

The LEGAL MONITOR

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Torturers in the dock

BULAWAYO-The chickens are coming home to roost for two police officers accused of torturing a 43-year-old Bulawayo woman.

Constables Tinevimbo Shoko and Tazvitya Mudzingwa based at Pumula Police Station last week appeared before a Western Commonage Magistrate in Mpopoma on assault charges.

While many other cases of torture by police officers are going ignored, Shoko and Mudzingwa's case brings a ray of hope that cases of civilians being tortured in police cells could start getting attention from authorities.

Shoko and Mudzingwa are back in court tomorrow for continuation of their trial which commenced last week.

Magistrate Temba Chimiso is presiding over the matter while Mrs Nyathi is prosecuting.

The police officers are in the dock after Zimbabwe Lawyers for Human Rights (ZLHR) intervened and warned of legal consequences if action was not taken against the two for allegedly torturing 43-year-old Mankanzanyana Moyo. The torture included denying her medication.

ZLHR senior projects lawyer, Lizwe Jamela on 13 January this year lodged a complaint to the Officer In-Charge of Pumula Police Station.

Police responded to ZLHR's complaint after a follow up letter to Commissioner-General Augustine Chihuri on 16 January stating an intention to sue.

"Please be advised that on behalf of the Commissioner-General of Police we are treating the matter just as good as other reports of assault made by citizens and foreigners in Zimbabwe. We do not condone such behaviour even if perpetrated by our members," wrote a chief superintendent who signed the letter as L Matange.

According to the ZLHR letter to Chihuri, the two police officers assaulted Moyo at Pumula Police station in Bulawayo with a baton stick under her feet and slapped her on the face.

"She was then severely assaulted under her feet to the extent she could not put on her shoes upon being released," read the ZLHR letter.

"She was also denied her medication when her alarm went off alerting her of the twelve hour intervals for medication. She was instead insulted about her medical status and told people like her always die in prisons and she should just admit and give the police what they wanted. All of which necessitated her seeking medical attention (report of which is attached together with an extract from her treatment book) at Mpilo Hospital, Bulawayo. Such torture we consider to be inhumane and degrading treatment."

The issue of police torturing civilians in police stations has been on the spotlight since the beginning of the year.

Doctors say Agnes Muponda, a 37-year-old Bulawayo woman, could have suffered "potential damage of life" after police tortured her at the Criminal Investigations Department housed at CABS Building in Bulawayo on Saturday 14 January.

A medical report indicates she could also have suffered permanent disability after being attacked by officers who had taken her in on allegations of theft.

A government doctor at United Bulawayo Hospitals who attended to Muponda after her ordeal stated in a medical report that she has suffered "extensive bruises over the entire trunk (and) limited movement over the ankle joints."

The doctor noted after examining Muponda that there was "potential danger of life" following the attack.

He described the injuries as "very serious", most probably caused by a "blunt" instrument. The degree of force used to inflict the injuries was "severe", according to the doctor's report.

The report noted that Muponda's life was left vulnerable because of "extensive tissue injury".

Permanent disability was likely to occur at the ankle joint, the doctor said in an affidavit signed on 17 January, a day after attending to Muponda.

Before Muponda, police at Chisamba police in Mutare had opened the New Year with the torture of Noel Zino, a bus loader from Mutare on 9 January.

In typical Zimbabwe police style, officers at Chisamba Police Station in Mutare's Sakubva high density suburb beat up Zino to force him to admit that he had assaulted a passenger. The court later threw out the case against Zino for lack of evidence.

Rights groups such as the Zimbabwe Human Rights NGO Forum have been campaigning for an end

to impunity, which they blame for the continued torture of civilians by state security agents.

The Forum told the 50th Session of the African Commission on Human and Peoples' Rights (ACHPR) in Banjul last year that torture, a crime prohibited under regional and international law, was still rampant in Zimbabwe.

This was despite a decline in the magnitude of levels of organised violence and torture in the country since the formation of the coalition government between President Robert Mugabe and long-time rival Prime Minister Morgan Tsvangirai in February 2009.

The government committed itself to giving consideration to ratifying the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment at last year's Universal Periodic Review.

But information availed in Banjul last year showed that on the ground; State institutions could take a while to wipe out torture, which hit a high during the 2008 election period and has refused to die down.

"Organisations providing psycho-social, medical and legal assistance to victims of torture are still being inundated with requests for assistance from victims of the 2008 March harmonised elections and the June presidential runoff election," the Forum said in a position paper at the Banjul meeting.

"Perpetrators of torture remain largely immune to prosecution and the law does not criminalise torture. This encourages impunity."

Freedom at last as lawyers bid for Madzore's liberty

HARARE-"That is what you see when the wheels of justice spin slowly and at a snail's pace. But if a lawyer is in for the long haul then justice will be done eventually." These were the words of a human rights lawyer Kudzai Kadzere in response to the granting of bail to Glenview ward 32 councillor, Tungamirai Madzokere and Glenview residents Rebecca Mafikeni, Yvonne Musarurwa, Lazarus Maengahama, Stanford Maengahama, Stanford Mangwi and Phineas Nhatarikwa. The Glenview residents were granted bail by Deputy Chief Justice Luke Malaba on Friday after their lawyer, Charles Kwaramba of Mbizvo, Muchadehama and Makoni Legal Practitioners, who is a member of Zimbabwe Lawyers for Human Rights (ZLHR) took their freedom bid to the Supreme Court.

The seven Glenview residents who are expected to walk out of prison walls today after the late processing of their warrants of liberation had been wallowing in prison since their arrest in May last year for allegedly murdering a police officer, Inspector Petros Mutedza. Their first bid for bail was dismissed by Justice Tendai Uchena, who in July threw out their bail application after ruling that they could flee from the country.

Justice Malaba asked Madzokere to deposit US\$1 000 in bail money while the rest of the residents were asked to pay US\$500 and to report three times a week to the police. The Judge ordered those with travelling documents to surrender them as part of their stringent bail conditions.

In response to the granting of bail to the Glenview residents, human rights lawyer Jeremiah Bamu of ZLHR remarked that; "It has been a long walk, and a protracted battle, but finally, Tungamirai Madzokere, Lazarus Maengahama, Stanford Maengahama, Phineas Nhatarikwa, Stanford Mangwi, Rebecca Mafikeni and Yvonne Musarurwa, will walk out of the gates of remand prison on bail. Regrettably, the administrative processes for their release could not be completed on time today (Friday) and they will have to spend the weekend inside. Hats off to Charles Kwaramba for his sterling efforts and tireless quest for the release of his clients.

Meanwhile, lawyers representing Movement for Democratic Change Youth Assembly chairperson, Solomon Madzore on Monday filed a notice of appeal against the refusal to grant him bail by High Court Judge Justice Hlekani Mwayera.

In the application which was filed after Justice Mwayera granted them leave to appeal last Friday, Madzore's lawyers Gift Mtisi and Selby Hwacha, who are ZLHR members argued that the high court judge erred in vetoing the youth leader's first bail bid last year. The lawyers say there was no sufficient evidence showing that Madzore had an inclination to abscond if admitted to bail as stated by Justice Mwayera when she denied him bail last year.

"The court-a-quo grossly misdirected itself by making findings which were not supported by the facts and evidence placed before the court," reads part of the application. Madzore was arrested in October and charged with murdering Inspector Mutedza.



Rebecca Mafikeni and Yvonne Musarurwa



Councillor Madzokere and Last Maengahama



Phineas Nhatarikwa, Lazarus Maengahama, Stanford Maengahama and Stanford Mangwi

CSO's dismiss NGO's ban

MASVINGO-The environment "has to be cleared" before national elections can be held, Masvingo provincial Governor Titus Maluleke told field monitors for local and international non-governmental organisations (NGOs) doing critical humanitarian

and human rights work in the province before banning them. The fact that he made the announcement flanked by provincial military, prisons and police commanders send the clearest message how the crackdown on NGOs and human rights defenders

is likely to intensify ahead of elections despite the Southern African Development Community's demands for reforms. *Below is the official reaction of Civil Society Organisations to the ban:*

CSO'S JOINT PRESS STATEMENT ON THE PURPORTED BAN OF NGO'S IN MASVINGO

We note with concern the blatantly illegal actions of Masvingo Provincial Governor, Titus Maluleke in purporting to ban some Non Governmental Organisations (NGO's) operating in Masvingo. On 14 February 2012, at a press conference convened in Masvingo, Governor Maluleke ordered the suspension of the activities of 29 NGOs for allegedly failing to register their operations with his office.

The Governor's actions were illegal and are a nullity at law.

The law in this country clearly shows that he has no regulatory authority; nor does he have the power to register or de-register NGOs. Even the Provincial Council that he heads in terms of the Provincial Councils and Administration Act does not have regulatory powers over NGOs. The council exists solely to foster developmental projects initiated and carried out by central government and local government.

In fact in terms of the law, the Governor's functions must be exercised through the process of consultation and suggestion with the

various organs of government and not NGOs. As such he has no executive powers to suspend, disrupt or hinder the activities of NGO's and there is no legal obligation for an NGO to register with his office or any other Provincial Governor's Office.

The Governor's rash and ill-advised utterances merely seek to confuse matters and are regrettably likely to worsen the humanitarian crisis prevailing in the Masvingo Province. This is because the list of organisations he seeks to ban include NGOs that are currently providing food, medication and water and other social economic support to the community – something the state itself has failed to do due to its misplaced priorities.

The actions of the Governor are also irresponsible considering that the government and NGOs should be coming together to fight the Socio-Economic ills bedevilling Zimbabwe rather than him frustrating the efforts of individuals and organisations trying their best to help out fellow Zimbabweans.

Governor Maluleke has also violated section 21 (a) of the Constitution of Zimbabwe which guarantees freedom of assembly and association, in that all the members and beneficiaries of the suspended NGOs are effectively being hindered from enjoying the benefits of such association and membership. Furthermore by illegally seeking to suspend the activities of NGOs, the Governor has violated their rights to freedom of movement as enshrined in Section 22 of the Constitution. Lastly, he as a public officer, has a duty to exercise his functions in accordance with the law and to observe and uphold the rule of law in terms of section 18 (1a) of the Constitution. Therefore he is also in violation of this provision as he acted illegally and beyond the scope of his authority.

We also note that there are reports that Governor Maluleke made the pronouncement suspending the NGOs flanked by security forces from both the Zimbabwe Republic Police as well as the Zimbabwe Defence Forces. We wonder why this was so. We reiterate that the role of the security forces in terms of the constitution is to preserve security during times

of war and, for the police, to maintain law and order in Zimbabwe. Their inclusion in the press conference is therefore curious and misplaced and it is difficult for us not to conclude that their presence was a strategy designed to cower and intimidate the NGOs.

This fresh onslaught on NGOs does not surprise anyone, as it was already hinted at by ZANU PF at its annual conference held in Bulawayo in December last year. NGOs have weathered such attacks before, and shall do so again.

In these circumstances, the affected NGOs should ignore the order by the Governor and continue to carry out their life saving interventions in this province and all others in the country.

Issued on behalf of:

- Crisis In Zimbabwe Coalition
- National Association of Non Governmental Organisations
- National Constitutional Assembly
- Zimbabwe Election Support Network
- Zimbabwe Human Rights NGO Forum



Gambian lawyers need to look up to their Zim colleagues for inspiration

BANJUL, GAMBIA-An online newspaper here says Gambian lawyers need to look for inspiration in Zimbabwe, where the country's human rights lawyers group has urged NGOs to defy a provincial governor's suspension. Senegambia News said though it

had been reported that Masvingo Governor Titus Maluleke had chosen to announce the suspension of 29 NGOs in the presence of senior officials from the army, police and prison services that intimidatory tactic did little to frighten the lawyers. As a member and

partner of influential civil society coalitions, Zimbabwe Lawyers for Human Rights assisted in the convening of a press conference held at the organisation's offices last Thursday, where leaders of CSO's vowed to defy Maluleke's purported ban of NGO's.

Source: http://www.senegambianews.com/article/Editorials_Commentaries/Editorials_Commentaries/Gambian_lawyers_need_to_look_up_to_their_Zimbabwean_colleagues_for_inspiration/19922

Shosholoza for love met with violence

HARARE-Spreading love has now become hazardous for Zimbabwean women, particularly with police full of "hate" lurking around.

It has always been tough for activists in Zimbabwe trying to express themselves, but it is proving even tougher during the Valentine's period.

During this period, beautiful ladies singing love ballads are met with violence by baton wielding, mean-looking police officers. It can only happen in Zimbabwe!

Picture this: Two teenagers, one of them pregnant, are locked up in filthy police cells after being rounded up by police officers on the hunt for Women and Men of Zimbabwe Arise (WOZA) activists staging a pre-Valentine's march in Bulawayo exactly seven days before the Valentine's Day.

A week later, on 14 February, the actual Valentine's Day, more than 500 women took to the streets in Harare singing love songs and roses in hand.

To the police, this sounded more like a war cry and within minutes some women were heavily assaulted and suffered injuries after lashes from the truncheon-wielding police, others fleeing in all directions as police pounce.

Red which is the colour of love came out thanks to the police. Ten members had to seek medical

attention for soft tissue bruises and lacerations caused by baton stick injuries, according to WOZA.

WOZA had organised its action into two separate protests marching to Parliament last Tuesday.

Andrew Makoni, a human rights lawyer and the board chairperson of Zimbabwe Lawyers for Human Rights offers his counsel on the role of police according to the Criminal Law (Codification and Reform) Act (Chapter 9:23).

Said Makoni: "The legislature is aware that processions inevitably interfere in some way with other people's movements, hence the provisions of section 29 (1) (c) which prescribes what a police officer may do if a regulatory authority has not received a notice of the intended procession more than 48 hours before the gathering, where such notice is required. In terms of this subsection, an officer may restrict the gathering to a place or guide the participants along a route. This section does not give the police the power to arrest in the event of an unlawful gathering but the power to regulate the gathering. Neither does the act provide police officers with the right to brutally disperse peaceful human rights defenders."

Eight police officers wielding baton sticks and shields stopped the protestors 50 metres from the Parliament door and refused them passage.

The activists took the opportunity to sing love songs to the police and chant slogans while leaders addressed the gathering on constitutional reforms

and the role police should have been playing instead of stopping the peaceful activists.

The arrival of the second group of WOZA protestors forced police into higher gear.

An officer with a tear gas gun cocked the weapon in a threat to shoot, while some police officers began to beat the peacefully dispersing crowd. Pandemonium followed, forcing people to flee at speed.

"One of the participants was beaten by four police officers at once taking turns to slay her across the neck and shoulders. She apparently was being beaten with this level of severity for telling them 'the thieves are going free while you beat us'."

"WOZA calls on police officers to be more professional. It is illogical to beat people as they are actually dispersing and a sign that police officers have too high an appetite for violence," said WOZA.

"WOZA wishes to draw comparison between the semi professional behaviour of police at Parliament who go through the motions of engaging protest leaders whereas in Bulawayo the police officers just jump from their truck and thump anybody in sight showing a greedy appetite for violence. On 7th February the Bulawayo edition of the protest was violently dispersed by police officers and over 30 members had to seek medication for abrasions and bruises."

Shosholoza for LOVE

Women and Men of Zimbabwe Arise (WOZA)
Is turning **10** in 2012!
Lets Shosholoza for love!

WOZA mobilises Zimbabweans to demand social and economic justice. WOZA educates people about their rights and freedoms so they can fully participate in all civic processes. WOZA members conduct civic education programmes that teach people peaceful ways to speak out about their issues. WOZA members use Valentines Day to campaign for LOVE to overcome hate. The red rose shows our message of love - receive the rose and let it encourage you to demand dignity and a new Constitution.

Zimbabweans WOZA needs your voice and action!
WOZA members send you this message!

I Love what I do
I Do Democracy
I Do Development
I Defend Human Rights
I Do it the name of love
I Do it in for the love of Zimbabwe
Woza let's Do it together
Woza Zimbabwe Woza
Lets Shosholoza for love!

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Tomana's huge mountain

HARARE-Deputy Chief Justice Luke Malaba has reserved judgment in a case in which Attorney General (AG) Johannes Tomana wants the Supreme Court to allow a late noting of an appeal by his office against the acquittal of human rights lawyer, Alec Muchadehama and Constance Gambara, a clerk to High Court Judge Justice Chinembiri Bhunu on charges of contempt of court.

Justice Malaba reserved judgment but not before remarking that the State had a huge mountain to climb as it seeks the Supreme Court to condone their conduct which included "drunken binges instead of preparing court papers", according to the Deputy Chief Justice.

Tomana argues that he still has chances of getting the acquittal of Muchadehama and Gambara overturned. The two, who were charged with contravening Section 182 (1) of the Criminal Law (Codification and Reform) Act (Chapter 9:23) were acquitted in the Magistrates Court in December 2009.

Tomana accuses Muchadehama and Gambara of facilitating the improper release of Andriison Manyere, a freelance journalist and senior Movement for Democratic Change (MDC) officials Gandhi Mudzingwa and Chris Dhlamini. The three men were abducted and tortured by State security agents during the period they were under State sponsored enforced disappearance in late 2008.

The three men were later admitted to bail but the AG argued they were released when the bail granted was being appealed against. High Court Judge Justice Joseph Musakwa in 2010 dismissed the AG's chamber application for leave to appeal against the Magistrates Court's acquittal of Muchadehama and Gambara.

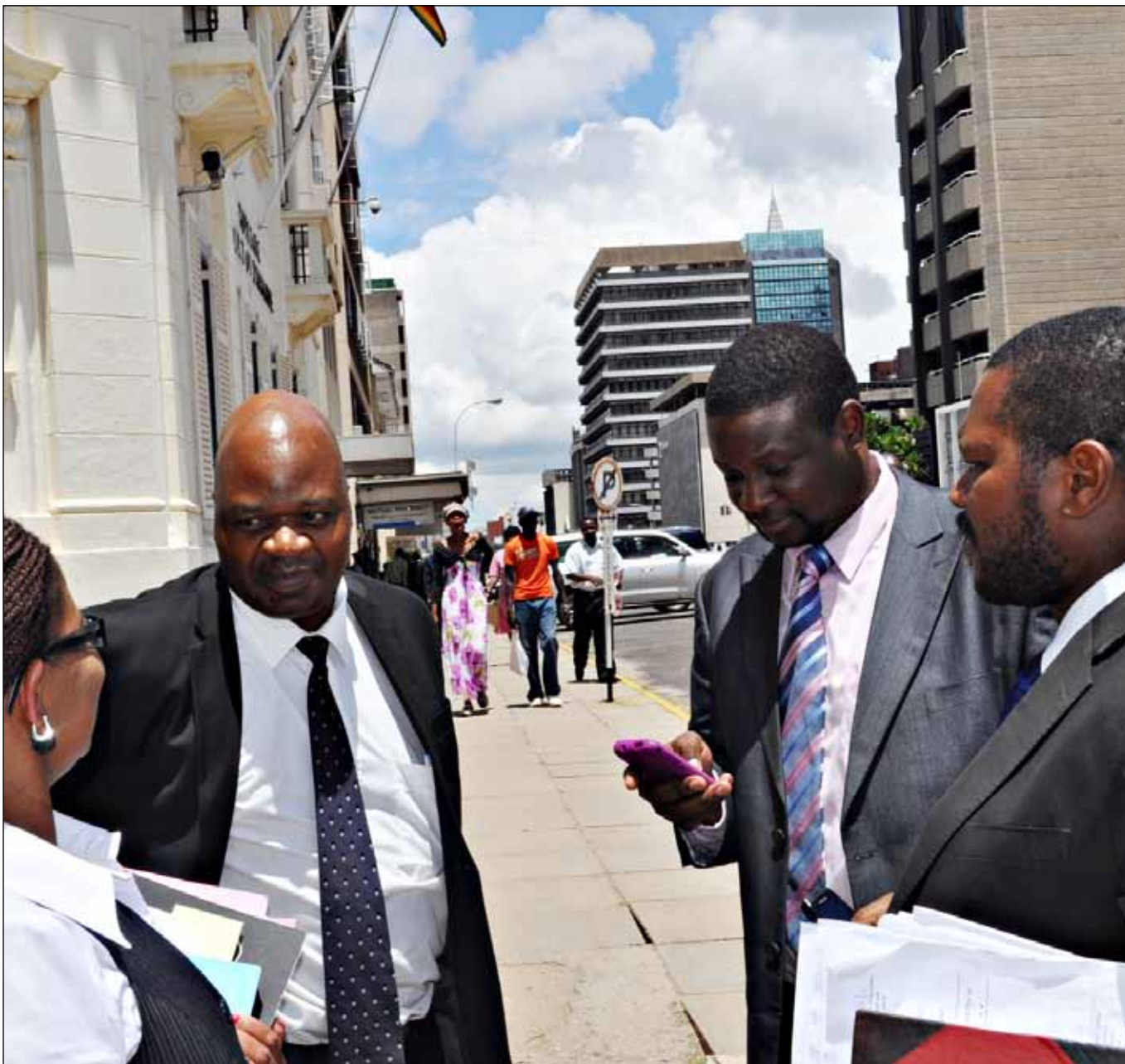
The AG failed to appeal against Justice Musakwa's ruling on time, and has now filed an application for late noting of the appeal.

Roderick Tokwe, a prosecutor handling the case at the time Justice Musakwa dismissed the AG's application for leave to appeal against the Magistrates Court's acquittal of Muchadehama and Gambara stated in the Supreme Court application that he failed to file the appeal on time partly because he was fighting a messy divorce.

On Wednesday, Muchadehama's lawyer Beatrice Mtetwa, a board member of Zimbabwe Lawyers for Human Rights raised a preliminary point when the hearing commenced in Justice Malaba's chambers on whether Tomana can appeal directly to the Supreme Court without first approaching and seeking leave from the High Court.

Justice Malaba restricted Mtetwa and Edmore Nyazamba, who appeared on behalf of Tomana to arguments on the preliminary point raised by Muchadehama's lawyer.

Mtsetwa submitted that the actions by Tomana were yet another step by the AG to hound the prominent human rights lawyer through abuse of procedure by filing an appeal through a non-existent procedure and way out of time.



Muchadehama chats with his lawyers Beatrice Mtetwa and Dzimbabwe Chimbga together with Nyazamba outside the Supreme Court

Blow to Gwisai freedom bid

HARARE-Magistrate Kudakwashe Jarabini on Wednesday dismissed an application for discharge filed by International Socialist Organisation leader and University of Zimbabwe law lecturer Munyaradzi Gwisai and five other social justice

and human rights activists, who were on trial on charges of conspiring to commit public violence.

The activists' lawyer Alec Muchadehama had applied for discharge at the close of the State

case on the basis that the State had failed to produce sufficient evidence to require putting the accused persons to their defence but Magistrate Jarabini ruled that the matter should proceed to the defence case as the State had made up a *prima*

facie case against the activists tending to prove the commission of an offence. The Magistrate postponed the case to Monday.

Below Muchadehama briefs his clients at the Harare Magistrates Court.

