



ZIMBABWE

PERMANENT MISSION TO THE UNITED NATIONS  
AND OTHER INTERNATIONAL ORGANISATIONS AT GENEVA

**Note No: 219/2020**

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and other International Organisations in Geneva presents its compliments to the Special Procedures Branch of the Office of the High Commissioner for Human Rights and with reference to the latter's Note No: AL/ZWE3/2020 dated 24 August 2020, has the honour to forward herewith the response by the Government of the Republic of Zimbabwe.

The Permanent Mission of the Republic of Zimbabwe to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Special Procedures Branch of the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

**20 October 2020**

**Special Procedures Branch of the Office of the High  
Commissioner for Human Rights  
Geneva**



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

To the

**SPECIAL RAPPOREUR ON THE SITUATION OF HUMAN RIGHTS  
DEFENDERS;**

**THE WORKING GROUP ON ARBITRARY DETENTION;**

**SPECIAL RAPPOREUR ON THE PROMOTION AND PROTECTION  
OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION;**

And

**SPECIAL RAPPOREUR ON THE RIGHTS TO FREEDOM OF  
PEACEFUL ASSEMBLY AND OF ASSOCIATION;**

Regarding

**JOINT COMMUNICATION FROM FOUR HUMAN RIGHTS COUNCIL  
SPECIAL PROCEDURES MANDATE HOLDERS, REGARDING THE  
ARREST OF HUMAN RIGHTS DEFENDERS AND PROTESTERS**

## **1. CONTEXTUALIZATION OF THE RIGHT TO FREEDOM OF ASSOCIATION AND ASSEMBLY**

- 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 Zimbabweans 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 civil and political freedoms and rights enshrined in the country's Constitution.
- d) Since then, the Government has allowed conducive environments for those who want to exercise their political rights to demonstrate, petition, picket and lobby in any manner as long it is done peacefully and does not violate the rule of law and the rights of others who also reserve their democratic right not to partake in such demonstrations.
- e) In terms of Section 59 of the Zimbabwean Constitution *"every person has the right to demonstrate and to present petitions, but these rights must*

*be exercised peacefully.” It is also clear that this right is not unfettered in terms of Section 86 (2) (b) of the Constitution, which reads “*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—*”*

*the purpose of the limitation, in particular to this right is necessary in the interests of..., **public safety, public order, ..., public health, ...or the general public interest;***

- f) On the 15<sup>th</sup> of November, 2019, the Maintenance of Peace and Order Act [Chapter 11:23] came into force. The Act provides for the maintenance of peace, order and security in Zimbabwe. The Act of Parliament repealed the Public Order and Security Act [Chapter 11:17]. The Act was promulgated with respect to Section 86 of the Constitution as its preamble eloquently encapsulates the desire to make provision for the maintenance of peace, order and security to ensure the enjoyment of rights and freedoms by any person, and in particular to make provision for the peaceful conduct of gatherings in a manner that protects the rights of freedom of assembly, association, demonstration and petitioning without prejudicing the rights and freedoms of others.
- g) Further, Section 37 (1) (a) (i) and (ii) the Criminal Law (Codification and Reform Act) Act [Chapter 09:23] provides that;

*"Any person who acts together with one or more other persons present with him or her in any place or at any meeting with the intention or realising that there is a real risk or possibility of forcibly **disturbing the peace, security or order of the public or any section of the public;** or **invading the rights of other people**... shall be guilty of participating in a gathering with intent to promote ..., **a breach of the peace** or ..., as the case may be, and be liable to a fine not exceeding level ten or imprisonment for a period not exceeding five years or both."*

h) In addition, Section 31 of the Criminal Law (Codification and Reform) Act criminalizes publishing or communicating false statements prejudicial to the State.

i) **COVID 19 REGULATIONS**

- On 29 March 2020, His Excellency, the President of the Republic of Zimbabwe declared a total national lockdown in a bid to contain and curb the spread of the Corona virus in Zimbabwe through the **Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020** published in Statutory Instrument 86 of 2020 and later consolidated and amended by Statutory Instrument 200 of 2020.
- The period of the lockdown has since been reviewed and has been relaxed in phases as and when deemed appropriate.
- In terms of the lockdown directives, public gatherings in excess of fifty (50) people are prohibited, save in special laid down circumstances.

## **2. FACTS SURROUNDING THE ARREST OF HOPEWELL CHIN'ONO AND TSITSI DANGAREMBGA**

### ***State Vs Hopewell Chin'ono***

- a) 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*].
- b) 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. 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. In its arguments the state highlighted that it had reasonable belief that the accused was inciting and calling on people 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 centre of the offences that the accused was being charged for. 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.

- c) 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.
- d) 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. [REDACTED].
- e) Hopewell Chin'ono's 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 was dismissed. The lawyers for the accused then appealed to the High Court of Zimbabwe, which then granted the application under Case No. [REDACTED].
- f) It is important to note that the conduct of [REDACTED] 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 officer of the court. She had evidently treated the court proceedings with a lot of contempt both in and outside the courtroom.
- g) The application to have Chino'no's lawyer removed from the proceedings was granted and on 1 September 2020 and Advocate

Nyamakura took over the matter as representative of Hopewell Chin'ono. There was never a time that Hopewell Chin'ono was not represented by a legal practitioner of his choice as alleged in the complaint letters. Despite the unwarranted and unethical displays of conduct by his legal practitioner, Chin'ono was represented throughout his appearances in court.

h) The trial of Hopewell Chin'ono is pending before the courts.

### ***State Vs Tsitsi Dangarembga and Another***

a) The two accused persons were jointly charged with two 2 counts; firstly, for contravening section 37 (1) of the Criminal Law (Codification and Reform) Act [ Chapter 9:23]. It being alleged that they participated in a gathering with the intent to promote public violence, breaches of the peace or bigotry. Secondly, they were charged for contravening section 4(1) of the Public Health Covid 19 (Prevention, Containment and Treatment) (National Lock Down) Order Statutory Instrument 77/20 [*Chapter 15:17*].

b) The facts of the case, according to the records at the courts and not as portrayed by social media and partially in your communication, is that on 31 July 2020, the accused persons were demonstrating at corner Whitewell and Borrowdale streets in Harare. The accused were found holding placards inscribed "Free Hopewell, free Jacob hashtag Zimbabwe, we want better reform of our institution". The second accused was holding a placard inscribed "Free our journalists, we want better"



- c) The prosecution argues that the accused participated in an unsanctioned demonstration with intent to promote breach of peace. The accused persons' conduct was also in contravention of section 4(1) of the Public Health Covid 19 (Prevention, Containment and Treatment) National Lock Down Order Statutory instrument 77/2020. This Statutory Instrument prohibits unnecessary movement during the Covid 19 national lockdown without any exemption.
- d) The accused persons appeared in the Magistrates' court on 1 August 2020. At the initial remand, their application for bail was not opposed and they were both admitted to bail. The matter is pending trial before the courts of law.
- e) In terms of **section 49 (1) (b) of the Constitution of Zimbabwe**, every person has the right to personal liberty and this includes the right not to be deprived of their liberty **arbitrarily** or **without just cause**. The Constitution allows a person arrested to challenge the lawfulness of his/ her arrest in person before a court and if the arrest is deemed unlawful, they must be released promptly.

In the case of ***Martin v. A-G and Another*** 1993(1) ZLR 153 at 159 it was held that: *"It is the entitlement of every individual to challenge the power and right of the State to place him on remand. This he does the truth is not involved, for otherwise it ceases to become suspicion and becomes fact. Suspicion, by definition, is a state of conjecture or surmise whereof proof upon a submission that insufficient facts have been alleged to enable the court to objectively find the existence of a reasonable*

*suspicion of his having committed or being about to commit a criminal offence, thereby justifying the deprivation of his personal liberty under section 13(2)(e) of the Constitution. He may adduce evidence, as the applicant did, designed to demolish, clarify or weaken the facts alleged by the State. The test to be applied is the same as that for arrest without warrant. It does not require the firm resolution of conflicting evidence that guilt beyond a reasonable doubt demands, nor even a preponderance of probability. Certainty as to the truth is not involved, for otherwise it ceases to become suspicion and becomes fact. Suspicion by definition, is a state of conjecture or surmise whereof proof is lacking."*

### **3. General appreciation of international human rights law**

- (a) The Government of Zimbabwe affirms its readiness to abide by its obligations under the International Covenant on Civil and Political Rights (ICCPR), which it acceded to on 13 May 1991.
- (b) Furthermore, Zimbabwe also ascribes to the provisions of the Universal Declaration of Human Rights and other international human rights instruments to which it is a party.
- (c) 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....”*

- (d) It is pertinent to note that both accused persons participated in an illegal demonstration in that they contravened Sections 5, 6, 7 and 8 of the Maintenance of Peace and Order Act [*Chapter 11:23*], Section 37 (1) (a) of the Criminal Law (Codification and Reform) Act as well as Section 5 (1) and (2) of Statutory Instrument 83 of 2020 of the COVID-19 Regulations.
- (e) Both Hopewell Chin’ono and Tsitsi Dangarembga have the right to defend their innocence in the courts of law.

#### **4. Conclusion**

The Government remains committed to ensuring that the rights of Human Rights Defenders, Women, Citizens and Residents are upheld, promoted, respected and effectively enforced. Furthermore, the principle of judicial independence entails the discretion on the Judiciary of Zimbabwe to determine the cases of Hopewell Chin’ono and Tsitsi Dangarembga 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 these matters. It will be important for these individuals to exhaust local remedies including awaiting the outcome of the criminal trials.