



ICJ/SADC-LA ZAMBIA FACT-FINDING MISSION REPORT



Meeting with Zambian Minister of Justice and AG: From Left to right: Likando Kalaluka (Attorney General), Head of International Relations MOJ, Gilberto Correia (Past President SADCLA-Mozambique), Thulani Maseko ICJ (Head of ICJ/SADC-LA Delegation), Thandiwe Daka Oteng (Permanent Secretary Ministry of Justice), Honourable Given Lubinda (Zambian Minister of Justice) MP, Linda Kasonde (LAZ President), Stanley Nyamanhindi (SADCLA CEO), Abraham Mwansa (Solicitor General), Edward Sakala (LAZ CEO)

Background and scope of the FFM

On Friday 3 March 2017, an illegal demonstration was carried out against the Law Association of Zambia (LAZ). Crowds with banners denouncing LAZ and its President, Linda Kasonde arrived in four buses. They specifically warned LAZ to stay out of politics, and that the President should declare her political affiliation. The crowd made threats to stage more demonstrations with heightened consequences. The demonstration seemed to be an attack on the independence of lawyers in Zambia, and therefore a threat to the rule of law.

LAZ immediately made a statement condemning the physical threat to the legal profession's representative body and they made it clear that statements issued by LAZ are not attributable to the person of the President but that they were a collective decision by the Council of LAZ. (Statement attached marked as ANNEX 1).

The Southern African Development Community Lawyers Association (SADC-LA) responded by making its own statement that was published in the Zambian press and circulated to all 15 member bars. In addition, SADCLA mobilized its member bars to circulate the SADCLA statement. Malawi and Namibia are specifically applauded for each making a statement calling for a cessation of such hostilities against the legal profession. Overwhelming solidarity was mobilized at regional level and shown to the Zambian Legal Profession and SADC-LA greatly commends the response and concern shown by other members across the region. It goes without saying that a threat to lawyers in one country in the SADC region or anywhere in the world for that matter, is a potential threat to all lawyers in the region.

Due to this realization coupled with the threat of escalation to violence in the nature of the demonstrations against LAZ, SADCLA approached the International Commission of Jurists (ICJ) for support in immediately mounting a Fact-Finding Mission (FFM) to Zambia. The greatest concern was that an attack had been mounted against lawyers who are supposed to be the frontline defenders of the rule of law for and on behalf of all other citizens. The successful demonstration of a physical attack against lawyers is an indicator of potential breakdown of the rule of law and exposure to human rights abuse of all other classes of citizens in any society.

The ICJ/SADCLA delegation consisted of Mr. Thulani Maseko of the ICJ, SADCLA former President, Mr. Gilberto Correia (Mozambique) and SADCLA Chief Executive Officer, Mr. Stanley Nyamanhindi.

The FFM's mandate was to establish the facts regarding the causes and effects of the demonstrations against LAZ, to establish the potential for escalation of the hostilities into physical violence and the potential for more demonstrations against the legal profession in Zambia. The legal profession does not operate in a vacuum and it was essential to establish the role of the

natural partners of the legal profession such as the Ministry of Justice, the Attorney General and the Director of Public Prosecutions (DPP) etc in the wake of the attacks. The mission met with the Director of Public Prosecutions, the Deputy Director of the Human Rights Commission, the Minister of Justice, Attorney General, the Solicitor General, the President, Vice President and Councilors of LAZ as well as representatives of civic organizations in Zambia.

The mandate of the mission was also to provide solidarity for our fellow Zambian lawyers who were the subject of the illegal attack.

The key findings of the mission were as follows;

- i) The physical attack on LAZ offices was unsanctioned at law and it came with the threat of escalation into violence. LAZ gates and barriers had to be closed to prevent entrance of the crowds
- ii) Visuals seen of the crowds show presence of weapons of violence such as a hammer in the possession of at least one member of the crowd.
- iii) The message of the crowd was a denigration of LAZ and more particularly its President, Linda Kasonde for meddling in politics. This was on account of both statements and actions of LAZ against government conduct in identified instances.¹
- iv) No political identity of the crowd was established but persons interviewed by the FFM revealed without disclosing any identity for fear of victimization that some of the faces were known youth wing political activists of the ruling party.
- v) It was noted that at about the same time, the Secretary General of the ruling party made utterances published in the press to the effect that Linda Kasonde must declare her political affiliation.
- vi) No record of prior communication or official internal consultations had yet been made on account of the attacks between LAZ and the Minister of Justice. There was tension on this point with LAZ indicating that they had made several unsuccessful attempts through the AG to meet with the Executive. The Executive on the other hand made it clear that no such request or information in regard to the concerns of LAZ had been made officially. The AG acknowledged making informal contact with LAZ on the matter but no official records were passed and in this regard, the Minister was clear that he had no way in which he could officially respond in the circumstances.
- vii) The Human Rights Commission of Zambia made a statement in support of LAZ and condemned the illegal demonstrations.

¹ A law suit against government ministers who remained in office after dissolution of Parliament prior to elections that led to an order compelling the Ministers to repay government all money paid in salaries and benefits for the period they purported to be in office: & LAZ engagement of legal representation of opposition party affiliated lawyer named Nchito.

- viii) The DPP assured the FFM of her commitment to prompt prosecution of the case once it is brought before the office.
- ix) Investigations were ongoing but the perpetrators are yet to be caught and brought to book.
- x) Lawyers in the public service interviewed generally feel LAZ is not making statements wholly representative of the legal profession. However, they also generally do not participate in LAZ processes and activities; LAZ on the other hand feels it is not receiving the due support of colleagues in the public service.
- xi) A Member of Parliament is reported to have called for amendment of the Act constituting LAZ to allow other representative bodies of the legal profession to be constituted. Failing that, for Parliament to enact a statute allowing constitution of alternative regulatory and representative bodies for the legal profession in Zambia. The Minister of Justice, however, made it clear that this is not an Executive position.
- xii) Leaders of Civic society met expressed overwhelming support for LAZ and pointed out that the silence of government in the face of attack was indicative of growing intolerance on the political platform in Zambia, not only against LAZ but against dissenting voices in general. This is set against growing political polarization in Zambian society. For example, similar demonstrations were reported to have been carried out against the Judiciary for delivering judgements that were not to the liking of the ruling party in government.
- xiii) Other professional bodies came out against such attacks and made the pertinent observation that the threat to LAZ puts all other professional bodies under the same risk of attack.²

Key outcomes of the FFM

It is pleasing to note that the mission was highly successful in both solidarity conveyance and establishment of facts on the event.

The FFM resulted in positive outcomes in that the Minister of Justice took the opportunity to give audience to the LAZ President, Vice and Executive Secretary. In the presence of the ICJ-SADLA delegation the two parties made commitments to initiate and continue formal meetings and updates to enable LAZ to seek and receive the support of the Minister as a member of the Executive.

To this end, the delegation witnessed a restoration of common understanding and reassuring assumption of meaningful dialogue between the Minister of Justice and the representative body of the legal profession in Zambia, LAZ. The ICJ and SADCLA appreciated the openness

² Zambian Institute of Chartered Accountants

and swiftness of the Namibian Minister of Justice in facilitating dialogue and clearing his schedule on short notice to attend to the concerns of LAZ for what turned out to be a greater part of the day. The same appreciation goes for all stakeholders met and interviewed in general.

The key outcomes of the Solidarity and Fact-Finding Mission are summarized below;

- i. Facilitation of dialogue between LAZ and key stake holders in the Zambian justice delivery system. i.e. Minister of Justice and his Permanent Secretary, Attorney General and Solicitor General in one meeting
- ii. Conveyance of solidarity from the legal profession across the SADC region and a key partner, the ICJ.
- iii. The resultant commencement of dialogue is the removal of political actors between government and the legal profession, this is hoped to de-escalate the hostilities and remove the threat of violence against the legal profession.

Recommendations on the way forward

- It is critical to have follow up communications with LAZ and the Minister of Justice to establish the progress of dialogue and evaluate the impact of any actions taken as a result of such contact.
- The independence of lawyers is crucially significant in promoting and defending the Rule of Law. And as per paragraph I (b) of the African Union Guidelines on the Right to a Fair Trial and Legal Assistance in Africa:

(b) States shall ensure that lawyers:

1. are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference.
- A report on the progress of investigations with a view to ensuring the identity of the perpetrators of illegal attacks on LAZ are brought to book must be demanded. The delay in the conclusion of investigations and apprehension of the perpetrators is already of grave concern and has occasioned the reversal of the gains of initially swift action by Police to remove the crowds from the premises of LAZ and give due protection to LAZ staff.

This is significant for the reason that there is a general feeling that the identity of some of the perpetrators can easily be established by the law enforcement agent; the police. Moreover, though unsubstantiated, submissions by some interviewees show that circulating pictures of the crowds reveal faces of known political activists.

More significantly it invariably communicates the message that lawlessness is condoned and that its perpetrators can get away with it. To this end the progress of investigations must be vigorously pursued primarily at LAZ level with close following by SADCLA.

- SADCLA needs to establish a regional protocol for risk mitigation by lawyers and staff of Law Society Secretariats as established targets in attacks against their professional bodies. This action must include key players in the Justice Delivery System. The key content of such a platform will be to establish relations with influential stakeholders in the justice delivery system in all SADC countries and to positively prevent risk of isolation of the legal profession. This network will be a key ingredient of future rapid response capacity of missions such as the one carried out by the ICJ and SADCLA .
- A deliberate action must be taken to strengthen the capacity of Law Societies to mitigate risk physically and at lobby and advocacy levels, particularly the creation of a female leaders' network in recognition of heightened and uniquely advanced intolerance and violence against female leaders in the legal profession and in general. Zambia and Zimbabwe provide apt demonstrations of heightened vulnerability of female leaders in the legal profession. This is a trend that must receive the immediate attention of stakeholders and jolt them into action to ensure safety and security of female leadership.
- LAZ has requested for an observer mission to the ongoing case in court in which they are defending a member who is being sued by government on seemingly politically motivated charges.
- A SADC rule of law barometer must be established to monitor threats to rule of law and constitutionalism in the region.

About SADC LA

The Southern African Development Community Lawyers' Association (SADC Lawyers Association/SADC-LA) is the representative body of law societies, bar associations and individual lawyers from the 15-member SADC region.

SADCLA is dedicated to the advancement and promotion of human rights, the rule of law, democracy and good governance in the SADC Region and beyond.

About ICJ

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.



Meeting with leaders of Civic Society: L-R; Stanley Nyamanhindi (SADCLA CEO), Father Cleophas Lungu (Secretary General-CARITAS Zambia National Office), Thulani Maseko (ICJ), Eugene Kabilika (Executive Director-CARITAS Zambia National Office), Gilberto Correia (SADCLA Past President), Edward Sakala (LAZ CEO)

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