



May 27th, 2010

Press Statement on the state of the judiciary in Zimbabwe in the wake of the GALZ case

Today, Thursday 27th of May 2010, at around 12 noon, Magistrate Munamato Mutevedzi granted bail in relation to Ellen Chademana and Ignatius Muhambi - 2 employees of the Gays and Lesbians of Zimbabwe (GALZ) organization on the seventh day of their detention.

The bail application was observed by many representatives of local non-governmental organisations. It was encouraging to note that, despite the best efforts of the police – particularly Detective Inspector Timothy Chibvuma who is the Officer in Charge of Drugs Section of the Harare Central police station, and the office of the Attorney General – particularly Mr. Bruce Tokwe – the magistrate came to his conclusions on the basis of the law and not external factors.

The same, however, cannot be said of other judicial officers who have become involved in this case, which once again smacks of persecution rather than legitimate prosecution. It is a matter of public record that lawyers representing our 2 colleagues were forced to file an Urgent Chamber Application in the High Court in Harare on Tuesday 25th of May 2010 whilst all of us were commemorating Africa Day. This was because Chademana and Mhambi were, as from the previous evening, being over-detained by the police without being brought to court or released. In addition, medication for Ms. Chademana's diabetic condition was being denied to her.

Instead of attending at court to apply her mind to the matter, the Duty Judge, Justice Lavender Makoni, instead asked a clerk present at court to read her the basis of the application over the telephone. Thereafter, she advised that the matter “could wait” for the following day.

It is also a matter of public record that, that same evening, our 2 colleagues – left at the mercy of the police – were severely assaulted by state agents in a manner which clearly amounts to torture and cruel, inhuman and degrading punishment. They were also warned that these criminals were going to return later to deal further with the two.

We learned that on the morning of Wednesday 26th of May 2010, these extremely disturbing developments were brought to the attention of the High Court by way of a Supplementary Affidavit which is part of the public record, with the expectation that the court would realise the urgency and act to protect the fundamental rights of detainees. Instead, Justice Joseph Musakwa – who is dealing with the matter now – chose to set the matter down for hearing on the afternoon of Thursday the 27th of May 2010 – leaving our colleagues exposed to the police and other state agents for another 24 hours.

We commend Magistrate Mutevedzi for acting in terms of the law to protect the interests of accused persons appearing before him. However, the time has come for us to refuse to allow the actions of the High Court to go unnoticed or unchallenged.

Judicial officers are constitutionally obliged to protect the rights and freedoms of all the people of Zimbabwe without fear or favour. Not only must justice be done, but it must be seen to be done. In this instance, it is regrettable that the perception in the mind of any reasonable person is that some courts and some judicial officers do not care about their constitutional obligations, and that they believe some accused persons are not worthy of their attention or the protection the courts are meant to offer.

It is not the first time that delays on the parts of the High Court have led to unspeakable violations – one only has to recall the images of March 11, 2007 or the abduction and subsequent torture of Jestina Mukoko.

In the Global Political Agreement, our leaders committed themselves to “re-orient [their] attitudes towards respect for the Constitution and all national laws [and] the rule of law”. Article XIII goes further to state that “State organs and institutions ... should be impartial in the discharge of their duties” and that “all state organs and institutions [must] strictly observe the principles of the Rule of Law and remain non-partisan and impartial” and that “laws and regulations governing state organs and institutions [must be] strictly adhered to and those violating them be penalized without fear or favour”. The courts themselves have publicly commented on this and bound themselves to such a way of doing business.

What kind of society are we living in if we cannot be assured that the courts will come to the assistance of the weak and those who are at the mercy of powerful state forces and machinery? It is time for the judiciary in this country to make a stand and reclaim their independence and effectiveness. Rule of Law must be maintained if we are to have any hope for economic recovery, investment, uplifting of social and economic conditions, and public confidence in the justice delivery system.

Judicial officers who refuse or are unwilling to play their part must and will be publicly exposed as they should not remain part of the bench in a free, democratic and prosperous society. Judges may believe that they are immune or exempt from public criticism, but where they themselves act with no regard for laws and rules of procedure, they – and no others – are the ones bringing the bench into disrepute.

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This statement was issued by the Zimbabwe Human Rights NGO Forum on behalf NANGO, Crisis in Zimbabwe Coalition and the broader civil society. For further information feel free to contact Abel Chikomo on 0912 260 664 or 04-772 860.