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His Excellency Emmerson Mnangagwa
President of Zimbabwe
State House
Harare
Zimbabwe

24 June 2020

Open letter to His Excellency Emmerson Mnangagwa, President of Zimbabwe, from the International Bar Association's Human Rights Institute

Your Excellency,

We are writing to you on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our concern over the recent arrests of several lawyers in Zimbabwe, in violation of rule of law principles and the independence of the legal profession.

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 160 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

In May 2020, IBAHRI Council member, Beatrice Mtetwa, wrote to Your Excellency to express her concern over the abduction, torture and sexual abuse of three female leaders of the Movement for Democratic Change's youth wing, persecuted for their alleged opposition of the Government.¹ The three women remain in prison after their application for bail was denied.² Following this, the IBAHRI has received several reports of Zimbabwean lawyers who have been arrested in the course of their duties as lawyers. Thabani Mpfu, Tapiwa Makanza, Joshua Chirambwe and Choice Damiso were all arrested for allegedly forging an affidavit by a fictitious person, Simbarase Zuze, in a case before the Constitutional Court of Zimbabwe challenging the appointment of Mr Kumbirai Hodzi to the position of Prosecutor-General. The first three have been charged with 'defeating or obstructing the course of justice' under the Criminal Law (Codification & Reform) Act, as well as impeding investigation into the existence of the allegedly fictitious person. However, Mr Makanza alleges that similar charges against him were previously investigated by another section of the police and were dropped after the allegedly fictitious person Simbarase Zuze presented himself to the police and confirmed his identity.

¹ <https://www.southernafricalitigationcentre.org/2020/05/20/open-letter-to-president-emmerson-mnangagwa-from-beatrice-mtetwa/>

² <https://abcnews.go.com/International/wireStory/zimbabwean-women-denied-bail-accused-lying-abuse-71254759>
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Further, Dumisani Dube was recently arrested for forging a Certificate of Service, the usual remedy for which is merely an application for rescission of judgment. Sylvester Hashiti was arrested and charged with ‘criminal insult’ for making comments in court about the prosecutor having accepted a bribe. And finally, Patrick Tererai was also recently arrested for ‘disorderly conduct’ while attending to his client at a police station.

The IBAHRI is concerned that this spate of arrests points to a larger pattern of systemic harassment, humiliation and intimidation of lawyers, simply for carrying out their duties as legal practitioners. The dubious allegations appear to be a result of their involvement in the case challenging the appointment of the current Prosecutor-General. As well as the arrests of these lawyers, police arrested six Movement for Democratic Change Alliance officials on 5 June, demonstrating a wider silencing of opposition. Freedom of expression is a universal right, but lawyers have a duty to exercise their independent voice and should not face persecution for doing so. This undermines the administration of justice as well as the principles of both the rule of law and the independence of the legal profession – two vital pillars upholding the guarantee of human rights.

States must ensure that the security of lawyers is provided and upheld, and that their right to practise their profession without any hindrance is protected. These principles have been enshrined in the United Nations Basic Principles on the Role of Lawyers adopted in 1990. Principle 16 states that governments shall ensure that lawyers *‘are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel and to consult with their clients freely both within their own country and abroad; and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.’* Further, with specific reference to Mr Hashiti’s arrest, Principle 20 guarantees to lawyers civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

Similarly, the IBA Standards for the Independence of the Legal Profession, also adopted in 1990, state that, *‘no lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions or harassment by reason of his or her having legitimately advised or represented any client or client’s cause’*. They also state that, *‘a lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in his or her professional appearances’*.

The rule of law depends upon a strong and empowered legal profession, free from improper influence, and the IBAHRI is committed to calling to notice attacks against the rights of lawyers. The IBAHRI calls for the immediate release of the arrested lawyers and urges Your Excellency to observe the rule of law and uphold the rights of lawyers to be free from persecution for carrying out their professional duties. We urge you to consider the importance of an independent legal profession and the rule of law in preserving the legitimacy of governmental power.

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We would be grateful to receive your assurances that you have received our letter and that our concerns will be addressed as a matter of urgency.

Yours sincerely,

Handwritten signature of Michael Kirby.

The Hon Michael Kirby AC CMG
IBAHRI Co-Chair

Handwritten signature of Anne Ramberg.

Anne Ramberg Dr jur hc
IBAHRI Co-Chair

CC

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