

# Dozens arrested, dozens freed

*... Scarce resources used to silence HRDs as govt struggles to fund basic services*

**H**ARARE-The government could be broke, but it is not too broke to find money to silence legitimate dissent.

In Zimbabwe, money for electricity, water, medical drugs and other essentials may be scarce, but when it relates to the persecution of Human Rights Defenders (HRDs), resources seem forever available – even if it means money going down the drain.

For decades, human rights lawyers, the HRDs they represent, ordinary citizens and even judicial officers have loudly expressed concern over the zealotry with which the cash strapped government dedicates huge amounts of resources such as time and money to persecute HRDs using the law as a weapon.

“In terms of quantification, you will realise that the State actually ends up using more in the litigation process to prosecute some trivial cases.”

These are the words of prominent human rights lawyer Tonderai Bhatasara, a member of Zimbabwe Lawyers for Human Rights (ZLHR), speaking on how repression is costing the taxpayer in Zimbabwe.

He added: “In most human rights cases, the police do not always call the accused to the police station, they go to take the alleged perpetrators. Their intention is to detain you, they raid you during the night, so that they will not release you until you appear before the court.”

“But all these processes use money; in terms of fuel, bus fare for witnesses and most of the time these cases are continuously postponed and they take time to complete. This results in the cost of prosecution becoming higher.”

Bhatasara was speaking a few years ago to a local publication. His words still stand true today – never mind the pledges of reform by President Emmerson Mnangagwa’s government.

Despite a change of government and promises of a new dawn, priorities seem to have remained the same. Since January this year, the Zimbabwe Republic Police (ZRP) and the National Prosecuting Authority (NPA) have dedicated seemingly limitless resources to arrest and prosecute dozens of HRDs. During the same period, dozens of HRDs have walked free after the courts ruled against the state.

Yet, this waste of resources continues, costing taxpayers who are desperate for essential services that the government is failing to provide.

#### The conviction rate speaks volumes of this wastage.

According to statistics by ZLHR, more than 98 percent of cases linked to HRDs end up with the accused walking free because the charges are too frivolous and the state has no evidence to back its accusations.

According to ZLHR, such figures are indicative of how prosecutorial authorities “have been, and continue to be, perceptively biased in their prosecution of alleged crimes.”



Police State...

“This conduct results in unnecessary misuse of scarce taxpayers’ resources,” said ZLHR in a report.

It is not just the cost to taxpayers that is of concern to human rights lawyers and HRDs. It is also about the time spent fighting trumped up charges.

HRDs caught up in the net have suffered massive prejudice and emotional cost. Some have endured days and weeks in detention and remand prison while the emotional cost on their families has been huge. Others have spent months hopping in and out of court defending frivolous charges.

#### Take some of the most recent cases for example.

Kudakwashe Nyanga spent six months with the prospect of jail hanging over his head after being arrested in January for allegedly participating in anti-government protests. In the end, he was acquitted after the court found that the state lacked a shred of evidence against the 21-year-old man.

In the case of Denford Ngadzire, a Councillor with the City of

Harare, a Magistrate noted that state witnesses even resorted to lying under oath just to nail the politician on public violence charges.

This was the trend in similar cases involving dozens other HRDs, who, even though they were later acquitted, were forced to endure court appearances at the expense of their time as well as taxpayers’ money on fabricated charges.

Lawyers say money used to pursue these cases is never recovered and there are no effective means to ensure that such abuse of state funds is curtailed.

“There are lots of costs involved in printing court documents, buying stationery and constitutionally when one is arrested and has no cellphone to call a close relative, the State will have to provide. Effectively the government incurs more costs,” said Obey Shava, a ZLHR member, who has intervened in many cases to assist HRDs arrested on trumped up charges.

**See stories on pages 2 and 3 on how some HRDs have been arrested, prosecuted and later freed by the courts due to the frivolous nature of the charges.**

# Abusing public resources, State threatens young man's future



All smiles after rescuing tomorrow's future...ZLHR lawyers Tinashe Mundawarara and Gift Mtisi after securing the acquittal of 21-year-old Kudakwashe Nyanga.

**H**ARARE-Kudakwashe Nyanga, a youthful Human Rights Defender (HRD), nearly had his future spoiled as the Zimbabwe Republic Police (ZRP) and the National Prosecuting Authority, using public resources, sought to nail him on trumped up charges of public violence.

Arrested in January following anti-government protests that rocked the country, the 21-year-old and members of his family were forced to endure a painful six months until he was acquitted on 10 July 2019.

His case is one example of how state resources have been abused in the vain pursuit of citizens viewed as critical of the government even though they would not have committed any crime.

Mbare Magistrate Kudzai Zihove recently ended Nyanga's ordeal by acquitting him of the charges of committing public violence for allegedly participating in the anti-government protest.

Arrested by ZRP officers on 15 January 2019 and charged with public violence as defined in section 36(1)(a) of the Criminal Law (Codification and Reform) Act, Nyanga got legal representation from

Zimbabwe Lawyers for Human Rights (ZLHR) lawyers Gift Mtisi and Tinashe Mundawarara.

During trial, prosecutors claimed that Nyanga unlawfully and forcibly disturbed the peace, security or order of the public during the anti-government demonstration to protest against a hike in fuel prices and the general economic decay affecting the country by burning tyres along Seke road in Harare. He was also accused of throwing stones and other missiles at members of the public and at some police officers who were manning Mbare Police Station.

But Magistrate Zihove found the allegations ludicrous, especially given the quality of the evidence presented during trial by state witnesses. Magistrate Zihove discharged and acquitted Nyanga at the close of the prosecution case after ruling that the evidence led by state witnesses was discredited.

Magistrate Zihove noted that none of the ZRP officers who testified during Nyanga's trial told the court why he was shot during the anti-government protest while the arresting officer didn't testify in court during trial.

## Dragnet arrests, a hallmark of ZRP

**H**ARARE-After the Zimbabwe Republic Police conducted mass arrests in the aftermath of the crippling anti-government protests in January this year, the state failed to prove a case against nine residents from Harare's Mbare suburb.

Magistrate Kudzai Zihove recently acquitted the Mbare residents who had been on trial for committing public violence during the shutdown protests.

Acquitting the Mbare residents, Magistrate Zihove ruled that the state had failed to prove a case against the accused persons to justify putting them to their defence.

The Magistrate's decision vindicated human rights lawyers who have been criticising the police for

embarking on mass arrests of people following the protests.

Dozens of people were arrested in the dragnet arrests carried out in January despite not having committed any crimes.

Such dragnet arrests are increasingly becoming a hallmark of police operations during or after demonstrations, although in most cases they just result in a waste of public resources since the cases often fail to stand the test in the courts of law.

Human rights lawyers argue that the police should respect the right of citizens to freedom of assembly and association and the right to demonstrate and petition as enshrined in sections 58 and 59 of the Constitution (**see Know Your Rights below**).



ZRP officers at work

### Section 58 of the Constitution: Freedom of assembly and association

1. Every person has the right to freedom of assembly and association, and the right not to assemble or associate with others.

2. No person may be compelled to belong to an association or to attend a meeting or gathering.

### Section 59 of the Constitution: 59. Freedom to demonstrate and petition

Every person has the right to demonstrate and to present petitions, but these rights must be exercised peacefully.

## Know Your Rights

# Opposition councillor charged for opposing government

## Know Your Rights

**Section 61(1) of the Constitution: Freedom of expression and freedom of the media.**

1. Every person has the right to freedom of expression, which includes--

- a. freedom to seek, receive and communicate ideas and other information;
- b. freedom of artistic expression and scientific research and creativity; and
- c. academic freedom

**B**INDURA-In what can only be described as a sheer waste of public resources, the Zimbabwe Republic Police and the National Prosecuting Authority teamed up to arrest and prosecute an opposition political party official for opposing the government.

Brian Kembo, the Councillor for Ward 3 in Bindura, was arraigned before the Bindura Magistrates Court after expressing his opposition to the way President Emmerson Mnangagwa and his ZANU PF party-led government are mismanaging the country's deteriorating economy.

Kembo, who is now free – at least for now - was charged with disorderly conduct after he allegedly stated that President Mnangagwa is liable for causing stress among citizens and for authoring the country's economic crisis.

Kembo was set free after a Bindura Magistrate upheld his application for exception to the charges. The Magistrate's ruling followed the intervention by the councillor's lawyer, Idirashe Chikomba of ZLHR, who argued that the charge of disorderly conduct as defined in section 41 of the Criminal Law (Codification and Reform) Act was inconsistent with the facts and the warned and cautioned statement

recorded from Kembo. The Magistrate ordered the State to proceed by issuing summonses if it intends to pursue the prosecution of Kembo.

According to the state, the charges arose after Kembo boarded a commuter omnibus on 24 October in Bindura, where he allegedly told fellow commuters that President Mnangagwa was failing to deal with the current economic crisis. Since taking over from former ruler Robert Mugabe in November 2017, President Mnangagwa's administration has battled to turn around the economy, which is deteriorating even further.

Rising prices and acute shortages of basic commodities such as cooking oil, bread and fuel amid steep erosion of incomes due to rising inflation have characterised the country's economy since November 2017. President Mnangagwa and his government blame the imposition of targeted sanctions on some officials and claim that the economic troubles are a necessary and temporary pain before things get better.

However, others such as Kembo, believe the economic decay is due to economic mismanagement – a view they are entitled to hold and freely express as espoused in Section 61(1) of the Constitution (See **Know Your Rights**).



Brian Kembo and his lawyer Idirashe Chikomba of ZLHR

## Residents' long wait for freedom

**H**ARARE-Arrested in January for allegedly burning a State-owned bus during anti-government protests, six Harare residents spent three months agonisingly waiting for the outcome of their case.

Eventually, the case collapsed because the state could not even get its own witness to attend court proceedings. Although the six were let free, it was time and resources wasted for the residents who had

to attend court several times before the case collapsed when Harare Magistrate Victoria Mashamba recently set them free.

They were arrested in January and accused of burning a bus belonging to the State-run Zimbabwe United Passenger Company during an anti-government protest.

The residents, who were charged with committing public violence

in contravention of section 36 of the Criminal Law (Codification and Reform) Act, were set free after their lawyer Paidamoyo Saurombe of ZLHR challenged their continued placement on remand without being put on trial and yet the state witness had not been attending court proceedings.

Magistrate Mashamba granted the application for refusal of further remand, with the prosecutors conceding that they had a weak case.

"They had one witness who failed to attend court," said Saurombe, who decried that his clients had already spent money and time travelling to court despite the state's lack of seriousness – never mind the state resources used to pursue the residents initially.

Magistrate Mashamba advised the State to summon the residents to stand trial if at any time it intends to prosecute them.

## Lies, contradictory statements as State fails to nail Councillor

**H**ARARE-At a time when Denford Ngadziore, a Councillor in the capital, Harare was supposed to be attending to the service delivery needs of residents, he was locked up in detention and then forced to spend time attending court for a case built on lies.

A Harare Magistrate eventually freed him to enable him to execute his duties without undue interruption after reading through the fabrications tendered in

court by State witnesses. Ngadziore, the Councillor for Ward 16 in Harare's Mabelreign suburb, was arrested on 16 February 2019 by Zimbabwe Republic Police (ZRP) officers and charged with inciting public violence as defined in section 187 of the Criminal Law (Codification and Reform) Act and committing public violence in contravention of section 36(1)(a) of the Criminal Law (Codification and Reform) Act.

Despite the apparent weaknesses of their case,

prosecutors still insisted on going for trial, where they were humiliated by the Magistrate.

During trial, prosecutors alleged that Ngadziore went around several high-density suburbs in Harare such as Glenview, Budiro and Kuwadzana in January this year inciting people to engage in acts of public violence during an anti-government protest.

But Harare Magistrate Victoria Mashamba recently acquitted Ngadziore after ruling that there was no evidence tendered during trial to prove that the Ward 16 Councillor had committed the alleged offence.

Magistrate Mashamba stated that State witnesses who testified during trial lied, changed statements and kept giving contradicting evidence.

Tinomuda Shoko of Zimbabwe Lawyers for Human Rights represented Ngadziore.



Denford Ngadziore Councillor for Ward 16 in Mabelreign

# Arrested persons have rights too

*...Court frowns as police over detain suspects in signs of ZRP's lack of respect for constitutional rights*

**E**PWORTH-Despite the clear provisions in the Constitution, the Zimbabwe Republic Police (ZRP) still detained four protestors for more than the stipulated timeframe – a practice often frowned upon by courts of law.

As a result, the four Epworth residents were set free after a Magistrate ruled that they had been over-detained by ZRP officers, who arrested and charged them with public violence for allegedly participating in anti-government protests held in January.

So crude were the police that among the detainees were juveniles. The four are Hamfrey Munofa (30), Lenon Kwasuwa (23) years and two juveniles aged 14 and 16 – all from Epworth, an impoverished settlement located about 12 kilometres south east of the capital, Harare.

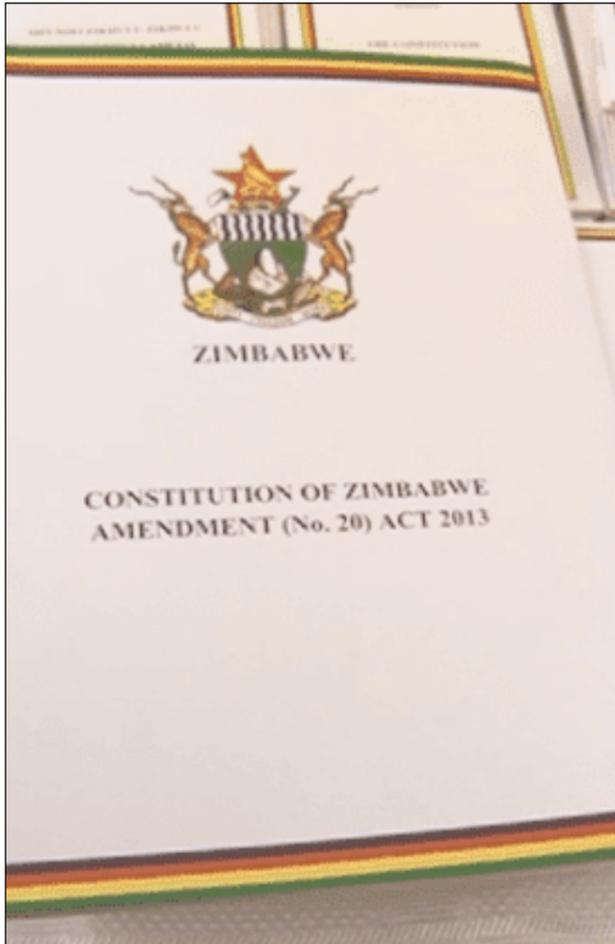
They were arrested in January this year and charged with public violence as defined in section 36(1)(a) of the Criminal Law (Codification and Reform) Act. Prosecutors alleged that the Epworth residents committed public violence during the shutdown protests held across the country.

But Harare Magistrate Obedience Matare recently set the quartet free after ruling that they had been detained for more than the stipulated 48 hours.

The Epworth residents' lawyer Webster Jiti of Zimbabwe Lawyers for Human Rights had filed an application in court arguing that ZRP officers had detained them for more than 48 hours without bringing them to court in violation of their fundamental rights.

Magistrate Matare agreed with Jiti and ordered the release of the Epworth residents. He criticised the police officers for contravening the provisions of the Constitution, which compel them to take accused persons to court not later than 48 hours after the arrest.

Human rights lawyers have repeatedly called for police officers to undertake rigorous training in human rights to avoid such incidents. (see **Know Your Rights** below).



Webster Jiti of ZLHR

## Know Your Rights

### Section 50 of the Constitution: 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.