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ZIMBABWE: ICJ CONCLUDES HIGH-LEVEL MISSION TO INQUIRE INTO RECENT ARRESTS, DETENTION AND BEATINGS OF LAWYERS.

The International Commission of Jurists (ICJ) concluded on 9 June 2007 its five-day Mission to Zimbabwe to investigate the facts and law surrounding the reports of recent arrests, detention and beatings of lawyers.

The Honourable Claire L'Heureux-Dubé (Canada), former Justice of the Supreme Court of Canada and former President of the ICJ and Mr. George Kegoro (Kenya), Executive Director of the International Commission of Jurists, Kenya Section, represented the ICJ on this Mission.

During the five days in Harare, Zimbabwe, the Mission met the Permanent Secretary of the Ministry of Justice, Legal and Parliamentary Affairs and the Attorney-General. The Mission regrets that its requests to meet with the Chief Justice of the Supreme Court and the Judge President of the High Court, as well as the Minister of Justice and the Minister of Home Affairs, were not answered. The Mission also met with the President and members of the Law Society, lawyers, senior advocates and law professors, as well as other civil society representatives.

Below are the observations of the Mission, presented at a press conference in Johannesburg on Monday, 11 June 2007.

OBSERVATIONS OF THE ICJ MISSION TO ZIMBABWE

There have been well-known and documented patterns of executive interference in the independence of the judiciary and the legal profession in Zimbabwe over a number of years now and particularly since the beginning of 2007. However, the events of 4 May 2007 and the following days were clearly an escalation in the harassment and intimidation of the legal profession, particularly those lawyers who seek to represent in court opposition activists and other persons perceived to be unpopular with the Government.

The events of May 2007

The Mission was told that on Friday, 4 May 2007, two lawyers, Alec Muchadehana and Andrew Makoni, while representing opposition supporters, were arrested at the High Court by police. It later became clear that the police justified the arrests by asserting that they considered the lawyers had lied in an affidavit submitted to the court on behalf of their clients. Other lawyers, upon learning of the arrest of their colleagues, successfully applied to the High Court for their release. The police did not act on that order and the two lawyers were taken into custody, each held in a different police station. On Saturday, 5 May, the lawyers representing the two detained lawyers again successfully applied for their release. Again, these court orders were ignored by the police and the two lawyers were kept in custody, incommunicado and without medication and food. Their families were denied access and, according to the lawyers, were also threatened. For a third time, on Sunday 6 May, their representatives successfully applied for the release of the two lawyers. That court order was again

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ignored by the police. On Monday, 7 May, the two lawyers were charged with obstruction of justice and released on bail. The Mission has learned that they are awaiting trial.

While these two lawyers were kept in detention, police raided their offices and seized several documents. Two lawyers sent to represent them during the search demanded to see a search warrant but were also assaulted by police.

The Mission was informed that the lawyer representing the Attorney-General in court and who consented to the three release orders issued by the High Court was subsequently assaulted by the police, who apparently disapproved of his consent to the releases. The Attorney General, while not denying this incident, indicated to the Mission that the representative in question acted outside his authority. The Attorney-General considered the claims regarding the two lawyers to be mere allegations, although he indicated they would be investigated.

When he met the Mission, the Permanent Secretary of the Ministry of Justice was of the view that the police acted properly in arresting the two lawyers on the basis that they had committed a crime by allegedly lying in the allegations made in the affidavits, signed for and on behalf of their clients. The Permanent Secretary said he had not and would not investigate the matter.

Following the events described above, the President of the Law Society convened a meeting of its members. It was decided to assemble at the High Court on 8 May and march peacefully to present a petition to various government officials, including the Minister of Justice and the Attorney-General. Although not legally required, the Law Society gave the police prior notice of the march. A number of members of the Bar, some fully robed, proceeded to the Court House, again informed the police about the purpose of their march and were told by them to disband on the pretext that such a march was illegal. The police then chased the lawyers with batons. Four lawyers, including the President of the Law Society, were loaded into a police truck, taken out of the city and beaten with batons to a point where some had thereafter to receive medical attention. The four lawyers were left by the police at the roadside and were later brought back to the city by their colleagues.

The Attorney-General told the Mission that such a march by lawyers for professional purposes was fully legal and the police may have made a mistake and acted in error in dispersing the march. However, he also indicated that the lawyers were also in error by needlessly notifying the police about the march which may, in his view, have induced the police to act in error.

The Permanent Secretary, for his part, denied that any beatings took place and suggested that these incidents were stage managed to discredit the Government of Zimbabwe in the eyes of the international community.

Following the arrest and beatings of members of the Bar, the President of the Law Society attempted to file a complaint with several police stations, but each refused to register it claiming that they were not the proper police station to receive the complaint.

On the claims surrounding the march and the beatings, the Attorney-General indicated that the matter was under investigation by his office, but that the investigation had been hampered by the failure of the Law Society to submit a written complaint to his office as agreed at a meeting with them. However, the Mission was provided with a letter written by the Law Society to the Attorney-General, dated 22 May 2007. This letter enclosed a report about the general state of affairs of the legal profession, as well as a copy of a letter sent to the Deputy Commissioner, Crime, with more specific details of the events of 8 May, including the failed attempt to lodge a criminal complaint.

Conclusions and recommendations of the Mission

The Mission underscores that the information it received from the Law Society about the above incidents was corroborated by lawyers and other reliable persons with whom the Mission met during its stay in Harare.

The Mission is disturbed that the unjustifiable harassment, detention and beating of lawyers has only increased the tension between the Law Society and the Government. Such treatment is interfering with the proper functioning of the administration of justice, the role of lawyers and their independence and is making it difficult for lawyers to act for clients viewed by the Government as dissidents.

The fact that in the reported incidents the police repeatedly and blatantly ignored court orders is a clear contempt of the court and breaches the most fundamental principles of the rule of law. Ignoring court orders can only bring the administration of justice into disrepute and requires swift action by the judiciary and by the Government itself.

The Mission is greatly concerned about the role the police have been allowed to play in Zimbabwe in relation to judicial and legal institutions. Based on information received, it would appear that the police have taken upon themselves the unconstitutional role of overseer of both the Attorney-General and the courts in the performance of their independent functions. The Mission urges the Government to restrain the police and the Mission expresses its concern that the arbitrary actions of the police are apparently being tolerated by the courts and the Attorney-General.

The Mission finds that several fundamental rights have been violated in relation to individual lawyers during the incidents it has described. The lawyers taken into custody by the police were arbitrarily arrested and detained, with no apparent, justifiable basis in law. They were held incommunicado and the two lawyers who were not released as ordered by the court were denied their rights to due process, and their continuing detention was arbitrary. The Mission is concerned about the charges that still stand against two lawyers. The lawyers who were beaten suffered torture or ill-treatment and members of the Law Society have been denied their right to associate freely and to protest peacefully.

The Mission is astonished about the cavalier response that the attacks by police on members of the Law Society have elicited from relevant public authorities. It is the view of the Mission that, beyond the physical aspects of the attacks, they also represent a disturbing attack on the rule of law in Zimbabwe.

The Mission is also deeply concerned that the harassment of lawyers is being fueled, and the attacks by police legitimised, by what appears to be a systematic campaign by the less than independent media¹ to vilify the Law Society and individual members of the Bar. Such a tactic can only aggravate further the relationship between the legal profession and the Government.

The Mission considers that the actions of the police against lawyers undermines the independence of the legal profession and their right and duty to carry out their professional obligations, including representing anyone suspected of a criminal offence. The contempt of court orders by the police is undermining further the independence of the judiciary.

The independence of lawyers and judges is a cornerstone of the rule of law. It is essential in a democratic state to protect the separation of powers, the fair application of the law and the rights of all people in the country, and to prevent arbitrary actions by the executive.

The rights and principles that the Mission considers have been violated in Zimbabwe in the incidents it has investigated, are enshrined in the Constitution of Zimbabwe, as well as international treaties that Zimbabwe has ratified, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. The independence of the legal profession is also guaranteed in the UN Basic Principles on the Role of Lawyers.

In conclusion, the Mission considers that the present level of tension between the Government and the legal profession, if not resolved soon, will only deepen the damage to the rule of law in Zimbabwe and the rights of all people in the country to seek legal representation. The Mission urges the Government to end the harassment of lawyers, to control the police and hold them accountable, and to restore a fundamental democratic principle that is pivotal for the rule of law in Zimbabwe - the independence of the legal profession.

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¹ See the resolution passed by the World Association of Newspapers Board (WNA) on 5 June 2007 at its 60th Congress held in Cape Town, South Africa, condemning the Zimbabwean Government's policy of repression of the free press.