

Testimony: Mrs. Beatrice Mtetwa, President of the Zimbabwe Law Society's testimony of events of 8th May 2007, Zimbabwe

You might be aware that members of the Law Society of Zimbabwe have endured various forms of harassment in the last couple of months. These have included denial of access to clients, refusal to disclose the whereabouts of clients, chasing lawyers out of police stations, assaulting, arresting and detaining lawyers. These forms of harassment increased dramatically from 11th March, 2007 when many civil society and opposition activists were severely assaulted by agents of the state. As a direct result of their representation of members of the opposition two lawyers were arrested, detained and kept incommunicado in early May, 2007. Three court orders for their release and for access were ignored. The Law Society, through myself as its current President, gave notice to the police that members would march on 8th May, 2007 to go and present a petition to the Minister of Justice and to the Commissioner of Police protesting at the difficult environment under which lawyers were expected to operate. For your ease of reference herewith a copy of the petition.

Nothing was heard from the police and on the 8th May, 2007, I went to the High Court at about 12:40hours and found at least 6 armed police officers in riot gear already there. Two constables in plain clothes also identified themselves to me as Constables Chijaka and Siziba. As the Law Society wished to avoid any violence, I enquired from the riot police what their instructions were, i.e. whether to escort us or to stop us presenting the petition. They indicated that they were not at liberty to disclose that information and that I could get it from their superiors, whose identity they refused to disclose.

The lawyers were congregating and at about 1300hrs a truckload of more armed riot police arrived, followed by the officer commanding Harare District, Mr Tendere. He enquired from me if I had received his letter and I answered in the negative. I asked him to disclose the contents of the letter or for a copy thereof as I needed to communicate this to our members. He proceeded to his vehicle and I thought he was going to get a copy of the letter. But instead he produced a loud hailer and advised the gathering that all such congregations were banned in the Harare district and that our gathering was illegal and he would count to three and if we did not disperse, his riot squad, which included state security agents, would deal with us accordingly.

I pointed out that the ban he referred to related to political rallies and gatherings and did not apply to professional bodies wishing merely to present a petition and that he could allow a few of us to go and present the petition. This he ignored and proceeded to count to three after which the lawyers promptly dispersed. However, elements within the riot squad accused some members of not dispersing fast enough and they started assaulting them, mostly on their backs as they were walking away. I also walked away in the direction of my offices in the company of some lawyers whose offices were in the same direction.

After we had walked away for 100-150metres, we saw the riot police running towards us and we ran into the nearest building, which houses the Attorney-General's office and the Justice Ministry, believing we would be safe there. There were more police in the building and we were rounded up, lodged onto a police van and taken to a

riverbed about 2-3kms away where we were asked to disembark from the truck and an order was given that we be assaulted. We were asked to lie down on our tummies and one of the young lawyers started running away and was pursued by a gang of between 7 -8 riot police. About a similar number remained with the three of us and started assaulting us all over the body with baton sticks and I suffered bruises all over my arms and back, as did the three other lawyers who had been bundled onto the truck with me. As the assaults were in full view of the passing motorists who stopped to watch, we were saved by two senior officers who rebuked the officers for assaulting us in public and an order was given by their senior officer to stop assaulting us and they all drove away abandoning us at the scene of the assault. We then arranged for transport to take us for medical attention. The other lawyers were Colin Kuhuni and Chris Mhike, both Law Society Councillors and Mr T. Fitzpatrick, a lawyer who is more than 60 years old.

The bruises remain visible and I could not sit on my bum or drive for the first two days. I was obviously targeted as a possible “ringleader” as I was to present the petition as President. In addition, I handle a lot of cases involving human rights abuses, for which I have received vilification in the state media, the latest instalment having been last Saturday where the Secretary for Information described me as “ugly, dull, lonely, etc”. Since the aborted march, one more lawyer has been arrested in connection with allegations connected with his work as a lawyer.

Petition: the Law Society of Zimbabwe protest to the attacks on legal practitioners and call for the release of lawyers Alec Muchadehama and Andrew Makoni

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PETITION

The Law Society of Zimbabwe has for sometime been concerned at the relentless and unjustified attacks on its members for actions taken during the course and scope of their mandate as legal practitioners. The attacks in the main took the form of vilification and threats by the state media and politicians against those members of the profession who would have taken on cases and causes which are unpopular with the state.

Since the 11th March, 2007 the vilification, intimidation and threats have assumed physical proportions where members of the legal profession have been physically assaulted, manhandled, chased out of police stations, threatened with arrest, intimidated and generally harassed whilst executing their lawful mandates as provided for under the law. The threats of arrest have since been acted upon as two members of the legal profession, Messrs Alec Muchadehama and Andrew Makoni were arrested outside the High Court, Harare, by members of the Law and Order Section. The arrests were entirely premised on their representation of their clients in matters that remain

pending before courts and on which the courts have made no adverse pronouncements on their conduct.

Following their arrests, the two were denied access to their lawyers and members of their families, their whereabouts were not disclosed to their lawyers and members of their families, they were denied food and medication and their rights to the full protection of the law were severely compromised. Despite the High Court declaring their arrest and detention unlawful, and ordering their immediate release at about lunch time on the 5th May, 2007, the police refused to release them and they remained in custody overnight. Following a second application, the High Court ordered that they be produced before it on the 6th May, 2007 and once again, the police refused to produce them and they remained in custody as at 7th May, 2007. Lawyers acting for the two were harassed, threatened and severely intimidated by officers of the Law and Order Section as and when they served the court applications and court orders and the general refusal to accept service of court process by members of the Law and Order Section continued.

The harassment, intimidation, threats and assaults have since taken a new turn in that an officer in the Attorney-General's office who handled the first application has reportedly been harassed, assaulted, intimidated and threatened by members of the Law and Order Section for carrying out his duties as mandated by the Constitution of Zimbabwe.

In addition to the above, police officers from the Law and Order section at Harare Central police station took the detained lawyers to their offices, those of the law firm of Mbidzo, Muchadehama & Makoni. The police, led by one Detective Inspector Muchada, were purportedly armed with some search warrant which they refused to show and proceeded to raid the law firm. Lawrence Chibwe, the Deputy Secretary of the Law Society of Zimbabwe, and Otto Saki, were threatened with arrest when they sought to scrutinise the search warrant. Police proceeded to remove certain files and documents from the offices and did not allow the lawyers to take an inventory or remain present during the search. It is unlawful to search and remove documents from law offices, as they are protected by legal practitioner-client privilege. This, however, did not deter the police.

The Law Society of Zimbabwe is extremely concerned at these developments which are clearly in breach of the Legal Practitioners Act, the Constitution of Zimbabwe, regional, continental and international instruments meant to protect lawyers in the execution of their duties.

In terms of the Legal Practitioners Act, legal practitioners are entitled to represent their clients without fear of being harassed and intimidated by the authorities. Legal practitioners are no different from other professions such as Accountants who carry out work for all manner of clients without intimidation and harassment. Section 18 of the Constitution of Zimbabwe equally entitles persons charged with any criminal offence to the full and secure protection of the law, which include the right to legal representation by a legal practitioner

of his choice. This right cannot be fully enjoyed in an environment where legal practitioners are vilified, intimidated, harassed, assaulted, arrested and detained for carrying out mandates given to them by the most supreme law of the land.

Zimbabwe is also a state party to many international instruments which provide for the protection of lawyers in the execution of their duties. These include the African Charter on Human and Peoples Rights whose Article 7(c) provide for the right to be defended by counsel of choice. This right has been expanded upon by the African Commission on Human and Peoples Rights in its Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. These principles specifically provide that "Prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil penal or other liability". Similar provisions are found in the 1990 UN Guidelines on the Role of Prosecutors. Item G of the Principles provides for access to lawyers and legal services. In particular, Item (G) (b) provides that states shall ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference" whilst subsection 3 of the same Item obliges state parties to ensure that lawyers "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". The office of the UN High Commissioner for Human Rights on the 27th August to 7th September, 1990 adopted Basic Principles on the Role of Lawyers which specifically provides for access to lawyers and legal services, with a specific guarantee under Item 15 where states are required to ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference".

There can be no doubt, therefore, that the continued vilification, harassment, intimidation, assaults, arrests and detentions, are breaches of not only Zimbabwe's own domestic legislation, but also constitute a flouting of internationally recognised basic conditions under which lawyers are supposed to operate.

We, as members of the Law Society of Zimbabwe, call upon the government of Zimbabwe and all its organs to immediately:

1. Abide by provisions of Section 18 of the Constitution of Zimbabwe and all the international principles set out hereabove;
2. Create an environment where the independence of the legal profession will not be compromised in anyway;
3. Forthwith desist from harassing, intimidating, threatening, assaulting, arresting and detaining lawyers for carrying out their professional duties as recognised by law;

4. Prosecute all law enforcement agents who interfere with lawyers whilst acting in their professional capacities;
5. Ensure the enforcement of all court orders by the authorities, in particular law enforcement agents;
6. Ensure that the constitutionally guaranteed independence of the Attorney-General is not compromised by the intimidation, harassment and any other improper hindrance or interference with prosecutors and law officers in the performance of their professional functions.
7. Stop forthwith the practice of searching and or removing documents and or files in the lawful custody of lawyers or their offices in violation of search and remove procedures from law offices, as they are protected by legal practitioner-client privilege.