

The LEGAL MONITOR

For feedback please email ZLHR on: info@zlhr.org.zw visit: www.zlhr.org.zw

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



31 January 2011

Edition 78

COST-FREE

Ultimatum

MASVINGO-Oliver Mudzongachiso, the Magistrate who convicted a Minister from Prime Minister Morgan Tsvangirai's party on assault charges, has been given until this Friday by his bosses to prove that his judgment was not driven by political vendetta.

Mudzongachiso, the Acting Masvingo Provincial Magistrate, allegedly bragged in public on 8 January this year that he would continue using his office to convict people he perceived as pro-Movement for Democratic Change (MDC).

Mudzongachiso in December convicted and fined Deputy Minister of Youth Development, Indigenisation and Empowerment, Hon. Tongai Matutu, \$100 for allegedly assaulting Vengesai Rushwaya, Chief Serima in Masvingo province. Hon. Matutu, who is also the MP for Masvingo Urban, is appealing against both conviction and sentence.

The Magistrate now finds himself in the unfamiliar position of having to defend his conduct after he reportedly boasted during a beer drink with colleagues at Chevron Hotel in Masvingo that he was just getting started with the conviction of MDC "puppets".

"On Saturday 8 January 2011, the Learned Magistrate went for a beer drink at Chevron Hotel in Masvingo. During the beer drink the Learned Magistrate uttered the following words; 'Zvimwasungata zveMDC tino convicta. Chimwe chacho takato convicta uye tichiramba tichizvi convicta. Tiri mawar vet isu. (We convict MDC puppets, and will continue convicting them. We have already convicted one of them. We are war veterans)'," wrote Mwonzora and Associates Legal Practitioners to the Chief Magistrate's office.

Mwonzora and Associates Legal Practitioners are representing Deputy Minister Matutu in the matter.

Acting Chief Magistrate, Hlekani Mwayera, immediately asked Mudzongachiso to respond to the allegations.

"We are in receipt of a letter of complaint against you by Messrs Mwonzora and Associates Legal Practitioners, a copy of which was sent to you. May we have your comments and response to issues raised by 4 February 2011," wrote Magistrate Mwayera to Magistrate Mudzongachiso last week.

Mwonzora and Associates Legal Practitioners said they had suspected foul play well before the Magistrate's alleged public utterances because his conduct during the trial last year was inconsistent with a Magistrate keen on justice.

"Our suspicions about improper conduct on the part of the Magistrate arose during trial when it



Hon. Tongai Matutu

became clear to us that the Magistrate was not reading submissions written on behalf of the accused person (Hon. Matutu).

"We later noticed that his keeping of the trial record was shoddy with the result that some key evidence favourable to the accused was not recorded. In his judgment, he never analysed or evaluated the evidence of the defence witness," wrote Mwonzora and Associates Legal Practitioners.

The law firm said it had been prepared to attribute this to "simple ineptitude" on the part of the Magistrate, but Mudzongachiso's subsequent behaviour after the trial "led us to believe that he acted maliciously in this trial".

Magistrate Mudzongachiso was reportedly in the company of Masvingo Magistrate Timeon Makunde, public prosecutor Rodrick Chipembere and law officer Mirirai Shumba of the Masvingo Magistrates Court when he allegedly uttered the words. Magistrate Mwayera has also asked Shumba to give his version of events by Friday.

"The other court officials especially Mr Mirirai Shumba tried to refrain the Learned Magistrate but this was all in vain much to the disgust of members of the public present," wrote Mwonzora and Associates Legal Practitioners. "Our client is an MDC Deputy Minister. He was the person clearly referred to in the derogatory remarks of the Learned Magistrate. It leaves no doubt that our client was convicted on the basis of his political affiliation. We kindly request your good offices to investigate the matter fully."

The letter was copied to the Attorney General's Office, the Registrar of the High Court and Magistrate Mudzongachiso.

Ironically, Magistrate Mudzongachiso is expected to preside over a fraud case against Hon. Douglas Mwonzora at Masvingo Magistrates Court today.

Hon. Mwonzora-the MDC MP for Nyanga North-is one of the partners at Mwonzora and Associates Legal Practitioners.



Roger Stringer, a publishing consultant, arrives at the Harare Magistrates Court on Friday. Stringer, a resident of Mt Pleasant suburb, was arrested by the police on Thursday for allegedly defaming Reserve Bank of Zimbabwe Governor Gideon Gono's adviser Munyaradzi Kereke.

Stringer was charged with contravening Section 96 of the Criminal Law (Codification and Reform) Act Chapter 9:23. The police allege that Stringer defamed Kereke, his neighbour, by causing the publication of a false story in a local weekly newspaper on 16 January pertaining to a hospital project, which the RBZ official is developing in the residential suburb of Mt Pleasant.

Harare Magistrate Moses Murendo on Friday granted \$100 bail to Stringer who was remanded to 24 February.



27 January 2011
Press Statement

African Union: Promoting “shared values” of democracy and human rights in Zimbabwe

In the spirit of the African Union’s 16th Summit’s theme, “*Towards Greater Unity and Integration through Shared Values*,” Zimbabwe Lawyers for Human Rights (ZLHR) calls upon the African Union to urge Zimbabwe to embrace Africa’s shared values of democracy, good governance and human rights. The African Charter on Human and People’s Rights, to which Zimbabwe is party to, obliges African States to respect and protect human rights. Article 3 of the Constitutive Act of the African Union, reinforces the obligations on states to guarantee principles of good governance, popular participation, the rule of law and human rights: These values, when exercised in each and every African state, will ultimately lead to the realisation of the shared goals of peace, unity, stability and integration of the region.

During the 16th African Union Summit, ZLHR brought to the attention of various members of the African Union the need for greater presence by the regional body, as the guarantor to the implementation of the Interparty agreement in Zimbabwe, to ensure a peaceful transition from two years of an inclusive government to a democratically elected government.

ZLHR notes that sometime in 2007 the African Union mandated SADC to mediate on the Zimbabwe political impasse, caused by a near decade of political violence and elections marred human rights violations and illegitimacy. The SADC led negotiations led to Zimbabwe’s main political parties signing a Global Political Agreement and forming an Inclusive Government. This Inclusive Government became a political compromise to a democratically elected government following the discredited 2008 presidential elections during which many

Zimbabweans suffered gross human rights violations, including murder, rape and torture. ZLHR notes that the Inclusive Government was never the result of the will of the people but rather a political compromise imposed upon them as temporary solution to the political impasse.

As the Inclusive Government and Zimbabwe’s Global Political Agreement near their end ZLHR calls upon the African Union to take this opportunity to help create an environment conducive to free participation by the Zimbabwean in the political processes of electing a democratic government. Zimbabwe presents a critical turning point for the African Union to prove to its citizens across the continent its commitment to these essential “shared values”, at a time when the continent has been witnessing the wilting of democracy in favor of undemocratically constituted inclusive/coalition governments, in Kenya, Madagascar and now possibly in the Ivory Coast. Should the African Union succeed in ensuring a peaceful transition to democratic government in Zimbabwe such success presents a critical precedent and learning point for the rest of Africa to emulate and consolidate its commitment to the shared values of democracy, respect for human rights and good governance.

To ensure a successful transition from an imposed government to one that is democratically elected the African Union must take immediate steps which are critical to ensuring that Zimbabwe holds legitimate elections free from any political violence, intimidation and gross human rights violations. To achieve this ZLHR calls upon the African Union and its member states, especially those within SADC, to use their influence towards in achieving the following in Zimbabwe:

- (a) *Ensuring a legitimate constitution:* The Inclusive Government committed itself to a new constitution in Zimbabwe, which constitution should be the foundation for democracy, good governance and the rule of law. The African Union and its SADC negotiators, must call for such a constitution to be completed;
- (b) *Ensure national healing and accountability for past human rights violations:* the last elections in Zimbabwe were marred by gross human rights violations committed against ordinary Zimbabweans. Sadly the Inclusive Government has failed to ensure a legitimate national healing programme that involves applying aspects of truth telling, reparations and prosecutions. Indeed there is no guarantee that human rights violations will not be repeated in any new elections in Zimbabwe. No legitimate election can be held when a people are captured by fear and the real threat of gross human rights violations being perpetrated on them, again;
- (c) *Call for freedom of expression and political participation:* Despite commitment to guaranteeing freedom of expression/information, association and assembly there continues to be undermining of these freedoms which are critical to establishing democracy and ensuring legitimate elections. The media remains closed to private broadcasters, while peaceful demonstrations by human rights defenders are still not tolerated;
- (d) *Guarantee non-partisan state security institutions:* At the centre of illegitimate elections in Zimbabwe has been the interference of state security institutions, including the Zimbabwe Republic Police, the Zimbabwe National Army and the Central Intelligence Organisation. These institutions which have become openly partisan, especially during elections, swearing their allegiance to one party while being responsible for human rights violations, must be reformed and become non-partisan;
- (e) *Call for real electoral reforms:* Zimbabwe requires critical electoral reforms, including a revised and updated voter’s roll, transparent delimitation of constituencies, voter registration by all Zimbabweans eligible to vote and guaranteeing an effective and independent Zimbabwe Electoral Commission;
- (f) *Establish an early warning system in Zimbabwe to respond to any threat of political violence and human rights violations:* the African Union and SADC must establish an early warning system in Zimbabwe in preparation for any election. This must involve having adequate and resourced monitors on the ground at least four months before any elections and another four months after elections to access the electoral environment and respond effectively to any threat of intimidation violence or other electoral malpractice.

Court throws out drugs case

HARARE—The Harare Magistrates Court has acquitted Hendrick O’Neil who was facing charges of donating expired medical drugs to Movement for Democratic Change MP, Ian Kay.

“The State has failed to prove its case beyond any reasonable doubt against the accused person. The accused is hereby found not guilty and acquitted on both counts,” ruled Magistrate Don Ndirowei recently.

According to the State, led by Phyllis Zvenyika, O’Neil received expired drugs without the approval of the Medicines Control Authority of Zimbabwe (MCAZ) in May 2010.

The State had argued that MCAZ should have granted O’Neil authority to receive the

different drugs that had expired between October 2007 and April 2010 before accepting them.

But David Hofisi, of Zimbabwe Lawyers for Human Rights, successfully represented O’Neil who had entered a not guilty plea.

“The items (medical drugs) were lawfully imported into Zimbabwe and were cleared by the Zimbabwe Department of Customs and Excise. They were imported into Zimbabwe with the knowledge and approval of the relevant Ministry, namely the Zimbabwe Ministry of Health and Child Welfare,” argued Hofisi, adding that O’Neil never intended to commit the offence the State was levelling against him.

The case dragged in Hon Kay, whom the State accused of donating the said drugs to his constituency in Marondera after receiving them from O’Neil.



David Hofisi

A sad history of dictatorship...

Lessons from Argentina's rise from military repression

Sarudzayi Njerere (SN), Zimbabwe Lawyers for Human Rights (ZLHR) board vice chairperson, travelled to Argentina to receive the Emilio Mignone Award granted by that country's government to organisations that show an unwavering stand against human rights abuses. Below Njerere tells the Legal Monitor (LM) how Argentina suffered from one of the world's most brutal dictators. She talks on how Argentina, whose experiences are very similar to what Zimbabweans have been witnessing here at home, rose from that traumatic period to become a country that avers human rights as fundamental.

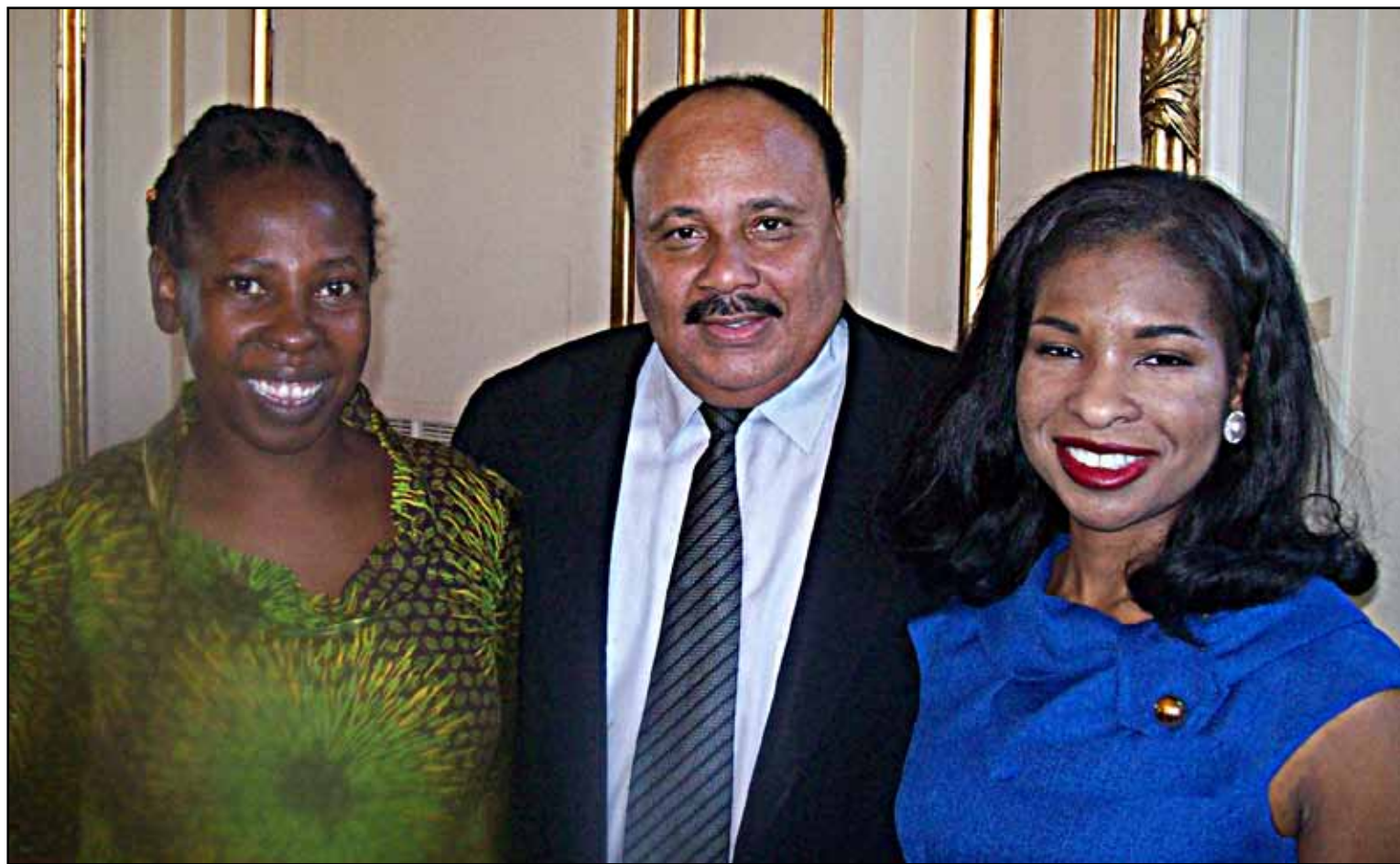
LM: What did you see in Argentina that vividly captures that country's nightmare under military dictatorship?

SN: There was a programme of events which saw us visiting various places that made us realise why the award was so important to the Argentine government. We visited one of the clandestine detention centres that existed during the last military dictatorship in that country. It is suspected that at the height of the military dictatorship there were over 400 centres of clandestine detention. What the military dictators had in place was a system of detaining persons who were seen as subversive and holding them clandestinely, meaning they had no access to lawyers or their relatives. It is said more than 30 000 people disappeared during this time, between the years of 1976 and 1983.

These people were not only persons whom we would normally regard as politically active. For example, the prize we received is named after one of the founders of the Centre for Legal and Social Studies, CELSS, Emilio Mignone. He was a lawyer and CELSS is an organisation that is very similar to the ZHLR. His daughter was working among the poor doing social work among disadvantaged members of society because Argentina continues to have a high rate of poverty and slum areas. She was taken from her home and they never saw her again. Similarly, the 30 000 people who disappeared were never seen again and their fate remains unknown.

So there is in Argentina a big movement to find out what happened to these 30 000 people and this has been assisted in part by technological advances in that you can get DNA and you can go to mass graves and try to identify the various people buried in those graves. But some of the people were not buried in those mass graves because if a person is clandestinely disappeared there is nobody who will say "oh look there is a mass grave there". So there is a process of investigation and search. There is a huge movement in Argentina for truth, justice and memory. They want to find out what happened to the disappeared people, they want to have justice. The people who were perpetrators of crime must be brought to account. They want memory of what happened in Argentina during the military dictatorship alive so that it can never happen again.

One of the detention centres we visited was actually a naval school. Like here, maybe you would have say Tomlinson Depot (Police training and residential camp in Harare) being used as a



Njerere (left) and Martin Luther King III, the son of US civil rights activist Martin Luther King, at the awards ceremony

detention centre. The rest of the community would think it is just a place where police train but it would be used for other purposes. So what happened was that in 1979 the inter-American Committee for Human Rights, at the invitation of Emilio Mignone, and CELSS, went to Argentina to investigate these clandestine detention centres and the administration, that is the military dictatorship, restructured architecturally the buildings so that they were different. For example, the centre which we visited, most of the people who would have been detained there and said to have been released would talk of being put on a lift and taken to the first floor. So what the dictatorship did was to remove that lift and it became a new building basically. So the commission found no evidence of these detention centres.

But for me it shows that dictatorships can be quite very determined in their path because they feel they are fighting subversives. The Catholic Church was also implicated because the people were taken to an island owned by the Catholic Church and this was done with the Catholic Church's knowledge and the people were later taken from that island, put onto planes and dropped into River la Plata. So Argentina has a very sad history of dictatorship but it also has a history of courage and refusal to go gently into that good night. That is why there is such a huge movement of justice and truth.

LM: Are there any similarities with Zimbabwe?

SN: There is a lot of similarity in the way dictatorships do things. For example, the level of intelligence gathering increases when you are in a dictatorship. I think in Zimbabwe we have complained for a long time about the Central Intelligence Organisation as it was known, it is now the President's office, you know how many are they, what exactly do they do, we

know that information is being gathered about us we complain about interception of communications. Even the organisations that arose in Argentina are very similar to organisations that have arisen in Zimbabwe. CELSS is very similar to ZLHR.

LM: What can Zimbabwe learn?

SN: The first lesson is that documentation is very important. Sometimes it is difficult because things happen fast. But we have to try and keep some measure of accurate documentation because it would be useful in future because no crime goes unpunished. Eventually those who have committed crimes need to be punished and we have to be prepared for those eventualities. Also, there is a commitment not to sweep issues under the carpet. One of the key elements to this is to make sure that history is known to future generations because if it isn't there is a danger that we will fall into the same trap.

LM: Truth, justice and memory. Do you see that happening in Zimbabwe in the foreseeable future?

SN: In fact, that was another lesson from Argentina. We need to stop thinking that things will come right tomorrow or next year. It is a process and it is a process that is long and that requires dedication. Emilio is now dead. But this is a fight he started decades ago and that fight is still going on. I think we need to be in that mode. We are fighting for justice and justice is not a destination but a road.

LM: It is often said by dictators that human rights is a European concept. How do you feel as ZLHR, not only being the first organisation outside the Americas to get this award, but to be honoured by a South American country?

SN: Here you have Argentina, a country that is also in the global South that is also recognising human rights and is reaching out across the ocean to Zimbabwe to say your fight is worthy and you must continue in that fight. It shows that even as you stretch from Argentina to Zimbabwe human rights are global. Human rights are universal and they are inalienable. ZLHR was founded by lawyers who saw a need to institutionalise what those lawyers in their individual capacities had been doing anyway, trying to defend human rights before the courts of law. Also remember that our members are obliged to do one case a year for the organisation so we are basically looking at 200 cases we can do without any funding a year.

LM: What has ZLHR done to justify this award?

SN: ZLHR was at the forefront of fighting for the rights that surround disenfranchisement. Remember there was a lot of disenfranchisement by the State around 2000 and 2002 when they tried to remove people from the voters' roll on the basis of people being able to claim the nationality of other countries, mostly affecting migrant workers whose families came to Zimbabwe ages ago from neighbouring countries. ZLHR has fought against that. ZLHR has fought most ably for freedom of expression. We are still fighting for more radio and television stations. We have continued to expose the irregularities that occur around elections, the violence, and the torture that happens around election time. We represent people who otherwise would have absolutely no voice when their rights are trampled on. We represent men and women who feel that they have civic rights that entitle them to freely assemble and associate and we are the ones who have said that we are going to defend every Zimbabwean life.

Civil society warns defiant African despots

ADDIS ABABA-Civil society groups have stepped up pressure on African leaders to adopt mechanisms that would guarantee that the wishes of citizens, as expressed through the ballot box, are respected.

The refusal by sitting governments to accept electoral defeats has led to the emergence of coalition governments in countries such as Kenya and Zimbabwe, a trend that civil society groups say is disturbingly being used to accommodate losing dictators.

Last week, groups from across the continent gathered in Ethiopia ahead of the 16th Ordinary Session of the African Union attended by Heads of States and Governments at the weekend to press leaders uphold the will of the people "as a cardinal tenet of the continental democratisation agenda".

Zimbabwe, where a constantly bickering coalition government has failed to stop resurgent political violence in urban and rural areas, should not be used as a model for resolving the crisis in Ivory Coast, the groups demanded.

Laurent Gbagbo is refusing to hand over power to internationally recognised presidential election winner Alassane Ouattara in Ivory Coast, opening up the prospect of a unity government deal.

"The will of the people in elections seems to be under threat in light of trends towards unjustified disputed elections and consequently negotiated coalition governments, as exemplified by Zimbabwe, Kenya and Madagascar," read a statement issued at the end of a meeting held in Addis Ababa. Zimbabwe Lawyers for Human Rights was part of Zimbabwe's delegation to Ethiopia.

"The meeting is the clearest indication yet that in terms of shared values and greater African unity, democratic values and principles should take centre stage instead of a parochial focus on common markets and physical integration. Civic society continues to make a cogent case for political stability as a pre-requisite for economic development and physical integration on the continent," read the statement signed by Ibrahima Kane, a board member of the Centre for Citizens Participation in the African Union and Open Society Initiative African Union Advocacy director.

Teresa Adene, of the Ghanaian Institute for Governance at the Institute for Security Studies Seminar, read out the statement, also raising concern on continued gross and massive violations of human and peoples' rights. A lack of access to justice, selective application of the law and a culture of impunity in some member states worsen this situation.

Some of AU members continued to ignore and undermine key decisions of governance institutions such as regional and African courts and independent commissions, according to the groups.

"Both concerns have found expression in Zimbabwe, with continued intimidation and violence during the constitution making process by ZANU PF supporters, leading to the death of one person in Mbare in September 2010 and injuries of hundreds, and continued forays in rural areas by 'axe' combatants led by Jabulani Sibanda (leader of the Zimbabwe National Liberation War Veterans Association)," noted Zimbabwe's civil society coalition that was represented in Ethiopia.

Zimbabwe delegates met representatives of the continent's leaders to pressure Africa to pay closer attention to Harare, as well as act on the unfolding political situation that if unchecked could result in a repeat of the violent and disputed June 2008 election fiasco.

Crisis in Zimbabwe Coalition director McDonald Lewanika met with Ambassador Kwesi Quartey, Ghana's Permanent Representative to the AU and the United Nations Economic Commission for Africa (UN-ECA) Ambassador Professor Joseph Nsengimana Rwanda's Ambassador to Ethiopia and Permanent Representative to AU and NECA and Minister Plenipotentiary Vincent Kibwana of Tanzania, Charge De Affairs and acting Head of Mission who are all members of the AU peace and security force.

Zimbabwe's situation has been deteriorating at a frightening rate since President Robert Mugabe, 86, announced his intention to hold elections this year to end his fragile coalition with former trade unionist, Morgan Tsvangirai. UN-ECA, which sponsored the meeting, is the regional arm of the United Nations, mandated to support Africa's economic and social growth.

For example, the Zimbabwe Peace Project last week issued an alert on how hardliners from President Mugabe's ZANU PF party were force marching villagers to political meetings across the country.

ZPP said the villagers were being forced to sign an anti-sanctions petition that ZANU PF wants to use to appeal to Western countries to lift financial and travel sanctions imposed on President Mugabe and his military, political and business allies.

Grassroots-based group, ZimRights that is conducting community awareness meetings on torture, has reported how torture victims were still struggling with the trauma of 2008 turmoil. The same people are again potential victims as violence and intimidation spreads well before

coalition government partners agree on a firm date for elections.

"From the torture experiences shared during the meeting (held in Magunje), many people went through traumatic experiences that still haunt them to date," said ZimRights.

"One of the torture experiences shared was given by a woman whose husband was abducted during the 2008 election period by some ZANU PF thugs and to date she does not know where her husband is and whether or not he is still alive," said ZimRights.

ZANU PF overpowered us - police

HARARE-Police have made startling revelations that five Mbare residents arrested in the volatile suburb had to be hospitalised for injuries sustained from attacks by ZANU PF supporters who are still roaming free.

Mbare Police Officer-in-Charge of Investigations, Phillip Magauze, told the court during a bail hearing for the residents last week that police failed to arrest any of the ZANU PF youths involved in the clashes because the activists were too powerful.

Only residents suspected to be Movement for Democratic Change (MDC) supporters were arrested. This has left questions as to whether the police intended to arrest the ZANU PF youths in the first place.

"They fled away. We (police) were overpowered," said Inspector Magauze in response to suggestions by the residents' lawyer Marufu Mandevere that the police selectively arrested the residents, and chose to let the more than 100 ZANU PF youths involved in the scuffle free.

"I did not selectively arrest them because the other group managed to escape," he said.

Police have been repeatedly forced to defend allegations of selective application of the law, which has resulted in human rights defenders and political and rights activists perceived to be anti-ZANU PF being the only ones arrested, in most instances on flimsy charges.

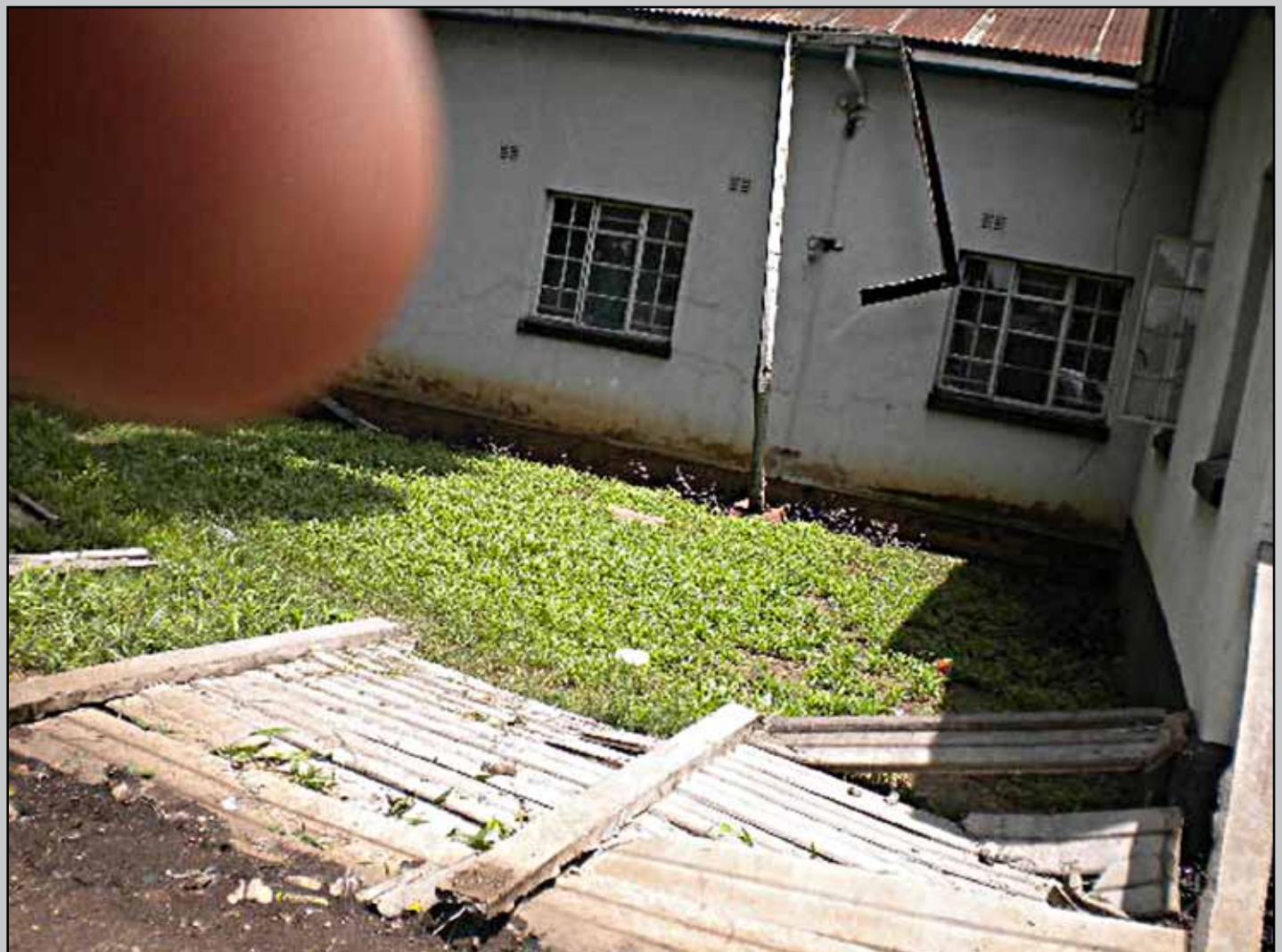
After failing to arrest the ZANU PF youths for the violence, police nabbed 19 residents perceived to be MDC supporters, including three juveniles

namely Edwin Machokoto aged 16 years, Garikai Zuze aged 17 years and Thomas Tasara aged 17 years and charged them with public violence.

In the charge sheet the police accused the Mbare residents of stoning ZANU PF supporters.

"Five of the accused persons were injured and taken to hospital for treatment while 19 were arrested and detained at Mbare police station," reads part of charge sheet.

The 19 Mbare residents were granted free bail by Magistrate Rebecca Kaviya on Wednesday after their lawyer Mandevere applied for bail, which was contested by the prosecutor Emmanuel Chipanda.



Trail of destruction... The durawall at the MDC Mbare offices which was pulled down by some ZANU PF youths