

The LEGAL MONITOR

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Dreadful 2008 imminent

HARARE-Persecuted lawyer Beatrice Mtetwa fears the country could retreat to the bloody days of 2008 when human rights defenders were tortured while ordinary citizens were maimed in a violent election campaign.

Zimbabwe is set for a bruising general election this year and Mtetwa says signs are already showing that instability could resurface.

Fresh from remand prison, Mtetwa sat down with *The Legal Monitor* to share how her experience at the hands of State agents points to worse things ahead.

A feisty human rights lawyer who has been in practice for the past three decades, Mtetwa was arrested on March 17 and subsequently sent to remand prison at Chikurubi Maximum Prison for six nights. She was accused of obstructing the course of justice after she went to assist an official from Prime Minister Morgan Tsvangirai's office.

Police were raiding the official, Thabani Mpofu's home and Mtetwa demanded that they produce a search warrant, leading to trouble.

The recipient of numerous local, regional and international honours, Mtetwa told *The Legal Monitor* that her arrest and imprisonment, as well as the harassment of broader civil society, showed that State agents are

going for broke.

"It is not just human rights lawyers. It is all civil society activists. As you have seen there has been an upsurge in the harassment of anyone doing anything seen as mobilising people to be aware that there will be an election and that they should vote.

"One way or another, such people are being harassed," said Mtetwa.

"So it's not only human rights lawyers who are up for harassment, it's all human rights defenders.

But it is particularly so for the human rights lawyers because when everyone's rights are threatened it's the lawyers who are the last line of defence and if they intimidate us, it means nobody is going to be safe.

"So if a journalist, for example, is harassed for practising journalism the way you think it should be, and you call a lawyer, the lawyer will be scared to come, especially the younger lawyers. If a senior lawyer like me can be arrested, what does a lawyer of five

years' experience do? They will say 'I can't come, I am in Masvingo' to avoid arrest," she said.

Mtetwa, who started her career in Zimbabwe as a public prosecutor in the Attorney General's Office, said attacking lawyers was a well-calculated move.

"It means there will be nobody there to defend people whose rights are abused. It also means we will not be far off from 2008...It's scary," she said.

The run-up to the June 2008 presidential election runoff was marred by violence targeting mainly supporters of Prime Minister Tsvangirai's Movement for Democratic Change. Rights defenders such as Zimbabwe Peace Project director Jestina Mukoko and freelance journalist Andriison Manyere were in the same year abducted, held incommunicado and tortured.

Mtetwa said signs that Zimbabwe is backsliding towards that era are evident.

"I don't think they are targeting me as an individual. I believe they are targeting all those who try to fight for basic rights. I think any other lawyer who would have gone there (to Mpofu's house) on that day would probably have been dealt with the same way I was treated. The stakes are high," she said.

Minutes after her arrest, outrage poured from all corners of the globe, with human rights campaigners and lawyers demanding her release.

But Mtetwa chose to be modest, insisting the outpouring came simply because of the goodwill the world has for Zimbabwean people.

"The world wants to see Zimbabwe restored to the community of nations that respect basic human rights like the right to be represented by a lawyer. So there will be that outrage that nothing has changed as we go towards elections. There is fear, generally, that we might find 2008 being replayed," said Mtetwa.

• In the full interview on page 3, Mtetwa talks about fears of being abused in custody to her desire to keep fighting for justice.



Beatrice Mtetwa

Mtetwa cries for jailed children

“Free these children.” That is the war cry Beatrice Mtetwa has adopted since leaving remand prison last week.

Mtetwa said while she was prepared for every dirty tactic by the State to break her down, it was the children jailed with their mothers who got her heart bleeding. In an interview with *The Legal*

Monitor, Mtetwa said the system is being unfair to children, whose future is being wrecked by their forced stay in jail.

“The saddest bit is there are children in prison between the ages of four and six whom I saw. They ought to be in school yet they have been in jail for up to two years.

“They are there because their mothers are said to have transgressed some immigration law. They have to sleep with women – some criminals, some not convicted. Surely, surely we can do better than that. Our laws should take into account that kids should not be punished for the transgressions of their parents,” said Mtetwa. She added: “I also think that it is inhuman and completely degrading

for 17 women to be packed into a cell that does not have even a toilet. Particularly because by 4pm you are already locked up in the cell and it will be opened in the morning between 6 and 7am. I think it is particularly inhuman to force those women to relieve themselves in little containers that they have each cut around. That is totally, totally unacceptable.”

Mugabe case set for Wednesday

HARARE- Judge President George Chiweshe is this week expected to preside over an urgent application in which President Robert Mugabe is seeking to be excused from complying with a court order that forces him to proclaim dates for three Matabeleland by-elections by end of March.

The 31 March deadline was set by the High Court in October last year at the request of President Mugabe. He had said he would call for general elections by end of March.

He now wants more time.

“The life of Parliament terminates on June 29 2013 by which date harmonised elections will be held in the country. Given the above, it does not make economic and practical sense to conduct a parallel process to hold by-elections about the time it is anticipated to hold harmonised elections,” said Justice Minister Patrick Chinamasa in an affidavit filed on behalf of President Mugabe.

“Compliance with the order to publish a proclamation for the holding of by-elections in the three constituencies is no longer possible as a general election is now imminent,” the affidavit reads.

The case, which was supposed to be heard last week, was postponed after Prime Minister Morgan Tsvangirai said he wanted to be included as a respondent by three former MPs Abednico Bhebe, Njabuliso Mguni and Norman Mpofu, who want their vacant constituencies filled through by elections. Prime Minister Tsvangirai, who is one of the three principals of the Global Political Agreement, charges that President Mugabe’s proposed poll timelines is impossible to implement.

In 2009, the trio lost their Parliamentary seats after they were expelled from the Movement for Democratic Change led by Industry Minister Welshman Ncube, on whose ticket they had been elected in the March 2008 general election.

Hon. Chinamasa said all processes to have a general election would be finished by May 8, adding that: “And a proclamation for harmonised elections will be published immediately thereafter.”



Fighting on... Bhebe

Obituary

In Amos, the Quill Club was robbed of history

By Stanley Kwenda

IF the National Press Club otherwise known as the Quill Club had a history then that history was buried last week.

Amos Mwedziwendera, who has been a bartender at the Quill Club died last month personified everything that was the Quill. He was a moving encyclopaedia of the place that a successive generation of journalists had come to call home.

His cultured serving hand had taken care of both local and foreign journalists - female and male. But his death last month took something away from the Quill. Some among his patrons of years have since passed on, others went away to far away places and still come back to find him giving that one more drink.

Others have also become kings in their chosen fields. He has seen many of us grow to become editors and others legislators and ministers. Mwedziwendera would be remembered as a fine gentleman who always made sure things happen for any guest of the Quill Club. From the students at the Zimbabwe National Students

Union (Zinasu), women’s movements, the Media Institute of Southern Africa, Zimbabwe Lawyers for Human Rights, the famous US Embassy hosted Thursday ladies night functions, politicians such as Jonathan Moyo, Gabriel Chaibva, Jameson Timba and many others they all owe him something from the manner in which he treated them even when they had not paid where they were supposed to.

But of all these groups of people it is the journalists who enjoyed the most of Bla Moshto as he was famously known. From those beers on credit to the story tips. We ought to give him a fitting send off and at least have a day set aside once a month to pay a dollar at the club and help his family and the extended family get by as they relied on him as a bread winner. We also remembered the tales that he used to tell us of how the late famous Minister Zvobgo, former Information Minister Sikhanyiso Ndlovu and many other government ministers used to slosh themselves with the finest of whiskies, rare stories that very few living people were privileged to witness. Thank you for all the memories and we shall always cherish the times we shared. RIP Bla Moshto.

‘Unreasonable’ Chombo bites the dust again

BULAWAYO – The High Court has described the appointment of “Special Interest Councillors” in Bulawayo by Local Government Minister Ignatius Chombo a few months before the expiry of the council’s term as “unreasonable”. Justice Meshack Cheda delivered the blow to Hon. Chombo last week when he concurred with a resident who had dragged the minister to court over the appointments.

Alick Gumede, a Pelandaba resident and an official of Bulawayo Progressive Residents’ Association, took Hon. Chombo to court questioning the motive behind the appointments.

His lawyer, Job Sibanda of Job Sibanda and Associates, a member of Zimbabwe Lawyers for Human Rights, successfully argued that the appointments were not motivated by a desire to cater for special interest groups who ideally should benefit from such appointments. Justice Cheda agreed with Gumede that the appointments were “irrational”.

As a result, Gatsha Mazithulela and Sipiwe Ncube, who were appointed by Hon. Chombo in February, will not be allowed to participate in council proceedings as councillors.

Justice Cheda ruled that it did not make sense for Hon. Chombo to appoint “Special Interest Councillors” at the last hour since they would not contribute much.

“No purpose will be served by these appointments. It is too late (to make the appointments),” ruled Justice Cheda, before tearing Hon. Chombo’s reasoning on the matter.

“The unreasonableness of the first respondent’s (Hon. Chombo) action raises questions from any person properly applying his mind to the matter. It is clear that the council’s term will come to an end before the appointees even understand the business of council and as such cannot be in a position to be of any benefit to the special group for which the appointments are made,” said Justice Cheda delivering the ruling.

Councillors are already winding business as their term comes to an end in a few months. President Robert Mugabe has indicated that he will call for a general election on or before June 29. Gumede had argued that the appointment of the “Special Interest Councillors” would only serve to milk the broke city and would be a waste of ratepayers’ money as Mazithulela and Ncube would be paid allowances for doing nothing.

‘Stakes are high’

She spent eight days in remand prison and Beatrice Mtetwa (BM) says the motive was to break her down. In this interview with *The Legal Monitor* (LM), Mtetwa talks about how she plans to fight on.

LM: After your release, you said you are being made an example. Do you fear that worse could come?

BM: It is not just human rights lawyers. It is all civil society activists. As you have seen there has been an upsurge in the harassment of anyone doing anything seen as mobilising people to be aware that there will be an election and that they should vote. One way or another, such people are being harassed.

So it is not only human rights lawyers who are up for harassment, it is all human rights defenders. But it is particularly so for the human rights lawyers because when everyone's rights are threatened it's the lawyers who are the last line of defence and if they intimidate us, it means nobody is going to be safe. So if a journalist, for example, is harassed for practising journalism the way you think it should be, and you call a lawyer, the lawyer will be scared to come, especially the younger lawyers. If a senior lawyer like me can be arrested, what does a lawyer of five years experience do? They will say 'I can't come, I am in Masvingo' to avoid arrest.

LM: You say they are going for the last barrier. What does that tell us?

BM: It means there will be nobody there to defend people whose rights are abused. It also means we will not be far off from 2008... It is scary

LM: Why are they targeting you in particular, Ms Mtetwa?

BM: I do not think they are targeting me as an individual. I believe they are targeting all those who try to fight for basic rights. I think any other lawyer who would have gone there on that day would probably have been dealt with the same way I was treated. The stakes are high.

LM: Were you surprised by the arrest?

BM: I was completely surprised because I had not done anything that remotely warranted an arrest. You will recall that a few weeks ago, the same police CID Law and Order Section raided the ZPP (Zimbabwe Peace Project) offices. We were called there. We went there and it was the same Law and Order Section and in exactly the same circumstances we asked for a search warrant and it was produced. We went in together with the police when they were taking whatever they wanted to take. An inventory was prepared. That is how it should be. Why would I have thought that the same Law and Order Section that had given me a search warrant on the ZPP premises only a few weeks back would suddenly resist producing a search warrant? Why would I be combative? Why would I be in a mood that would suggest that they would not give me a warrant because there would be no reason to think that I would not get a warrant? I had been given a warrant in another other case and the search had gone perfectly well, and it is the same law.

For me it suggests that they did not have a warrant to search those premises. That is why up to now we have not seen that warrant. If suddenly it is produced; it is because someone has gone out and created it. Because if it has been there, it would have been produced to me the same way it was produced at the ZPP offices. So I was completely taken by surprise by my arrest because I had not done anything at all to justify arrest.

LM: Please tell us about your treatment by the police from the time of your arrest...

BM: The police, from the minute I was thrown into the back of a van, it was quite clear they wanted to be as rough with me as possible. There was a vehicle which was not a van – they took Thabani (Mpfu)'s car. I did not see why I could not get into that car. But being thrown into the back of a van and to be paraded through the streets of Harare, it clearly showed that they wanted me to be humiliated as much as possible. When we got to Bath Road (Prime Minister's communication offices), where I was not allowed to be part of the search team, contrary to the assertions by Jonathan Moyo that the incident took place there, it did not. At Bath Road I was already an accused. Their commander directed that I be thrown in the boot of a car that arrived. Before I had been thrown in there, that is when they wanted to search me again because the young policeman who thought I had taken pictures still believed that there must be another phone. When they went through my phone there was nothing. When I told the woman officer that there was no need to open my bag because it is private, the boss then ordered that I must be handcuffed on my back. My bag was emptied for all to see. Of course, there was no phone and then I was put at the back of the van.

At Rhodesville (police station), I was thrown in a cell. Of course, I was expecting that to happen. I was denied the basic rights that one is entitled to. Fortunately, people had followed. So they knew I was there. In the morning, I asked if I could be allowed



to get a bucket to get water to bath. I was told 'No'. On the first day, my friends and family were allowed to give me food in the morning. But from lunchtime, Law and Order Section officers had blocked that access. From that time onwards, I was not allowed access to the lawyers. They said if I had lawyers I must mention one, yet I had quite a number representing me. My relatives were told they were not allowed to see me. On the second night, we had two visitors coming at night to open the cell. They were male and there were two of us (female) in the cell and they wanted to take our blankets saying there were other persons at the charge office who wanted to use them. We said female officers must come, and they (male officers) got in and grabbed the blankets. Naturally, at that hour of night, you say 'oh my God, two male officers and there are only two of us in the cell; we are going to be raped'. We made noise so that the male cell occupants would know that somebody had come into our cell. I shouted 'Why are male officers coming into our cell at night?' That was scary.

LM: Explain why there was this outrage when you were arrested; locally, regionally and internationally?

BM: The arrests happened when there were still observers for the constitutional referendum in the country. Everybody was saying everything was going right in Zimbabwe. Suddenly, a lawyer is arrested for doing her work. It is like these guys were saying 'there were reforms, so why is this happening at all?' I had been called to a search scene as a lawyer and as the judge said: I have a right to be there and police have to respect that. And lawyers have a right to ask for a search warrant. It would be absolute anarchy if police were to walk into your house and start searching without a warrant. So when I ask for a warrant I am entitled to do that.

Of course the world wants to see Zimbabwe restored to the community of nations that respect basic human rights; like right to be represented by a lawyer. So there will be that outrage that nothing has changed as we go towards elections. There is fear, generally, that we might find 2008 being replayed.

LM: Some sections of the media are hinting on your possible deportation. You were Andrew Meldrum (deported journalist)'s lawyer when he was thrown out despite a court order stopping such as action. Is this making you uncomfortable?

BM: If people want to do things which are outside the provisions of the law, I cannot stop them. I am a lawful resident of this country. If someone wants me out, they have to follow the law to ensure that I am lawfully dealt with. But this is not to say those who have no respect for the law cannot throw a blanket on me and do a Meldrum on me. There is nothing one can do about lawlessness.

LM: Is this affecting your work, being called an ungrateful 'daughter-in-law' because you are Swazi and married a Zimbabwean?

BM: I worked for the government of Zimbabwe as a prosecutor and I was very diligent, worked faithfully. What I do as a lawyer is that if I am prosecuting, I prosecute diligently. If I am a defence lawyer, I do it with the same spirit. I find it extremely strange because in this country we have women who are exactly in my position, foreigners who married Zimbabweans and have been government ministers. No one ever questioned that they are of foreign origin because they had become integrated into the society. Half the Cabinet have foreign women who have fully participated in the affairs of this country. Why should it be a different case when it comes to me? The very same Jonathan Moyo is married to a foreign woman as we speak.



That she prefers to be quiet does not mean all of us should behave like her. Should Sally Mugabe have quietly lived her life because she had Ghananian origin? Come one, please guys. Should I practise law as some cowed in-law clapping hands before the extended family to please the Caesar Zvayis of this world? No. Caesar Zvayi can come to my home and see me in an apron. But when I am called as a lawyer, I am a lawyer, not a muroora (daughter-in-law). The same applies when he is writing his column in The Herald, he is not writing as someone's mukuwasha (son-in-law). But when he goes to a funeral at his wife's home, he plays a completely different role to the one he plays at his work. Why should it be any different for women?

LM: There are insinuations that you told the police that they are 'Mugabe's dogs', something we did not see in your court papers. Do you want to react to that?

BM: I read that too. I am sure even the police are surprised that someone has cooked that up for them. If I had said so, the police would have said so the very first time I was charged. Clearly you can see that some people are trying to incite hatred and ill will against me. Fortunately, the author of that article is so discredited that no-one believes anything he says. Firstly he did not get his facts right on what happened where. That is just cheap, childish politicking not befitting someone with a title of professor.

LM: A day after you were released you were already at work...

BM: I had a trial the very next day. The previous week I had trials postponed because I was unavailable. Being in prison is not taxing so I had no reason not to be at work. Also the idea is to make me afraid, I had to be at court, particularly at the Rotten Row Magistrates Court where I had been denied bail so that people could see that I was back at work.

LM: Some say you must be arrested again for 'stealing' that red and white jersey you wore in prison...

BM: People must check their facts before posting such silly messages. Prisons do not have jerseys. You buy your own jersey. I want to keep it as a memento for being in prison. If there are people who believe you steal something you bought, then shame.. If you have a relative in prison without that jersey then they are really going to face the cold this winter.

LM: Many people were heartbroken by the way you were arrested and detained; but you did not show that. You were actually defiant...

BM: It wasn't actually defiance. I have seen so many of my clients being in this situation before. Jestina (Mukoko) walked that route. Did you ever see her cry? Broken? No. If there is Chikurubi Female Prison; then it is meant for females like me. If someone thinks I have transgressed the law I go through the same route. I anticipated every move. I would have been extremely surprised if I had been granted bail at the Magistrates Court.

I knew that the idea was to try and break me. If Jestina was not heart broken having been on this route, being in jail much longer and being tortured for weeks, why would I be broken? No ways.

LM: What do you have to say to your legal team which secured bail?

BM: To the entire legal team, civil society and to the general public, I am absolutely grateful. I know for eight days they abandoned their posts and concentrated on getting me out. The legal team continued to work extremely hard despite the hurdles placed before them. Psychologically, I was ready for that because I knew that these were tactics used for the past 12-15 years.

The day Mtetwa was released

