

Lack of necessary guarantees for the independence of the legal profession in Zimbabwe

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Summary

The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers are able to carry out their professional duties independently of the government and political pressure.

Since the second UPR cycle, the situation of lawyers in Zimbabwe has not improved. Zimbabwe does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the United Nations Basic Principles on the Role of Lawyers. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This also undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

Intimidation and harassment of lawyers

According to our information, several lawyers are facing continued intimidation and harassment in Zimbabwe in the form of (death) threats and intimidation by police officers. Some lawyers are also subjected to physical attacks. This was the case for, amongst others, Douglas Coltart and Beatrice Mtetwa. ([L4L and ZLHR submission, §11 and §12](#)). Another form of intimidation that Zimbabwean lawyers have been subjected to, is public threatening statements, against human rights lawyers in particular, that were made by several state institutions including the President and the Minister of Justice, Legal and Parliamentary Affairs during the period under review. Similar threats have also been directed at non-governmental organisations deemed to be “straying from their mandates”, directly

impacting law based not for profit organisations such as Zimbabwe Lawyers for Human Rights (ZLHR) and the Law Society of Zimbabwe. ([L4L and ZLHR submission, §16, §17, and §20](#)).

The cases of intimidation and harassment against human rights defenders in Zimbabwe were also reported by the Special Rapporteur on the rights to freedom of peaceful assembly and association. After a country visit to Zimbabwe in September 2019, the Special Rapporteur expressed concern about “cases of intimidation against NGOs and human rights defenders, which isolates and stifles the space in which they may be able to make their voices heard”. ([L4L and ZLHR submission, §13](#)).

Judicial harassment and criminal prosecution of lawyers

Lawyers in Zimbabwe have been subjected to judicial harassment, arrest, detention, and prosecution in connection to their professional duties. Several Zimbabwean lawyers were arrested in June 2020. On 10 July 2020, these lawyers were charged with “defeating or obstructing the course of justice”. ([L4L and ZLHR submission, §18 and §19](#)).

Freedom of expression and assembly of lawyers

The freedom of expression that lawyers enjoy in connection with their professional functions should not only be guaranteed in light of the rights of the lawyer, but also in protection of the rights of their clients. Some lawyers in Zimbabwe have faced arrests and criminal prosecution in connection to freedom of expression and assembly. This includes harassment and arrest or arbitrary detention while protesting or posting on social media ([L4L and ZLHR submission, §23 and §24](#)).

Concerns regarding Independence of the Judiciary

Section 164 of the Constitution of Zimbabwe provides that the judiciary must be independent, and that the courts must apply the law and Constitution “impartially, expeditiously and without fear, favour or prejudice”. However, there are increasing challenges to the independence of the judiciary in Zimbabwe. ([L4L and ZLHR submission, §25](#)). Parliament has pushed through constitutional amendments (No.1) and (No.2) removing the public consultation process in the appointment of judges and the Prosecutor General, and giving the President unfettered powers to extend the tenure of judges. Furthermore, malicious criminal prosecutions of high-profile human rights defenders such as Hopewell Chin’ono and Job Sikhala are being tried by an unlegislated special “Anti-Corruption” unit of the Criminal Magistrates Court, with the same prosecutors handling these matters and opposing bail, and the same magistrates systematically denying bail. In the High Court, judges are similarly seemingly receiving instructions in these matters. ([L4L and ZLHR submission, §27](#))

Recommendations

- Take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation in connection with their professional activity.
- Immediately take effective measures necessary to ensure that crimes, harassment, infringements, and other violations against lawyers are effectively investigated and publicly condemned at all levels, and that the perpetrators of such acts are prosecuted.

- Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their criminal prosecution on improper grounds such as the expression of views critical of the state, or the nature of the cases that the lawyer is involved in.
- Refrain from making public threats against non-governmental organisations and the legal profession, including threats that aim to discredit the work and integrity of the targeted lawyers, organizations or bodies.
- Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in principle 23 of the Basic Principles, in their right to take part in public discussions on matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.
- Refrain from amendments to the Constitution, Legal Practitioners Act, and any other legislation that would impact on the independence of the judiciary and the Law Society of Zimbabwe, and impact on lawyers’ ability to represent all clients without fear or favour.
- Desist from any interferences, directives, and public statements and threats that would undermine the independence of the judiciary in Zimbabwe.
- Refrain from allocating so-called “political” cases involving human rights defenders to particular prosecutors, judicial officers and unlegislated special courts, and ensure all cases are determined impartially before independent courts.

