

The LEGAL MONITOR

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Human rights champions

HARARE-From downtrodden villagers and top politicians to civil society activists and leaders, Zimbabweans across the country have found refuge in Zimbabwe Lawyers for Human Rights (ZLHR), an organisation whose name has become synonymous with human rights defence work.

And on Friday last week, this status was stamped when ZLHR staff scooped awards presented by the Zimbabwe Human Rights Association (ZimRights) to honour outstanding human rights defenders in the country.

The winners were judged to have shown "exceptional courage and leadership in protecting and promoting the rights and freedoms of Zimbabwean citizens".

Blessing Nyamaropa, Irene Petras, Peggy Tavagadza and Lizwe Jamela won awards on a day which belonged to ZLHR. Nyamaropa was adjudged the overall Human Rights Defender of the Year.

Petras, the ZLHR Executive Director won the overall female Human Rights Defender of the Year. She has been a target of vilification by the State-controlled media and State security agents who last year harassed her together with other Civil Society Organisation leaders at the SADC Extra-Ordinary Summit held in Namibia.

Tavagadza was honoured for her sterling work in Manicaland Province while Jamela was recognised for helping human rights defenders in Bulawayo. Daily News journalist Farai Mutsaka was named the inaugural winner of the Human Rights Journalist of the Year Award.

ZimRights said the awards were part of the organisation's celebrations to mark International Human Rights Day held annually on December 10.

"These men and women have braved multiple threats to their safety. They have worked tirelessly to advance the rights of Zimbabweans including some in marginalised, forgotten and minority communities," said ZimRights director Okay Machisa.

"These community human rights defenders (HRD) have had to endure all the pressures that come with being human rights defenders including torture and intimidation. They have and continue to endure



Award winners Irene Petras, Jeremiah Bamu representing Lizwe Jamela, Peggy Tavagadza and Blessing Nyamaropa

unwarranted arrests and many in Zimbabwe, have suffered at the hands of the State (police).

"As ZimRights, we realised that most of these HRD's efforts and work tend to go unnoticed hence the awards are our humble contribution in honouring and appreciating the efforts and work done by these community HRD's. With human rights so often trashed in certain circles and quarters, it is all the more inspiring to reward our winners' efforts," said Machisa.

He said rewarding hardworking HRD's will go a long way in motivating all human rights defenders to remain steadfast in their work and realise that their work is appreciated.

"The awards serve as a medium of recognising courageous and diligent human rights defenders who bring leaders' and the world's attention to the serious issues affecting Zimbabwe," said Machisa.

He said the media award is aimed at reinforcing the importance of journalists' role in the country and to

recognise and develop journalistic talent.

Petras, who has been providing leadership for the influential human rights organisation said ZLHR felt humbled by the honour bestowed by ZimRights. She paid tribute to her team at ZLHR, which recently celebrated its 16th anniversary this year, for working tirelessly to defend human rights and to foster a culture of human rights in the country.

"This honour would not have been possible if it was not for the great team that I have all around the country, and the dedication, energy and enthusiasm that they show when going about the work of the organisation. We can take courage from the acknowledgement which our peers have provided to renew our strength and to serve our beneficiaries and stakeholders. There may be dark days ahead as we approach elections, but together I am sure we can continue to make a difference to the lives of our fellow Zimbabweans and to our country at large," said Petras.

Cop under investigation

RUSAPE-Police have undertaken to investigate an officer involved in the assault of a Rusape man on accusations of theft.

Following the intervention of Zimbabwe Lawyers for Human Rights lawyer Peggy Tavagadza, who is representing the victim, Never Mulayi, the police legal department said it would get to the bottom of the matter.

A letter from the police legal division for the eastern region signed by an assistant inspector Mushangwe acknowledged the ZLHR complaint and stated that "investigations into the allegations raised therein will be instituted".

ZLHR interventions have resulted in several police officers being discharged, jailed or fined for torturing suspects to force confessions.

Mulayi, from Guruza Village in Rusape, was assaulted by a policeman so far identified only as Sachikoko whom he filed a criminal report against.

The 59-year-old man plans to sue in a civil court for damages and has - through his lawyers - already notified relevant authorities of this intention.

According to his lawyers, trouble for Mulayi started when his employer, Chiduku Chipiri Irrigation, reported the theft of equipment leading to the arrest of Mulayi and 19 other workers. He was not informed of the charge he was facing but Sachikoko assaulted him on the face and back using a log, his lawyers say.

"The assault started around 6pm and was only released after 11pm without a charge. As a result of the assault he suffered a ruptured eardrum which may cause permanent deafness," said Tavagadza.

A report was made against the police officer and the criminal record number for the case is RRB1522623.



Impact... The Constitution Select Committee was forced to attend to this billboard after The Legal Monitor exposed its tattered condition



INTERNATIONAL HUMAN RIGHTS DAY – 10 DECEMBER 2012

PETITION: Respect, Promote and Protect Legal Practitioners in the course of carrying out their duties from all forms of threats, harassment and intimidation.

We, the Members of Zimbabwe Lawyers for Human Rights (ZLHR), are deeply committed to fostering a culture of human rights and respect for the Rule of Just Law in Zimbabwe. Our commitment extends to robustly exercising our constitutionally protected freedom of expression to highlight challenges within our profession and the broader justice delivery system, not in efforts to bring the system into disrepute, but rather to ensure that the concerns are heard and acted upon by all stakeholders, so as to strengthen and improve this system and public confidence therein.

We are cognizant of the fact that the respect, promotion and protection of the rights of legal practitioners, both in the private sector and those within the public service in Zimbabwe, are prerequisites to safeguard the independence of the legal profession as well as the Judiciary, and in turn to enable the efficient and effective administration of justice.

We are aggrieved that it has become commonplace to hear of regular and increasingly frequent attacks against members of the legal profession, both in the private sector and within the public service in Zimbabwe. The incidents – which have ranged from denial of entry into police stations, denial of access to clients, verbal and physical attacks on lawyers and prosecutors, and arrest, detention and persecution through prosecution of lawyers – have been well documented and are a matter of public record. Where they have been raised in the past, however, they have neither been acknowledged nor attended to.

In recent months the operating environment for members of the legal profession – more particularly human rights lawyers – has shrunk to the extent that it is becoming almost impossible for them, as Officers of the Court, to perform their professional duties and functions.

Throughout 2012 and 2011, lawyers have been threatened and harassed in the course of performing their duties, including being subjected to the following:

- Arbitrary arrest and wrongful detention on unsubstantiated charges of obstructing or defeating the course of justice – charges which are then not further pursued after the indignity of the arrest and detention
- Attempts to seize the business mobile telephones of legal practitioners for the purposes of “downloading information” despite such information being protected under the sacrosanct lawyer-client privilege
- Unlawful access to, and seizure, of client files – similarly protected by the lawyer-client privilege – together with medical records prepared for legal cases (protected under the doctor-patient confidentiality), most recently seen in the much-publicised and controversial raid of a medical facility, the Counseling Services Unit
- Harassment by political party activists, including verbal abuse and general threats of physical action against legal practitioners carrying out their professional duties in court. Lawyers have been barricaded and denied exit from the courts; been subjected to threats to stone and overturn their vehicles; been forced to exit court buildings in Zimbabwe Prisons Service trucks carrying prisoners back to remand facilities and being dropped in town to escape physical attacks. In spite of such criminal action having occurred at a court, in the presence of police officers and complaints being made to the police, the perpetrators have not been brought to book, fuelling impunity and providing fertile ground for further such violations.

ZLHR is greatly concerned about the rising pattern of threats, harassment and attacks against lawyers and by the seeming inaction from the relevant authorities. Indeed, the fundamental and constitutionally-protected right of the general populace to legal representation and to the protection of the law suffers great harm if their legal practitioners are rendered unable to carry out their jobs due to the unacceptable and unlawful conduct of elements in society that choose to ignore the rights of other persons with impunity.

The Constitution of Zimbabwe in section 13(3) of the Declaration of Rights, guarantees a person who is arrested or detained the right

to “obtain and instruct without delay a legal representative of his own choice and hold communication with him”.

The African Charter on Human and Peoples’ Rights (to which Zimbabwe is a State Party), and the African Union’s Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa (“the Principles and Guidelines”), both reaffirm these rights.

The Principles and Guidelines further stipulate that every accused person has the right to an effective defence and representation, and that the independence of lawyers shall be guaranteed.

In particular, the state is obliged to ensure that lawyers:

1. are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
2. are able to travel and to consult with their clients freely both within their own country and abroad;
3. shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Lawyers also “shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a judicial body or other legal or administrative authority”, and “shall not be identified with their clients or their clients’ cause as a result of discharging their functions”. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

Similar safeguards have been laid out in various United Nations (UN) instruments (to which Zimbabwe is a State Party) and expanded particularly in the UN Basic Principles on the Role of Lawyers, of which the State is well aware as a member of the UN.

ZLHR wishes to warn of the dire consequences ahead, not only for human rights defenders, civic organizations and legitimate political party leaders and members as a result of the clampdown on lawyers, but also on the general population at large. Such targeting of lawyers – even the mere allegation that there exists a “list” of lawyers for elimination – has a chilling effect on all members of the legal profession and, by implication, on the affected individuals whose rights they seek to protect.

It is pertinent to note that any individual may, without cause, become an accused person and we all rely on such safeguards to ensure that our rights are protected and respected. The moment such rights are not respected for one person there is a danger of the entire justice system being brought into disrepute, particularly in this digital age where public scrutiny of processes of justice is greatly enhanced and therefore public confidence can be swiftly and broadly affected. Where we fail to act upon transgressions against one person, we are all at risk.

ZLHR members remain committed to the representation of all human rights defenders, no matter their political persuasion, in compliance with their constitutional obligations, just as they have been doing on behalf of our organisation for the past 16 years. As such, they will continue to exercise vigilance and extreme caution in relation to their security, and to immediately report all threats of attack and/or actual attacks to the responsible authorities, to the Law Society of Zimbabwe and to ZLHR, as well as SADC diplomatic representatives and regional observers in Zimbabwe. We expect action to be taken to address such complaints in a timely and productive manner in order to increase public confidence in the existence and proper functioning of the Rule of Just Law.

ZLHR further issues an urgent call for the following, as a matter of extreme urgency:

TO THE EXECUTIVE

1. An immediate cessation by members of the police, armed forces, prisons, central intelligence, and/or other individuals or organs acting on their behalf or with their knowledge

or acquiescence, of ongoing acts and/or plans to commit acts of intimidation, threats, attacks, abductions (enforced disappearance) and/or extra-judicial execution of members of the legal profession, their families, or work colleagues which have an adverse impact on the efficient and effective administration of justice.

2. That the Minister of Justice and Legal Affairs, the Commissioner-General of Police, the Commissioner of Prisons, the Director of the Central Intelligence Organization, and the Attorney General provide a public undertaking that all members of the legal profession will be properly protected by the authorities in compliance with constitutional, regional and international law obligations, and will be allowed to continue representing all and any clients who call upon their services without fear or favour and without the threat of physical and/or psychological harm.
3. To ensure the respect of the sacrosanct lawyer-client privilege so as to ensure the justice system is not brought into disrepute.

TO THE JUDICIARY

To increase cooperation and engagement between the Bar and Bench at a practical level in the understanding that legal practitioners and the Judiciary are partners in the ongoing struggle to protect and ensure the independence of the legal profession and the Judiciary (which are inextricably linked) and for the greater good of smooth justice delivery and increased access to justice, which is a common goal for all.

TO THE LEGISLATURE

1. To take immediate steps to deal proactively in expeditiously domesticating all international treaties, statutes and instruments guaranteeing the independence of the legal profession.
2. To take steps to ensure that adequate legal provisions exist or are included in national legislation to protect the independence of legal practitioners and allow them to carry out their professional duties without hindrance.
3. Through the Committee system, to ensure that attacks on lawyers and their professional work are swiftly investigated through a public hearing of documented cases, including an inquiry into action taken by the appropriate authorities.

6 DECEMBER 2012

ON BEHALF OF ZIMBABWE LAWYERS FOR HUMAN RIGHTS



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Lawyers protest attacks

HARARE- Tired of being treated like criminals for doing their professional work, lawyers have taken to the streets to demand protection from the State.

Members of Zimbabwe Lawyers for Human Rights (ZLHR) last week said attacks on lawyers were increasing at an alarming rate. The lawyers demonstrated in Harare and petitioned authorities.

Numbering about 200, the lawyers, who were joined by other human rights defenders marched on Thursday chanting songs and holding placards with different messages.

They delivered their petition to Parliament, Supreme Court, High Court, Ministry of Justice and the Attorney General's Office demanding an immediate end to the harassment of lawyers performing their duties.

"We are aggrieved that it has become commonplace to hear of regular and increasingly frequent attacks against members of the legal profession, both in the private sector and within the public service in Zimbabwe. The incidents – which have ranged from denial of entry into police stations, denial of access to clients, verbal and physical attacks on lawyers and prosecutors, and arrest, detention and persecution through prosecution of lawyers - have been well documented and are a matter of public record," reads the petition.

"Where they have been raised in the past, however, they have neither been acknowledged nor attended to," states the petition, which was read by Wilbert Mandinde, the deputy secretary of the Law Society of Zimbabwe.

"In recent months, the operating environment for members of the legal profession - more particularly human rights lawyers - has shrunk to the extent that it is becoming almost impossible for them, as Officers of the Court, to perform their professional duties and functions. Throughout 2012 and 2011, lawyers have been threatened and harassed in the course of performing their duties."

At Parliament, Precious Chakasikwa, the Deputy Chairperson of ZLHR, said the legislature was expected to: "To take immediate steps

to deal proactively in expeditiously domesticating all international treaties, statutes and instruments guaranteeing the independence of the legal profession.

"To take steps to ensure that adequate legal provisions exist or are included in national legislation to protect the independence of legal practitioners and allow them to carry out their professional duties without hindrance.

"Through the Committee system, to ensure that attacks on lawyers and their professional work are swiftly investigated through a public hearing of documented cases, including an inquiry into action taken by the appropriate authorities."

The lawyers then marched to the offices of Justice Minister Patrick Chinamasa. Chakasikwa said lawyers wanted an "immediate cessation" by State security agencies of ongoing acts intimidation,

threats, attacks or extra-judicial persecution of members of the legal profession which have an adverse impact on the efficient and effective administration of justice.

"The Minister of Justice and Legal Affairs, the Commissioner-General of Police, the Commissioner of Prisons, the Director of the Central Intelligence Organisation, and the Attorney General (must) provide a public undertaking that all members of the legal profession will be properly protected by the authorities in compliance with constitutional, regional and international law obligations, and will be allowed to continue representing all and any clients who call upon their services without fear or favour and without the threat of physical and/or psychological harm," she said, adding that ZLHR wanted the Executive: "To ensure the respect of the sacrosanct lawyer-client privilege so as to ensure the justice system is not brought into disrepute."

The procession moved to the High Court. Lawyers said they wanted increased cooperation and engagement with the Bench at a practical level on the understanding that legal practitioners and the Judiciary are "partners in the ongoing struggle to protect and ensure the independence of the legal profession and the Judiciary for the greater good of smooth justice delivery and increased access to justice, which is a common goal for all".

The lawyers said for the past two years, they have been threatened and harassed in the course of performing their duties. **Please see Page 4 for the demonstration in pictures.**



Rise up, stand up... human rights lawyers take to the streets

Ladies time out in Honde Valley

HONDEY VALLEY-Zimbabwe Lawyers for Human Rights (ZLHR) continues using sport to reach out to grassroots communities to raise awareness on human rights issues.

Honde Valley in Manicaland Province exploded into life last week when the ZLHR Mutare office held Youth and Human Rights games at Samaringa School.

The youth games proved popular among the participants who numbered 224.

It was serious fun as local football and netball teams tussled on the pitch as well as engage in human rights issues affecting them at the community level.

Zorai butter was there too. But unlike their Harare doyens Dynamos, they could not take the first prize.

Instead, it was Combined Stars who walked home as winners after beating Super Tigers 2-1 in a tightly contested football match.

Other teams which took part in the football bonanza were Samaringa, Nyabadza, Take-Take and, of course, Zorai Butter.

Combined Stars went away with a brand new ZLHR kit as part of the prizes while Super Tigers bagged a soccer ball and \$50 for coming second.

Hauna Stars beat Take-Take 18-1 to win the fiercely fought netball competition.

Red Chuster and Combined Stars also took part in the competition.

Before the games, participants discussed human rights and HIV and AIDS issues.

Participants identified the right to life, right to shelter, right to health and education as foremost. They were also able to identify some civil and political rights.

Kennedy Majamanda of ZLHR defined human rights as universal laws that protect all people from actions that interfere with human dignity, freedom and entitlements. He asked the participants to name some of the rights they knew.

"Human rights are universal, equal, indivisible and interdependent. Rights cannot be taken away from people and are legally protected," said Majamanda.

The participants' main worry was how to protect their rights and what action to take when one's rights have been violated or abused.

Warning participants that rights come with responsibilities and not to abuse the rights of others in the community, Majamanda said people should report to the police depending on the matter.

HIV AND AIDS treatment issues came for major discussion.

Ched Nyamanhindi of ZLHR said because no cure has been found so far for HIV and AIDS, people living with HIV should manage their health by getting on ARV treatment, eating healthy food and exercising.

He addressed the issue of testing, as it appeared many were hesitant to know their status.

"You must not lose hope if you test positive," he said.

"You must seek support and ARV treatment," said Nyamanhindi while encouraging pregnant mothers to get tested to avoid transmitting the virus to the baby if one is positive.

He encouraged males to support their wives through this process and to get tested as well.

The correct and consistent use of condoms was also discussed as one way of preventing the spread of HIV. Participants were encouraged to be faithful to their partners if they are married and to abstain from sex if they were not married.

Drinkers had their questions too.

Some participants asked whether it is good for a person who is on ARV treatment to smoke and drink alcohol.

Nyamanhindi said this was not encouraged.

"Heavy drinking and hangovers can lead to missed doses of ARVs and people who drink whilst on treatment should be careful with that as this can cause your treatment to fail," he said and encouraged people on ARVs to seek treatment whenever they fail to manage opportunistic infections.

It was not all serious stuff though.

The tournament was a form of entertainment and relaxation for the ladies.

They said they learnt some things about human rights and HIV but far and above all they were able to meet their friends and enjoy themselves. One woman said the rural woman is burdened by a lot of work in the home and barely finds time for entertainment.

Meanwhile, in Harare ZLHR continued its dominance by crushing Chinhoyi University 6-1 before silencing Word of Life 4-2.



Hokey... These ladies enjoy themselves at the Youth and Human Rights games hosted by ZLHR at Samaringa School

End persecution now

HARARE-Lawyers and human rights defenders on Thursday took to the streets to assert their rights. The lawyers protested against the

increasing harassment they are enduring at the hands of State apparatus. Below, *The Legal Monitor* captures some of the action that brought

business in central Harare to a standstill.

