ZIMBABWE LAWYERS FOR HUMAN RIGHTS
Fostering a culture of human rights

The Legal Monitor

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Zimbabwe Lawyers for Human Rights
@ZLHRLawyers
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Muzzled

…rights lawyers report increased threats to free speech

…Law criminalising insult of president 'creates a god out of politicians'

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Free expression under threat

HARARE-The right to freedom of expression, one of the most fundamental rights for a functional democracy, has remained under threat despite promises that democracy would flourish following the ouster of former president, the late Robert Mugabe, whose administration arrested, detained and jailed dozens of people for simply criticising the president.



Unfulfilled promise...One of President Emmerson Mnangagwa's campaign messages in the run-up to 2018 general elections

Human rights lawyers say five years after the coming in of a purported "new dispensation," people are still being persecuted and prosecuted for insulting the President, a practice which was prevalent during Mugabe's tenure.

Zimbabwe Lawyers for Human Rights (ZLHR) says it continues to record increasing numbers of cases of people being arrested and prosecuted for allegedly undermining or insulting the authority of President Emmerson Mnangagwa. Many of the cases have been described as ridiculous by human rights lawyers.

They include a student arrested and detained for criticising the president's speech, a man charged for poking fun at the president's picture, a woman arrested for venting her anger at the president following the suspension of her husband from a teaching job and juveniles arrested for allegedly encouraging people to register to vote and chanting opposition party slogans during a procession.

Other cases involve beer hall talk (See page 3).
To silence people, the State has largely relied on invoking the provisions of Section 33(2) of the Criminal Law (Codification and Reform) Act, which criminalises "undermining the authority of or insulting the president."

"These provisions are no doubt repressive. They only help shrink free space. Citizens should be allowed to criticise the president. It is part of freedom of expression," commented Hillary Garikayi, a ZLHR member lawyer, who represented a Shurugwi woman, who spent a night in detention for criticising the president and the ruling ZANU PF party after her husband was suspended from his teaching job.

"Ring-fencing the office of the president from insults is to isolate the office and make it aloof from the rest of the citizen. It creates a god out of politicians and promotes an unnecessary class that appears special from the rest of the people," Garikayi said.

Others have been charged with participating in a gathering with intent to promote public violence, breaches of peace or bigotry as defined in Section 37(1)(a) of the Criminal Law (Codification and Reform) Act. The government has also set its sights on social media platforms after appointing a team to monitor the social media activities of citizens.

With the country now in election season, the clampdown has raised alarm, and ZLHR stands ready to intervene as part of its mandate to promote and protect rights such as the right to freedom of expression.
The right to freedom of expression is enshrined in Section 61 of the Constitution (See Know Your Rights on page 4 for full text).

Article 9 of the African Charter on Human and Peoples' Rights states that "Every individual shall have the right to express and disseminate his opinions within the law."

The African Commission Declaration of Principles on Freedom of Expression and Access to Information describes freedom of expression and access to information as fundamental rights protected under the African Charter and other international human rights laws and standards.

These provisions insist that this is a fundamental right that every state institution should strive to promote and protect. (See Know Your Rights on page 4).

But for many Zimbabweans being arrested, harassed or intimidated for speaking out, the right to freedom of speech just exists on paper as the supposed protectors have usually turned out to be the major perpetrators.
State agents have a history of repeatedly violating the fundamental human rights and freedoms of those that they are supposed to protect, under the pretext of enforcing law and order.

Human Rights Defenders (HRDs) say the fall of repressive former president, the late Robert Mugabe in 2017 amid promises of reform by the incoming government of President Emmerson Mnangagwa has done little to change the situation.

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After Mugabe, Zimbabweans suffer over anti-Mnangagwa jibes



Targeted...Tinotenda Majuru and his lawyer Ernest Jena of ZLHR

HARARE-From activists to housewives, students and beer drinkers: no one seems safe.

Speaking out against the president, including uttering seemingly harmless statements, has become hazardous in Zimbabwe where authorities are intensifying a crackdown on dissenting voices.

Before his ouster in 2017, former president, the late Robert Mugabe's regime was notorious for creating a demi-god out of the president by punishing the slightest of criticisms.

The trend continues under his successor, President Emmerson Mnangagwa, with human rights lawyers noting an increasing number of arrests and detentions.

Recent months have seen many people across the country appearing in court answering to charges of undermining authority of or insulting President Mnangagwa, the man who promised to do away with the repressive ways of the old regime led by Mugabe.

Below, *The Legal Monitor* highlights a few of the cases, where Zimbabwe Lawyers for Human Rights (ZLHR) has deployed lawyers to assist people charged with undermining the authority of or insulting President.

In Shurugwi, police officers arrested 48-year old Maria Mapfumo and charged her with undermining the authority of or insulting President Mnangagwa in contravention of Section 33 of the Criminal Law (Codification and Reform) Act.

In court, prosecutors accused Mapfumo of using derogatory language to insult President Mnangagwa during an altercation with Bernard Dangi, a ZANU PF councillor for Tongogara rural district council in Shurugwi.

The 48-year old woman allegedly stated that Dangi and President Mnangagwa were murderers conniving to kill her husband.

Mapfumo's husband, who is employed as a geography teacher had been suspended from work after Dangi wrote a letter of complaint to his employers accusing him of abdicating his teaching duties and engaging in political activities. Mapfumo, who was represented by Hillary Garikayi of ZLHR, was also charged with criminal insult as defined in Section 95 of the Criminal Law (Codification and Reform) Act for allegedly impairing Dangi's dignity.

In Hwange, Mehlo Mpala, a 42-year old man recently appeared at Dete Magistrates Court answering to the same charge of contravening Section 33(2)(a) of the Criminal Law (Codification and Reform) Act for allegedly undermining or insulting the authority of President Mnangagwa.
Mpala, who is employed as a train engineer, was accused of acting unlawfully after he criticised Nyambe Mathe, a war veteran and the ZANU PF party Chairperson for Ward 16 for wearing the ruling party's regalia.

Mathe was wearing a T-shirt and a cap emblazoned with a picture of President Mnangagwa, whom the train engineer accused of causing a lot of suffering for Zimbabweans.

Prosecutors alleged that Mpala told Mathe that he was wearing a good pair of shoes and trousers except for the cap and T-shirt, which he said were "rubbish" stuff. He was also accused of describing President Mnangagwa's picture on the party regalia as "not good".

ZLHR lawyer Jabulani Mhlanga, who represented Mpala, challenged the prosecution of the train engineer without obtaining authority to prosecute from the Prosecutor-General.

Mpala was removed from remand and the State was ordered to summon him should it still want to proceed with prosecuting him.

In Bindura, Tinotenda Majuru, a-24 year old man was scheduled to stand trial in April on the same charges of undermining authority of or insulting President Mnangagwa after he allegedly snatched beer and a ZANU PF party branded cap from another resident at Chiwaridzo Business Centre.
Majuru, who is self-employed as a car washer at Chiwaridzo Business Centre, was accused of using derogatory words to criticise President Mnangagwa during an altercation with another resident, Samson Waraza.

Majuru, who was granted free bail by Bindura Magistrate Samantha Dhlamini, is represented by Ernest Jena of ZLHR.

Clapaton Redi, a 42-year old Harare man is also on trial at Mbare Magistrates Court on charges

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Concern as govt confirms monitoring online activities





Birds of the same feather... The late Robert Mugabe and President Emmerson Mnangagwa

HARARE-A government announcement that it had appointed special teams to monitor the online activities of citizens raised alarm in a country where social media is increasingly becoming a platform of free speech.

With dozens of people arrested, detained, charged, harassed and in some instances assaulted for expressing their views in public spaces such as workplaces, social gatherings and even in beer halls, many people are finding refuge on social media platforms.

This has seen a boom in online activity, ranging from fierce political debates to voter registration campaigns and artistic performances such as comedy and drama depicting the country's harsh economic, social and political conditions.

The government says it is taking special notice of the development and intends to regulate such online activities.

The privately owned NewsDay newspaper quoted Information, Publicity and Broadcasting Services Minister Senator Monica Mutsvangwa as saying late last year: "We have actually come up with a cyber-team that is constantly on social media to monitor what people send and receive since we cannot wish social media away."

The newspaper said Senator Mutsvangwa praised President Mnangagwa for "ensuring free speech" while criticising the late country's leader Robert Mugabe for muzzling the media and the populace." People used to have fear and respect on social media during Mugabe's time, but all that is no longer there in the second republic," the newspaper reported her as saying.

Many disagree, citing the move to monitor people's activities online as an example of the government's lack of will to allow free speech to flourish.

In response to Senator Mutsvangwa's statements, Zimbabwe Lawyers for Human Rights (ZLHR) said the move is part of a systematic campaign to silence people.

"Minister Mutsvangwa's utterances should not be viewed in isolation. They indicate government's long-existing desire to muzzle citizens through mass surveillance," said ZLHR in a statement that described Senator Mutsvangwa's statements as alarming and disturbing.

"The monitoring of social media networks will be used by Zimbabwean authorities to further clamp down on perceived government opponents and citizens who express themselves freely on social media," said ZLHR.

The organisation warned that plans to monitor social media "have a devastating impact on the right to privacy and freedom of expression".

Already, several people who include opposition political party leaders and ordinary citizens are being prosecuted over statements they made on social media in exercise of their freedom of expression.

Instead of targeting people who freely express their views, the government should concentrate its efforts on fulfilling its obligation to promote, protect and respect citizens' fundamental human rights protected under several provisions of the Constitution of Zimbabwe," said ZLHR, which has represented hundreds of people arrested for exercising their right to freedom of expression.

"Citizens have a right to privacy (Section 57 of the Constitution) which includes the right not to have the privacy of their communications invaded. The right to freedom of expression, online and offline is the fundamental bedrock of democracy and it is important to an individual's personal development, political consciousness and participation in public affairs."

ZLHR called on the government to take a rights-based approach in the regulation of the internet and to:

- Stop mass surveillance of citizens online and on social media;
- Urgently remove restrictions on freedom of expression, access to information and guarantee freedom after speech;
- Fully align all media laws with the Constitution, implementing all outstanding law reform recommendations made by regional and international human rights bodies;
- To abide by the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression and Access to Information in Africa.

Free expression under threat

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Some argue that human rights violations have actually worsened. Under Mugabe's administration, hundreds of HRDs and ordinary citizens suffered arrests, detentions and charges under the insult law, which seemed one of the administration's favourite weapon to silence dissent.

Some of the cases were so petty, like arrests of drunkards arguing about politics in a bar, that the judiciary at one time criticised the National Prosecuting Authority (NPA) for bringing such cases to court.
Chief Justice Luke Malaba, then a deputy Chief Justice, told a prosecutor in 2013 while hearing on such a case that the NPA should avoid prosecuting some insult cases that he equated to beer hall talk.

"I think it is important that the name of the President is not just dragged here to the court unnecessarily. (Prosecuting authorities) should be careful not to allow prosecution when a person says something in a bar, where people are just making statements while drunk," he said.

His advice seems to have fallen on deaf ears, as evidenced by the new government's desire to continue relying on such provisions of the law to silence critics.

People were hopeful that under President Emmerson Mnangagwa's 'new dispensation' administration, the clampdown on freedom of expression, which had become systematic and systemic under Mugabe, would end.

Regrettably, it seems to be getting worse.
These arrests are a worrying sign given that the country is now in election mode after holding by-elections in March and now preparing for the general election in 2023.

After Mugabe, Zimbabweans suffer over anti-Mnangagwa jibes

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of undermining or insulting the authority of President Mnangagwa.

Redi, who was arrested in December 2021 and is represented by Paidamoyo Saurombe of ZLHR, is accused of insulting President Mnangagwa on 14 December 2021 in the politically volatile Mbare suburb by uttering some disparaging comments about the ruling ZANU PF party leader.

In Seke, 27-year-old Leonard Mutsa Mukuya is also on trial at Chitungwiza Magistrates Court after he allegedly made some utterances which some law enforcement agents claimed would engender feelings of hostility towards the President.

Prosecutors claim that Mukuya unlawfully and with intent to cause hatred, contempt and ridicule towards President Mnangagwa used offensive language to criticise the President during a conversation with another resident, Takudzwa Chitiga in February 2022 at Damview Recreational Centre in Chitungwiza.

Mukuya, who is represented by Gift Mtisi of ZLHR, allegedly approached Chitiga, who was wearing a ZANU PF party T-shirt which had President Mnangagwa's picture on it, and questioned him for supporting the ruling party.

In Bulawayo, a visit to a beer hall in February ended in legal trouble for Izalokuhle Ncube after he was charged with undermining the authority of or insulting President Mnangagwa for criticising a man wearing ruling party clothing. Ncube allegedly questioned the man wearing ZANU PF clothing why he was "wearing this dog's t shirt?"

He was arrested, with police charging that Ncube uttered the words "knowing there was a real risk or possibility that the authority of the President would be undermined."

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The truth shall set you for jail

...Pastors endure arrests, detention for speaking out

HARARE-It is often said the truth shall set you free, but not in this country and Pastors Philip Mugadza and Evan Mawarire will testify to this.

In Zimbabwe, speaking truth to the powers-be seems a sure path to jail – or at least a few nights in a filthy and overcrowded police cell. It is increasingly becoming risky for people who are in the business of speaking the truth to stay true to their vocation amid hostility from the State.

Pastors Mugadza and Mawarire, known for being outspoken in their defence of human rights, bear testimony to the dangers of such a calling. State agents appear to have thrown caution to the wind, and are going after religious leaders who dare speak out with more force than before.

Pastor Mugadza of the Remnant Church has been languishing in remand prison for weeks.

Pastor Mawarire, of the His Generation church, just spent two nights in police detention and faces charges that attract more than 20 years in jail. He had the same experience last year before he was acquitted of trying to subvert President Robert Mugabe's government.

Both Mugadza and Mawarire have borne the brunt of State harassment before, but this time, the State seems determined to ensure they endure lengthy jail time. Mugadza was denied bail on 19 January because the court feared he could "commit similar crimes."

Similar crimes, as advanced by State prosecutors, refer to chaining himself near Parliament in protest against the deteriorating human rights situation last year, allegedly wearing the national flag without permission from authorities last year and embarking on a one-man demonstration during the ruling ZANU-PF party conference in 2015 in Victoria Falls.

On 19 January this year, Harare Magistrate Vongai Muchuchutu ruled that Mugadza should stay in remand prison while awaiting trial on his latest charges of criminal nuisance after allegedly prophesying that President Mugabe will die this year. Earlier on, Magistrate Muchuchutu dismissed an application filed by Gift Mtisi of Zimbabwe Lawyers for Human Rights (ZLHR) challenging the lawfulness of the clergyman's arrest and detention.

Mtisi had argued that Mugadza's constitutional right to be brought to court from police cells within 48 hours had been violated as he was only hauled to court after 51 hours. Magistrate Muchuchutu also dismissed Mtisi's application for refusal of placement of Pastor Mugadza on remand.

Pastor Mugadza was arrested three weeks ago and charged with contravening Section 42 (2) of Criminal Law (Codification and Reform) Act Chapter 9:23 alternatively criminal nuisance as defined in Section 46 (2) (v) of the third schedule to the Criminal Law (Codification and Reform) Act Chapter 9:23.

Prosecutors charged that Pastor Mugadza caused the publication of a story in an online publication, The Zimbabwe Mail on Friday 13 January 2017 entitled "Pastor Mugadza says President Mugabe will die in October 2017, thus says the Lord".

Prosecutors claimed that Pastor Mugadza allegedly insulted the Christian religion and the African tradition by uttering some words which are a taboo to predict someone's death and words to the effect that: " It was on the 26th December 2016 when I was in prayer and God said to me this coming 2017 the President is dying and he told me that he is dying on 17 October 2017, like I said earlier on that am not happy for someone to die but this is something that is going to happen. People may ask me what if he does not die. I do not know how much he believes in prayer but he has to do something about this prophecy".

As for Pastor Mawarire, he was picked up as he stepped out of the plane on his way back home after spending some time in the United States on Wednesday last week at Harare International Airport on his return home.

He was detained at Harare Central Police Station before he was charged with subverting a constitutional government as defined in Section 22 (2) (a) of the Criminal Law (Codification and Reform) Act Chapter 9:23. According to a warned and cautioned statement, which was recorded from Pastor Mawarire on Wednesday evening, police alleged that the clergyman incited Zimbabweans from "all walks of life either locally or internationally" to revolt and overthrow a constitutionally elected government.

The police charged that Pastor Mawarire, who is represented by Harrison Nkomo and Sharon Hofisi of ZLHR, circulated several videos on social media platforms inciting Zimbabweans "to stage violent demonstrations to subvert the constitutional government of Zimbabwe and resultantly from August 2016 to January 2017 there have been violent demonstrations in the country where several property was destroyed."

The police officers alleged that on 15 September 2016, Pastor Mawarire incited more Zimmbabweans living in the USA and "all over the world" through social media to converge in New York on 22 September 2016 to "confront" President Robert Mugabe who was attending the United Nations General Assembly and order him to "immediately" resign from his position accusing him of destroying the country.
In July 2016, ZRP officers arrested and charged Pastor Mawarire with inciting public violence at a time when Zimbabweans staged crippling anti-government protests before prosecutors altered the charges to attempting to overthrow a constitutional government.

However Harare Magistrate Vakai Chikwekwe set free the clergyman after ruling that ZRP officers had already violated his constitutional rights in arresting and detaining him and that it was also unconditional for prosecutors to bring fresh charges against the clergyman while in court.

In September last year, President Mugabe told his ruling ZANU PF party supporters upon returning from New York that Pastor Mawarire was a "great shame" and a "disgrace" for "allowing himself to demonstrate against the country" during the United Nations General Assembly.

Know your rights

Section 57 of the Constitution: Right to privacy

Every person has the right to privacy, which includes the right not to have--

a. their home, premises or property entered without their permission;
b. their person, home, premises or property searched;
c. their possessions seized;
d. the privacy of their communications infringed; or
e. their health condition disclosed.

Section 61 of the Constitution: Freedom of expression and freedom of the media

1. Every person has the right to freedom of expression, which includes--
   a. freedom to seek, receive and communicate ideas and other information;
   b. freedom of artistic expression and scientific research and creativity; and
   c. academic freedom.

2. Every person is entitled to freedom of the media, which freedom includes protection of the confidentiality of journalists' sources of information.

3. Broadcasting and other electronic media of communication have freedom of establishment, subject only to State licensing procedures that--
   a. are necessary to regulate the airwaves and other forms of signal distribution; and
   b. are independent of control by government or by political or commercial interests.

4. All State-owned media of communication must--
   a. be free to determine independently the editorial content of their broadcasts or other communications;
   b. be impartial; and
   c. afford fair opportunity for the presentation of divergent views and dissenting opinions.

5. Freedom of expression and freedom of the media exclude--
   a. incitement to violence;
   b. advocacy of hatred or hate speech;
   c. malicious injury to a person's reputation or dignity; or
   d. malicious or unwarranted breach of a person's right to privacy.

Article 9 of the African Charter on Human and Peoples' Rights
1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law

African Commission Declaration of Principles on Freedom of Expression and Access to Information

Conscious that freedom of expression and access to information are cross-cutting rights that are important for the realization of all other human rights, including socio-economic rights, and of the potential of both rights to contribute to the socio-economic transformation of the continent;

Desiring to promote the free flow of information and ideas and greater respect for the rights to freedom of expression and access to information; The African Commission adopts the Declaration of Principles on Freedom of Expression and Access to Information in Africa to replace the Declaration on Principles of Freedom of Expression in Africa of 2002.

Part I: General Principles

Principle 1. Importance of the rights to freedom of expression and access to information

1. Freedom of expression and access to information are fundamental rights protected under the African Charter and other international human rights laws and standards. The respect, protection and fulfilment of these rights is crucial and indispensable for the free development of the human person, the creation and nurturing of democratic societies and for enabling the exercise of other rights.

2. States Parties to the African Charter (States) shall create an enabling environment for the exercise of freedom of expression and access to information, including by ensuring protection against acts or omissions of non-State actors that curtail the enjoyment of freedom of expression and access to information.

Principle 2. Non-interference with freedom of opinion

Freedom of opinion, including the right to form and change all forms of opinion at any time and for whatever reason, is a fundamental and inalienable human right indispensable for the exercise of freedom of expression. States shall not interfere with anyone's freedom of opinion.

Principle 3. Non-discrimination

Everyone shall have the rights to exercise freedom of expression and access to information without distinction of any kind, on one or more grounds, including race, ethnic group, colour, sex, language, religion, political or any other opinion, political association, national and social origin, birth, age, class, level of education, occupation, disability, sexual orientation, gender identity or any other status.