

Zim's two faced justice system

...Accused Minister tweets as activist who demanded his arrest is charged

HARARE-Professor Jonathan Moyo, the Minister for Higher and Tertiary Education, Science and Technology Development publicly admitted to diverting government money to fund partisan political projects, and even boasted about it.

Denford Ngadziore, a political activist, took the matter further and asked the police to arrest Moyo.

The Zimbabwe Republic Police (ZRP) responded... by arresting the activist.

Welcome to Zimbabwe's justice delivery system.

Like many Zimbabweans, the youthful Ngadziore was baffled by the ZRP's failure to arrest Hon. Moyo despite the minister's admission that he took money meant for youth development to buy bicycles for his political party supporters. Moyo

said he used part of the money to fund a political rally aimed at drumming up support for President Robert Mugabe amid growing pressure from groups such as #ThisFlag.

He received public support from several Cabinet colleagues, not least Vice President Phelekezela Mphoko, who declared that Moyo could not be arrested for spending government money on ruling ZANU-PF projects.

Ngadziore decided to do something about this anomaly. Together with several colleagues, they publicly campaigned for Moyo's arrest, specifically asking members of the public to effect a citizen's arrest so that the minister could have his day in court.

Instead, it was Ngadziore standing in the dock on

Thursday, November 3, charged with contravening Section 25 (5) of the Public Order and Security Act (POSA).

Ngadziore was arrested on Wednesday, November 2. He was represented by Obey Shava, a Zimbabwe Lawyers for Human Rights member and freed on \$100 bail. He is set to return to court on November 18.

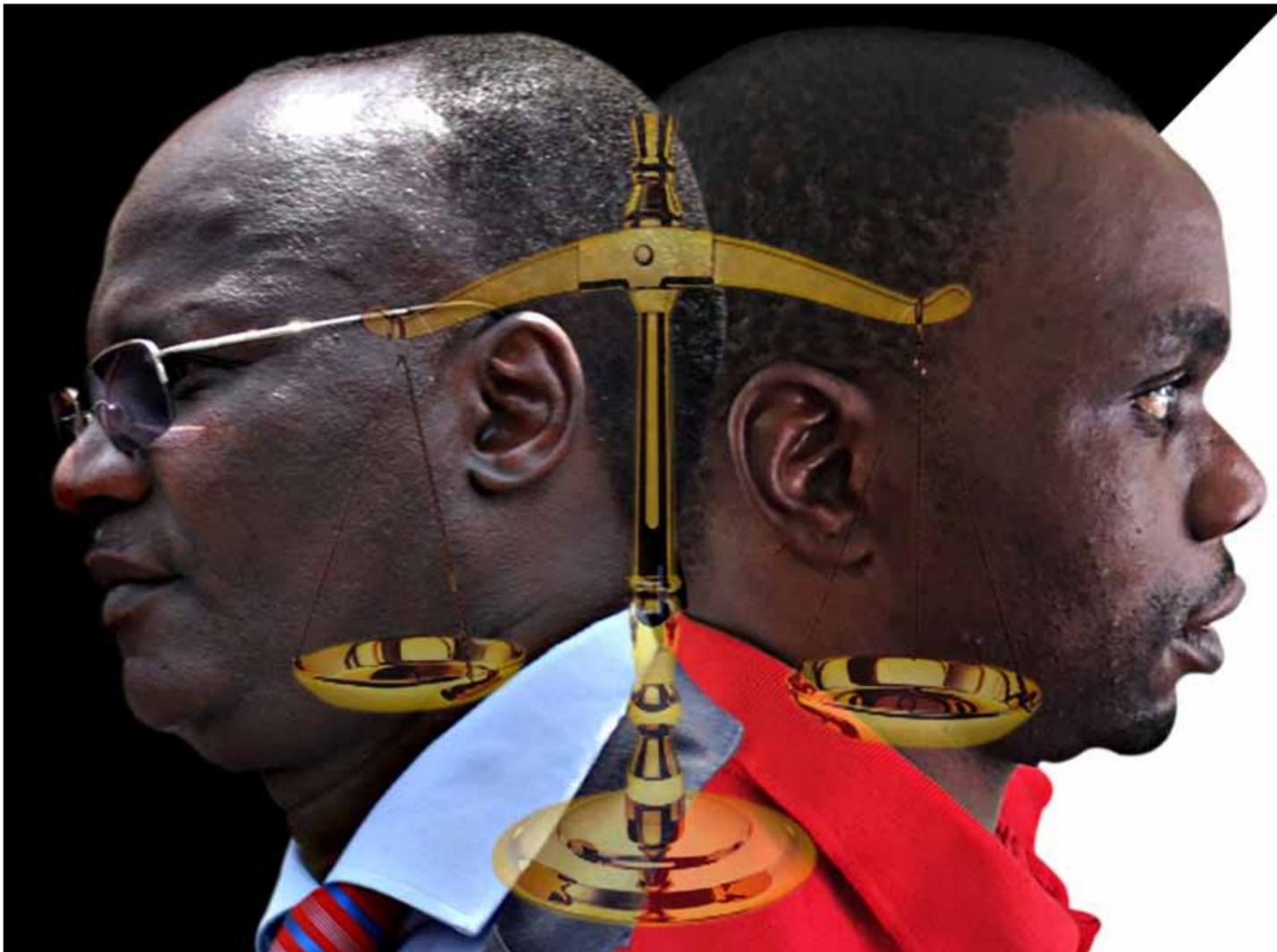
As for Hon. Moyo, he was tweeting about his meeting with Zimbabwe Anti-Corruption Commission (ZACC) as Ngadziore appeared in court. Hon. Moyo had the luxury to drive to ZACC with his lawyer on Wednesday- the same day Ngadziore appeared in court.

Reports last month indicated that ZACC

investigations into Hon. Moyo and his ministry had unearthed the diversion of money meant for students' development under the Zimbabwe Development Fund (Zimdef) by the minister.

Hon. Moyo publicly admitted as much and even sought to equate himself to Robin Hood. Robin Hood is an English folklore outlaw who robbed from the rich and gave to the poor. On Wednesday last week, he tweeted that being summoned to ZACC was like being "summoned by lions to their den".

And all this in a country whose Constitution "guarantees" equality before the law, and whose vice president, Emmerson Mnangagwa, told a United Nations Universal Periodic Review Mechanism meeting that the country had a solid human rights record.



Know Your Rights

Section 56 of the Constitution of Zimbabwe

Equality and non-discrimination

1. All persons are equal before the law and have the right to equal protection and benefit of the law.
2. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
3. Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.
4. A person is treated in a discriminatory manner for the purpose of subsection (3) if -
 - a. they are subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected; or
 - b. other people are accorded directly or indirectly a privilege or advantage which they are not accorded.

Know Your Rights

Parliament versus Statutory Instruments

Since the promulgation of the new Constitution in May 2013, the Executive has published a number of statutory instruments (SIs) in the Gazette, which have far-reaching effects on the lives of ordinary people. This is despite the fact that the new Charter has no room for the Executive to do so without involving Parliament.

This week *The Legal Monitor* reproduces, in part an opinion of Veritas – an organisation that provides simplified legal information to Zimbabweans – on the validity of the unilateral use of SIs by the Executive under the new Constitution which guarantees the doctrine of Separation of Powers.

Constitution and Law on Parliament and SIs

According to section 134 (f) of the Constitution:

“statutory instruments must be laid before the National Assembly in accordance with its Standing Orders and submitted to the Parliamentary Legal Committee for scrutiny.”

Under section 152 of the Constitution the Parliamentary Legal Committee (PLC) must examine every statutory instrument published in the Gazette, as well as any draft statutory instrument referred to the Committee by the Minister or other authority empowered to make it.

Paragraph 9 of the Fifth Schedule to the Constitution says that if the PLC reports that a statutory instrument is unconstitutional or ultra vires its enabling Act of Parliament – i.e. goes beyond the limits laid down in that Act – and the Senate or the National Assembly adopts the report, the statutory instrument “thereupon ceases to have effect” The use of the word “thereupon” means that the statutory instrument becomes invalid from the date on which the Senate or the National Assembly adopted the report, and its previous validity and operation are not affected.

Section 36 of the Interpretation Act says that all statutory instruments must be laid before Parliament (presumably both Houses) within 30 sitting days [in the sense of days on which Parliament actually sits] after the instruments were published in the Gazette.

Laying of SIs before Parliament means simply placing them on the table in the centre of the parliamentary chamber. The SIs are not read out, and members are not even encouraged to look at them. In any event, because of a dispute over who is to pay for instruments to be laid before Parliament (and under Standing Order 193 of the National Assembly copies of them must be given to each member) SIs are not currently laid before either House. Hence the parliamentary control over statutory instruments envisaged by section 36 of the Interpretation Act, slight though it is, is ineffective in practice. Democracy, transparency and accountability seems to have been sacrificed for the cost of a few reams of paper.

Two points may be noted here:

- Instruments are laid before Parliament after they have been gazetted, so they are normally in force before Parliament gets to see them.

- Neither the Constitution nor the Interpretation Act says that the Houses of Parliament must approve statutory instruments that are laid before them, or indeed do anything with them. If however either House were to pass a motion that an instrument should be repealed, the President or Minister who issued it would probably have to comply as a matter of practical politics – though he or she would not be legally obliged to do so.

PLC and Statutory Instruments

As pointed out above, section 134 of the Constitution requires statutory instruments to be laid before Parliament and also requires them to be submitted to the PLC for scrutiny. Under section 152 of the Constitution (referred to above) the PLC must examine every statutory instrument published in the Gazette, as well as any draft instrument referred to the Committee by the authority empowered to make it.

Time-limits

There is no specific time-limit for the submission of statutory instruments to the PLC after their gazetting, but it has to be done without delay in terms of section 324 of the Constitution. Once the PLC has a statutory instrument it has 26 business days within which to examine it and report on it to the Senate or the National Assembly (Standing Order 32(5)(d) of the National Assembly).

Duties of PLC

The PLC must examine all SIs submitted to it to see if:

- they contravene any provision of the Constitution (section 152(3) of the Constitution) or
- they are ultra vires the Act of Parliament under which they were made (section 152(4) of the Constitution).

In addition, under Standing Order 28 of the National Assembly, the PLC:

- may recommend the correction of errors or omissions in a statutory instrument,
- must ensure that no statutory instrument derogates from the exercise of legislative power, and
- must ensure that no statutory instrument:
 - contains matters more appropriate for parliamentary enactment,
 - makes the rights and liberties of persons unduly dependent on administrative decisions which are not subject to review by a judicial tribunal, and
 - changes an Act of Parliament unless permitted to do so by the enabling Act.

Clearly the PLC plays a very important and responsible role in the legislative process.

Consultation Before Enactment of SIs?

The drawback to the control exercised over statutory instruments by Parliament through the PLC, as outlined above, is that Parliament does not look at the instruments until they have been published in the Gazette, i.e. after they have come into force. Even though Parliament may effectively repeal instruments by adopting a PLC report that they are ultra vires, the instruments will have been in operation for some time and, during that time, members of the public will have had to obey them.

Is there any legal requirement that Parliament must be consulted about statutory instruments before they are published? Perhaps there is.

In our Constitution Watch 14/2016 of 26th July 2016, we noted that section 141 of the Constitution says that Parliament must -

“facilitate public involvement in its legislative and other processes and in the processes of its committees”, and must -

“ensure that interested parties are consulted about Bills being considered by Parliament,

unless such consultation is inappropriate or impracticable.”

We went on to say that although this provision applies only to Bills, which are draft Acts of Parliament, it would be strange if the constitution-makers had intended Parliament itself to consult widely before passing Acts of Parliament while allowing Ministers who make statutory instruments under those Acts to do so without consultation.

Arguably all Acts of Parliament that confer power to make statutory instruments should be construed as requiring the Ministers who make them to ensure that interested parties are consulted about them to the same extent as applies to Acts of Parliament.

The democratic political system envisaged by section 3 of the Constitution is one that is transparent, accountable and responsive and makes provision for public involvement in the law-making processes. Statutory instruments are an important part of the law-making process and the public must, where practicable, be involved in it through consultation.

Separation of Powers under the Constitution

Although the Executive is responsible for drawing up legislation and, through Ministers and other authorities, for making statutory instruments, Parliament is the most important part of the Legislature. Its legislative role must be upheld and protected against encroachment by the Executive.

Parliament as the supreme law-making entity in Zimbabwe has a very real interest in the validity and effectiveness of the country’s laws, including statutory instruments. It can be argued therefore that Parliament has an equal constitutional right with other interested parties to be consulted before important statutory instruments are made.

So although such consultation has not been formalised in an Act or in parliamentary Standing Orders, it can be said that the Constitution mandates it and therefore, before publishing a statutory instrument that will significantly affect the national economy or people’s lives, the person or authority responsible for making the instruments must consult Parliament.

ENFORCED DISAPPEARANCE = CRIME AGAINST HUMANITY

HRDs

WITNESS AGAINST VIOLENCE

WHERE ARE THEY?

HELP IN THEIR SAFE RETURN

Itai Dzamara
Missing since 2015

Call **Hotline: 0779 204 102**

Paul Chizuze
Missing since 2012

Horror Zim torture accounts released

HARARE-New York-based Human Rights Watch (HRW) has released horrific details of rights defenders and pro-democracy activists being tortured by police and intelligence operatives during the recent anti-government protests.

The gruesome details were presented in Geneva, Switzerland yesterday, where the country's human rights record came under global scrutiny at the United Nations' Human Rights Council's Universal Periodic Review (UPR).

Vice President Emmerson Mnangagwa, who is also Justice minister, presented the country's official report at the same meeting, which was roundly condemned by civic groups who described it as a sham and at odds with their findings.

The HRW detailed how police and members of the dreaded Central Intelligence Organisation (CIO) tortured protesters during recent demonstrations against the introduction of bond notes, as well as protests by the opposition for electoral reforms.

"During 2016, the government of President Robert Mugabe intensified repression against thousands of people who peacefully protested human rights violations and the deteriorating economic situation.

"Those who criticise ...Mugabe or his government, including human rights defenders, civil society activists, government opponents and street vendors face harassment, threats or arbitrary arrest by the police and State security agents. The government has failed to ensure justice and accountability for serious past abuses.

"Acts of torture that Human Rights Watch has documented include severe beatings that involve victims being punched, kicked and struck with batons; beatings on the soles of the feet; repeated banging of detainees' heads against walls; and the shackling of detainees in painful positions," Human Rights Watch notes in the UPR submission.

"Torture and other ill-treatment of detainees by police and members of Zimbabwe's intelligence services remain a serious and systemic human rights problem in Zimbabwe, despite accepting to 'ratify the Convention Against Torture (CAT),' the HRW said further.

In July, August and September this year, fed up ordinary citizens demonstrated against Mugabe and his government over what they claim was lack of resolve to fix the country's dying economy and the worsening local rot.

At the time, the Daily News witnessed heavily-armed riot police descending on hapless protesters and leaving scores hospitalised, as Mugabe's panicking government cranked up its savage assault on dissenting voices in the country.

Mugabe and Zanu PF, in power for 36 uninterrupted years, are facing their biggest challenge to their rule, which ordinary Zimbabweans say has been disastrous.

Last week, Counselling Services Unit (CSU) also reported a sharp increase in violence in the country in 2016, with record levels of assault, abduction and torture dominating its findings.

About 654 cases of political violence were recorded by the local non-governmental organisation as of

October 21, compared to 476 cases in the whole of 2015.

The CSU found that assaults were overwhelmingly perpetrated by the State's security forces - including police, military and the secretive CIO - while opposition supporters and civil society activists had been on the receiving end of the increasingly violent treatment.

One activist interviewed, Gift Siziba, a student protest leader at the University of Zimbabwe, said he was abducted by State security agents in August and taken to Zanu PF headquarters in

Harare where he was hung from the ceiling by his feet.

"It is at this time that I experienced brutal, callous and inhumane treatment," he said.

"I was tortured and assaulted with my feet hanging upwards and my head downwards as 21 youths and men exchanged chances to beat me until I passed out."

Siziba said his interrogators demanded information about other human rights defenders, and claims at

one point he was dangled over a large drum of sulphuric acid.

Siziba was then transferred to the Harare Central Police Station, where the beatings continued.

"At this instant I had lost a lot of blood and I was still bleeding. I was injured in almost all parts of my body. I was denied water, and the right to call my parents, a lawyer, or anyone. I received no treatment and had to become my own doctor," he said.

Source: Daily News

Shock, dismay as Govt says all is well in Zimbabwe

GENEVA, SWITZERLAND-Many Zimbabweans were baffled as Vice President Emmerson Mnangagwa painted a rosy picture of the human rights situation in the country at the Universal Periodic Review Mechanism (UPRM) last week.

Hon. Mnangagwa led the Zimbabwe delegation to the UPRM session held in Geneva. UPRM is a mechanism established by the United Nations Human Rights Commission for member states to review the overall human rights situation of fellow UN member states.

With a straight face, Hon. Mnangagwa seems short of just saying "all was well in Zimbabwe".

This is despite repeated calls by human rights defenders and activists for the government to stop disregarding human rights.

Hon. Mnangagwa said the only problems the country was facing were hunger caused by El Nino-induced drought that hit most parts of the country and sanctions.

Official estimates put the number of Zimbabweans in need of food hand-outs at more than a quarter of the country's 13 million population.

"The continued imposition of economic sanctions by some Western countries has severely limited the fiscal space and economic growth. These sanctions have compounded the challenges faced by Government in its effort to mobilise resources for the provision of social services, including

education and health services particularly in the rural areas," said Hon. Mnangagwa, who doubles as Zimbabwe's Minister of Justice, Legal and Parliamentary Affairs.

He was accompanied by several senior government officials to the UPRM, which was Zimbabwe's second appearance after it accepted 130 recommendations during the 2011 round to improve the human rights situation in the country.

Last week's event was meant to review Zimbabwe's situation and for the country to report back on the progress made towards implementing the recommendations it accepted in 2011.

Hon. Mnangagwa said a lot had been done since the last review, including the enactment of a new Constitution in May 2013.

"The Constitution has been lauded for its substantive content that introduces salient foundational democratic elements and an expanded Bill of Rights, incorporating all generations of rights. These rights can only be meaningful to our people through implementation of legislative and administrative measures to actualize the Constitution," he said, adding that the country had started aligning its laws with the new Charter.

"That (sanctions) notwithstanding, government continues to put in place initiatives and policy parameters that ensure implementation of its social, economic and cultural rights obligations. In order to promote these fundamental rights, Government, among other initiatives launched the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zim-ASSET) in 2013, which is the Government's major economic blue print that is aimed at achieving sustainable and equitable economic and social development, propelled by the judicious and optimum utilization of the country's natural resources," said the veteran politician.

Human rights defenders expressed shock at Mnangagwa's statements, and roundly condemned the way his delegation tried to gloss over the country's worsening human rights situation.

Please note: The Legal Monitor will this week be publishing an in depth coverage of Zimbabwe's appearance at the UPRM session.

As part of efforts to raise awareness of the UPRM process, Zimbabwe Lawyers for Human Rights on behalf of the civil society's UPR Steering Committee representatives, the National Association of Non Governmental Organisations, the Zimbabwe Human Rights NGO Forum and ZLHR itself, hosted a Zimbabwe UPRM Interactive Dialogue Public Screening last week on Wednesday in Harare, Bulawayo and Mutare, where people followed live the screening of proceedings of the interactive dialogue during the review of Zimbabwe.



Lloyd Kuvheya of Zimbabwe Human Rights NGO Forum and Roselyn Hanzi of Zimbabwe Lawyers for Human Rights follow proceedings as United Nations (UN) countries make interventions during the UN Human Rights Council Universal Periodic Review's Interactive Dialogue on Zimbabwe's Second Cycle Review in Geneva, Switzerland on Wednesday 02 November 2016

Varsity students rights under threat

... as another state university clamps down on right to demonstrate

BULAWAYO-Human rights lawyers have once again been called to defend what appears to be a determined effort by State-owned universities to suppress students' rights, despite recent court rulings ordering the authorities to ease on their heavy handedness on students.

Mthokozisi Dube (26) and Anele Ncube (22), both final year students at Lupane State University students, are waiting for a hearing date at the High Court after they challenged their suspension a few months ago. Dube was suspended for writing an allegedly insulting letter to Professor Pardon Kuipa, the Vice Chancellor of the University.

"The letter in issue was a petition," said Nosimilo Chanayiwa of Zimbabwe Lawyers for Human Rights (ZLHR), who is representing the two students.

"Anele Dube was charged with disrupting university activities as it is alleged that he sent a message on social media calling for a stay away.

"We took up the case (of the two students) to protect the rights to education and the right to petition as enshrined in Sections 75 and 59 of the Constitution respectively," said Chanayiwa.

After ZLHR objected to the charges during a hearing in August, the institution later wrote to the students informing that it had overturned the objection to the charges.

"It is clear from the judgements that the objection was dismissed. The judgements speak for themselves. Needless to say you may carry out your instructions to approach the High Court," the university, through its Senior Proctor, wrote to ZLHR on 26 September, 2016.

Chanayiwa has since filed an application at the High Court seeking to declare the conduct of the university both unlawful and unconstitutional.

Lupane State University is digging in its heels in the case despite a recent ruling by Justice Nicholas Mathonsi defending the right of students to use social media to mobilise for protests, and harshly criticising university authorities for using archaic methods to stifle the freedoms of students.

Universities should be bastions of freedom, where students should feel free to express themselves as well as challenge decisions by authorities – including through protests, but authorities want to turn them into semi-prisons where inmates have limited rights, ruled Justice Mathonsi. (See Flashback).

The Legal Monitor
For feedback please email ZLHR on: info@zlh.org.zw or visit: www.zlh.org.zw
Zimbabwe Lawyers for Human Rights @ZLHRLawyers
10 October 2016
Edition 357
Distributed without any inserts

In defence of students rights

...Judge affirms constitutionality of protests, social media campaigns

... 'You are not God,' university bosses told

BULAWAYO-The High Court has defended the right of students to use social media to mobilise for protests, and harshly criticised university authorities for using "archaic" methods to stifle the freedoms of students.

Universities should be bastions of freedom, where students should feel free to express themselves as well as challenge decisions by authorities, including through protests, said Justice Nicholas Mathonsi.

The Bulawayo-based judge made the noteworthy remarks while ruling in a case in which three Midlands State University students were challenging their suspension.

The university in April suspended Fanele Maqele, Tendai Warambwa and Aldrin Nyabando for allegedly using the social media *whatsapp* platform to mobilise against their institution's decision to relocate them.

Maqele is a final year politics and public management student while Warambwa and Nyabando are second year development studies students. The students could not write their examinations due to the suspensions, a development condemned by Justice Mathonsi. The students were unhappy about the move to relocate them to Zvishavane, a town they claimed lacked adequate facilities and posed a hazard to students due to the proliferation of violent and unlicensed miners.

Justice Mathonsi overturned the suspension following the intervention of Zimbabwe Lawyers for Human Rights, whose member, Tonderai Chitere of Chitere, Chidawanyika and Partners Legal Practitioners, successfully represented the students. Justice Mathonsi had harsh words

for university authorities, warning them against violating the constitutional rights of students.

"It occurs to me that there is a discernible readiness to pull the trigger and in the process play havoc with the constitutional rights of students," he said in an eight-page ruling delivered last month.

He queried the decision to suspend the students on the basis on "harmless" *whatsapp* messages.

"To begin with, the *whatsapp* message complained of cannot possibly be said to be offensive at all even if it had been generated by the applicants, of which it was not. What the author was doing was to mobilise support among students to protest against what was considered as an unreasonable decision by university authorities to shift students to Zvishavane, a little town with inadequate infrastructure and scarcity of accommodation," said Justice Mathonsi.

He queried the decision to suspend the students on the basis of "harmless" *whatsapp* messages.

"To begin with, the *whatsapp* message complained of cannot possibly be said to be offensive at all even if it had been generated by the applicants, of which it was not. What the author was doing was to mobilise support among students to protest against what was considered as an unreasonable decision by university authorities to shift students to Zvishavane, a little town with inadequate infrastructure and scarcity of accommodation," said Justice Mathonsi.

"Why then should a university be seen to be working to stifle students' rights when it was established with the progressive objectives including: the advancement of knowledge, the diffusion and extension of arts, science and

learning, the preservation, dissemination and enhancement of knowledge that is relevant for the development of the people of Zimbabwe through teaching and research, in so far as is consistent with those objectives, the nurturing of the intellectual, aesthetic, social and moral growth of the students of the university," said Justice Mathonsi.

In Zimbabwe, student leaders have of late become targets of State harassment. More than 20 student leaders have been arrested in recent months for exercising their rights to freedom of speech, freedom of assembly as well as the right to demonstrate and petition. Justice Mathonsi said instead of being repressive, university authorities should strive to ensure that campuses remain zones of freedom.

"The second respondent (Midlands State University) should not only be a doyen of intellectual interaction, but also a wonderful laboratory for freedom of expression and free flow of information.

"Those values are suppressed if the authorities remain engrossed in a time capsule, propagating archaic controls and methods of instruction where students are removed from campus for expressing their views. It is unthinkable that someone can sleep well at night after excluding a student from school and sitting for an examination when that student has not been found guilty but is accused of sending a harmless *whatsapp* message," he said.

He ordered the university to allow the students to sit for the examinations they missed during the period for supplementary examinations.

Justice Mathonsi further ruled that the State-owned institution should conduct a disciplinary hearing for the students after they finish writing their examinations, lambasting the university's decision to punish the trio without conducting a hearing. ➤

Judge rescues protest placard student

GWERU- In the Midlands province, the Midlands State University suspended a student for holding a placard protesting the deteriorating human rights situation in the country and expressing support for the opposition.

However, after intervention by Zimbabwe Lawyers for Human Rights (ZLHR), High Court Judge Justice Francis Bere on Tuesday 23 August 2016 ordered authorities at the state-run university to reinstate a university student whom they had suspended for allegedly wielding an offensive placard.

Archbold Elias Madida had been suspended from MSU for allegedly holding a placard inscribed "MSU Students support MDC-T", within the university's premises following an anti-government protest staged in Gweru in Midlands on Saturday 13 August 2016 by the MDC-T party.

The MSU authorities had claimed that Madida's conduct is "harmful to the interests of the university".

Madida, through ZLHR member Takashinga Pamacheche of Gundu and Dube Legal Practitioners, filed an urgent chamber application in the High Court in Bulawayo, challenging his suspension as victimisation and seeking an order to have it set aside. On Tuesday 23 August 2016, Justice Bere ordered MSU and Professor Ngwabi Bhebhe, who were cited as respondents respectively, to allow Madida to be on the university's premises. Justice Bere ordered that Madida be allowed to attend lectures, participate in university programmes and have access to all university facilities. Justice Bere also ordered that Madida's suspension pending the conducting of a disciplinary hearing against him be permanently lifted.

Prior to being suspended, MSU security personnel had on Tuesday 16 August 2016 escorted Madida from MSU's Zvishavane campus to the university's Gweru main campus, where the authorities had scheduled to convene a disciplinary hearing for him. Madida's lawyer was later advised that no hearing was to take place but that just an enquiry was to be held which was conducted in the office of the Chief Security Officer only identified as Chademana.

Madida denied all the allegations levelled against him and insisted that the authorities proceed in whatever manner they deem fit. Madida's lawyer also resisted attempts by Chademana to have the legal practitioner leave the university premises without her client which Pamacheche refused to do and insisted that the security personnel ensures that the MSU student travels back to Zvishavane campus as they were the ones who had escorted him to Gweru. In the end, the MSU security personnel capitulated and made some arrangements to facilitate Madida's return to Zvishavane campus.