



### Questionnaire for civil society and bar associations

- 1. Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the [Basic Principles on the Role of Lawyers](#), please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner**

Although there are no specific legal provisions in relation to the independence of lawyers in Zimbabwe, 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”.

The Legal Practitioners Act [Chapter 27:07] and Legal Practitioners (Code of Conduct) By-laws, 2018 (SI 2018-037) also regulate the professional and ethical conduct of lawyers, through the Law Society of Zimbabwe.

Various constitutional rights also indirectly protect the independence of lawyers, such as the right to equality and non-discrimination (section 56), the right to privacy (section 57), freedom of association (section 58), freedom of expression (section 61), freedom of profession, trade or occupation (section 64), labour rights (section 65), right to administrative justice (section 68), and right to a fair trial (section 69).

- 2. What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.**

The Law Society of Zimbabwe regulates the legal profession in terms of the Legal Practitioners Act [Chapter 27:07] and Legal Practitioners (Code of Conduct) By-laws, 2018 (SI 2018-037) and can disbar lawyers that do not uphold professional and ethical conduct. The Law Society is currently independent, but on 13 July 2021, Cabinet approved principles to amend the Legal Practitioners Act [Chapter 27:07] to increase the number of ministerial appointments in the Law Society Council, increasing executive control over the profession. Lawyers may also seek to have their constitutional rights mentioned above protected in the courts. Section 85 of the Constitution provides for appropriate relief to be awarded for rights violations.

**3. Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country, and describe them.**

The prosecuting authority and Criminal Magistrates Court lack independence, and have been responsible for malicious prosecutions of lawyers.

The police and security services have also maliciously attacked human rights lawyers, associating them with their clients' causes.

**4. Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?**

The Law Society of Zimbabwe is an independent body representing the profession, but the state is seeking to amend the Legal Practitioners Act to increase executive control of the society through Ministerial appointments and control of foreign funding.

**5. Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?**

Unfortunately, this information can only be provided by the Law Society of Zimbabwe.

**6. Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.**

a) Intimidation, harassment and physical attacks of lawyers

Since 2016, there have been ongoing protests in Zimbabwe. The focal points of the national protests have been on government repression, corruption, high unemployment, and poor public service. The government has responded to these protests with the use of force. On 10 June 2020, human rights experts of the UN called on Zimbabwe to take immediate measures to end a pattern of reported disappearances and torture within the country. These disappearances and incidents of torture appear to be aimed to suppress the ongoing protests and acts of dissent by opposition activists.<sup>1</sup> The government's suppression of protests and civic action has also had a strong impact on the work of lawyers in the country. ZLHR has repeatedly stated that there is "*a worrying rise in the intimidation, threats and reprisals of lawyers in Zimbabwe*".<sup>2</sup> Below we will highlight a number of these cases:

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<sup>1</sup>Zimbabwe: UN experts demand an immediate end to abductions and torture, Office of the High Commissioner for Human Rights, 10 June 2020, Available at:

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25944&LangID=E>

<sup>2</sup> ZLHR Condemns Arrest And Detention Of Lawyer Dumisani Dube, Zimbabwe Lawyers for Human Rights, 6 June 2020, Available at: <https://www.zlhr.org.zw/?p=2057>

### *Tendai Biti*

On 23 January 2021, human rights lawyer and opposition party MDC Alliance MP Tendai Biti was arrested by police officers in Karoi. Biti was not informed of the reason for his arrest. After some time, he was released without any known or filed charges against him. On the day of his arrest, three unknown persons were seen attaching various cardboard signs to the fences at, or in the vicinity of, Tendai Biti's law firm in Harare. The cardboard signs bore serious, yet untruthful, allegations against Tendai Biti such as "*office of a rightful stupid Biti*" and "*you are murderer Tendai Biti*". In the evening of the same day Tendai Biti's offices were attacked. A report on the attack was made at the police station, but no arrests were made. During the following days, Tendai Biti was also personally approached and threatened. He even received death threats. The authorities in Zimbabwe have not taken any action in response to the threats against Tendai Biti.

### *Beatrice Mtetwa*

In August 2020, a large number of anti-riot police sat outside of renowned human rights lawyer Beatrice Mtetwa's offices, in full gear. Mtetwa and her client, were also followed by a prison guard in court, which made it difficult for the two to have a private conversation.<sup>3</sup>

### *Douglas Coltart*

On 23 August 2019, human rights lawyer Douglas Coltart was arrested and assaulted by Zimbabwe Republic Police officers. This occurred while he was executing his professional duties as a lawyer and representing his clients Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) who were conducting a peaceful protest, as discussed in more detail below.

On 23 November 2019, he was again physically assaulted by Zimbabwe Republic Police officers. He was at the Harare Central Police Station to offer legal support services to his client. Despite identifying himself as a lawyer and showing his legal practicing certificate, Douglas Coltart was denied access to his client. Coltart tried to bring a complaint against the police officers for denying him access to his client. The police officers instead followed him, and they dragged him out of the office where he was making the complaint. Douglas Coltart was handcuffed and violently assaulted by a Chief Inspector and several other unidentified police officers, which caused injuries to his neck, back, arms and legs. He was also detained shortly again and then released without charge.<sup>4</sup>

#### b) Criminal prosecution and arbitrary arrests of lawyers

The beginning of 2020 saw an increase in the number of arrests of Zimbabwean lawyers, and in the restrictions placed on lawyers in their freedoms to carry out their profession. The onset of the COVID-19 pandemic, and government-enforced restrictions, resulted in an increase in these

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<sup>3</sup> *Police camp outside Hopewell Chin'ono's lawyer Beatrice Mtetwa's office*, Savanna News, 13 August 2020, Available at: <https://savannanews.com/police-camp-outside-hopewell-chinonos-lawyer-beatrice-mtetwas-office/>

<sup>4</sup> *Letter on the arrest and attack on lawyer Douglas Coltart*, Lawyers for Lawyers, 11 March 2020, Available at: <https://lawyersforlawyers.org/letter-on-the-arrest-and-attack-on-lawyer-douglas-coltart/>

numbers. Below we give several examples of Zimbabwean authorities questioning and arresting lawyers while they were carrying out of their professional duties as lawyers<sup>5</sup>:

### *Beatrice Mtetwa*

On 18 August 2020, Beatrice Mtetwa was barred from representing the detained human rights defender and journalist, Hopewell Chin'ono at the Harare Magistrate Court. This order was based on comments about the case posted on a Facebook page. The Facebook page is not run by Beatrice Mtetwa but by an American filmmaker, who produced a documentary about the work of Beatrice Mtetwa.<sup>6</sup> Yet, the lawyers representing the Zimbabwean State alleged that these comments were made by Beatrice Mtetwa. Mtetwa had represented Chin'ono since he was detained on 20 July 2020. A Zimbabwean magistrate, ordered that Mtetwa should be charged with contempt of court<sup>7</sup> and ordered her to be referred to the Law Society of Zimbabwe. She appealed the ruling by the Magistrate,<sup>8</sup> and the decision was subsequently overturned by the High Court on 15 December 2020.<sup>9</sup>

### *Douglas Coltart*

As mentioned above, on 23 August 2019, Douglas Coltart was violently arrested during an organized protest by the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ).<sup>10</sup> Douglas Coltart attended the protest in his capacity as a lawyer and as a legal representative of the ARTUZ. He filmed the arrests occurring at the protest, yet he was violently arrested while doing this. The Zimbabwe Republic Police officers disregarded Douglas Coltart's statement that he was acting in his capacity as a lawyer. The police officers did not inform Douglas Coltart and the other arrestees of the reason of their arrest. Moreover, the police officers refused to identify themselves. Douglas Coltart was detained and then released on bail the following day.<sup>11</sup>

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<sup>5</sup> *Lawyers Under Siege as Court Sets Free Opposition Party Leaders Arrested on Allegations of Singing in CBD*, Zimbabwe Lawyers for Human Rights, 8 June 2020, Available at: <https://www.zlhr.org.zw/?p=2064>.

<sup>6</sup> The comments called on the international community to speak out against Hopewell Chin'ono's imprisonment. The American filmmaker and owner of the Facebook page has explicitly made clear in a number of posts on the given Facebook page that Beatrice Mtetwa does not operate the page and that she has never posted on the page. See: <https://www.facebook.com/bostonfilmvideo/>.

<sup>7</sup> *Beatrice Mtetwa barred from representing client*, Zimbabwe Lawyers for Human Rights, Lawyers for Lawyers, 21 August 2020, Available at: <https://lawyersforlawyers.org/beatrice-mtetwa-barred-from-representing-client/>. This was originally reported by Frontline Defenders.

<sup>8</sup> *High Court Hears Mtetwa's Challenge of Banishment as Chin'ono's Lead Lawyer*, Zimbabwe Lawyers for Human Rights, 14 December 2020, Available at: <https://www.zlhr.org.zw/?p=2229>

<sup>9</sup> *Order barring Beatrice Mtetwa from handling a case overturned*, Lawyers for Lawyers, 15 December 2020, Available at: <https://lawyersforlawyers.org/order-barring-beatrice-mtetwa-from-handling-a-case-overturned/>

<sup>10</sup> *Nine HRDs to Stand Trial Over Possession of Miniature Coffin*, Zimbabwe Lawyers for Human Rights, 8 October 2019, Available at: <https://www.zlhr.org.zw/?p=1840>; *Lawyer, HRDs Plead not Guilty as Trial Over Possession of Miniature Coffin Commences*, Zimbabwe Lawyers for Human Rights, 2 December 2019, Available at: <https://www.zlhr.org.zw/?p=1894>. The protest was organized to draw attention to the decreasing funds available to rural teachers and schools.

<sup>11</sup> See also: *Letter on the arrest and attack on lawyer Douglas Coltart*, Lawyers for Lawyers, 11 March 2020, Available at: <https://lawyersforlawyers.org/letter-on-the-arrest-and-attack-on-lawyer-douglas-coltart/>

### *Obey Shava*

Obey Shava is a human rights lawyer. On 31 July 2020, Obey had accompanied three of his clients to Harare Central Police Station to make a report as part of their bail conditions during a national lockdown. Obey and his clients had an altercation with soldiers who were manning a roadblock close to the Zanu PF Headquarters and would not let them past. He was arrested and taken to Harare Central Police Station together with his clients. Obey was released without any charge after being detained for close to four hours.

### *Jeremiah Bamu*

Jeremiah Bamu, a human rights lawyer, was arrested by the Zimbabwe Republic Police (ZRP) for “defying an instruction by riot police to disperse” on 22 August 2020. At the time, he was defending lawyer and MDC legislator for Zengeza West constituency Job Sikhala, who was scheduled to appear in court on the day of Jeremiah Bamu’s arrest. Jeremiah Bamu was released without charge on the same day.

#### c) Threatening statements against the legal profession and law-based organisations

Following a nationwide stay-away and protests in January 2019, human rights lawyers provided legal representation to hundreds of people subjected to arbitrary dragnet arrests, summary trials and arbitrary denial of bail. On 29 January 2019, lawyers also conducted a march protesting against the widespread violations of fair trial rights. Speaking against the lawyers who offered their services to the January 2019 protesters arrestees, President Mnangagwa made a chilling statement that, “Those lawyers that were inciting violence, we are now going after them.”

More recently, following a High Court judgment declaring as unconstitutional the extension of tenure of the Chief Justice Mr Malaba in terms of a rushed constitutional amendment before his 70<sup>th</sup> birthday, the Minister of Justice, Legal and Parliamentary Affairs Mr Ziyambi Ziyambi issued a statement declaring the judiciary to have been captured by foreign governments and Zimbabwe Lawyers for Human Rights.<sup>12</sup> (The judgment has since been overturned in the Supreme Court).

Following the Law Society of Zimbabwe having lodged a court application challenging recent Constitutional Amendments (No.1) and (No.2) —which limit judicial independence by increasing executive powers over judicial appointments— there have been targeted attacks against them on Twitter by the Deputy Chief Secretary in the Office of the President and Cabinet in charge of Communications George Charamba, indicating that the Law Society is captured by an opposition political party and Zimbabwe Lawyers for Human Rights, and that it favours white-owned law firms. The Law Society has responded to these attacks by highlighting that the intention seems to be to discredit the integrity of the society as an independent regulatory body.<sup>13</sup>

On 13 July 2021, Cabinet approved principles to amend the Legal Practitioners Act [Chapter 27:07] to allow the Minister of Justice to disapprove external funding of the Law Society. The proposed amendments would also increase the number of ministerial appointments in the Law Society Council, increasing executive control over the profession.

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<sup>12</sup> ZLHR Statement in Response to Comments by Justice, Legal and Parliamentary Affairs Minister Hon. Ziyambi, ZLHR, 16 May 2021, Available at: <https://www.zlhr.org.zw/?p=2374>

<sup>13</sup> Law Society of Zimbabwe Responds To ‘Mischievous’ Attacks – Full Statement, Law Society, 19 June 2021, Available at: <https://news.pindula.co.zw/2021/06/19/law-society-of-zimbabwe-responds-to-mischievous-attacks-full-statement/>

Since 2018, there have also been a number of threats against non-governmental law-based organisations deemed to be “straying from their mandates”,<sup>14</sup> directly impacting law-based not for profit organisations such as ZLHR and the Law Society of Zimbabwe. In a recent statement, Zanu PF acting-political commissar Patrick Chinamasa stated that “Foreign funding... of... NGOs... is clearly calculated to undermine the orderly evolution of our political, economic and judicial systems and must be condemned in the strongest possible terms... if we clearly see that they are on a regime change agenda, ours will be to request their deregistration.”<sup>15</sup> In June – July 2021, the authorities specifically demanded that all non-governmental organisations submit Memorandums of Understanding and Work Plans to be authorised by provincial administrators, or be closed down by law enforcement, in spite of this not being provided for in any law.<sup>16</sup> On 5 November 2021, the restrictive Private Voluntary Organizations Amendment Bill, 2021, was gazetted, which will result in deregistration of most non-governmental human rights law-based organisations if passed.<sup>17</sup>

**7. What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.**

Zimbabwe Lawyers for Human Rights (ZLHR) is an organisation that dedicates itself to promote a culture of human rights, equality and respect for the rule of law in order to create a just and democratic society in Zimbabwe. Most of the lawyers mentioned in this submission are ZLHR members. ZLHR has provided legal representation to all the lawyers mentioned who have been formally charged. ZLHR will continue to represent these lawyers until their cases are finalized.

Lawyers for Lawyers is an independent and non-political foundation which seeks to promote the proper functioning of the rule of law by pursuing freedom an independent of the legal profession. Lawyers for Lawyers does this by drawing attention to the situation and circumstances in which lawyers all over the world have to perform their work. Lawyers for Lawyers mainly focuses on countries and areas where lawyers are confronted with reprisals, improper interferences or unreasonable interferences in the execution of their profession. We are part of an international network of NGOs and bar associations that are committed to protecting the rule of law and an independent legal profession. The UN Basic Principles form the basis for rule of law, which is why they are the guiding principle in everything we do. Lawyers for Lawyers has Special Consultative status with the UN Economic and Social Council since 2013.

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<sup>14</sup> *ED threatens to de-register NGOs*, Newsday, 12 December 2018, Available at: <https://www.newsday.co.zw/2018/12/ed-threatens-to-de-register-ngos/>

<sup>15</sup> *Zimbabwe ruling party threatens to deal with 'hostile' NGOs*, Zambezi News, 26 June 2021, Available at: [https://zambezinews24.com/zimbabwe-ruling-party-threatens-to-deal-with-hostile-ngos/?utm\\_source=rss&utm\\_medium=rss&utm\\_campaign=zimbabwe-ruling-party-threatens-to-deal-with-hostile-ngos](https://zambezinews24.com/zimbabwe-ruling-party-threatens-to-deal-with-hostile-ngos/?utm_source=rss&utm_medium=rss&utm_campaign=zimbabwe-ruling-party-threatens-to-deal-with-hostile-ngos)

<sup>16</sup> *Govt Cracks Whip On NGOs, Demands Monthly Reports On Activities*, New Zimbabwe, 30 June 2021, Available at: <https://www.newzimbabwe.com/govt-cracks-whip-on-ngos-demands-monthly-reports-on-activities/>

<sup>17</sup> Private Voluntary Organizations Amendment Bill, H.B. 10, 2021, Available at: <http://www.veritaszim.net/node/5325>

**8. To what extent has, the legislation and/or measures adopted in your country because of the Covid-19 pandemic, affected the exercise of the independence of the legal profession or security of lawyers. Please explain.**

The COVID-19 pandemic has posed huge challenges to human rights and the rule of law in Zimbabwe. The pandemic has affected Zimbabwe during a period in which the country has been experiencing economic challenges. The restrictions imposed by the Zimbabwean government to address the pandemic affected the movement of people as well as their sources of income. Due to the lockdown the rights of lawyers to practice their profession were strongly affected. This was especially the case as lawyers were initially not classified as '*essential services*'.

Due to the National Lockdown Order, all residents, including lawyers, of Zimbabwe were restricted in their mobility. Lawyers needed specific authorisation letters to pass certain roadblocks which were located throughout Zimbabwe. Showing a practitioner's certificate was not enough for some police officers. Lawyers were also initially required to adhere to the curfew that applied in Zimbabwe. These conditions made it difficult in practice for lawyers to access and visit clients and provide adequate assistance. In some cases, it was not possible for lawyers to assist clients who had been arrested and were in need of urgent assistance at all. It was only after ZLHR issued an application challenging the lockdown regulations, that lawyers were seen as '*essential services*' and therefore they could more easily visit and help clients.

**9. Please describe the measures and policies you would suggest to better protect and guarantee the free exercise of the legal profession.**

- Repeal of constitutional amendments increasing executive control and removing public scrutiny over the appointment, promotion and security of tenure of judges and prosecutor general.
- Implementation of safeguards, 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.
- Policies 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.
- Domestication of the United Nations Basic Principles on the Independence of the Judiciary.

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