

The LEGAL MONITOR

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Filthy police cells under Supreme Court spotlight

HARARE-Pressure group Women of Zimbabwe Arise (WOZA) members have filed an application at the Supreme Court to force government to ensure that holding cells at Harare Central Police Station meet basic hygienic conditions.

Last week, Belinda Chinowawa of Zimbabwe Lawyers for Human Rights (ZLHR), filed an application for four WOZA members who want the cells at Harare Central Police Station to have clean and flushing toilets with toilet paper and a washing bowl.

"The flushing toilets should be cordoned off from the main cell to ensure privacy. The holding cells at Harare Central Police Station should be cleaned daily with soap and detergents, and a good standard of hygiene should be maintained in the police holding cells," WOZA members, Jennifer Williams, Magodonga Mahlangu, Clara Manjengwa and Celina Madukani say in the application.

The four made the application after being detained at Harare Central Police Station for demonstrating against government's failure to adhere to human rights.

They want each person detained in police custody overnight to be given a clean mattress and adequate blankets, as well as adequate bathing or shower installations.

Suspects have routinely complained about inhumane conditions at most police holding cells countrywide.

In July 2005, Supreme Court Chief Justice Godfrey Chidyausiku ruled that police cells at Matapi and Highlands police stations were "degrading and inhumane and unfit for holding criminal suspects."

The Chief Justice ordered police to upgrade the facilities, which have only deteriorated further since. Yet police still detain suspects in the condemned cells, in what lawyers say constitutes contempt of court.

The ruling followed an application by former Zimbabwe Congress of Trade Unions secretary-general Wellington Chibebe and Nancy Kachingwe, a Harare woman after they had been detained at the two holding cells.

In their application, WOZA members have tried to make sure that if the Supreme Court rules in their favour, respondents Hon. Theresa Makone and Hon. Kembo Mohadi, the co-Home Affairs Ministers and Police Commissioner Augustine Chihuri enforce the orders.

"The respondents be interdicted from holding any persons at the police cells at Harare Central Police Station until the above directives have been complied with," reads part of the order being sought by the WOZA members.

The activists also want suspects to have access to sufficient drinking water suitable for consumption at all times.

"Women and girls detained at the police holding cells shall be provided with sanitary wear or should be permitted to purchase such necessary items with their own money.

"Police holding cells should be equipped with a disposal mechanism to ensure that women in detention are able to safely and hygienically dispose of their sanitary wear," reads the application, which also seeks to have women detained in police custody allowed to keep on their shoes and under garments.

Besides that, they want all detainees to have daily exposure to natural light and appropriate ventilation and heating.

"Police officers at Harare Central Police station refrain from arbitrary search and seizure of possessions of persons detained in custody," they added.



WOZA members want the respondents to submit a clear programme of action on the steps and timeframe to be taken in giving effect to the ruling.

"The respondents be directed to compile and submit a report to the court bi-annually, demonstrating the extent of compliance with the order of the Court. Upon compliance with the above, Respondents be and are hereby ordered to allow an independent inspector, appointed by the Court, to inspect the holding cells," reads the draft order being sought by WOZA.

The Supreme Court is yet to set a hearing date for the application.

Meanwhile, two Women of Zimbabwe Arise (WOZA) leaders, Jenni Williams and Magodonga Mahlangu spent the weekend in prison after their arrest last week on charges of kidnapping and theft. The two human rights campaigners were arrested on Wednesday together with ten WOZA members as they peacefully staged a march in Bulawayo in

observance of International Day of Peace, a day set aside by the United Nations and devoted to commemorating and strengthening the ideals of peace around the world.

Prosecutors at Bulawayo Magistrates Court on Thursday released the 10 members who were

charged with criminal nuisance after they declined to prosecute them. On Friday, Williams and Mahlangu's lawyer, Kossam Ncube of Kossam Ncube and Partners, who is a board member of Zimbabwe Lawyers for Human Rights filed a bail application in the High Court seeking the release of his clients.



Flying the Zimbabwe flag high... An American university has presented Zimbabwe's feisty freedom fighter Beatrice Mterwa with its Inamori Ethics Prize for her efforts in fighting injustice in the country.

Case Western Reserve University, one of the United States' most respected learning and research institutions, presented its 2011 Inamori Ethics Prize to Mterwa at the institution's campus this month.

The university said it honoured Mterwa with the award for her courage in fighting the injustice endured by everyday citizens and for using her legal skills to free tormented human rights defenders in the country.

Trial of Mugabe, Grace cartoons begins

BULAWAYO-Three MDC youths are on trial after being found in possession of paper cuttings with caricatures that prosecutors say mock President Robert Mugabe, his wife Grace and Reserve Bank of Zimbabwe governor Gideon Gono.

Police allegedly caught Calvin Ncube aged 22, Mpumelelo Donga (26) and Gift Mlala (22) of Emganwini and Nkulumane suburbs in Bulawayo with paper cuttings resembling bearer cheques with cartoon pictures of naked people that prosecutors say depict Gono, Grace and Mugabe.

Ncube, Donga and Mlala deny the charges of allegedly contravening Section 33(2) (a) (ii) of the Criminal Law (Codification and Reform)

Act for allegedly making a statement that insults the President.

Magistrate Thobekile Mkhosana-Matimbe last week postponed the case to 10 October for continuation of trial.

A police witness told the court that the bearer cheques were not written Mugabe.

Defence lawyer Lizwe Jamela of Zimbabwe Lawyers for Human Rights cross-examined after the State had led evidence.

The three were arrested in February this year.

The case surfaced after Ncube was arrested on a different allegation and was taken to Saurcetown Police Station. Upon arrival at the police station, he was searched and found in possession of three paper cuttings carrying “insulting and undesirable statements about the first lady Grace Mugabe, the Reserve Bank Governor Gideon Gono and the President.”

The State further alleged that upon being questioned Ncube then implicated Donga and Mlala.

“I am still baffled as to how this constitute ‘publicly making a statement’ as contemplated by the relevant Section (33(2) (a) (ii) of the Criminal Law (Codification and Reform) Act),” said Jamela.

Spotlight on Zim rights record

GENEVA-Zimbabwe government representatives, diplomats and civil society representatives on Wednesday attended a side meeting at the ongoing 18th session of United Nations Human Rights Council (UNHRC) in Geneva, Switzerland.

Zimbabwe Lawyers for Human Right’s Dzimbabwe Chimbga updated participants on the current human rights situation obtaining in the country. He reviewed the long path that civil society organisations (CSOs) have traversed since 2010 in preparing for the forthcoming Universal Periodic Review (UPR) before providing an overview of the Advocacy Charter prepared by local CSOs in relation to the government’s National Report.

The UPR is a unique human rights mechanism of the UNHRC aimed at improving the human rights situation on the ground in each of the UN Member States. Under this mechanism, the human rights situation of all UN member States is reviewed every 4 years. At each of its meetings the Council devotes much of its time to consideration of country reports from the process of review in which every UN member State has agreed to participate.

Zimbabwe’s compliance with its international obligations is scheduled to be scrutinised by the global community of nations on 10 October 2011. The government has produced its National Report which it will present at the UPR session; local and international CSOs have submitted several Stakeholder Reports to assist the UNHRC in assessing the accuracy of this National Report.

As has become the custom, Zimbabwe government representatives based in Geneva were in attendance to dispute presentations made and defend the government’s tainted human rights record in advance of the review.



Chibaya’s trial commences

GWERU-The trial of Mkoba legislator Hon. Amos Chibaya for allegedly assaulting a soldier commenced here last week.

Hon. Chibaya was charged with two counts for allegedly committing assault in contravention of Section 89 (1) (a) of the Criminal Law (Codification and Reform) Act and for defeating or obstructing the course of justice in contravention of Section 184 of the Criminal Law (Codification and Reform) Act.

Prosecutors allege that Hon. Chibaya teamed up with 10 Movement for Democratic Change (MDC) youths in December last year and assaulted Lovemore Batsirayi Kene Hungwe, a soldier based at 5 Brigade, Battlefields in Kwekwe at a bar in Mkoba suburb with clenched

fists, booted feet and bottles. The State represented by Bonwell Balamanga says Hon. Chibaya who is represented by Reginald Chidawanyika of Chitere, Chidawanyika and Partners and a member of Zimbabwe Lawyers for Human Rights allegedly drove away from the scene with his party’s youths after realising that Hungwe was bleeding and lying haplessly in a ditch.

The State alleges that Hungwe sustained injuries from the assault.

The State also alleges that Hon. Chibaya, who denies the charges, defeated the course of justice by causing the police to arrest Augustine Mutusva, the proprietor of a vehicle garage whom he asked to confess to driving the legislator’s vehicle when Hungwe was allegedly assaulted.

Prosecutors claim that Mutusva revealed to the police a day after his arrest that the Mkoba legislator had coaxed him to own up to the offence of driving the MDC party youths in Hon. Chibaya’s vehicle when the soldier was allegedly assaulted.

Magistrate Meo Rubwe is presiding over the trial.

CSOs launch advocacy charter

GENEVA-A coalition of Zimbabwean Civil Society Organisations (CSO)’s on Friday officially launched a Human Rights Advocacy Charter on the sidelines of the 18th Session of the UN Human Rights Council.

The Advocacy Charter was launched during a special event jointly organised by Zimbabwe Lawyers for Human Rights, the International Commission of Jurists (ICJ) and the Geneva-based Zimbabwe Advocacy Office.

The theme of the event was, ‘The Universal Peer Review Process (UPR) and the current human rights situation in Zimbabwe.’

In his opening remarks, Martin Okumu-Masiga, the deputy director of ICJ’s Africa Programme highlighted the importance of the forthcoming review of Zimbabwe’s compliance with its human rights obligations on 10 October 2011. Masiga noted that the review process was an opportunity for Zimbabwe to reflect on its human rights record and take corrective measures to address concerns that would have been raised by fellow states during the peer review process.

Officially commissioning the Advocacy Charter, Dzimbabwe Chimbga, a projects manager with ZLHR gave a narration of the process through which a coalition of over thirty organisations had undertaken since the beginning of 2010 to work together to put a report highlighting the key human rights issues in Zimbabwe, culminating in the validation and adoption of the Advocacy Charter.

Chimbga noted that although the UPR process did not allow for direct interventions by CSOs during the review itself there were mechanisms by which other stakeholders, CSOs included, can make submissions to the Office of the UN High Commission that would form part of the overall submissions to the state.

“CSOs can additionally lobby UN member states to relay certain questions or recommendations to the State under review during the actual review process. It is this space, among other state-targeted initiatives, that the coalition of CSOs had sought to explore,” said Chimbga.

Commenting on the current human rights operating environment in Zimbabwe, Chimbga noted that, notwithstanding the signing of the Global Political Agreement that brought about the coalition government, cases of human rights violations continued to be reported across the country.

He said in 2011, more than one thousand cases of various human rights violations, including arbitrary arrests, persecutions and harassment of human rights defenders had been documented by ZLHR.

Chimbga urged the government to take advantage of the UPR process to evaluate its record in the past decade in the protection and promotion of human rights and take cogent measures to correct its failings that are well documented. The human rights lawyer said a case in point was the failure to address cases of impunity through investigating and prosecuting those guilty of human rights

violations arising from the violent election of 2008.

With fresh elections imminent, Chimbga urged the government to create conditions that would allow for the holding of a free, fair and credible election by ensuring that the electorate freely exercised its right to vote. He declared that the era of disputed elections should become a thing of the past.

In response, the State representative only identified as Munhundiripo based at the Permanent Mission of Zimbabwe to the UN in Geneva acknowledged that the events of 2008 were ‘regrettable’.

He however defended the State arguing that no country in the world had a ‘pristine human rights record.’

Munhundiripo pointed out that since the inception of the coalition government the human rights situation had greatly improved although it remained work in progress.

He also pointed towards the progressive amendments to most of the repressive legislation such as the Public Order and Security Act (POSA) as evidencing the progress the State was making to address human rights. Munhundiripo further blamed the poor performance of the economy for the poor service delivery and the falling standards in areas such as health and education. He concluded by suggesting that the on-going constitution making process could address most of the issues of political contestation that negatively impacted on the enjoyment of human rights.

Contributing to the discussion, Marlon Zakeyo, a Zimbabwean lawyer and coordinator of the Zimbabwe Advocacy Office observed that a lot of the human rights violations in Zimbabwe did not require material resources to be addressed. He gave an example of the brutal repression of people particularly around election period. All it required was for the State to desist from violating the rights of citizens without any impact to the State resources. Whilst commending some of the positive statements made by the government delegate, Zakeyo urged the State representative to ensure that the same spirit of co-operation exhibited during the meeting should be translated into real gains on the ground for human rights defenders and ordinary people back home in Zimbabwe where the enjoyment of human rights still remain elusive to many.

The UPR is a United Nations-led state to state review process of each member States’ record of compliance with international human rights law. The process culminates in recommendations being made to the particular State on how it can enhance the protection and promotion of human rights of its people.

Zimbabwe will for the first time in history be subjected to the review process on 10 October 2011. It will remain key for civil society to follow up on the implementation of the recommendations on the ground during the period between Zimbabwe’s review next month and the next cycle of review in 2016.

Chief in bed with Kunonga...

MUREHWA-From being harassed by police and hired thugs, Anglican congregants are facing a new threat from an unlikely source. A traditional leader, of all the guesses one may come up with!

On Thursday, parishioners from St Johns Chikwaka were shocked to find the local chief ordering them to pay allegiance to expelled renegade bishop, Nolbert Kunonga.

In clear violation of the right to religious freedom, the chief told Anglican members who had waited over four hours in scorching heat that he would only allow them to worship in his area if they agreed to be under Kunonga. Spotting a pair of blue jeans and a golf t-shirt, the young chief told the Anglicans he would not allow them to worship even under a tree being currently used as a venue after Kunonga forcibly took over the church building two weeks ago.

But the Anglican members stood firm.

"Chief we are not going back there. Our doctrines are different. What has changed that you now want us to go back? You are the one who gave us this place in the first place, saying 'don't worry you don't need to be in a church to worship'," one of the church representatives said.

The chief had last Sunday told the Church of the Province of Central Africa (CPCA) local priest, Reverend Richard Mombeshora, that he was no longer eligible to lead the congregation, before promising to deliver a final ruling on Thursday.

On Thursday, parishioners strengthened each other through worship, praise songs and Bible teachings as they waited for the chief to arrive.

A passer-by would have been forgiven for thinking this was a normal church service.

"Ndinochemera mweya handichemeri chechi, handichemeri mari ndinochemara mweya wangu (All I want is my spirit's salvation, not the church building nor money). Shingirira nganga nga uri mwana waMwari. (Hold fast you are a child of God). Mira panzvimbo usacheuke (Hold your position don't look back.) Ndinoramba ndichinamata (I will

...bans priest

MUREHWA-A Chief has banned a priest from presiding over Anglican church services in his constituency as the feud between the Church of the Province of Central Africa (CPCA) and an excommunicated church leader Nolbert Kunonga takes a nasty turn.

Chief Chikwaka recently banned Reverend Richard Mombeshora from presiding over church services in Chikwaka, Murehwa, after "convicting" him of defecting from Kunonga's church and aligning himself with church leaders of the CPCA whom the Chief claimed had embraced homosexuality.

At a Dare, the local customary court session convened on 16 September 2011 at Juru council offices, the Chief banned the CPCA from operating in his area and ruled that Rev Mombeshora was no longer allowed to hold any church services. Chief Chikwaka dictated that Rev Richard Mombeshora would preside over his last church on Sunday 18 September 2011 and thereafter leave his area. On Sunday 18 September, Chief Chikwaka told congregants

who attended a CPCA church service under a tree that they should join Kunonga's church and worship in a classroom at St Johns Mission under the priesthood of one Gwema.

In reaching at his verdict, Chief Chikwaka claimed to have consulted Chief Justice Godfrey Chidyausiku about the issue of homosexuality and that police Commissioner-General Augustine Chihuri had condemned the CPCA. He also claimed that one of the elderly sisters at Shirley Cripps children's home had confessed that the CPCA had taught her to embrace homosexuality, a charge which was denied.

Supporters loyal to Kunonga, who openly supports President Robert Mugabe's ZANU PF party, recently took over an orphanage housing more than 100 children. The breakaway leader has also seized mission schools and priests homes on the church premises around the country. Most worshippers now congregate under the shade of trees and at facilities at other churches and schools.

Chikwaka, showed the kind of arrogance that went with his ruling.

He nonchalantly dismissed the parishioners complaints about his delays, before delivering the fatal blow.

"If you do not adhere to what I am saying I will not be able to protect you from harm as I did before. The issue will be out of my hands," he said, in a covert admission that "harm" awaited those that refused to join Kunonga. "This coming Sunday you will go back to the church under the current priest (Kunonga's priest).

I am not allowing you to continue under this tree and I cannot give you any other place," the chief said.

However, the Anglican members steadfastly told the chief that they were not going back to the church building under the same priest who had chased them away like "dogs".

"This same priest you want us to go to was excommunicated from the Roman Catholic Church, how can we go to him? Who is Kunonga that we are forced to go to his church?" the congregants said. Only identified as Gwema, Kunonga's priest was chased away from the Roman Catholic Church for defying church cannons.

The chief had gone to the meeting with documents from Kunonga "that prove" that the Harare Diocese had agreed to pull out of the CPCA. But the parishioners would have none of it.

They said the church had not unanimously agreed to pull out of CPCA. It was only Kunonga and three other members out of a possible 100 that took the decision, they argued.

The community has been shaken by the eviction and displacement of the CPCA members including St Johns Chikwaka teachers by Kunonga.

But they are not the only ones.

Throughout the country, trees have become the common place of worship for CPCA parishioners who are being barred from church buildings by affiliates of the ex-communicated Kunonga.

With the aid of the police, Kunonga has been able to evict congregants of the CPCA under the Harare Diocese from Church buildings, thus he has maintained control of the church properties. Followers have not been kind to him though.

The majority has chosen to pray under trees than join a man it says is prone to using violence, leaving the church buildings Kunonga grabbed empty.

Earlier this month, Kunonga evicted orphan caregivers at Shearly Cripps Home leaving the orphans vulnerable.



Enduring tribulation through song and dance... members of the Anglican church under a tree in Murehwa. This might be the last time they gathered in this area



lol... Mavhudzi laughs last

Vikas Mavhudzi (VM) who until last week was facing a charge of subversion because of an alleged *facebook* posting urging Prime Minister Morgan Tsvangirai to imitate mass protests staged in Egypt speaks to *The Legal Monitor* (LM)

LM: Will you be using *facebook* after what you went through such as arrest, detention and prosecution?

VM: Ooh yes, even more because I am not a coward.

LM: Were you a Facebook fanatic before this case?

VM: I was and I would spend most of my time socialising on the network.

LM: Are you a fanatic now?

VM: Now I have been hardened and made stronger.

LM: How are you handling the pressure of being an instant celebrity?

VM: It's hard especially with the security aspect of our country you never know what they are planning next for you but I am humbled though.

LM: How did your family react to your arrest and persecution?

VM: They were really shocked and could not believe it but they were really all over the place supporting me and looking for assistance especially my wife and my brother Azaria. I really value their never ending support throughout my ordeal

LM: What can you say about the collapse or crumbling of your case? How are you feeling?

VM: I am very thrilled and I feel vindicated, now that common sense prevailed.

LM: What do you think about moves to control the use of social networking websites such as *facebook*?

VM: These are uncontrollable because new and advanced sites keep on emerging time and again. Also it is clearly a violation of freedoms of association and expression.

LM: How powerful can these tools be in mobilising?

VM: They are very powerful considering that we are moving into the technology era. The clear example is the incidents in the Arab world.

LM: Do you think Zimbabwe has the capacity to mobilise using social sites?

VM: At the moment it may be difficult as this tool is more or less for the elite and our networks are mainly accessible in urban areas to exclusion of the many rural masses.

LM: You spent almost a month in remand prison before you were granted bail. What were the conditions and how did you manage to survive in prison?

VM: The conditions were horrible but I managed to survive because of the overwhelming support from my family, friends and most importantly my winning legal team.

LM: What do you think about the freedom of expression in Zimbabwe?

VM: It is freedom on paper but it does not prevail on the ground and my case is a clear testimony to this.

LM: What were your fears throughout your ordeal or case since it started in February?



Lizwe Jamela and Vikas Mavhudzi

VM: I feared for my life as I was not sure whom I was dealing with. Also the thought of a possibility of 20 years imprisonment sentence was a living reality that haunted me every time I stepped in the court room.

LM: What do you have to say about your lawyers from Zimbabwe Lawyers for

Human Rights, who assisted you in this case?

VM: Whow!!! These guys are great. They work as a team and I feel great associated with them as they are a winning team. I also read a lot about them and the great work they are doing in the region.

LM: How did you come to know about Zimbabwe Lawyers for Human Rights?

VM: Through the media including your interesting newsletter "*The Legal Monitor*."

Spectacular collapse for *facebook* case

BULAWAYO-The case against Magwegwe resident, Vikas Mavhudzi, who was accused of subversion because of an alleged *facebook* posting urging Prime Minister Morgan Tsvangirai to imitate mass protests staged in Egypt, collapsed on Tuesday after Magistrate Rose Dube threw out the charges.

Magistrate Dube threw out the charges after State prosecutor Jeremiah Mutsindikwa failed to furnish the court with any evidence of the message allegedly posted by the 39 year-old Mavhudzi on the social networking site *facebook*.

Mutsindikwa had pressed ahead with prosecution even though the police's information technology experts had failed to retrieve the alleged *facebook* posting by Mavhudzi.

Mavhudzi's lawyer, Lizwe Jamela of Zimbabwe Lawyers for Human Rights (ZLHR) had demanded to be furnished with the evidence allegedly posted by the Magwegwe suburb resident praising the Egyptian uprising before commencement of the trial.

Magistrate Dube ordered the State to return the mobile handset to Mavhudzi. Mavhudzi was arrested in February 2011 and charged with subverting a government by unconstitutional means over a comment he allegedly made on Prime Minister Morgan Tsvangirai's *facebook* page expressing his approval of the protests in Egypt that led to the resignation of Hosni Mubarak as president. He was granted bail after spending one month in prison after his lawyers Jamela and Nosimilo Chanayiwa of ZLHR intervened.

Zimbabwe's first ever *facebook* case had turned into a comic a fortnight ago after some clueless members of the Zimbabwe Republic Police who had been trying to crack up Mavhudzi's mobile phone surrendered.

In a letter written prosecutor Mutsindikwa by Detective Inspector, B Samakande, the acting Officer In Charge of Bulawayo Central Police Station's CID Law and Order Section, the police candidly admitted that their computer experts had failed to access the alleged *facebook* posting by Mavhudzi.

"This report serves to inform you that this station has failed to access the *facebook* message, which is subject of the charge in this case. Assistance was sought from experts in the police's information technology section without any success. It would appear the message was deleted from the network and it had not been served (sic) in the cell phone," reads part of the police letter.

Meanwhile, High Court Judge, Justice Joseph Musakwa on Wednesday granted bail to two Glenview residents Kerina Gweshe and Memory Ncube, who were arrested on 7 September 2011 and charged with committing murder for allegedly slaying a police officer, Inspector Petros Mutedza. Justice Musakwa ordered the two to reside at their given addresses and to report once a week on Monday to the police. The Judge ordered Gweshe to surrender her passport.



Vikas Mavhudzi