

The LEGAL MONITOR



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20 June 2011

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

COST-FREE

Edition 98

It's game on: WOZA

BULAWAYO-Zimbabwe's often brutalised women activists are taking their campaign against repression and poor service delivery by public utilities such as the Zimbabwe Electricity Supply Authority (ZESA) a gear up.

Despite constant arrests, imprisonment and lately the invasion of property, the women activists say they are pushing for more non-violent protests until their demands are heard.

In a multi-pronged strategy, the Women of Zimbabwe Arise (WOZA) says it will intensify street protests as well as launch a passionate plea to families of ruthless police officers to talk to their relatives out of brutality.

The organisation, which has over 75 000 members countrywide, is also mobilising the international community to pressure Zimbabwe over human rights abuses.

"WOZA calls on Zimbabweans to mobilise themselves to non-violently demand respect for people will before it is too late. Your mothers need your help," said the group, whose members include elderly women.

"As a direct action non-violent movement and mother of the nation we will take action. We will not be silenced," the group said as police officers refused to vacate a house used by WOZA as an office claiming that they were searching firearms and subversive material. Police escalated its war on WOZA when officers invaded a private residence

used by WOZA, demanding the "surrender" of the group's leadership.

The Bulawayo High Court on Friday reserved judgment on an application brought by WOZA lawyer, Kossan Ncube of Kossam Ncube and Partners Legal Practitioners, who is a board

member of Zimbabwe Lawyers for Human Rights to force the officers to leave the premises.

Declaring its intention to continue fighting, WOZA appealed to those with police relatives to use their influence to stop police brutality.

"WOZA calls on all police officers to refuse to be used to carry out illegal acts in the name of political supremacy. We call on their family members to prevail upon them to think carefully about their future and personal sanity. There will be a time for their action to be judged if not on this earth then in heaven," said the group.

Since the beginning of the year, 38 WOZA members have been arbitrarily arrested and 24 detained and charged under the Criminal Law (Codification and Reform) Act, the group said.

"This police harassment of WOZA human rights defenders provides leaders of the South African Development Community (SADC) with direct proof of the intransigence of the Mugabe regime and their refusal to respect the Global Political Agreement of which they are guarantors and prosecution in the absence of any genuine suspicion of criminal activity needs urgent addressing through security sector reform," said WOZA.

WOZA said it was lobbying local, regional and international human rights defenders to directly press their governments to put pressure through diplomatic means to stop the persecution of human rights defenders, especially women human rights defenders.

"Special emphasis should be on their rights to peacefully hold their own government to account by direct or indirect street engagement," said WOZA.



Strangers in the house? ZANU PF youth leaders Joshua Sacco and Tongai Kasukuwere attend a press conference convened by Crisis in Zimbabwe Coalition in Johannesburg recently ahead of the SADC summit

Travesty of justice

HARARE-Not guilty! That would be the verdict expected when accused persons are asked to investigate their misdeeds.

And that's exactly what happened in court last Friday.

The Attorney General (AG)'s Office asked the police to present a report on what led to 24 people sustaining injuries after being detained in connection with the death of a police officer last month.

This followed an order by Magistrate Shane Kubonera who gave the State until last week to conduct "an impartial investigation" on what caused the injuries.

"The accused persons were never assaulted by the police during and after their arrest. It is from out of this world to say police over and above the baton sticks, had sticks that they used to assault the accused persons. This is nothing but an amplified lie," reads a report compiled by the police. State prosecutor Edmore Nyazamba read the police report in court.

The suspects, who are this week expecting a verdict on their High Court bail application, had shown to Magistrate Kubonera their injuries and bruises which they said had been inflicted by the police, forcing the Magistrate to order an investigation.

"There is no evidence of assaults by the police," said Nyazamba as he

wound up his submissions, leaving the packed courtroom in stitches.

Most of the people in the public gallery were part of the drama two weeks earlier. They were there when there was silence in court. The suspects brought silence as they entered the court showing deep pain.

The Legal Monitor team was there too to witness the pain.

The suspects took turns to show their injuries to Magistrate Kubonera.

Tungamirai Madzokere, a councillor in Glen View, showed a deep cut on his left limb and swollen hands while his eyes had bloodstains. Last Friday Clr Madzokere's limp cut might have shown signs of recovery but his left eye was still clear the bloodstains.

"He has begged me to tell you (Magistrate) that he has worse bruises on his belly and buttocks which he is only prepared to show you but not in court," said Charles Kwaramba, one of the lawyers who represented the torture victims together with Marufu Mandevere and Jeremiah Bamu.

On the same day, Yvonne Musarurwa, struggled to walk into the courtroom. From the public gallery one could clearly see that Musarurwa had swollen hands and face. Cynthia Manjoro had swollen knees and was visibly in pain. Kwaramba said police had assaulted

Manjoro on the knees so that she could reveal her boyfriend's location.

But last Friday, Nyazamba had forgotten about that evidence. Hardly surprising. Two weeks back he had denied the existence of injuries despite the suspects having presented their case in his presence. Probably Kwaramba was prophetic when two weeks ago he said: "We knew the State would say that. We will leave it in the hands of the court to determine if what you saw is our own creation. We knew he (Nyazamba) would say that. That is why we asked these people to show you the injuries they sustained," said Kwaramba two weeks back, much to the delight of the people in the gallery.

On Friday, Magistrate Kubonera said he would respond to the AG Office's report done by the police after the defence team submitted its response.

But on Friday, Bamu had no kind words for the report. "We are not satisfied that this is an accurate and an impartial report. We have noted several defects in the report. We need time to consider it. We shall be filing our response by 24 June," said Bamu.

Bamu indicated that on that day, the defence team would be making an application for refusal of remand.

"We will do it on that day or on the day of further remand which is 1 July. To Page 4



CIVIL SOCIETY MONITORING MECHANISM (CISOMM) PERIODIC REPORT

April to May 2011

Par 17	Resolutions	Compliance by IG
a)	An immediate end to violence, intimidation, hate speech, harassment....	No compliance. The extreme clampdown in Glen View subsequent to the tragic death of a law officer, and violence and intimidation in Mbare have shown the speed with which the police are prepared to employ repression against the people, and the situation's negative reality cannot be ignored. The effective curfew, harassment and deprivation of livelihood of residents in Glenview 3 is unwarranted. The police are alleged to have subjected those in detention to torture. Statements made by senior government and security officials, such as C-G A.Chihuri, Min K. Mohadi have sought to politicise and inflame the situation, amounting to intimidation and hate speech. Harassment of civics, churches, and violence between political opponents remained at a high level. Emergence of rural militia bases creates pervasive fear in communities too.
b)	All stakeholders...should implement all the provisions of the GPA and create a conducive environment for peace, security and free political activity.	No compliance. The polarization, fear and intimidation faced in communities indicates how far lacking is implementation of this resolution. The IG, the law enforcement mechanisms, the Organ on National Healing have failed to prevent violence or create a peaceful and tolerant environment. Free political activity seems to apply only to ZANU PF, with the complicity of the police, which serve partisan interests. The tragic death of a law-enforcement officer in this environment also accentuates the need for these improvements.

FROM 31 MARCH TO 1 JUNE

What compliance with the Livingstone Troika Summit resolutions?

The SADC Organ on Politics, Defence and Security Cooperation; Livingstone, Zambia, 31 March passed the following comments and resolutions on Zimbabwe:

Inter alia, they urged that stakeholders '... create a conducive environment for peace, security and free political activity and complete all the necessary steps for holding of the election...' They further noted: 'with grave concern, the polarization of the political environment as characterized by, *inter alia*, resurgence of violence, arrests and intimidation in Zimbabwe.' (Summit Communiqué, paragraph 16)

Citizens of Zimbabwe are comforted to know that SADC has confronted the real issues hindering progress and are determined to support the efforts of the Facilitation Team in terms of cooperation, monitoring, evaluation and implementation of the GPA, or other such roadmap. The following schedule lists the resolutions and how far they were addressed by the parties to the Inclusive Government.

Par 17	Resolutions	Compliance by IG
c)	Complete all the steps necessary for the holding of an election including the finalisation of the constitutional amendment and the referendum	Some compliance. Parliamentarians working with COPAC have been focused on the Thematic Committee stage of the constitution-making process. Serious delays and time-wasting however are counter-productive.
d)	SADC to assist to formulate guidelines that will assist in holding an election that will be peaceful, free and fair...	Compliance. The work carried out by the Zimbabwean negotiators in conjunction with SADC to bring out an election roadmap has been concluded with a document to be presented at the 11 June Summit. It is hoped that SADC will endorse an agreement that conforms to the Principles governing Democratic Elections, and that prioritises the will of the people in an election to come.
e)	Troika to appoint a team of officials to work with JOMIC to ensure monitoring, evaluation and implementation of the GPA.	Not yet compliance. Although this resolution will certainly assist in the strengthening of JOMIC's capacity to independently monitor and urge compliance of the parties, it has not yet been implemented due to rejection by ZANU PF. JOMIC's monitoring report was however tabled and discussed by the Facilitators.

Prosecutor claims persecution



Godwin Nyasha

HARARE-When a veteran lawyer openly tells a court that he does not even understand charges against his own client then the situation would have gone out of hand.

"This is a sad day for the profession. We hope to have understood them (charges) by the time the trial starts, that is if we are to have a trial," said Jonathan Samkange, who represented Godwin Nyasha, a law officer from the Attorney General's Office facing allegations of abuse of office after he closed a fraud case involving ZANU PF apologist Themba Mliswa after having called one witness.

Mliswa was acquitted of the charge earlier this month, according to the State papers.

Nyasha was arrested last Thursday and spent a night in police detention before being released by Magistrate Shane Kubonera on free bail.

"The accused closed the State case without calling in other witnesses who were in attendance," reads the State papers referring to Samantha Westwood, the Registrar of Companies and Samuel Masvokweni "to corroborate evidence" by Paul Westwood.

"This was a ploy to starve the State case of evidence against Themba Mliswa and his co-accused persons. The accused's conduct was unlawful and contrary to or inconsistent with his duty as a prosecutor as he subverted the objective of the criminal justice," according to the State.

But Samkange had nothing of that as he appeared in court. He was fidgeting in court a sign of his anger at the State's allegations. "I have served 10 years as a prosecutor myself. I have never seen anything like that as a charge," he said. "How can one be prosecuted for using his discretion on how to prosecute.

That is persecution." Outside the court, Nyasha asked reporters to refer all questions to his lawyer Samkange. Asked to explain what he meant by saying it was a "sad day for the profession" Samkange said: "Nyasha is a lawyer and a professional. He cannot be prosecuted for exercising his discretion. My experience is that, a prosecutor can even decline to prosecute where there is evidence. I will not speculate the motive behind this as I will be like them."

He added that if Nyasha's superiors were aggrieved by what he had done, it (the case) should have been treated as a disciplinary matter. "It cannot be a criminal matter, at all."

"This is a sad day for the profession. We hope to have understood them (charges) by the time the trial starts, that is if we are to have a trial"

Chris Mhike, a human rights lawyer told journalists outside the Harare Magistrates Court that the arrest of Nyasha "was a travesty of justice."

"At best, if there is need, this could have been a disciplinary matter on incompetence. I have to emphasise that if indeed there was such a thing," he added.

According to the State papers, Nyasha's application to have Gerald Mlotshwa testify as a State witness was dismissed.

Kunonga, police threaten Anglican event

HARARE-Anglicans organising this year's commemorations of one of the first local black martyrs, Bernard Mizeki, are jittery that the police and rogue Bishop Nolbert Kunonga will combine forces again to stop the religious event.

Kunonga, excommunicated by the Anglican Church of the Province of Central Africa (CPCA) in 2008, has over the past four years used his close political links to charm the police and prevent the church from holding masses in church halls as well as commemorating Mizeki's death.

CPCA Bishop for Harare Dr Chad Gandiya told *The Legal Monitor* on Friday that the church would commemorate the event this weekend in Marondera. Kunonga, who enjoys little public following, held his commemorations this past weekend.

Bishop Gandiya said he had informed the police about the commemorations, but was nervous because the same police had over the years sided with Kunonga.

Kunonga formed his own version of the church, naming it the Province of Zimbabwe. He ordained himself Archbishop and has appointed his own "bishops" to lead the church dioceses after being chased from the mother church.

"Since our problems with Kunonga started in 2007, we have been blocked from worshipping at the shrine. Last year the police blocked us from marching to the shrine and we hope that this year it is not going to happen as we have been having problems for the past four years with the Kunonga faction," said Bishop Gandiya.

Mizeki, an early convert to Christianity, is one of the first black martyrs. He died in 1896. His annual commemorations draw between 15 000 and 30 000 worshippers from across the region, according to Bishop Gandiya.

The Bernard Mizeki commemorations are only part of the running battles between Anglican Church parishioners and Kunonga, who has on numerous occasions used mobs, thugs and the police to block worshippers from using church



Dr Chad Gandiya

property. "We have nothing to do with Kunonga and his group but he continues to lock us out of our church properties. It is very painful for our members to be subjected to that kind of treatment but we know that justice shall be served one day and we will be allowed to worship freely in our churches. The matter is before the courts and Kunonga cannot claim to own Anglican properties and assets," said Gandiya.

Early this month police arrested and detained 16 church officials and parishioners belonging to the CPCA who had rushed to the assistance of a priest who was being evicted from his house by a pro-Kunonga gang.

Bishop Gandiya said the parishioners included an elderly woman.

"It's sad," said Dr Gandiya.

"Police were called and they sided with those evicting our people. In all cases there were no eviction orders as is required by the laws of the land," he said.



A vendor selling farm produce at the Anglican Cathedral Church in Harare which was grabbed by Kunonga



Members of the CPCA are being forced to congregate in open spaces such as Africa Unity Square

Anglican Diocese of Harare (Church of the Province of Central Africa)

ANGLICANS TO GATHER IN MARONDERA FOR BERNARD MIZEKI COMMEMORATIONS 24- 26 JUNE 2011

Harare- It is that time of the year again, when thousands of Anglicans in the Anglican Church in Malawi, Zimbabwe, Zambia, Botswana, Mozambique and South Africa gather in memory of the late Martyr Bernard Mizeki (1861 – 18 June 1896) who died at the hands of Mangwende villagers in Murehwa who felt threatened by his Christian teachings.

This year, from Friday 24 June through to Sunday 26 June 2011, Anglicans, led by Archbishop Albert Chama of the Church of the Province of Central Africa (C.P.C.A) will celebrate the life of Bernard Mizeki at the Marondera Show grounds, in the Mashonaland East Province, about 75 kilometers east of Harare.

The gathering has traditionally been held in Marondera at the Bernard Mizeki Shrine. However, the rebel grouping led by Dr Nolbert Kunonga has virtually made it impossible to hold the commemorations there. This has deprived Anglicans from visiting the place where the late Martyr lived and subsequently died.

The venue has been secured and all other necessary preparations have been concluded. According to the Bernard Mizeki Organising Committee, water is available and there would be sufficient security to safeguard everyone who wishes to be at the venue of the commemorations.

This year's gathering is being held under the theme "MuKristu Usanete" taken from Romans 12 vs. 12 which urge Christians to be "joyful in hope, patient in affliction, and faithful in prayer".

The programme for the pilgrimage will be released in due course. For any questions and comments relating to this information, please feel free to contact the undersigned or visit the CPCA Harare Diocesan Offices.

Thank you

15 June 2011

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UN urges child rights protection

HARARE-The United Nations Children's Fund (Unicef) wants the country's proposed new constitution to prioritise children's rights to curb high cases of child abuse.

Dr Peter Salama, the Unicef country representative, told journalists last week at the commemorations of the Day of the African Child that Zimbabweans must utilise the ongoing constitution making process to protect children.

He said Zimbabwe must emulate African countries like Kenya and South Africa, which included children's rights in the Bill of Rights of their post-conflict constitutions.

"I am sure Zimbabwe can follow that select group of class of countries showing best practices for children's rights through the next few months when the new constitution is drafted," said Dr Salama.

He said children were demanding the right to education, to health, to free care services, to antiretroviral treatment and to an identity.

"They need to be in the constitution. They aren't the majority in the current constitution,

so this is a once in a generation opportunity for those children's rights to be enshrined in the constitution of the country," said Salama. Last year Unicef facilitated direct consultations for over 4000 kids on the constitution outreach process.

Salama said since the children would not be voting in the referendum, it was the duty of adults to ensure that children's were included in the drafting of a new constitution.

"It is very important that we keep our implicit promise to those children. That was not just a tokenistic exercise. Get their views and ignore what they told us. What we need to do now is to ensure that those issues children raised get into the formal constitution.

"Children because of their age won't be consulted in a referendum. They will not be able to vote and say, ok we like this constitution because it highlights children's rights. They will not have a voice. The only way for them to have a voice for adults and organisations like ourselves which are about children's rights to stand up and say: this is what the children said."

Ncube joins ZLHR board

HARARE-Prominent Bulawayo based human rights lawyer Kossam Ncube (pictured right) has been elected into the Zimbabwe Lawyers for Human Rights (ZLHR) board.

Ncube was elected as a board member on Friday at ZLHR's annual general meeting (AGM) held at the organisation's training centre in Harare.

Ncube replaces long serving ZLHR board member Josephat Tshuma, whose term of office has ended. The rest of the Andrew

Makoni led ZLHR board was retained at the AGM. Other board members are Sarudzayi Njerere, the Vice Chairperson, Selby Hwacha, Reginald Chidawanyika, Trust Maanda, Beatrice Mtetwa, Jacob Mafume, Precious Chakasiwa, Hillary Garikayi and Irene Petras, the organisation's executive director.

Below are some of the moments captured during the AGM.



ZLHR Board Chairperson Andrew Makoni delivers his report at the AGM



Some of the ZLHR members follow proceedings during the AGM



ZLHR members at the AGM



ZLHR Board Vice Chairperson Saru Njerere and board members Precious Chakasiwa and Beatrice Mtetwa

Travesty of justice

From Page 1

"We will make that application because these people are not properly before this court," said Bamu, making reference to the fact that they had been ill-treated during their incarceration.

Mandevere said the prison officials were not offering adequate medical treatment to his clients.

"As for the females, they are being given painkillers only," he said.

Magistrate Kubonera had ordered that the suspects be examined and treated for the injuries suffered as a result of the torture as a matter of urgency.

On Friday, Mandevere said prison medical staff had only examined his clients to produce a medical report.

"The State is reluctant to produce that report. We do not know why they are refusing to give us medical affidavits. This is crucial to us," said Mandevere.

Nyazamba responded saying the correspondence from the Zimbabwe Prisons Services about the medical situation was still in his boss' office.

Typical of the State in this case: It wants to

give out as little as possible. Despite having made an undertaking to produce the report, Nyazamba had to produce it on Friday after he was threatened with contempt of court charges.

"The report is almost complete. We are yet to get medical reports of the females, plus we want written submissions from the individuals who have complaints against the police," said Nyazamba. "I am prepared to bring the report at the next remand date." But Bamu could not have anything of that.

"What is perplexing is that at initial remand, not only did the State make an undertaking to submit the report on or before today. Your Worship what the State is seeking is illegal. It cannot be given a remand date when it has failed to comply with a preparatory order linked with the incarceration of the accused," said the tough but soft-spoken Bamu.

He added that the State was in contempt of court.

It was at that stage that Nyazamba backed down and said he was prepared to present a "preliminary report" if he was given about two hours.

And when the "preliminary report" eventually came, he said it was a final report.