

# No boundaries

*...Mawarire, war vets cases, ZLHR and universality of human rights*

HARARE-Evan Mawarire and Douglas Mahiya share very little in common.

Mawarire, only a toddler when Mahiya joined the 1970's liberation war, is a young pastor seen as a liberator by many among his generation. They view him as a "non-partisan" voice of their frustrations and aspirations.

Mahiya, on the other hand, is the spokesman of an organisation widely disdained as liberators who turned into oppressors.

Yet, Zimbabwe Lawyers for Human Rights (ZLHR) stood by both men when they came under attack from law enforcement and prosecuting agencies for exercising their freedoms enshrined under the Constitution.

Amid heated debate, ZLHR received praise for representing Mawarire and came under severe criticism for affording the same representation to Mahiya, and later several of his colleagues.

"Even to the war veterans themselves, it came to them as a surprise. ZLHR took a stand: 'Fostering a culture of human rights' as our motto says," he said during an interview at his offices in Harare.



sentiments against the ruling system, a system that had been propped up by ZNLWVA members for decades.

Nkomo is handling the Mahiya case with ZLHR board member Andrew Makoni.

"Even to the war veterans themselves, it came to them as a surprise. ZLHR took a stand: 'Fostering a culture of human rights' as our motto says," he said at his offices in Harare.

Harrison Nkomo outside Harare Magistrates Court during one of the court appearances in July. Pic: Elias Mambo

They have in the past used violence as a weapon to coerce Zimbabweans to support a system that Mawarire has galvanised the nation against.

Even after the announcement that they were no longer part of the "system", the war veterans failed to comprehensively address their past role in human rights abuses.

For the flag draping 39-year-old Mawarire - whose phenomenal and peaceful #This Flag campaign kicked off to instant and monumental success - social media has been the most formidable weapon.

Different generations. Different visions. Different aspirations.

One loved. The other despised.

Nonetheless, both Mawarire and Mahiya owe their freedom today in huge part to the intervention of the same organisation, ZLHR.

And they share the same lawyer too in Harrison Nkomo, a ZLHR member.

The Legal Monitor sat down with Nkomo last week. We asked him why he defended both Mawarire and Mahiya with the same passion despite his strong

"ZLHR stood the criticism. People believed that because of what the war veterans did in 2000; the farm invasions, possibly the political violence that they perpetrated; they did not deserve legal representation. But that is not the duty of the human rights lawyer," said Nkomo.

He added: "If you are a human rights lawyer, the guiding principle is the Constitution.

"Are the person's constitutional rights being violated simply because they have communicated their position? If yes, someone has to come to their defence.

"So my decision to represent them was informed by conscience," he said, adding he received help from hundreds of lawyers, including from some in the Diaspora on both cases.

In the interview with *The Legal Monitor*, which you can read in full on centrespread, Nkomo speaks on the turbulent times Zimbabwe is in and why human rights lawyers often become targets of State harassment. He highlights the importance of the Magistrates Courts in protecting people's constitutional rights among other issues. ➤

• Turn to centrespread for full interview.

## The Cases

### 12 July-Mawarire: Arrested, home office ransacked

HARARE-Evan Mawarire was a relatively unknown pastor until 20 April this year. Today he is the face of resistance after leading a human rights movement popular with the youth. His #ThisFlag campaign moved from a social media movement to an on the ground protest movement when he organized the biggest stay away in a decade on July 6. Thousands of people thronged Harare Magistrates Court after he was charged for his role in organising the stay away. A persuasive speaker, Mawarire was arrested on 12 July. He handed himself over to the police at Harare Central Police Station in the company of his lawyer Harrison Nkomo. In no time, police were searching Mawarire's home and church premises and charged him with inciting public violence. They proceeded to detain him overnight. At court, the State ambushed him with new charges of attempting to subvert a constitutional government. From an offence which carries a fine, Mawarire was facing 20 years in jail. But his lawyers fought to convince Magistrate Vakayi Chikwekwe to free Mawarire. "According to the new Constitution, a person must be permitted to challenge the lawfulness of the arrest. Accused (Mawarire) was detained in respect of charges of inciting public violence, according to his warned and cautioned statement. For reasons best known to the National Prosecuting Authority, the State for the first time in court, preferred charges which accused was not informed of or warned or cautioned of. No statement was recorded from him. "It is my finding that the NPA cannot charge the accused without complying with provisions of Section 50 and 70 of the Constitution. In the result the application to place him on remand on charges subverting a constitutionally elected government is hereby dismissed," ruled Magistrate Chikwekwe.



### 27 July-Mahiya detained, police harass family

Douglas Mahiya, 61, is the spokesman of the Zimbabwe National Liberation War Veterans Association, an organisation whose members acted as foot soldiers in repeated episodes of human rights abuses. Together with many of his colleagues, they became victims of a system they had supported for so long after they unexpectedly criticised President Robert Mugabe in a harsh communique, describing him as "dictatorial". Mahiya was subsequently arrested on 27 July. He had handed himself over to the police at the Harare Central Police Station after the law enforcement agents laid siege on his family at his Chitungwiza home. At subsequent court appearances, police maintained a heavy presence, forming a human chain to lock people from entering the courtroom when he appeared at court. Dozens of ageing war veterans appeared at the court in solidarity and cheered loudly as ZLHR member Harrison Nkomo and Andrew Makoni, the human rights organisation's board member argued the case on behalf of Mahiya. They sang liberation war songs, accused law enforcement agents of behaving like the colonial police. His charge: Undermining the authority of, or insulting the President for the scathing communique issued by the war veterans association. Magistrate Vakayi Chikwekwe released him on \$300 bail on 1 August, overruling requests by the State to send Mahiya to remand prison. ➤





# Face to face

HARARE-Human rights lawyer Harrison Nkomo (HN) was involved in some of the most high profile cases in the past two months. A member of Zimbabwe Lawyers for Human Rights (ZLHR), Nkomo represented Evan Mawarire, a pastor who gained a huge following for using social media to speak out against corruption, unemployment and bad governance. Nkomo also represented Douglas Mahiya, spokesman for the Zimbabwe National Liberation War Veterans Association, a group previously involved in suppressing voices of activists such as Mawarire. *The Legal Monitor* (LM) spoke to Nkomo, who also shares his thoughts on how to reclaim the democratic values of the liberation struggle. *Read on...*

**LM:** The past three or so months have been hectic for human rights lawyers, more so for Zimbabwe Lawyers for Human Rights (ZLHR), of which you are a member. How has been the experience?

**HN:** I think I would actually say we have had one of the busiest three months since June for lawyers in the country. You will remember the 100 plus arrested in Epworth early July, I was not personally involved, by my colleagues from Zimbabwe Lawyers for Human Rights did a tremendous job. I actually felt for them. Imagine having to deal with 100 different people, taking instructions and getting each and everyone's concerns and handling families of 100 people. It was hectic for them. Then we had disturbances in Beitbridge, uprisings in Harare and then came my involvement after the arrest of Pastor Evan Mawarire.

You can also talk of dirty tactics and uncooperativeness on the part of the State. It was quite hectic. Then came the arrest of the least expected to be arrested group in the country; the war veterans. It has been hectic, but thanks to ZLHR for mobilising such a big team. I need to put out that Zimbabwe Lawyers for Human Rights has managed to perform a very tremendous job under very difficult circumstances. Very few people acknowledge the kind of work it has done. Imagine what could have happened to those 100 Epworth guys if they had not had access to lawyers?

Even to the war veterans themselves, it came to them as a surprise. ZLHR took a stand: 'Fostering a culture of human rights' as our motto says. ZLHR stood the criticism. People believed that because of what the war veterans did in 2000; the farm invasions, possibly the political violence that they perpetrated; they did not deserve legal representation. But that is not the duty of the human rights lawyer.

**LM:** Can you take us through that war veterans' case, your emotions...

**HN:** As a lawyer the first question that you ask is: Do you believe in the cause? And if you are a human rights lawyer the guiding principle is the Constitution. Are the person's constitutional rights being violated simply because they have communicated their position? If yes, someone has to come to their defence. So my decision to represent them was informed by conscience, firstly. Secondly by my zeal and zest to uphold the Constitution as a human rights lawyer. Obviously, the failure of us lawyers failing to access the client was quite unfortunate. We made the point, so we are expecting



*In solidarity...More than 100 lawyers attended Mawarire's court case, with many of them offering advice to Nkomo who led a ZLHR legal team*

the response from the State because they were directed by the Magistrate to make a report as to why they were barring lawyers from representing the client of their choice.

**LM:** You represented Harare Mayor Bernard Manyenyeni, war veterans leader Douglas Mahiya and Pastor Evan Mawarire in rapid succession, all victims of State sponsored harassment. What's the takeaway from these cases?

**HN:** I am actually angry with the system. And at the same time humbled with the support that I am getting. In the case of Pastor Mawarire, the support I got from ZLHR and from the legal fraternity was very tremendous. In fact, while I was addressing the court, a lawyer – from the gallery – would finish a sentence for me. It was quite encouraging. On Mahiya; people came in numbers. I received a lot of literature from professors of law from around the world, by email. The list is long but I will give an example of one of the unsung heroes of this country Bryant Elliot, he also came on board.

**LM:** The human rights situation in the country is deteriorating at the moment, what do you think needs to be done?

**HN:** It is a situation that really requires all democratic or progressive forces to put their heads together. The number of people who are unemployed, the number of people who are failing to put food on the table and the heavy handedness on the part of the police in crushing peaceful demonstrations, the arresting of journalists and in the past two or three weeks a number of journalists have lost their equipment to the police. For example, the BBC's Tendai Musiyazviriyo – who is a friend of mine – was heavily assaulted by the police and his camera was damaged in the process. Not to mention what Associated Press photographer Tsvangirayi Mukwazhi has lost over the years. So it's the issue of unhappiness on the part of the people with its government. And then what follows next is an expression of frustration with their government. Then the police descend heavily on them with water cannons and truncheons. So it is a very desperate situation. The government has to change its response to the peaceful protests. Instead of using force it must do the right thing: They are in government to execute the mandate of the people. The people that

voted them in are saying we are unhappy with the following, you descend on them heavily? I do not think that is the right thing.

**LM:** What would you consider to be the right thing?

**HN:** The government must sort out infrastructure, look at the conditions of the roads, look at the conditions of the rail. When did we last have the government building dams? There is total collapse of infrastructure. They must fix jobs. How do you have graduates playing football in the streets because they are totally unemployed? How do you have industrial sites in Harare and Bulawayo resembling a funeral parlour? It is so pathetic. And they need to sort out corruption in government. Look at what has been happening in Zesa. Assuming the reports of the corrupt deals at Zesa are true what is government doing about it? Has anyone refuted them? Or at least say they are taking action? No! No – one has come out to disown them (reports of corruption at Zesa) or explain them. So, what are we going to think as a people? Naturally we think that this corruption is condoned.

**LM:** What went on through your mind when the State changed Pastor Mawarire's charge at the last minute – from inciting violence to trying to subverting a constitutionally elected government?

**HN:** It is actually one thing I was taught. I was told that the best lawyer thinks on his feet. In fact, I knew that when they were changing their charges to the ones that we had answered at the police station, I knew I would get them. It did not take me five minutes because I was given those new charges' about five minutes before the resumption of the court. And I knew that in their hurried nature they must have skipped something in terms of the law. And I got them.

**LM:** You looked animated, infuriated when you were making that point on unprofessionalism on the part of the State during the Mawarire case. Why?

**HN:** What actually upset me is that the people at the National prosecuting Authority are supposed to be professionals. Notwithstanding where a lawyer practises his law from we are colleagues. When I started practising law in this country 13 years ago, we sit on the bar and argue and criticise each other's submissions. But when tea break comes we sit on the same table and enjoy tea, which is something clients might not understand. So the starting point is: the person who was doing all these dirty tactics on me is supposed to be a lawyer. Law is not like politics. You do not hide the kind of information that you have. And the Constitution is clear. An accused has to know the charges that they are facing.

Where in this world have you heard of an accused going into court without being warned and cautioned? At the police station they charge you with Road Traffic Act, in court they charge you with murder! What is that? Who does that, seriously? So it was that unprofessionalism I was denouncing and I had to come out strongly. I wanted to send a message to my colleagues that in the practice of law you must not be extremely emotional about it.



*Nkomo and ZLHR Executive Director Irene Petras at the Mawarire case*



# with Nkomo

What should win at the end of day is justice.

**LM:** A lot of people say the Constitutional Court has done a great job so far to defend the Constitution or people's rights. But most cases, like the Pastor Mawarire one, go to the Magistrates Court. What's your view of the Magistrates Courts as the first frontier regarding the protection of human rights within the judiciary?

**HN:** In whole constitutional dimension, that is the court of inception in so far as upholding the Constitution is concerned. For example, Mayor Bernard Manyenyeni's case was won by the defence on the basis of a constitutional point. So the Magistrates Court has a crucial role. Once you fail to uphold fundamental rights then there is a problem and that is where so many of these human rights violations can occur.

**LM:** The National Prosecuting Authority (NPA) has a pathetic record in prosecuting HRDs, two-percent success rate in 2013 of cases handled by ZHLR, for example. Does this speak to persecution rather than prosecution?

**HN:** HN: They must withstand political pressure. Take a stand and behave like lawyers. Where there is no case, there is no case. If politicians think otherwise, they put on the robes and take the cases to court. That is what the NPA must say. At the risk of pre-emptying the case, those 100 Epworth people are potential victims. There is a demonstration, police beat up people and to cover their case they bring those people to court. A prosecutor must look at every case with conviction to the law and law alone. If there is no evidence he must tell the police to release those people. If police feel strongly that politicians want the case in court and if I were part of the NPA I would say "there is the robe, please get into court."

**LM:** It is now more than three years since Zimbabwe adopted what many regarded as a progressive Constitution. How do you rate its implementation, particularly by the government?

**HN:** The only institution that I must commend in upholding the Constitution is the judiciary. It has tried its level best. I have said this so many times at international platforms: the Constitution of Uganda, the Constitution of South Africa and the Constitution of Zimbabwe, which has a very sweet and marinated Bill of Rights; but if you do not have a government that has the will to ensure that the people enjoy those rights that are on a piece of paper then we have not started to do anything. For example in 2000, how many people were killed in politically motivated violence? The Constitution then was very clear. There was right to life and right to fair trial. But as long as the government is not willing to uphold those rights then we have not started. So, with respect no. Citizens have not begun to fully enjoy those rights.

**LM:** How effective has ZLHR been in promoting and protecting constitutional rights?

**HN:** I think ZLHR has successfully managed to do it through two fronts. Firstly directly through litigation. Representing the interests of the people in courts. And making it known to the people that if these rights are violated there is an institution to assist you. Then the second front is lobbying, technical support and technical training. For one to understand the rights they have to be aware of them. The judiciary, prosecutors, lawyers and all Human Rights Defenders, all these people need constant training and ZLHR has been able to provide that training.

**LM:** You have been arrested, you have endured intimidation for your human rights work yet you continue taking up cases that infuriate the government. Why? Are you not scared?

**HN:** I do commercial law, yes. I know I am followed by CIOs, I was assaulted and I was arrested; I am scared but I am not moved. They will find nothing. In every struggle; there is someone who has to do this. Who is that? If I stand by the sideways and say: Beatrice Mtetwa, or Alec Muchadehama or Andrew Makoni must take it up; what about me? I must also do my own part. And more importantly, it is the conviction that informs my decision to take up some of these cases.

**LM:** It seems the government is determined in its quest to harass human rights lawyers. How does this affect human rights defenders such as journalists and others?

**HN:** They arrest to break your spirits. So if he is arrested now, the government will ensure that he rots in jail. He must not get

representation. Once you suffer you think twice after release. So the person who makes sure that you are out of that desperate situation is the lawyer. I think they have been successful to a certain extent. There are a number of lawyers in town who are scared of taking cases of this nature because they have seen the harassment that other lawyers have faced at the hands of the system. But remember there are lawyers who are members of ZLHR, these are lawyers who are committed to defending human rights no matter the cost. So we will always have lawyers willing to risk it all for the defence of human rights. ➤





# Cricket protest victory

BULAWAYO-Magistrate Batsirai Tuhwe on 22 August 2016, granted the application challenging the placement of Jenni Williams and 9 others on remand. Jenni Williams, Hlalanani Ncube, Silibaziso Mpofo, Phephelaphi Aruchupetu, Violet Nxumalo, Nokuthaba Ndlovu, Emmaculate Sibanda, Loveness Ndlovu, Elma Nyathi are facing charges of contravening section 46 of the Criminal Law (Codification and Reform) Act: Chapter 9:23.

Charges against the Woza members arose after they were

arrested on 6 August 2016.

The State alleges that the activists with intent “or realising that a breach of the peace may be provoked gathered outside Queens Sports Club and blocked the entrance to the grounds and started singing displaying placards with various inscriptions.”

The 10 who were represented by ZLHR’s Lizwe Jamela, Mehlu Dube and Solomon Mguni were challenged their placement on remand. ➡



Victory... In Bulawayo, Magistrate Batsirai Tuhwe last week granted an application filed by ZLHR lawyers challenging the placement of WOZA leader Jennifer Williams and nine other WOZA members on remand on criminal nuisance charges. The 10 WOZA members were arrested early this month for allegedly staging a protest outside Queens Sports Club in Bulawayo during a cricket match between Zimbabwe and New Zealand.

# Harrison Nkomo profile

Harrison has a special interest in Corporate, Civil Litigation, Telecommunication law and Criminal Law.

He has been registered as a legal practitioner for twelve years. Harrison has represented a number of journalists, both locally and internationally.

His active involvement in Media Rights Litigation saw him being one of the final nominees of the Index of Censorship’s (an institution that advocates for the media and press freedom in the world) International Award in 2009.

He has handled international litigation at tribunals such as ACHPR – African

Commission on People’s and Human Rights and African Court.

Harrison is the Chairperson of the Media Centre of Zimbabwe, a Commissioner with the Securities Commission of Zimbabwe, a member of Zimbabwe Lawyers for Human Rights and a member of the Coalition of the African Court.

Harrison is a highly experienced and renowned corporate, Civil and Criminal Law Litigation Lawyer and has represented litigants from the lowest to the highest courts in Zimbabwe.

Source: *Mhishi Legal Practice*



*I am driven by my conscience...Nkomo*

## ZLHR intervenes in rural teachers case

Six members of the Rural Teachers Union in Zimbabwe (RTUZ) who were arrested last week in Murehwa have been released from custody.

The RTUZ members who include Obert Masaraure, Lynette Mudhwe, Pride Mkono, Robson Ruhanya, Brighton Makunike and Robson Chere, had walked for 80 kilometers from Mutawatawa with the intention of handing over a petition with their demands at the education district office in Murewa, before proceeding to walk to the Ministry of Education offices in Harare. They were intercepted by police in Murehwa, arrested and charged with committing ‘public nuisance’ as defined in Section 46 (2) of the Criminal Law (Codification and Reform) Act.

Five of the RTUZ members, namely Mudhwe, Mkono, Ruhanya, Makunike and Chere were released by police who will summon them to appear in court on a later date. Masaraure was also charged with contravening Section 23 of the Public Order and Security Act.

He is accused of failing to notify the police of the RTUZ march. He appeared before Magistrate Mudonhi who released him on \$50 bail. Masaraure will appear in court again on 2 September on routine remand.

ZLHR member lawyer, Gift Mtisi represented the RTUZ members. In their petition, the rural teachers are demanding a review of their working conditions that include; a monthly salary above the poverty datum line, an upward review of rural allowance at 100% of the salary, cessation of the non-transparent pension contributions, restoration of vacation leave and full maternity for teachers on probation.

In addition, the teachers are also demanding infrastructural development in rural schools and communities, an end to all forms of violence against teachers, a solution to the cash crisis, full salaries for student teachers and the awarding of fully recognized school status to all satellite schools as well as the dissolution of the incumbent government and fresh elections if their demands are not met. ➡

## ENFORCED DISAPPEARANCE = CRIME AGAINST HUMANITY

### HRDs

## WITNESS AGAINST VIOLENCE WHERE ARE THEY?

## HELP IN THEIR SAFE RETURN

Call **Hotline**: 0779 204 102



**Itai Dzamara**  
Missing since 2015



**Paul Chizuze**  
Missing since 2012