

BRIEFING PAPER

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THE SITUATION OF HUMAN RIGHTS DEFENDERS IN ZIMBABWE

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In its November 2016 Universal Periodic Review (UPR), Zimbabwe accepted 154 out of 263 recommendations, with 3 of them focusing on human rights defenders (HRDs). Zimbabwe committed to take concrete steps to create and maintain a safe and enabling environment for HRDs, adopt national legislation for the effective implementation of the United Nations Declaration on Human Rights Defenders, and investigate threats, attacks and intimidations against HRDs. However, since its last review, the human rights situation in Zimbabwe has deteriorated significantly with a persistent harassment and persecution of civil society and HRDs.

RISKS FACING HUMAN RIGHTS DEFENDERS

- In 2016, Zimbabwe Lawyers for Human Rights (ZLHR) condemned the violation of the rights of HRDs, including Dr Patson Dzamara, who were abducted and tortured by unidentified men on Friday 18 November 2016 following an organised ambush. Dzamara, a pro-democracy campaigner — and the brother of activist Itai Dzamara who was subjected to enforced disappearance in March 2015— was hit on the back of the head and all over his back with spikes which had been thrown in front of his vehicle before being abducted.¹
- On 1 August 2018, following Zimbabwe’s presidential elections, security forces indiscriminately shot at protesters demanding the release of the results of the 20 July 2018 elections, killing six of them. Although a Commission of Inquiry appointed by the President of Zimbabwe looked into the shootings and made recommendations including for the payment of compensation to the victims of the violence and dependents of the deceased², nothing substantial has been done to implement them.³
- In January 2019, during a 3-day national stay-away to protest against fuel increases, the Zimbabwe National Army was unlawfully deployed into residential areas where they and the police unleashed a reign of terror on citizens⁴ and conducted systematic dragnet arrests, particularly of young adult males in affected areas⁵. The State then sought to conduct summary trials and systematically denied bail to the accused persons. The government also imposed a total shutdown of the internet during the stayaway⁶, which was restored after ZLHR instituted a court application in terms of the right to information protected under section 62 of the Constitution⁷.
- On 27 May 2019, two HRDs, Sitabile Dewah and Rita Nyamupinga, were arrested at the Harare airport as part of a mounting onslaught on the rights to freedom of expression and association in Zimbabwe. This brought the total number of HRDs arrested at the Robert Mugabe International Airport in a single week to seven. The arrested HRDs were returning from a capacity-building workshop on non-violent protest tactics in the Maldives organised by the Centre for Applied Non-Violent Action and Strategies (CANVAS).⁸ The seven activists were charged with treason for ‘subverting a constitutional government’ under Section 22 (2) of Criminal Law (Codification and Reform Act) (the “Criminal Code”) which carries a penalty of up to 20 years in prison.⁹ Between mid-January and November 2019, a cumulative number of 22 HRDs were arrested and charged with this offence.¹⁰
- In 2020, ZLHR condemned State actors for abusing and exploiting COVID-19 enforcement regulations to curtail human mobility and interaction in a manner which provides the Zimbabwean Government with a smokescreen to escalate a systematic assault on HRDs. ZLHR remains concerned about the ongoing repressive enforcement of the regulations in 2021, imposing unlawful restrictions on HRDs fundamental rights and freedoms.¹¹
- In 2020, numerous arrests were made of HRDs who participated in or promoted the 31 July anti-corruption protests. This includes Hopewell Chin’ono, Jacob Ngarivhume, Job Sikhala, Fadzayi Mahere and Tsitsi Dangarembga, among others,¹² in violation of their rights to freedom of expression, association and assembly. Prosecutions are ongoing. In 2021, the crackdown on HRDs has continued, with HRDs increasingly being arrested for social media posts critical of the State, and numerous HRD activists being subjected lengthy pre-trial detention periods, due to systematic denial of bail, in maximum security prisons that are overcrowded.

OFFICIAL RESTRICTIONS ON THE SPACE FOR HUMAN RIGHTS DEFENDERS

- While Zimbabwe’s 2013 Constitution enshrines the rights to freedom of assembly, expression and movement,¹³ the Government has failed to align existing national laws with the new Constitution. The crime of “subverting constitutional government” continues to pose as a peril to the activities of HRDs, opposition leaders and CSOs in Zimbabwe.¹⁴ The recent arrests of Chin’ono, Sikhala and Mahere for issuing statements “prejudicial to the state” further demonstrate a crackdown on the freedom of expression targeted at opposition leaders, HRDs and other critical voices.¹⁵
- In 2020, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association

(FoAA), Clément Nyaletsossi Voule, reported that the 2019 Maintenance of Peace and Order Act (MOPA) replacing the Public Order and Security Act, is “not conducive to free and unhindered exercise of the right to freedom of peaceful assembly” as it negatively affects the exercise of the rights to FoAA. Sections 5 to 8 of the MOPA criminalise the failure by convenors of public gathering to give notice to a local regulating authority in advance of all their planned gatherings leaving no room for spontaneous assemblies to be held in response to matters of public concern.¹⁶

- On 19 May 2020, MISA Zimbabwe expressed concern over the State’s Cyber Security and Data Protection Bill (CSDP Bill) which seeks to promote security in a manner that may infringe on the exercise of media freedom, freedom of expression and access to information. For instance, section 164 of the CSDP Bill makes the sharing of information to the public “with intent to incite such persons to commit acts of violence” against any person, a criminal offence attracting a sentence of up to 15 years. This section could be relied on by the State to prevent the expression of dissenting opinions from CSOs and HRDs.¹⁷

INTIMIDATION AND REPRISALS FOR ACCESSING INTERNATIONAL AND REGIONAL MECHANISMS

- Following the visit of the UN Special Rapporteur on FoAA in September 2019¹⁸, and his subsequent assessment report on the situation of the rights to FoAA in the country¹⁹, certain groups of HRDs mentioned in his report and those who participated and contributed to his assessment have seemingly been targeted.
- At the time of the Special Rapporteur on FoAA’s visit, medical practitioners were staging countrywide peaceful protests demanding the immediate release of Dr Peter Magombeyi — former leader of the Zimbabwe Hospital Doctors Association (ZHDA), an organization advocating for labour rights of health workers— who had been abducted at the time.²⁰ The Special Rapporteur held meetings with various stakeholders including Civil Society Organisations (CSOs), which likely contributed to Magombeyi’s release²¹. However, since his report, the government has intensified massive crackdowns on health workers demanding better working conditions and better salaries. Constantino Chiwenga, the Zimbabwe Health Minister, has also conscripted junior doctors to complete their training through the Zimbabwe Defence Forces, in a seeming bid to militarise and control the health sector.²²
- In May 2020, three women human rights defenders (WHRDs) - Joana Mamombe, Netsai Marova and Cecilia Chimhiri were abducted after participating in a demonstration over the lack of social State

measures to protect the vulnerable members of community amidst COVID-19.²³ After their release, they were subjected to repeated arbitrary arrests and detention. They are facing ongoing charges relating to activism on social media, challenging state corruption, poor governance and security services’ brutality.²⁴ ZLHR documented and communicated their case to the UN Special Procedures.²⁵ The international condemnation of their persecution has unfortunately seemingly escalated their persecution by the State.

- In seemingly direct retaliation to the above-mentioned reports made to the UN, in October 2020, the Minister of Information announced that Cabinet had approved amendments to the Criminal Code²⁶ that would outlaw protests that coincide with international events and, criminalise unsubstantiated claims of torture and abductions that are concocted to tarnish the image of government, among other things.²⁷ In October 2020, President Emmerson Mnangagwa also made a chilling statement to the effect that the Government was in the process of amending the Private Voluntary Organisations Act to “deal” with Non-Governmental Organisations (NGOs) and Private Voluntary Organisations (PVOs) that operated outside their mandate.²⁸
- In July 2021, in a further attempt to regulate HRDs and CSOs, directives have been issued for NGOs “straying from their mandates” to submit Memorandums of Understanding and work plans to the authorities, although there is no legal requirement for them to do so.²⁹

HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISKS

- In November 2017, President Robert Mugabe was replaced by Emmerson Mnangagwa as a result of an apparent military coup. Despite rhetoric of a ‘new era’ in the country, HRDs are still targeted. Particularly targeted HRDs include those advocating for public accountability, those working on freedom of speech, documenting human rights abuses, LGBTI rights and women’s rights, as well as those advocating for transparency in the country’s extractive industries.³⁰
- In August 2019, the Zimbabwe Peace Project reported that Tatenda Mombeyarara, one of the seven HRDs who was arrested for attending the workshop in the Maldives organised by CANVAS, was abducted on 13 August 2019 and inflicted with grievous bodily harm and then left for dead in a bushy area in Hatfield. Mombeyarara was tortured while being interrogated about the workshop he attended. He sustained a broken leg, fractured hand and bruises, while a caustic liquid was poured on him.³¹

- On 18 August 2020, a magistrate barred Beatrice Mtetwa, a human rights lawyer, from representing her detained client, a HRD journalist by the name of Hopewell Chin'ono, and recommended that her legal practicing licence be revoked after she was falsely accused of running a Facebook page which criticised the justice system.³² Other human rights lawyers including Obey Shava, Jeremiah Bamu, and Thabani Mpfu have also been targeted and arrested while representing high profile HRDs.³³
- On 8 January 2021, Chin'ono was arrested by police officers without a warrant, at his home and charged with “publishing or communicating false statements prejudicial to the State”, as defined in section 31(a) of the Criminal Code, for a tweet he wrote about the death of a child who had allegedly been beaten by the police, while enforcing new lockdown measures.³⁴ Although he was vindicated of these charges by the court on 28 April 2021, the State wants to reopen the matter and has filed an application to rescind the High Court's decision.³⁵ Further, he has yet another case before the courts in which he is accused of a planned anti-Government protest in July 2020.³⁶
- Makomborero Haruzivishe, an outspoken critic of the Zimbabwean Government, was convicted on 6 April 2021 by the Harare Magistrates Court and sentenced to 36-months imprisonment on charges of resisting arrest and inciting informal traders to commit public violence. He is accused of whistling

when police were on an operation to round up informal traders in Harare's central business district.³⁷

THE RESPONSE OF THE STATE REGARDING THE PROTECTION OF HUMAN RIGHTS DEFENDERS

- Despite the numerous reported cases of torture and enforced disappearances of persons in Zimbabwe, the State has neither ratified the Convention against Torture and other Cruel, Inhuman and Degrading Treatment (CAT) nor the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).
- The Zimbabwe police are yet to produce a comprehensive report on the enforced disappearance of Itai Dzamara, a HRD who was abducted in Harare six years ago, two days after he spoke against the deteriorating situation in Zimbabwe at an oppositional political party rally.³⁸
- In Zimbabwe's 2016 UPR, the Government accepted the recommendations by States to take concrete steps to create and maintain a safe and enabling environment for HRDs, and ensure that violence directed against political activists and HRDs will not be tolerated, and that perpetrators will be held accountable. It also accepted the recommendation to adopt national legislation for the effective implementation of the UN Declaration on HRDs.³⁹ However, these recommendations are yet to be implemented.

RECOMMENDATIONS TO THE GOVERNMENT OF ZIMBABWE:

- Adopt concrete measures to align domestic laws with international human rights instruments and the protections guaranteed in the 2013 Zimbabwe Constitution;
- Ensure the CSDP Bill is amended to prevent its provisions from infringing on the exercise of media freedom, and FoAA;
- Abandon proposed amendments to the PVO Bill and the Criminal Code, and the proposed introduction of a Patriotic Bill, that would restrict and criminalise operations of HRDs and CSOs;
- Prevent, investigate and adequately punish politically motivated threats, attacks, enforced disappearances and intimidations against HRDs and activists, including when such violence is committed by members of the police and security forces and at the instigation of public officials;
- Take all necessary measures to guarantee the physical and psychological integrity and security of HRDs;
- Promote and disseminate the UN Declaration on HRDs and adopt national legislation for its effective implementation;
- Take steps to ratify and domesticate the CAT and ICPPED; and
- Repeal and amend legislation which infringes on the rights to freedom of association, expression, demonstration and petition, movement, media and peaceful assembly, including the MPOA and the Criminal Code.

ABOUT THIS BRIEFING PAPER

ISHR and the ZLHR encourage States to consult UPR submissions by local activists and make recommendations to Zimbabwe regarding the protections of HRDs. This paper is a result of compiling public information and direct contact and experience in the protection of HRDs. Readers should consult sources provided for additional information.

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