



Zimbabwe
HUMAN RIGHTS
NGO Forum

TRIAL BY PRE-TRIAL INCARCERATION

**Detention without Trial and
Delayed Trials in Zimbabwe
2020 - 2023**

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ARTUZ	Amalgamated Rural Teachers Union in Zimbabwe
CCC	Citizens Coalition for Change
CiZC	Crisis in Zimbabwe Coalition
CPEA	Criminal Procedure and Evidence Act
CSOs	Civic Society Organisations
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
ITUC	International Trade Union Confederation
MDC-Alliance	Movement for Democratic Change Alliance
POSA	Peace and Order Security Act
POTRAZ	Postal and Telecommunications Regulatory Authority of Zimbabwe
UDHR	Universal Declaration of Human Rights
UDHRD	United Nations Declaration on Human Rights Defenders
ZACC	Zimbabwe Anti-Corruption Commission
ZANU PF	Zimbabwe African National Union- Patriotic Front
ZMF	Zimbabwe Miners Federation
ZIFA	Zimbabwe Football Association
ZINASU	Zimbabwe National Students Union


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EXECUTIVE SUMMARY

This report seeks to provide insights into the emerging crisis of prolonged pretrial incarceration as a tool being deployed by Zimbabwe to punish and muzzle perceived voices of dissent.

The assignment of the criminal justice system as a tool to directly threaten, intimidate, and, perhaps most importantly, close off the constitutionally guaranteed rights of arrested and detained persons, freedom of expression, protest and assembly, demonstration and petition, and the rights of accused persons is apparent. The collective incidents of arrests related to political opponents, human rights defenders, activists, and other opposition figures highlighted therein are not isolated, and the cases explored throughout this report provide a unique insight into the law as it is dictated on paper, and its translation into an advanced punitive measure denies arrested person rights that accrue to them by virtue of being detained persons. Prolonged pretrial incarceration of human rights defenders and political activists has become rampant practice by the state such that those affected have no access to timeous trial processes, are denied bail repeatedly, and suffer prejudices from limitation of their liberty.

Despite international, regional and domestic human rights instruments setting the benchmarks and principles to pre-trial detention, the practise in Zimbabwe is falling short of meeting such standards. This practice consequently deters the broader citizens from actively demanding and enjoying their civil and political rights enshrined in the Constitution¹.

The report further juxtaposes the selective application of the criminal law procedures with regards to arrests, granting of bail and also pretrial detention. How these processes apply differently to certain groups of persons in society.

The State has resorted to using this method to punish political opponents and in some cases sympathisers of opposition political members. Sometimes, this method is deployed to muzzle media practitioners who are part of the fourth arm of the state to limit reporting on misgovernance by public officials and holding them to account.

1. Jennifer Rietbergen-McCracken, Civic Education, https://www.civicus.org/documents/toolkits/PGX_B_Civic%20Education.pdf

From 2019 onwards, issues around the state failure to issue bail in deserving cases and commence timeous trial proceedings, seen in several high-profile political cases, have raised concerns, and this forms the focus of this report.

In the period under review, there is analysis of some politically sensitive cases that involve denial of bail and sometimes where bail is not secured, the arrested persons remain in pretrial detention for long periods of time. Some of the examples of cases are as follows; i the high-profile case of the then Movement for Democratic Change (MDC) Alliance “trio” of Honourable Joana Mamombe (Member of Parliament for Harare West Constituency), Netsai Marova (member of Citizens Coalition for Change), and Cecilia Chimhiri (member of Citizens Coalition for Change) on 13 May 2020.² The trio was arrested and charged with falsifying an abduction.

There were also incidents of interparty violence, such as the skirmishes between members of the Citizens’ Coalition for Change (CCC) and Zimbabwe African National Union-Patriotic Front (ZANU-PF) in the Nyatsime area in Chitungwiza in June 2022 that led to the dragnet arrests of some political activists. 26 opposition political party members were arrested for incitement of public violence and underwent irregular processes of pretrial detention.

There were repeated failed attempts to secure their bail and also there was slow commencement of trial. Members of Parliament (MPs) Job Sikhala (Member of Parliament for Zengeza West Constituency) and Godfrey Sithole (Member of Parliament for Chitungwiza North) were also part of the arrested persons in connection with the Nyatsime skirmishes and were subjected to leg irons and denial of access to legal counsel whilst in pre-trial detention. Furthermore, despite the others being released on bail, Job Sikhala remained in pretrial incarceration for over 300 days. Bail applications were unsuccessful, further charges were levelled against him whilst he was in detention and his trial was very slow in commencement. Thus, he continues to be in prolonged pre-trial detention yet the law clearly stipulated timeous commencement of trial as a right of a detained person.

There was also observation of the trend spilling over to affect not only opposition political actors and activists, but this method of denial of bail and prolonged pre-trial detention was used to punish perceived sympathisers of the opposition political party. Journalist Hopewell Chin’ono was also subjected to prolonged pre-trial detention for inciting public violence only to be acquitted of the charges. Allan Moyo a student activist, who was also trying to bring food for student activists who had been arrested, was in pre-

2. The case of Tawanda Muchehiwa’s abduction and torture which occurred under circumstances that led Zimbabwe to the country’s first known recording of a state-sponsored abduction which was immediately followed by the abduction and torture of then Zimbabwe National Students Union (ZINASU) leader Takudzwa Ngadzire. Furthermore, organizers of protests and proponents of dialogue such as Jacob Ngarivhume, Job Sikhala, Hopewell Chin’ono, Jacob Mafume, Alan Moyo and Makomborero Haruzivishe were constantly arrested and detained for prolonged periods of time with attempts at being granted bail being constantly denied.

trial detention for almost a year before he was finally granted bail. This is the same with the case of Tafadzwa Ngadziore. Makomborero Haruzivishe was in pre-trial incarceration for 14 months. These are some examples of arrested persons who were arrested, denied bail and eventually became victims of prolonged pre-trial detention.

These incidents are not isolated and speak to a broader breakdown in the rule of law. The Zimbabwe Human Rights NGO Forum (the Forum) has identified a disturbing pattern of manipulation of the criminal justice system by state personnel to intimidate and punish perceived voices of dissent. This is achieved through denial of bail in deserving political cases or prolonged pre-trial incarceration. Whilst the process of pre-trial incarceration in Zimbabwe is governed by procedural rules, this report identifies evidence of systemic abuses which evince a “*punishment by pre-trial incarceration*” methodology. This method involves repeatedly denying the arrested person with bail and stalling the process of commencing a trial. As a result, the arrested person stays in detention for a prolonged period, which itself gives the semblance of them already serving time in detention.

The report suggests that criminal justice has become a tool for infringement of constitutionally guaranteed rights of arrested and detained persons, freedom of expression, protest and assembly, demonstration and

petition. It has been deployed to have a chilling effect on the exercise of fundamental rights enshrined in the Constitution.³ It is within this context that this report seeks to identify the international, regional and domestic law benchmarks of pre-trial detention, whilst analysing the practice of the use of prolonged pre-trial detention as a method to punish perceived voices of dissent and the developing trends of the same in Zimbabwe.

Methodology

The methodology used to consolidate this report was desk review of key international, regional and domestic human rights instruments that espouse the rights of arrested persons. This approach was accompanied by the use of participatory observation, due to the Forum providing legal representation in some of the cases in the report. The legal representation provided by the Forum informed part of the report. The Forum was a key participant in the process. There was also reliance on verified media reports to provide data for the report. The report was also informed by key informant interviews of legal counsel and clients in some of the cases identified in the report.

Delimitation of the Report

The report covers the occurrence of cases of manipulation of the criminal justice system through use of denying granting of bail and subjecting arrested persons to prolonged periods of pre-trial detention from 2020 to 2023.

3. Section 67 of the constitution of Zimbabwe (2013)

Recommendations

The report concludes by making some key recommendations targeted at the State, Members of Parliament and civil society organisations.

The recommendations include:

- The State should not politicize the role of judicial officers.
- Investigative role of police should not be politicized by the State.
- The State to apply regional best practises pertaining to pre-trial detention through domestication and enforcement of regional instruments.
- The State must apply international best practises in ensuring protection and promotion of human rights and freedoms.
- The State must adhere to provisions of the United Nations Declaration on Human Rights Defenders in the protection of human rights defenders.
- The State should implement the Independent Complaints Act whilst fully operationalising and capacitating the Independent Complaints Commission.
- The State should prioritize capacitation of judicial officers on fair trial rights.
- The State should facilitate establishment of a conducive environment for HRDs.
- Civic society organisations should explore advocacy avenues that strengthen the justice delivery system.
- Civic society organisations should complement Government interventions by providing technical support to justice delivery staff (if the need arises).
- Parliamentarians must be capacitated to strengthen their oversight and legislative role.

01. BACKGROUND AND ANALYSIS

This report deals with concerns pertaining to the denial of bail and prolonged pre-trial incarceration. It represents the observed continuation of the abuse of legal process over several years possibly to silence and or punish perceived voices of dissent. Despite the outlawing of section 27 of the Peace and Order Security Act (POSA), the state has deployed other methods of punishing perceived voices of dissent by denial of bail in deserving cases and subjecting arrested persons to prolonged pretrial detention.

Methods include non-timeous commencement of trial for arrested persons, deprivation of access to bail, and sanctioning their access to legal counsel and other amenities whilst in detention. All of these are being achieved through the manipulation of the criminal justice system that ensures that arrested persons, especially political activists, and other human rights defenders remain in pre-trial detention for protracted periods. In the event that some of these cases go to trial, it is observed that a significant number do not result in convictions. The current situation has negative implications on citizens' ability to actively demand their groups' rights found in the Bill of Rights, particularly civil and political rights.

Zimbabwe experienced a military coup in November 2017 that threw the country into a retrogressive trajectory of impediments

to justice and constitutionalism. What is interesting is that, when the new dispensation became the new Government, hopes were high that this would signal the beginning of a pro-human rights regime, especially considering that the Mugabe era spanned over nearly four decades, was marred with disregard for the rule of law. The post-Mugabe era has, however, shown that it is worse than its predecessor where demand for civil and political rights is concerned. There has been a noticeable closing out of the democratic space to limit the freedom to demonstrate, freedom of assembly, and freedom of expression.



This report represents the observed continuation of the abuse of legal process over several years possibly to silence and or punish perceived voices of dissent.

Examples of some of the failures of the new dispensation to uphold the Constitution where the aforementioned rights are concerned and the rule of law include:

- i. the August 2018 shootings;
- ii. Amendment 1 and 2 to the Constitution;
- iii. marked increase in cases of arbitrary arrests, torture, harassment, and extra-judicial killings of political opponents enjoying some of their civil and political rights;
- iv. removal of the Legislative role of Parliament during COVID-19;
- v. suspension of electoral activities in COVID-19 era;
- vi. weaponization of the Judiciary e.g. Luke Malaba Case and
- vii. restrictive operating space for citizens and Civic Society Organisations (CSOs) through denial of peaceful demonstrations and banning of meetings.

Considering the above-cited political and human rights violations in the short period under the leadership of the new dispensation, it comes as no surprise that the Government would make attempts to silence and suppress voices of political dissent, whilst systematically shrinking the civic space. By means of some examples, the report unpacks a timeline of such violations within the period of review.

In May 2020, the then MDC Alliance trio including Joana Mamombe, Netsai Marova and Cecilia Chimbiri were arrested for faking an abduction.⁴

In July 2020, journalist Hopewell Chin'ono and Jacob Ngarivhume, a leader of an opposition political party (Transform Zimbabwe), were both arrested for inciting public violence.⁵

In July 2020 Godfrey Kurauone, the then MDC Alliance Ward 4 Councillor was arrested for insulting the office of the president.⁶

In September 2020, Takudzwa Ngadziore, the then Zimbabwe National Students Union (ZINASU) President was arrested on charges of participating in a public gathering with intent to promote public violence.⁷

In October 2020, Youngerson Matete and Prince Gora, both student activists, were arrested on charges of kidnapping and participating in a public gathering with intent to promote public violence and of breaching the peace.⁸

In November 2020, there was the arrest of Jacob Mafume on charges of criminal abuse

of office,⁹ in addition to subsequent charges of allegedly interfering with a key witness.

In December 2020, Allan Moyo, a student activist, was similarly arrested on charges of participating in a public gathering with intent to promote public violence and was remanded in prison for over two months.¹⁰ Similar cases are on the increase. As the pattern of denial of bail and prolonged pre-trial incarceration is repeated.

There is a clear upsurge in cases of arrests, subsequent repeated denial of bail of Human Rights Defenders (HRDs) and prolonged pretrial incarceration in 2021 and 2022. Human Rights Defenders can be defined as people who, individually or with others, act to promote or protect human rights in a peaceful manner.¹¹

Examples of such cases include the dragnet arrest of student leaders, juveniles and journalists in 2021, the arrest of nine HRDs from Masvingo Residents Forum on 24 September 2021,¹² who spent a night in detention and were later acquitted on the charges, the arrest of journalist Hopewell Chin'ono, who spent forty four days in pre-trial

4. "Zimbabwe's MDC abductees arrested for lying about torture", 11 June 2020, BBC News, <https://www.bbc.com/news/world-africa-53005447>

5. "Zimbabwe Police Arrest July 31st Protest Organiser and Investigative Journalist Hopewell Chin'ono", 20 July 2020, Voice of America, <https://www.voazimbabwe.com/a/zimbabwe-police-arrest-protest-organizer-and-jor/5509675.html>

6. "Arrests of activists continue in Zimbabwe", 19 July 2020, Enca, <https://www.enca.com/news/arrests-activists-continue-zimbabwe>

7. "Pressure grows on Zimbabwe to free detained student leader", 16 October 2020, the Guardian, <https://www.theguardian.com/global-development/2020/oct/16/pressure-grows-on-zimbabwe-to-free-detained-student-leader>

8. "MDC Alliance calls for the release of student leaders", 2 November 2020, Zim Citizen, <https://www.zimcitizen.com/mdc-alliance-calls-for-the-release-of-student-leaders/>

9. "Zimbabwe: Arrest of Harare Mayor Mafume, Incompetence or Corruption?", 9 December 2020, The Africa Report, <https://www.theafricareport.com/53995/zimbabwe-arrest-of-harare-mayor-mafume-incompetence-or-corruption/>

10. "Family demands the release of detained student activist Allan Moyo amid fears of COVID-19", 16 February 2021, News Hawks, <https://thenewshawks.com/family-demands-release-of-detained-student-activist-allan-moyo-amid-fears-of-covid-19/>

11. "About Human Rights Defenders, Special Rapporteur on Human Rights Defenders", <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/about-human-rights-defenders>

12. <https://kubatana.net/2021/02/26/student-leaders-juveniles-and-journalist-arrested-in-fresh-crackdown-on-hrds/>



detention before being granted bail¹³ and Makomborero Haruzivishe was sentenced to fourteen months in prison whilst his incarceration continued despite a court order granting him bail pending appeal¹⁴ and the arrest and detention for five days of sixteen HRDs from the Amalgamated Rural Teachers Union of Zimbabwe.¹⁵ These arrests have extended to include members of the CSOs such as the arrests of Crisis Coalition Spokesperson Obert Masaraure and detention for 15 days before being granted bail and staff members of the Institute for Young Women's Development.¹⁶

In January 2021 Fadzai Mahere, the then MDC Alliance spokesperson, was arrested for publishing false statements on social media that were prejudicial to the state. She spent

seven nights in pre-trial detention before being granted bail. Political activists have not been spared in these arrests, for example in the Nyatsime skirmishes that has seen 17 arrested on 14 June 2022 and detained for over 130 days without bail. Job Sikhala remains in pre-trial detention for over three hundred days. Furthermore, the arrest and torture of Godfrey Karembere "*Madzibaba veShanduko*"¹⁷ who is a political activist from CCC.

Some of the arrests of the aforementioned political activists have resulted in them staying for prolonged periods in pretrial detention without bail. This points to the abuses of the law, and the Forum, amongst these, identified denial of bail, and excessive delays in commencement of trials as some of

13. Hopewell Chin'ono was arrested by police on 8 January 2021 without a warrant and charged with publishing and communicating false statements prejudicial to the state. https://ishr.ch/wp-content/uploads/2022/05/Zimbabwe-HRD-UPR-Briefing-Paper_FINAL.pdf

14. Makomborero Haruzivishe was arrested and convicted on 6 April 2021 for 36 months on the charge of resisting arrest and inciting informal traders to commit public violence. https://ishr.ch/wp-content/uploads/2022/05/Zimbabwe-HRD-UPR-Briefing-Paper_FINAL.pdf

15. They were arrested on 12 January 2021 and charged with participating in a gathering with intention to promote public violence, bigotry and breaches of peace. They were detained until 17 January 2022 when they were granted bail.

16. Staff members of Institute for Young Women's Development were arrested on 29 June 2022 for neglecting to acquire a police clearance before hosting a community meeting

17. Godfrey Karembere of Citizens Coalition for Change (CCC) activist Godfrey Karembere popularly known as Madzibaba Veshanduko on 17 March 2022 was arrested and charged with disorderly conduct and undermining police officers. He was brutally assaulted following his arrest.

Governments newly adopted approaches in punishing perceived voices of dissent.

Despite there being special circumstances where generally prolonged periods of pre-trial detention are justified, it cannot be in all circumstances. Such justifiable circumstances include when there are the following:

- The risk of witness intimidation and concealment of evidence.
- Accused is a high flight risk.
- Accused is facing serious offences.
- Late filing of state papers.
- Postponement of proceedings.¹⁸

However, there is a need to also take into consideration the socio-economic and political climate prevailing at the time these arrests and decisions of the court occur, specifically in politically sensitive cases. The context in which these arrests and decisions inform how the cases are handled procedurally. In the instance of Zimbabwe, with the civic and democratic space shrinking, it comes as no surprise that there is also an upsurge in cases of denial of bail and prolonged pre-trial incarceration of detained political activists.

As the space is shrinking through the PVO Amendment Bill, an active demand for civil and political rights also reduces as the state employs mechanisms that deter enjoyment of the group rights.

Structure of the Report

The report will give background information as to the past context that informs the current state of affairs. It also unpacks provisions of various international, regional and domestic human rights instruments on the procedure of bail granting and pre-trial detention.

It will also further make a comparative analysis of the different application of the criminal procedures to opposition political activists and ruling party elites, public officials and those aligned with the ruling party. Thereafter, the report will proffer recommendations to various stakeholders in terms of their role in ensuring the implementation of the benchmarks of human rights instruments in the guaranteeing of the rights of detained persons.

18. "Pre-trial Detention – Addressing risk factors to prevent torture and ill treatment", 2016, 2nd Edition, Penal Reform International, <https://cdn.penalreform.org/wp-content/uploads/2016/01/factsheet-1-pre-trial-2nd-ed-v5.pdf>

02.

THE LAW, PRINCIPLES AND BEST PRACTISES IN PRETRIAL AND DETENTION PROCESSES

2.1

International and Regional Legislative Frameworks

Pre-trial detention also known as remand or preventative detention, is when someone is detained by the state while they are waiting for a trial to determine whether they are innocent or guilty of a crime.¹⁹

There are selected circumstances in which pre-trial detention is permissible and legitimate. The circumstances include where there is a reasonable suspicion of the person having committed the offence, and where detention is necessary and proportionate to prevent them from absconding, committing another offence, or interfering with the course of justice during pending procedures. Thus, pre-trial detention is not permissible or legitimate when the above can be achieved through other less intrusive methods. Less intrusive methods include and are not limited to granting of bail, seizure of travel documents, the condition to appear before the court as and when required

19. "Pre-trial Detention, Fair Trial", <https://www.fairtrials.org/campaigns/pre-trial-detention/>

and/or not to interfere with witnesses, periodic reporting to police or other authorities, electronic monitoring, or curfews.²⁰

After the United Nations was founded in 1945, there was a clear drive to promulgate international norms for the protection of persons that have been deprived of their liberty. Of note, some of the following international law and regional instruments guarantee the rights of those in detention;

- the Universal Declaration of Human Rights (UDHR),
- the International Convention on Civil and Political Rights (ICCPR), and
- the African Charter on Human and Peoples Rights.

These instruments guarantee persons freedom from torture and arbitrary arrests, the right to fair and speedy trial, and the presumption of their innocence of any criminal charges brought against them.

Over the years, the General Assembly and other United Nations organs have promulgated instruments such as the UDHR and the ICCPR that contain provisions relating to detention. Some are of a general nature and apply to pre-trial detention whilst others deal specifically with pre-trial detention.

2.1.1

Universal Declaration of Human Rights (UDHR)

The UDHR recognises civil and political rights. Of relevance to this report, the UDHR sets out the respect of the full dignity of all persons including those accused of a crime. In essence, this instrument supports the basic protection of the rights of detained persons. This instrument guarantees arrested persons freedom from torture or to cruel, inhuman, or degrading treatment or punishment; right from arbitrary arrest; right to a fair trial and the presumption of innocence of any criminal charges brought before them. The declaration²¹ is not a treaty but a recommendatory resolution of the General Assembly and is therefore not legally binding on states. However, despite not being legally binding it has the weight of being persuasive in guiding application and upholding international human rights law in Zimbabwe. This is so as:

The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning their inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.²²

20. "Pre-trial Detention-Addressing risk factors to prevent torture and ill treatment", Penal Reform International- 2nd Edition- <https://cdn.penalreform.org/wp-content/uploads/2016/01/factsheet-1-pre-trial-2nd-ed-v5.pdf>

21. These rights are entrenched under Articles 5, 9, 10 and 11 of the UDHR respectively.

22. Dugard John, International Law: A South African Perspective, Pretoria, South Africa, APH, 2007.

Thus, the Declaration, despite not being binding, must be looked to as an authority that informed various national bills of rights, including that of the 2013 Zimbabwe Constitution Bill of rights in Chapter 4.

2.1.2

International Convention on Civil and Political Rights (ICCPR)

The ICCPR, whilst not enacted into legislative law, has been ratified by the Zimbabwe Government and places an obligation, *in the period between signing and ratification or consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.*²³

Accordingly, it is of persuasive value. In relation to the detention of persons, Article 9 of the ICCPR goes a step further and provides that:

- *Anyone arrested or detained on a criminal charge shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should the occasion arise, for execution of the judgment.*
- *Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his*

release if the detention is not lawful.

2.1.3

African Charter on Human and Peoples' Rights (the African Charter)

The African Charter on Human and Peoples' Rights, also known as the Banjul Charter, was drafted and adopted between 1979 and 1981 and came into force in 1986. It is an international human rights instrument that seeks to protect and promote human rights and basic freedoms in the African continent. It takes a unique approach to protect several rights compared to other regional and international human rights instruments. One of the rights in which this is most evident is also one of its fundamental guarantees namely, the right to a fair trial and remedies therewith.

Thus, in a regional human rights context, fair trial rights find expression under:

- Article 3: Every individual shall be equal before the law and shall be entitled to equal protection of the law.
- Article 5: the right to respect of the dignity inherent in every human being.

23. United Nations, Chapter Four: Becoming a party to the Convention and the Optional Protocol – Joining the Convention, 2017. Accessed at <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-four-becoming-a-party-to-the-convention-and-the-optional-protocol.html>

- Article 6: right to liberty and security of the person. In particular, no one may be arbitrarily detained or arrested.
- Article 7: by far the most invoked provision of the Banjul Charter when it comes to claiming redress for human rights violations before the African Court on Human and People's Rights. It comprises the right to be tried within a reasonable time by an impartial court/tribunal as well as the right to be presumed innocent until proven guilty.

Essentially, therefore, it is critical to view the process of pre-trial detention within its proper context and appropriately extend the rights provided by the law to persons facing pre-trial detention processes. The key element is that in the absence of a conviction, every person is deemed innocent until proven guilty.

Worriedly, however, the judiciary who are, in essence, the custodians of the Constitution and the social contract it envisions, have apparently become enablers of the state's repressive use of laws governing pre-trial bail and procedures. As a result, a culture of impunity is created where no one is left to guard the guards.

Trial observers clearly have an important role to play in reporting on discrepancies relating

to the application of Fair Trial Rights – where these rights are being impinged upon with impunity (through, for example, arbitrary arrests, unjustified denial of bail, enforced disappearances and torture) and where one finds the judiciary often acting in a partisan manner. The utility of independent or administrative mechanisms for monitoring the performance of judicial officers; receiving and processing complaints against judicial officers and tracking public reaction to the justice delivery processes of judicial bodies in Zimbabwe is also critical. As always, justice must not only be done but must be seen to be done.

The African Commission on Human and People's Rights (the ACHPR) has, in this regard, recognized that it is necessary to formulate and lay down principles and rules to further strengthen and supplement the provisions relating to a fair trial in the African Charter on Human and Peoples' Rights which stands ratified by the government of Zimbabwe.

Towards this end, the ACHPR proclaimed 'Principles and guidelines on the right to a fair trial and legal assistance in Africa'. These include the provision under Article B for states to ensure that judicial officials have appropriate education and training and should be made aware of the ethical duties of their office; of the constitutional and statutory protections for the rights of accused persons, victims, and other litigants as well as the right to an effective remedy for acts violating fair

trial rights notwithstanding that the acts were committed by persons in an official capacity as captured under Article C.

2.2

Domestic Laws Governing Pre-trial Detention

The legislative framework that governs arrest and detention procedures in Zimbabwe is generally comprehensive and anchored in the Constitution of Zimbabwe Amendment (No. 20) Act, 2013 (the Constitution), the Criminal Procedure and Evidence Act [Chapter 9:07], and the Criminal Law (Codification and Reform) Act [Chapter 9:23].

As a preliminary point, and as established by section 49(1) of the Constitution:

(1) Every person has the right to personal liberty, which includes the right:

- (a) not to be detained without trial; and
- (b) not to be deprived of their liberty arbitrarily or without just cause.

This right may however be lawfully limited in prescribed circumstances, and a person may be detained for the following purposes:

- if convicted and sentenced by a court;
- if found by a court to be unfit to stand trial;
- in order to bring them to court;
- if he/she is arrested on reasonable suspicion of having committed, or being about to commit a crime.

The detention of a person directly affects their constitutional right to personal liberty, and, by law, ought not to be restricted lightly. Given the serious nature of depriving a person of their personal liberty, it is imperative that the law be employed to ensure justice and be safeguarded from potential and actual abuse. To that end, Section 50 of the 2013 Constitution provides extensively for the rights of arrested and detained persons.

2.2.1

The 48-hour Rule

After an arrest as a general rule, the arrested person may be detained for up to 48 hours, unless. The exceptions to this are in two circumstances;

- when he is brought before a judge or magistrate and the judge or magistrate orders his further detention;
- or a warrant is obtained for his further detention.²⁴

The case of *S v Mloyi* [2020] ZWBHC 123 dealt extensively with bail and the 48-hour rule as set out under section 50 of the Constitution. The ruling delivered by Dube-Banda J is quite informative as seen from the Justice's assertion that: *In my view this section 50(1)(d) gives an arrested and detained person, who has not appeared in court, certain rights, first, a procedural right to approach a court to determine the lawfulness of*

24. Section 32(2) of the Criminal Procedure and Evidence Act.

pre-initial appearance detention, second, a substantive right to have the lawfulness of the detention determined, and third, a remedy to be released when there are no compelling reasons justifying their continued detention.

The legal questions that arose in this regard were two-pronged; firstly “What is the remedy of an arrested person who has been detained for a period exceeding 48 hours without a court appearance or judicial authority? First, while still in police detention”?

In response to this question, Dube-Banda J averred that:

While still in police custody beyond the 48-hour limit, he is entitled to seek immediate release. The police must release him. The Constitution demands no less. In the event the police do not release him and continue holding him unlawfully, he can invoke section 50 (5) (e) and motivate a court to order his release from unlawful detention. Section 50 (5)(e) of the Constitution provides that: “Any person who is detained, including a sentenced prisoner, has the right - (e) to challenge the lawfulness of their detention in person before a court and, if the detention is unlawful, to be released promptly”.

The second question that arose for consideration before the court was: “what is the remedy of such a person after he has been taken to court for initial remand”?²⁵

Dube-Banda J responded to this question by asserting that:

In my view, section 50(3) applies to an over-detained suspect who has been brought to court after the expiry of 48 hours. The court can only proceed and remand him when it is satisfied that the arrest and detention was lawful. Where it is illegal, by reason of failure to comply with the 48-hour rule, he must be unconditionally released as contemplated in section 50(3) of the Constitution.

Ultimately, the judge’s reasoning in this instance was:

Refusing a person’s admission to bail is a serious matter. It is a serious inroad into the right to liberty. It must be taken seriously, because it is serious. If the prosecution makes a concession, the court is not bound by such concession, but must give it due consideration. It is the prosecution that has got the docket to the investigations. It is the prosecution that communicates with the investigating authorities. The court cannot run in circles looking for evidence to show that the accused is not a good candidate for admission to bail. That is not the role of the court.²⁶

25. Here the applicant had been detained beyond the 48-hour limit. At his initial remand proceedings, he complained to the court a quo, and made the point very strongly, that he was detained in violation of section 50(2) of the Constitution. He asked the court to order his immediate release. The court a quo declined to release the applicant. It reasoned that section 50(3) of the Constitution is not applicable to persons who have appeared in court for initial remand.

26. The prosecution conceded that the applicant had in this instance discharged the onus of showing that it is in the interests of justice that he be released on bail pending trial. The judge took the view that, on the facts of this case, the concession had been properly taken and he accepted it. In conclusion, he found that it was in the interests of justice to release the applicant on bail pending trial.

2.2.2

Extension of Period:

Warrant of Further Detention

The 48-hour period of detention can be extended through the issuance of a warrant of further detention by a judge, magistrate, or justice of the peace.²⁷ It is not clear from the Criminal Procedure and Evidence Act how long a suspect can be detained under such a warrant. In practice, it is taken that the period cannot exceed 96 hours.²⁸

2.2.3

Waiting for Trial

Every person that is accused of a crime must have a trial within a reasonable time. An accused person may be allowed to await trial at home or be remanded in prison. Remand prisoners are not kept in the same place as prisoners who have already been convicted and sentenced. Where an accused person is permitted to await trial from home, it is referred to as bail. Bail will often be granted if the crime is not too serious, it is unlikely that you will interfere with witnesses, and you are unlikely to escape.

What is a Reasonable Time?

That depends on the circumstances of the case, and it is not possible to lay down a specific period that would be unreasonable in

all cases. Much depends on the reason for the delay, as well as the extent of the delay. The period begins from the moment the suspect is “charged” – officially informed of an allegation that he has committed a crime – and a mere investigation is not enough.²⁹ The running of the period is not interrupted by the withdrawal of charges before plea if the accused is subsequently charged with the same crime(s). To constitute a violation of the right to trial within a reasonable time, the delay must be “extraordinary”.³⁰ In one case, where the accused person was facing serious fraud charges, a delay of four years and seven months was enough to trigger an inquiry into whether the accused right had been violated.³¹ In another, a delay of seven years was enough.³² In *S v Tau* 1997 (1) ZLR 93 (H), Gillespie J said:

The Supreme Court’s decision in S v Midzi & Ors 1994 (2) ZLR 218 (S)] was no doubt an appropriate conclusion for a complicated case of fraud and corruption where the accused were on bail. In a different situation, however, twelve months delay might well be unreasonable and oppressive. I would venture to suggest that the scrupulous magistrate would in all cases be questioning the State very closely indeed on any application for further remand made after delays approaching a year.

As a general rule, if the period between charge and trial exceeds one year, the courts should

27. Section 33 of the Criminal Procedure and Evidence Act.

28. Reid Rowland *Criminal Procedure in Zimbabwe* p 5-11.

29. *Smyth v Ushokowunze & Anor* 1997 (2) ZLR 544 (S).

30. *Fikilini v Attorney-General* 1990 (1) ZLR 105 (S).

31. In re *Mlambo* 1991 (2) ZLR 339 (S).

32. In re *Masendeke* 1992 (2) ZLR 5 (S).

enquire into a possible violation of the accused's right to a speedy trial.

Before the courts will enquire into a violation of the accused's right to a speedy trial, it must be shown that the accused suffered prejudice from the delay. This is assessed in the light of the interests which the right to a speedy trial is intended to protect, namely:

- to prevent oppressive pre-trial imprisonment;
- to minimise the anxiety and concern of the accused while he awaits trial;
- to limit the possibility that his defence will be impaired (e.g., witnesses may no longer be available for the trial).

The accused must also show that he asserted his right to a speedy trial (where he was aware of the right), and, if he was not legally represented, his failure to press for a speedy trial will not be held against him.

In the case of *State v Jonathan Mutsinze*,³³ the court dealt with the question: what happens when an accused does not demand or request the exercise of his right to a speedy trial and in the result, spends a lengthy period with no course of action being taken? It was accepted in this instance by High Court Judge, Justice Hungwe J that the accused spent a long-time awaiting sentence.³⁴

However, the judge did not attach too much weight to this aspect in determining mitigating factors for sentencing because, in the judge's view, the accused did not press early enough for his right to a speedy trial within a reasonable time and was thus, in any event, partly to blame for his plight.

In view of the above, it is evident that there is a generally concise and comprehensive legal framework for the process of pre-trial incarceration detention procedures. The anomaly occurs when these processes are subject to manipulation or abuse to target a collective of perceived figures of political opposition.

2.2.4

Pre-trial Detention

Pre-trial detention can be defined as deprivation of an individual's liberty, from the moment of initial apprehension until the end of trial, including detention imposed or overseen by a judicial body as well as deprivation of liberty outside of or prior to judicial supervision.³⁵

The late Justice Arthur Chaskalson³⁶ contends that:

"Pre-trial treatment of the accused should proceed from the assumption that he is

33. HH 654-14.

34. Jonathan Mutsinze had sometime in 2003 been indicted with two others for 2 counts of murder and 1 count of armed robbery and had spent 13 years in prison awaiting sentencing.

35. American Bar Association, 2010. Handbook of International Standards of Pre-Trial detention.

36. The late Justice Arthur Chaskalson was the first President of South Africa's Constitutional Court and was Chief Justice of South Africa from November 2001 until his retirement in 2005. In the *Pearson (1992)77 CCC (3d) 124 (SCC) 136-1* case,

*is innocent, and his basic rights are not to be disturbed or ignored on an unconstitutional assumption of guilt before it is proved by the state in a fair public trial before an ordinary court of the land.*³⁷

Section 69 of the Constitution provides that every person accused of a crime has a right to a fair and public trial within a reasonable period before an independent and impartial court. Furthermore, section 70(1)(a) of the Constitution provides that a person accused of a crime is presumed to be innocent until proved guilty. Section 18(1) of the Code³⁸ also provides that generally subject to limited exceptions a person may not be found guilty of a crime under the Code or other enactment where each essential element of the crime is not proved beyond a reasonable doubt. This presumption of innocence principle presupposes that no one must be punished until the presumption is rebutted by proof of his guilt beyond a reasonable doubt.

For HRDs, the bail dynamics have been made to be inclined more on the interests of justice clause and the classification of the offence. As discussed above, there is a clear trend to prefer leveling of serious charges against human rights defenders, which charges where power to admit to bail by a Magistrate is either qualified or removed.³⁹ The CPEA categorizes offences into schedules according to their gravity and the likely punishment of each offence. The offence which is often identified with linkages to activism, is categorized under Third Schedule offences and these are offences, wherein the powers of the Magistrates to grant bail are fettered.⁴⁰

The courts have also interpreted section 117 (b) (a) of the CPEA as placing an even more onerous burden on the applicant seeking admission to bail on a Part 1 Third Schedule listed offence. The applicant is required upon being given a reasonable opportunity to do so, to adduce evidence to the satisfaction of the judge that exceptional circumstances exist in which the interests of justice permit the release of the applicant to bail.⁴¹ Therefore, it means that in practice, most human rights defenders are not likely to be admitted to bail immediately as a result of the prevailing

37. Quoted by J. Van der Berg's *Bail – A Practitioner's Guide*, 2nd Edition, at page 18. This view confirmed the Pearson (1992) 77 CCC (3d) 124 (SCC) 136-1, decision in which the court held that "the principle does not necessarily require anything in the nature of proof beyond a reasonable doubt, because the particular step in the process does not involve a determination of guilt. Precisely what is required depends upon the basic tenets of our legal system as exemplified by specific Charter rights, basic principles of penal policy as viewed in the light of "an analysis of the nature, sources, rationale and essential role of that principle within the judicial process and in our legal system, as it evolves"

38. Criminal Law (Codification and Reform) Act [Chapter 9:23]

39. Section 116b of the Criminal Procedure and Evidence Act

40. Section 116 provides that:

"Subject to this section and sections 32 and 34, a person may, upon an application made in terms of section 117A, be admitted to bail or have his or her conditions of bail altered—

(b) in respect of any offence, except an offence specified in the Third Schedule, by a magistrate within whose area of jurisdiction the accused is in custody at any time after he or she has appeared in court on a charge and before sentence is imposed": -

41. *S v Mathuthu* (HH 182-17 B 29/15) [2017] ZWHHC 182 (17 March 2017), *S v Kondo & Another* (HH 99 - 17 HC B1285/16) [2017] ZWHHC 99 (29 December 2016);

tendencies of having the offence of subversion preferred against them. This takes away the right to be presumed innocent until proven guilty beyond reasonable doubt. More often, this results in waiting in custody as the High Court prepares to hear their bail applications.

The courts have unfettered discretion to entertain applications for bail in offences prescribed as bailable and make determinations on the applications taking into consideration a mix of factors. However, as stated earlier, due to the stringent approach with which the courts handle cases related to activism, the rights of human rights defenders are compromised and continue to be susceptible to violations.

2.2.5

Bail

Anyone who is arrested must be brought before a court within 48 hours, but their trial can seldom take place so soon. Thus, they must be remanded i.e., ordered to come back to court later. The court must decide whether in the interim the person must be kept in custody or whether they can be released on bail, i.e., set free subject to conditions. These conditions usually require the payment of a sum of money which will be forfeited if the person fails to obey the order to come back to court.

Principles Governing the Granting of Bail

The principles that govern the granting or refusal of bail are outlined as follows;

i. There are compelling reasons justifying their continued detention,

ii. The presumption of innocence before being proven guilty must be seen in motion. An accused person is presumed to be innocent until he has been convicted by a court of law. The presumption posits that the arrested person should not, therefore, be deprived of his liberty until he has been convicted. On the other hand, the State has an interest in ensuring that accused persons appear in court for their trial, and in some cases, this can only be ensured by keeping them in custody pending trial. A balance must be struck between these two interests.⁴²

iii. It is not in the interests of justice for bail to be granted to a person who is a flight risk or will abuse his liberty by, e.g., intimidating the witnesses against him. Thus, it is not in the interests of justice to refuse bail to a person who will stand his trial and will not abuse his liberty.

iv. A court must consider the constitutional rights of the accused person and his or her dependants. Where the accused is the primary caregiver of a child, the best interests of the child must be considered together with all the other circumstances.

42. Bail pending Trial – Zimbabwe Legal Information Institute- <https://old.zimlil.org/content/5-bail-pending-trial#:~:text=In%20deciding%20whether%20or%20not,with%20all%20the%20other%20circumstances>

It is also in very exceptional cases that bail can be refused. One such instance is when it is likely that the release of the accused will disturb public order or undermine public peace or security. It seems that this ground for refusing bail is intended to cover crimes that cause shock or outrage to the community or cases where the public might feel uneasy or unsafe if the accused were let out on bail. This should apply to arrests of persons who commit violent crimes.⁴³

The court must balance the interests of justice against the right of the accused to personal freedom, considering the following, amongst other factors:

- the period the accused has already spent in custody and the period he is likely to spend before his trial;
- any delay in bringing him to trial, and whether he is to blame for any such delay;
- any prejudice he may suffer in preparing his defence if he remains in custody;
- the state of his health.

The Burden of Proof

Generally, the onus of proving that bail should not be granted rests with the prosecution, where bail is sought before trial. It is not sufficient for the prosecutor to make bald assertions that a particular ground for refusing bail exists; he must show that his assertions are well founded. Once, the prosecution has

made credible allegations against the accused which would provide grounds for refusing bail, the onus shifts to the accused person, who must show on a balance of probabilities that his admission to bail would not prejudice the interests of justice.

Where the accused is charged with a Third Schedule crime, the onus is on the accused to adduce evidence that satisfies the court that the interests of justice permit his/her release. In the case of the more serious of those crimes (premeditated murder, murder of a police officer, serious rape or indecent assault, indecent assault of a child, crimes involving terrorism) he/she must go further and satisfy the court that exceptional circumstances exist that permit his release.

Bail Hearing

Due to a person's right to personal liberty and security of the person: An accused person who appears before a judge or magistrate before trial (for example, when he/she appears on remand) may apply orally to be granted bail immediately. Alternatively, he/she may make a written application in the form prescribed by the rules of the court.⁴⁴ Every such application must be dealt with promptly.⁴⁵

The Registrar must set a bail matter down for hearing within 48 hours after it is filed. The Attorney-General must file a written response

43. See ZHRNGOF (2021), Who Guards the Guards? Monitoring Crime and Security Force Involvement in Crime. August 2021. Harare: Zimbabwe Human Rights NGO Forum.

44. Section 117A of the Criminal Procedure and Evidence Act. The form to be used in the High Court is prescribed in the High Court of Zimbabwe (Bail) Rules, 1991 (SI 109 of 1991). There is no form prescribed for use in the magistrate's court (applications for bail in the magistrate's court are normally made orally) but if a written application is made to a magistrate, it would be wise to follow the format of the High Court

45. Section 117Af (3) of the Criminal Procedure and Evidence Act.



response to the application within three hours before the hearing.

In a bail application, the judge or magistrate can receive evidence on oath or by affidavit, and hearsay evidence is admissible.⁴⁶ In practice, formal evidence is not given in most applications; the accused asks for bail and is questioned by the court to ascertain his/her circumstances and what amount of bail he/she can afford. The prosecutor indicates his attitude to the granting or refusal of bail, and the judge or magistrate decides the question based on what he has been told by the accused and the prosecutor. Both sides can be required to adduce evidence. If the accused gives evidence, however, the court must

inform him that his evidence will be admissible and may be used against him at his trial. An accused person is not entitled to have access to information contained in the police docket of his/her case unless the Attorney-General consents.⁴⁷ This statutory provision runs counter to the judgment in *S v Sithole* 1996 (2) ZLR 577 (H),⁴⁸ in which Devittie J stated that in High Court proceedings, an accused person ought to be ordinarily entitled to, if he/she so requests, copies of statements of witnesses whom the State proposes to call.

Bail applications should be recorded, and the record forms part of the record of the trial, but any information the accused may have given regarding his previous convictions is excluded.

46. Section 117A (4) of the Criminal Procedure and Evidence Act.

47. Section 117A (10) of the Criminal Procedure and Evidence Act.

48. Approved by Gowora J in *S v Chibaya & Ors* HH-4-2007.

03.

COMPARATIVE ANALYSIS OF APPLICATION FOR BAIL AND PRE-TRIAL DETENTION OF POLITICALLY-EXPOSED PERSONS

In the light of all the legal provisions and judgements on arrests and the granting of bail, the report examines if there is selective (politically motivated) use in the granting of bail. Interrogation of this shall be supported with the mention of examples of both persons in the ruling party and in the opposition who were either denied or granted bail unreasonably and unjustifiably detained longer than is necessary in the pretrial stage.

3.1

Ruling Party Officials

Historically, electoral trends in Zimbabwe since 1980 paint a picture of electoral authority and the overwhelming dominance of the political space by the ruling party i.e. ZANU-PF. Since independence, Zimbabwe has witnessed ruling party officials being both the architects and main beneficiaries of decades of

electoral authoritarianism.⁴⁹ Zimbabwe can thus be characterized as a dominant party state.

A dominant party state has been defined as:

*...one in which one party enjoys electoral dominance despite an entrenched framework for multiparty democracy through universal suffrage and regular elections.*⁵⁰

The manifestations of a dominant party state have some telling characteristics. These include;

- the capturing of important state institutions such as the judiciary and law enforcement through mechanisms such as “cadre deployment”;
- the blurring of the distinction between the state and the dominant political party by equating the state with the party which results in the deployment of state apparatus for the benefit of one political party;
- misconceived notions of political invincibility; and
- the resulting disdainful regard of the rule of law.⁵¹

These characteristics are frequently accompanied by increasing cases of organized violence and torture where perpetrators are

beneficiaries of impunity. Evidence of this is in targeted arrests of political opponents and human rights defenders, as well as the adoption of protracted and undue pre-trial incarceration processes that are often characterized by the denial of bail, specifically in political cases. Thus, it becomes imperative to deepen the analysis into how targeted or selective the use of state machinery is through examination of the opposite spectrum: the arrest of ruling party officials.

With regards to the arrests of ruling party officials, there is observation that the trend is that this occurs to settle internal political party squabbles or to give the impression that the justice system is balanced in the discharge of its mandate. The impression that the Judiciary is not captured is meant to comfort citizens into believing that even ruling party members can be subjected to the long arm of the law. Unfortunately, such attempts at giving this impression are short-lived as the arrested persons are “*caught and released*”.

This report will now proceed to unpack some examples of a façade of justice where members of the ruling party are concerned.

49. African Democracy Encyclopaedia Project. Zimbabwe: Main electoral trends 1980-2008. <https://www.eisa.org/wep/zim2008trends.htm>

50. S Choudry “He has a mandate: The South African Constitutional Court and the African National Congress in a dominant party democracy” 2009 Constitutional Court Review 11, pg 12. See also H Gillomee and C Simkins (eds) The awkward embrace: One party domination and democracy (1999) at pg 97 and P du Toit and N de Jager, Friend or Foe? Dominant party systems in Southern Africa: Insights from the developing world (2013) at pg 7.

51. CP Mlingwa, Towards the sustenance of an accountable and corruption-free constitutional democracy: A critical examination of the legal nature of the Public Protector’s remedial powers considering the Constitutional Court’s interpretation in Economic Freedom Fighters v Speaker of the National Assembly and Others 2016, Unpublished LLM Thesis, University of KwaZulu-Natal (2018) at pg 12.

3.1.1

Prisca Mupfumira

Under former President Mugabe's rulership, the detention of senior public functionaries within the ruling party was generally unheard of.⁵² In November 2017, Mugabe's top aide, Emmerson Mnangagwa, wrestled power away from his former boss. Under what he dubbed the "New Dispensation" in "the Second Republic", he made wide-sweeping remarks and promises that, among other things, claimed to ensure equal application of the law to root out corruption and cognate practices. He committed that members of the ruling party in the upper echelons of Government were not spared in this drive. Five years on, this has seen very uneven application.

One such prominent example is that of Prisca Mupfumira, former Minister of Tourism.

Mupfumira's case represents an exception to the norm and sets the trend that Mnangagwa was seeking to depict in his new dispensation. She was the first sitting Minister in the ruling ZANU PF party to be arrested for corruption by the country's anti-graft Commission under the new administration.⁵³ In July 2019, she was arraigned for corruption charges relating to her previous role as Minister of Labour

overseeing a \$1 billion state pension fund.⁵⁴ She appeared in court facing several counts of criminal abuse of office for misappropriating \$95 million from the national pension fund and concealing a transaction.

The President had spearheaded a "name and shame" exercise which saw Mupfumira being one of the many called out in a list compiled by the ZANU-PF Youth League of political and business persons who were sabotaging the economy through acts of corruption.⁵⁵

When she appeared in court after being arrested, her lawyer applied for bail which was subsequently denied by the Magistrate, who remanded her in custody for 21 days. She was to spend the next two months in remand prison and attempts at being granted bail were repeatedly denied.

Was this a fair outcome? As has been shown above, the right of arrested persons to bail is a constitutional right entrenched under section 50(1)(d) of the Constitution. Entrenched under section 50(1)(d) however, is the provision that: bail can be denied (where a person would have been brought before a judge or magistrate for remand after being arrested) if there are compelling reasons that justify continued detention. They were found

52. As examples, Government minister Chris Kuruneri, who was charged with graft in 2004, was subsequently acquitted. Martin Dinha, Provincial Minister of Provincial Affairs for Mashonaland Central Province, whose charge sheet indicated he demanded and was paid \$60 000 in 2012 to protect a white farmer from eviction from his farm, was charged and immediately released on \$1000 bail.

53. "Zimbabwe ex-tourism minister facing graft charges freed on bail," News24, 28 November 2019.

<https://www.news24.com/news24/Africa/News/zimbabwe-ex-tourism-minister-facing-graft-charges-freed-on-bail-20190927>

54. "Zimbabwe ex-tourism minister facing graft charges freed on bail," News24, 28 November 2019.

<https://www.news24.com/news24/Africa/News/zimbabwe-ex-tourism-minister-facing-graft-charges-freed-on-bail-20190927>

55. "ZANU PF youths name, shame 'looters'," Zimbabwe Situation, 5 June 2019 <https://www.zimbabwesituation.com/news/zanu-pf-youths-name-shame-looters/>

to exist here in that:

- She had been arrested on reasonable suspicion of having committed serious economic crimes listed in the Ninth Schedule to the Criminal Procedure and Evidence Act as stipulated by section 32(b) of the same Act;
- That the crimes committed involved significant prejudice to the national interest as such further detention was necessary for the crime to be investigated properly;
- Further that the accused was a person likely to abscond due to:
 - (i) The gravity of the alleged offences and the hefty prison sentences that they would attract upon conviction.
 - (ii) The accused's possessions of an ordinary passport with a multiple entry, ten-year visa to the United Kingdom as well as her strong connections to the country where she owns houses in addition to the mansions she owns in South Africa and Dubai.

As emerges from the above discussion, Prisca Mupfumira's case constituted a justifiable denial of bail as there were compelling reasons that justified continued detention. She was eventually granted \$5 000 ZWL bail by High Court Judge, Justice Amy Tsanga, after spending two months in prison on 27 September 2019. It came as a surprise, during

the 2023 ZANU PF primary elections, that Prisca Mupfumira emerged as a plausible candidate to represent the party in the general elections.

3.1.2

Obadiah Moyo

As Health Minister, Obadiah Moyo awarded a multi-million dollar tender, to the tune of USD \$60 million, to Drax International LLC, a company that allegedly sold COVID-19 supplies to the Government at inflated prices, without following proper procurement procedures.⁵⁶ In June 2020, he was arrested and charged with criminal abuse of office, ordered to surrender his passport and subsequently sacked by Mnangagwa for inappropriate conduct by a public official.⁵⁷ The government then proceeded to cancel all contracts with the United Arab Emirates-based company.⁵⁸

These measures by Mnangagwa and his Government carry the impression of a bona fide desire to tackle corruption. The government was quick to spotlight the arrest as testimony of its commitment to fighting corruption adding that no one is immune from prosecution.⁵⁹ In reality, the measures were implemented in the wake of mounting pressure as the public questioned how a businessman, Delish Nguwaya, (believed to be Drax International's representative in

56. Zimbabwe Health Minister facing coronavirus corruption charge sacked. The Guardian, 9 July 2020. [<https://www.theguardian.com/global-development/2020/jul/09/zimbabwe-health-minister-facing-coronavirus-corruption-charge-sacked>]

57. Ibid. Or see note above.

58. Zimbabwe Health Minister Obadiah Moyo sacked amid graft scandal. Al Jazeera, 8 July 2020. [<https://www.aljazeera.com/economy/2020/7/8/zimbabwe-health-minister-obediah-moyo-sacked-amid-graft-scandal>]

59. Coronavirus: Zimbabwe health minister in court on corruption charges. BBC News, 20 June 2020 [<https://www.bbc.com/news/world-africa-53119989>]



Zimbabwe), had managed to set up a new company and secure millions dollars' worth of contracts for COVID-19 supplies after having failed a vetting process months earlier.⁶⁰

One of the purposes of this report is to highlight the speedy way the errant public official with thinks to the ruling party was granted bail. Obadiah Moyo was released on ZWL50 000 bail following his arrest the previous day on allegations of corruption.⁶¹ This is quite startling, particularly, when due regard is paid to how prominent activist and Transform Zimbabwe leader, Jacob Ngarivhume, remained detained for forty-five days⁶² during which time he applied to be released on bail a total of four times, with bail only being granted after the fourth attempt. It is in this selective application of the law that the targeted nature of arrests and the resultant adoption of protracted and undue pre-trial incarceration processes such as the denial of bail in relation to opposition party figures becomes markedly clear.

What emerges, and as previously indicated above, cases such as the Prisca Mupfumira case represent the exception to the norm as ruling party officials are prevalently granted bail speedily as opposed to opposition political party figures and human rights defenders.

3.1.3

Delish Nguwaya

Another clear “*catch-and-release*” case is that of Delish Nguwaya. Delish Nguwaya was arrested in June 2020 as part of the same investigations that had led to Obadiah Moyo’s arrest. Delish Nguwaya’s company was irregularly awarded COVID-19 supply contracts worth over US\$60 million after the sacked former health minister Obadiah Moyo leaned on officials to sign off on the contracts, which the Ministry of Finance later admitted carried inflated prices.⁶³

Drax International, which was not on a Procurement Regulatory Authority of Zimbabwe list of approved government suppliers, won itself huge contracts to supply drugs and medical devices to NatPharm, the state-owned pharmaceutical company. The contracts were not subjected to a tender process. The company also won tenders as Papi Pharma and Drax SAGL.⁶⁴ Of interest, Delish Nguwaya is alleged to be an associate of President Emerson Mnangagwa’s sons, Collins and Sean Mnangagwa whom he has been pictured with. He has also been pictured with the first lady, Auxillia Mnangagwa, and is reported to have attended functions at State House despite allegedly failing a security clearance conducted by the Central

60. Ibid.

61. Zimbabwe's health minister granted bail over \$60 million graft claims. Reuters, 20 June 2020 [https://www.reuters.com/article/health-c/888oronavirus-zimbabwe-corruption-idINKBN23RON0]

62. Zimbabwean High Court orders dissidents to be freed on bail. VOA, 2 September 2020 [https://www.voanews.com/a/africa_zimbabwean-high-court-orders-dissidents-be-freed-bail/6195356.html]

63. “C-19: Zimbabwe and the Rule of Law”, 7 July 2020, Good Governance Africa, https://gga.org/c-19-zimbabwe-and-the-rule-of-law/

64. “The Corruption scandal that angered the Zimbabwean regime”, 12 August 2020, Alex Magaisa https://bigsr.africa/the-corruption-scandals-that-angered-the-mnangagwa-regime-d21/

Intelligence Organisation.⁶⁵

Delish Nguwaya was denied bail by Magistrate Vongai Muchuchuti in a bail hearing held on 16 June 2020 on the basis that he was a flight risk and likely to interfere with witnesses if released.⁶⁶ He was remanded in custody until 30 June 2020. He was eventually removed from remand on 2 December 2020 after being remanded ten times without trial.⁶⁷

3.1.4

Henrietta Rushwaya

In 2020, Henrietta was charged with contravening the Customs Act after being found in possession of 6 kgs of gold at the Robert Mugabe International Airport. She was later charged with bribery and unlawful possession of gold. There were some attempts made at applying for bail, which failed. Additionally, in her case, there was failure to provide a trial date since her arrest in 2020. One of the foundations for one of her applications for bail was evasion of liability to say she had gone to the airport with the wrong handbag. Eventually, Henrietta was granted bail in January 2021 coupled with movement restrictions. What is peculiar about this case is that eventually when she was granted bail, she

was reelected as Zimbabwe Miners Federation (ZMF) President. In 2012 she was arrested by the Anti-Corruption Commission on allegations of bribery and match-fixing linked to the Asiagate match-fixing scandal.⁶⁸ In August 2014 Rushwaya was arrested on charges of extorting hundreds of thousands of dollars from Walter Magaya, the religious leader of Prophetic Healing and Deliverance Ministries.⁶⁹ In April 2016 she was again arrested for manipulating football matches and being the central figure in a syndicate that involved referees, players and journalists in a trip by the Zimbabwe national team to Malaysia on 28 December 2009 during which matches are said to have been manipulated.⁷⁰ It was alleged that Rushwaya was the central figure in another match-fixing scandal commonly referred to as Limpopogate which had been fixing games for a period of at least six years.⁷¹ After being found guilty of the multiple charges levelled against her, she was dismissed from Zimbabwe Football Association (ZIFA) in October 2016. Interestingly, she is also the niece of the incumbent President. Henrietta was acquitted of the bribery charges on 11 August 2022⁷² for the reason that the State's case was too weak for a reasonable court to convict. However, she still faces the smuggling charges.

65. "C-19: Zimbabwe and the rule of law", July 7, 2020, Good Governance Africa <https://gga.org/c-19-zimbabwe-and-the-rule-of-law/>

66. "Delish Nguwaya denied bail after magistrate says he is a flight risk", 16 June 2020, ZimLive, <https://www.zimlive.com/2020/06/delish-nguwaya-denied-bail-after-magistrate-says-he-is-a-flight-risk/>

67. Businessman Nguwaya removed from remand, 2 December 2020, All Africa Zimbabwe <https://allafrica.com/stories/202012020552.html>

68. "Rushwaya gold smuggling case exposes microcosm corruption exists", <https://zimfieldguide.com/midlands/rushwaya-gold-smuggling-case-exposes-microcosm-corruption-exists-zimbabwe-today>

69. "Rushwaya gold smuggling case exposes microcosm corruption exists", <https://zimfieldguide.com/midlands/rushwaya-gold-smuggling-case-exposes-microcosm-corruption-exists-zimbabwe-today>

70. "Rushwaya gold smuggling case exposes microcosm corruption exists", <https://zimfieldguide.com/midlands/rushwaya-gold-smuggling-case-exposes-microcosm-corruption-exists-zimbabwe-today>

71. "Rushwaya gold smuggling case exposes microcosm corruption exists", <https://zimfieldguide.com/midlands/rushwaya-gold-smuggling-case-exposes-microcosm-corruption-exists-zimbabwe-today>

72. "Henrietta Rushwaya Acquitted of Bribery Charges", 11 August 2022, 263Chat, <https://www.263chat.com/henrietta-rushwaya-acquitted-of-bribery-charge/>

This case is paradoxical in nature because, on the one hand, Henrietta is subjected to the arm of the law as is expected, whilst she has that relationship with the first family, and on the other hand today she is the President of the Zimbabwe Miners Federation (ZMF). Analysts indicate that her case is one that was because of the factional tensions between the incumbent President and Vice President Chiwenga.⁷³ The law is deployed in the form of fictional arrests and denial of bail to send a message to various stakeholders for various reasons. As the Mnangagwa dispensation runs under the “Zimbabwe is Open for Business” mantra, there is the intention to instill confidence in current and potential investors that the justice system is unbiased. Whilst, with regards to opposition political actors, the Government is sending a chilling message of deterrence by displaying what it can do to its own.

Furthermore, with regard to citizens, such fictional arrests of ruling party officials are to appear as though the Government is warning citizens of the consequences of participating in corrupt activities. Additionally, the intention is to be in control of the narrative as the ruling party with regards to being an efficient Government endowed with a justice system that properly discharges its mandate.

Critics have posited that the arrests and convictions that do get secured are a political ploy to flaunt a non-corrupt image to current

and potential foreign investors and more often than not entail the hooking of ‘small fish’ whilst the ‘big fish’ are left to swim happily away with impunity. Examples include:

- The arrest on 20 May 2022 of Deputy Minister of Lands, Agriculture, Fisheries, Water, and Rural Settlement, Douglas Karoro for appropriating 700 bags of fertilizer, USD\$18 000 worth of maize seed, and 5 000 vegetable seed kits from Presidential inputs schemes, and selling them (fired on 2 June 2022 for conduct inappropriate for a Deputy Minister).
- The conviction of former Public Service, Labour and Social Welfare Minister, Priscilla Kagonye for diverting laptops donated by POTRAZ to schools in the ZANU-PF politician's Goromonzi South constituency for personal use (sentenced to 36 months in jail of which a total of 20 months were set aside for five years on condition of good behavior and further that she restitutes USD\$10 000 which is equivalent to the laptops she stole).

In essence, there has been an increase in high-profile ruling party arrests involving fraud and corruption under Mnangagwa’s administration. This move has ostensibly been in keeping with Mnangagwa’s drive to pluck out all the “bad apples” in government. On 15 July 2019, President Mnangagwa appointed nine new commissioners to the Zimbabwe Anti-Corruption Commission (ZACC) and gave the Commission the power to arrest.

73. “Rushwaya gold case opens can of worms”, 6 November 2020, Zimbabwe Independent- Andrew Kunambura/ Tinashe Kairiza - <https://www.theindependent.co.zw/2020/11/06/rushwaya-gold-case-opens-can-of-worms/>

ZACC moved swiftly to assert that it is not a toothless institution and has, since then, effected several arrests. Many of these cases, however, end with most of the senior government officials walking away with a slap on the wrist. In terms of section 174(1) of the Criminal Law Code, a public officer convicted of criminal abuse of office is liable to spend up to 15 years in prison. Despite the gravity of the alleged offences in respect of the ruling party officials cited above, none of them served full sentences and all currently walk free. Delish Nguwaya has in fact recently been implicated in a bigger corruption scandal. Thus, corruption remains a perennial problem in Zimbabwe which costs the country USD\$1 billion annually and is the major contributory factor for economic degradation in Zimbabwe and several of the country's socio-economic woes.

Corruption in Zimbabwe has been described as institutionalized and sadly very functional – it is part of the patronage system that begins from grassroots political structures and goes all the way up to the very center of government. This results in a lack of genuine political will to root it out completely which instead results in the manipulation of the justice system to protect the political elite through hounding perceived voices of political dissent who speak out and/or expose maladministration, corruption and call for social justice in Zimbabwe.



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3.2

Opposition Political Figures and Activists

Whilst the cases described above suggest an even hand by the state in dealing with crime, it is evident, and as described in the introduction, it is more probable that perceived opponents of the Government will experience detention and denial of bail. The arrests, denial of bail, and prolonged incarceration of opposition political actors in the period under review has become a trend that the Forum decided to undertake a deeper analysis of. The Government has a propensity to arrest political opponents with the objective of making examples of them so that citizens are afraid to question the Government on their chosen governance style. Additionally, the ruling party continues to use state apparatus to settle scores with political opponents so that the party has an unfair advantage in the political space.

The cases of Hopewell Chin'ono, Joana Mamombe, Cecilia Chimhiri, Netsai Marova, Jacob Mafume, Allan Moyo, Tafadzwa Ngadziore, Jacob Ngarivhume, Job Sikhala, Fadzayi Mahere, Godfrey Sithole, Mduduzi Mathuthu (whose nephew Tawanda Muchehiwa was abducted and tortured so that Mduduzi would come out of hiding) Godfrey Kurauone, Obert Masaraure, and Makomborero Haruzivishe testify to the repurposing of justice in Zimbabwe. All were open critics of the regime and some belonged

or sympathised with the then opposition MDC Alliance party which rebranded to the Citizens Coalition for Change (CCC) on 24 June 2022.

3.2.1

Joana Mamombe, Netsai Marova and Cecilia Chimhiri

In May 2020, three women (Joana Mamombe, Netsai Marova and Cecilia Chimhiri) from the main opposition party, known then as the MDC Alliance led by Nelson Chamisa, were arrested at a police roadblock, and taken to Harare Central Police Station, from where they were abducted and disappeared for days. The trio was dumped outside Harare a few days later, having been physically and psychologically tortured. Police denied ever arresting them, even though on the day of their arrest, police spokesperson, Paul Nyathi, admitted to two newspapers that indeed they had arrested the three women.

The trio was rearrested at the hospital where they were being treated for torture, and they were charged with faking their abduction. Like Jestina Mukoko's case,⁷⁴ they were granted bail, but with punitively strict conditions. Amongst their bail conditions were ordered to report three times a week at Harare Central Police Station, surrender their passports to court authorities, and not to interfere with witnesses. Furthermore, they were ordered to continue residing at the addresses given to law enforcement agents upon their arrest and

74. Abductees found in police custody in Zimbabwe", 24 December 2008- <https://www.amnesty.org/en/latest/news/2008/12/abductees-found-police-custody-zimbabwe-20081224/>.

barred from communicating with the media on anything to do with the alleged offence. They were also banned from social media.

The Government, on the other hand, continued to abuse the three on social media and state-controlled media, accusing them of having faked their abduction. The women had no way of defending themselves as they were banned from commenting on the case. The Government aired dubious footage of what they claimed was evidence that the three women were mobile during the time of their abduction.

3.2.2

Hopewell Chin'ono

Another case was the arrest and detention of Zimbabwean investigative journalist and human rights defender Hopewell Chin'ono. On 20 July 2020, Chin'ono was arrested at his home in Harare on charges of incitement to participate in public violence in contravention of section 187 (1)(a), as read with section 37(1)(a)(i) of the Criminal Law [Codification and Reform] Act. His charge was the calling for the removal of a constitutionally elected Government through an uprising, using his Twitter account. Police officers searched the house of Hopewell Chin'ono, in his presence, in search of gadget they say he used to post three tweets *"inciting public violence"*. Beatrice Mtetwa, Hopewell Chin'ono's lawyer, had to request for the search warrant various times before the police officers showed it to

her. She also stopped the police officers from taking cameras, which were gadgets not covered by the warrant. However, in the evening of the same day, a group of armed riot police unlawfully raided Hopewell's home and eventually managed to seize his camera.

In June 2020, Chin'ono conducted investigative work which exposed corruption in the COVID-19-related contracts awarded by Zimbabwe's Ministry of Health and Child Welfare i.e., the Drax International scandal.⁷⁵ As a result, he was now at the centre of the Government's target list. Having been denied bail on four separate occasions Chin'ono spent 45 days in pre-trial detention held at Chikurubi Maximum Prison. The facility is a high-security prison that houses the country's most notorious criminals including serial rapists and murderers.

A hearing within the framework of Hopewell's second bail appeal took place on August 18, 2020, but the court did not finalise the bail hearing due to questions raised by the prosecutor regarding Beatrice Mtetwa's eligibility to continue as the lead defence counsel for Hopewell Chin'ono. The court advised Hopewell to find another lawyer to allow the bail proceedings to continue following the 17 August 2020 ruling by Harare Magistrate, Ngoni Nduna, to the effect that Beatrice Mtetwa be barred from representing Hopewell. While the review application that was filed in September 2020 proved successful and the order barring Mtetwa

75. "Has COVID-19 become a weapon to gag student activists?", Gora P, 2021, <https://www.universityworldnews.com/post.php?story=20210215153817816>



from handling the case was overturned, disqualifying Beatrice as Hopewell's lawyer breached the journalist's right to a lawyer of his own choice enshrined in terms of section 50(1)(b) and consequently his fair trial rights under the country's 2013 Constitution.

Chin'ono was released from Chikurubi Prison on 2 September 2020 after having been detained following his arrest on 20 July 2020. On 3 November 2020, Chin'ono was however arrested again for allegedly violating his bail conditions and obstructing justice. He was said to have done this by posting a tweet relating to his possession of confidential information from the National Prosecuting Authority relating to the denial of bail to the president of the Zimbabwe Miners' Federation, Henrietta Rushwaya.⁷⁶ The arrest was part of a wide-ranging crackdown on dissent in Zimbabwe, during which between 50 and 100 opposition party officials, writers, labour activists and others were arrested with detainees including the award-winning author Tsitsi Dangarembga.

He was denied bail again and remained at the Chikurubi Maximum Prison until 20 November 2020. On 8 January 2021, he was arrested again, this time on charges of "communicating falsehoods" after he allegedly shared a video he claimed showed a police officer beating a baby to death while on its mother's back. This arrest was his third in just six months. He was only granted bail after spending twenty days in remand detention.⁷⁷ As with other prominent human rights activists, his release from prison did not guarantee freedom from political persecution. In a Facebook post dated 8 December 2021,⁷⁸ Hopewell posted a video that clearly shows police officers armed with AK47 rifles patrolling in and outside his home. He details how the "regime security" took, (following his 20 July 2020 arrest) and has been determined to keep his camera and expensive broadcasting equipment which he averred had nothing to do with the tweet that earned him his first arrest.

Hopewell was later acquitted in December 2021 on the basis that the law used to arrest him did not exist.

76. One of the stringent bail conditions attached to Hopewell Chin'ono's release from prison on charges of inciting public violence included an effective ban from using social media for anything that could be seen as critical of the ruling ZANU-PF Government.

77. "Zimbabwe journalist: 'I was jailed for a month after exposing corruption'", BBC News, 12 October 2021. <https://www.bbc.com/news/world-africa-54480264#:~:text=Middle%20East-,Zimbabwe%20journalist%3A%20'I%20was%20jailed%20for,a%20month%20after%20exposing%20corruption'&text=In%20our%20series%20of%20letters,helped%20highlight%20earlier%20this%20year.>

78. The video can be accessed on the following link: <https://www.facebook.com/watch/?v=900773220802594>

3.2.3

Jacob Ngarivhume

Jacob Ngarivhume is a political activist who was arrested on the same day as Hopewell Chin'ono on 20 July 2020. He was charged jointly with Chin'ono for allegedly calling for protests against Government corruption. On 22 July 2020, Chin'ono and Ngarivhume appeared respectively before Court 14 and Court 11 of the Rottenrow Magistrates Court, which postponed their bail hearings to 23 July 2020. Both remained detained at Harare Remand Prison but were however transferred to Chikurubi Maximum Prison on 7 August 2020, where their rights to receive food parcels and to communicate with their lawyers were severely restricted.

Ngarivhume spent 45 days in remand detention. Attempts to secure his bail failed four times. Chin'ono and Ngarivhume were both granted bail on 2 September 2020 and ordered to pay respectively a ZWL\$10,000 and a ZWL\$50,000 Zimbabwean dollar bail. They were also requested to surrender their passports, to report to police three times a week and to refrain from posting on social media. In addition, Hopewell Chin'ono was reportedly asked to hand over title deeds.

The persecution did not stop here for Jacob Ngarivhume. On 4 May 2021, Ngarivhume was arrested again for allegedly conducting a clean-up campaign in Harare's Mbare suburb

without first seeking police clearance. Ngarivhume was arrested together with Thabani Ncube, also of the #31 July Movement, and two unidentified drivers and detained at Matapi Police Station for close to two hours. The drivers were assisting in the collection of garbage which is littered in Mbare and had not been collected by the local authority for a long time thereby posing a health hazard. Ngarivhume, Ncube and the two drivers were released without any charges preferred against them after Tinomuda Shoko, Paidamoyo Saurombe and Harrison Nkomo of Zimbabwe Lawyers for Human Rights had been deployed to represent them.

In April 2023, Jacob was sentenced to three years imprisonment without the option of paying a fine.

3.2.4

Godfrey Kurauone

MDC Alliance the Ward 4 Councillor and youth leader, Godfrey Kurauone spent 45 days in remand prison upon his arrest on 31 July 2020 for criminal nuisance.⁷⁹ The arrest came after he allegedly circulated a video on social media while singing a song with the words: "Ichava nhoroondo kana ndatenderwa na baba kubvisa Mhangagwa... Ichava nhoroondo". The lyrics of the song, which loosely translate to "It shall be a worthy tale when my Heavenly Father allows me to remove Mhangagwa"

⁷⁹ "MDC youth leader sues police for wrongful arrest", NewZimbabwe, 14 October 2020, <https://www.newzimbabwe.com/mdc-youth-leader-sues-police-for-wrongful-arrest/>

were deemed by authorities to be an insult to the President. He was denied bail at both the magistrates court and high court, was detained in remand, and only stood trial in early September 2020.

3.2.5

Takudzwa Ngadziore et al

Takudzwa Ngadziore was arrested on 16 October 2020 for protesting outside Impala Car Rental offices which had been under pressure to release details on the alleged use of one of their vehicles in the suspected abduction of student activist, Tawanda Muchehiwa.

He was denied bail when he appeared in court on 21 September 2020 and spent forty days in custody. Subsequent appeals for bail could not proceed in the High Court on various grounds that included his court record not being delivered and other dilatory tactics with prosecutors claiming they needed more time to study the record and later then indicating that the court record was not complete.

Takudzwa was finally released on ZWL\$5000 bail by Justice Davison Foroma⁸⁰ though this came with stringent conditions that included surrendering his passport, the prohibition from participating in any public gathering as well as having to report to the police once every Friday.

3.2.6

Allan Moyo, et al

Allan Moyo, a Zimbabwean student activist, spent 72 days in remand detention. He was arrested on 7 December 2020 and released on bail on 19 February 2021. He was charged with inciting public violence and for allegedly participating in the organization of the 31 July 2020 anti-corruption peaceful protests.

Although Moyo was incarcerated for the longest time, his case has not been an isolated one. When he was arrested on 7 December 2020, he was trying to deliver food to nine Morgan Zintec College student teachers who had been arrested for staging a demonstration against a Government directive compelling them to repeat their courses in 2021. The nine are Walter Muzamani, Steven Mariwo, Enoch Masasu, Chipu Ngirandi, Sarudzai Nkezana, Fortunate Mukondo, Monica Mutegude, Charity Chakona and Lucia Mafara.

Allan was denied bail despite several attempts to overturn the ruling that said he must be remanded in custody. He was locked up at Chikurubi Maximum Prison – (a facility that houses the country’s most hardened criminals) for seventy-two days without trial. It is worth reiterating here that in terms of section 50 (2) any person who is arrested or detained person for the purposes of bringing him or her before a court must be brought

80. Bail was granted on Friday 16 October 2020, <https://kubatana.net/2020/10/16/high-court-ends-detention-of-ngadziore-over-abduction-protest/>

before a court no later than 48 hours after the arrest occurred.

Eventually, he was granted bail but his is a classic case of being granted his liberty whilst on the other hand his bail conditions are designed in such a way that they will frustrate his human rights work. In such a case, the bail conditions are such that Government restricts freedom of movement as one is required to report at least once or three times a week. Additionally, Government maintains unlawful surveillance on those who are out on bail.

3.2.7

Fadzayi Mahere

Fadzayi Mahere is the spokesperson of CCC which was MDC Alliance at the time of her arrest. She was arrested on 11 January 2021 on charges of “publishing or communicating false statements prejudicial to the State” in contravention of section 31(a)(iii) of the Criminal Law Code.⁸¹ Mahere was released on bail on 18 January 2021 after spending a week in prison. Fadzai was convicted and sentenced to pay a fine of USD \$500 on 5 April 2023.

3.2.8

Makomborero Haruzivishe

Makomborero Haruzivishe a pro-democracy activist was sentenced to 14 months

imprisonment on 6 April 2021 for allegedly inciting public violence when he whistled at busy Copa Cabana terminus in a protest demanding the Government to provide more support to poor Zimbabweans. He had his bail revoked and was in fact incarcerated despite a court order granting him bail pending appeal thereby raising concern with civil society⁸² social media-driven movements, the #FreeMako and #MakoMonday campaigns gained impetus during the time of his incarceration as supporters demanded his release. Tendai Biti, then Vice President of the opposition MDC Alliance as it was then led by Nelson Chamisa had this to say about Haruzivishe’s conviction and sentence:

*It reflects the selective application of the law in Zimbabwe. It confirms the complete emasculation of state institutions in Zimbabwe. The conviction and heavy sentence (are) meant to send out a chilling effect to the democratic movement in Zimbabwe.*⁸³

Haruzivishe finally walked out of prison to jubilant scenes on 8 January 2022 after 10 months and 22 days of pretrial incarceration by his court. The now 29-year-old had been granted bail on appeal by the High Court on 7 January 2022 but to add insult to injury, his release was delayed by more than 36 hours

81. “Zimbabwe: Authorities must drop malicious charges against opposition leaders and journalist”, Amnesty International, 13 January 2021, <https://www.amnesty.org/en/latest/press-release/2021/01/zimbabwe-authorities-must-drop-malicious-charges-against-opposition-leaders-and-journalist/#:~:text=Zimbabwean%20authorities%20must%20immediately%20and,in%20court%20for%20bail%20application>

82. “Court Revokes Bail for Activist Makomborero Haruzivishe”, NewZimbabwe, 3 March 2021, <https://www.newzimbabwe.com/court-revokes-bail-for-activist-makomborero-haruzivishe/>

83. “Zimbabwe court jails opposition activist for blowing whistle during protest”, 7 April 2021, VOA News, https://www.voanews.com/a/africa_zimbabwe-court-jails-opposition-activist-blowing-whistle-during-protest/6204243.html

over what prison officials described as a “clerical error” in his warrant of release. His release ought to have accorded him a somewhat peaceful respite outside prison walls. This is even more so in light of his heart wrenching missive penned behind prison walls in which he describes having made “a gentlemen’s agreement with pain” from having been arrested an average of three times a year, tortured numerous times since 2011 and being exposed to harrowing prison conditions during the period of his incarceration.⁸⁴

This was not to be the case for the human rights activist as his release came with stringent conditions that include having to report twice a week to Harare Central Police Law and Order section. He has to date reported to the police about 50 times since his release.

His constitutional right to personal liberty and freedom of movement under sections 49 and 66 of the 2013 Constitution respectively continue to be impinged upon as he has had to attend court on an almost daily basis as he still has four active cases yet to be finalized in the courts on charges of inciting public violence; participating in public violence; violating COVID-19 regulations alternatively gathering with intent to cause public violence, breach of peace and bigotry including a kidnapping

charge relating to the staging of a student demonstration at Impala Car Rental Offices protesting against the company’s alleged complicity in the abduction of Tawanda Muchehiwa who was abducted on 30 July 2020, just a day before the foiled 31 July 2020 protests and subjected to gruesome torture before being dumped close to his home after the High Court ordered his release within 72 hours.

Tawanda Muchehiwa’s abductors who tortured him so severely that he was left with damaged kidneys, recurring suicidal thoughts, and acute depression continue to walk free despite the unique circumstances surrounding this abduction – it is the first state-sponsored abduction in Zimbabwe to be caught on camera. There have been no meaningful follow-ups on the part of the State on the clear leads and evidence captured by the CCTV footage.

On 22 September 2022, Makomborero Haruzivishe finally won an appeal against both his 6 April 2021 conviction and sentence by Magistrate Judith Tarvinga on charges of inciting public violence and resisting arrest.

He had been jailed for 24 months on the first count of incitement and 12 months for the resisting arrest charge.

84. “Letter from a Zimbabwean prison: Justice is the first condition of humanity and we deserve it pure and undiluted”, 29 September 2021, Daily Maverick, <https://www.dailymaverick.co.za/article/2021-09-29-letter-from-a-zimbabwe-prison-justice-is-the-first-condition-of-humanity-and-we-deserve-it-pure-and-undiluted/>

3.2.9

Obert Masaraure and Robson Chere

On 12 January 2022, Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) leader and Crisis in Zimbabwe Coalition spokesperson Obert Masaraure and fifteen other teachers were arrested for taking part in a peaceful protest against poor working conditions and paltry salaries for teachers. The group was tortured during the arrested and sustained serious injuries – they also had to spend the weekend in cells which were infested with sewer and overflowing urine and the police reportedly also refused to give them blankets.⁸⁵ Teachers' working conditions deteriorated to levels far worse than during the era of late, Robert Mugabe with their meagre salaries being reduced to next to nothing due to hyperinflation. Their arrest for peacefully demanding better wages for teachers (who used to earn USD\$540 during Mugabe's tenure but who, at the time of their arrest, now earned the equivalent of USD\$100 per month) was described by CiCZ Chairperson Peter Mutasa as being a clear manifestation of the weaponization of the law in Zimbabwe.⁸⁶

Obert Masaraure and the ARTUZ members were released on ZWL\$5 000 bail on 17 January 2022 after pressure mounted from Continental Unions including the International Trade Union Confederation (ITUC) which

petitioned President Emerson Mnangagwa to urgently release the teachers. Obert Masaraure was arrested again on 14 June 2022 on charges of murder after he reported to the Harare Central Police Station as part of his bail reporting conditions in a separate matter in which he is accused of participating in an illegal protest. The murder charge relates to a 2016 incident in which a colleague fell to his death from the seventh floor of Jameson Hotel while drinking with friends including Masaraure. CiCz described this arrest as yet another case of political persecution to silent dissent. Masaraure was released on ZWL\$60 000 bail by the High Court on 29 June 2022.

On 5 July 2022, police arrested ARTUZ Secretary General Robson Chere and like Masaraure also charged him with murder based on the same 2016 incident that had led to Masaraure's arrest on 14 June 2022. It is worth emphasizing at this point that an inquest into this 2016 incident ruled out foul play due to numerous eyewitness accounts that all indicated that youth activist Roy Issa fell from the seventh-floor window of Jameson Hotel in Harare while drinking with friends including Masaraure. He was granted ZWL\$60 000 bail on 13 July 2022 and ordered to surrender his passport.

On 8 July 2022, ARTUZ leader Obert Masaraure was arrested again on fresh charges of defeating the course of justice and

85. "Zimbabwe Situation, Teacher's arrest a manifestation of the weaponization of the law in Zimbabwe", 15 January 2022, <https://www.zimbabwesituation.com/news/teachers-arrest-a-manifestation-of-the-weaponization-of-the-law-in-zimbabwe/>
86. "Zimbabwe Situation, Teacher's arrest a manifestation of the weaponization of the law in Zimbabwe", 15 January 2022, <https://www.zimbabwesituation.com/news/teachers-arrest-a-manifestation-of-the-weaponization-of-the-law-in-zimbabwe/>

inciting public violence. This marks his third arrest in just half a year. He was later granted bail on 4 August by Judge Rodgers Manyangadze in the High Court.

It is through this repeated persecution of human rights activists that the politically motivated nature of their arrests becomes clear.

3.2.10

The Nyatsime 15

On 14 June 2022, violence rocked Chitungwiza's Nyatsime suburb as members of the opposition party, CCC, and the ruling party, ZANU-PF, clashed over the death of a CCC activist, Moreblessing Ali.

The violence resulted in the destruction of homes, business premises, vehicles and other household property. Following the events, the police carried out investigations into the events that transpired resulting in the arrests of up to 15 suspects. Worryingly, most of those arrested were victims of destruction of property, who were arrested upon attending to police stations to report this property destruction.

The table on the next page shows the details of each matter and its status. The data used in this table was derived from the Forum monitoring and verification exercises, PIU cases where the Forum provided legal representation and also update reports consolidated by the Forum Research Unit.



Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
1. Precious Jeché 2. Misheck Guzha 3. Odius Makoma	20 June 2022	Public violence as defined in section 36 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]	Accused in Remand Prison. Bail denied in the Magistrates Court.	14 June 2022	Accused persons
				16 June 2022	Accused persons file a police report at Beatrice Police Station.
				20 June 2022	Accused persons are summoned to Marondera Police Station and willingly surrender themselves and are arrested and detained on charges of public violence where they spent two nights in police cells.
				22 June 2022	Accused persons are brought before Magistrate Yeukai Dzuda at the Harare Magistrate Court for initial remand and a bail hearing is done. The ruling for bail was postponed to 23 June 2022.
				23 June 2022	Bail is denied for the accused persons. Magistrate Yeukai Dzuda gave reasons that there was a possibility of interference with investigations, there is a propensity to commit similar offences if released and the Accused persons'

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
					defence is not plausible. The matter was postponed to 6 July 2022. Lawyers request transcribed record to mount an appeal.
				27 June 2022	Record of proceedings is collected from the Magistrate's Court.
				29 June 2022	An appeal against the refusal of bail is filed at the Harare High Court and the matter is set down for 1 July 2022.
				1 July 2022	The matter is struck off the roll. The legal practitioner who was instructed to appear at the Harare High Court failed to appear in Court owing to personal misfortune on the road.
				4 July 2022	A chamber application for reinstatement of the matter is filed in the Harare High Court and is not opposed by the State.
				6 July 2022	Harare High Court Judge Justice Mungwari consolidated the

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
<p>4. Chauya Shopa</p> <p>5. Zephania Chinembiri</p> <p>6. Zecks Makoni</p> <p>7. Roan Tsoka</p>	22 June 2022	Public Violence as defined in section 36 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]	Accused in Remand Prison. Bail denied in the Magistrates Court.	22 June 2022	<p>matters of Chauya Shopa, Zecks Makoni, Zephania Chinembiri, Roan Tsoka, Shepherd Bulakisi, Tatenda Pindahama, Enock Tsoka and Emmanuel Muradzikwa and postponed the matter to 22 July 2022 on grounds that investigations are still incomplete.</p> <p>The accused, who own and run individual transport businesses, are summoned to St Mary's Police Station in Chitungwiza for allegedly ferrying mourners to Moreblessing Ali's funeral. The accused persons willingly surrender themselves and are arrested and detained for two nights at Harare Central Police Station on charges of public violence.</p> <p>The Accused are taken to Harare Magistrates Court for initial remand where the State opposes bail. The bail application is heard and the ruling on bail is deferred to 27 June 2022.</p>

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
				27 June 2022	Harare Magistrate Mangosi denied the accused persons bail on the grounds that the State's case is strong and the release of the accused will hamper the proper administration of justice. The matter is postponed to 6 July 2022.
				28 June 2022	Lawyers write to the Clerk requesting record of proceedings for appeal.
				6 July 2022	Accused persons' matter is consolidated to the matters of Precious Jeche, Misheck Guzha, Odius Makoma, Shepherd Bulakisi, Tatenda Pindahama, Enock Tsoka and Emmanuel Muradzikwa by Harare High Court Judge Justice Mungwari and postponed to 22 July 2022 on grounds that investigations are still incomplete. The transcribed record is ready for collection.
				7 July 2022	Appeal against refusal of bail is filed in the Harare High Court and set

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
					down for 8 July 2022.
				8 July 2022	The State applies that the matter be consolidated with the other matter that was struck off the roll and another matter yet to be filed since they are on the same facts, charge and allegations and the Court agrees. The matter is removed from the roll to allow the matter to be consolidated with the other matters when they are ready.
8. Shepherd Bulakisi 9. Tatenda Pindahama 10. Enock Tsoka 11. Emmanuel Muradzikwa	23 June 2022	Public Violence as defined in section 36 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]	Accused in Remand Prison. Bail denied in the Magistrates Court	23 June 2022	Accused persons are summoned to St Mary's Police Station in Chitungwiza and willingly surrender themselves. Accused persons are arrested and detained for two nights on allegations of having ferried mourners to Moreblessing Ali's funeral and charged.
				25 June 2022	The accused appear at the Harare Magistrate Court for remand and the bail application is postponed to Monday 27 June 2022. It was a Saturday and the Magistrate

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
					alleged that the Court was overwhelmed to hear applications.
				27 June 2022	Bail consideration is heard at the Harare Magistrate's Court and the ruling is deferred to 28 June 2022 by Magistrate Moyo.
				28 June 2022	Harare Magistrate Ruth Moyo denied the accused persons bail on the basis that they are facing a serious offence which is likely to attract a heavy sentence and therefore that there is risk they will abscond. The matter is postponed to 6 July 2022. Lawyers write to clerk requesting transcribed record.
				6 July 2022	Accused persons' matter is married to the matters of Precious Jeche, Misheck Guzha, Odius Makoma, Chauya Shopa, Zecks Makoni, Zephaniah Chinembiri and Roan Tsoka by Harare High Court Judge Justice Mungwari and postponed to 22 July 2022 on grounds that investigations are still incomplete.

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
				11 July 2022	Transcribed record is ready.
				13 July 2022	An appeal is filed in the Harare High Court and awaiting a consolidated set down date.
12. Robert Madzokere	13 July 2022	Public Violence as defined in section 36 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]	Accused in remand prison. Bail denied in the Magistrates Court	13 July 2022	The accused, a youth development social worker and a former CCC member, is arrested at his house in Nyatsime by implication of his neighbours and taken to Harare Central Police Station where he is charged with public violence and is detained for two nights.
				15 July 2022	Accused is brought at the Harare Magistrate Court before Magistrate Yeukai Dzuda for initial remand on a charge of public violence and bail consideration is heard. The State opposes bail and the Court hears submissions on bail. The ruling is postponed to 18 July 2022.
				18 July 2022	Bail is denied by Magistrate Yeukai Dzuda on grounds that the accused is facing a serious offence. Matter

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
14. Godfrey Sithole	14 June 2022	Public Violence as defined in section 36 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]	Accused in remand prison. Bail denied in the Magistrates Court and the High Court.	14 June 2022	The accused person who is the Citizens Coalition for Change Member of Parliament for Chitungwiza North is arrested on the charge of incitement to commit public violence and is detained at Harare Central Police Station.
				16 June 2022	Accused is brought before the Harare Magistrates Court (Criminal) and State opposes bail. Bail consideration is done and the matter is postponed to 20 June 2022 for ruling.
				20 June 2022	The matter is postponed to 22 June 2022 since the ruling is not yet ready.
				22 June 2022	Accused is denied bail by Magistrate Mambanje on the grounds that he is a danger to society. The matter is remanded to 6 July 2022.

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
				27 June 2022	Accused appeals to the Harare High Court.
				29 June 2022	The Harare High Court removes matter from roll to await transcribed record from the Magistrates Court.
				5 July 2022	Bail hearing postponed to 7 July 2022 awaiting the transcribed record from the Magistrates Court.
				6 July 2022	Matter is remanded further by the Harare Magistrates Court to 2 August 2022 pending investigations.
				7 July 2022	Accused denied bail by the Harare High Court Justice Mungwari on the ground that the accused was likely to disturb peace or undermine public order or security.
15. Clever Sibanda	14 July 2022	Public Violence as defined in section 36 (1) of the Criminal Law (Codification	Bail ruling pending, accused in remand prison.	18 July 2022	Accused is a Citizens Coalition for Change youth member and is arrested at his home in Nyatsime and is taken to Harare Central

Name of Accused	Date of Arrest	Charge	Status	Timeline of Proceedings	
				Date	Update
		and Reform) Act [Chapter 9:23]		20 July 2022	Police Station. Accused appears at Harare Magistrates Court for initial remand before Magistrate Mushavakure. Bail application not completed, and matter is rolled over to 21 July 2022.
				21 July 2022	Bail application heard in full before Harare Magistrate Mushavakure. Bail denied on the grounds that the offence is serious, accused is likely to abscond, the accused is a danger to society by staying where the witnesses are and that his defence is weak. Matter remanded to 22 August 2022.

Felix Biri, the 16th Nyatsime detainee became the first to be released on bail on 17 October 2022. Felix Biri, who had been arrested on 29 September 2022 on the same inciting public violence charges as the other Nyatsime detainees, was granted ZWL\$20 000 bail by Justice Esther Muremba after being represented by Forum lawyer, Darlington Marange who approached the High Court as a court of first instance on 5 October 2022. Justice Muremba, in handing down the ruling disagreed with the lower court's reasoning by asserting that:

(I) grounds of denying bail should be ascertained on a case-by-case basis as personal circumstances may differ despite accused persons facing the same charge;⁸⁷ and

(ii) significantly that an accused person can approach the High Court as a court of first instance on bail in respect of non-third schedule offences. This will be the case where exceptional circumstances exist and where justifiable reasons are given by the applicant for approaching the High Court instead of making his or her bail application in the Magistrates Court. In this instance, the applicant was deemed to have satisfied this threshold – Felix Biri approached the High Court because, during his appearance at the Harare Magistrates Court, several individuals wearing ZANU PF regalia milled around the

courthouse and threatening to burn it down if he was granted bail.⁸⁸

Honorable Godfrey Sithole became the second Nyatsime detainees to be granted bail after his release on 10 November 2022 on USD\$470 bail. He too had been charged with inciting public violence in relation to the violence that erupted in Nyatsime. By the time of his release, he had spent 149 days in detention without trial.

14 members of the Citizens Coalition for Change (CCC) opposition political party were eventually all released on bail on 16 November 2022 on ZWL\$50 000 bail after spending nearly 6 months in total in pretrial incarceration.

Much like Makomborero Haruzuvushe's continued persecution after release on bail, the Nyatsime 14 were subjected to stringent bail conditions upon release which included reporting three times a week to the Harare Central Police Law and Order section. However, on 27 January 2023, Forum lawyer, Noble Chinhanhu managed to successfully apply for relaxation of the harsh bail conditions on the grounds that they were becoming punitive and causing undue hardship. As a result, the Nyatsime 16 have gone from reporting thrice to only having to report once a week.

87. Prosecutor Ms A Mupini had denied bail on the grounds that Felix Biri's co-accused had been denied bail on the same charge and circumstances. Her averment was that Felix Biri had actively participated in all the violence that had happened in Nyatsime and that therefore there should be denied bail since his co-accused's applications had been rejected. Justice Muremba was however adamant that Ms A Mupini's ground for denial of bail was not covered under section 117 (2) of the Criminal Procedure and Evidence Act which clearly sets out grounds for denial of bail (the likelihood that the accused will abscond; interfere with the evidence or with witnesses; commit further crimes; the likelihood that the proper functioning of the criminal justice system will be undermined, and in exceptional circumstances, the likelihood that public order will be disturbed or that public security will be undermined if the accused is released on bail).

88. Felix Biri v The State HH 722-22

3.2.11

Job Sikhala

Job Sikhala has a history of being persecuted for being an outspoken critic of the government. He was one of Chin'ono's legal representatives and the Vice Chairperson of the Movement for Democratic Change Alliance (MDC Alliance). He was, for example, arrested on 21 August 2020 for allegedly posting videos on social media inciting the public to revolt against the government of Zimbabwean President Emmerson Mnangagwa and charged with inciting the public to commit violence.⁸⁹ He was released on bail after 31 days in remand detention. Sikhala was arrested again on 9 January 2021, charged with communicating falsehoods for sharing the same video as Chin'ono.⁹⁰

On 14 June 2022, Job Sikhala was arrested on a charge of inciting violence in Nyatsime, Chitungwiza following the violence that erupted in the area in the wake of Moreblessing Ali's death. Moreblessing Ali was a political activist who went missing for three weeks before being found murdered and her body mutilated on 11 June 2022. Job Sikhala, who was the legal representative and family spokesperson of Moreblessing Ali's relatives was targeted after sharing the family's communication that those responsible for their sister's death will face the

wrath of the spirit world.⁹¹ His initial bail hearing was postponed to Monday 20 June 2022. Harare magistrate Gibson Mandaza denied bail in a bail ruling on 22 June 2022 declaring that Job Sikhala poses a "threat to public security" and is "likely to re-offend if released on bail".⁹² He was remanded in custody to 6 July 2022 and advised to lodge an appeal in the High Court. A subsequent bail appeal filed by lawyers Alec Muchadehama and Jeremiah Bhamu was dismissed by the High Court on 7 July 2022.⁹³ He remains the only Nyatsime detainee behind bars as at 6 June 2023.

Here is a tabulation below detailing the arrest, denial of bail, and pretrial detention of Job Sikhala to 6 June 2023. The following data was derived from information from the Forum legal counsel and the Forum PIU unit:

Job Sikhala Case Timeline

He was arrested on 14 June 2022 for Public Violence as defined in section 36 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23] and defeating or obstructing the course of justice in terms of section 184 (1)(e) of the Criminal (Codification and Reform) Act [Chapter 9:23]. The status of the case that the accused person remains in remand prison as at 6 June 2023 after bail was denied at both the Magistrates Court and the High Court.

89. "Zimbabwe's outspoken opposition lawmaker Job Sikhala released on bail", News24, 22 September 2020

90. "MDC Alliance MP Job Sikhala Arrested", NewZimbabwe, 9 January 2021.

91. Hopewell Ching'ono, 27 June 2020, Facebook post, <https://www.facebook.com/hopewelljournalist/posts/moreblessing-alis-family-demands-the-release-of-their-lawyer-job-sikhala-who-was/3353720428183305/>

92. Sikhala, Sithole denied bail, court says MPs a threat to national security, Zimlive, 22 June 2022, <https://www.zimlive.com/2022/06/sikhala-sithole-denied-bail-courts-says-mps-a-threat-to-security/>

93. New Zimbabwe, High Court refuses Sithole and Sikhala bail; MPs have been in detention for 22 days, 7 July 2022, <https://www.newzimbabwe.com/just-in-sikhala-sithole-denied-bail/>

The following events provide a detailed narrative of the timeline of proceedings in his case:

14 June 2022

On 14 June 2022, the accused person was arrested at his home St Mary's Chitungwiza on charges of incitement to commit public violence. The accused is detained at Harare Central Police Station for two days

On 16 June 2022, the Accused was brought before the Harare Magistrates Court (Criminal) and State opposes bail. Bail consideration is done and the matter is postponed to 22 June 2022 for ruling.

16 June 2022

22 June 2022

On 22 June 2022, the accused was denied bail by Harare Magistrate Nduna on the grounds that he has a propensity to commit further crimes and is a danger to society. The matter is remanded to 6 July 2022 .

27 June 2022

On 27 June 2022, the accused appealed to the Harare High Court.

06 July 2022

On 6 July 2022, the matter was further remanded by the Magistrates Court to 2 August 2022 pending police investigations.

07 July 2022

On 7 July 2022, accused was denied bail at the Harare High Court by Judge Justice Mungwari.

14 July 2022

On 14 July 2022, accused was re-arrested whilst in custody on fresh charges of defeating or obstructing the course of justice for misleading the police on the identity of the murder of Moreblessing Ali.

18 July 2022

On 18 July 2022, Harare Magistrate Nduna recuses himself citing he had exercised bias in the process of denying the accused bail. The matter was postponed to 19 July 2022.

19 July 2022

On 19 July 2022, application for refusal of further remand was made at the Harare Magistrates Court. Ruling postponed to 21 July 2022.

21 July 2022

On 21 July 2022, application was dismissed by Harare Magistrate Stenford Mambanje on the ground that remand only deals with reasonable suspicion and not merit.

27 July 2022

On 27 July 2022, Sikhala was denied bail at the Magistrates Court for the charge of defeating the course of justice. Sikhala's lawyer Beatrice Mtetwa says next course of action is to approach the High Court for bail.

30 July 2022

On 30 July 2022, application for bail on the charge of obstruction of justice launched at the High Court for Sikhala. Sikhala was denied bail on the incitement of violence charge.

14 October 2022

On 14 October 2022, bail application was denied at the High Court. Despite the bail application being made on the basis that a petition for the release of Sikhala was signed by over 50 000 Zimbabweans. The general view was that denying him bail was contradictory to the Magistrates submission that granting Sikhala freedom would result in the public losing trust in the bail system. Minister of Justice, Legal and Parliamentary Affairs, Ziyambi Ziyambi says, *"The individual so concerned, my understanding which I just read, not to say that I was schooled by the Judiciary from going to ask about judicial decision*

but that is not my duty; the decision of the courts was on the basis of the fact that a bail was granted, bail conditions were violated and that is the reason to deny bail.” He insists that superiors cannot direct judges and magistrates on how to deal with cases. “When we are in court, sometimes as politicians, we must refrain from abusing the courts for political expediency.”

19 October 2022

On 19 October 2022, Sikhala was denied bail on the obstruction of justice charge. Magistrate Taurai Manuwere ruled that there was no change of circumstances from the last attempt at attaining bail. Magistrate insists that public feelings have no bearing on bail. Reasons for denying bail include that the defence offered nothing to prove that Sikhala would re-offend or abscond.

04 November 2022

On 4 November 2022, the High Court dismissed bail application for both Job Sikhala and Godfrey Sithole based on unchanged circumstances since the initial bail hearing in July. Both arrested persons were represented by Jeremiah Bamu. Justice Rogers Manyangadze noted that court did not look at the reasons Sikhala and Sithole were denied bail by a change in circumstances from the time their bail application was turned down.

16 November 2022

On 16 November 2022, 14 members of Citizens Coalition for Change (CCC) were released on bail after being arrested for the skirmishes in Nyatsime shrouding the death of activist Moreblessings Ali. Honorable Godfrey Sithole was granted bail a week after the release of the Nyatsime detainees. However, Honorable Job Sikhala was still held at Chikurubi Maximum prison.

19 November 2022

On 19 November 2022, bail application could not be argued due to power outage and could only be argued on the 21st of November hopefully there would be electricity. This was the reason given by the prosecutor George Manokore. Sikhala's lawyer Tabani Mpofu argued that the courts used to record manually so the proceedings must go ahead. However, Magistrate Tafadzwa Miti argued that the matter had been machine recorded previously and must continue in the same format. Thus, deferring the matter to 21 November.

22 November 2022

On 22 November 2022, Sikhala and his lawyers spent that whole day at the Harare Magistrates Court waiting for the trial to commence. However, prosecutors were not available. Sikhala's legal counsel Jeremiah Bamu opted for bail application but the magistrate in court 14 insisted that he was too occupied to handle the application.

24 November 2022

On 24 November 2022, Job Sikhala through his lawyer Jeremiah Bamu notified the state that he intends to make an application seeking recusal of Magistrate Tafadzwa Miti. Recusal was being sought on reason that the Magistrate had dismissed a previous bail application based on changed circumstances.

06 December 2022

On 6 December 2022, Job Sikhala's trial began with him applying for an exception through his lawyer Jeremiah Bamu. The basis of the application was that state allegations do not formulate the offence. Sikhala appeared before Magistrate Mrs Marehwanazvo Gofa. Zabadih Bofu appearing for the state was expected to respond to the application for exception on 7 december 2022.

21 December 2022

On 21 December 2022, the High Court Judge Justice Samuel Deme indefinitely reserved judgement in the Sikhala bail application. The bail application by Sikhala's legal Counsel Tabani Mpfu was based on the assertion that the Magistrates Court erred in denying bail on the basis that Sikhala was an incorrigible criminal that has been arrested 63 times. Justice Deme insisted that Sikhala breached his bail conditions.

03 January 2023

On 3 January 2023, Job Sikhala's trial was to begin but was stalled by his request through a letter penned from Chikurubi Maximum Prison, requesting that trial be broadcast live. The letter insists that he is unwell and has been denied access to his doctor.

26 January 2023

On 26 January 2023, Job Sikhala was remanded in custody in absentia after the Zimbabwe Prisons and Correctional Services indicated that he was not well.

07 February 2023

On 7 February 2023, Job Sikhala's lawyer, Jeremiah Bhamu filed two applications before the Harare Magistrate Tafadzwa Miti for Sikhala to get treatment from his chosen medical practitioners. Job Sikhala wrote a letter from Chikurubi Maximum Security Prison expressing concerns over his deteriorating health and also highlighted that he had been suffering from abdominal pains from his left side. He was granted access to medical assistance and for the officers to return his blood pressure medication.

26 March 2023

On 26 March 2023, Job Sikhala appeared before the Magistrates Court facing a charge of contravening section 184 (1) (a) of the Criminal Law (Codification and Reform) Act, [Chapter 9:23] defacing or obstructing the course of justice where in allegations are contained in the charge sheet and the state outline. He pleaded

not guilty to the charge and trial commenced. State led evidence from three witnesses and closed its case. Through his legal counsel, Job Sikhala applied for discharge at the close of the state case. This was made in terms of section 198 (3) of the Criminal Procedure and Evidence Act, [Chapter 9:07] for no reference was made to the section being relied on by the defence on the face of the application.

03 May 2023

On 3 May 2023, Job Sikhala was convicted and given a wholly suspended six month sentence on the obstruction of justice charge. He is also fined by Magistrate Marewanazvo Gofa US\$600 or six months in jail if he could not pay the fine. The magistrate asserted that Sikhala's defence that he was in Gutu on the 25th of May 2022 was an afterthought because it was never mentioned by the police. The magistrate went on further to say that the evidence clearly showed that utterances made by Sikhala led the police to follow new leads in the murder of Moreblessings Ali. *"Sikhala was aware that police were investigating the murder case but he went ahead to make utterances that misled the police investigations. The evidence led by State witnesses corroborated each other and Sikhala if found guilty of obstructing the course of justice."* - Magistrate Marewanazvo Gofa

04 May 2023

On 4 May 2023, after the conviction and sentencing on the obstruction of justice charge, Sikhala's lawyer Harrison Nkomo said they would appeal the conviction at the High Court, where his client feels the matter will be handled better. *"We have instructions to file to the High Court. The accused person believes very strongly that he stands a better chance in the High Court on review, a superior court might arrive at a different decision altogether,"* Nkomo said.

Job Sikhala is a classic example of arrests that are politically motivated because he has been arrested a record of sixty-seven times only to be convicted recently on the 3rd of May 2023 for the obstructing the course of justice. Sikhala was given a wholly suspended six months sentence with an option of paying a fine of \$USD 600 or spending six months in prison.

94. "Zimbabwe: Allow legal representatives access to opposition politicians while in detention", 5 July 2022- <https://www.amnesty.org/en/latest/news/2022/07/zimbabwe-allow-legal-representatives-access-to-opposition-politicians/>

04.

CONCLUSION AND RECOMMENDATIONS

Zimbabwe has witnessed a concerning increase in cases of arrests, denial of bail and prolonged incarceration of persons perceived to be voices of dissent to the Government of Zimbabwe. This is a worrying trend that needed deeper analysis, specifically between the year 2020 to date. The arrest and subsequent denial of bail and prolonged pre-trial detention is undoubtedly and increasingly being used as a tool of repression in Zimbabwe. This abuse of the criminal law violates basic fair trial and pre-trial rights protected under Zimbabwe, regional and international law. There is also violation of fundamentals to the fair administration of justice.

The promotion, protection and upholding of human rights; in particular, Fair Trial Rights is essential to the enhancement, efficacy as well as long-term survival of Zimbabwe's democratic constitutional project.

In the result, this report makes the following recommendations for various stakeholders to consider as follows;

Recommendations



- i) The State must desist from politicising the role of judicial officers such that they exercise independence in the discharge of their mandate.
- ii) The role of police officers in investigating cases should not be politicised by the State such that they also exercise independence in the discharge of their mandate.
- iii) The State should pay due regard to regional best practices regarding pre-trial detention and to show such commitment by domesticating and enforcing the *'Principles and guidelines on the right to a fair trial and legal assistance in Africa'*. These are proclaimed by the African Charter on Human and Peoples' Rights (ACHPR) and push for respect of the right to liberty and security of arrested and detained persons under Article M namely that:

1(e) Unless there is sufficient evidence that makes it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.

1(g) Ensuring, the enactment of legal provisions into domestic law, that officials or other persons who arbitrarily arrest or detain any person are brought to justice.

1(h) Ensuring, the enactment of legal provisions and adoption of procedures that anyone who has been the victim of unlawful or arbitrary arrest or detention is enabled to claim compensation.



- iv) In all circumstances, respect and implement of international best practices, norms, and standards and ensure the protection and promotion of and respect for fundamental human rights and freedoms in accordance with the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR).
- v) Conform to the provisions of the United Nations Declaration on Human Rights Defenders (UDHRD), which provides specific protections to human rights defenders that, inter alia include the right to conduct human rights work individually and in association with others.
- vi) The State should implement bona fide amendments to the Independent Complaints Commission Bill H.B. 5, 2020 to align the Bill with the spirit and purpose of section 210 of the Constitution of Zimbabwe, 2013.
- vii) The State should take concrete and cogent steps to ensure that the Independent Complaints Commission is fully capacitated and implemented so as to provide a platform for redress for victims of brutality from law enforcement officers.
- viii) The State should seriously consider the issue of sensitization funding for the Judicial Services Commission to train judicial officers on fair trial rights from a regional and international perspective as the nation inches closer towards the 2023 poll.
- ix) The State should create and safeguard a conducive operating environment for Human Rights Defenders in Zimbabwe and show genuine commitment to do so by:



(a) immediately condemning the criminalization of legitimate human rights activism by members of the Zimbabwe Republic Police and the judiciary and

(b) facilitating the unconditional release of all political prisoners in Zimbabwe as well as withdrawing stringent bail conditions and additional criminal charges on released political prisoners that serve to continuously impinge upon their constitutional guarantees to freedom of movement and of liberty and security of the person.

- x) The human rights based civil society organisations should undertake advocacy efforts that strengthen the justice delivery system.
- xi) The civil society organisations should play its complementary role towards Government efforts through provision of technical support to judicial officers in strengthening their knowledge on the benchmarks used on the rights of arrested persons.
- xii) The parliamentarians should be capacitated continuously so that they provide concrete oversight on legislative review processes on laws governing rights of arrested persons.



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