



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND & WALES

TRIAL OBSERVATION REPORT

Legal process following recent unrest in Zimbabwe

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Bar Human Rights Committee

The Bar Human Rights Committee (“BHRC”) is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It has a membership of nearly five hundred lawyers, comprised of barristers practicing at the Bar of England and Wales, legal academics and law students. BHRC’s fifteen Executive Committee members and general members offer their services *pro bono*, alongside their independent legal practices, teaching commitments and/or legal studies. BHRC also employs a full-time executive officer.

BHRC aims to:

- uphold the rule of law and internationally recognised human rights norms and standards;
- support and protect practicing lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- further interest in and knowledge of human rights and the laws relating to human rights, both within and outside the legal profession;
- support and co-operate with other organisations and individuals working for the promotion and protection of human rights; and
- advise the Bar Council of England and Wales in connection with international human rights issues.

As part of its mandate, BHRC undertakes legal observation missions to monitor proceedings where there are concerns as to the proper functioning of due process and fair trial rights. The remit of BHRC extends to all countries of the world, apart from its own jurisdiction of England and Wales. This reflects the Committee's need to maintain its role as an independent but legally qualified observer and critic.

Executive Summary

Michael Ivers QC, an executive officer of the Bar Human Rights Committee of England and Wales (BHRC), observed proceedings at two Magistrates Courts in and around Harare (Rotten Row in the Centre and Mbare in the South) between the 30 January and the 1 February 2019.

These observations followed unrest during anti- government protests between 14 and 17 January 2019, where acts of violence against property and persons were reported to have been perpetrated in several places in Zimbabwe. Over 1,000 people were arrested by both the police and, it would seem, the army. Many organisations spoke of some excessive force being used by the security forces in dispersal and arrests. There were some reported killings, some reports of rape and a large number of people were injured, including individuals with bullet wounds.

As well as observing at the trials of some of those arrested, Mr Ivers QC spoke to a number of those involved in different roles in the Criminal Justice System and coordinated with two representatives from the American Bar Association (ABA) conducting their own observations.

In the earlier period based upon numerous sources, BHRC learned:

- Over 1,000 people were arrested in total.
- A significant number of these in ‘dragnet’ operations.
- There was a wholesale refusal of bail for those arrested in the initial period.
- There was deeply worrying fast-tracking of trials with little time for defence preparation.

As to the ongoing proceedings, based on Mr Ivers QC’s own observations, BHRC noted:

- A lack of information about charges and evidence and inadequate disclosure.
- Many large multi-handed cases -in some cases with over 50 defendants - raising significant practical difficulties in achieving a fair trial.
- Haphazard and dangerous dock identifications which, if accepted, would lead to unfairness.
- Children tried together with adults in some cases.

BHRC calls on the Zimbabwe government and judicial system to ensure that international fair trial rights are met for those arrested. BHRC also requests that the High Court urgently review the procedurally problematic convictions which have already taken place and thereby positively influence many of the ongoing cases where systemic problems, at the outset, are continuing to have an effect on the fairness of the proceedings.

Introduction

1. From 14-17 January 2019, there was widespread unrest in Zimbabwe following a hike (of 300%) in fuel prices, where acts of violence against property and persons were reported to have been perpetrated in several places , mainly in Harare and Bulawayo. Many local sources described this unrest as the worst since 2008. BHRC issued a public statement on 22 January 2019, raising concern over the government's response to the protest and reminding Zimbabwe of its obligations to fair trial rights, freedom of expression, right to life and prohibition of torture under its own constitution and its international treaty obligations, particularly as it concerns children.¹
2. Over 1,000 people were arrested by both the police and, it would seem, the army. Many organisations spoke of excessive force being used by the security forces in dispersal and arrests. There were reported killings, reports of rape and a large number of people were injured, including individuals with bullet wounds.
3. Numerous sources reported that people appear to have been arrested initially for both theft and public order offences. However, a significant number of those arrested were in apparently dragnet operations in sweeps of nearby streets and homes where people were rounded up. Particular emphasis was placed on the arrests of any unemployed males in the area on the basis that they were likely to have been involved in the unrest, or close to persons who were involved.
4. The majority of the theft and public order matters were to be dealt with in the magistrates' courts. However, a few individuals alleged to have orchestrated the unrest were charged with more serious offences that could only be dealt with in the High Court.
5. BHRC observed trials at two magistrates' courts in and around Harare (Rotten Row in the Centre and Mbare in the South) between the 30 January and the 1 February 2019. As well as observing at the trials of some of those arrested, BHRC also spoke to a number of those involved in different roles in the criminal justice system both on and off the record.

¹ See <http://www.barhumanrights.org.uk/bhrc-calls-for-zimbabwe-to-cess-state-violence-and-protect-the-rights-of-children-amid-concern-for-fair-trials-and-freedom-of-expression/>

Terms of reference

6. The mission was undertaken to assess and report on compliance of the Zimbabwe magistrates' courts with domestic and international fair trial standards. Particular concerns related to pre-trial detention and denial of bail, the right to legal representation and to prepare an adequate defence, and the rights of juveniles in criminal proceedings codified within the Zimbabwe Constitution as well as the International Covenant of Civil and Political Rights and the African Charter of Human and People's Rights

Acknowledgments

7. The mission was assisted by the American Bar Association (ABA), who conducted their own observations concurrently with other observers. Prior to Mr Ivers QC's arrival, two delegates from ABA, Oliver Windridge and Mary Pais De Silva, obtained authorisation to enter courts to view trials. Whilst the criminal justice system is open to the public in any event, this helped facilitate visits. BHRC and the ABA exchanged notes of the meetings they attended together and co-operated where possible to obtain the maximum amount of information. BHRC is grateful for the assistance given.

Funding

8. Expenses for the mission were funded from BHRC trial observation funds, provided by the Bar Council of England and Wales, and accommodations were provided by the American Bar Association. BHRC, however, conducted the trial observations and wrote this report on a *pro bono* basis.

Hearings observed

9. BHRC observed trials at two magistrates' courts in and around Harare (Rotten Row in the centre and Mbare in the South) between the 30 January and the 1 February 2019. This included one large multi-handed case (originally with 61 defendant) involving an alleged attack on a police station; a case involving an alleged physical attack on a Zanu PF politician during public disorder; another multi-handed case (15 defendants) alleging looting and public disorder. The ABA delegates also shared information by the two ABA delegates concerning a bail proceeding in the High court and two other public disorder trials.
10. BHRC spoke to a number of those involved in different roles in the criminal justice system both on and off the record. Together with the ABA delegates and representatives of the International Commission of Jurists (ICJ) , BHRC also met with diplomats from a large number of European Union (EU) countries at a meeting at the EU mission as well as a meeting with an experienced British diplomat at the UK Embassy.
11. These meetings assisted in obtaining an overview of the current situation in Zimbabwe and the unrest that had taken place, with an assessment of its causes and how it had developed. Some of the diplomats had themselves attended proceedings, although at the High Court, rather than at the magistrates' courts and were able to give their perspectives.

Compliance of the proceedings with domestic and international fair trial standards

12. Zimbabwe ratified the International Covenant on Civil and Political Rights (ICCPR) in 1991² and the African Charter on Human and Peoples' Rights (African Charter) in 1986.³ The later charter issued guidance in 2003 on fair trials and the scope of legal representation.⁴
13. While under a period of power sharing in 2013 between the main parties; -Zanu PF, MDC-T and MDC-N - Zimbabwe passed its constitution⁵ (Zimbabwe Constitution (2013)), after a referendum, albeit many Articles were not to take effect for 10 years. The following Chapter 4 rights took effect upon publication⁶ and so are in effect; Article 50 deals with the rights of arrested and detained persons. Article 58 deals with freedom of assembly and association. Article 61 protects freedom of expression. Article 69 affords the right to a fair hearing and Article 70 protects the rights of accused persons. Additionally, Article 81 sets out the rights of children. The second schedule applies limitations on the various rights protected in times of 'Public Emergencies' however such an emergency must be declared and were it to be so a tribunal would need to be set up to review preventative detention.⁷

²https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=195&Lang=EN

³<http://www.achpr.org/instruments/achpr/ratification/>

⁴ <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>.

⁵ https://www.parlzim.gov.zw/.../k2/.../1290_da9279a81557040d47c3a2c27012f6e1

⁶ See Sixth Schedule Para 3(1)(b)

⁷ See Second Schedule (Section 87) 3 (1)

A. Detention and Bail Proceedings

Article 50(2)-(3) of Zimbabwe Constitution (2013):

*(2) Any person who is arrested or detained-(a) for the purpose of bringing him or her before a court; or (b) for an alleged offence- and who is not released must be brought before a court as soon as possible and in any event **not later than forty-eight hours after the arrest took place** or the detention began, as the case may be, whether or not the period ends on a Saturday, Sunday or public holiday.*

(3) Any person who is not brought to court within the forty-eight-hour period referred to in subsection (2) must be released immediately unless their detention has earlier been extended by a competent court.

Article 6 of the African Charter:

*Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be **arbitrarily arrested or detained**.*

Article 1e of the African Union Fair Trial Guidelines

Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail

Article 9(3) of the ICCPR

*Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. **It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement***

14. BHRC received numerous and widespread accounts of non-compliance with Article 50 (2) and (3) of the Zimbabwe Constitution (2013), which provides for the so-called “48-hour rule”. Any person who is not brought to court within 48 hours of arrest must be released immediately, unless their detention had been earlier extended by a competent court. The 48-hour rule would satisfy the international obligations in relation to promptness, cited above. It is a strict provision (stricter than in many jurisdictions) and local lawyers indicated it was ordinarily strictly adhered to.

15. However, in the period which followed the unrest, BHRC was informed that numerous magistrates in different courts, unusually, did not strictly enforce the rule. Moreover, in the Press at the time of Mr Ivers QC's visit there was an article referring to comments by a High Court Judge, Justice Mabhikwa from Bulawayo, 'lamenting' the misinterpretation of 'over-detention' and effectively stating that Article 50 should not be strictly adhered to; the report suggests that magistrates should consider the 'gravity of the charge' and the 'effort put in by the police in bringing the suspect to court' and stated that even if a defendant is over-detained, it is simply a 'civil matter'.⁸ Such comments from a senior Judicial source and its timing tends to support what local lawyers had indicated concerning the undermining of Article 50 (3).
16. The widely held belief among many in the criminal justice system in Zimbabwe is that these approaches to bail were so unusual, so widespread and so uniform that it is hard not to conclude that magistrates were responding to some central directive to affect a blanket denial of bail. Apparently nearly all of cases following offences concerning the unrest were denied bail. A figure far away from what would ordinarily be the case for similar offences; particularly those defendants of previous good character (as, I understand, many of the arrested people were).
17. During its observations, BHRC witnessed a trial of one defendant who had twice surrendered on a summons to court voluntarily but was nevertheless denied bail (clearly the bail matters had been dealt with prior to the observations - some two weeks following their initial arrest). BHRC received reports of others who, on hearing they were wanted had sought out the police, yet were similarly denied bail when they had surrendered. Again, whilst there may well be cases ordinarily where those who surrender will be denied bail the picture that built up was of many unusual decisions of this nature.
18. During BHRC observations, defendants were continuing to be denied bail as the proceedings went forward. In each of the cases observed, the vast majority of those facing trials in cases relating to the unrest were remanded in custody. The exception was a single juvenile in a multi-handed case with 60 other defendants at Rotten Row magistrates court in central Harare⁹. All of the adult defendants, whatever their alleged

⁸ <https://www.herald.co.zw/high-court-clarifies-over-detention-clause/>

⁹ Vhurandi and others charged with Public violence contrary to Section 36(1)(a) as read with ss (3) (a) of the Criminal Law (codification and Reform) Act Chapter 9:23

role, large or small, were remanded in custody. Detention awaiting trial should be the exception rather than the rule.¹⁰

19. Thus if, as appears to be the case, there is an ongoing virtually uniform bar on bail this would not only be in breach of the domestic constitution but also not compliant with international obligations providing a right to bail in most cases and it would at least arguably prima facie amount to 'arbitrary detention.'

¹⁰ See Article 70 of the Zimbabwe Constitution (2013)

B. Right to Legal Representation and Adequate Time to Prepare a Defence

Article 70 of the Zimbabwe Constitution (2013)

(1) Any person accused of an offence has the following rights—

- (a) to be presumed innocent until proved guilty;*
- (b) to be informed promptly of the charge, in sufficient detail to enable them to answer it;*
- (c) to be given adequate time and facilities to prepare a defence;*
- (d) to choose a legal practitioner and, at their own expense, to be represented by that legal practitioner;*
- (e) to be represented by a legal practitioner assigned by the State and at State expense, if substantial injustice would otherwise result;*
- (f) to be informed promptly of the rights conferred by paragraphs (d) and (e);*
- (g) to be present when being tried;*
- (h) to adduce and challenge evidence;*

Chapter A, Article 2 of African Union Fair Trial Guidelines.

- (e) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;*
- (f) an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings;*

Article 14 (3) of the ICCPR

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing

20. BHRC received anecdotal reports that in the early stages of proceedings, questions were unusually being asked of defence lawyers by magistrates about their practicing certificates and complaints made as to their issuance. Again, the chief concern was how different courts, in different places, seemed to have been taking the same novel approach. Such interference in the right to be represented by a lawyer would amount to a violation of Article 70(1)(d)(ante) and in serious cases, and many of the cases were serious, 70(1) (e)(ante).

21. From numerous defence lawyers and those in civil society, BHRC received reports that trials were being rushed in the initial stages on the stated basis that it is in the interests of justice that matters proceed quickly. Whilst it is correct to say that trials should proceed as quickly as possible, this must not be at the expense of having adequate time and facilities to prepare a defence (protected in Article 70 (1) (c)) and to know sufficient detail about the case against them (Article 70(1)(b)). Once again, this practice was so uniform and widespread there is a widely held and realistic belief by a large section of the legal community in Zimbabwe that there had been a policy to do so, whatever the circumstances.
22. It is worth setting out the facts of the 61 defendant case mentioned above which perhaps illustrates the pressures involved. The nature of the allegations was that the group had barricaded Chiremba Road, which leads from Ebsworth in the Central Business District of Harare, with stones and burning tyres. They then were alleged to have proceeded to ZRP Epsworth Police station, pulling down a police signpost on the way, and throwing stones and other missiles at motor vehicles, disturbing the free movement of traffic. When they reached the police station, they were alleged to have attacked it, pulling down the police perimeter security fence. They allegedly went on to attack the police station through the indiscriminate throwing of stones and other missiles. There were alleged threats to burn down the police station. The police called assistance from the Police Reaction Group and arrests took place of people 'positively identified by witnesses during the commission of the offence.' Many arrests took place of those in the vicinity of the scene.¹¹
23. The defendants were arrested on 14 January 2019, their first appearance was on 16 January 2019, and the trial began on 22 January 2019. There were approximately five defence lawyers. They were told to visit their clients over the weekend of 18 January 2019 to be ready to proceed on the Monday following. Their clients were all in custody. Whilst legal visits can be obtained at prisons at the weekend, it is wholly unrealistic to expect even cases with far fewer defendants to be ready in such a timescale. Here, there was the additional factor of multiple accused. It is difficult to see how it would be possible to deal with the sorts of issues raised in a large public order trial in this period of time. Moreover, it's difficult to envisage that the prosecution could properly review its case and meet its disclosure obligations in the time available. There were

¹¹ See Summary of charges – Appendix

widespread complaints in many courts of inadequate service or indeed no service of the prosecution case at all. The two observers from the ABA saw a case with witness statements from key prosecution witnesses simply taken at court just prior to going into court. BHRC's observer saw haphazard and, it is suggested, dangerous dock identification procedures, which ran the risk of grave unfairness if the court is persuaded to accept them. These matters again appear, on the face of it, to breach both the domestic and international obligations in terms of fair trial norms. The size of the trial appeared wholly unmanageable. The magistrate was assiduous in taking notes and rarely interrupted defence counsel and when he did, never inappropriately, and on the face of it was attempting to manage this large trial. However, the court room itself was ill- equipped to deal with it, being too small for such a large number of defendants and consequent interest from family members and interested parties.¹²

24. The facts of the case reveal two countervailing pressures. On the basis of such serious violence, including an alleged attack upon a police station, there is an urgent need to apprehend those responsible and restore order. The other side of that coin is that in making the police presence felt, with arrests taking place quickly, there is an obvious risk of some innocent people being caught up in the events and arrested. This is particularly so when the police are under pressure. Moreover, it was clear that the army had attended at the scene. Their main role will have been to quell violence rather than make decisions about arrests on the same basis that the police are trained to do. The nature of this case, and its sheer size is such that one would expect some time to be taken before a trial, preparing the evidence, conducting fair identification procedures and obtaining evidence to be served on the defence. This did not appear realistically possible in the time available, and this was illustrated in terms of a reversion to dock identification and the provision and service of statements on the hoof. Of course, if the prosecution doesn't have an opportunity to properly prepare a case this can accrue advantage to the defence. The effects in practice of such apparent procedural flaws depend, at least initially, on individual decisions by magistrates.¹³

¹³ Since drafting and prior to publication BHRC received an update from the ICJ on the 15th February 2019 that 52 of the 59 defendants then left had been acquitted that day by the Magistrate on dismissal applications at the close of the prosecution case.

25. Whilst in a period of widespread unrest there might be pressure to send a message out quickly, this cannot be at the expense of fair trial norms. Arguably the need to adhere to the principles is never greater than at such times and with such pressures on the police and other parties.
26. It is fair to add that the trials observed had defendants with competent legal representation, interpreters, and magistrates who were conspicuously allowing challenging cross-examination of prosecution evidence to take place. But allowing for some searching cross-examination cannot remedy faults in knowing the case to meet or be a substitute for even more searching questioning, were the lawyer to be given sufficient time with their clients or with the prosecution papers. Allowing, without interference, such questioning as can be done to take place cannot realistically ameliorate the systemic failures at the initial stages of the proceedings.
27. So concerned were many lawyers in Zimbabwe that they demonstrated in Harare on Tuesday the 29 January 2019 and petitioned the Constitutional Court demanding restoration of justice and an end to apparent political and military interference in the criminal justice system. The fact of such a large demonstration by a large cross-section of lawyers speaks volumes. Again, BHRC was informed that this demonstration had an impact in the ongoing proceedings and was welcomed, albeit discreetly, by many prosecutors and magistrates. The underlying petition however was flatly rejected by the Chief Justice, Luke Malaba, who strongly rejected any suggestion that the judiciary had been ‘captured’ and urged those with complaints about any individual decision to take a route of appeal provided for under the law rather than extra judicial petitions.¹⁴
28. BHRC observed a trial in Mbele on the outskirts of Harare where the magistrate dismissed charges against one defendant at the end of the prosecution case where there had been absolutely no identification evidence. Indeed, the witnesses who attended made clear they didn’t recognise the defendant. Though superficially an example of a trial process working, the fact remains that it is difficult to see why the defendant had been prosecuted at all in these circumstances. Indeed, the magistrate carefully and wisely pointed out that such prosecutions can give rise to an impression of ‘persecution’ by the police when he made his ruling.

¹⁴ See <https://www.herald.co.zw/chief-justice-slaps-down-capture-claims/>

29. There is of course an interplay here. It is easier to prepare a case where a defendant is not in custody; issues around disclosure of a case are less likely if a reasonable time is given to the prosecution to undertake their obligations and the defence then respond. It is in nobody's interests to rush trials and obtain unsafe convictions (or inappropriate acquittals for that matter - due to prosecution failures), which in the instance of the convictions, will need to be reviewed by the High Court who may well quash them (indeed BHRC heard considerable confidence from lawyers that they would). However, this will take some time, and meanwhile hundreds of people are possibly subject to wrongful conviction and a deprivation of their liberty. Whilst a calculation may have taken place of stopping the unrest by temporarily throwing away the rule book without declaring an emergency, the legacy may be an undermining of confidence in the Justice System in terms of how robust it is in meeting challenges.

C. Juveniles

Article 81(1) of the Zimbabwe Constitution 2013

Every child, that is to say every boy and girl under the age of eighteen years, has the right--

- (i) not to be detained except as a measure of last resort and, if detained –*
 - (i) to be detained for the shortest appropriate period;*
 - (ii) to be kept separately from detained persons over the age of eighteen years; and*
 - (iii) to be treated in a manner, and kept in conditions, that take account of the child's age.*

AU Fair Trial Guideline

*'States shall establish laws and procedures which set a minimum age below which children will be presumed not to have the capacity to infringe the criminal law. The age of criminal responsibility should not be fixed below 15 years of age. No child below the age of 15 shall be arrested or detained on allegations of having committed a crime.'*¹

30. As stated above the large, originally 61 handed public order trial, had a Juvenile defendant, a girl aged 16, facing trial with the adults. BHRC received information from credible sources that children as young as 12 had been tried with adults in other courts. Normally youths face trial at a special Youth Court. Indeed, there was a youth court visible (and not being used) at Rotten Row Magistrates Courts. BHRC

was informed that in a large number of unrest cases, the normal position of trying juveniles separately had been abandoned. The girl in this court sat with other adult defendants in the dock, (albeit with her grandmother) and had initially been detained in an adult prison for 48 hours, in apparent breach of Article 81 of the constitution (ante) and the various international obligations.

31. BHRC spoke to a large number of persons from different parts of the criminal justice system. Although those matters which concerned the initial period are clearly based on hearsay, several factors give weight to the allegations as outlined above and thereby make them more credible. Moreover, the trials witnessed, still dealing with the effects of the earlier decisions, confirmed those findings as well as illustrating the ongoing problems.

Conclusions & Recommendations

32. The main concern is not simply the individual instances of apparent alleged human rights violations in terms of the criminal process but a wider systemic breakdown, at least temporarily, in the rule of law and powerful inferential evidence pointing to some central organisation, which would strike at the heart of the integrity of the Criminal Justice System (as indeed the Chief Justice acknowledged it would¹⁵). After the observation, Chief Justice Luke Malaba made public comments supporting the role of lawyers, including from the Zimbabwe Lawyers for Human Rights (ZLHR), in attempting to cope with such a large volume of cases in the circumstances and do their job representing clients.¹⁶ This was welcome, particularly since it contrasts with some implied and direct criticism of such lawyers in state sympathetic media over the previous two weeks and the senior judicial criticism of the strict adherence to the 48-hour limit on police detention under Section 50(3) of the Zimbabwe constitution as set out above¹⁷. BHRC would suggest that there is an investigation into the widely held belief that pressure, perhaps political in its genesis, was applied to Magistrates in the immediate aftermath of the unrest to weaken the protections afforded in the Constitution and mirroring international obligations.

¹⁵ See <https://www.herald.co.zw/chief-justice-slaps-down-capture-claims/>

¹⁶ See <https://www.newzimbabwe.com/malaba-praises-zlhr-for-defending-over-1000-violence-suspects/>

¹⁷ See <https://www.herald.co.zw/high-court-clarifies-over-detention-clause/> -

33. The High Court in Zimbabwe also, need to urgently review some of the procedurally problematic convictions which have already taken place and thereby positively influence many of the ongoing cases where systemic problems, at the outset, are continuing to have an effect on the fairness of the proceedings.

ANNEX: Relevant Provisions of the Zimbabwe Constitution

ARTICLE 50 Rights of arrested and detained persons

(1) Any person who is arrested—

- (a) must be informed at the time of arrest of the reason for the arrest;*
- (b) must be permitted, without delay—*
 - (i) at the expense of the State, to contact their spouse or partner, or a relative or legal practitioner, or anyone else of their choice; and*
 - (ii) at their own expense, to consult in private with a legal practitioner and a medical practitioner of their choice;*

and must be informed of this right promptly;

- (c) must be treated humanely and with respect for their inherent dignity;*
- (d) must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention; and*
- (e) must be permitted to challenge the lawfulness of the arrest in person before a court and must be released promptly if the arrest is unlawful.*

(2) Any person who is arrested or detained—

- (a) for the purpose of bringing him or her before a court; or*
- (b) for an alleged offence;*

and who is not released must be brought before a court as soon as possible and in any event not later than forty-eight hours after the arrest took place or the detention began, as the case may be, whether or not the period ends on a Saturday, Sunday or public holiday.

(3) Any person who is not brought to court within the forty-eight-hour period referred to in subsection (2) must be released immediately unless their detention has earlier been extended by a competent court.

(4) Any person who is arrested or detained for an alleged offence has the right—

- (a) to remain silent;*
- (b) to be informed promptly—*
 - (i) of their right to remain silent; and*
 - (ii) of the consequences of remaining silent and of not remaining silent;*
- (c) not to be compelled to make any confession or admission; and*
- (d) at the first court appearance after being arrested, to be charged or to be informed of the reason why their detention should continue, or to be released.*

(5) Any person who is detained, including a sentenced prisoner, has the right—

- (a) to be informed promptly of the reason for their being detained;*

- (b) *at their own expense, to consult in private with a legal practitioner of their choice, and to be informed of this right promptly;*
- (c) *to communicate with, and be visited by—*
- (i) *a spouse or partner;*
 - (ii) *a relative;*
 - (iii) *their chosen religious counsellor;*
 - (iv) *their chosen legal practitioner;*
 - (v) *their chosen medical practitioner; and*
 - (vi) *subject to reasonable restrictions imposed for the proper administration of prisons or places of detention, anyone else of their choice;*
- (d) *to conditions of detention that are consistent with human dignity, including the opportunity for physical exercise and the provision, at State expense, of adequate accommodation, ablution facilities, personal hygiene, nutrition, appropriate reading material and medical treatment; and*
- (e) *to challenge the lawfulness of their detention in person before a court and, if the detention is unlawful, to be released promptly.*
- (6) *Any person who is detained pending trial for an alleged offence and is not tried within a reasonable time must be released from detention, either unconditionally or on reasonable conditions to ensure that after being released they—*
- (a) *attend trial;*
 - (b) *do not interfere with the evidence to be given at the trial; and*
 - (c) *do not commit any other offence before the trial begins.*
- (7) *If there are reasonable grounds to believe that a person is being detained illegally or if it is not possible to ascertain the whereabouts of a detained person, any person may approach the High Court for an order—*
- (a) *of habeas corpus, that is to say an order requiring the detained person to be released, or to be brought before the court for the lawfulness of the detention to be justified, or requiring the whereabouts of the detained person to be disclosed; or*
 - (b) *declaring the detention to be illegal and ordering the detained person's prompt release;*
- and the High Court may make whatever order is appropriate in the circumstances.*
- (8) *An arrest or detention which contravenes this section, or in which the conditions set out in this section are not met, is illegal.*
- (9) *Any person who has been illegally arrested or detained is entitled to compensation from the person responsible for the arrest or detention, but a law may protect the following persons from liability under this section—*
- (a) *a judicial officer acting in a judicial capacity reasonably and in good faith;*
 - (b) *any other public officer acting reasonably and in good faith and without culpable ignorance or negligence.*

ARTICLE 70 Rights of accused persons

- (1) Any person accused of an offence has the following rights—
- (a) to be presumed innocent until proved guilty;
 - (b) to be informed promptly of the charge, in sufficient detail to enable them to answer it;
 - (c) to be given adequate time and facilities to prepare a defence;
 - (d) to choose a legal practitioner and, at their own expense, to be represented by that legal practitioner;
 - (e) to be represented by a legal practitioner assigned by the State and at State expense, if substantial injustice would otherwise result;
 - (f) to be informed promptly of the rights conferred by paragraphs (d) and (e);
 - (g) to be present when being tried;
 - (h) to adduce and challenge evidence;
 - (i) to remain silent and not to testify or be compelled to give self-incriminating evidence;
 - (j) to have the proceedings of the trial interpreted into a language that they understand;
 - (k) not to be convicted of an act or omission that was not an offence when it took place;
 - (l) not to be convicted of an act or omission that is no longer an offence;
 - (m) not to be tried for an offence in respect of an act or omission for which they have previously been pardoned or either acquitted or convicted on the merits;
 - (n) to be sentenced to the lesser of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing.
- (2) Where this section requires information to be given to a person—
- (a) the information must be given in a language the person understands; and
 - (b) if the person cannot read or write, any document embodying the information must be explained in such a way that the person understands it.
- (3) In any criminal trial, evidence that has been obtained in a manner that violates any provision of this Chapter must be excluded if the admission of the evidence would render the trial unfair or would otherwise be detrimental to the administration of justice or the public interest.
- (4) Any person who has been tried for an offence has the right, on payment of a reasonable fee prescribed by law, to be given a copy of the record of the proceedings within a reasonable time after judgment is delivered in the trial.
- (5) Any person who has been tried and convicted of an offence has the right, subject to reasonable restrictions that may be prescribed by law, to—
- (a) have the case reviewed by a higher court; or
 - (b) appeal to a higher court against the conviction and sentence.