



07 July 2021

United Nations Special Rapporteur on the Situation of Human Rights Defenders, Ms. Lawlor
United Nations Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion
And Expression, Ms. Khan
United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association,
Mr. Voulé
African Commission on Human and People's Rights Special Rapporteur on Freedom of Expression and
Access to Information, Ms. King
African Commission on Human and People's Rights Special Rapporteur on Human Rights Defenders and
Focal Point on Reprisals in Africa, Mr. Lumbu
African Commission on Human and People's Rights Special Rapporteur on Prisons, Conditions of
Detention and Policing in Africa, Ms. Manuela

Sent via email to: au-banjul@africa-union.org; africancommission@yahoo.com;
freeassembly@ohchr.org; defenders@ohchr.org; freedex@ohchr.org

Re: Ongoing Targeting of Human Rights Defenders in Zimbabwe

Dear Madams and Sir,

We write to call your attention to the disturbing trend¹ in Zimbabwe of weaponizing the criminal justice system to stifle dissent and suppress the activities of human rights defenders (HRDs) and journalists. We are particularly concerned that the arrests and charges against individuals are politically motivated and violate their human rights, including their personal liberty and freedom of expression. We were encouraged by [Commissioner King's January 21 statement concerning Mr. Hopewell Chin'ono](#), and now strongly urge each of your mandates to follow up on her message in light of the significant escalation in harassment since then.

Select Arrests Emblematic of This Trend

The following high-profile arrests in just the first half of 2021 exemplify the Zimbabwe government's persecution of journalists and HRDs, including lawyers and political activists, in violation of international law.

- Between January 8-10, **Hopewell Chin'ono**², a prominent journalist and a vocal anti-corruption activist, **Job Sikhala**, a lawyer, Deputy Chairperson of Movement for Democratic Change (MDC)-Alliance opposition political party, and part of the legal team representing Mr. Chin'ono, and **Fadzayi Mahere**, a lawyer and spokesperson for the MDC-Alliance opposition party, were each arrested and charged in relation to comments allegedly posted on their social media pages. Mr.

¹ In February, the European Union expressed its concern at a "proliferation of arrests and prosecutions of journalists, opposition actors and individuals expressing dissenting views" in Zimbabwe. Council of the European Union, "Zimbabwe: Declaration by the High Representative on behalf of the European Union," (19 February 2021), available at <https://www.consilium.europa.eu/en/press/press-releases/2021/02/19/zimbabwe-declaration-by-the-high-representative-on-behalf-of-the-european-union/>.

² Committee to Protect Journalists, "Zimbabwe re-arrests journalist Hopewell Chin'ono" (08 January 2021), available at <https://cpj.org/2021/01/zimbabwe-re-arrests-journalist-hopewell-chinono/>.

Chin'ono and Mr. Sikhala were denied bail³ and remained in pre-trial detention until the bail decisions were overturned by higher courts,⁴ and Ms. Mahere was only granted bail after 7 days in detention.⁵ The latter two cases remain pending, and while Mr. Chin'ono's case was quashed after a judge recognized the charges were unconstitutional, national authorities are attempting to overturn that decision. His passport had been held by the State even after he was released on bail,⁶ rendering him unable to carry out his work or receive overseas medical treatment.

- On February 26, Zimbabwe police [arrested](#) **Kumbirai Mafunda**, a free-lance journalist and the communications officer for Zimbabwe Lawyers for Human Rights. He was at Rotten Row Magistrates Court covering ZLHR cases when he was arrested, allegedly for practicing journalism without accreditation. Mafunda was later [freed](#) without charge but only after legal intervention.
- On March 3, four students **Pritchard Paradzayi, Glen Magaya, Falon Dunga and Allan Chipoyi** were [arrested](#) and charged with disorderly conduct in a public place. They were arrested while protesting against the arrest of fellow student leaders, including **Takudzwa Ngadziore, Makomborero Haruzivishe** and **Tapiwanashe Chiriga**. After spending two nights in prison, the four students were released on bail.
- On March 5, MDC-Alliance activists **Joana Mamombe** and **Cecilia Chimhiri** were [arrested](#)—for the third time in less than a year—after they appeared for their routine reporting at Harare Central Police. The duo was arrested for addressing a press conference in solidarity with **Makomborero Haruzivishe** and calling for the dismissal of Zimbabwe Police Commissioner-General Godwin Matanga. Their bail hearings were [delayed](#) multiple times ending with the [denial](#) of bail on March 25. After two months in jail, they were finally granted bail on May 5, but their charges remain.⁷
- On March 6, MDC-Alliance National Chair, **Thabitha Khumalo**, was [attacked](#) in her home by suspected state operatives.
- On March 16, a student journalist, **Molleen Chisveto**, was [arrested](#) by Zimbabwean Police for allegedly taking a video of police involved in an altercation with a vendor. She has since been released after showing police a letter confirming she was a student.
- On March 24, two pro-democracy campaigners **Leroy Tevera** and **Tatenda Dennius** were [arrested](#) for allegedly spray painting graffiti on buildings demanding the release of Makomborero Haruzivishe. After the police searched their homes and found no evidence of the crime alleged, the two campaigners were freed.
- On May 27, Zimbabwean journalist **Jeffrey Moyo** was arrested and charged with violating the Immigration Act.⁸ Moyo is a freelance journalist for several foreign outlets including the New York Times. He was accused of misrepresenting to immigration officials about the accreditation of two fellow journalists from the New York Times. These two journalists had been earlier deported from Zimbabwe, on May 8. Moyo was eventually released on bail on June 15 and his case is ongoing.
- On June 22, woman human rights defender and director of Chitungwiza Residents Trust (CHITREST), **Alice Kuvheya**, was arrested and charged with inciting criminal activity and gathering with intent to incite public violence. Her arrest followed public statements made by a senior government official threatening to arrest CHITREST's leaders, after the organisation had obtained a

³ Committee to Protect Journalists, "Journalist Hopewell Chin'ono denied bail, remains in detention in Zimbabwe" (14 January 2021), *available at* <https://cpj.org/2021/01/journalist-hopewell-chinono-denied-bail-remains-in-detention-in-zimbabwe/>.

⁴ See Mangwaya, Miriam, "Chin'ono granted bail as Sikhala remains in custody," NewsDay (28 January 2021), *available at* <https://www.newsday.co.zw/2021/01/chinono-granted-bail-as-sikhala-remains-in-custody/>.

⁵ Whiz, Lindie, "MDC spokesperson Fadzayi Mahere freed on bail after 7 days in prison," Zim Live (18 January 2021), *available at* <https://www.zimlive.com/2021/01/18/mdc-spokesperson-fadzayi-mahere-freed-on-bail-after-7-days-in-prison/>.

⁶ Hopewell Chin'ono, Twitter Account (25 February 2021), *available at* <https://twitter.com/daddyhope/status/1364897055731290113?s=12>.

⁷ Zim Sentinel, "ZLHR: High Court ends two months detention of Mamombe and Chimhiri" (07 May 2021), *available at* <http://www.zimsentinel.com/zlhr-high-court-ends-two-months-detention-of-mamombe-and-chimhiri>.

⁸ Committee to Protect Journalists, Zimbabwe detains NY Times freelancer Jeffrey Moyo over alleged accreditation misrepresentation, (28 May 2021), *available at* <https://cpj.org/2021/05/zimbabwe-detains-ny-times-freelancer-jeffrey-moyo-over-alleged-accreditation-misrepresentation>.

court order preventing the government from further demolishing informal trade structures and homes in the community. She was released two days later but her criminal case continues.

Notably, **Mr. Makomborero Haruzivishe**, an outspoken activist, pro-democracy campaigner, and leader in the MDC-Alliance opposition party, was recently convicted and sentenced to a 36 month prison sentence (with 16 months suspended). Mr. Haruzivishe had first been arrested in February 2020, and charged with inciting public violence and resisting arrest for allegedly inciting vendors to commit public violence by [whistling](#) when ZRP officers were working to detain informal traders in Harare’s central business district and allegedly throwing stones at police officers and their vehicles. At that time, Mr. Haruzivishe spent two nights in jail and was released on bail.⁹ Throughout 2020, Mr. Haruzivishe continued his pro-democracy activism and was consequently accused of additional crimes such as convening illegal gatherings. In February 2021, Mr. Haruzivishe was again arrested and detained for his participation in an October 2020 protest. He was then accused of kidnapping at Impala Car Rental where protestors locked the doors to the building while workers were inside. Mr. Haruzivishe was arrested at gunpoint and it is believed the police intended to torture him.¹⁰ Following multiple delays in a bail determination,¹¹ in March 2021 Mr. Haruzivishe was convicted of inciting public violence and resisting arrest and sentenced to 20 months effective imprisonment - and he still has other pending charges.¹²

Violation of the Right to Freedom of Expression

The Zimbabwe government targeted these individuals because they freely express their political opinions and speak publicly against the government and in defense of human rights.

Their activities are expressly protected in both international and Zimbabwean law. Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR)—to which Zimbabwe has been a State Party since 1976—provides that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Article 9 of the African Charter on Human and Peoples’ Rights—which Zimbabwe ratified in 1986—provides that “every individual shall have the right to express and disseminate his opinions within the law.” The right to free expression is also protected under Article 19 of the Universal Declaration of Human Rights (UDHR). Further, the Zimbabwe Constitution similarly recognizes and guarantees the right to freedom of expression and freedom of the media in Article 61.¹³

The charges against these HRDs constitute a violation of the right to freedom of expression. Relevant to many of their cases, including those of Ms. Mamombe and Ms. Chimbiri, the protection “includes the right of individuals to criticize or openly and publicly evaluate their Government without fear of interference or punishment.”¹⁴ For Mr. Chin’ono, the penalization of a journalist “solely for being critical of the government” is never a necessary restriction of freedom of expression¹⁵ because in fact “no democracy is complete without

⁹ Zimbabwe Lawyers for Human Rights, “Court Ends Haruzivishe’s Detention Over Public Violence Charges,” (07 February 2020), *available at* <https://kubatana.net/2020/02/07/court-ends-haruzivishes-detention-over-public-violence-charges/>.

¹⁰ *Zim Eye*, Free Mako Protests in Harare, (26 February 2021), *available at* <https://www.zimeye.net/2021/02/26/free-mako-protest-in-harare/>.

¹¹ Whiz, Lindi, “3 arrest warrants delay Makomborero Haruzivishe bail appeal,” *Zim Live* (23 March 2021), *available at* <https://www.zimlive.com/2021/03/23/3-arrest-warrants-delay-makomborero-haruzivishe-bail-appeal/>.

¹² Whiz, Lindi, “Makomborero Haruzivishe faces up to 20 years in jail after double conviction,” *Zim Live* (01 April 2021), *available at* <https://www.zimlive.com/2021/04/01/makomborero-haruzivishe-faces-up-to-20-years-in-jail-after-double-conviction/>; Mazingaizo, Sharon, “Zimbabwe activist Makomborero Haruzivishe jailed for 14 months,” *Dispatch Live* (06 April 2021), *available at* <https://www.dispatchlive.co.za/africa/2021-04-06-zimbabwe-activist-makomborero-haruzivishe-jailed-for-14-months/>.

¹³ Constitution of Zimbabwe (2013), Art. 61, *available at* https://www.constituteproject.org/constitution/Zimbabwe_2013.pdf.

¹⁴ *Marques de Morais v. Angola*, Communication No. 1128/2002, UN Doc. CCPR/C/83/D/1128/2002 (2005) at para 6.7, *available at* <http://hrlibrary.umn.edu/undocs/1128-2002.html#19>.

¹⁵ Human Rights Committee, *General Comment No. 34 (Article 19: Freedom of opinion and expression)*, U.N. Doc. CCPR/C/GC/34 (2011), *available at* <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>, [hereinafter Gen. Comment No. 34] at para. 42.

press freedom.”¹⁶ Additionally, the arrest, imprisonment, and harassment of an individual for the opinions they hold, as is the case for Mr. Haruzivishe, Ms. Khumalo, and others, constitutes a violation of Article 19(1).¹⁷

Because the HRDs have been charged - and in Mr. Haruzivishe’s case, convicted - for freely expressing their opinions, their rights to freedom of expression have been violated.

Violation of the Right to Liberty

The actions the Zimbabwe government has taken against the aforementioned activists and journalists violate each of their individual rights to liberty as established in international, regional, and domestic law.

Article 9(1) of the ICCPR establishes that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law;” it is further provided for in Article 6 of the African Charter which recognizes that “[e]very individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.” Article 49 of the Zimbabwe Constitution protects the right to liberty as well, “which includes the right not to be detained without trial; and not to be deprived of [sic] liberty arbitrarily or without just cause.”¹⁸

A detention is arbitrary if, among other things, there is no legal basis justifying the deprivation of liberty,¹⁹ the individual has been arrested as a result of the exercise of their fundamental rights including the right to freedom of expression,²⁰ or the individual has been deprived of his or her liberty for reasons of discrimination based on political or other opinion.²¹ Arrests and detention of human rights defenders are subject to particular scrutiny when investigating their legality. As the UN Working Group on Arbitrary Detention has recognized, there is a need to “subject interventions against individuals who may qualify as human rights defenders to particularly intense review.”²² This “heightened standard of review” by international bodies is especially appropriate where there is a “pattern of harassment” by national authorities targeting such individuals,²³ as is the case in Zimbabwe.

As discussed above, the various deprivations of liberty suffered by the aforementioned individuals resulted from their exercise of the rights to freedom of expression or assembly - fundamental freedoms protected by international and Zimbabwean law. In Mr. Haruzivishe’s case, whistling is a form of expression. International standards dictate that freedom of expression covers “expression and receipt of communications of every form of idea and opinion capable of transmission to others,”²⁴ which would include non-verbal communication such as whistling. Additionally, the High Court of Zimbabwe has stated that peaceful resistance to law is a constitutional right.²⁵ Peaceful resistance, such as a boycott or warning others of impending police

¹⁶ “‘Informing is not a crime’ UN chief calls for better protection of journalists, press freedom,” United Nations News (25 February 2019), available at <https://news.un.org/en/story/2019/02/1033552>.

¹⁷ Gen. Comment No. 34, at para. 9.

¹⁸ Constitution of Zimbabwe (2013), Art. 49, available at https://www.constituteproject.org/constitution/Zimbabwe_2013.pdf.

¹⁹ Methods of the Working Group on Arbitrary Detention, A/HRC/30/69, (04 August 2015), at para. 8(a), available at <https://undocs.org/en/A/HRC/30/69>.

²⁰ Methods of the Working Group on Arbitrary Detention, A/HRC/30/69, (04 August 2015), at para. 8(b), available at <https://undocs.org/en/A/HRC/30/69>.

²¹ Methods of the Working Group on Arbitrary Detention, A/HRC/30/69, (04 August 2015), at para. 8(e), available at <https://undocs.org/en/A/HRC/30/69>.

²² *Nega v. Ethiopia*, UN Working Group on Arbitrary Detention, Opinion No. 62/2012, UN Doc. A/HRC/WGAD/2012/62, ¶ 39, (21 Nov. 2012); see also, *Sotoudeh v. Islamic Republic of Iran*, UN Working Group on Arbitrary Detention, Opinion No. 21/2011, UN Doc. A/HRC/WGAD/2011/21, ¶ 29, (27 Jan. 2011).

²³ *Bialiatski v. Belarus*, UN Working Group on Arbitrary Detention, Opinion No. 39/2012, ¶ 43, (23 Nov. 2012).

²⁴ Gen. Comment No. 34, at para. 11.

²⁵ *The State v. Evan Marawiwe*, High Court of Zimbabwe at p. 16, available at <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2017/12/S-v-Mawarire.pdf>. There, the High Court of Zimbabwe acquitted Zimbabwean political activist Evan Mawarire’s alternative charge of inciting public violence after finding that the defendant did not encourage violence by urging citizens to participate in boycotts

intervention, are protected expressions. A deprivation of liberty based on whistling that allegedly intended to convey a peaceful message contravenes both international and Zimbabwean freedom of expression standards, and is therefore arbitrary.

For some of the aforementioned individuals, the charges do not even provide a legal basis justifying the detentions because they are not legitimate under Zimbabwean constitutional law. For instance, charges were preferred against Mr. Chin'ono, Mr. Sikhala, and Ms. Mahere in terms of section 31(a)(iii) of the criminal Code, which was declared *unconstitutional* under the previous constitution by Zimbabwe's Constitutional Court in *Chimakure & 2 Ors V. The Attorney General*.²⁶ Because the law was previously declared unconstitutional and these activists have been arrested due to their lawful exercise of freedom of expression, their right to liberty and not to be arbitrarily arrested and detained was violated.

Looking Ahead

Beyond the foregoing cases, we additionally wish to bring your attention to new legislation which, if passed, would curtail speech criticizing the government of Zimbabwe when it occurs even outside Zimbabwe's own borders. The so-called "Patriotic Bill" aims to prohibit public messages on international platforms or to foreign governments which the Zimbabwe government deem harmful to its image, and if passed would be another vehicle to target dissidents, human rights defenders, and journalists. Intervention is needed to remind Zimbabwe of its obligations under international law.

In light of the foregoing violations and the worrying trend they represent of abuse of the criminal justice system to stifle dissent, we respectfully urge your mandates to publicly intervene and urge the government of Zimbabwe to respect and protect the rights to freedom of expression and liberty.

Sincerely,

Committee to Protect Journalists
Robert F. Kennedy Human Rights
Southern African Human Rights Defenders Network
Zimbabwe Lawyers for Human Rights

CC:

His Excellency Ambassador Ammon Mutembwa, Embassy of the Republic of Zimbabwe to the U.S.A.

and that videos promoting boycotts did not intend to incite the ensuing violence. Similar to that case, here, Mr. Haruzivishe did not intend to incite public violence.

²⁶ Constantine Munyaradzi Chimakure, Vincent Kahiya, Zimind Publishers (Pvt) Ltd v. The Attorney General of Zimbabwe, Constitutional Court Of Zimbabwe, available at: http://www.veritaszim.net/sites/veritas_d/files/CCZ%2006-14%20-%20CHIMAKURE%20%26%202%20ORS%20v%20THE%20ATTORNEY%20GENERAL.pdf; see also <https://www.southernafricalitigationcentre.org/2021/01/21/news-release-salc-statement-on-the-attack-on-freedom-of-expression-in-zimbabwe/>.