

## URGENT APPEAL - THE OBSERVATORY

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**New information**  
**ZWE 008 / 1208 / OBS 206.5**  
Stay of prosecution / Judicial harassment /  
Ill-treatments  
**Zimbabwe**  
September 30, 2009

The Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), has received new information and requests your urgent intervention in the following situation in **Zimbabwe**.

### **New information:**

The Observatory has been informed by reliable sources of the stay of prosecution benefiting Ms. **Jestina Mukoko**, Executive Director of the Zimbabwe Peace Project (ZPP) and Board Member of the Zimbabwe Human Rights NGO Forum.

According to the information received, on September 28, 2009, the Constitutional Court decided to grant a permanent stay of prosecution in favour of Ms. Jestina Mukoko due to the violation of several of her fundamental rights by State agents.

According to Ms. Mukoko's lawyers, during her detention, the latter had been subjected to simulated drowning, locked in a freezer and beaten as the security forces tried to make her confess to plotting to overthrow Mr. Mugabe<sup>1</sup>.

The court held that Ms. Mukoko's fundamental right to be free from torture had been violated by "the State, through its agents". As a consequence, the court found that State agents had violated her constitutional right to personal liberty and denied her protection of the law and that the violations committed had been to such an extent as to warrant a permanent stay of criminal prosecution. All charges pending against her in the criminal trial were therefore withdrawn.

As Ms. Mukoko was the sole applicant in this case, other ex-abductees, including Mr. **Broderick Takawira**, ZPP Provincial Coordinator, and Mr. **Andrisson Manyere**, freelance journalist, who were indicted in June 2009, do not benefit from the stay of prosecution and still face High Court trials. All ex-abductees have already lodged constitutional applications with the Supreme Court alleging the same violations of their rights as Ms. Mukoko (abduction, forced disappearance, illegal detention, torture and/or inhuman or degrading treatment, etc.) and seeking permanent stays of their trials.

The Observatory thanks all the persons, organisations, and institutions that intervened in favour of Ms. Mukoko. However, it expresses its deep concern about the continued judicial harassment faced by Mr. Takawira and Mr. Manyere, and urges the Zimbabwe authorities to put their harassment to an end.

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<sup>1</sup> In 2008, the ZPP regularly reported on political violence that occurred after the Zimbabwe African National Union - Patriotic Front (ZANU-PF), the party of President Robert Mugabe, was beaten in the first round of elections in March by the Movement for Democratic Change (MDC) of opposition leader Morgan Tsvangirai.

## Background information

On December 3, 2008, Ms. Mukoko was abducted by a group of 15 unidentified armed men from her home in Norton, and has allegedly undergone serious acts of torture.

On December 8, 2008, Messrs. Broderick Takawira and **Pascal Gonzo**, ZPP driver, were also abducted by at least five men at the ZPP offices in Harare. Ms. Mukoko and Mr. Broderick's whereabouts remained unknown until December 24, 2008, when they first appeared before the Harare Magistrates Court, after weeks of incommunicado detention.

On January 5 and 6, 2009, Ms. Mukoko, Mr. Gonzo and Mr. Takawira, accused by the Government of "recruiting or goading other people to undergo military training in neighbouring Botswana aimed at toppling Robert Mugabe's Government", appeared before the Harare Magistrates Court. The hearing in Ms. Mukoko and Mr. Takawira's case was then postponed, pending a decision of the High Court on an application demanding further medical examination in a well-equipped hospital, as they reportedly bear signs of torture and ill-treatment.

Throughout the first ten days of her detention, Ms. Mukoko was not allowed to take medication for an allergic condition she has, and also learned with concern that she had been prescribed medication for anxiety and insomnia by an army doctor who facilitated acts of torture against her. Ms. Mukoko called for a toxicology report, fearing that the Zimbabwe Government might be trying to poison her.

On February 6 and February 26, 2009 respectively, Mr. Pascal Gonzo and Mr. Broderick Takawira were released on bail by the High Court of Zimbabwe.

On March 2, 2009, Ms. Jestina Mukoko was released on bail by the Harare Magistrates Court's decision, on payment of 600 USD.

On May 4, 2009, Ms. Jestina Mukoko, Mr. Broderick Takawira, Mr. Andrisson Manyere and 12 political activists - members of the Movement for Democratic Change (MDC) - were served an indictment warrant for "terrorism and sabotage" charges by the Attorney General's office and remanded in custody pursuant to Section 66.1 of the Criminal Procedure and Evidence Act, as they appeared in the Magistrates' Court on routine remand. Mr. Pascal Gonzo was not charged.

On the same day, Harare Magistrate Catherine Chimwanda granted the State leave to indict Ms. Mukoko, Mr. Takawira and Mr. Manyere as well as the 12 other co-accused, though defence counsel argued that the Magistrates' Court could not revoke or suspend the bail granted to the accused in the beginning of 2009, since the bail came about as the result of political intervention and not as the result of any ruling by the court. Indeed, the bail had been granted till the trial as the result of instructions given to the Attorney General's office by the president acting in consultation with members of the Joint Monitoring and Implementation Committee (JOMIC) pursuant to the Global Political Agreement. Additionally, the indictment was opposed on the basis that there was an appeal pending before the Constitutional Court, in which Ms. Mukoko and others allege a breach of their constitutional right to be afforded the full protection of the law. Magistrate Chimwanda then decided to adjourn the hearing and summoned several JOMIC members to testify on May 5, 2009.

Finally, upon resumption of the hearing on May 5, 2009, Magistrate Chimwanda ruled she did not have the jurisdiction to consider the issue of bail continuing and committed all the detainees back to prison. Ms. Mukoko, Mr. Takawira and Mr. Manyere as well as the other 12 individuals were then formally indicted. Later, the Attorney General consented to bail and defence lawyers decided to go to court to have the agreement effected by the magistrate.

On May 6, 2009, Magistrate Catherine Chimwanda granted some activists, including Ms. Jestina Mukoko and Mr. Takawira, bail of 600 USD under the same earlier conditions i.e. that they surrender their passports and report to police once a week. On May 13, 2009, Mr. Andrisson Manyere was also granted bail by the High Court.

### **Actions required:**

Please write to the authorities of Zimbabwe urging them to:

- i. Guarantee in all circumstances the physical and psychological integrity of Ms. Jestina Mukoko, Mr. Takawira, Mr. Andrisson Manyere and Mr. Gonzo, as well as of all human rights defenders in Zimbabwe;
- ii. Put an end to any kind of harassment, including at the judicial level, against Mr. Takawira and Mr. Andrisson Manyere as well as against all human rights defenders in Zimbabwe;
- iii. Order an immediate, thorough and impartial investigation into the above-mentioned allegations of torture and ill-treatments, in order to identify all those responsible, bring them before a competent and impartial tribunal and apply to them the penal sanctions provided by the law;
- iv. Conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially its Article 1, which states that “everyone has the right, individually or collectively, to promote the protection and fulfilment of human rights and fundamental freedoms at the national and international levels”, as well as above-mentioned Article 12.2 (“the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure*);
- v. Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by Zimbabwe.

### **Addresses:**

- President of Zimbabwe, Mr. Robert G. Mugabe, Office of the President, Private Bag 7700, Causeway, Harare, Zimbabwe, Fax : +263 4 708 211 / + 263.4.70.38.58
- Mr. Khembo Mohadi, Minister of Home Affairs, Ministry of Home Affairs, 11th Floor Mukwati Building, Private Bag 7703, Causeway, Harare, Zimbabwe, Fax : +263 4 726 716
- Mr. Patrick Chinamasa, Minister of Justice, Legal and Parliamentary Affairs, Ministry of Justice, Legal and Parliamentary Affairs, Fax: + 263 4 77 29 99 / +263 4 252 155
- Mr. Augustine Chihuri, Commissioner General, Police Headquarters, P.O. Box 8807, Causeway, Harare, Zimbabwe, Fax : +263 4 253 212 / 728 768 / 726 084
- Mr. Justice Johannes Tomana, Attorney-General, Office of the Attorney, PO Box 7714, Causeway, Harare, Zimbabwe, Fax: + 263 4 77 32 47
- Mrs. Chanetsa, Office of the Ombudsman Fax: + 263 4 70 41 19
- Ambassador Mr. Boniface Chydiausiku, Permanent Mission of Zimbabwe to the United Nations in Geneva, Chemin William Barbey 27, 1292 Chambésy, Switzerland, Fax: + 41 22 758 30 44, Email: mission.zimbabwe@ties.itu.int
- Embassy of Zimbabwe in Brussels, 11 SQ Josephine Charlotte, 1200 Woluwe-Saint-Lambert, Belgium, Fax: + 32 2 762 96 05 / + 32 2 775 65 10, Email: zimbrussels@skynet.be.



Please also write to the embassies of Zimbabwe in your respective country.

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Paris-Geneva, September 30, 2009.

Kindly inform us of any action undertaken quoting the code of this appeal in your reply.

The Observatory, a FIDH and OMCT venture, is dedicated to the protection of Human Rights Defenders and aims to offer them concrete support in their time of need.

The Observatory was the winner of the 1998 Human Rights Prize of the French Republic.

To contact the Observatory, call the emergency line:

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