



Zimbabwe

United Nations Human Rights Committee Consideration of the 2nd Periodic Report of Zimbabwe

Joint Submission to the United Nations Human Rights Committee by Lawyers for Lawyers, the Law Society of England and Wales, Bar Human Rights Committee, and the International Bar Association's Human Rights Institute, submitted on 3 February 2025.

Information on the submitting organisations

Lawyers for Lawyers (L4L) is an independent, non-political and not-for-profit lawyers' organisation established in 1986. Its mission is to promote the independent functioning of lawyers and the legal profession across the world in accordance with internationally recognised norms and standards by supporting lawyers who are at risk as a result of discharging their professional duties. Lawyers for Lawyers was granted special consultative status with the UN Economic and Social Council in July 2013.

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The **Law Society of England and Wales** is the professional body representing over 200,000 solicitors in England and Wales. Its aims include upholding the independence of the legal profession, the rule of law and human rights around the world. Established by Royal Charter in 1845, it was granted special consultative status with the UN Economic and Social Council in 2014.

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The **International Bar Association's Human Rights Institute (IBAHRI)** was established in 1995 under the honorary presidency of emblematic human rights defender, the late Nelson Mandela, and works with the global legal community and partner civil society organisations to promote and protect human rights and the independence of the legal profession worldwide. The IBAHRI is a substantively autonomous entity within the International Bar Association, the world's leading organisation of international legal practitioners, bar associations and law societies, with over 80,000 individual lawyers, and 190 bar associations and law societies across more than 160 countries. Under the IBAHRI's By-Laws, the Institute is governed by an independent Council and is under the Directorship of Baroness Helena Kennedy LT KC.

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The **Bar Human Rights Committee of England and Wales (BHRC)** is the independent, international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges, and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is autonomous of the Bar Council.

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I. Introduction

1. Lawyers for Lawyers (L4L), the Law Society of England and Wales (LSEW), Bar Human Rights Committee (BHRC) and the International Bar Association's Human Rights Institute (IBAHRI) welcome the opportunity to contribute to UN Human Rights Committee's examination of Zimbabwe's second periodic report. This submission will focus on matters concerning articles 2, 4, 7, 9, 14, 15, 17, 18, 19 and 22 ICCPR, specifically:
 - II. Institutional independence of the legal profession
 - III. Interference with lawyers' activities
 - IV. Restrictions on the right to an effective defence
 - V. Conclusion and recommendations.
2. This report will provide information on issues and questions raised in the List of Issues Prior to Reporting ('LoIPR'), and related matters, that have had an adverse impact on the capacity of lawyers to carry out their professional functions in Zimbabwe. The concerns shared in this submission are particularly relevant for the Committee's evaluation of Zimbabwe's implementation of the right to a fair trial under Article 14 ICCPR, as it relates to the independence of the legal profession, as well as other ICCPR rights and their ensuing impact thereon.

Methodology

3. The submitting organisations have been closely following the rule of law and human rights developments in Zimbabwe in the context of increasing executive interference with the judiciary and rising threats, intimidation and reprisals against lawyers, restricting the ability of lawyers to practice their profession free from intimidation, hindrance, harassment or improper interference (pursuant to the UN Basic Principles on the Role of Lawyers ['UN Basic Principles']). The information in this submission is collected through ongoing research, including semi-structured interviews with Zimbabwean legal professionals, and engagement with and reports from Zimbabwean lawyers and other local and international stakeholders.
4. All mentioned lawyers have either provided informed consent to the submitting organisations to be named, or information about their cases are publicly available and cited where relevant.

II. Institutional independence of the legal profession in Zimbabwe (Articles 2, 14)

5. The following information is provided in response to the Committee's request for information relating to the independence and impartiality of the judiciary, and influence by the executive and legislative branches on the judiciary (LoIPR, para 18). Judicial independence is a prerequisite for the rule of law and is essential to ensure that lawyers can carry out their duties in a free and enabling environment. An equitable system for the administration of justice guarantees the independence of lawyers in the discharge of their professional duties without any improper restrictions, pressures or interference, both directly and indirectly. Therefore, the relationship between judges and lawyers is one of mutual reliance in furthering the delivery of justice.

6. The independence and integrity of the judiciary has been significantly compromised by increased political interference, harassment and corruption, despite constitutional provisions which safeguard its autonomy. Local civil society and international organisations continue to call for urgent reforms to restore trust, transparency, and accountability in Zimbabwe's legal system.

a. Constitutional Amendments and Executive Interference

7. The Zimbabwean Constitution of 2013¹ enshrines judicial independence, specifically Section 164, which explicitly states that courts must operate free from external interference. However, recent constitutional amendments have undermined these protections. Constitutional Amendment No. 1 of 2017 altered the process of judicial appointments by granting the President the power to unilaterally select the Chief Justice, Deputy Chief Justice, and Judge President of the High Court. Previously, the Judicial Service Commission (JSC) was required to nominate candidates to the President following a rigorous interview process, ensuring a level of independence and merit-based selection. In bypassing the public advertisement and interview process, the amendment significantly impacted the transparency around, and public participation in, the judicial selection process. Constitutional Amendment No. 2, passed in May 2021, further deepened concerns about judicial independence by allowing the President to extend the tenure of the Chief Justice, Deputy Chief Justice, and judges of the Constitutional and Supreme Court beyond the mandatory retirement age of 70. This extension, under Article 13, is contingent upon the President's discretion and is justified under the provision of a medical report as to their mental and physical fitness to continue in office, without offering discretion to the JSC to object to such extensions. Additionally, Section 328 § 7 of the Constitution bars the extension of term-limits from applying in relation to any person who held that office at any time prior to the amendment, which may render the extension of the Chief Justice's tenure as unconstitutional, as he occupied his office prior to the amendment under Section 13 § 4. Such provisions grant the Executive significant influence over senior judiciary members, their tenure, and the independence of the selection process, thus sidelining the role of the JSC and raising concern over judges' impartiality in politically sensitive cases.
8. Local and regional civil society organisations and experts have argued that these amendments concentrate power in the Executive branch and erode the judiciary's role as an independent arbiter. Organisations like the Zimbabwe Lawyers for Human Rights (ZLHR), as well as international legal organisations, have highlighted these amendments as a direct affront to the principle of separation of powers, democratic institutions and the rule of law.² Reports have indicated that these changes have led to perceptions of judicial partiality in cases, particularly those involving high-profile political figures, corruption, and contentious electoral disputes.³

¹ Constitution of Zimbabwe. Available at https://www.constituteproject.org/constitution/Zimbabwe_2013.

² Information retrieved from interviews and conversations with lawyers from Zimbabwe and local organisations.

³ Robert F. Kennedy Human Rights, IBAHRI, and ZLHR (2021). Zimbabwe: President Mnangagwa must stop undermining judicial independence. *Robert F. Kennedy Human Rights*. <https://rfkhumanrights.org/press/zimbabwe-president-mnangagwa-must-stop-undermining-judicial-independence/>; Transparency International Zimbabwe. (2021). *Judicial corruption in Zimbabwe*, <https://www.tizim.org/wp-content/uploads/2021/11/Judicial-Corruption-in-Zimbabwe.pdf>.

9. There are also reported concerns that the Government has undermined the judicial selection process to ensure preferred candidates are appointed. In June 2024, 11 new judges were appointed to the High Court and Administrative Court. They included at least seven who had failed the public interview process undermining public confidence in the independence of the selection process. Furthermore, interviewed lawyers reported concerns over the appointment of certain justices to the High Court despite their previous decisions having been subject to criticism by the High Court and having committed misconduct undermining confidence in their suitability for judicial office.⁴ . Lawyers expressed concerns over the impact on trust in the judicial system, and the perceived rewarding of such behaviours.
10. By prioritising political objectives over legal principles, the Act significantly weakens constitutional safeguards for judicial independence enshrined in the 2013 Constitution. It also contradicts Zimbabwe's international obligations under Articles 10, 11, 12 and 13 of the UN Basic Principles on the Independence of the Judiciary, concerning non-interference in the judicial appointments, conditions of service and tenure.

b. Intimidation and Harassment of Judicial Officers

11. The intimidation of judges and other judicial officers has become an increasingly prevalent concern in Zimbabwe. Instances of public disparagement, threats, and harassment have been reported, creating an environment that compromises judicial independence and deters judges from ruling impartially. For example, the Minister of Justice, Legal and Parliamentary Affairs, Ziyambi Ziyambi publicly threatened High Court judges because he was unhappy with their decision that the extension of the Chief Justice's term beyond retirement age was unconstitutional.⁵ Many legal practitioners highlighted this as a significant point in time marking a subsequent decline in the independence of the judiciary.
12. One of the dismissed judges claimed that investigative tribunals were '*weaponised*' to try judges in pursuance of political aims disguised as formal claims of 'gross misconduct'.⁶ In that case, former High Court Judge, Justice Erica Ndewere, was removed from office in 2021 following allegations of misconduct. Justice Ndewere's dismissal has been widely criticised as politically motivated, given her prior dissenting rulings that were deemed unfavourable to the Government.⁷

⁴ See for example, F. Munyoro, "Tainted aspiring judges exposed", *The Herald*, 15 May 2024, <https://www.herald.co.zw/tainted-aspiring-judges-exposed/>.

⁵ Zimbabwe Human Rights Association (2021). Statement on the attacks on the judiciary and the Constitution of Zimbabwe. <https://www.zimrights.org.zw/statement-on-the-attacks-on-the-judiciary-and-the-constitution-of-zimbabwe/>; Voice of America Zimbabwe (16 May 2021). Zimbabwe: Chief Justice Malaba's retirement sparks controversy, <https://www.voazimbabwe.com/a/zimbabwe-malaba-retirement-chief-justice/5892733.html>.

⁶ C Rickard, "Judge claims CJ instructs how cases must be decided," African Legal Information, 31 October 2020. <https://africanlii.org/articles/2020-10-31/carmel-rickard/judge-claims-cj-instructs-how-cases-must-be-decided>.

⁷ The Herald (2021). Justice Ndewere fired. <https://www.herald.co.zw/justice-ndewere-fired-2/>; The Chronicle (2021). Justice Erica Ndewere fired. <https://www.chronicle.co.zw/justice-erica-ndewere-fired/>.

13. Others, including High Court judges, Thompson Mabhikwa,⁸ and Edith Mushore⁹ recognised for ruling on cases negatively impacting the presidential party, have also been dismissed. These apparently targeted actions illustrate a trend towards increasing executive control over the judiciary, limiting the ability of judges to render impartial decisions.
14. Following the successful High Court challenge to the extension of Chief Justice Luke Malaba's tenure in May 2021, Constitutional Amendment No. 2 was rapidly passed to guarantee the extension of his tenure. The constitutional amendment was widely seen as a political decision to influence the independence of the judiciary. Chief Justice Luke Malaba had already been subject to a letter of complaint on 26 October 2020 for interfering with the independence of the Magistrates' courts on behalf of the Government and the constitutional amendment contributed to the feeling of judicial capture by the Government. Such incidents underscore the tension within the judiciary and highlight the risks faced by those who resist political interference.

c. Corruption

15. Reports of corruption through financial incentives to the judiciary have been attributed to the Zimbabwean Government in recent years. NGOs¹⁰ and local media outlets¹¹ have reported that the Government awarded judges with generous housing loans, farms and agricultural machinery and other benefits coinciding with critical moments for the government, and where judicial support would be an asset to them. The distribution of 'loans' of US\$400,000 for judges in payment for residential properties was particularly controversial as the payments were (a) only available in the lead up to the 2023 elections, (b) judges were reportedly not required to sign a loan agreement and (c) were paid directly by the Government to the sellers of the properties. The payments were widely perceived to be 'bribes' distributed to secure a favourable decision on any potential legal challenges or politically sensitive case related to the elections.

d. Laws or practices limiting institutional independence of the legal profession

16. Lawyers in Zimbabwe have encountered mounting obstacles in recent years while fulfilling their professional duties, particularly in politically sensitive cases. A series of broad and discriminatory laws have exacerbated these challenges, as outlined below:

Criminal Law (Codification and Reform) Act¹²

⁸ The Chronicle (2022). Justice Mabhikwa fired for gross misconduct. <https://www.chronicle.co.zw/justice-mabhikwa-fired-for-gross-misconduct/>.

⁹ The Chronicle (2022). New details emerge on sacked judge. <https://www.chronicle.co.zw/new-details-emerge-on-sacked-judge/>.

¹⁰ Information retrieved from interviews and conversations with local non-governmental organisations.

¹¹ Nehanda Radio (6 June 2023). Mnangagwa awards US\$400K loans to judges 3 months before elections. <https://nehandaradio.com/2023/06/06/mnangagwa-awards-us400k-loans-to-judges-3-months-before-elections/>;

Freedom House (2024). *Freedom in the World 2024: Zimbabwe*. <https://freedomhouse.org/country/zimbabwe/freedom-world/2024>.

¹² Criminal Law (Codification and Reform) Act, <https://www.jsc.org.zw/upload/Acts/2017/0923updated.pdf>, accessed 15 July 2024.

17. The Criminal Law Act was amended in 2022 [Chapter 9:23] and includes key provisions criminalising acts such as "*undermining the authority of or insulting the President*,"¹³ "*wilfully injuring the sovereignty and national interest of Zimbabwe*,"¹⁴ "*participating in gatherings with intent to promote public violence, breaches of the peace, or bigotry*,"¹⁵ and "*defeating or obstructing the course of justice*."¹⁶ These provisions, characterised by their vague and overly broad definitions, have had a chilling effect on the legal profession. Authorities have been reported to have recourse to these laws to target and arrest lawyers handling politically sensitive cases.¹⁷ For example, legal practitioners challenging the legality of actions taken by President Mnangagwa have faced charges of obstructing the course of justice following allegations they had falsified documents in papers filed on behalf of their clients.¹⁸ In another example, **Job Sikhala** was charged with obstructing the course of justice when acting on behalf of the family of a political activist, Moreblessing Ali, who had been found murdered. Following protracted criminal proceedings, the High Court overturned his conviction in the Magistrates Court on 23 November 2023.
18. The broad and imprecise provisions under the Criminal Law Act have been abused to prevent lawyers from performing their duties without fear of reprisal.

Private Voluntary Organisation (PVO) Amendment Bill 2024¹⁹

19. The proposed PVO Amendment Bill would revise the Private Voluntary Organisations Act [Chapter 17:05], regulating NGO registration and activities under the pretext of "countering terrorism" and prohibiting political lobbying. The Bill mandates that NGOs register as PVOs, and denial of registration effectively halts their operations.²⁰ Organisations deemed to have 'political affiliations' will face restrictions with limited avenues for judicial review, threatening the work of legal associations and law-based organisations handling politically sensitive cases. Although not yet in effect, the Bill has already had a chilling effect on legal NGOs. Local organisations have reported concerns over the broadness of the term "political affiliations" and absence of legal certainty surrounding it, pushing several organisations to refrain from taking on any activity which may be seen as political whilst awaiting the confirmation of their registration. UN Special Rapporteurs have criticised this Bill for granting disproportionate and discretionary powers to the Office of the Registrar of PVOs, which operates under the executive's control rather than as an independent entity, further stressing how this oversight restricts NGO activities, particularly those perceived as critical of the government, and impedes access to foreign funding.²¹ Moreover, the Bill, if passed, will grant the Registrar the power

¹³ Section 33 of the Criminal Law (Codification and Reform) Act.

¹⁴ Section 22A of the Criminal Law (Codification and Reform) Act.

¹⁵ Section 37 of the Criminal Law (Codification and Reform) Act.

¹⁶ Section 184 of the Criminal Law (Codification and Reform) Act.

¹⁷ For eg. Advocate Thabani Mpfu, Advocate Choice Damiso, Mr Tapiwa Makanza and Mr Joshua Chirambwe.

¹⁸ Asser Khattab, 'Zimbabwe: ICJ Calls on Government to Ensure the Independence of Lawyers' [2020] International Commission of Jurists <https://www.icj.org/zimbabwe-icj-calls-on-government-to-ensure-the-independence-of-lawyers/>, accessed 15 July 2024.

¹⁹ Private Voluntary Organisations (Amendment) Bill 2024, <https://www.jsc.org.zw/upload/Gazette/H.B.%202024%20Private%20Voluntary%20Organisations%20Amendment%20Bill.%202024.pdf>, accessed 22 July 2024.

²⁰ Idriss Nassah (21 February 2023), 'Zimbabwe's President Shouldn't Sign Repressive NGO Bill', *Human Rights Watch*, <https://www.hrw.org/news/2023/02/21/zimbabwes-president-shouldnt-sign-repressive-ngo-bill>.

²¹ UN Human Rights Office of the High Commissioner, 'UN experts urge President of Zimbabwe to reject bill restricting civic space' (14 February 2023), <https://www.ohchr.org/en/press-releases/2023/02/un-experts-urge-president-zimbabwe-reject-bill-restricting-civic-space>, accessed 22 July 2024.

to terminate employment contracts²² and replace NGO leadership with interim trustees empowered to make significant decisions, further undermining independence.²³ Associations of lawyers have expressed the chilling effect this has had on their ability to continue to carry out their functions independently but also to receive foreign funding, greatly restricting their ability to provide pro bono assistance.

Legal Practitioners Act (1981)²⁴

20. Amendments approved by government in 2021 to the Legal Practitioners Act [Chapter 27:07] have been reported as threatening the autonomy of Zimbabwe's legal profession. These changes have not yet been passed by Parliament but are perceived as a threat to the independence of the legal system as they would empower the Minister of Justice to disapprove external funding for the Law Society of Zimbabwe,²⁵ which succeeded the Zimbabwe Bar Association and is tasked with safeguarding the legal profession's interests.²⁶ The amendments, if passed, will weaken the Law Society's independence, exposing it to executive influence, a shrinking independence which has been evidenced above.
21. Additionally, the proposed amendments will increase ministerial appointments to the Law Society Council from two to four and will enhance government control, further compromising the organisation's ability to protect lawyers' independence and provide adequate support for lawyers targeted when exercising their functions in connection with politically sensitive cases.

Maintenance of Peace and Order Act (MOPO) of 2019²⁷

22. The MOPO Act governs freedom of association and imposes restrictions on processions, demonstrations, and public gatherings. In 2019, this Act replaced the Public Order and Security Act of 2002 (POSA), over which the UN Special Representative of the Secretary General on Human Rights Defenders had previously expressed concern, notably in relation to its violation of the rights of freedom of expression, association, and assembly.²⁸ Such concerns were confirmed by the UN Special Rapporteur who stated that the MOPO has worrying similarities to the POSA, as it continues to give law enforcement broad regulatory discretion and powers.²⁹

²² Amnesty International, 'Zimbabwe: Further information: Civil society under attack with new draft law' (19 April 2024) <https://www.amnesty.org/en/documents/afr46/7957/2024/en/>, accessed 22 July 2024.

²³ Ibid.

²⁴ Legal Practitioners Act, <https://www.lawsociety.org.zw/download/legal-practitioners-act/>, accessed 22 July 2024.

²⁵ Lawyers for Lawyers & Zimbabwe Lawyers for Human Rights, 'Joint Submission to the United Nations Universal Periodic Review, Zimbabwe, 40th session of the Working Group on the UPR, Human Rights Council [January - February 2022]' (July 2021) <https://lawyersforlawyers.org/wp-content/uploads/2021/07/Joint-UPR-Submission-Zimbabwe-July-2021-L4L-and-ZLHR.pdf>, accessed 22 July 2024, para 19.

²⁶ Law Society of Zimbabwe, 'About Us' <https://www.lawsociety.org.zw/about-lsz/>, accessed 22 July 2024.

²⁷ Maintenance of Peace and Order Act [Chapter 11:23] https://www.veritaszim.net/sites/veritas_d/files/Maintenance%20of%20Peace%20%26%20Order%20Act.pdf, accessed 22 July 2024.

²⁸ Special Representative of the Secretary General on Human Rights Defenders, 'Report to the 59th Session of the UN Commission on Human Rights' (February 2003) E/CN.4/2003/104/Add.1, para. 513.

²⁹ UN Human Rights Council, 'Visit to Zimbabwe, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association' (22 May 2020) A/HRC/44/50/Add.2, para 2. See a description of all the Sections that violate international human rights law in paragraph 28 of the same document.

Interception of Communications Act³⁰

23. This Act grants the government extensive surveillance powers without requiring judicial authorisation,³¹ lacking safeguards for lawyer-client confidentiality. It does not mandate notifying surveilled individuals nor establish protocols for handling collected data.³² Consequently, authorities can monitor private communications, including privileged exchanges between lawyers and clients.³³ Such practices undermine the confidentiality essential to legal defence and erode trust in the legal system.
24. The legislative and regulatory measures described above, together with Constitutional Amendment Bill No. 2, collectively compromise the independence and effectiveness of Zimbabwe's legal profession. They undermine the rule of law, curtail access to justice, and violate fundamental rights guaranteed under international human rights law. Urgent reforms are needed to ensure the protection of lawyers and the independence of the judiciary, thereby safeguarding Zimbabwe's legal framework and upholding democratic principles.

III. Interference with lawyers' activities (Articles 2, 7, 9, 14, 17, 19 and 22)

25. The UN Basic Principles on the Role of Lawyers set out the freedoms that legal practitioners require to discharge their professional responsibilities. The rights afforded to lawyers are a prerequisite to the realisation of the rights enshrined in the ICCPR, which are inherently dependent on legal representatives being able to provide legal representation without unlawful interference. Over the past years, there have been regular and growing numbers of reports of legal practitioners in Zimbabwe being subjected to assaults, intimidation, wrongful arrests and malicious prosecutions, linked to the performance of their professional duties. These grave intrusions into lawyers' rights to exercise their profession undermines the independence of the legal system and affects the public confidence in the proper functioning of the system. This has had a notable chilling effect, with reports of many lawyers refusing to provide representation to political activists and/ or defendants in political cases for fear of reprisals.
26. The following section will discuss trends identified with regards to the (a) safety and security of lawyers, and (b) interference with lawyers' exercise of their rights to freedom of expression, association, and assembly.

a. Physical attacks, threats, intimidation

27. There have been consistent reports of lawyers having been subject to physical and verbal assaults and intimidation while acting in the course of their professional duties. In several reported cases, police officers have physically assaulted lawyers while they were seeking

³⁰ Interception of Communications Act, <https://www.jsc.org.zw/upload/Acts/2014/1120done.pdf>, accessed 22 July 2024.

³¹ International Press Institute, 'Press Freedom in Zimbabwe: National, Regional and Global Frameworks' (24 August 2023) https://ipi.media/wp-content/uploads/2023/08/ZIMBABWE_Resource_Toolkit_2023.pdf, accessed 22 July 2024, p 25.

³² Allen Munoriyarwa and Brian Hungwe, 'An Analysis of the Legislative Protection for Journalists and Lawyers Under Zimbabwe's Interception of Communications Act' (16 March 2024) 45 Statute Law Review <https://academic.oup.com/slr/article/45/1/hmae018/7630409>, accessed 22 July 2024, pp 9-10.

³³ *Ibid.*, p 10.

access to their clients. **Douglas James Coltart**, a human rights lawyer, was assaulted while acting in the course of his duties on three occasions, on 27 April 2019, 23 August 2019, and 23 November 2019. On some of these occasions, he was also arrested and detained (considered further below). The repeated pattern of harassment to which Mr Coltart was subjected prompted a communication on 9 December 2022 from five UN mandates to the Zimbabwean Government raising concerns about his treatment.³⁴

28. In August 2020, **Beatrice Mtetwa**, was barred from representing her client, journalist Hopewell Chin'ono, due to comments about the case posted on a facebook page run by an American filmmaker (Mrs Mtetwa had no role in the contribution of those comments).³⁵ The case was referred as a disciplinary matter to the Law Society of Zimbabwe. Mrs Mtetwa successfully appealed against the decision barring her from representing her client, but her client was still deprived of his choice of counsel until the High Court decision of 15 December 2020. Around the same time in August 2020, a large number of fully armed anti-riot police were stationed outside her offices, in a suspected act of intimidation as a result of her professional representation of Mr Chin'ono.³⁶

29. On 14 January 2023, **Kudzayi Erick Kadzere**, lawyer and a member of Zimbabwe Lawyers for Human Rights ('ZLHR'), was stopped and assaulted by a police officer when travelling to a police station to represent a client.³⁷ He was then taken to the same police station and charged with criminal offences (see further below).

30. On 5 July 2023, **Obey Shava**, lawyer and ZLHR member, was violently assaulted by four unidentified men who had requested a meeting for legal services.³⁸ The assault is believed to be as a result of exposing corruption.

31. Reports were shared with the undersigned organisations of 2024 events where a lawyer representing opposition parties, after having cross examined an investigating officer, was then threatened by the same police officer. These events were allegedly reported to the local police authorities, but no action has been taken as of the date of this submission.

b. Arbitrary and malicious prosecutions

32. Legal practitioners have frequently been subject to arbitrary arrest, detention and prosecution to prevent their effective representation of their clients.

³⁴ Ref.: AL ZWE 3/2022, 9 December 2022. Mandates of the Special Rapporteur on the situation of human rights defenders; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27723>.

³⁵ L4L, Beatrice Mtetwa barred from representing client, 21 August 2020 <https://www.lawyersforlawyers.org/beatrice-mtetwa-barrred-from-representing-client/>.

³⁶ See for example: responses to a questionnaire for L4L and ZLHR <https://lawyersforlawyers.org/wp-content/uploads/2022/08/Questionnaire-for-civil-society-and-bar-associations-ZLHR-and-L4L-responses.pdf>.

³⁷ IBAHRI, L4L, LRW Canada, Joint statement on the harassment of Zimbabwean lawyer Kudzayi Erick Kadzere, <https://www.lawyersforlawyers.org/wp-content/uploads/2023/02/Zimbabwe-Statement-on-the-harassment-of-Mr-Kadzere-final.pdf>.

³⁸ IBAHRI and L4L, Statement on the Brutal Assault of Zimbabwean Human Rights Lawyer Obey Shava, 17 July 2023 <https://www.lawyersforlawyers.org/ibahri-and-l4l-statement-on-the-brutal-assault-of-zimbabwean-human-rights-lawyer-obey-shava/>.

33. After being assaulted on 27 April 2019, **Douglas James Coltart** was detained and charged with participating in a gathering with intent to promote public violence.³⁹ The participants to the gathering had been discussing *A Pedagogy of the Oppressed*, written by Paulo Freire, which was deemed illegal for spearheading civil disobedience in Zimbabwe. During Mr Coltart's detention, his laptop was surrendered to police and there was a cyberattack on the server of his law firm, resulting in a violation of the right to client-lawyer confidentiality. In a later incident on 23 August 2019, Mr Coltart was arrested while representing Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ).⁴⁰ No explanation of the reasons for the arrests was offered by the police officers on request (and as documented in a video of the incident). He was charged with criminal nuisance and detained for one year on remand, before being acquitted of all charges. On 23 November 2019, Mr Coltart was assaulted and charged while trying to file a report to the Police Controller's Office of a breach of his client's right to a lawyer. The charges were dropped, and he was released later that day.⁴¹
34. On 21 July 2020, Mr Coltart was detained after questioning the legality of a home search of his client. He was again released without charge. On 24 December 2021, a complaint was filed against Mr Coltart by activists of the political party Zanu-PF requesting the Law Society of Zimbabwe cancel his licence to practice. On 22 October 2022, Mr Coltart was arrested on fraud charges in connection to a case initiated by an activist of Zanu-PF. Police refused to consider evidence presented by Mr Coltart that the case was fabricated in retaliation for his work as a lawyer. On 4 September 2023, Mr Coltart and his colleague, **Tapiwa Muchineripi**, were arrested and detained while representing hospitalised opposition activists who had been abducted and tortured (see further below).
35. **Obey Shava** was arrested on 31 July 2020 and detained for four hours when visiting his clients at Harare Central Police Station. Mr Shava was released without charge.⁴² On 22 August 2020, another human rights lawyer, **Jeremiah Bamu** was arrested while defending an opposition politician and charged for defying an instruction by riot police to disperse from the Rotten Row Criminal Magistrates Court.⁴³ Mr Bamu was transported to Harare Central Police Station and released the same day without charge.
36. In January 2023, **Kudzayi Erick Kadzere** was assaulted by a police officer on his way to a police station to represent a client. Mr Kadzere was released for medical attention but charged with criminal nuisance under the Criminal Law Codification and Reform Act.⁴⁴ He tried to file a police report against police officers for his assault, but his report was not accepted, and he was further charged with absconding from lawful custody.

³⁹ UN Special Rapporteur on human Rights defenders, *Zimbabwe: successive assaults, detentions and charges against human rights lawyer Douglas James Coltart (joint communication)*, 10 February 2023, <https://srdefenders.org/zimbabwe-successive-assaults-detentions-and-charges-against-human-rights-lawyer-douglas-james-coltart-joint-communication/>.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² L4L, Obey Shava, <https://www.lawyersforlawyers.org/lawyers/obey-shava/>.

⁴³ Zimeye, Police arrest, release without charge Sikhala's lawyer Jeremiah Mutongi Bamu, 22 August 2020, <https://www.zimeye.net/2020/08/22/police-arrest-release-without-charge-sikhala-lawyer-jeremiah-mutongi-bamu/>.

⁴⁴ IBAHRI, L4L, LRW Canada, Joint statement on the harassment of Zimbabwean lawyer Kudzayi Erick Kadzere, <https://www.lawyersforlawyers.org/wp-content/uploads/2023/02/Zimbabwe-Statement-on-the-harassment-of-Mr-Kadzere-final.pdf>.

37. Taken collectively, these individual reports illustrate a wider pattern of police authorities seeking to prevent legal representatives from fulfilling their professional responsibilities through force or coercion. The threat of arrest therefore remains and the impact on access to justice is evident, as practitioners have reported fears of arrest if they insist on respect for their client's rights.

IV. Restrictions on freedom of expression, association, and assembly (ICCPR articles 19, 21, 22)

38. The recent years, particularly following the national elections in 2023, have been marked by the passage of restrictive laws which threaten civic space for freedom of expression, association and assembly. The most notable example is the proposed Private Voluntary Organisations (PVO) Amendment Bill which is widely feared will impact the work of non-governmental organisations and human rights defenders when passed into law (as described above). It is already reported to have had a chilling effect on NGOs who are reportedly self-censoring in anticipation that the bill will be used to de-register organisations critical of the government if passed. There are similar concerns that strict provisions for the registration of organisations under the PVO Bill will be relied upon to control the Law Society Council.

39. The Maintenance of Peace and Order Act (MOPO) was passed in 2019 and imposes stringent regulations on public gatherings. The requirements for police approval for demonstrations under the act have led to arbitrary denials in order to suppress dissent. The Criminal Law (Codification and Reform) Act was amended in 2022 to criminalise actions or speech which is deemed to undermine the dignity and sovereignty of Zimbabwe. Some fear that the Cyber and Data Protection Act will facilitate the surveillance of online activities of activists and political opponents. The combination of these laws serves to create a hostile environment for NGOs and human rights defenders and constricts the legal environment in which their rights can be protected. By way of illustration, in October 2020, President Emmerson Mnangagwa made a statement that the government was in the process of amending the Private Voluntary Organisations Act to “deal” with NGOs and private voluntary organisations (‘PVOs’) operating outside their mandate through the amendment of the Private Voluntary Organisations Act.⁴⁵ This statement was understood to be made in response to public statements and reports by CSOs and human rights defenders to the UN regarding the disappearance of three female political activists. Public exposure of state wrongdoing risks censorship from the State which can revoke licences to operate if the PVO bill is introduced.

40. The concerns about the scope for abuse of these new restrictive provisions is also grounded in past experience of abusive prosecutions. As set out above, legal representatives have been arrested, detained and in some cases charged when executing their professional duties representing clients.

⁴⁵ Mohammed, S. (24 March 2022), ‘Mnangagwa Threatens to Expel NGOs’, *New Zimbabwe*. <https://www.newzimbabwe.com/mnangagwa-threatens-to-expel-ngos/>.

41. The cumulative effect of the restrictive legislation is to prevent legal representatives from reporting openly about violations of rights protected under the ICCPR.

V. Restrictions on access to clients, rights of the defence (Articles 7, 9, 10 and 14)

42. The following information is provided in response to the Committee's request to receive information on the right to prompt access to a lawyer (LoIPR, para 14):

a. Access to case files and procedural delays

43. Lawyers have reported facing significant challenges in accessing case files and procedural delays which often hinder the pursuit of justice. Authorities frequently fail to meet deadlines, causing prolonged detention periods and undermining the constitutional right to bail.
44. Limited access to procedural rights is a persistent issue, with judicial authorities often avoiding substantive matters, particularly in politically sensitive cases. Individuals are frequently denied prompt or regular access to their legal representatives, with lawyers encountering administrative obstacles and uncooperative officials. Advocate **Douglas Coltart** reported instances from 2020 of clients being taken to remote locations whilst awaiting trial and him having been denied access to them during this detention. Furthermore, when advocate **Job Sikhala** was detained in 2023, his legal representatives further reported significant hurdles in accessing and being able to represent him.
45. Additionally, missing case documents, outdated systems, and suspected interference from law enforcement or prosecutors further complicate the process, leading to critical evidence being lost or delayed. Lawyers interviewed have reflected on the inefficacy of the executive and judicial institutions' reporting and documentation systems, highlighting how the hurdles and delays in trials and document access were partly due to the outdated technology and organisational means used in these proceedings, calling for a real need to modernise and develop it.
46. Lawyers have further shared growing concerns for the undermining of their clients' constitutional right to bail. According to the Constitution of Zimbabwe, section 50(1)(d), arrested or detained persons "*must be released unconditionally or on reasonable conditions, pending charge or trial, unless there are compelling reasons justifying their continued detention.*" The presumption is therefore in favour of granting bail, unless the individual represents a danger to public safety. However, in recent years lawyers have noted that in cases where there are political sensitivities, bail is often denied arbitrarily. Interviewed lawyers have further stressed the limited possibility for appeal of such denials. Indeed, as the law currently stands, the court of last instance to contest such bail-denials is the High Court. Following the recent changes in the High Court and the extension of the Chief Justice's tenure, there has been a perceived change in the independence of High Court decisions on bail and the High Courts have been known to follow the verdict of the Magistrates' Courts. A prominent example of the difficulties faced in securing bail in political cases is the 2024 case of the Citizens Coalition for Change ("CCC"), during which 78 activists of the main opposition parties were arrested and charged with "*gathering with*

intent to promote public violence and disorderly conduct". Despite having good grounds in favour of their right to bail, they were refused bail by the Magistrates' Court and the High Court declined to revisit the decision. The activists reported being assaulted by the police and enduring indecent pre-trial detention conditions. During their trial, serious concerns were expressed by their lawyers surrounding the violation of their right to a fair trial. This case raised grave concerns regarding the deliberate delaying of proceedings by the State and prosecutor, and the impact this has on clients' right to a fair trial and lawyers' ability to effectively represent their clients.

b. Prompt access to a lawyer of ones choosing

47. Section 13(3) of the Constitution guarantees the right of an arrested person to see their lawyer without delay; however, systemic barriers frequently prevent lawyers from effectively representing their clients in court.
48. Lawyers' who work with law-based organisations have found their ability to access their clients in rural areas in a timely manner and prepare an efficient defence to have been greatly restricted through the requirement for organisations to sign Memorandums of Understanding (MOUs) to access certain districts. These MOUs, although not legally mandated, are required in practice to exert control, particularly in areas governed by the dominant political party. Indeed, lawyers have reported being prohibited access to these areas through threats of incarceration by local authorities claiming the need for MOUs. The recourse to these MOUs is disparate and arbitrary, impeding lawyers' ability to effectively prepare a defence.
49. Individuals' right to a lawyer of their own choosing has been further restricted in Zimbabwe through the recourse to incommunicado detentions. Interviewed lawyers have reported the increasing use of such practices to detain their clients for days before revealing their locations and granting them access to a lawyer. During their time held incommunicado individuals have shared instances of torture and of being denied access to any lawyer for the duration of the detention, a clear violation of their right to a fair trial.
50. In some cases, legal practitioners have been explicitly barred from continuing their representation, as seen in the 2020 case of **Beatrice Mtetwa**, a prominent human rights lawyer. She was prohibited from defending journalist Hopewell Chin'ono, violating Mr Chin'ono's right to representation by a lawyer of his choice. It is however important to note that Advocate Mtetwa successfully challenged this decision in December of the same year, effectively re-instating herself as Mr. Chin'ono's lawyer.
51. While explicit bans on legal counsel are less frequent, other tactics are commonly used to hinder lawyers' access to their clients. Lawyers have been arrested while attempting to visit detainees, and legal meetings are often subjected to surveillance by intelligence services, military, or police forces. Under the Maintenance of Peace and Order Act (MOPA), which replaced the restrictive Public Order and Security Act, authorities have interpreted the requirement to notify police of gatherings as an obligation to seek approval. This has resulted in law enforcement officers attending legal meetings, monitoring discussions, and sometimes contacting hotels to listen-in on confidential client consultations, creating an atmosphere of intimidation and mistrust.

52. Instances have further been reported where legal representatives have been imprisoned after visiting their clients, as experienced by **Douglas Coltart** and **Tapiwa Muchineripi**, who were detained and mistreated while representing their client's interests. These tactics collectively contribute to a climate where the fundamental right to legal representation is undermined, eroding trust in the judicial system and discouraging legal professionals from taking on high-profile or politically charged cases.

c. Interference with lawyer-client confidentiality

53. While the Constitution⁴⁶ and the Legal Practitioners Act [Chapter 27:07]⁴⁷ emphasize the right to confidential communication between lawyers and their clients, instances of state interference, surveillance, and breaches of privilege have been reported.

54. Lawyers have reported that they are not able to consult their clients in private spaces when they attend police stations or prisons. Frequently police officers or prison guards remain in the room preventing their clients from engaging in privileged discussions with their clients. Such violations compromise the fundamental right to a fair trial and discourage clients from fully disclosing critical information to their legal counsel. This further violates guarantees of fair trial as information listened in on by the guards or surrounding representatives of the executive power may be reported back to the prosecutor.

VI. Conclusion and recommendations

55. The submitting organisations request that the Human Rights Committee recommend the government of Zimbabwe to:

- i) Take all measures necessary to end the executive's influence over the judiciary and ensure that the independence of the judiciary is respected in practice.
- ii) Ensure that judges are appointed through a fair, transparent and impartial process. This includes repealing Constitutional Amendment No 1, 2017, granting the President the power to unilaterally select the Chief Justice, Deputy Chief Justice, and Judge President of the High Court, which undermines the independence of the appointment procedure. Judicial appointments should be conducted transparently through the Judicial Service Commission (JSC), ensuring merit-based selection without executive interference.
- iii) Ensure the mandatory retirement age for judges is respected in practice. To this end, to repeal Constitutional Amendment No. 2, 2021, which enables the President to extend the tenure of the Chief Justice, Deputy Chief Justice, and judges of the Constitutional and Supreme Court beyond the mandatory retirement age of 70.

⁴⁶ Sections 62 and 69 of the Constitution.

⁴⁷ Sections 3(33)(e), and 3(44) of the Legal Practitioners (Code of Conduct) By-laws 2018.

- iv) Review the Criminal Law Codification and Reform Amendment Bill 2022 (the 'Patriotic Act') and the Maintenance of Peace and Order Act 2019 and repeal provisions which are vague and lack legal certainty. Take measures to ensure that judicial officers do not face interference, intimidation and harassment when carrying out their professional duties. There must be independent investigations into reported cases of judicial interference, including the dismissal and persecution of judges, and the State must ensure that those who have been unfairly dismissed are reinstated.
- v) Take measures to address interference with and corruption within the judiciary by ending the practice of providing financial loans and rewards to the judiciary by government officials especially at politically sensitive periods such as elections.
- vi) Ensure lawyers can perform all their professional functions without intimidation, hindrance, harassment or improper interference, and guarantee their physical and psychological integrity.
- vii) Ensure that lawyers have prompt access to their clients and are able to consult with them in private, as well as access to documents relevant to their client's case to enable them adequate time and facilities for the preparation of a defence in accordance with Article 14 of the ICCPR.
- viii) Ensure that everyone charged with a criminal offence has the right to access a lawyer of their choice in accordance with Article 14 of the ICCPR.
- ix) Ensure that the constitutional right to bail is respected in practice and pre-trial detention is an exceptional measure used only as necessary and proportionate and in compliance with the presumption of innocence and the right to liberty under Article 9 of the ICCPR.
- x) Review the PVO Amendment Bill and ensure that provisions that violate the rights to freedom of expression, peaceful assembly and association are removed or amended and brought in line with the country's constitutional and international human rights obligations.
- xi) Ensure the Law Society of Zimbabwe can function independently. To this end, withdraw the proposed amendments to the Legal Practitioners Act [Chapter 27:07] which would increase Ministerial control over the Law Society of Zimbabwe.
- xii) Revoke provisions of the Interception of Communications Act which interfere with the principle of lawyer/client confidentiality and halt the monitoring of private communications, including privileged exchanges between lawyers and clients.