

The LEGAL MONITOR

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



01 August 2011

Edition 104

COST-FREE

Tension grips nation

HARARE-Tension has gripped Zimbabwe, with recorded human rights violations inching closer to 2008 levels when the country plunged into unprecedented depths of instability, according to figures released by a leading peace group.

The Zimbabwe Peace Project (ZPP), which has monitors on the ground countrywide, has just released a report showing that human rights violations increased between June last year and June this year.

According to the ZPP report documenting the trend of human rights violations, Zimbabwe is on the edge because political parties have intensified campaigns for a general election whose date is yet to be announced. Some of the parties, such as ZANU PF, have upped the use of violence and intimidation, according to ZPP.

Election campaigning is in "full gear" resulting in people's rights being violated on a larger scale than last year, according to the ZPP report.

Politically motivated human rights violation cases recorded this past June were 1 014, up from 994 witnessed during the month of May, according to ZPP.

The year-on-year comparison makes much more sad reading.

"Over the past four years, the highest number of violations during the month of June was witnessed in 2008 in the lead up to the inconclusive Presidential election runoff when 3 758 cases were recorded. The violations eased significantly in 2009 with 1 558 cases being recorded following the consummation of the inclusive government in February that year while in 2010 there were 913 cases," reads the ZPP report.

It notes that the decline in abuses in June last year-largely because coalition government partners were still trying their best to hold the shaky administration together-has failed to hold as the political temperature heats up.

The situation has since changed as political rivals put their gloves off in preparation for a watershed election, but at the expense of the general public.

Whereas 913 cases were recorded in June last year, that figure has since spiked to 1 014 recorded cases this past June, according to the ZPP report.

"The political situation has remained very tense across the country with political parties... preparing for the holding of elections as well as the constitutional referendum," noted ZPP.

ZPP says cases of politically motivated violence remain high and the atmosphere has remained volatile in Midlands, Manicaland, Mashonaland Central, Mashonaland East and Masvingo provinces.

"ZANU PF supporters have been accused of leading political violence in the many incidents that were recorded during the month. Political violence cases were recorded to be continuing in Manicaland province despite interventions by the Joint Monitoring and Implementation Committee (JOMIC) in rural Chimanimani and Headlands,"

reads the ZPP report. JOMIC is a cross-party organ set up to monitor the full implementation of the Global Political Agreement (GPA), the founding accord to President Robert Mugabe and Prime Minister Morgan Tsvangirai's fragile coalition government. JOMIC is largely viewed as ineffective and a waste of resources for its lack of teeth.

The two leaders-bitter enemies since Prime Minister Tsvangirai formed the Movement for Democratic Change party in 1999-are trapped in a coalition government forced by an African Union (AU) resolution passed in June 2008.

The AU resolution, taken in Egypt's Sharm el-Sheikh barely a week after President Mugabe declared himself winner of a disputed solo presidential election runoff, mandated regional leaders under the Southern African Development Community (SADC) to supervise the negotiation of a coalition government and ensure credible fresh elections.

Democratic reforms agreed to in the GPA aren't coming quickly enough, ZPP says.

Instead, the situation is worsening.

Figures from ZPP research show that recorded human rights

violations this past June are already reaching almost half the cases recorded during the tumultuous 2008 period.

State security agents are back in action against civilians, says ZPP in its report.

Rights groups say the brutal 2008 campaign by the military was on behalf of President Mugabe, who was on a desperate comeback bid. This is after President Mugabe lost-for the first time since he took power at independence in 1980-an election in March 2008 to once trade unionist ally Prime Minister Tsvangirai.

The 1 014 cases of human rights violations recorded by ZPP this past June are a shy 2 744 from the cases recorded during the bloody 2008 period.

"State security agents and in particular members of the police force and soldiers were accused of partisan application of the law during the course of their work. This was evidenced in the manner in which police officers handled the murder case of police Inspector Petros Mutedza in Harare," read the ZPP report.

The report is referring to the rounding up of two dozen Glen View residents, mostly MDC activists, following the stoning to death

of Inspector Mutedza in a neighbourhood beer hall brawl.

Freeing one of the residents, Cynthia Manjoro on \$500 bail on bail on Thursday, High Court Judge Justice Samuel Kudyia described the State case against her as weak.

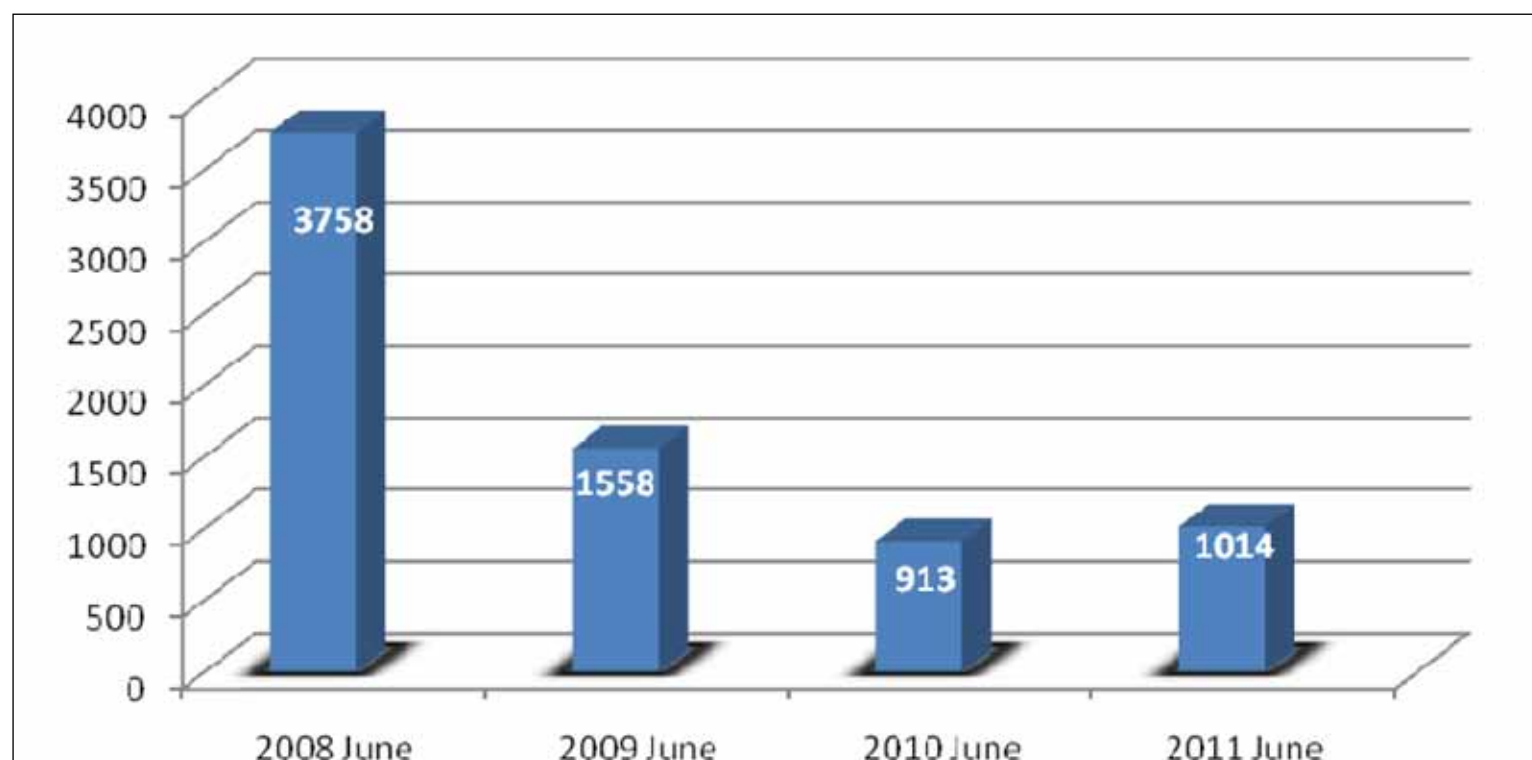
Matters of the belly have also come under attack, showing how human rights violations are affecting even the most basic survival of communities that are viewed as politically incorrect.

"Politicisation of food and other forms of aid was also recorded during the month under review with high indications that the folly is going to increase in the next months as more and more Zimbabweans will rely on food aid in the coming months due to poor harvests in some parts of the country. Humanitarian organisations are now carrying out surveys and registering possible beneficiaries," read the ZPP report.

UN agencies and government figures indicate that over 1, 7 million Zimbabweans, close to a tenth of the population, will require food aid this year. This is after a promising 2010-2011 main summer agricultural season turned disastrous because of a mid-season drought and poor capacity by newly resettled farmers.

The ZPP report cites ZANU PF as the main perpetrator of political violence against rival parties. But infighting for positions within the former ruling party has also come at a cost to ordinary people.

"The infighting within ZANU PF has been ongoing as new candidates are facing stiff resistance from the party's heavy weights in the fight to represent the party during the next general elections," reads the ZPP report.



Trends of politically motivated violations

ZIMBABWE LAWYERS FOR HUMAN RIGHTS

Position Paper on the Zimbabwe Human Rights Commission Bill HB 2, 2011

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1. INTRODUCTION

Zimbabwe Lawyers for Human Rights (ZLHR) notes that the Zimbabwe Human Rights Commission (ZHRC) can only be regarded as independent, effective and accountable if it has a legal and operational framework and mandate that fully complies with the United Nations (UN) General Assembly Resolution 48/131 (December 1993) on National Human Rights Institutions which incorporates the Principles relating to the Status of National Institutions (more commonly known as “the Paris Principles”).

It must be borne in mind that the current foundation of the ZHRC - as set out in the Constitution of Zimbabwe through insertion of a framework in terms of Constitution of Zimbabwe (Amendment No.19) Act - is weak and problematic and does not, in and of itself, facilitate the creation of an independent institution. Enabling legislation can go some way towards strengthening the independence and effectiveness of the ZHRC, but the foundational issues relating to appointment of the Commissioners, their mandate and independence, will remain unless further amendments are made to the constitutional framework of this body. This is a point to consider in the ongoing constitution-making exercise.

ZLHR notes that this is the first time in Zimbabwe’s independent history that intention has been translated into proposed legislation to establish a framework for considering human rights violations. This is a milestone, and is to be commended. However, although the absence of an enabling law has hindered the operations of the ZHRC since the appointment of Commissioners in December 2009, ZLHR notes that a ZHRC Act that does not comply with the Paris Principles is as good as not having a law at all.

In order to provide guidance to government on setting up credible independent human rights institutions, the United Nations (UN) Office of the High Commissioner for Human Rights has developed guidelines specifically setting out what elements or conditions are necessary for the effective functioning of domestic human rights commissions and institutions.

Some of the elements include: independence; defined jurisdiction and adequate powers; accessibility; co-operation; operational efficiency (including sufficient resources); and accountability. The Paris Principles and the elements highlighted in the UN Guidelines will be used to measure the potential impact of the Bill in operationalising the ZHRC and whether it will comply with international norms and standards for it to be regarded as independent. It is also important to note that a human rights commission which does not meet the requirements as set out in the Paris Principles will not be properly recognised in regional and international fora such as the African Union and the United Nations.

This requires, therefore, that serious attention be paid to ensuring compliance with the Paris Principles so that the ZHRC can participate in and benefit fully from interaction with its peers in the region and globally.

One key issue which has not been addressed at all in the current Bill is the role of the ZHRC in elections. In light of the current political processes and developments and the importance of providing mechanisms for effective electoral dispute resolution, conflict prevention, management and resolution, it is vital that this area of debate and the roles and responsibilities of the ZHRC in such process is addressed within the legislation. This will allow the ZHRC to contribute in a positive and effective manner towards the holding of free, fair and genuine elections in which the will of the people is respected.

2. COMMENTARY ON PROPOSED CLAUSES OF THE ZHRC BILL

2.1 Clause 1: Short Title -

There should be an insertion into this provision to ensure that the Act is cited as the “Zimbabwe Human Rights Commission Act” (emphasis added) so that it corresponds to the manner of citation in the Constitution of Zimbabwe.

2.2 Clause 2: Interpretation of “human rights violation” -

The Bill seeks to define a human rights violation as only relating to “a violation of the Declaration of Rights in the Constitution; or any international human rights instrument that Zimbabwe is a party to and has

domesticated as part of its laws”. It further states that “the law domesticating the instrument in question must expressly bestow on the Commission the jurisdiction to entertain complaints arising from alleged violations of the instrument” (our emphasis).

This provision and interpretation is as unfortunate as it is regrettable in a country that has been haunted by a wide range of civil, political, social, economic and cultural human rights violations throughout its history. This definition of a human rights violation is further illustrative of a government which does not have the political will to honour its obligations under international human rights law and which seeks to mislead people into believing that it will be giving effect to scrutiny of the state’s international and regional obligations when in fact it is doing nothing of the sort.

The interpretation of a “human rights violation” is unreasonably narrow and too restrictive. By seeking to confine the ambit of violations which can be considered to the Declaration of Rights in the Constitution, it will be impossible for the ZHRC to consider any alleged violation which is not proscribed by this part of the Constitution.

As it presently exists, the Constitution does not protect economic, social and cultural rights; nor does it protect group rights (such as those relating to use and protection of natural resources and protection of the environment, amongst others). Even the rights which are currently constitutionally protected suffer from the effects of rigid and far-reaching “claw-back clauses” which, in some instances, render the protective provisions redundant. As such, the scope of intervention, investigation and action of the ZHRC will be seriously confined. In addition, government can still put in place laws to further restrict or undermine human rights. This has been evident with the current Constitution’s Declaration of Rights, which has been undermined in the past through several constitutional amendments. This could happen in the future, thus restricting the jurisdiction of the ZHRC.

Although the ZHRC will be mandated to scrutinise violations of international human rights instruments, limiting the interpretation of a human rights violation in the manner envisaged by Clause 2 (where it can only be considered if domesticated), is dangerous due to the capacity of government to pick and choose which human rights instruments it ratifies and domesticates, and which it can continue to ignore.

Zimbabwe has assumed numerous human rights obligations under the United Nations and African Union human rights systems on a voluntary basis, but has failed to domesticate the vast majority of them. In terms of public international law, a country which accedes to, or ratifies, accepted international and regional human rights norms and standards, makes undertakings and binds itself to promote, respect, protect and fulfil the human rights norms and standards set out in these instruments. When these rights are not promoted, respected, protected or fulfilled, the government can be held liable for such human rights violations.

The same commitment has been made with regards to human rights norms and standards that have been enunciated in the International Labour Organisation Conventions, and also by the Southern African Development Community (SADC) in a number of Treaties and Protocols to which the country is a signatory.

By seeking to confine human rights violations only to those outlined under the Declaration of Rights, and those that have been domesticated into law, the government is making a back-door attempt to escape scrutiny and sanction where it is responsible for, or encourages, or nurtures the violation of Zimbabwe’s additional wide-ranging

international and regional human rights obligations as long as they are not domesticated by being incorporated into the Declaration of Rights or other subordinate laws right under the nose of an institution whose chief mandate should be the promotion and protection of all human rights. This violates public international law and cannot withstand scrutiny in terms of the Paris Principles or the Vienna Convention on Treaties.

The further inclusion of a requirement that the domesticating law must expressly allow the ZHRC to have jurisdiction in relation to violations of a human rights instrument is included in bad faith. It is patently clear that no such jurisdiction exists in any domesticated legislation, as the ZHRC has never existed until now. This is therefore an attempt to escape scrutiny of any violations of human rights instruments, whether domesticated or not.

Recommendations

- The definition of a human rights violation must be significantly widened to encompass violations arising from – at the very least - the disregard of any and all human rights norms and standards as articulated in all the human rights instruments to which Zimbabwe is a State Party after having signed, or acceded to, or ratified the instrument in question, whether or not it has been domesticated.

- The proviso in the definition must be completely removed from the Bill.

- The definition should also be wide enough to allow for scrutiny, investigation and action in relation to any alleged violations which are proscribed under customary international law.

- The definition of a human rights violation must be wide enough to allow for evolution, over time, of what can be considered to be a human rights violation. This is in recognition and acceptance of the fact that new rights and duties arise over time, and there are changing morals, norms and standards throughout

history. Currently, the definition of a human rights violation as something focussed on provisions contained in the Constitution or current international obligations means that the crafters assume that human rights are static and do not change at any time.

2.3 Clause 2: Interpretation of “Minister”

The Bill assigns administration of this Act to the Minister of Justice and Legal Affairs.

This is peculiar in that the ZHRC is a constitutional commission.

Recommendation

The administration of this Act and the affairs of the ZHRC should be assigned to the Minister of Constitutional and Parliamentary Affairs.

2.4 Clause 3: Corporate Status

The ZHRC is a corporate body, capable of suing and being sued and, subject to this Act, performing all acts that corporate bodies may by law perform.

No issues arise with this standard provision. However, there is need to ensure the independence of this Commission - at both the institutional and individual levels - for both the Commissioners, as well as the secretariat.

Recommendation

Consideration should be given to inserting a provision to reaffirm the institutional and individual independence of the ZHRC, its Commissioners, and its secretariat.

2.5 Clause 4: Functions of Commission

The ZHRC’s functions are to promote awareness of

and respect for human rights and freedoms at all levels of society, promote the development of such, monitor and assess observance of human rights in Zimbabwe, recommend to Parliament effective measures to promote human rights and freedoms, investigate alleged violations of the Declaration of Rights committed by any authority or person, and assist the Minister to prepare human rights report according to human rights instruments.

The first point to note is that this is a closed set of functions and is thus too restrictive; it does not give any room for exercise of discretion or expertise to take up other functions which may normally be required of a human rights commission and which allows it to be organic and remain relevant to the environment. The general functions as currently outlined in the Bill focus almost exclusively on promotional activities and ignore the protective functions that a commission should play. Where they are able to investigate alleged violations, there is an attempt to again restrict the mandate of the ZHRC merely to violations of the Declaration of Rights and not other regional and international obligations.

Although the ZHRC will be able to advise Parliament, it is not clear how far this role can be effectively played, at what critical stages this will become possible, and whether Parliament is bound to follow such advice. Once again, the advice is only in relation to promotional measures and not protective. Once again, the ZHRC is hamstrung by only being able to assist the Minister in preparing human rights reports for various human rights bodies and not produce its own reports. Making it mandatory for the ZHRC to assist the Minister to produce reports can also create an unnecessary burden on ZHRC whose resources may become overstrained.

Recommendations

ZLHR maintains its previously stated position - as set out in a Paper on the ZHRC produced in 2009 (and attached hereto) - that the functions and mandate of the ZHRC must be elaborated and widened in order to comply with the Paris Principles. It should not have a closed set of functions. The functions should be expanded to include the protective mandate so that it does not become a lame duck, by including investigative and adjudicative functions. In particular, the following must be included:

- Promote and raise awareness and respect for human rights and freedoms in particular among young people, police officers, defence forces personnel and other public officers. The ZHRC should also be empowered to promote the teaching of human rights in schools, universities and other educational institutions and encourage research on human rights issues.

- Promote the development and strengthening of human rights and freedoms as articulated in international, regional and sub-regional human rights instruments.

- Monitor and assess the observance of human rights in Zimbabwe with regards to government’s compliance with its obligations and the recommendations of treaty-monitoring bodies and other human rights mechanisms established by the UN, the AU and SADC.

- Recommend to Parliament and government departments effective measures to be adopted to promote and protect human rights and freedoms in their activities, programmes and policies.

- Investigate the conduct of any authority or person, where it is alleged that any of the rights in the Declaration of Rights or in international, regional and sub-regional treaties, or customary international law principles that are founded in human rights has been violated by that authority or person.

- Require any person, body, organ, agency or institution, whether belonging to or employed by the State, a local authority or otherwise, to provide the Commission annually with such information as it may need for the purpose of preparing and submitting any report required to be submitted to any regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

- Prepare its own independent reports required to be submitted to any sub-regional, regional or international body constituted or appointed for the purpose of receiving such reports under any human rights convention, treaty or agreement to which Zimbabwe is a party.

Continued next week

Govt says opposed to media self regulation

BULAWAYO-The government has no immediate intention to allow self-regulation of the media industry, claiming that the current environment was not “conducive”.

Delivering the dampening news, Regis Chikowore, the director for rural communications in the Ministry of Media, Information and

Publicity, told journalists in Bulawayo that the media still needed “guiding”.

“Self-regulation is the way to go but currently the environment in the country is not yet conducive for that. Regulations have to be put in place to help guide the media so that you do not impinge on other people’s rights. The society needs

protection from any abuse that might arise from media reports,” said Chikowore.

Recently, the Voluntary Media Council of Zimbabwe (VMCZ) said the Access to Information and Protection of Privacy Act, which allows for the formation of a government appointed media council, was a bad law.

“AIPPA is a law that has continually been used to curtail freedom of expression through the mandatory registration of journalists/media houses, the arrest of journalists and the closure of media houses,” said Alec Muchadehama, the VMCZ chairperson. In Bulawayo, Chikowore said journalists should not expect changes in harsh media laws until after the COPAC-led constitution making process.

Biscuit man to stand trial



Zebedia Mpofu

HARARE- A 52-year-old man who is in trouble for allegedly telling a ZANU PF workmate that President Robert Mugabe’s death was imminent will stand trial next week.

Last week on Monday, Jeremiah Bamu of the Zimbabwe Lawyers for Human Rights, successfully sought to have the trial of Zebedia Mpofu – accused of undermining the authority of the President – moved to 11 August.

Bamu is representing Mpofu, a general hand labourer at a private security firm. He argues that the law under which his client is being charged is a “negation of democratic principles”.

Mpofu allegedly mocked his workmate, informing him that a soft drink and packet of biscuits he was having for lunch came courtesy of Prime Minister Morgan Tsvangirai. He is being charged under the harsh Section 33 (1) (a) of the Criminal Law

(Codification and Reform) Act Chapter 9:23 as read with Section 33 (2) (a) of the same Act for allegedly undermining the authority or insulting the President.

According to the State outline, Mpofu was at work in October last year when he went to Gilbert Matarutse’s office. Matarutse, a security officer known to be a ZANU PF supporter, was having his lunch at the time.

“The accused shouted to Gilbert through the window, saying that the biscuits and the cascade he was having were brought by MDC-T through its leader Prime Minister Morgan Tsvangirai,” reads the State outline.

“He went further to say that President Mugabe had ruined the country and that he was going to be dead by December 2010 then Morgan Tsvangirai would take over as President of Zimbabwe.”

Statements recorded from other workmates acting as witnesses

all deny hearing Mpofu utter the alleged words. Commenting on the case, Bamu said: “It is just an alarming indication of a sad state of affairs where citizens are not allowed to level any form of criticism against the President as doing so will result in prosecution.”

“The law is a negation of democratic principles and an unnecessary gag on legitimate criticism,” said Bamu. Mpofu joins dozens of other Zimbabweans, from politicians to ordinary villagers, who are in court charged under the Criminal Law (Codification and Reform) Act on politically related issues.

For example, Chiredzi Central Member of Parliament Hon. Moses Mare is on trial for allegedly assaulting a minor at a funeral in Chiredzi over a pro-Mugabe song.

Hon. Mare was arrested in January last year on allegations of contravening Section 89 (1) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23.

Prosecutors claim that Hon. Mare was so incensed by a 13-year-old boy’s decision to join in the singing of a Mugabe praise hymn “*Nyatsoterera unzw kutonga*” at a funeral that he hit the juvenile on the neck using open hands in January last year. The MDC MP denies the charge, which he says is fabricated.

Three Chiweshe villagers, Tinashe Chinyemba, Luckson Khumalo and Tafadzwa Chironga have been summoned to Bindura Magistrates’ Court for allegedly distorting one of the pro-Mugabe songs by inserting Prime Minister Morgan Tsvangirai’s name into the song lyrics.

The villagers are being charged under Section 41 of the Criminal Law (Codification and Reform) Act Chapter 9:23 for conduct likely to provoke the breach of peace.

In Penhalonga, Manicaland, another three residents, Patrick Chikoti, Faith Mudiwa and Phillip Dowera were in February charged under the same law for allegedly singing a modified version of Mbare Chimurenga Choir’s “*Nyatsoterera unzw kutonga*” song at a funeral.

The residents were accused of having sung: “*Nyatsoterera unzw kupenga muhofisi mune mboko nyatsoterera unzw kupenga*” and “*Ngatishandei nesimba takabatana tibvise kamudhara aka muoffice mupinde president wenyika Morgan Tsvangirai*” (Listen carefully to the madman and idiot in the office. Let’s work hard to remove this old man from office and install Tsvangirai)."



Komichi trial starts

HWANGE-The trial of Movement for Democratic Change (MDC) deputy national chairperson and non-constituency Senator Morgan Komichi for allegedly communicating falsehoods commenced on Tuesday at Hwange Magistrates Court.

Regional Magistrate Ndlovu presided over the trial where one witness only turned up leading to the postponement of the trial to 15 August.

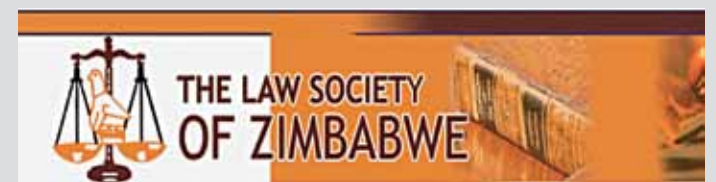
Prosecutors allege that Senator Komichi, who is represented by Nosimilo Chanayiwa of Zimbabwe Lawyers for Human Rights, communicated falsehoods when he addressed and told supporters at an MDC rally in Lupane, Matabeleland North province in February last year that the provincial police, led by Officer Commanding Matabeleland North Senior Assistant Commissioner Edmore Veterai, were unwilling to release three party vehicles that were impounded by the police.



Morgan Komichi

They claim that Senator Komichi made reference to the impounding of the vehicles at a rally held at Negasha stadium in Lupane in February this year where he allegedly said Veterai had confiscated the vehicles to further the interests of ZANU PF. Lupane police impounded Prime Minister

Morgan Tsvangirai’s campaign vehicle and two others belonging to the party’s Matabeleland North province and the youth assembly during the run-up to the disputed June 2008 presidential elections. The vehicles are still being kept by the police.



The President,
Council and Secretariat
join ZLHR to celebrate the production of
its 100th Edition of the Legal Monitor.
100 is a milestone,
a marker and a reason for retrospect.
We all congratulate you for continued and
consistent propagation of information that
fosters a culture of human rights
without fear or favour.

Committed to justice and the rule of law

Quality training key to justice delivery

HARARE-The quality of training accorded to lawyers, magistrates, prosecutors and judicial officers will impact on the quality of the country's justice delivery system, according to US ambassador Charles Ray.

In remarks made at the handover of law literature worth \$150 000 to the Law Society of Zimbabwe (LSZ), Zimbabwe Lawyers for Human Rights (ZLHR), Legal Resources Foundation and the Women's Law Centre, Ambassador Ray said a

solid academic and research base with access to recent and relevant legal books would assist lawyers and judicial officers to perform to their full potential.

The US embassy made the donation possible after partnering with Thomson Reuters, one of the largest legal resources in the world and Books for Africa.

"Zimbabwe has been one of the countries that has produced some of the best legal minds and ground

breaking jurisprudence in the region and in Africa. Our intention is for this country to continue on that path," said Ambassador Ray.

The books include law dictionaries, reference books and books on specific law subjects such as constitutional law, international law, business transactions, law and economics and some for primary schools. In accepting the donation, ZLHR chairperson, Andrew Makoni, said the books would help replenish school and college libraries.

"The books are an important intervention. In the schools and colleges students are using antiquated materials. They are sharing books sometimes at the ratio of 40 pupils to one book. In some instances only the teacher or instructor will have the book from which he or she extracts notes for the students," said Makoni.

LSZ deputy president Lloyd Mhishi lauded the book donation. **Below is the book donation in pictures**

