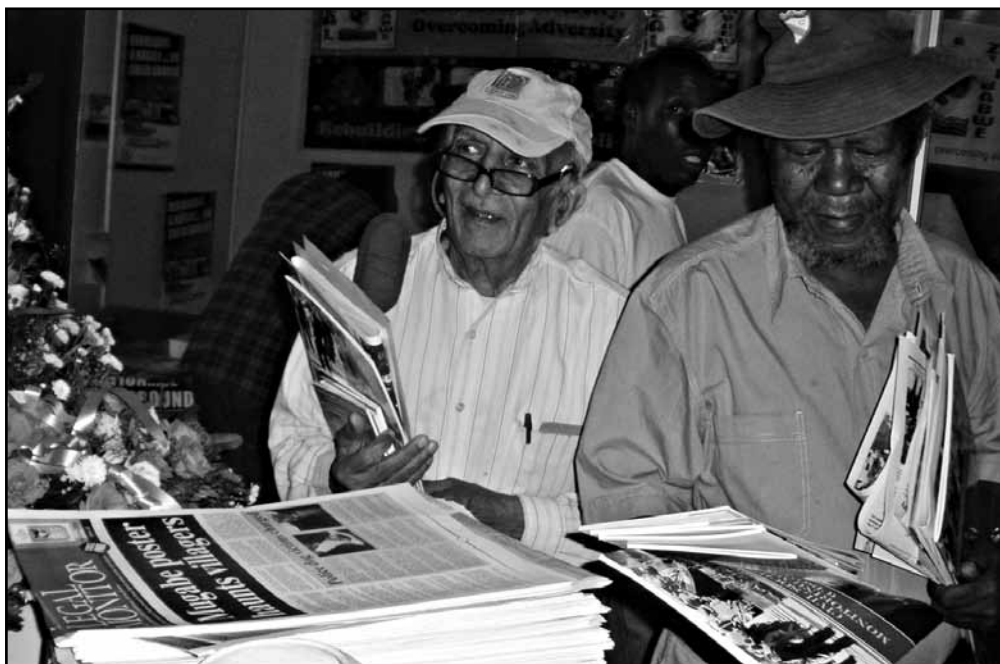
The ZLHR stand at the symposium



From left: ZLHR lawyer Nosimilo Chanayiwa, Speaker of the House of Assembly Lovemore Moyo and Director of Bulawayo Agenda Anastacia Moyo



Irene Petras with ZLHR lawyers



Members of the public at the ZLHR stand



Young exhibitor... Craig Jamela flanked by Nosimilo Chanayiwa and Andiswa Chabvepi