

The LEGAL MONITOR

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



13 September 2010

Edition 62

COST-FREE

Brutal police unleash dogs

HARARE-Several farm residents at a plot just outside Harare are nursing injuries after police used vicious dogs to induce chicken stealing confessions.

Police officers stationed at Marlborough and Ashdown Park Police Station set dogs on Temba Dzimwasa, Ruth Nyarumwe and Vusa Dzimwasa, all residents of Globetrotter, a peri-urban settlement located just outside Harare.

The police accused the residents of stealing chickens from a neighbour's residence. The trio deny the charge.

In an attempt to justify the unleashing of dogs on the three residents Constable Muziri claimed that the residents had "obstructed the police in a confirmed struggle to effect searches and arrest".

The residents, who were arrested and detained from about 09:00hrs to around 15:30hrs last Thursday at Marlborough Police Station without any charges being preferred against them were freed after the intervention of lawyers from Zimbabwe Lawyers for Human Rights (ZLHR).

The residents told *The Legal Monitor* that officers from the dog section unleashed police dogs on them after they requested to be furnished with search warrants by the police who had stormed into their houses and accused them of stealing chickens at a nearby plot.

The police details forced open the residents' premises and led their dogs into their houses. When the residents questioned the police action, a female police officer only identified as Sergeant Nyamasotera unleashed her police dog on the residents and at the same time called for more dogs to be brought from the police dog section at Ashdown Park Police Station, alleging that she was facing resistance while conducting her searches.



Ruth Nyarumwe

The police dogs bit Vusa and Themba on the neck, arm, thigh, ankle and legs.

Two male police officers who joined Sergeant Nyamasotera as reinforcements immediately pounced upon him, one of whom had a police dog.



Temba and Vusa Dzimwasa show off some of their injuries inflicted by police dogs

Thembas was assaulted with clenched fists and booted feet all over his body, including on his ribs.

Amidst the assaults, the police dog was also unleashed on him and he got bit on several parts of his anatomy including on the thigh and on the neck.

Nyarumwe, another resident at Globe Trotter, was accused by a male police officer of having refused to open her door to facilitate police investigations.

Nyarumwe told *The Legal Monitor* that the male police officer lifted her skirt, exposing her body which led to her screaming in protest. As a result of this, the police officer assaulted her heavily using open hands and clenched fists and she sustained injuries to her ear.

Vusa has since lodged a complaint against the police under RRB No. 0987725 for the assaults perpetrated against him and was given a request for medical report by the police.

Lieutenant Zvenyika Hlatshwayo, a doctor at Parirenyatwa Hospital who examined Vusa on

Friday treated him for "lacerations on his right ankle, bruises on the lateral side of the right ankle probably caused by a dog bite."

Hlatshwayo prescribed anti-tetanus and anti-rabies vaccines and antibiotics to treat Vusa's injuries.

The Legal Monitor could not access medical reports for Themba and Nyarumwe by Friday to determine the extent of their injuries as they rushed to lodge them with the police after examination.

The police reportedly arrested a security guard for the alleged theft and detained him at Marlborough Police Station.

ZLHR Public Interest Litigation (PIL) projects manager Rangu Nyamurundira condemned the police brutality.

"The conduct of the police in this case clearly indicates the impunity with which the human rights of ordinary Zimbabwean citizens continue to be so grossly violated by members of the Zimbabwe Republic Police (ZRP)," said Nyamurundira. Indeed to ensure any professionalism by the ZRP, especially regarding their respect for human rights, there is urgent need for the responsible Ministry to begin implementing provisions within the Inter-Party Agreement (IPA) that requires the police to receive training in matters of human rights," he added.

Under the IPA, President Robert Mugabe, Prime Minister Morgan Tsvangirai and his deputy Arthur Mutambara undertook to teach the police and other uniformed forces subjects on human rights so that they fully understand and appreciate their roles in a multi-party democratic system.

But there has been no indication of political will to begin to reform the ZRP and ensure that incidents where the police wantonly use excessive force and act unlawfully when dealing with any citizen are avoided.

State ropes in Zvekare to persecute Maseko

BULAWAYO-The Attorney General (AG)'s Office has deployed Tawanda Zvekare, one of its senior law officers famous for persecuting human rights defenders to prosecute during the trial of tormented Gukurahundi visual artist Owen Maseko, which commences today in Bulawayo.

Maseko, whose trial commences today, is accused of publishing or communicating false statements prejudicial to the State in contravention of Section 31 (a) (1) of the Criminal Law (Codification and Reform Act) Chapter 9:23.

If convicted Maseko faces up to 20 years imprisonment. He also faces an alternative charge of undermining the authority of or insulting President Robert Mugabe, which if convicted will be liable to imprisonment for a period not exceeding one year or a fine.

The talented visual artist was arrested in March under the country's security laws for staging an exhibition in Bulawayo depicting the 1980's Matabeleland massacres carried out by troops loyal to President Robert Mugabe's previous government. The exhibition, which showcased paintings that explored the torture and massacres that characterized the civil unrest known as Gukurahundi, was closed when the artist was arrested.

He is represented by Lizwe Jamela of Zimbabwe Lawyers for Human Rights (ZLHR).

In a renewed clampdown on dissent the government recently invoked the Censorship and Entertainment Control Act to ban the exhibition of Maseko's paintings at the Bulawayo National Art Gallery charging that they portrayed "the Gukurahundi era as a tribal biased event."



Owen Maseko

The ban on Maseko's paintings has drawn the ire of the Media Institute of Southern Africa (MISA-

Zimbabwe) which condemned the government actions as violating citizens' right to freedom of expression.

Artists describe the Censorship and Entertainment Control Act as draconian and similar to the repressive Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) in their effectiveness in silencing diverse views. The statute was established in 1967 when Zimbabwe was still Rhodesia and has been revised and amended on a number of times.

Besides Maseko, independent film producer, Zenzele Ndebele who in 2007 launched a documentary entitled Gukurahundi-A moment of madness, was in April 2010 allegedly confronted by state security agents over his documentary.

Fear grips Gunhill residents

HARARE-In the middle of Highlands and Gunhill suburbs, affluent places, is a disturbing settlement. About 250 people are in fear of the government they say they voted for. They fear for the coming rain season too. Rains of all things? Whether from the rural or urban, every Zimbabwean smiles when the rain season approaches. Water for human consumption and to water plants. But that is not for these 250 families in Gunhill.

Sources say they were told that people in the Gunhill area had complained of rampant theft cases and suspected that the informal settlement was a haven for the criminals. "I was one of the five people who were arrested and spent a night at the Harare Central Police Station until ZLHR came to our rescue," adds a visibly bitter Mushangwe. "They treated us



Maidai Jokonya stands next to what was once her place of residence

"I hope the rains take time, otherwise it will destroy whatever is left of our belongings," says Martin Mushangwe, a 38-year old man who has five children. He is one of the people living at an informal settlement in Gunhill, which was destroyed by police about three weeks ago.

Mushangwe said police, some armed and accompanied by dogs raided the settlement in the Gunhill suburb shortly after midnight, giving the residents a few minutes to leave their homes before setting the settlement alight.

"All I managed to rescue were two blankets for my children," he narrates to *The Legal Monitor*. "I could not take more because I had to first assist my wife who is yet to recover from a stroke she sustained about four years ago."

He says just like most residents he is now living in fear. "They might come back and destroy our new structures. Even if they do not come, the rain season this year will be long. As you can see we had to use thatch grass to rebuild and this time of the year there is not enough thatch grass so our structures will be leaking."

Mushangwe says the fire destroyed his medication and that of his family. "I am a sick person. They burnt my medical drugs. I spent two days without having them yet I am supposed to have them daily. I am also asthmatic. But they could not have that. They were ruthless."

Next to his new structure is a heap of partially burnt clothes and blankets. "We can't use them anymore as you can see that they are burnt," he added with a voice that clearly resembled a troubled person.

Maidei Jokonya is another resident living in fear. "I stay with four children aged 14, 12, seven and six, we are all fearful. They gave no reason why they destroyed our structures so they can come again if they feel like," she says. She says she lost blankets, clothes and dishes to the fire.



Some of the residents of Gunhill informal settlement captured by The Legal Monitor after they had received assistance

Since the demolition of the structures pastors from a local church have come to the rescue of the residents, giving them food, blankets and clothes. "What I am putting on is all I was left with," says 47-year-old Charles Zhoti. "My radio, clothes and other things were destroyed."

Most of the settlement's residents were victims of the ill-timed Operation Murambatsvina (Drive Out Filth), a 2005 eviction blitz that left close to a million people homeless as the government bulldozed shacks and vendor stands in what it described as an urban clean-up.



Marvellous Muguta ponders on his bleak future

like criminals but they could not lay charges against us. That is very unfair. I spent a week sleeping in the open with my family."

It is not only Mushangwe who is angry. "If the government does not want us here they should allocate space for us to develop our own houses," says 32 year-old Marvellous Muguta, who has five children. "Why does the government treat us this way? When it comes to voting we do it. We do it peacefully. But we are being neglected. The council put us on the housing waiting list last year but nothing has materialised. Government is making our life difficult. We are being neglected."

SA deportations to affect poorest immigrants-groups

PRETORIA-Civil society groups in South Africa have warned that low-end Zimbabweans immigrants will be the worst affected by that country's decision to deport those who fail to regularise their stay by year-end.

The groups met senior officials from the South African Department of Home Affairs last Monday to pressure for a review of the position, which they say will hit poor immigrants hardest.

They said the Home Affairs department had only promised to extend the window period for Zimbabwean immigrants to regularise their stay by three months. South African based rights groups, the Zimbabwe Exiles Forum, PASSOP and Lawyers for Human Rights are pushing the South African government to ensure that no immigrants are adversely affected by the new policy.

Before the Soccer World Cup in June, South Africa announced that a special dispensation allowing Zimbabwean immigrants to live and work in South Africa without documentation.

Under what is called the Zimbabwean Documentation Project, Pretoria wants to document Zimbabweans who otherwise would not have qualified for permits in terms of the immigration laws. This would include unskilled and semi-skilled Zimbabweans who until now were excluded from qualifying for these permits on account of their level of skills.

The only requirements would be that the applicant be in possession of a passport and must have been in the country on or before 31 May, 2010 and provide proof of tax payments, a situation that could leave self-employed immigrants vulnerable.

"Looking at the requirements for the permits which are available under this documentation project, it is clear that small-scale hawkers and persons who are self-employed in the informal sector will not be able to satisfy the requirements for the work permits and will be excluded from this process. It is unlikely that these persons will leave South Africa and will become increasingly vulnerable to police harassment, arrest, detention and deportation," read a statement released by the organisations after meeting Home Affairs Deputy Director General, Jackie Mackay.

"However, the Department of Home Affairs does have a plan to deal with this situation and that seems to be to coerce a particularly vulnerable group by threatening deportations in the near future," the groups said.

Oppressive laws won't curtail creativity

Gukurahundi visual artist Owen Maseko who goes on trial this Monday after his paintings of the Gukurahundi massacre were banned earlier this year has hit out at the government accusing it of failing to appreciate creative artworks.

Maseko (OM) speaks with *The Legal Monitor* (LM) in an interview below.

LM: How is your livelihood affected by this ban on your work?

OM: I make a living through art. Art is a profession. It is difficult for me to do business because the arts community don't want to associate with me. It is a great disappointment to me.

LM: Do you think other artists have been supportive of you?

OM: Other artists haven't been supportive and have distanced themselves from me. It was a time for us to come out and make a statement. It's civil society and Non-Governmental Organisations who were supportive. Bulawayo artists really disappointed me by not being supportive although there are a few artists and friends who supported me.

LM: Why do you think the government has suddenly decided to criminalize works of your art?

OM: The government is very paranoid because my exhibition brought about a very sensitive issue for the government which is part of history. It is not about the banning of art. It's particularly about Gukurahundi. The government could not believe visual art is so powerful a medium in exhibiting these issues we are living in a society.

LM: You are from Matabeleland region where the Gukurahundi massacres took place. Ironically you are being charged for invoking this issue. In your view how best should the issue be addressed and put to rest?

OM: People should be allowed to talk about these issues. That on its own is a healing process. It's more painful not to discuss because you never know what happened to your relative. Unfortunately the government is blowing this issue. The most important thing is to discuss openly.

LM: Tell us about your career?

OM: I am a much more open-minded experienced artist. I have been painting for the past 16 years. The more years you spend in art the more you become flexible and experimental.

LM: What are the highlights of your career?

OM: When I did a painting in 2003 which was based on the banning of *The Daily News*. Then there was Toilet Democracy which I did in 2005. That was one of my first strong exhibition that I did. It was very controversial. It covered the

issues of the Access to Protection of Privacy Act (AIIPA) and the Public Order and Security Act (POSA) in relation to journalists.

LM: You are being charged under a law that is regarded as repressive, how does it affect your work and what do you think should be done?

OM: It's unfortunate if the present government thinks that this exhibition is false. It (Gukurahundi) actually did happen. It's an open secret that these atrocities did happen.

LM: What other laws affect your work?

OM: The issue of not having freedom of expression. The government is so desperate to

OM: If you put pressure on me I will become more creative. It would be sad for me to do these exhibitions outside Zimbabwe and at other private spaces. As a visual artist the government would have failed.

LM: What do you think should be the role of the National Art Gallery?

OM: What is the role of the National Art Gallery. Are we supposed to be selling tomatoes? With this censoring, a gallery can be like any other flea market in town.

LM: If you were to give advice to the country's political leaders what would you tell them?

OM: Honestly, I have no regret even if I have to do this a million times I will do it again and again. I have opened people's minds.

LM: Do you think institutions in this country such as the National Arts Council of Zimbabwe (NACZ) are doing enough to protect artist's rights?

OM: I think to say they are doing enough is being kind. They are totally useless. The NACZ has never been anything but just a name. The role of NACZ is to protect artists but they have not been doing that. It is a totally useless institution.



Owen Maseko



make artists self censor themselves. An artist doesn't operate that way.

LM: What lessons are you drawing from this traumatic experience?

OM: One of the most important thing that I have learnt so far is that art is very important and plays a very pivotal role in opening up discussions. I have learnt that I am working in an oppressed and suppressed environment.

LM: Would you say we have seen the end of Owen Maseko?

OM: The most important thing is to be open-minded and to appreciate differences. Zimbabwe can not be separated from the rest of the world. This is not ancient. We are not living in the stone-age ear anymore.

LM: In view of the charges that you are facing, what is your advice to other artists?

OM: The simple advice is as an artist you need to be relevant to the society that you are living in. You need to be strong.

LM: What do you regret most?

LM: What do you think of the Censorship and Entertainment Control Act and how does this affect you?

OM: It is just an oppressive law but the laws won't stop people from being creative.

LM: Any last words?

OM: I will be one of the few people to bite the bullet and fight against the censorship of artists.

Muchadehama demands justice

HARARE-A lawyer who has represented most of the human rights defenders worst affected by political violence and State sponsored rights violations such as abductions is crying for justice for his clients.

Alec Muchadehama, himself repeatedly prosecuted for carrying out his professional duties, said any new dispensation that succeeds the current government should ensure those responsible for the killings and torture of political and rights activists face jail.

In an interview with *The Legal Monitor* after receiving an award for his human rights work, Muchadehama said his biggest frustration was that a national healing process initiated by the coalition government of Prime Minister Morgan Tsvangirai and President Robert Mugabe lacked the element of justice.

Muchadehama, whose clients range from former opposition leader and now Prime Minister Tsvangirai to ordinary community activists, said the coalition government had no capacity to deal with issues of transitional justice.

He said the biggest perpetrators of violence, members of President Mugabe's ZANU PF party and security agents, were still firmly in charge of the country and carrying out more rights violations, reducing reconciliation efforts to a mockery.

"It is just a power sharing arrangement and we know who is in charge and that makes it difficult, if not impossible, for justice to be done under the current government," he said.

"But I have a conviction that justice will prevail in the future. There is no way reconciliation can be



Alec Muchadehama

achieved without justice. It will not happen now of course. But everything has its time. People will have to answer for their crimes and those found on the wrong side of the law should duly go to prison. It is a matter of time.

"My personal experiences with some of the victims of political violence have given me unshakable belief that people, no matter how powerful now, should take responsibility for the reckless actions. Some of the activists I have represented are dead, killed by political rivals who still roam free and rule the country. But their time will come," said Muchadehama.

Workers demand daily bread

HARARE-The Zimbabwe Congress of Trade Unions (ZCTU) says the transitional government is yet to uplift workers' living standards, despite that a labour backed party is now part of the government.

"For us the formation of the MDC is a process full of struggles and hard times. As we make an audit, (we notice) very difficult social challenges being experienced by the society," said Lovemore Matombo, the ZCTU President. He was a panelist at a public lecture to assess progress 11 years after the formation of the MDC last Thursday.

Matombo said Zimbabweans, including the rural people, expected Prime Minister Morgan Tsvangirai's labour backed party-which last year formed a coalition government with President Robert Mugabe's ZANU PF party-to economically emancipate Zimbabweans.

"There is need to deal with our economy. Broaden the economy's base to create employment. We hope you will usher in the hope that the people expect," said Matombo. "We have said we will wait, but please bear with us when life becomes unsustainable. Why are we so poor yet we are so rich?"

Matombo was making reference to the fact that the country was rich in natural resources such as diamonds, platinum and uranium yet more than half the population still lives in horrible poverty.

Political scientist John Makumbe, who spoke at the lecture, said the MDC erred by joining ZANU PF to form a transitional coalition government. "You are not yet there. You still have a lot of work to do," said Makumbe. "You can't succeed when you are still in the hands of those who are busy wrecking and raping the country daily."

He gave an example of a media report in which people in Bikita were quoted saying they were surviving on boiling wild tree roots and leaves.

"You will not attain your founding principles as long as sipping with the devil. One fears that the concoction will not turn poison."

Makumbe said the current constitution making exercise would not create a perfect document. "This is painful (for Zimbabweans). It cannot be written by democrats and dictators to produce an election that will bring a straight government. A government without a surname or a middle name," added Makumbe.

He said ZANU PF was now preparing for elections and President Mugabe could dissolve Cabinet ahead of the elections early next year and leave only those from his party in government.

"The preparations (for elections) is now in full swing while you are not watching," he said. "This time do not put your money on SADC. It is a useless body."

Throughout Makumbe's speech, MDC leader Morgan Tsvangirai was shaking his head to express his disagreement.

"SADC is not as useless as you want to say. Ask us those who have attended the SADC summit. It has no army or police, yes but it has peer pressure," said Tsvangirai.

"I am not a political scientist or a professor but I can tell you Mugabe will not dissolve the GNU. Mugabe is seeking a soft landing to this crisis and of his legacy. His legacy and credibility hinges on the successful conclusion of this GNU as guaranteed by SADC and African Union. There will be no end of this government without a legitimate election."

Tsvangirai admitted that his party had made mistakes in the last 11 years of its existence.

"Have we arrived there yet? No. Have we made mistakes? Yes. But experience can never be taught," said the former ZCTU leader.

GALZ case: lawyers apply for discharge

HARARE- Magistrate Don Ndirowei will at the end of this month rule on whether to discharge Ellen Chademana, a receptionist at the Gays and Lesbians of Zimbabwe (GALZ) on charges of possessing prohibited materials.

Chademana's lawyer Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR) filed an application for discharge at the close of the State case last Friday.

"The State cannot build its case on mere assumptions... Clearly this matter was not properly investigated. It was simply rushed to court without due care and consideration of the fatal defects in it," said Bamu.

The State led by prosecutor Rufaro Mhandu hinge their charges on the claims that the police discovered some pornographic material in a file at the organisation's reception where Chademana works during a raid on the GALZ offices in May. The State now claims that Chademana was in possession of the material.

"Given that the general search at the (GALZ) premises did not happen in her (Chademana) presence, it is quite possible that this file could have been taken from some other source and planted at the reception area as the accused cannot account for what happened in her absence," added Bamu in his application for discharge.

Mhandu is supposed to respond to Chademana's application for discharge by Wednesday before Magistrate Ndirowei delivers his ruling on whether to discharge the GALZ employee or not on 30 September.

Chademana is on trial on charges of possessing prohibited materials in contravention of Section 26 (1) (a) of the Censorship and Entertainment Control Act Chapter 10:04.

Already, Ignatius Mhambi, a GALZ employee, who was arrested together with Chademana on almost similar charges of possessing prohibited or pornographic material, was acquitted by Harare Magistrate Sandra Mupindu in July.

COPAC member faces expulsion

KADOMA-A Constitution Select Committee (COPAC) rapporteur who assaulted a team leader last week faces expulsion from participating in the process meant to solicit people's views to draft a new governance charter for the country.

Beauty Zhuwao, a COPAC rapporteur for team 4 in Mashonaland West Province allegedly punched Movement for Democratic Change (MDC) Bindura South legislator Hon. Bednock Nyaude on his chest after accusing him of insinuating that she had personal problems. Hon. Nyaude denies the charge.

Hon. Nyaude, is one of the COPAC team leaders spearheading the process to solicit people's views on a planned new constitution expected to lay the foundation for political stability.

The assault took place outside the offices of the District Administrator for Kadoma in Mashonaland West Province last Monday. Zhuwao is part of the team of rapporteurs who are capturing public sentiments expressed during the constitution making outreach process.

Both Hon. Nyaude and Kadoma Central legislator Hon. Editor Matamisa, who is one of the COPAC supervisors in Mashonaland West Province confirmed the assault case.

They said Hon. Nyaude reported the assault case at Kadoma Central Police Station last Tuesday and to the two COPAC team supervisors Hon. Matamisa and Hon. Walter Chidakwa, the MP for Zvimba South.

Hon. Matamisa has since handed over her report detailing the assault to COPAC co-chairpersons Hon. Paul Mangwana and Hon. Douglas Mwonzora.

Hon. Mwonzora said Zhuwao would be expelled from the COPAC process if found guilty.

"If we get *prima facie* evidence of violence by a team member against another team member then that team member must be suspended from COPAC," said Hon. Mwonzora.