

**Mandate of the Special Rapporteur on the independence of judges and lawyers**

REFERENCE:  
AL ZWE 4/2020

1 October 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 44/8.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the criminal proceedings brought against three Zimbabwean lawyers, Mr. Thabani Mpofu, Mr. Dumisani Dube and Mr. Joshua Chirambwe, allegedly as a result of the legitimate exercise of the legal profession.

**Advocate Thabani Mpofu** is a prominent Zimbabwean lawyer and a constitutional law expert. He practices with Advocates of Zimbabwe at The Chambers and is registered with the Law Society of Zimbabwe. Advocate Mpofu is a leader of the Movement for Democratic Change (MDC) Alliance, and represented the President of the MDC Alliance in challenging the presidential results following their announcement by the Zimbabwe Electoral Commission.

**Mr. Joshua Chirambwe** is an experienced lawyer who practices at Lawman Chimuriwo Attorneys at Law and is registered with the Law Society of Zimbabwe.

**Mr. Dumisani Dube** is registered with the Law Society of Zimbabwe. He is currently practicing under Mathonsi-Ncube Law Chambers, a law firm owned by MDC Alliance Vice President.

According to the information received:

*Advocate Thabani Mpofu*

Mr. Mpofu's arrest and detention are connected to a constitutional case (case number CCZ 03/19) he filed in January 2019, related to the appointment of the Prosecutor General, Mr. Hodzi. Mr. Mpofu, represented the applicant, Mr Simbarashe Zuze, and argued on behalf of his client that the appointment of the Prosecutor-General was unlawful due to the failure of the President of the Republic, H.E. Mr. Emmerson Mnangagwa, to comply with constitutional provisions concerning the procedure for the appointment of the Prosecutor-General.

Mr. Mpofu raised concerns as to the independence and impartiality of the selection process, arguing that the President failed to consider qualified candidates without any legitimate reason, and ultimately appointed Mr. Kumbirai Hodzi, a candidate who ranked 7<sup>th</sup> out of the ten participating candidates at the end of the interviews conducted by the Judicial Service

Commission.<sup>1</sup> For these reasons, Mr. Mpofu requested the Constitutional Court to declare the appointment of Mr. Hodzi as Prosecutor-General null and void.

On 6 February 2020, the case was struck off the list of cases to be adjudicated by the Court for its alleged non-compliance with rule 9 (5) of the Constitutional Court Rules, according to which an application is deemed to have been abandoned if the applicant fails to provide proof of service to the court within 2 days.

In addition, Mr. Mpofu was accused of having relied on an affidavit of a person, Mr. Simbarashe Zuze, who according to the State authorities was a fictitious person. On 1 June 2020, the Zimbabwe Republic Police arrested and detained Mr. Thabani Mpofu on charges of ‘defeating or obstructing the course of justice.’ He is accused of corruptly concealing a transaction from a principal’, as defined in section 172(1)(b) of the Criminal Law (Codification and Reform) Act, and ‘perjury’, as defined in section 183(1)(a) of the Criminal Law (Codification and Reform) Act.

Following the arrest of Mr. Mpofu, Mr. Zuze presented himself to the police. He reported that he had chosen Advocate Mpofu as his legal representative, and instructed him to file a case on the appointment of the Prosecutor General in his capacity as private citizen.

At present, Mr. Mpofu’s case is still pending, and he is awaiting trial. His application challenging his placement on remand was dismissed by the magistrate’s court. He has now presented an appeal challenging its dismissal.

#### *Mr. Joshua Chirambwe*

Mr. Chirambwe approached the Constitutional Court as an applicant challenging the appointment of the Prosecutor-General (case number CCZ 04/19) after the application submitted by Advocate Mpofu was struck off the court’s roll. Advocate Mpofu acted as Mr. Chirambwe’s legal representative in this second application.

In light of the fact that Mr. Simbarashe Zuze had previously been alleged to be a fictitious person, the State accused Mr. Chirambwe of attempting to defraud the State together with his legal representative, Mr. Mpofu. Mr. Chirambwe was accused of duplicating the content of the affidavit purported to have been made by Mr Simbarashe Zuze in order to bring the same case before the Constitutional Court.

On 8 June 2020, Mr. Joshua Chirambwe was arrested and charged with ‘defeating or obstructing the course of justice’, as defined in section 184 (1) (a) of the Codification and Reform Act (case number CRB 5669/20). On the same

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<sup>1</sup> The Zimbabwean Constitution provides that the President of the Republic appoints the Prosecutor-General from a list of three nominees and on the advice of the Judicial Service Commission. However, it remains silent as to the procedure to be followed in cases where the President does not intend to appoint any of the nominees recommended by the Judicial Service Commission.

day, he was granted a \$20,000 (Zimbabwe Dollars) bail by the Harare Magistrates Court.

Mr Chirambwe is currently still awaiting trial.

*Mr. Dumisani Dube*

On 29 April 2020, Mr. Dube filed an urgent chamber application under case number 727/2020 at the Bulawayo High Court to obtain an interim order in favour of his client over a mining rights dispute.

On 6 June 2020, Mr. Dube was arrested and charged with ‘defeating or obstructing the course of justice’, as defined in section 184 (1) (d) of the Codification and Reform Act. He was accused of filing a fake certificate of service in order to obtain an interim order in favour of his client. Mr. Dube was granted a \$5,000 (Zimbabwe dollars) bail when he appeared at Bulawayo Magistrates Court.

The matter is still ongoing and Mr Dube is still awaiting trial under case number CRB 1179A-B/20.

In addition to the individuals referred to in this communication, there appear to be several lawyers in Zimbabwe who have been subject to arbitrary arrest and detention, intimidation and harassment by law enforcement officials as a result of the legitimate exercise of the legal profession. Their cases are not listed here solely because I have not yet received the consent of the victims to bring their cases to your Excellency’s Government’s attention.

Without prejudging the accuracy of the information made available to me, I express my concerns for the criminal proceedings brought against Mr. Thabani Mpofu, Mr. Dumisani Dube and Mr. Joshua Chirambwe, which appear to be part of a wider strategy aimed at intimidating lawyers who are linked to opposition parties or otherwise represent opposition party activists and journalists.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on the criminal proceedings initiated against Mr. Thabani Mpofu, Mr. Dumisani Dube and Mr. Joshua Chirambwe, and explain to what extent can these proceedings be considered in line with fair trial guarantees enshrined in article 14 of the International Covenant on Civil and Political Rights.

3. Please elaborate on the substance of the disciplinary proceedings brought against these lawyers, and explain whether, and at to what extent, did these proceedings comply with the provisions of the UN Basic Principles on the Role of Lawyers, and in particular principle 18, which prohibits the identification of lawyers with their clients or their clients' causes in the legitimate exercise of their functions..
4. Please provide information on the measures that your Excellency's Government has taken, or intends to take, to ensure the independence of the legal profession and to enable lawyers to perform their professional functions freely and without any intimidation, threat, harassment or improper interference.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Diego García-Sayán  
Special Rapporteur on the independence of judges and lawyers

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, I would like to draw your attention to the International Covenant on Civil and Political Rights (ICCPR), acceded by Zimbabwe on 13 May 1991, and to the Basic Principles on the Role of Lawyers.

Article 14 provides a set of contain procedural guarantees that must be made available to persons charged with a criminal offence, including the right of accused persons to have access to, and communicate with, a counsel of their own choosing.

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able “to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter” (CCPR/C/GC/32, para. 34).

I would also like to refer your Excellency’s Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 16 requires Governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions.

Principle 20 establishes that lawyers must enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.