

The LEGAL MONITOR

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A newsletter published by Zimbabwe Lawyers for Human Rights for members & human rights defenders



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COST-FREE

All eyes on *facebook* trial

BULAWAYO-The trial date for the first person to be arrested in Zimbabwe in connection with a *facebook* posting has been set for and will resume in two weeks time.

Vikas Mavhudzi of Bulawayo made history when he was nabbed by police on 24 February for allegedly posting a *facebook* comment on Prime Minister Morgan Tsvangirai's wall.

Magistrate Gideon Ruwetsa is expected to preside over the matter, while Jeremiah Mutsindikwa will prosecute for the State.

Mavhudzi's lawyers Lizwe Jamela and Nosimilo Chanayiwa of Zimbabwe Lawyers for Human Rights say the State case is weak.

The 39-year-old is being charged with subversion

after allegedly suggesting that Prime Minister Tsvangirai should emulate events in Egypt that saw long-time dictator Hosni Mubarak fall to a popular street revolt.

"I'm overwhelmed, don't know what to say Mr PM. What happened in Egypt is sending shockwaves to all dictators around the world. No weapon but unity of purpose. Worth emulating, hey," Mavhudzi is alleged to have posted on Tsvangirai's *facebook* page.

Prosecutors say Mavhudzi suggested to Prime Minister Tsvangirai "the taking over or attempt to take over the government by unconstitutional means or usurping the functions of the government".

Mavhudzi languished in remand prison for weeks after his arrest following the prosecutors' argument

that the threat of an Egyptian style revolution was real. The Magistrate Court denied Mavhudzi bail.

He was only freed after Jamela and Chanayiwa successfully appealed against the Magistrate Court's ruling at the High Court.

Social networking sites such as *facebook* and Twitter became effective tools to mobilise against dictators who keep a strong hold on the media.

In Egypt and Tunisia, where dictators muzzled the media young activists rose triumphantly against their regimes using these powerful new media tools.

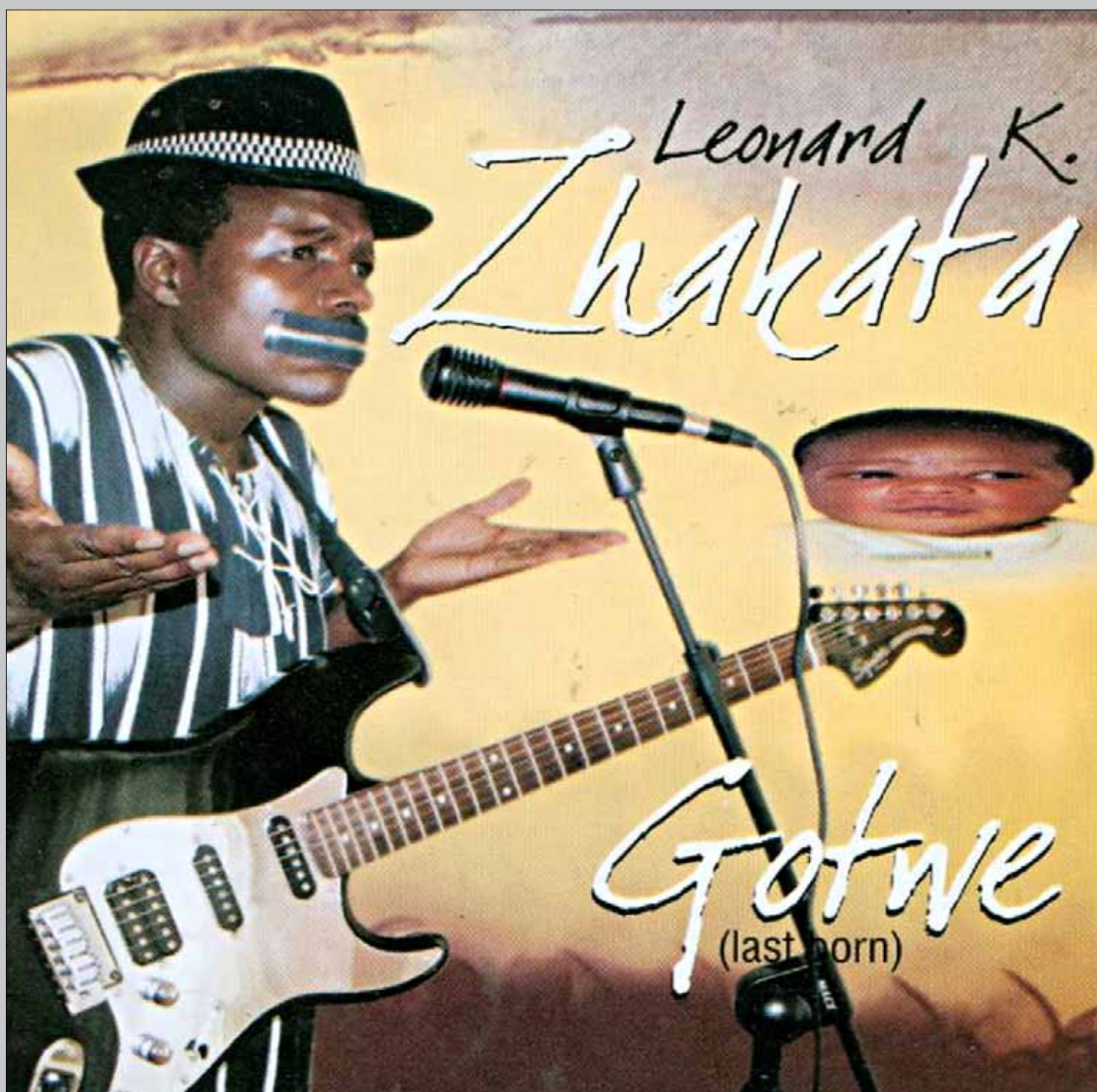
Locally, the new media tools have become a hazard for Mavhudzi, as the State widens its control to cover social networking sites. While social

networking sites have become popular in urban areas, the majority of Zimbabweans who stay in rural and farming communities have no access to such new media.

But that has not stopped the Zimbabwean government from being on the edge since the revolts in North Africa.

Mavhudzi was arrested just as police swooped on 45 people, including International Socialist Organisation local representative Munyaradzi Gwisai for watching television footage of Egyptian and Tunisian revolts.

Gwisai and five others claimed in court that they were tortured while in police custody. They were charged with treason but the State has since indicated that it will prefer lesser charges.



Gagged... Musician Leonard Zhakata artistically portrays the censorship that is rampant in Zimbabwe on this sleeve of his new album "Gotwe" launched recently

Cold winter for journalists

BULAWAYO- With temperatures hitting ice-low levels, this year's winter has proved even colder for journalists in Zimbabwe.

Last Friday, four freelance journalists in Bulawayo spent the day detained at Ntabazinduna police station after being arrested while covering the eviction of a policeman.

The policeman's alleged crime was to use Prime Minister Morgan Tsvangirai's Movement for Democratic Change (MDC)'s party song as his ringing tone.

Lizwe Jamela, of Zimbabwe Lawyers for Human Rights (ZLHR), drove to Ntabazinduna police station after journalists Ngobani Ndlovu, Pindai Dube, Oscar Nkala and Pamenus Tusso had sent him text messages that they were being detained.

But he retired for the day before locating the reporters.

"I have been to the police station (Ntabazinduna) and Mbembesi since the time they sent the May-Day message, but I could not locate them," said Jamela.

"All their phones are off and I have no clue where they could be. I am suspecting that they were picked by other State agents since the matter they were covering is sensitive or they have been ordered to switch off their phones," said Jamela before the reporters' release.

Police only released the journalists without charge late Friday.

The incident comes weeks after the arrest of *The Standard* editor Nevanji Madanhire, reporter Patience Nyangove and executive Loud Ramakgapola in connection with a story on the arrest of Hon. Jameson Timba, a minister in Prime Minister Tsvangirai's office.

Prisons dark walls

HARARE-Zimbabwe's prisoners are living in the dark, literally.

A special parliamentary committee that investigated prison conditions revealed that cells were dark most of the time because of lack of electricity.

But that's not all.

They have no entertainment and are in the dark about what is happening in the country because they are denied information, the committee said in a report tabled in Parliament last week.

Here and there they get newspapers, but only copies that prison officials want them to read, the report noted, showing how government censorship has invaded prisons.

"The committee noted with concern that most of the prisons, if not all do



not have information dissemination equipment such as radios and televisions. Inmates were forced to rely on censored newspapers for information. Information

equipment should also provide entertainment," read the report.

The report noted that grave conditions remained at most prisons, where a

shortage of food and basic utilities is leading to deaths.

At Chikurubi Maximum Prison, 839 prisoners died between 2008 and 2009. The prison has had no tap water since 2006 and food is scarce. Mutare prison is no longer fit for human habitation and has the worst conditions yet it still holds prisoners, according to the committee's findings, tabled in the Senate.

"One of the major challenges was that some of the prisons were built during the colonial era when prisons were meant to be harsh and punitive. The committee was informed that Mutare Prison was built in 1910 and infrastructure was dilapidated," read the report. Male prisoners walk half naked in full view of female wardens because of a serious lack of clothing, according to the report.

HIV positive inmates were worst affected because they did not get regular medication and did not receive a special diet.

Children jailed with their mothers were surviving on *sadza* with beans and or vegetables that would have been given to their mothers. Prison officials did not cater for the children in their rations, the report noted. Supreme Court Chief Justice Godfrey Chidyausiku in July 2005 delivered a ruling that Matapi and Highlands police cells were "degrading and inhumane and unfit for holding criminal suspects", ordering police to upgrade the facilities, which have only deteriorated further since. But police continue to detain people in these condemned holding cells in clear defiance of the 2005 Supreme Court ruling.



ZLHR MOURNS CHISVO

Condolence Message

The Board, Members and Staff of Zimbabwe Lawyers for Human Rights (ZLHR) express their deep sorrow at the untimely death of Adam Chisvo, who died on Wednesday 13 July 2011 after succumbing to diabetes.

We have lost an artist, a brother and a friend who radiated warmth and camaraderie to those who knew and associated with him as human rights defenders.

ZLHR had the privilege of working very closely with the talented Adam particularly during musical concerts that were organised to commemorate crucial dates on the international and regional human rights calendar.

In December 2010, the veteran percussionist, composer, singer and songwriter, who featured for Victor Kunonga's Peace band, delivered a majestic performance at the Meikles Hotel during ZLHR's coveted annual human rights lecture and dinner held to mark International Human Rights Day festivities.

During the show, Adam played the drums and mbira with dexterity and exuded the aura of legendary artistry that came to characterise his career.

The loss of Adam during his prime time is beyond words and the gap left is immense, particularly due to the dedication and fearlessness he showed by

participating in human rights promotion activities at a time when many artists-young and old-still shy away from the important role they can play in this regard as opinion leaders in society.

Adam will be sadly missed for his courage, humour and commitment as well as his professionalism. It is not only ZLHR that will mourn him but his loss is Zimbabwe's loss.

ZLHR sadly but yet fondly bids him farewell. We mourn his death but yet celebrate his life as "a humble and tireless human rights defender".

It is a harsh reality that Adam is no more amongst us but his legacy in terms of his brave work will inspire us to continue our struggle for the establishment of a just and equitable world in which the rights of all-particularly artists-are promoted and respected. It is hoped that other artists will continue the fine tradition set by Adam in highlighting human rights issues through the important and popular medium of music and the arts.

ZLHR extends its deepest sympathies to the Chisvo family, Victor Kunonga and Peace band and the music and entertainment community as they try to come to terms with so sudden and tragic a loss.

May his dear soul deservedly rest in eternal peace.

Rest in Peace Mhofu



Police latest cell phone grabbers

HARARE-The spooks are in town. And they are in the form of the Zimbabwe Republic Police (ZRP).

Known for using torture, ransom arrests and other crude methods to smoke out genuine human rights defenders, police have moved a gear up.

They have become the latest cell phone grabbers in town, all in a bid to snoop into private communications and records of lawyers, journalists and President Robert Mugabe's political rivals.

The courts are chocking, not with common criminals but human rights defenders targeted for going about their professional work.

Finance Minister Tendai Biti, journalist Patience Nyangove and human rights lawyer David Hofisi can bear testimony. Inside four weeks, they all have had their private cell phone records targeted by the police.

It's a trend that lawyers are already fighting. But so determined are the police that one Chief Superintendent Majuta of Harare Central Police Station threatened Hofisi of Zimbabwe Lawyers for Human Rights (ZLHR) with arrest if he didn't surrender his cell phone for the purposes of "downloading information".

Lawyers say the practice cannot be condoned.

ZLHR has described it as "the greatest assault on the rule of law and the legal practice".

First it was Nyangove, a journalist with the *Standard* arrested in connection with a story on the arrest of Prime Minister Morgan Tsvangirai's senior aide Jameson Timba.

"There is information on the phone which we want to verify. She talked to an accused whom we have not arrested yet," police officer John Peter Mudyirwa told Harare Magistrate Shane Kubonera during Nyangove's bail hearing late last month.

Nyangove's lawyers could not understand what information police wanted given that they had the phone when Nyangove was in detention.

When police picked her at her workplace, Nyangove took her phone with her hoping to remain in constant communication with relatives, workmates and friends.

That was not to be.

It seized to be hers upon arrival at the police station.

"The police asked her to tell them everyone she hangs out with, socialise with and to write her profile. That took a sinister twist when they went through her contacts in the phonebook and called them asking how they were related to her," said her lawyer Deepak Mehta.

Granted bail, she left the court without her prized cell phone. Police had grabbed it.

Hofisi had hoped to put that trend to a stop when he was granted an order barring police from accessing his cell phone records by Justice Francis Bere.

Hofisi had to seek the protection of the courts after Chief Superintendent Majuta threatened the lawyer with arrest if he didn't surrender the phone within a set time frame.

Hofisi argued that since the mobile phone contained his personal and professional information, releasing it for an indefinite period and for unspecified and unjustifiable reasons would prejudice him.

"It would be the greatest assault on the rule of law and legal practice should police be allowed now, or in the future, to impact in such a criminal manner on the operations of an independent legal profession executing its responsibilities according to the law," said ZLHR after the delivery of Justice Bere's ruling. "ZLHR condemns the continued attacks on



Patience Nyangove



David Hofisi

lawyers-both through arbitrary arrest and detention, levelling of spurious charges of obstruction of justice, and now through new means of repression such as targeting of lawyers' communications with clients."

Before the ink on ZLHR's statement had dried up, it was Hon. Biti's turn to fight for his privacy related to his mobile phones.

Hon. Biti filed an urgent High Court chamber application after police sought to force mobile telecommunications giant Econet to release the minister's cell phone records.

Justice Chinembiri Bhunu reserved judgment last week.



Tendai Biti

"I have committed no criminal offence. I have not been investigated of any offence and the basis upon which the warrant may well have been obtained was clearly false," Hon. Biti said in his affidavit challenging a warrant of seizure that had earlier been granted by Magistrate Mishrod Guvamombe.

"I submit that the release of the information requested is unlawful and unconstitutional as it violates my right to privacy and protection of the law," argued Hon. Biti.

Chris Mutangadura, a chief law officer in the Attorney General's Office told journalists that the police actions were justified.

"Police cannot be stopped from investigating anyone whether there is a right to privacy or not,"

said Mutangadura. While the jury is still out on Minister Biti's case, those who read the story as reported by the state-run *Herald online newspaper* sent their verdict. We reproduce some of the comments below:

Tendai Mutore: "These must be the last kicks of a dying horse. Can't believe that every week there has to be a minister or a high ranking opposition official arrested for flimsy charges. Soldier on comrades, the darkest hour comes before dawn. I just hope a day will come when every individual will give an account of their role in all these things happening in Zimbabwe."

One Chibwe had this to say: "This is pathetic and some more State funds and time will be wasted pursuing useless issues in the courts."

Lawyers protest guerrilla tactics

HARARE-Lawyers representing 24 people arrested on charges of murdering a policeman in May say the State is employing “guerrilla tactics” as it turned out that female suspects in prison have been denied access to medication.

Jeremiah Bamu of Zimbabwe Lawyers for Human Rights (ZLHR) told Magistrate Shane Kubonera on Friday that he was worried about the conditions of female suspects especially human rights campaigner Cynthia Manjoro and Yvonne Musarurwa.

The two have not yet been attended to by a medical doctor since their arrest and torture in police detention in May.

“As of today (Friday), the accused females are yet to access medical attention within the Zimbabwe Prison Services (ZPS). At our last visit, Yvonne Musarurwa had a fracture on her left hand and blood clots on the right thigh that had not been attended to,” said Bamu.

“Cynthia Fungayi Manjoro has growth on her left knee which has not been attended to. It had been recommended that she goes for biopsy but that has not been done,” the lawyer said.

According to the *New Oxford American Dictionary*, biopsy is “an examination of tissue

removed from a living body to discover the presence, cause, or extent of a disease”.

Musarurwa and Manjoro are eight of the suspects who were denied bail by the High Court earlier this month.

When Manjoro appeared in court for initial remand, she had swollen knees and was visibly in pain.

One of her lawyers Charles Kwaramba, a ZLHR member, said police had assaulted Manjoro on the knees so that she could reveal the whereabouts of her boyfriend whom they wanted to charge in connection with the policeman’s death.

On the same day, Musarurwa struggled to walk into the courtroom. From the public gallery one could clearly see that Musarurwa had swollen hands and face.

Magistrate Kubonera ordered the State to make an “impartial investigation” as to what caused the suspects’ injuries.

The court is expected to make a ruling on a disputed report on the torture claims written by police and submitted in court by prosecutor Edmore Nyazamba.

Magistrate Kubonera will make a ruling on the report Nyazamba presented in court on 29 July when the 24 appear in court for further remand.

The arrest of the 24 Glen View residents caused uproar after some of the suspects came to court with deep cuts, bruised bodies and swollen faces.

They alleged that they had been tortured in police custody.

On Friday, Glen View ward 32 councillor Tungamirai Madzokere, who is one of the accused persons, was still in bandages and his eyes had blood clots. He was visibly in pain.

ZLHR has since given a notice to the State that it will apply to the Supreme Court for a stay of prosecution arguing that the rights of the accused were violated while in police detention.

Prosecutor Svodai Kadivirire, who appeared for Nyazamba, said the State was prepared to meet defence lawyers this Tuesday to make arrangements for the female suspects to receive treatment.

But Bamu was not having any of that.

“Section 39 of the Prisons Service Act obliges a medical officer of the ZPS to visit and examine people charged with a capital offence regularly. This has never been done in the case of the accused,” said Bamu. He said he wanted the detained suspects to be granted access to a private doctor of their choice.

At the initial remand Nyazamba had said the suspects could only be allowed to visit a doctor of their choice if the ZPS was failing to provide medical care.

On Friday, a visibly fired up Bamu refused to have his clients further remanded forcing Kadivirire to pledge that the suspects would be furnished with a trial date.

“You have to justify why further remand is requested,” said the soft-spoken but tough human rights lawyer. He told the court that at the previous remand hearing, Nyazamba had duped defence lawyers.

“As a result, the accused were in court without defence lawyers. It appears the State has developed guerrilla tactics in these purely legal proceedings. The court must sternly censure this conduct by the Attorney General’s Office,” said Bamu.

Gwisai, Mangoma trials start

HARARE-The trial of Munyaradzi Gwisai and five other activists facing charges of plotting to topple President Robert Mugabe using “Egyptian style” revolts is expected to start today.

The trial of Energy and Power Development Minister Elton Mangoma accused of criminal abuse of duty as a public officer is expected to commence on the same day.

Gwisai and 45 activists were arrested in February and charged with contravening Section 20 or 22 (2) (a) (i) of the Criminal Law (Codification and Reform) Act (Chapter 9:23).

Harare Magistrate Munamato Mutevedzi subsequently freed the other activists leaving Gwisai and five others in the dock.

The six spent weeks in remand prison before the High Court granted them \$2 000 bail.

The arrest of the activists drew international condemnation of government. The denunciation worsened after the activists claimed that they had been tortured while in police cells.

The activists have denied allegations of treason being levelled against them. They say they were arrested while attending a meeting at the International Socialist Organisation (ISO) offices in Harare. Gwisai heads the local ISO chapter.

The State has since indicated that Gwisai and his co-accused will face a lesser charge to treason.

Meanwhile, State prosecutors allege that Hon. Mangoma “fixed” tenders for electricity metres for State power utility, Zimbabwe Electricity Supply Authority



Lawyers converse at Harare Remand Prison waiting for the release of Gwisai and others

(ZESA), a charge which he denies.

He was arrested in March at a time when the police and prosecutors intensified a campaign against Movement for Democratic Change supporters and officials.

Hon. Mangoma is the MDC deputy treasurer-general. The Energy and Power Development Minister was cleared of another charge of criminal abuse of office

by High Court Justice Chinembiri Bhunu last month.

On the latest charge, prosecutors claim that Hon. Mangoma unlawfully and intentionally abused his public office for the purpose of showing disfavour to some local and South African companies that had participated in a tender for the supply and delivery of prepayment revenue management system meters.

The State alleges that Hon. Mangoma unlawfully instructed former ZESA Holdings chief executive officer Benjamin Rafemoyo, the power utility’s board chairperson Noah Madziva and the State Procurement Board to stop processing the tender for the supply of prepaid electricity meters after adjudication thereby effectively cancelling a tender awaiting announcement of the winner. Hon. Mangoma’s lawyer Beatrice

Mtsetwa lashed out at the police and prosecutors for preferring to prosecute Mangoma in instalments.

Mtsetwa said the police and the prosecutors’ actions were malicious as they could have laid the charges against Hon. Mangoma when he was first arrested early in March for allegedly contravening procurement procedures in the acquisition of fuel supplies.