



Monitoring Report in the Aftermath of the 14 January to 16 January 2019 “Stay Away” and Subsequent Disturbances

The mandate of the Zimbabwe Human Rights Commission (ZHRC/Commission) is to promote, protect and enforce human rights and fundamental freedoms in Zimbabwe, and its establishment and functions are elaborated in Sections 232, 233, 242 and 243 of the Constitution of Zimbabwe.

In line with its mandate the ZHRC issued a press statement on the 16th of January 2019 highlighting the deteriorating economic and security situation in the country. Since then, the Commission has continued with its constitutional mandate to monitor the human rights situation in the country. This report is therefore an update following the monitoring undertaken from the 16th to the 21st of January 2019. Due to capacity and logistical constraints the ZHRC field monitoring teams only managed to visit places in and around Harare and Bulawayo. The Commission has now deployed teams to assess the human rights situation in other parts of the country. Specific areas that were visited during the just ended monitoring missions include; Kuwadzana, Glen View, Dzivarasekwa, Highfield, Hopley, Sunningdale, Mbare, Mabvuku, Tafara, Epworth Chitungwiza, Domboshava in and around Harare and Entumbane, Emakhandeni, Nkulume, Tshabalala, Cowdray Park, Nketa and Mpopoma in Bulawayo. In addition, the Commission monitored court proceedings at Mbare, Chitungwiza and Harare (Rotten Row) Magistrates Courts on bail applications by the alleged perpetrators of violence. Efforts to monitor and inspect places of detention, in particular Zimbabwe Republic Police (ZRP) Police Cells at Harare Central Police Station, where detainees were kept proved futile.

Key Findings and Observations

Zimbabwe Republic Police (ZRP)

The ZHRC teams visited local police stations during the monitoring visits as the first port of call to get a brief on the situation. One of the Commission teams also sought to monitor and inspect the Harare Central Police Station and to interact with detained persons. Unfortunately, the police officers in charge did not seem to understand the mandate of the ZHRC and after referring the officers to different police officials, denied them the relevant information or entry into the holding cells. Interaction with human rights lawyers representing the accused persons revealed that the accused persons had been held for periods exceeding 48 hours and that juveniles were being mixed with adults in holding cells against international human rights law and standards. Unlike in other previous ZHRC engagements with the ZRP, the Police officers were not forthcoming with information and referred all questions to the Officer Commanding Harare Province, who over two days was said to be out of office in a series of meetings.

Barricading of Roads

Interviews with residents in and around Harare revealed that on the 14th of January 2019 around 8 and 9 AM, several roads were barricaded by protesters using various objects. The protesters also burnt tyres on the roads to stop police vehicles from patrolling. The monitoring teams also observed evidence of barricades that had been mounted in the areas assessed such as burnt tarmacs and concrete slabs and stones that had been moved to the sides of the roads. Such acts are not only unlawful but a violation of several rights including the right to freedom of movement and as such are strongly condemned.

Looting and Damage to Property

It was noted that a number of shops and properties were looted and damaged by protesters. At Makoni Police Station, the ZHRC noted that from the entrance the guard rooms of the police station had been set on fire and the windows had been broken by protesters. At least 6 cars and 3 buses in the yard of the police station were burnt. An additional 6 cars had been vandalized with most of the windscreens and windows shattered. The ZHRC monitors also visited Chitungwiza Town Centre and Mabvuku Complex where it was noted that there had been looting at Choppies Supermarkets and other shops. There was clear evidence of looting and destruction of property as the ZHRC observed broken window glasses and empty shops. At Mbudzi Roundabout in Hopley, it was noted that there was torching of a police base, police vehicles and a tollgate along Harare-Masvingo Road. Engagements conducted in Highfield at Machipisa shopping centre revealed that protesters vandalized and looted from shopping markets, Pick and Pay Supermarket, Machipisa and Zuva Service Station. In Bulawayo, the Commission observed that protesters vandalized and looted Choppies at Sokusile, 3 shops at Entumbane Complex, Total Service Station, Entumbane and shops at Chicken Corner, Tshabalala.

The ZHRC takes this opportunity to condemn in the strongest sense these acts of vandalism and wanton violation of human rights. These are criminal acts that should never be experienced in a modern, democratic, and free society. The Commission therefore urges the law enforcement agents to properly investigate and bring to book all the criminal elements behind the violence and looting.

Police and Military Patrols and Arrests

Complainants and witnesses who spoke to the ZHRC highlighted that armed soldiers and police visited their homes starting the evening of Monday 14 January 2019. They reported a heavy crackdown characterized by indiscriminate and severe beatings. The ZHRC also made home visits to some of those who were assaulted by the police and soldiers. It was noted that their *modus operandi* was the same in all the communities assessed by the

Commission. They would arrive at people's houses at night or in the early hours of the day and ask all men to go outside and lie on the ground. They would then beat up all the men, including boys as young as 11 years, and then ask them to run or arrest them. It was also noted that they targeted those who live in shared residences where there would be different families in one house with more than one male per house. They would also target men and boys who live in houses that are near areas where looting took place or where barricades were set up and just make dragnet arrests without investigating.

It was also stated that the police were letting loose their dogs to attack those whom they suspected to have caused mayhem. Some residents reported losing their valuables such as cellphones to the soldiers and the police during their searches of peoples' homes and their property such as doors and windows were destroyed. Some members of the public highlighted that they were scared of reporting the cases to the police as the nearby police stations were barricaded by the army and they also feared that the police would victimize them. Others managed to make reports but were turned away. This implies that those requiring medical attention were/are unable to do so, as the medical facilities often request police reports before attending to them. This impacts on citizens' right to health. Further a police report is required for many other purposes where a crime has allegedly been committed, for example, in order to make an insurance claim.

Of concern is the fact that arresting officials in most cases came during the night and refused to identify themselves. The fact that the accused persons ended up in police custody means that these were officers on duty but acting unlawfully and without following due process. The ZHRC therefore calls upon authorities to address this gap before more harm is done to society by criminal elements taking advantage of such actions.

In Bulawayo, due to heavy police and military presence in the areas visited, members of the public were uncomfortable speaking with the ZHRC.

Loss of Life

Unfortunately the disturbances have led to a number of deaths of civilians and a police officer. Whilst the Commission's investigations are still in progress some facts have since

been verified. For example, a 22 year old young man, Tinashe Choto died as a result of gun shots and was buried on Saturday 19 January 2019. A post mortem report read to family members by the authorities confirmed the cause of death as gun shots. Eye witnesses confirmed that the young man was shot near Makoni Police station during a face-off between the protesters and law enforcement agents. This is what incensed the protesters leading to the attack of Makoni Police Station. At least 8 deaths have been reported to the Commission and mostly attributed to use of live ammunition.

Whilst the police officers in charge were not forthcoming with their side of the story, the verified facts raise a lot of questions around the crowd control capacity of the law enforcement agents. They seem to resort to use of brute, excessive and disproportionate force in most circumstances thereby causing avoidable loss of life and also worsening the situation.

Targeting of Members of the Opposition and Civil Society Organisations (CSOs)

The ZHRC noted from its media monitoring activities and complaints received that the Government is blaming the opposition and civil society leaders for the violent protests. The Commission received and verified reports that around the country, some Councilors and Members of Parliament of the MDC Alliance as well as civil society leaders in suburbs where the most damage to property occurred were either abducted or arrested from their homes. At one Councilor's house, children who included a three year old girl narrated what had happened to their father. The three year old girl gave a vivid and moving account of the beatings and arrest of her father during the late hours of the night.

Appearance in Court and Denial of Bail

The ZHRC attended court hearings at Mbare, Chitungwiza and Rotten Row Magistrates Court and noted that a large number of accused persons were appearing before the Magistrates at different times. Although the cases were all the same, it was noted that bail hearings were split which process overwhelmed the judicial officers, the prosecution

and the lawyers representing the accused persons. It was noted that juveniles were also arrested although they were eventually released into the custody of their parents by the courts. Some were said to have spent more than 48 hours in detention. The police during the bail hearings in Chitungwiza admitted that they had arrested primary school children, some as young as 11 years, although they were later released at the police stations. Almost all suspects above the age of 18 were denied bail on the basis of the nature of the offence and that some of the suspects were of no fixed abode. Accused persons that the ZHRC saw appeared in the same clothing that they had been arrested in and were foul smelling indicating that they had not been given access to bathing facilities. Some of them were already coming from Remand Prison and had been in the same clothes for more than four days. Some of the suspects had visible injuries and had not received medical attention, including a suspect at the Mbare Magistrate's Court who had a broken arm and foot.

Analysis of the Situation

The findings reveal that in the aftermath of the 14th of January 2019 disturbances, armed and uniformed members of the Zimbabwe National Army and the Zimbabwe Republic Police instigated systematic torture. The torture was organized in that they targeted men who stay near areas where barricades had been placed and near areas that were torched by protestors or looted. They also targeted shared homes where they would round up many men in one homestead. In some instances it was also noted that those aligned to the Movement for Democratic Change were also specifically targeted for example Members of Parliament, Councillors and other active members.

Torture was perpetrated through beating the men with baton sticks on their backs while they lay on the ground, including falanga, i.e. beating under the feet and beating them with open hands.

It is acknowledged that property including a police station, police vehicles and shops were destroyed and vandalized/looted whilst barricades were placed on roads to stop people from going to work. This however did not justify torture of citizens by the security forces as the right to freedom from torture is one right that cannot be derogated from under any

circumstances. The Supreme Court of Zimbabwe in the case of JESTINA MUKOKO v THE ATTORNEY-GENERAL, Judgment No. SC 11/12 emphasized that “*No exceptional circumstance such as the seriousness of the crime the person is suspected of having committed, or the danger he or she is believed to pose to national security can justify infliction of torture, or inhuman or degrading treatment.* (Emphasis added)

The amount of force, evidenced by the injuries sustained by some of the Complainants that were interviewed and the deaths that occurred which were supported by medical records reveal a case of **Police Brutality**. **Police Brutality** is defined as;

“The use of excessive and/or unnecessary force by police when dealing with civilians. “Excessive use of force” means a force well beyond what would be necessary in order to handle a situation.”¹

From the above definition it is clear that although “excessive force” is not subject to a precise definition, it is generally use of force beyond the force a reasonable and prudent law enforcement officer would use under the circumstances. Excessive force by law enforcement officers is a violation of a person's rights. The unleashing of live bullets on demonstrators and falanga on some Complainants are examples of excessive force that was used by the police amounting to **Police Brutality** often violating the right to life. Other methods of dispersing crowds such as tear gas, rubber bullets and water canisters could have been used rather than the use of live bullets which to any reasonable person have the potential of causing unnecessary deaths.

In addition, the ZHRC noted that the method of arrest and detention that was used by the police and soldiers amounted to arbitrary arrests and detention, a crackdown as opposed to law enforcement. Complainants informed the ZHRC of how they were taken from their homes at night on the basis that they were males. The dragnet method did not take into consideration whether one was truly connected to the alleged offence. It is the ZHRC's strong view that police should properly investigate cases and only arrest people that have

¹ The Law Dictionary, available online at <http://thelawdictionary.org/article/what-is-police-brutality/>.

committed the alleged offences as opposed to indiscriminately rounding up citizens and taking them to courts without undertaking proper investigations.

Right to Privacy

The findings reveal that in the areas monitored the police and soldiers entered into the homes, premises and property of some of the Complainants in the middle of the night without their permission. Their doors were broken into and their windows and doors vandalized by the police and the soldiers. This violated their right to privacy which protects them from arbitrary searches of their homes and unlawful entry into their home, premises or property under section 57 of the Constitution.

Right to Personal Liberty

The facts gathered from interviews held with communities reveal that the police and the soldiers indiscriminately targeted men in the residential areas merely due to proximity to the areas where barricades had been placed and shopping centres where looting and vandalism had taken place. Yet interviews with most stakeholders in the areas that were monitored revealed that those who had put barricades on the road on 14 January 2019 or those who led the looting did not even stay in the areas and most were unknown to the communities. To conclude that every men living close to the looted shops or barricaded roads were involved and to proceed to conduct door to door searches for and arrest them on this basis led to a violation of personal liberty of men who had not been involved in the incidents, including boys below the age of 18 years.

In the case of STAMBOLIE V COMMISSIONER OF POLICE 1989 (3) ZLR 287 (S) it was held that the onus is upon the person making the arrest to prove that the arrest was lawfully justified. Further it was held in the case of MUYAMBO V NGOMAIKARIRA AND OTHERS (HC 5195/09) [2011] ZWHHC 138 (07 JULY 2011) that;

In order to establish the lawfulness of an arrest without a warrant, the onus lies upon the [arresting authority] to show probable cause or reasonable suspicion. In exercising the power of arrest, he must act as an ordinary honest man would act, on suspicions which have a reasonable basis, and not merely on wild suspicion. The arrestor must act on such circumstances as would ordinarily lead a reasonable man to form the suspicion that the arrestee has committed an offence. It is not the function of the police to arrest at large and to use the interrogatory process in order to determine whom to charge. The deprivation of personal liberty is an odious interference and constitutes a serious infraction of fundamental rights, attracting an exemplary assessment of reparation.

The use of military details who do not have arresting powers in the arrests also led to the violation of the right to liberty in respect of the men arrested. Interviewed citizens narrated how the police were accompanied by armed soldiers as they undertook the door to door raids. During a court hearing at the Chitungwiza Magistrate's Court, a police officer admitted that they were accompanied by armed soldiers during the home raids and at one point interrogated an 8-year old girl who supposedly led them to some of the accused persons.

The Commission remains concerned about the continued use of the military in maintaining law and order in the country. After the events of 1 August 2018, it was to be expected that the country would have learnt something and would in future do things differently. From reports received to date, indications are that more citizens have died during the current protests than those who died during the August 1 2018 protests. It is therefore disturbing to note that the deployment of the army in quelling civilian disturbances leads to loss of life and serious bodily injuries and other human rights violations, yet the Government continues to make such deployments.

Rights of Pre-Trial Detainees

The Constitution also provides for the rights of accused persons in section 70 which includes: the right to be presumed innocent until proved guilty; the right to be informed

promptly of the charge, in sufficient detail to enable them to answer it; the right to be given adequate time and facilities to prepare a defence and the right to remain silent; and the right not to testify or be compelled to give self-incriminating evidence. The ZHRC noted with concern that some of those arrested on 14 January 2019, had not appeared before a court within the required 48 hours. Lawyers representing accused persons complained that their clients were said to have been arrested on the 15th January 2019 to make it appear as if they had been taken to court within the confines of the law. Some of the relatives of detained juveniles who spoke to the ZHRC in Chitungwiza and Mbare, informed the ZHRC that they had been denied access to the detainees and access to information concerning the detainees, in breach of the Constitution.

The ZHRC will continue to monitor the situation in the country and provide updates to the country. The Commission will also continue to engage with various stakeholders with a view to ensuring the promotion, protection and enforcement of human rights in the country.

THANK YOU