

The LEGAL MONITOR

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ZLHR honoured

HARARE-The Argentine government has honoured Zimbabwe Lawyers for Human Rights (ZLHR) by awarding the organisation its prestigious Emilio Mignone International Human Rights Prize for 2010. This is the first time in the history of this prize that it has gone to an organisation outside the Americas.

The Emilio Mignone Award is presented to organisations that make “an outstanding contribution towards the promotion and protection of human rights in their own countries in the fight against impunity in cases involving systematic violations of human rights, discrimination and social, economic and cultural rights, among other areas”.

The Argentine Minister of Foreign Affairs, International Trade and Worship will hand over the prize to ZLHR at a function to be attended by his country’s government officials this week.

For winning the Award ZLHR will collect a Commemorative Plaque and pocket \$5000. In addition, the organisation’s Board Vice-Chairperson, Sarudzayi Njerere will travel to the Latin American country this week where she will have an opportunity to participate in a series of activities that include meetings with national authorities and members of academic institutions, the Judiciary and Human Rights NGOs.

ZLHR, a grouping of lawyers dedicated to promoting and defending all forms of human rights has, over the past 14 years, assisted thousands of human rights defenders and political activists through providing legal representation and other forms of assistance.

Although ZLHR has previously bagged a number of international awards, the Emilio Mignone Prize is the first to be awarded by a developing country that has been conspicuous in the field of human rights because of its own historical and political context of past military dictatorship.

“ZLHR is honoured to receive this recognition from a country of the global South. It shows the impact of our growing commitment to south-south partnerships and we hope to see our relations flourish further in the years ahead. It also means so much to know that countries around the world-including those which have experienced some of the most difficult periods of human rights violations themselves - are concerned about the situation in Zimbabwe and are offering solidarity in our trying times,” said ZLHR executive director, Irene Petras.

Carlos Sersale di Cerlsano, the Argentine Ambassador to South Africa regarded ZLHR in the “highest esteem”.

The “Emilio F. Mignone International Human Rights Prize” was established in 2007 by the Argentine Ministry of Foreign Affairs, International Trade and Worship.

It grants recognition to foreign institutions and/or individuals residing abroad that are making or have made an outstanding contribution towards the promotion and/or protection of human rights in their own countries in the fight against impunity in cases involving systematic violations of human rights, discrimination and social, economic and cultural rights, among other areas.

Argentine Embassies and Consular Offices throughout the world propose candidates based on information gathered and on consultations with the main local human rights organizations. National or foreign non-governmental human rights organisations and international organisations may also make nominations.

The award is named after Emilio F. Mignone, founder of the Centre for Legal and Social

Studies which did extensive human rights work in Argentina.

Emilio Mignone was one of the most effective leaders of the Argentine human rights movement against “disappearances”, torture and politically inspired murders carried out by the State between 1976 and 1983 when Argentina was under military dictatorship. Emilio Mignone, who died in 1998, helped to document the crimes and assisted victims and families through the judicial system, making use of all components of the international system for the protection of human rights.

Previous winners of the Emilio Mignone Award include Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional de Bolivia (ASOFAMD) which fights against forced disappearances in 2007, Comisión

Colombiana de Juristas (CCJ) in 2008 and the Washington Office on Latin America (WOLA), an organisation which promotes human rights, democracy and justice in the social and economic field in Latin America and the Caribbean.

It has become a tradition for ZLHR to be showered with awards in recent times as recognition for the organisation’s sterling interventions in defending and fostering a culture of human rights in Zimbabwe.

In 2009, the American Bar Association Rule of Law Initiative awarded ZLHR with its International Rule of Law Award.

ZLHR in 2008 won the Rights & Democracy John Humphrey Freedom Award in recognition of the organisation’s courageous pursuit of justice for victims of human rights abuses inside Zimbabwe.

Top Magistrate laments section 121

HARARE-Provincial Magistrate Mishrod Guvamombe has lamented the existence of Section 121 of the Criminal Procedure and Evidence Act (CPEA) that prosecutors have routinely used to deny freedom to suspects who would have been granted bail by the courts.

The draconian law gives prosecutors the power to suspend bail and keep accused persons in remand prison for a further seven days to allow the State to appeal against the positive bail ruling.

Lawyers have argued that this piece of legislation usurps the power of Magistrates and Judges to safeguard the fundamental right to liberty of the accused person. Magistrate Guvamombe’s statements strengthen this argument.

Contributing to a public discussion on prisoners’ rights last week, Magistrate Guvamombe implored authorities to amend the iniquitous legislation. Zimbabwe Lawyers for Human Rights (ZLHR) organised the discussion held under the title: “Prisoners Right to Health in Zimbabwe: Challenges and Opportunities”.

“Where even as a Magistrate you grant bail, the prosecution will invoke that section, and what will in effect happen is



Panelists to the ZLHR public discussion held last week. From left Shepherd Matsika of Justice for Children Trust, Andrew Makoni of ZLHR, Magistrate Mishrod Guvamombe, Magistrate Walter Chikwanha and Primrose Matambanadzo of Zimbabwe Doctors for Human Rights

that the person will remain in custody. So those are the other things we need to look at. Let us interrogate those issues and see and maybe lobby for amendments to the law because the prosecutor is a part to the litigation and part to the case but has the last word on the issue.”

Since the introduction of the CPEA, “Section 121”, as it is infamously known, has been invoked and abused extensively by the State in most cases to suspend bail to human rights defenders and political activists.

In one glaring case, prosecutors used the legislation to suspend bail granted to Standard newspaper reporter Nqobani Ndlovu two weeks ago. Ndlovu was later released on \$100 bail granted by High Court Judge Justice Nicholas Mathonsi after spending more than a week in

cells. Recently, Justice and Legal Affairs Minister Patrick Chinamasa attributed the repeated use of the legislation to lack of training by officials from the Attorney General’s Office.

Speaking at the discussion, Magistrate Guvamombe recommended that most judicial officers should consider fines and community service as penalties ahead of jail sentences.

“Do we take into account, as judicial officers, the conditions in prisons when remanding people in custody? The answer is yes. Certainly. As a matter of law, prisoners (suspects) must be kept out of prisons as much as possible (when they apply for bail),” added the Magistrate.



World AIDS Day 2010

“A moment to reflect and to renew our resolve towards a human rights-based approach to the epidemic”

On the occasion of commemorating the World AIDS Day for 2010 under the theme; ‘*Universal Access and Human Rights*’, the HIV/AIDS, Human Rights and Law project of Zimbabwe Lawyers for Human Rights recognizes and acknowledges the importance of a human rights based approach to the HIV/AIDS epidemic in Zimbabwe. We understand and appreciate the vulnerability, diversity, strength and resilience of people living with and affected by HIV and their need for access to justice and healthcare.

In particular, we note:

- The effects of HIV/AIDS in Zimbabwe have and continue to be calamitous. Since its advent, HIV/AIDS has caused untold suffering among families and communities. Despite the declines in prevalence over the years, Zimbabwe is still one of the countries experiencing one of the worst HIV epidemics in Southern Africa which is threatening to reverse decades of gains made in development.
- That as 2010 draws to a close, Zimbabwe is showing signs of missing the targets set for achieving universal access to treatment for all those in urgent need by 2010 and the Millennium Development Goal 6 which calls for the halting and reversal of the epidemic by 2015. Access to HIV and AIDS prevention, treatment and

care is still an overwhelming hurdle. To date, Zimbabwe has only managed less than 50% coverage for those who are in urgent need of treatment.

- Women continue to be disproportionately infected and affected by HIV and AIDS. More than half of all people living with HIV are women, and they continue to be at high risk of HIV infection and of related rights abuses.
- Corruption is a stumbling block to accessing anti-retroviral therapy for those living with HIV.
- The existence of laws that violate the human rights principles for those affected by HIV. Zimbabwe is among many countries that have criminalized HIV transmission and exposure. Though seemingly logical, such laws have endangered those that it sought to protect. The country also has outdated laws which fail to take into cognizance the current environment and the dynamic nature and effects of the epidemic.
- The recognition, respect and promotion of rights and fundamental freedoms of women, children, LGBTI and People living with HIV is important for Zimbabwe to positively advance a sustainable response to HIV prevention, treatment and care.

On this World AIDS Day, the HIV/AIDS, Human Rights and Law project calls on the Zimbabwean government to:

- Renew its commitment to push for universal access to prevention, treatment and care for all those in urgent need and the assurance of access to treatment as a human right.
- Increase efforts towards raising more funds for the healthcare coverage. Health-care systems financing is the path to ensuring universal coverage for all especially marginalized communities in the rural areas whose access to life saving treatment is hindered by insurmountable costs of health services and products and distances to hospitals and clinics.
- Most importantly, to ensure that the country’s healthcare financing system meets the 15 – 20% of the national budget as agreed upon by all member states, Zimbabwe included, in the Abuja Declaration of 2001.
- Reform laws that are out-dated and those that blatantly violate the rights of those living with, affected by or vulnerable to the HIV/AIDS epidemic.
- Scale up efforts to restore integrity in the health-care system and eradicate

corruption which has become one of the leading impediments to adequate and affordable access to prevention, treatment, care and support.

- Show commitment to their duty to respect, protect and fulfill basic human rights as an important effort towards universal access and highest attainable standard of health.

The HIV/AIDS, Human Rights and Law Project was established by Zimbabwe Lawyers for Human Rights in 2004 to enable and cultivate a legal and human rights response to HIV and AIDS in Zimbabwe. The project seeks to use law and rights based programming in stemming the advance of the AIDS pandemic in Zimbabwean communities including the provision of free legal services to persons living with and affected by HIV and AIDS. To date, the project has provided free legal representation to PLHIV whose rights are violated in cases such as unlawful dismissal from work, inheritance issues and access to health services and those prosecuted for deliberately transmitting HIV among others.

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Celebration of the 16 Days of Activism Against gender - based violence



“Structures of Violence - Ending Impunity to
political violence against women in Zimbabwe”

6 - 8 December 2010 Bulawayo



Zimbabwe Lawyers for Human Rights will this week hold various activities to mark the 16 Days of Activism Against Gender Based Violence in Bulawayo which include public speaking and drama, public indaba, a road show and a march on Thursday

High Court quashes MP conviction

HARARE-The High Court has overturned the conviction of Movement for Democratic Change (MDC) Member of Parliament for Mutare West, Hon. Shuah Mudiwa, who in 2009 was convicted of kidnapping a 12 year-old girl.

Hon Mudiwa, Patricia Chikide Mwashuma and Takudzwa Mudiwa were convicted by Magistrate Hlekani Mwayera in 2009 for allegedly kidnapping and keeping the girl isolated in a room without food for two days in 2007.

Magistrate Mwayera convicted Hon. Mudiwa, Mwashuma and Takudzwa on the strength of the girl's claim to have positively

identified the MP and his co-accused as her alleged kidnappers. The MP had been sentenced to a seven-year prison term.

The kidnap case arose prior to the 2008 March Parliamentary elections in which Hon. Mudiwa was challenging ZANU PF's Christopher Mushohwe in Mutare West House of Assembly constituency.

But High Court Judge Justice Ben Hlatshwayo who sat with Judge President Justice George Chiweshe last week on Thursday quashed both conviction and sentence after ruling that Magistrate Mwayera erred and misdirected herself by placing the onus on Hon. Mudiwa,

Takudzwa and Mwashuma to prove their innocence.

The ruling by the High Court Judges followed an appeal against both conviction and sentence by Hon. Mudiwa's lawyer Advocate Linos Mazonde. The AG's Office did not oppose the appeal.

Justice Hlatshwayo and Justice Chiweshe ruled that the investigating officers in the case had failed to interview some witnesses who were mentioned in court.

Hon. Mudiwa was suspended from Parliament in July 2009 by the Clerk of Parliament, Austin Zvoma, despite having appealed against both conviction and sentence.

Hon. Mudiwa is now expected to resume attending parliamentary sessions and executing his duties as a Member of Parliament.

The Mutare West MP becomes the second legislator to be acquitted after High Court Judges Justice Yunus Omerjee and Justice Chiweshe quashed Chipinge East MP Hon. Mathias Mlambo's conviction and set aside his sentence after ruling that State witnesses who testified during his trial were inconsistent.

Justice Omerjee and Justice Chiweshe ruled that there was no sufficient evidence upon which the court could convict Hon. Mlambo.

Hopley - self created camp of death

HARARE-Hopley Farm, on the outskirts of Harare, has become a death camp for children. Figures contained in an Amnesty International report following a study at the farm highlight how life is worsening for women victims of Operation Murambatsvina.

The farm is a settlement created by the government to re-house people it made homeless during the Operation Murambatsvina forced evictions that the UN said directly affected close to a million people nationally.

Vicious police and government brigades destroyed thousands of urban homes deemed illegal in the operation, which was conducted in the winter of 2005.

As the world commemorates 16 Days of Activism Against Violence Against Women and Girls, women at Hopley Farm are suffering as government ignores their plight.

Conditions remain appallingly unfit for human settlement, resulting in many of the women losing

newly born children to the treacherous state of affairs at the farm.

According to Amnesty International's report titled: "No Chance to Live, Newborn death at Hopley Settlement", at least 21 newborns had died at Hopley Farm within the first five months of 2010 indicating a very high level of newborn deaths within the settlement.

Many of the residents at Hopley Farm said they had never encountered such experiences before being forced to stay at the settlement.

Take the example of Megan (40), a resident there. On 19 February this year, she gave birth to twin boys prematurely at around midnight but could not get transport to the maternity clinic. The babies were delivered in her shack at the farm. Both the babies died while she was on her way to the clinic the following morning. This was her fifth pregnancy. She has four surviving children who were all born before the

family was settled at Hopley by the government, according to the Amnesty International report.

Another, Fadzai (25) went into labour on 26 February this year and gave birth to a baby girl who died the same day. She thinks her baby died because she could not keep it warm.

"Many of the women we spoke to felt that their minimal access to healthcare contributed to the deaths of their babies. Others suspected that their babies died of cold because they live in plastic shacks," said Michelle Kagari, Amnesty International's Deputy Africa Director.

"When people were settled in Hopley, the government promised them a better life but things have gone from bad to worse," Kagari added.

Many women described how they could not afford the \$50 required to register for antenatal care. While this cost is applied to all pregnant women in Zimbabwe, Hopley residents are

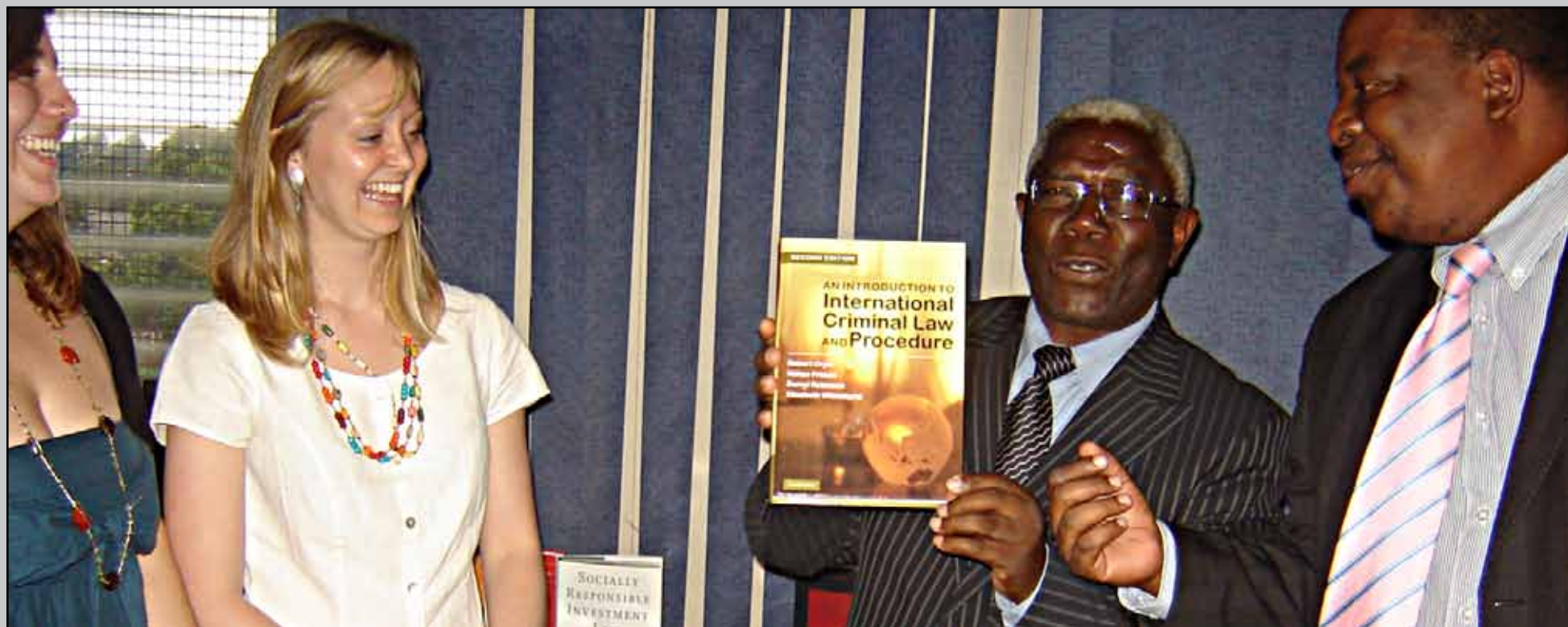
particularly unable to afford the costs because many lost their livelihoods during the mass forced evictions when market places and other informal businesses were destroyed.

Expecting mothers at Hopley are also affected by the lack of transport when they go into labour. The nearest maternity clinic is in Glen Norah, some eight kilometres away, noted Amnesty International.

The situation is compounded by the fact that Harare City Council only has three functioning ambulances which service a population of about two million.

"Limited access to health services is one of the causes of the high levels of newborn deaths at Hopley," said Kagari. "Low cost interventions and basic healthcare could save young lives as well as those of their mothers."

No public official figures exist but the Zimbabwean government estimates a national average of 29 neonatal cases per 1000 live births.



Students from McGill University in Canada, who are part of the International Centre for Human Rights and Democratic Development commonly known as Rights and Democracy on Friday donated books, a laptop and a printer to the University of Zimbabwe (UZ)'s Faculty of Law. The initiative to donate books to the UZ came after Zimbabwe Lawyers for Human Rights (ZLHR) executive director Irene Petras and then board member and now board Chairperson Andrew Makoni recommended the resourcing of the law school's library. Petras and Makoni sourced the donations in 2009 when they travelled to Canada to receive an award from the Rights and Democracy. In the picture UZ Vice-Chancellor Professor Levi Nyagura accepts the donation from McGill University students Nadia Santagata and Haley Milko.

Zim women tough it out against brutality

BULAWAYO-Zimbabweans took to the streets in the cities and gathered under trees in remote villages. The trendy ones were on social networking platforms such as facebook-all joined by the urgent need to highlight how big a problem gender-related violence has become.

The 16 Days of Activism Against Gender Violence is commemorated worldwide during this period to draw attention to all the forms of violence that women face. In many countries, this violence is largely noticed in the home, at the workplace and in social circles.

But in Zimbabwe, rights groups are concerned that political violence is adding a worrying dimension to the problem.

Women and girls, who make the majority of the population according to official figures, are most vulnerable to gender-related violence, say groups such as Musasa Project and Women of Zimbabwe Arise (WOZA).

"Their struggle has many facets, they suffer as political candidates, as wives to politicians, mothers and children," said Heal Zimbabwe Trust (HZZT), a local group conducting grassroots national healing programmes following the political tumult of 2008. The group has warned that renewed political tensions ahead of elections to be held possibly next year were already affecting women in some rural areas such as Chipinge.

"Many have been assaulted, raped, kidnapped, murdered, imprisoned and called names. The culture of militarism during election periods is prevalent in Zimbabwe's politics. There are many reported cases of abuse of women by members of the armed forces during periods of political violence," the group said while commemorating the 16 days campaign.

Women, mainly led by WOZA, often have to tough it out with armed police to embark on peaceful street protests to make their concerns heard.

On Thursday in Harare, they did just that in a spectacularly defiant fashion.

In a country where the police are always on the alert for demonstrations by human rights defenders, organisers have to be constantly innovative.

The courageous women split into two groups in Harare's city centre, before bravely marching towards Parliament Buildings from different directions to demand inclusion of their views in the constitution making process as well as an end to the harassment of women by political leaders.

At the entrance of Parliament, they sang human rights songs before distributing fliers demanding justice and peace.

Armed police that now keep a near permanent presence at Africa Unity Square, which is

adjacent to Parliament, to stop such protests were caught unawares.

The women had left the scene by the time police reacted.

"As we prepare our presentation to Parliament, our country is suffering political, legal, economic and social collapse and we desperately need a constitution that will give us back our dignity, a constitution with laws and policies that make women and men equal and eliminates all forms of discrimination," read one of the leaflets.

Often, such braveness has invited brutal consequences for these women. Many are assaulted and detained, some with infants on their backs, for days in filthy police cells for demanding their right to basic services such as electricity and water.

HZZT described the rate of violations of women's rights as "alarming, despite Zimbabwe being a signatory to the Convention of the Elimination of all forms of Discrimination Against Women.

The group stated last week that "75 percent of the total number of the victims of the 2008 political violence are women".

"The culture of militarism is an ideology that

creates a culture of fear and supports the use of violence, aggression, or military interventions for settling disputes and enforcing economic and political interests. It is a psychology that often has grave consequences for the true safety and security of women and of society," the group said of Zimbabwe's situation.

Similar messages streamed on social platforms where activists organised forums to strategise on how best to end gender-related violence.

In Bulawayo, more than 1 000 people took to the streets on Wednesday to emphasize that violence against women is a violation of human rights and advocate for the elimination of all forms of violence against women.

The protest march, which ended with main celebrations at the Large City Hall was organised by Zimbabwe Lawyers for Human Rights and included Musasa Project, Childline Zimbabwe Women Lawyers Association, ZimRights, the Ministry of Women Affairs, Gender and Community Development, the Zimbabwe Republic Police's Women Network and Sexual Rights Centre among other organisations.

Below are pictures of the protest march held in Bulawayo to mark the 16 Days of Activism Against Gender Violence.



Above: Kennedy Majamanda of ZLHR was part of the coordinating team