ZIMBABWE LAWYERS FOR HUMAN RIGHTS
Fostering a culture of human rights

The Legal Monitor

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MOPO Act: New weapon against citizens

…Analysts say it's a reincarnation of POSA

MASVINGO-Zimbabwean authorities are increasingly using the Maintenance of Peace and Order (MOPO) Act as their weapon of choice to prosecute citizens in what analysts view as a move to resurrect the dreaded Public Order and Security Act (POSA), which had been discarded.

In recent months, several people around the country have been arrested and charged with contravening the MOPO Act, which critics say is a reincarnation of the much-loathed POSA, which was repealed three years ago.

POSA was repealed in 2019 and replaced with an almost identical MOPO Act. Earlier on, Zimbabwean authorities had repealed the Law and Order Maintenance Act, a colonial and draconian law but its provisions were transplanted into and resurrected in POSA.

In 2018, the full bench of the Constitutional Court found a key Section of POSA to be unconstitutional. Writing for the majority, Justice Rita Makarau declared that Section 27 of POSA which granted wide powers to ZRP to ban demonstrations for periods of up to one month in the interests of the preservation of public order was an unjustifiable infringement on the right to demonstrate and petition which is enshrined in the Constitution.

The highest court made a finding that the blanket ban in Section 27 of POSA was unconstitutional because it had a dragnet effect, which completely nullified the fundamental right to demonstrate and petition. More importantly, Section 27 was found to deny rights in advance, condemning all protests and demonstrations before their purpose is known and denying citizens the opportunity to engage in mass protests and demonstrations crucial in an open and democratic society.

The judgment was handed down in a case filed and argued by Zimbabwe Lawyers for Human Rights (ZLHR), which at the time stated that the judgment "unequivocally confirms that the powers of the police are limited and can never be used to curtail fundamental rights".

But of late, ZLHR has had to intervene and represent several people targeted under MOPO.



Several people have been arrested by Zimbabwe Republic Police officers and charged for contravening MOPO Act, which is considered to be a reincarnation of POSA

One of such cases noted by ZLHR is that of three Masvingo residents namely Vigisai Norupandai, aged 53 years, Aleck Tabe, aged 38 years, and Magie Chakabuda, aged 62 years, who recently appeared at Masvingo Magistrates Court after they were arrested by Zimbabwe Republic Police (ZRP) officers and charged with contravening Section 7(5) of MOPO Act.

In court, prosecutors accused Norupandai, Tabe and Chakabuda of failing to give notice of a gathering to a regulatory authority. Prosecutors claimed that Norupandai, Tabe and Chakabuda failed to give notice of a gathering in terms of the provisions of the MOPO Act, when they allegedly gathered at Aphiri Vegetable Market in Masvingo on 16 January 2022.

The trio, which was represented by Phillip Shumba of ZLHR, was granted $5 000 bail each by Masvingo Magistrate Patience Madondo and ordered not to interfere with State witnesses.

Norupandai, Tabe and Chakabuda are not the only people who have been targeted by authorities brandishing the MOPO Act whip.

The leader of the opposition party, Freedom of Rights Under Sovereign (FORUS), Manyara Irene Muyenziwa, and two of her lieutenants also fell victim to the MOPO Act when they visited Bulawayo. They were arrested by ZRP officers late last year in Bulawayo and charged with contravening Section 7(5) of the MOPO Act.

Muyenziwa, together with Mono Minela and Tinashe Muzamhindo were accused of failing to notify the regulating authority of a gathering when they allegedly convened a public meeting at Stutterfords Building in Bulawayo. Muyenziwa, Minela and Muzamhindo are represented by Lison Ncube of ZLHR.

Provisions of the MOPO Act were once again invoked in Masvingo when two other residents, namely Langton Guvava and Phillip Mahachi, were arrested and charged with contravening Section 7(5) of the MOPO Act.

Guvava and Mahachi, who are represented by Martin Mureri of ZLHR, were accused of failing to give notice to ZRP, which is the regulating authority, of a gathering which they reportedly convened at Zvavahera Business Centre in Gutu in Masvingo province, where 36 people reportedly attended.

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Dilapidated Harare roads cost council, govt US$15 000





Rodrick Hahlani's damaged vehicle

HARARE-City of Harare and Transport and Infrastructural Development Minister Hon. Felix Mhona have been sued for US$15 000 in damages caused to a motorist's vehicle after it fell into an open and unmarked ditch.

Harare resident, Rodrick Hahlani, is demanding US$9 000 for replacement of his BMW vehicle, US$135 as costs for towing and US$3 750 as damages for loss of income as a result of the accident.

Another ZW$600 000 is being demanded for pain and suffering and general damages for contumelia.

City of Harare and Hon. Mhona have both been given 14 days to compensate Hahlani, failing which he will, through his lawyer, Idirashe Chikomba of Zimbabwe Lawyers for Human Rights (ZLHR), institute legal proceedings.

In a notice of intention to sue served on City of Harare and Hon. Mhona, Chikomba said Hahlani's vehicle plunged into a ditch and failed to drive out as a result of the unmarked drain.

The motorist was eventually assisted by two University of Zimbabwe students, who helped him to climb out of the ditch through the back window of his vehicle.

"City of Harare and Ministry of Transport and Infrastructure Development breached their duty of care by wrongfully and negligently creating a dangerous situation by leaving the trench exposed and unreasonably failed to take reasonable precautions to protect him and other members of the public from harm which could have easily been foreseen and guarded against," reads part of the notice of intention to sue. Hahlani charged that City of Harare and Hon. Mhona have a statutory duty to protect members of the public from hazards by covering trenches and erecting warning signs, lights, flags and barricade tapes to notify motorists of any hazard. Hahlani sustained injuries to his head and mouth from the impact and had to be treated at a medical facility in the capital city.

Recently, a Harare Magistrate punished Hon. Mhona by ordering him to pay more than ZW$500 000 in damages to Shepherd Chishiri, a Chitungwiza resident, as compensation for negligence after he sustained injuries when he fell into an uncovered roadside trench at Mbudzi roundabout in Harare.

The Magistrate granted the order after the 39 year-old Chishiri was assisted by Tinashe Chinopfukutwa of ZLHR to sue Hon. Mhona and City of Harare for damages arising from negligence by the two on the basis that the local authority and the Minister of Transport and Infrastructure Development breached their duty of care by leaving the roadside trench unmarked and uncovered.

In court, Chishiri said he broke his right leg and had to undergo an operation in hospital at his own expense after he fell into an uncovered roadside trench at Mbudzi roundabout along Simon Mazorodze road in Harare in the evening after he had disembarked from a commuter omnibus.

Earlier on, City of Harare was also ordered by a Harare Magistrate to pay more than US$3 000 to Phillip Mutare, a motorist and his wife Mercy Mutare, as compensation for damage to their vehicle which was battered after it fell into an unmarked ditch which was left uncovered by the local authority's employees.

Beer lands Bindura man in trouble



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

BINDURA-A local man here has been hauled before the courts for allegedly undermining the authority of President Emmerson Mnangagwa at a local beer hall, as Zimbabwean authorities intensify onslaughts on dissent.

Tinotenda Majuru, a 24 year-old man is on trial at Bindura Magistrates Court answering to charges of 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 some derogatory words in criticising President Mnangagwa and his ruling ZANU PF party during a squabble with Samson Wazara while drinking beer. Prosecutors alleged that Wazara, who is the complainant in the matter, was enjoying a cold pint of beer when Majuru surprisingly snatched a beer from him.

They charged that Wazara allegedly ignored Majuru's provocation and then proceeded to buy another pint of beer to quench his thirsty. As Wazara was enjoying his second pint of beer, Majuru reportedly pounced again by snatching his ZANU PF party-branded base-ball cap from his head.

It is alleged that Majuru then proceeded to utter some derogatory words in Shona criticising Wazara, President Mnangagwa and the ruling ZANU PF party.

The State charges that Majuru, who is represented by Ernest Jena of Zimbabwe Lawyers for Human Rights, acted unlawfully.

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State House trouble for mentally incapacitated former soldier



President Emmerson Mnangagwa

HARARE-A former member of the Zimbabwe National Army (ZNA) is appealing against imprisonment after he was convicted for allegedly trespassing into President Emmerson Mnangagwa's official residence.

The former soldier, Joseph Muhoni, was sentenced to serve three months in jail after he was convicted for criminal trespass as defined in Section 132 of the Criminal Law (Codification and Reform) Act.

During trial, prosecutors claimed that Muhoni went to State House in the company of another ZNA member stationed at the President's official residence and demanded to see President Mnangagwa.

Prosecutors argued that Muhoni had no right to do so as he knew that there was a real risk or possibility that such entry is forbidden.

In court, Muhoni's lawyer Freddy Masarirevhu of Zimbabwe Lawyers for Human Rights, argued that he was mentally incapacitated and that he had been discharged from ZNA on medical grounds and was a patient at Parirenyatwa Group of Hospitals prior to the commission of the alleged offence.

Masarirevhu told *The Legal Monitor* that he will appeal against both conviction and sentence of Muhoni.



Appealing...Freddy Masarirevhu of ZLHR

ZLHR Statement on World Water Day

ON this World Water Day, Zimbabwe Lawyers for Human Rights (ZLHR) urges all stakeholders to reflect on responsible and sustainable use of water in order to preserve ground water.

ZLHR also urges the Zimbabwean authorities to implement concrete policies that are aimed at increasing access to clean, safe and potable water throughout Zimbabwe.

World Water Day is commemorated annually on 22 March to highlight the importance of water to our communities, the environment and the global economy. Observance of this 'International Day' also encourages members of the public to utilise water in a sustainable way.

The theme for World Water Day in 2022 is "Groundwater – Making the invisible visible." The theme is a call upon the global community to conserve precious groundwater. The theme also highlights the need for everyone to commit to the sustainable consumption of groundwater. Groundwater is a critical resource that is necessary for survival. Experts in water governance estimate that over half of all drinking water is derived from groundwater. It is also estimated that over 2 billion people around the world derive all of their daily drinking water from groundwater source.

Groundwater is also key to the effective operation of industries such as agriculture, manufacturing and the service industry. Groundwater is extensively used in the irrigation and industrial processes. It is also key to the proper functioning of sanitation systems. It also supports biodiversity and ecological balance. Importantly, groundwater plays an indispensable role in the mitigation of the adverse effects of climate change, which include drought and natural disasters.

In some instances, Zimbabweans have to travel long distances in order to access water that is clean and safe. The demand for potable water in the country continues to rise each year as the population continues to grow. It is therefore imperative for authorities to formulate effective strategies that are aimed at increasing access to clean, safe and potable water throughout the country.

The government has a duty to ensure that everyone has access to safe water. In terms of Section 77 (a) of the Constitution, everyone has the right to safe, clean and potable water. Importantly, Section 77 of the Constitution obliges the State to adopt reasonable legislative and other related measures that are designed to progressively realise the right to clean, safe and potable water.

On this World Water Day, ZLHR calls upon:

- Members of the public to reflect upon the importance of water to society and the environment;
- The public to use water responsibly and sustainably;
- The authorities to fulfil their constitutional obligation to take legislative steps that are designed to progressively realise the right to clean, safe and potable water;
- The authorities to take other concrete steps that are aimed at increasing access to clean, safe and potable water throughout Zimbabwe.
- The Zimbabwean authorities to coordinate their efforts to conserve and manage water with other nations, in order to effectively preserve the earth's valuable water resources.

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Army shooting victim fights for justice

HARARE-An aggrieved trade unionist has petitioned the High Court seeking an order compelling government to make additional payment to him as compensation for damages caused to his eyes when soldiers fired into his offices during the fatal 1 August 2018 anti-government protests.

Defence and War Veterans Affairs Minister Oppah Muchinguri, Home Affairs and Cultural Heritage Minister Hon. Kazembe Kazembe and Zimbabwe Republic Police Commissioner-General Godwin Matanga were, in 2020, ordered by the High Court to pay compensation amounting to ZWL295 000 to Mutimutema, who sued them for compensation after glass particles landed in his eyes as armed soldiers used live ammunition to disperse protesting citizens.

However, government has over the years reneged on compensating Mutimutema and has instead appealed against the terms of the High Court order.

This prompted Mutimutema's lawyer Obey Shava of Zimbabwe Lawyers for Human Rights to file an application at the High Court seeking to amend his summons as the compensation award of ZWL295 000 has now lost value after it was eroded by inflation.

The High Court had initially ordered Muchinguri, Hon. Kazembe and Matanga to pay ZWL295 000 in damages for pain and suffering, medical and other general expenses to Mutimutema.

A Commission of Inquiry chaired by former South African President Kgalema Motlanthe and appointed by President Emmerson Mnangagwa to probe the post July 2018-election violence that left at least six people dead after they were shot by soldiers, recommended that government should compensate all the victims of the shootings and prosecute all perpetrators.

But four years on, no known victims or families have been compensated and there has been no prosecution of the perpetrators.



Former ZCTU legal advisor Zakeyo Mutimutema was hospitalised in August 2018 after sustaining injuries when soldiers fired some bullets into a building housing his offices in Harare.

Altercation with ZANU PF councillor lands woman in trouble

SHURUGWI-A 48 year-old woman is on trial after she was arrested and charged with undermining the authority of or insulting President Emmerson Mnangagwa following an altercation with a ZANU PF councillor for Tongogara Rural District Council.

Maria Mapfumo recently appeared at Shurugwi Magistrates Court after she was arrested and charged 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 argument 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 is represented by Hillary Garikayi of Zimbabwe Lawyers for Human Rights, was also charged with criminal insult as defined in Section 95 of the Criminal Law (Codification and Reform).



During Robert Mugabe's tenure as Zimbabwe's leader, more than 200 people were arrested and prosecuted for allegedly insulting or undermining his authority

Know your rights

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.