



CONTINENTAL LEADERSHIP RESEARCH INSTITUTE (CLRI)

A centre of leadership excellence in Africa

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The SADC Lawyers' Association,
304 Brooks Street, Menlo Park,
Pretoria, South Africa, 0102
Monday, 25 January 2021

Dear Sir/Madam,

RE: SHRINKING HUMAN RIGHTS AND DEMOCRATIC SPACE IN ZAMBIA

We write to you in our capacity as a registered Non-Governmental Organization, having our registered office situated in Lusaka, Zambia's Capital. Our mandate, among other core issues, include, promotion and defending of Human Rights, ensuring accountability in the administration of public affairs by public office bearers, advocacy for adherence to the rule of law in the governance system, as well as pressing on the need for the existence of a free and independent judiciary.

We have decided to invite your attention to the delicate and shrinking democratic environment obtaining in our country, Zambia. Our choice to call upon your noble organization to keep a tab on the political happenings in Zambia, especially as the country draws nigh to the general elections slated for the 12th August 2021, is inspired, guided and informed by your organization's unequivocal objectives. We understand that your organization has its overall focus on advancing and promotion of human rights, rule of law, democracy and good governance in the SADC Region and beyond. We further understand that your honourable organization is a dependable and representative voice of the collective legal profession in Southern Africa. It is out of our deep appreciation of your mandate as an organization, that we seek your trustworthy voice on our political landscape whose posture is gravely on a downward spiral. Your quick consideration and reaction to these issues that fall within your mandate, will not only be in the furtherance

and actualization of your core objectives, but will have the potential to engender a fundamental shift in the attitudinal behaviour and conduct of the current regime in its administration of public affairs.

We now hereunder chronicle the sticky issues on which we call upon your widely respected voice to censure and remind the Zambian government on its solemn obligations in the promotion and upholding of human rights of all without distinction, whatsoever:

On 23rd December 2020, the country woke up to the cold blooded extrajudicial killing of two citizens by the Zambia Police Service, namely; Nsama Nsama Chipyoka, a civil servant who worked as a prosecutor for the National Prosecution Authority (NPA), and Joseph Kaunda, a member of the United Party for National Development. As a background to these unfortunate and regrettable events, the President for the United Party for National Development Party, Mr. Hakainde Hichilema was scheduled to appear before the police at the Police Force Headquarters, in Lusaka. Mr. Hakainde was summoned for questioning by the police in connection with the purchase of a farm in Kalomo District, in Southern Province that occurred in 2004. Needless to say, in question was a private purchase agreement concluded and honoured by both parties to the transaction. Notwithstanding the feeble nature of this complaint to the police by a person who was not even a party to the agreement, Mr. Hichilema stood ready to hearken to the call by the police in order to answer questions relating to this transaction. However, on the days leading to the appearance of Mr. Hichilema before the police, the Minister of Home Affairs, Mr. Stephen Kampyongo, and the Inspector General of Police, Mr. Kakoma Kanganja, among other public officers, separately issued stern warnings to all those that would accompany Mr. Hichilema to the Police Force Headquarters, threatening that the police would deal with such persons ‘decisively’. In a strong show of solidarity, political party members decided to accompany their leader as he appeared before the police. As Mr. Hichilema and his supporters headed to the police station, heavily armed police officers blocked his way. Thankfully, Mr. Hichilema kept negotiating his way through, but as he approached the Police Force Headquarters, the Lusaka Police Commissioner’s official vehicle blocked Mr. Hichilema route. The Police Commissioner’s troops jumped out of their vehicle yelling and menacingly aiming their automatic weapons threatening to kill one of Mr. Hichilema lawyers, Mr. Frank Tayali.

As Mr. Hichilema proceeded for interrogation in the building, heavily armed police officers arrived and began shooting indiscriminately at unarmed citizens that accompanied Mr. Hichilema, and had peacefully gathered outside the Police Force Headquarters. It was during this shooting that a bystander Mr. Nsama Nsama Chipyoka, who it turned out was a Public Prosecutor, and Mr. Kaunda Kaunda were both shot in

their heads by live bullets fired by police officers. They died instantly. A number of innocent citizens were seriously injured while others were arrested, and remain in custody to date.

At this point, it is important that we bring to your attention that the *Zambian Constitution* provides and protects the fundamental freedoms of assembly and association. In this regards, Article 21 of the *Zambian Constitution* provides: “Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form a political or belong to any political party, trade union or other association for the protection of his interests.”

This provision is the foundation stone upon which political activities are organized and conducted in Zambia. It is equally important to note that Article 21 is located in Part III of the *Constitution*, the *Bill of Rights*. The rights and freedoms enshrined in the *Bill of Rights* sit at the very core of human existence—they edify and dignify human life. It is on the exercise of these protected rights and freedoms that supporters of the UPND stood to show solidarity to their leader. The unanimity and political activism shown by the UPND supporters to their leader, Hakainde Hichilema, is part of the broader concept of the freedom of association and assembly envisioned under Article 21. Therefore, the activities of the UPND supporters were in the exercise of their constitutionally guaranteed rights, as provided for in the *Bill of Rights*.

At this juncture, it is important to bring to your attention that the mandate of Zambia Police Service, formerly known as a Police Force, originates from the *Constitution of Zambia*. According to Article 193 (1) of the *Constitution*, the Zambia Police Service is established as one of the institutions of national security in the country. Article 193 (2) provides clarity on the functions of the Zambia Police Service in clear and mandatory terms as follows:

“The Zambia Police Service shall:

- (a) Protect life and property;
- (b) Preserve peace and maintain law and order;
- (c) Ensure the security of the people;
- (d) Detect and prevent crime;
- (e) Uphold the *Bill of Rights*;

- (f) Foster and promote good relationships with the Defense Force, other national security services and members of society; and
- (g) Perform other functions as prescribed.

The simple interpretation of this provision is that over and above all things that the police service does, national security is paramount. There can be no national security where the police are in the forefront of impunity against constitutional dictates such as protecting life and property; preserving peace and maintaining law and order and most importantly, upholding the Bill of Rights. This was the obligation of the Police Service on 23rd December, 2020, no more and no less! In the premises, the only inescapable conclusion to be drawn is that the Minister of Home Affairs and the Inspector General of Police issued illegal orders - orders that violated the Constitution of Zambia and the rights and freedoms of its citizens. Since these orders lacked any legal basis, the UPND leader and his supporters were under no legal obligation to obey or adhere to illegal instructions that sought to erode constitutionally entrenched rights.

The President blamed the loss of lives on the failure by the UPND sympathizers to follow the illegal orders of his two officials; which orders had no legal justification whatsoever! There was no justification in law, because no law gives these two public officers authority or power to issue orders that endangered and actually led to the loss of human life. Further, the orders by the two public officers have no justification in common-sense because it was highly outrageous for these two officers to have expected a publicly summoned leader of the biggest opposition political party in the country to have a solitary movement, from his residence to the Police Force Headquarters.

Your good office may also wish to note solemnly that our country seems to have plunged deeply into a state of lawlessness. This view is anchored, evidentiary, on the fact that the ruthless killings of innocent citizens that happened on the 23rd December are not isolated lapses in the observance of the law. To the contrary, these killings are part of the wider systematic crackdown on the rule law, respect for human rights, and good governance. To fortify this position, your attention is invited to the killing of a 23 year old, Chibulo Mapenzi, on the 8th July 2016. This young lady was an unarmed female UPND member, whose only wrong was her exercise of the freedom of association as a member of the United Party for National Development. During inquest conducted regarding her death, there was overwhelming evidence by way of admission by the Police Command that the deceased died at the hands of a police officer, who could, however, not be identified. As a result no justice has been delivered, and as such there has been no closure to the grieving family as well to the larger family of the United Party for National Development.

Further, on the 4th October, 2018, a female fourth-year student at the University of Zambia, Vespers Shimuzhila suffocated and died in her room at the hands of police officers who unjustifiably discharged teargas in student hostels. The Human Rights Commission of Zambia described the conduct of the police as extremely brutal and one that depicted a combative warfare against unarmed students, who at the time no longer posed any real danger or violence to the police officers or members of the public or property. In this case too, there has been no grain of justice done to bring the perpetrators of the crime to account.

Another regrettable loss of life at the hands of the police service was on the 13th of February, 2020. On this day, an innocent, fourteen year old boy, by the name of Frank Mugala, had his blossoming and precious life cut-short by the sheer brutality and lack of respect for the sanctity of human life exhibited by the Zambia Police. This young boy was killed in his school uniform by the police near his school in Chazanga Township in Lusaka. The Human Rights Commission characterized this unfortunate episode as forming part of the regrettable growing pattern of cases of extra-judicial killings by the Zambia Police under the watch of President Edgar Lungu.

The cases of loss of human life itemized above are not exhaustive, but merely illustrative of how viciously the current regime has reneged on its constitutional mandate of respecting human life, upholding and promoting human rights, and good governance. Apart from loss of human life, there has been an almost total muzzling of divergent views, through arrests, intimidation and physical violence. This situation, if allowed to escalate any further than this, will not only endanger the prospects of free and fair elections as the country draws close to the August 12 polls, but will further entrench a culture of impunity, which unfortunately, has begun to take root in our once cherished democratic environment.

Yours faithfully,



Mundia Paul Hakoola

Executive Director

For and on behalf of CONTINENTAL LEADERSHIP RESEARCH INSTITUTE

CC: The US Embassy Zambia
Lusaka, Zambia

CC: The British High Commission
Lusaka, Zambia

CC: The International Bar Association

CC: The African Union
Addis Abba, Ethiopia

CC: Amnesty International