



EMBASSY OF THE REPUBLIC OF ZIMBABWE  
ADDIS ABABA  
V. URGENT

**Zim-Add/AU/36**

**Note No: 22/2021**

The Embassy of the Republic of Zimbabwe presents its compliments to the African Union Commission and the Secretariat of the African Commission on Human and People's Rights (ACHPR) and has the honour to refer to the 48<sup>th</sup> and 49<sup>th</sup> Activity Reports of the ACHPR, to be presented to the 38<sup>th</sup> Ordinary Session of the Executive Council.

The 41<sup>st</sup> Ordinary Session of the PRC, requested States Parties, if they so wish, to submit written observations on the Activity Report, to be annexed thereto upon the Report's publication. The Embassy makes reference to the ACHPR's report which stated that Zimbabwe did not submit a response to the:

- i. Letter of Appeal dated 15 October 2020, that was addressed to the President of the Republic of Zimbabwe regarding the arrest and detention of Mr Hopewell Chin'ono; and
- ii. Letter of Urgent Appeal dated 20 November 2020, regarding the alleged judicial harassment against Ms. Beatrice Mtetwa.

Attached hereto are Zimbabwe responses to the above submitted on 20 November and 21 December 2020, respectively. The Embassy of Zimbabwe kindly requests the Secretariat of the ACHPR acknowledges, through Note Verbale, receipt of this correspondence.

The Embassy of the Republic of Zimbabwe avails itself of this opportunity to renew to the African Union Commission and the Secretariat of the African Commission on Human and People's Rights the assurances of its highest consideration.

**Addis Ababa, 28 January 2021**

**The African Union Commission**  
**Addis Ababa**

**Secretariat of the African Commission on Human and People's Rights**  
**Banjul**





**RESPONSE BY THE GOVERNMENT OF THE REPUBLIC  
ZIMBABWE**

To the

**AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS'**

**APPEAL BY THE SPECIAL RAPPORTEUR ON FREEDOM OF  
EXPRESSION AND ACCESS TO INFORMATION IN AFRICA**

Regarding

**THE ARREST OF MR. HOPEWELL CHIN'ONO**

**IN THE**

**REPUBLIC OF ZIMBABWE**



# **1. Introduction**

## **1.1. Background**

- a. The Republic of Zimbabwe (herein after "Zimbabwe") is committed to upholding, respecting, promoting, enforcing, implementing and fulfilling local and international human rights obligations. The obligations arise from Zimbabwe's constitutional and legislative frameworks and international human rights instruments to which it is party.
- b. The Zimbabwean human rights architecture is anchored on a sound modern political and legal system supported by a progressive 2013 Constitution. The Constitution enshrines an implementable separation of powers-matrix which facilitates the checks and balances interaction among the three cardinal organs of government: the Executive, Legislature and Judiciary.
- c. Furthermore, independent human rights institutions, in the fashion of the Commissions which promote democracy and good governance, form part of the oversight institutions prescribed by the Constitution. The watchdog institutions, by whose budgets are directly appropriated by Parliament are supported and have been operationalized through relevant Statutory Instruments. They report directly to Parliament and the Government of Zimbabwe has demonstrated commitment to ensure that the independent institutions are in line with the Paris Principles of Human Rights institutional independence.
- d. The gains outlined above have been positively bolstered by a new political dispensation which has ushered in the resignation of the former President of the Republic of Zimbabwe on 17 November 2017 and was



followed by the inauguration of the new Government born out of a peaceful transition on 24 November 2018. The positive state of affairs was underwritten by the free, fair, peaceful and credible 30 July 2018 harmonized elections which were observed by the wider international community.

- e. The peaceful electoral outcomes have broadened democratic horizons and opened democratic space appropriate for thriving multi-party representative democratic political system which in transparent, just, accountable and responsive to the wishes and aspirations of its citizenry. Good Governance, observance of the rule of law, constitutionalism and the principles of separation of powers remain the cornerstones on which Zimbabwe's governance is anchored on.

## **1.2. Zimbabwe's International Human Rights Obligations**

- a. Section 34 of the Constitution obliges the State to ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law.
- b. In keeping with this obligation, Zimbabwe is a signatory to various international instruments. It has ratified and domesticated several of these instruments and has designed and approved a Ratification and domestication Strategy to accelerate the ratification and domestication processes of outstanding ones.
- c. Section 46 of the Constitution envisages a broad interpretational framework by the courts which must take into account international law and all treaties and conventions to which Zimbabwe is a party.



d. Some of the core international and regional human rights treaties to which Zimbabwe is a party are shown in **Table 1** below:

**Table 1: Core International Human Rights Treaties to which Zimbabwe is party**

Treaty	Status	Reservations/ Derogations
1. International Covenant on Economic, Social and Cultural Rights	Ratified 13 May 1991	None
2. International Covenant on the Civil and Political Rights	Ratified 13 May 1991	None
3. International Covenant on the Elimination of All Forms of Discrimination against Women	Ratified 13 May 1991	None
4. International Covenant on the Elimination of All Forms of Racial Discrimination	Ratified 10 April 1997	None
5. Convention on the Rights of the Child (CRC)	Ratified 8 March 1990	None
6. Optional Protocol to the CRC on the involvement of Children in Armed Conflict	Ratified	None
7. Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography	Ratified 14 February 2012	None



8. Convention on the Rights of Persons with Disabilities	Ratified September 2013	None
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## **2. Contextualization of right to freedom of expression and access to information in Zimbabwe**

- a. From the day the Republic of Zimbabwe obtained its independence after a protracted liberation struggle in 1980, it has adopted non-racial policies and laws which promote unity, a constitutional democratic developmental state where all Zimbabwean pursue their dreams peacefully.
- b. Underlining the democratic ethos above, an understanding that Zimbabweans would protect and promote their rights and freedoms through an elected Government confirmed by regular free and fair elections has been the fundamental principle permeating the democratic agenda in Zimbabwe since independence.
- c. In pursuit of achieving the objectives of the social contract, where in return for a mandate given to an elected government at any given time, the new dispensation which was ushered in on 17 November 2017 and confirmed through the 30 July 2018 elections has opened democratic space and guaranteed social, civil and political freedoms and rights enshrined in the country's Constitution.
- d. Journalist, like any other citizens are guaranteed freedom of expression and access to information. In terms of Section 61 (1) (a) the Zimbabwean Constitution;



***"(1) Every person has the right to freedom of expression, which includes— (a) freedom to seek, receive and communicate ideas and other information..."*** However, the same provision qualifies the right, in terms of Section 61 (5) (a) ***"Freedom of expression and freedom of the media exclude— (a) incitement to violence..."***

e. Further, Zimbabwe has guaranteed citizens the right to demonstrate and petition. In terms of Section 59 the Zimbabwean Constitution *"every person has the right to demonstrate and to present petitions, but these rights must be exercised peacefully."*

f. However, these rights are not unfettered. In terms of Section 86 (2) (b) of the Constitution,

*"The fundamental rights and freedoms set out in this Chapter may be **limited only in terms of a law of general application** and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors, including—*

*...*

*(b) the purpose of the limitation, in particular whether it is necessary in the interests of..., **public safety, public order..., public health, ...or the general public interest;***

*..."*

g. In terms of the Section 187 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (herein after referred to as the "Code";



*"(1) Any person who, in any manner, communicates with another person— (a) intending by the communication to persuade or induce the other person to commit a crime, whether in terms of this Code or any other enactment; or (b) realizing that there is a real risk or possibility that the other person may be persuaded or induced by the communication to commit a crime, whether in terms of this Code or any other enactment; shall be guilty of incitement to commit the crime concerned. (2) It shall be immaterial to a charge of incitement that— (a) the person who was incited was unresponsive to the incitement and had no intention of acting on the incitement; or (b) the person who was incited did not know that what he or she was being incited to do or omit to do constituted a crime."*

h. On the other hand, section 36 (1) (a) of the Code prohibits conduct of;

*"36 Public violence (1) Any person who, acting in concert with one or more other persons, forcibly and to a serious extent— (a) disturbs the peace, security or order of the public or any section of the public; or..."*

i. Zimbabwe has set up protocols through the Criminal Procedure and Evidence [Chapter 9:07] for arrest with or without warrants. In particular Section 25 (1) (b) provides;

*"(1) Any peace officer and any other officer empowered by law to execute criminal warrants is hereby authorized, subject to the general or specific directions of a superior officer or person placed in*



*authority over him, to arrest without warrant—(b) any person whom he or she has reasonable grounds to suspect of having committed any of the offences mentioned in the First Schedule...*<sup>1</sup>

- j. On the other hand, Section 33 of the Criminal Procedure and Evidence [Chapter 9:07] provides for procedures of arrest with a warrant.

### **3. COVID -19 REGULATIONS**

- k. On the 23<sup>rd</sup> March, 2020 the President of the Republic of Zimbabwe declared a State of Disaster in connection with the COVID-19 formidable epidemic disease through Statutory Instrument 76 of 2020.
- l. On 29 March, 2020 the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020, published in Statutory Instrument 83 of 2020 (hereinafter referred to as the "principal order") declaring a national lockdown to contain the spread of the COVID-19 formidable epidemic disease with the effect from 30<sup>th</sup> March, 2020 to the 19<sup>th</sup> April, 2020, which period was extended to the 3<sup>rd</sup> of May, 2020, by Statutory Instrument 93 of 2020. Further, the principal order section 5 (1) restricted public gathering except as provided by sub subsection (a-l) i.e for people who are not more than 50 gathered for essential services, transport, medical treatment e.t.c. Consequently, the excepted gatherings are required to observe social distancing, sanitize and wearing of face masks.

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<sup>1</sup> Any offence in respect of which a punishment of a period of imprisonment exceeding six months is provided and may be imposed without the option of a fine, and any conspiracy, incitement or attempt to commit, or being a participant in, any such offence.



m. The period of the lockdown has since been reviewed and has been relaxed in phases as and when deemed appropriate.

#### **4. FACTS SURROUNDING THE ARREST OF HOPEWELL CHIN'ONO**

##### ***S Vs Hopewell Chin'ono***

- 4.1. Hopewell Chin'ono appeared on 22 July 2020 at the Magistrates Court facing charges of Incitement to commit public violence as defined in section 187(1) as read with section 36 of the Criminal Law (Codification and Reform) Act [Chapter 9:23].
- 4.2. At his initial remand, Hopewell Chin'ono was represented by his lawyers. The legal representatives for Chin'ono applied for bail which was opposed by the State on the grounds that he was not a suitable candidate for bail and was likely to abscond because he had numerous contacts out of the country.
- 4.3. The State also had reason to believe that if released on bail there was a probability that he would destroy the evidence. It was also argued by the State that if the accused was released on bail he would endanger the safety and security of the public since he had been calling for unlawful demonstrations on 31 July 2020.
- 4.4. In its arguments the state highlighted that it had reasonable belief that the accused was inciting and calling men to assemble despite the threat of the COVID 19 pandemic. On the basis of the grounds highlighted by the state, Hopewell's bail application was refused by the magistrate who held that there was need to protect the public



who were at the center of the offences that the accused was being charged.

- 4.5. The court held that confidence in the justice delivery system would be lost if the court exercised caution and protected the right of an individual's liberty over the safety and security of the general public.
- 4.6. It is a fact that the application to bail was indeed protracted as it ran from date of the initial remand, 22 July 2020 to 24 July 2020.
- 4.7. After the refusal of bail by the lower court, the accused consequently appealed in the High Court of Zimbabwe and was admitted to bail under Case NO. HC519/2020.
- 4.8. Hopewell Chin'onos lawyers again approached the court with yet another application for variation of bail conditions, which application was protracted and ran from 7 August 2020 until 24 August 2020. The application for variation of bail conditions dismissed. The lawyers for the accused then appealed to the High Court of Zimbabwe which then granted the application under Case No. HH567/2020.
- 4.9. It is important to note that the conduct of Ms Beatrice Mutetwa who was the legal representative of Chino'no before the presiding officer of the court was contemptuous. It led the magistrate to issue an order that the record of proceedings be referred to the Law Society of Zimbabwe and that the Prosecutor General was supposed to consider prosecution of the defence lawyer for her contemptuous conduct. The State had applied for the defence lawyer to be excused from the proceedings since she had failed to exercise her duty as an



*"Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law.*

*In particular, no may be arbitrary arrested or detained. ";*

c. **And Whereas** Zimbabwe is persuaded is guided by Article 9 of the ACHPR which provide thus:

*"1. Every individual shall have the right to receive information.*

*2. Every individual shall have the right to express and disseminate his opinions within the law."*

d. **And Whereas** Zimbabwe has entrenched Article 27 (1) & (2) the ACHPR which provides thus:

*"1. Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.*

*2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest."*

e. **And Whereas** Zimbabwe stands resolute with Article 29 (4) the ACHPR which provides thus:

*"The individual shall also have the duty... [t]o preserve and strengthen social and national solidarity, particularly when the latter is threatened..."*

f. **And Whereas** Zimbabwe is alive to the Principles of Freedom of Expression and Access to information in Africa.



**g. And Whereas** Zimbabwe is aware of Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa.

**3.2 Now Therefore the Government of Zimbabwe responds as follows:**

a. Mr. H. Chin'ono was arrested in terms of the laws of general application in Zimbabwe in particular for contravening Section 187 (1) (a) as read with section 37 (1) (a) (i) of the Criminal Law (Codification and Reform) Act, Chapter 9:23, "incitement to participate in public violence".

b. Article 15 (2) of the ICCPR provides that,

*"...Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations...."*

c. The grounds and procedures that were used in arresting Mr. Chin'ono are clear, accessible and precise as outlined in the Criminal Law (Codification and Reform) Act [Chapter 9:23] and Criminal Procedure and Evidence [Chapter 9:07]. Further, these laws are reflective of the customs and values of the people of Zimbabwe which are protected under Article III (3) of the OAU Charter, that provides thus;

***"Respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence."***



- d. Section 50 of the Constitution of Zimbabwe entrenches the rights of the arrested and detained. In this vein it has become trite, where a person believes that he or she has been wrongfully arrested or improperly arrested can raise his or her cause in the judicial system.
  - e. The Constitutional Court of Zimbabwe is at the helm of protecting fundamental rights and performs an essential function of checking the powers of the organs of State. It is the role of the Zimbabwean judiciary to adjudicate over such grievances as a way of exhausting the local remedies available for any complainant.
6. It is quite unfortunate that Mr. Chin'ono has ignored the remedies that are available for him locally to justify his allegations.

## 7. Conclusion

The Government remains Committed to ensuring that citizens enjoy their right to freedom of **freedom of expression and access to information, freedom to demonstrate or petition and right not be arbitrary detained.** Furthermore, the principle of judicial independence entails the discretion on the Judiciary of Zimbabwe to determine the case of Hopewell Chin'ono without interference from the other two arms of the state, namely the Legislature or the Executive. Zimbabwe has confidence that the rule of law will prevail concerning the matter. It will be important for Hopewell Chin'ono to exhaust local remedies including awaiting the outcome of the criminal trial.



**RESPONSE BY THE GOVERNMENT OF THE REPUBLIC  
OF ZIMBABWE**

To the

**AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

In respect of

**LETTER OF URGENT APPEAL FROM THE SPECIAL RAPPORTEUR  
ON HUMAN RIGHTS DEFENDERS AND FOCAL POINT ON  
REPRISALS IN AFRICA**

Regarding

**THE ALLEGED JUDICIAL HARASSMENT AGAINST HUMAN RIGHTS  
LAWYER MS BEATRICE MTETWA**



We acknowledge receipt of your communication reference **ACHPR/STC SM/ZW/896/20**. We also take note that a complaint was brought before you through other sources other than the complainant herself Ms Mtetwa. This could have been occasioned by the fact that Ms Mtetwa as an experienced and seasoned lawyer was quite aware that due process was being observed through our judicial process.

We deny the averment that Ms Mtetwa has been targeted or subjected to intimidation by the State for representing human rights defenders in Zimbabwe.

The information that you received is incorrect. The full court record could have assisted you to understand what fully transpired in the court. The presiding officer took the decision having fully considered all the facts presented before him. Ms Mtetwa subsequently successfully appealed against the decision in the High Court. Clearly therefore, due process was observed. We wish to bring to the Commission's attention, as a matter of fact that, in pursuit of our democracy we fully give credence to the doctrine of separation of powers, hence our non-interference with court process.



**Wherefore;**

- (i) We pray for the Commission to totally disregard the information by its source which is inaccurate, misleading, baseless and which has the potential to tarnish our human rights record,
- (ii) It will therefore be unnecessary to initiate any further investigations since due process was observe. Furthermore, the Law Society is still investigating the matter concerning Ms Mtetwas alleged misconduct as recommended by the Magistrate,
- (iii) We affirm our commitment to uphold, promote and protect the human of all persons including human rights defenders,
- (iv) The ACHPR is reassured of the Republic of Zimbabwe's continued observance of provisions of the Universal Declaration on Human and Peoples' Rights and other regional and international instruments to which we are party to, for the benefit of all our people.

In conclusion, it is humbly recommended that in future the African Commission on Human and Peoples' Rights (ACHPR) carries out a diligent inquiry before putting our democratic processes into question through reliance on unreliable sources.