

"Injustice anywhere is a threat to justice everywhere" - Dr. Martin Luther King

April 2023

JUSTICE DELAYED IS JUSTICE DENIED

Persecution by Prosecution in the case of Zengeza West
Opposition Member of Parliament Job Sikhala



This publication *Justice Delayed is Justice Denied*, documents weaponisation of the law in Zimbabwe to target a legitimate human rights defender and political activist Job Sikhala. It was researched and written by Obert Chinhamo [MBA (RBS), BAECs (ZOU)] and Bongani Ngwenya [LLB. Hons (UKZN)]. The report gives the reader a fairly comprehensive understanding of the circumstances around the arrest and lengthy pre-trial detention of Job Sikhala in Zimbabwe, a member of Parliament for the opposition political party Citizens Coalition for Change as well as a practicing lawyer. SouthernDefenders, Civic Space Network, the Zimbabwe Human Rights NGO Forum and Political Prisoners in Africa are increasingly concerned about the phenomenon of judicial persecution and the abuse of the legal system (known as “lawfare”) to close civic space, both on and offline and targeting human rights defenders and those with dissenting voices.

About SouthernDefenders

SouthernDefenders is a registered non-profit organization based in South Africa that embodies an ironclad commitment to protecting human rights defenders (HRDs) in the face of attacks and shrinking civic space, both offline and online. It coordinates regional efforts to provide rapid, practical, comprehensive, and inclusive protection support to HRDs at high risk, defend civic space, and empower HRDs to mitigate the effects of repression. To this end, the SouthernDefenders contribute to the respect and recognition of HRDs as legitimate actors and agents of social change with universally recognized and constitutionally guaranteed rights.

About Zimbabwe Human Rights NGO Forum

The Zimbabwe Human Rights NGO Forum (the Forum) is a coalition of twenty-two human rights NGOs operating nationally in Zimbabwe who while having their own objectives, are concerned with the levels and nature of organized violence and torture in the country perpetrated mainly, though not exclusively, by state agents and their ancillaries. It came into existence at the time of the Food Riots in 1998. The Forum monitors and documents human rights violations, provides legal and related services to victims, and engages in advocacy at local and international levels. It has observer status with the African Commission on Human and Peoples' Rights.

Civic Space Network (CSN)

The Civic Space Network (CSN) is a network dedicated to promoting and protecting civic space, digital or physical, online or offline in Africa that people need to organise, mobilise, intervene and transform societies. It works to promote the establishment and maintenance of an enabling environment that allows communities to develop and use local agency to grapple with issues that affect them and pursue causes that resolve societal challenges in an accountable and non-violent way. CSN documents and analyses threats or attacks to civil space in whatever form including through regulatory and policy frameworks and administrative action that undermine the full enjoyment of fundamental rights such as freedoms of association, assembly, expression and the right to protests. CSN is acutely aware that civic space is the oxygen through which civil society, the human rights movement, social movements and communities work to transform societies.

Political Prisoners in Africa (AfricanPOC)

Political Prisoners in Africa (AfricanPOC) is an initiative dedicated to giving solidarity to Prisoners of Conscience (PoC) who have been put in prison for holding political or religious views that are not tolerated in the state in which they live. It raises awareness on those unjustly imprisoned for defending and promoting fundamental freedoms and equality for all.



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LIST OF ACRONYMS

AU	African Union
ACHPR	African Charter on Human and Peoples' Rights
ACDEG	African Charter on Democracy, Elections and Governance
ACRWC	African Charter on the Rights and Welfare of the Child
CAT	Convention against Torture and Other Forms of Cruel and Inhuman or Degrading Treatment or Punishment
CCC	Citizens Coalition for Change
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	Convention on the Rights of the Child
CPEA	Criminal Procedure and Evidence Act
GoZ	Government of Zimbabwe
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPU	Inter-Parliamentary Union
JSC	Judicial Service Commission
NPA	National Prosecution Authority
PAN	Pan African Parliament
PEPs	Politically Exposed Persons
PG	Prosecutor General
PVOs	Private Voluntary Organisations
SADC	Southern African Development Community
SAHRDN	Southern African Human Rights Defenders Network
UNDP	United Nations Development Programme
UN	United Nations
ZANU PF	Zimbabwe African National Union - Patriotic Front
ZLHR	Zimbabwe Lawyers for Human Rights

1 INTRODUCTION AND BACKGROUND

1.1 About the Report

This report documents the persecution by the State of Job Sikhala, Member of Parliament for Zengeza West, human rights lawyer and a senior member of Zimbabwe's opposition political party Citizens Coalition for Change (CCC). Job Sikhala was arrested on the 14th of June 2022 together with fellow opposition Parliamentarian, Godfrey Sithole and 14 residents of Nyatsime, a densely populated suburb of Chitungwiza in Zimbabwe, over allegations of inciting public violence following the callous murder of CCC activist Moreblessing Ali by suspect(s) believed to be from the ruling political party, the Zimbabwe African National Union - Patriotic Front (ZANU PF). Since then, Job Sikhala has been held in a protracted pre-trial detention at Chikurubi Maximum Security Prison in Harare.

The report also provides context of the overall operating environment for HRDs and pro-democracy activists in Zimbabwe. In particular, the report examines Zimbabwe's political and human rights context, criminal justice system, and Job Sikhala's demand for justice and accountability. The report then applies constitutional, regional and international human rights law standards to assess the handling of Job Sikhala's case in light of the country's obligations under the same, especially on his right to a fair trial and his right to bail. The report also looks into the implications of Job Sikhala's situation for the rest of Zimbabwe and gives recommendations before concluding.

1.2 Research Methodology

The research material used in the production of this report was derived from both primary and secondary sources. This comprised Job Sikhala's publications, observations of court proceedings; review of court records; interviews with

Section 2. Supremacy of Constitution

"1. This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.

2. The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them."

Section 2 Constitution of Zimbabwe, 2013

Job Sikhala's legal representatives, family, close friends and colleagues; as well as third tier sources. Other sources of data comprised reports and publications from local Zimbabwean and international media, as well as reports from regional and international NGOs and human rights mechanisms.

The standard of measure against which the report assesses the contentious aspects of Job Sikhala's case and how the judiciary has applied itself is primarily the Constitution of Zimbabwe. However, the report also assesses Job Sikhala's case in-light of section 117(1) of the Criminal Procedure and Evidence Act [Chapter 9:07] as well as Zimbabwe's obligations emanating from the ratification of several regional and international human rights instruments.

The report also makes a comparative analysis to examine how the courts have thus far applied themselves in Job Sikhala's case in contrast to how they have previously reasoned and applied themselves in other public interest cases involving politically exposed persons with links to the ruling party.

The report applies descriptive, qualitative, comparative and analytic techniques to examine contentious issues in Job Sikhala's case and give the reader a fairly comprehensive understanding of his situation and other areas of interest.



Job Sikhala arrives at Rotten Row Magistrates Court for a hearing.

Picture: Tsvangirai Mukwazhi

2 THE ARREST AND DETENTION OF **JOB SIKHALA**

The extra-judicial killing of opposition political party CCC activist, Moreblessing Ali, resulted in clashes between members of the CCC in Nyatsime, Chitungwiza and the ruling Zanu PF party. This was exacerbated when the ruling Zanu PF local councillor for Ward 9 in Seke Constituency, Mr. Masimbi Masimbi, publicly declared that he would not allow burial of the slain Moreblessing Ali in the Nyatsime area.

Job Sikhala was engaged by Moreblessing Ali's family to represent them in seeking justice for the cold-blooded murder of their daughter. In his capacity as Moreblessing Ali's family legal practitioner, Job Sikhala approached the court on an urgent basis to interdict Zanu PF leaders from attacking mourners. Suspected Zanu PF members had attacked mourners and hijacked Ali's funeral on the 12th of June 2022. Job Sikhala was quoted as saying "ZANU PF attacked everyone at Moreblessing Ali's funeral last night and hijacked the funeral," and "We are going to Court on an urgent basis now to interdict their MP, Councillor and Simba Chisango who are leading the funeral hijackers." By seeking justice for the slain Moreblessing Ali and her family, Job Sikhala appears to have been immediately targeted and used as a scapegoat for fanning unrest. He was arrested and charged for inciting public violence.

Moreblessing Ali's family is demanding justice and accountability for her murder and have also vowed that her remains will not be buried until their lawyer, Job Sikhala is freed.¹ Approximately one month after being arrested, an additional charge of obstruction of justice was laid on Job Sikhala on the 12th of July 2022.

Since then, Job Sikhala has made numerous bail

applications and appeals, including before the High Court, which were all dismissed. The dismissal of the bail applications by both the Magistrates Court and High Court in circumstances where the law and the facts require that bail be granted suggests that the procedural safeguards meant to secure the right to a fair trial through the judicial process have failed and continue to fail in Job Sikhala's case.

A diversity of stakeholders interviewed during the compilation of this report were generally of the view that Job Sikhala's matter totally debunks and belies any pretence that the rule of law in Zimbabwe takes precedence over identity. An assessment of how the country's courts apply the law in cases involving whistleblowers/journalists exposing corruption,² government critics,³ activists and persons who hold dissenting political views such as Job Sikhala, reveals a glaring trend of selective application of the law which is even more evident when further assessed against how the courts apply themselves in cases involving high profile politically exposed person linked to the ruling political party and accused of arguably more serious crimes. Examples are the cases of the Gokwe Nembudziya legislator Justice Mayor Wadyajena;⁴ former Health Minister Obadiah Moyo;⁵ former Local Government Minister Ignatius

² Hopewell Chin'ono's was arrested multiple times on apparently little or no grounds after reporting on alleged Covid-19 procurement fraud involving \$65 million within the health ministry which led to the arrest and sacking of Health Minister, Obadiah Moyo. Hopewell spent a collective 84 days in pre-trial detention in Chikurubi Maximum Security Prison where Job Sikhala is currently detained.

³ For example, the case of Jacob Ngarivhume, an opposition politician who was denied bail three times and held for over a month under charges of inciting public violence after he criticized the government's handling of the economy and called for anti-corruption protests.

⁴ The Gokwe Nembudziya legislator was promptly granted bail after he was arrested by the Zimbabwe Anti-Corruption Commission (ZACC) over alleged money laundering involving over US\$5million.

⁵ Moyo was released on bail following his arrest the previous day on allegations of corruption regarding a \$60m deal to procure COVID-19 test kits and medical equipment.

¹ "Moreblessing Ali will not be buried until family lawyer Sikhala is freed", Nehanda Radio, 30 December 2022, <https://www.newsday.co.zw/thestandard/local-news/article/200005629/no-ali-burial-until-sikhala-is-freed>

Chombo;⁶ and Henrietta Rushwaya.⁷ This reinforces strong views about judicial capture and selective application of the law.

Illustrations of instances in Sikhala's arrest and detention that raise cause for concern abound. In December 2022, the Minister of Justice, Legal and Parliamentary Affairs Ziyambi Ziyambi who is responsible for the administration of justice, was quoted in the media as justifying Job Sikhala's continued incarceration on the side-lines of a Judicial Service Commission (JSC) workshop on standard sentencing guidelines held in Kadoma on in December 2022.⁸ This is in the backdrop of growing suspicion of the lack of independence of the judiciary. In another example, Job Sikhala made an application for recusal of the presiding magistrate Tafadzwa Miti, after the magistrate had described him as an unrepentant repeat offender.⁹ However, the magistrate refused to recuse herself from the case.¹⁰ In another instance, Job Sikhala sought the recusal of Presiding Magistrate Nduna citing that he had exercised bias in the process of denying him bail.¹¹ Furthermore, on the 21st of November 2022, magistrates and prosecutors at the Harare Magistrates Court claimed "too busy" to handle his case.¹²

At the time of writing this report, Job Sikhala had been held in pre-trial detention for over 10 months in respect of the public violence charge despite the fact that he should be presumed to be innocent until proven guilty by an impartial and competent court of law.

To add to Job Sikhala's plight, prisons in Zimbabwe, especially Chikurubi Maximum Prison where Job Sikhala is detained, is generally overcrowded, dilapidated, and has poor sanitary conditions, making prisoners vulnerable to infectious diseases.¹³ This is of particular concern as Job Sikhala has previously reported himself being unwell. In July 2022, Job Sikhala and Godfrey Sithole filed complaints against the Zimbabwe Prisons and Correctional Services (ZPCS) for denying them access to their lawyers and

doctors.¹⁴ The same took place in October 2022 and was reported by the Zimbabwe Lawyers for Human Rights (ZLHR) who confirmed that Job Sikhala was denied access to his private doctor.¹⁵ In his own words Job Sikhala highlighted that there were times when he was being denied access to his private doctors to the extent that he almost had given up requesting permission to be attended to by his doctor. He complained:

"I have not been feeling well for the past three weeks. A pain that started mildly on the left side of my abdomen has steadily grown to be extremely heavy and excessive by each passing day. There is some painful strike that exudes itself from the left side which I don't really understand and do not know what it is. I pray that it is not colon cancer. It is worrying me very seriously. Since the day I vomited and had a ceaseless running stomach, some time ago, which was widely reported, the prison authorities refused to allow my doctor to attend to me. This is despite the fact that my doctors came several times in the company of my lawyers Beatrice Mtetwa and Doug Coltart. Since then, I have stopped requesting the permission of my doctor to attend to me. The pain is severe during the night especially when I sleep by that left side. I ask all of you dear Zimbabweans, to pray for me to be healed of this pain. There is nothing beyond the cure of God."¹⁶

The continued unjustified incarceration of Job Sikhala is also having serious adverse effects on the well-being of his family, his legal career and political life. For instance, the CCC political party to which he is a senior member, started nominating candidates to participate in the 2023 harmonised elections from the 5th of April 2023 meaning he has already been prejudiced since he is imprisoned.¹⁷

Job Sikhala's friends, workmates, lawyers and other visitors have experienced difficulties on numerous occasions when they have tried to visit him in prison. For instance, Nelson Chamisa the leader of the main opposition CCC party had to lodge a formal complaint with the Commissioner-General of Prisons through his legal practitioner Obey Shava after being obstructed when trying to see Job Sikhala at the prison. Roselyn Hanzi, the Director of the Zimbabwe Lawyers for Human Rights (ZLHR) also had to file an urgent chamber application in the High Court to be granted access to Job Sikhala after being denied access.

⁶ Chombo was charged with corruption, including trying to defraud the central bank in 2004. He was ordered to pay \$5,000 bail and surrender his passport with High Court Judge Edith Mushore accusing the government of illegal and arbitrary detention.

⁷ Rushwaya was granted \$100 000 bail by Harare magistrate Ngoni Nduna after she was arrested at the Robert Mugabe International Airport for allegedly attempting to smuggle 6 kg of gold to Dubai.

⁸ "Job Sikhala is 'the author of his own situation' Says Justice Minister, Nehanda Radio, 6 December 2022, <https://nehandaradio.com/2022/12/06/job-sikhala-is-the-author-of-his-own-situation-says-justice-minister/>.

⁹ "Court Dismisses Sikhala's Bid to Have Presiding Magistrate Recused", ZimEye, 8 December 2022 <https://www.zimeye.net/2022/12/08/court-dismisses-sikhala-bid-to-have-presiding-magistrate-recused/>.

¹⁰ "Harare Magistrate Wants Sikhala's Head" ZimEye, 7 December 2022, <https://www.zimeye.net/2022/12/07/harare-magistrate-wants-sikhala-head/>.

¹¹ "Nduna recuses self from presiding over Sikhala case amid bias", Nehanda Radio, 19 July 2022, <https://nehandaradio.com/2022/07/19/nduna-recuses-self-from-presiding-over-sikhala-case-amid-bias/>.

¹² "Magistrates, prosecutors claim 'too busy' to handle Job Sikhala case", Nehanda Radio, 22 November 2022, <https://nehandaradio.com/2022/11/22/magistrates-prosecutors-claim-too-busy-to-handle-job-sikhala-case/>

¹³ <https://www.refworld.org/pdfid/589d76684.pdf>.

¹⁴ "Sikhala, Sithole denied access to lawyers, doctor in prison; file complaint", NewZimbabwe.com, 6 July 2022, <https://www.newzimbabwe.com/sikhala-sithole-denied-access-to-lawyers-doctor-in-prison-file-complaint/>.

¹⁵ "Sikhala denied access to his doctor, worried about his security at Chikurubi" Nehanda Radio, 31 October 2022, <https://nehandaradio.com/2022/10/31/sikhala-denied-access-to-his-doctor-worried-about-his-security-at-chikurubi/>

¹⁶ "New Year Epistle", Letter written Hon. Job Sikhala whilst at Chikurubi Maximum Prison on 1 January 2023.

¹⁷ "Chamisa's CCC sets candidates selection dates, nominees to undergo strict vetting process", New-zimbabwe.com, 30 March 2023, <https://www.newzimbabwe.com/chamisa-ccc-sets-candidates-selection-dates-nominees-to-undergo-strict-vetting-process/>.

Such reports further spurn suspicions and concerns that he is being detained to punish him rather than to enforce the law.

Job Sikhala's continued arbitrary detention amounts to an indirect punishment on his family and colleagues who depend on him for socio-economic and political support. As a breadwinner for his family, his continued unfair incarceration means that his family will continue to suffer with no effective remedy, compensation or reparations, all of which are worsened by not knowing if or when the ordeal will end. As a political leader mandated with the function of representing his constituents and as a likely contestant in the impending 2023 elections, Job Sikhala's

2.1 Moreblessing Ali's Murder

continued detention means that he will potentially suffer irreparable harm should he not be given bail or afforded a trial within a reasonable amount of time.

The brutal and cold-blooded murder of Moreblessing Ali triggered an outcry from her community, human rights defenders (HRDs) and pro-democracy activists. Moreblessing Ali was allegedly killed by Pius Mukandi Jamba on the night of 24 May 2022. Her body was subsequently chopped into three pieces consisting of the upper torso and two legs. Ali's decomposing body was found dumped at the suspected killer's mother (Laina Mukandi)'s residence situated at Plot 321 Dunnotar Farm, in Beatrice. Ali's body was discovered on 11 June 2022 by Mukandi's mother after a strong stench came from a disused well. She advised the police which led to the recovery of the body.

After the matter of the murder of Ali was reported to the police, the police allegedly refused to give Ali's family the Report Received Book (RRB) number, which raised suspicion of attempts to conceal the killer and the evidence. Job Sikhala in his capacity as Moreblessing Ali's family lawyer intervened, taking exception to the way the case was being handled by the police and demanding for an open and transparent investigation and arrest of the perpetrator. The suspect, Mukandi was later arrested on 16 June 2022 while on the run in Chidamoyo, Hurungwe in Mashonaland West Province.¹⁸

On the 12th of June 2022, a ZANU-PF Councillor identified as Masimbi declared that Ali's funeral was "problematic and politicized" and it could not be held in his ward. As a result, he ordered the funeral to be held in St Mary's in Chitungwiza. The ZANU PF Councillor was quoted saying: "As the leader of this community, I'm declaring that this funeral event be moved to St Mary's because it is so problematic. Accordingly, I have dismissed this funeral because it will tarnish our image as ZANU PF". The remarks from the ZANU PF Councillor and leader after the murder of Moreblessing Ali stirred public outrage and triggered public violence, as did the news of the murder itself.

"This is outrageous! If the party cannot rein-in this kind of wayward stupidity where is it going? We have a bereaved family with a victim who has been mutilated to death and in comes this nonsense! This has to end. What country are we becoming?" tweeted Norton Legislator Temba Mliswa.

British parliamentarian Lord Jonathan Oates added his voice by urging President Emmerson Mnangagwa and his government to root out human rights abuses as a condition for re-engagement with the West: "Tragic news

2.2 Job Sikhala's Demand for Justice and Accountability for Moreblessing Ali's Murder

of the murder of Moreblessing Ali, reported as yet another political killing. My deepest condolences to family and friends. The history of political violence, abductions and murder is sadly a long one in Zimbabwe. If Mnangagwa wants re-engagement he has to end this now," he tweeted.

It should be mentioned from the outset that Job Sikhala is a lawyer and member of the Law Society of Zimbabwe who by law is allowed to represent his clients to seek justice. In his New Year letter titled "New Year Epistle", dated 1 January 2023, he reiterated his position as Moreblessing Ali's family legal practitioner:

"What I stood for was correct both on earth and in heaven. Moreblessing Ali was a woman, viciously kidnapped and brutally murdered. I was instructed by her family to be their lawyer. I am proud for having represented their interests to the best of my abilities. If I am killed dear compatriots, I am prepared to meet the fate in defence of values and principles I hold dearly; values of a free and open democratic society, exuding happiness, free of impunity and fear".

¹⁸ "Jamba admits killing CCC activist Moreblessing Ali; court hears graphic details about gruesome murder" New Zimbabwe.com, 13 June 2022, <https://www.newzimbabwe.com/indepth-jamba-admits-killing-ccc-activist-moreblessing-ali-court-hears-graphic-details-gruesome-murder>.

The arrest of Job Sikhala also meant that the rights of Moreblessing Ali's family to legal representation by a lawyer of their choice under section 69(4) of the Constitution of Zimbabwe were compromised. The conduct of the State appeared to suggest that the State was not interested in justice for Moreblessing Ali's murder, and instead sought to punish those seeking justice in this matter.

After the violence the Zimbabwe Republic Police (ZRP) issued a public statement on 30 May 2022 suggesting that the murder of Moreblessing Ali could have been a crime of passion since the murder accused Pius Jamba was accusing Moreblessing Ali of dumping him. In addition, the police tried to dissociate Pius Jamba from political affiliation: *"Police investigations have also established that Pius Jamba is not a member of any political party as alleged by some social media activists and politicians. Currently there is no evidence to show that Simba Chisango is also linked to the disappearance of Moreblessing Ali or the scuffle which occurred at Chibhanguza Shopping Centre. Police inquiries have also shown that Pius Jamba was accusing Moreblessing Ali of dumping him after he had spent a lot of money on her during their love affair"* read the Statement.

Job Sikhala demanded answers from the Zimbabwe Republic Police (ZRP) who later arrested him:

"We are so inquisitive. How would even lovers who have decided to part ways decide to kill each other in such a brutal way that Ali was killed? The police are trying to give a picture that Pius Jamba and Simbarashe Chisango are not of the same mother. They are just trying to conceal and protect something from the public. Police are doing that for the purpose to extricate Zanu PF from its involvement, knowing well that Simba is a prominent Zanu PF terror gang leader in Nyatsime. For them to remove Zanu PF from the equation, they're trying to conceal that relationship," Sikhala said.¹⁹

"We want these people to be apprehended. We are not going to move back. We are going to continue demanding the apprehension of these people who murdered this innocent woman for no apparent reason. There is nothing whatsoever that can lead to taking human life which is sacrosanct. We cannot allow this thing to continue. We have had many people who disappeared without a trace."

2.2.1 The Arrest of Job Sikhala and other Pro-Democracy Activists

Itai Dzamara was taken in the public glare in Glen View

¹⁹ "Moreblessing Ali: slain activist's family demands justice", New Zimbabwe.com, 13 June 2022, <https://www.newzimbabwe.com/moreblessing-ali-slain-activists-family-demands-justice/>

and up to now, there is no closure to that case. We want to know Ali's killers. This thing is not going to end well if this doesn't come to conclusion. We will make sure that her spirit won't rest until these people are haunted. All their extended families shall suffer," Sikhala added.

Sikhala was arrested on the 14th of June 2022 together with a fellow Member of Parliament Godfrey Sithole for Chitungwiza North Constituency. A total of 14 other individuals were also arrested on charges of inciting public violence. Among these were Chauya Shopa (41) a resident of Chitungwiza who was arrested because his car was seen on the road to Nyatsime on the day the clashes broke out at the funeral. Clever Sibanda (37), Ephrage Gwavava (35) and Robert Madzokere (30) were arrested a month later, being active members of the CCC party in the area. Emmanuel Muradzikwa (38) who is a truck driver was arrested regardless of not having been in Nyatsime on the day of the violence but was implicated because of his relationship with drivers who were hired for the funeral. Zecks Makoni (54), Enock Tsoka (39), Shepherd Bulakasi (40) and Tatenda Pindahama (43) were arrested because they had driven mourners to Moreblessing Ali's funeral. Zephania Chinembiri (45) and Roan Tsoka (39) were arrested on the basis that they owned the trucks that were used to carry mourners to the funeral. Misheck Guzha (62), Precious Jeché (41) and Odious Makoma (42) did not attend the funeral ceremony but were arrested after reporting to the police that their property had been destroyed during the clashes. Another Nyatsime resident, known as Felix Biri was abducted on 30 September 2022 by suspected Zanu PF activists and was assaulted before being arrested and charged with engaging in public violence in connection with the June 2022 violence. This group of individuals was only released months later in November 2022 following multiple bail applications in both the Magistrates Court and the High Court, through representation by the Zimbabwe Human Rights NGO Forum.²⁰

The arrest of Job Sikhala on the 14th of June 2022, was allegedly the 67th time that Job Sikhala has been arrested in the country notwithstanding that in all the times that he has been arrested, he has never been convicted.²¹ The fact that Job Sikhala has been arrested so many times without ever being convicted tends to give credence to the belief that the charges levelled against him, as well as the persistent refusal to grant him bail are largely false and frivolous. It has also created a strong perception that his frequent arrests and detention are not based on legitimate suspicion of

²⁰ "Nyatsime 14 freed on \$50k bail each" NewsDay, <https://www.newsday.co.zw/local-news/article/200003631/nyatsime-14-freed-on-50k-bail-each>.

²¹ "Job Sikhala has been targeted by the State for 25 years, arrested 66 times" Nehanda Radio, 25 January 2023, <https://nehandaradio.com/2023/01/25/job-sikhala-has-been-targeted-by-the-state-for-25-years-arrested-66-times/>.

criminality on his part, and that Job Sikhala is being persecuted by the country's elites in conjunction with the courts which appear to have lost their independence and are being abused to intimidate, silence, punish, destabilise and harass him for his views and his work in defending the rights of others, and for his political and democratic activism.²² Job Sikhala's situation has all the hallmarks of a classic case of weaponization of the law. It appears to be politically motivated persecution through prosecution which constitutes a serious violation and abuse of the Zimbabwe Constitution and criminal justice system.

Of the 16 that were arrested in

²² "Job Sikhala has been targeted by the State for 25 years, arrested 66 times", Nehanda Radio, 25 January 2023, <https://nehandaradio.com/2023/01/25/job-sikhala-has-been-targeted-by-the-state-for-25-years-arrested-66-times/>.

connection with the Nyatsime violence, only Job Sikhala remains incarcerated. Others, including Member of Parliament Godfrey Sithole, were granted bail but only after numerous attempts in both the Magistrates Court and the High Court. The singling out of Job Sikhala for continued incarceration is telling.

Concerned institutions and individuals have made spirited efforts to get Job Sikhala released but to no avail.²³ The legal route and all existing domestic remedies have thus far failed to yield a just outcome for Job Sikhala. In respect to this, constitutional lawyer

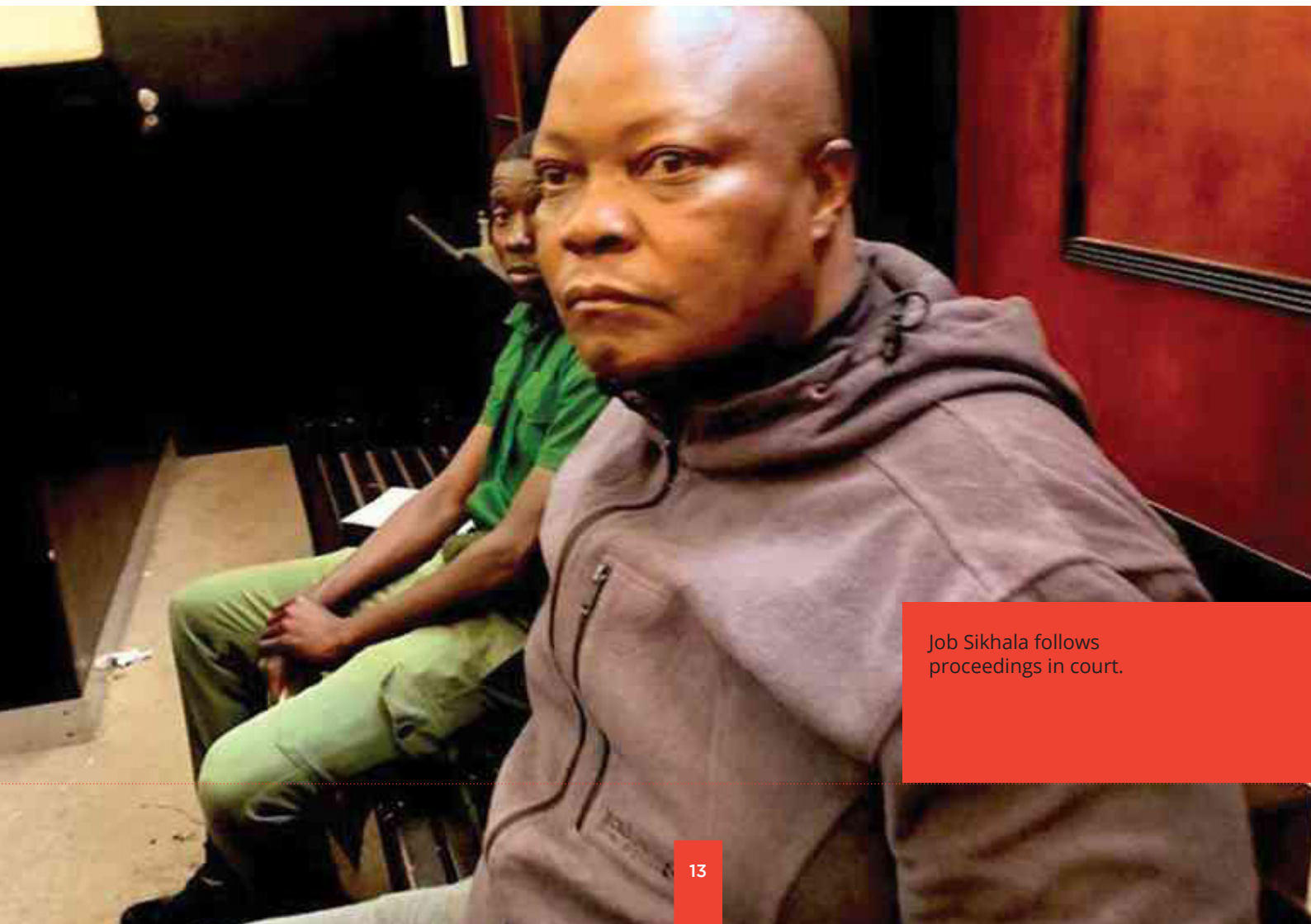
²³ The following are some of the efforts that were made: Eminent persons signed and forwarded a petition that was ignored by the authorities; Job Sikhala Trust was set up advocate for his release but he remains in prison; The CCC sent messages to regional and international leaders including the European Union telling them that Sikhala was being persecuted in Zimbabwe but he still remains locked up; There are several other advocacy activities that were carried out but they did not yield the desired results.

Lovemore Madhuku was quoted in the media stating that:

"I think that if there were issues to deal with the perception that is coming out strongly that this is a political persecution ... What would stop that political party from which they belong having an audience with the President (Emmerson Mnangagwa)? ... The role of the President there is not to interfere with the courts but to engage the National Prosecuting Authority (NPA) who would consent to bail. He is the one who would make an arrangement for an early trial and so on."²⁴

The Sikhala case casts significant and credible doubts as to whether

²⁴ "Madhuku's political solution for Sikhala release stirs storm" Bulawayo24.com, 12 September 2022 <https://bulawayo24.com/index-id-news-sc-national-byo-223295.html>



Job Sikhala follows proceedings in court.

the Zimbabwean judiciary is independent and impartial seeing how the courts have consistently failed to perform their duty in administering justice to Job Sikhala and others of a similar profile in the past. Zimbabwe's judiciary regrettably appears heavily susceptible to political interference in cases involving Human Rights Defenders (HRDs), pro-democracy activists and legitimate political opponents.

2.3 Job Sikhala's Arrest and Detention Illustrative Timeline

In what is largely perceived as selective application of the law, Job Sikhala has been denied bail more than 10 times when he appeared before both the Magistrate and High Court. The courts themselves, that is the Magistrate Court and the High Court of Zimbabwe, have allowed Job Sikhala to undergo a tortuous journey trying to seek justice. In the process, the right to a fair hearing, especially access to the courts as envisaged under section 69 (2) of the Constitution of Zimbabwe, 2013 has been compromised.

The table below shows a timeline of some of the developments in Job Sikhala's attempts to get justice in Zimbabwe. This list is not exhaustive:

Table 1: Illustrative Timeline of Job Sikhala's Persecution

Date	Activity
14 June 2022	Job Sikhala arrested on charges of public violence, which he vehemently denied.
17 June 2022	Job Sikhala made an application for bail.
22 June 2022	The bail application which he made on the 17th of June 2022 was dismissed.
27 June 2022	Job Sikhala appealed against the decision of the Magistrate Court to the High Court of Zimbabwe.
29 June 2022	The bail appeal at the High Court was struck off the court's roll on the basis that it was defective.
12 July 2022	Job Sikhala was charged on charges of obstruction of justice, in terms of section 184(1)(a) of the Criminal Law (Codification and Reform) Act. He was placed on remand and was denied bail on the ground that he had a "propensity to commit similar offences". ²⁵
19 July 2022	Job Sikhala made an application challenging placing on further remand.
21 July 2022	Job Sikhala made a fresh bail application.
25 July 2022	Job Sikhala made another bail application on changed circumstances, which was dismissed.
4 August 2022	Job Sikhala made another bail application on changed circumstances.
15 August 2022	The bail application on changed circumstances was dismissed.
28 August 2022	Job Sikhala appealed against the decision of the Magistrate Court to the High Court of Zimbabwe.
9 September 2022	A citizens' petition raising concerns on the treatment of Job Sikhala's case was written and submitted to the President's office.
5 October 2022	An application for bail on changed circumstances was dismissed.
19 October 2022	An application for bail pending trial was dismissed.
26 October 2022	Job Sikhala made bail appeal to the High Court of Zimbabwe.
28 November 2022	Job Sikhala made an application for recusal of the magistrate citing conflict of interest.

²⁵ Veritas (2023) Job Sikhala Trial for Obstruction of Justice: Progress Report: Court Watch 2/2023 [13th April 2023]

Date	Activity
6 December 2022	Job Sikhala was charged with obstructing the course of justice in terms of section 184(1)(a) of the Criminal Law (Codification and Reform) Act. The charge alleged that Mr Sikhala knew the police were investigating the commission of a crime, or realised there was a real risk or possibility that they were investigating one, but nonetheless caused their investigations to be defeated or obstructed by indicating that Ms Ali was murdered by ZANU PF members. Job Sikhala's lawyers excepted (i.e., objected) to the charges. ²⁶
13 December 2022	The exception raised on 6 December 2022 was rejected by the magistrate. Job Sikhala then pleaded not guilty.
4 January 2023	Job Sikhala made a request for medical attention but was denied access to his private doctor.
February 2023	Job Sikhala made an application challenging improper splitting of charges.
February 2023	Trial on the charge of obstruction of justice commences.
3 March 2023	State closed its case on the charges of obstruction of the course of justice, whereupon Job Sikhala's lawyers applied for discharge.
21 March 2023	The application for discharge was dismissed. ²⁷
21 March 2023	Trial on the obstruction charge continued. On 3 April 2023, the court stated that it will deliver judgment on 28 April 2023. ²⁸
April 2023	Job Sikhala was notified in April 2023 of a new charge of disorderly conduct as defined under section 41 (a) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. ²⁹ The summons calling him to appear in court on the 20th of April 2023 showed that the charge of disorderly conduct was recorded at St Marys Police Station in May 2022 but Job Sikhala only came to know about it in April 2023. It is alleged that on the 2nd of May 2022 at Zengeza 5 in Chitungwiza, Lovemore Maiko and Job Sikhala engaged in disorderly or riotous conduct by approaching a group of people who were gathered at a political rally and started stoning them which resulted in Shepherd Tawodzera sustaining a deep cut on the head. ³⁰

Pre-trial detention has disastrous effects, in particular to one's freedom, family, health, home, job, and community ties. According to the Open Society Foundations 2021 report on the Socio-Impact of Pretrial Detentions:

"The decision to detain a person before he is found guilty of a crime is one of the most draconian a State or an individual can make. A decision made in an instant by the arresting officer can have a severe, lasting, and adverse impact. Whether or not it is justified, and regardless of whether due process is followed, the arrest is likely to have a traumatic effect on the detainee and those who love and depend on him. Pre-trial detention is one of the worst things that can happen to a person: the detainee immediately loses his freedom, and can also lose his family, health, home, job, and community ties."³¹

The pre-trial detention has had catastrophic health and socio-economic effects on Job Sikhala and his family.

²⁶ Veritas, Job Sikhala Trial for Obstruction of Justice: Progress Report: Court Watch 2/2023, 13 April 2023.

²⁷ Veritas, Job Sikhala Trial for Obstruction of Justice: Progress Report: Court Watch 2/2023, 13 April 2023.

²⁸ Veritas, Job Sikhala Trial for Obstruction of Justice: Progress Report: Court Watch 2/2023, 13 April 2023.

²⁹ "Sikhala faces yet another charge" Newsday, 18 April 2023, <https://www.newsday.co.zw/local-news/article/200010354/sikhala-faces-yet-another-charge>.

³⁰ St Marys CR24/5/22 and DR1/5/22.

³¹ Open Society Foundations and UNDP (2011) Socio-Impact of Pretrial Detentions: Judit Kovacs /Creatch Ltd

3 ZIMBABWE'S POLITICAL AND HUMAN RIGHTS CONTEXT AND CRIMINAL JUSTICE

Zimbabwe is a constitutional democracy with a system of separation of powers amongst the three branches of government being, the Legislature; the Executive; and the Judiciary. The country has constitutional commissions such as the Zimbabwe Human Rights Commission (ZHRC) that are supposed to guarantee implementation of human rights and foster a culture of good governance and respect for human rights. There is no public evidence of the ZHRC being engaged in any way on the continued incarceration of Job Sikhala.

Job Sikhala is a senior member of the CCC political party which is the country's largest opposition political party. The political history of Zimbabwe characterised by repression of opposition politics, and Sikhala's membership of the opposition, makes suspicions rife that Job Sikhala and his CCC political party are being targeted for holding dissenting political views.³² The situation is compounded by strong suspicions of judicial capture which are based on the courts seeming failure to apply the country's laws to every person consistently, equally and impartially, regardless of stature or political affiliation.³³

³² "Mtetwa Says Sikhala's Continued Detention Is Political Persecution" Pindula News, 24 August 2022, <https://news.pindula.co.zw/2022/08/24/mtetwa-says-sikhala-continued-detention-is-political-persecution>.

³³ "Magistrates admit judiciary is 'highly captured' by politicians and Malaba", Nehanda Radio, 12 October 2022, <https://nehandaradio.com/2022/10/12/magistrates-admit-judiciary-is-highly-captured-by-politicians-and-malaba/>.

3.1 Criminal Justice System of Zimbabwe

The Zimbabwean criminal justice system is largely an adversarial or accusatorial one. Under this system the prosecutor presents the case against the accused person/s and the defence lawyer if available presents the defence and an independent and impartial judicial officer such as a Magistrate or Judge decides whether the accused person is guilty or not on the basis of the evidence provided and the law applicable.

The criminal justice system of Zimbabwe provides for the right to a fair trial and presumption of innocence for accused persons. Section 69 of the Constitution of Zimbabwe, 2013 provides that every person accused of a crime has a right to a fair and public trial within a reasonable period of time before an independent and impartial court or tribunal.³⁴ Section 70(1)(a) provides that a person accused of a crime has the right to be presumed innocent until proven guilty.³⁵ Furthermore, section 18(1) of the Criminal Code provides that each essential element

³⁴ 69. Right to a fair hearing

1. Every person accused of an offence has the right to a fair and public trial within a reasonable time before an independent and impartial court.

2. In the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum established by law.

3. Every person has the right of access to the courts, or to some other tribunal or forum established by law for the resolution of any dispute.

4. Every person has a right, at their own expense, to choose and be represented by a legal practitioner before any court, tribunal or forum".

³⁵ Criminal Procedure and Evidence Act [Chapter 9:07] (as amended).

of the crime should be proved beyond any reasonable doubt.

In order for an accused person to be afforded a fair trial, they have to be allowed to defend themselves against the allegations levelled against them. In this regard, bail is a very important attribute of the right to a fair trial.

3.2 Bail in Zimbabwe

Bail is a fundamental right as provided for in section 50(1)(d) of the Constitution of Zimbabwe 2013, and the Criminal Procedure and Evidence Amendment Act [Chapter 9:07].

The country's judicial precedence on bail is also rich. On the charge of obstructing the course of justice, Job Sikhala is being denied bail on the ground that he has a "propensity to commit similar offences".³⁶ This is irreconcilable with that Job Sikhala has been arrested numerous times and never been convicted. In *Edmore Shoshera & Others v The State* Makonese J ruled that:

*"It is not sufficient for the state to make bold assertions that particular grounds for refusing bail exist. The assertions made by the state must be well grounded on the facts. Simply alleging that the accused may abscond, that the matter is serious, and that the accused may endanger the public or will interfere with witnesses without substantiating such allegations does not meet the threshold of compelling reasons for the denial of bail...."*³⁷

Further, Makonese J stated that:

"It seems to me, that where the state makes reference to pending cases an accused is facing, as a ground for opposing bail, sufficient details regarding those cases and the status of such cases must be furnished. It is unfair for an accused to be denied bail on the ground that he has previously been charged with offences that have not been prosecuted or where charges have been dropped altogether".

In the same case, the High Court relied on the precedent set in *S v Kachigamba & Anor* HH-358/15 where the judge stated that;

"... Thus where a litigant applies for bail the presumption is that he is entitled to bail unless the state had proven otherwise. The section being a constitutional safeguard designed to protect the citizen's fundamental right to justice, freedom and liberty overrides all other common law and subordinate statutory provisions to the contrary. The effect of this section is to relieve an arrested person of the burden of proving he is entitled to bail thus shifting the burden to the state to prove that there are compelling reasons justifying the continued confinement of the detainee."

³⁶ Court watch progress report by Veritas.

³⁷ HB 103/22 HCB 109/22.

In *State v Kuruneri*, HH-111-04 the learned judge held that:

"It is because of the presumption of innocence that the courts are expected, and indeed required, to lean in favour of the liberty of the accused."

Judicial precedents and the facts in Job Sikhala's case in light of the charges of obstruction of justice levelled against him, make it difficult to understand why Job Sikhala continues to be held in prison and spurns suspicions of selective application of the law.

3.3 Principles guiding the judiciary in Zimbabwe

The Constitution of Zimbabwe, 2013 sets out principles that must govern members of the judiciary in the execution of their judicial mandate as follows;

165 Principles guiding judiciary

(1) *In exercising judicial authority members of the judiciary must be guided by the following principles—*

- (a) *justice must be done to all, irrespective of status;*
- (b) *justice must not be delayed, and to that end they must perform their judicial duties efficiently and with reasonable promptness;*
- (c) *the role of the courts is paramount in safeguarding human rights and freedoms and the rule of law.*

(2) *Members of the judiciary, individually and collectively, must respect and honour their judicial office as a public trust and strive to enhance their independence in order to maintain public confidence in the judicial system.*

It is against these principles that the treatment of the case of Job Sikhala by the courts must be assessed.

3.4 Human Rights Obligations and Standards Applicable to Zimbabwe

Zimbabwe has committed itself to several human rights instruments by ratifying them, which in-turn means that the country has binding obligations and human rights standards to promote, protect and uphold across three domains, being the national/domestic, regional (African) and international (UN) levels. By voluntarily signing and ratifying the same, Zimbabwe as a State party to these conventions/treaties is liable to be monitored by the corresponding treaty bodies and other human rights mechanisms such as the Special Rapporteurs on Human Rights Defenders from both the AU and UN, the African Commission on Human and Peoples Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Rights and Welfare of the Child and the

Job Sikhala enters Rotten Row Magistrates Court for a hearing.

Picture: Tsvangirai Mukwazhi



Human Rights Committee, amongst others.

In addition to its domestic laws and the Constitution, Zimbabwe has signed and ratified several human rights treaties/conventions which include:

- African Charter on Human and People's Rights (ACHPR),
- Optional Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol),
- African Charter on Democracy, Elections and Governance (ACDEG),
- African Charter on the Rights and Welfare of the Child (ACRWC),
- International Covenant on Civil and Political Rights-ICCPR (1966),
- Optional Protocol to the International Covenant on Civil and Political Rights (1966),
- International Covenant on Economic, Social and Cultural Rights (ICESCR),
- Convention against Torture and Other Forms of Cruel and Inhuman or Degrading Treatment or Punishment,
- International Convention on the Elimination of All forms of Discrimination,
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- Convention on the Rights of the Child (CRC).

Zimbabwe has also adopted important declarations which are non-binding but constitute an important part of the international human rights law framework binding on Zimbabwe such as

- Universal Declaration of Human Rights (1948),
- UN Declaration on Human Rights Defenders (1998).

Treaties create legal obligations for State Parties to promote and protect human rights at the national level. When a country such as Zimbabwe accepts one of these treaties through ratification, accession or succession, it assumes a legal obligation to implement the rights set out in the treaties. Zimbabwe has domesticated some of these human rights standards as evidenced through the 2013 Constitution that has a Declaration of Rights guaranteeing the right to life,³⁸ personal liberty,³⁹ human dignity,⁴⁰ freedom of profession,⁴¹ political rights,⁴² and fair hearing,⁴³ among others.

³⁸ Section 48 of the Constitution of Zimbabwe, 2013

³⁹ Section 49 of the Constitution of Zimbabwe, 2013

⁴⁰ Section 51 of the Constitution of Zimbabwe, 2013

⁴¹ Section 64 of the Constitution of Zimbabwe, 2013

⁴² Section 67 of the Constitution of Zimbabwe, 2013

⁴³ Section 69 of the Constitution of Zimbabwe, 2013

4 APPLYING CONSTITUTIONAL AND INTERNATIONAL HUMAN RIGHTS LAW STANDARDS TO ASSESS THE HANDLING OF **JOB SIKHALA'S CASE**

4.1 Independence of the National Prosecuting Authority (NPA)

The National Prosecuting Authority (NPA), in terms of section 258 of the Constitution of Zimbabwe, 2013 is mandated to institute and undertake criminal prosecutions. Section 262(2) states that officers in the NPA must not act in a partisan manner, further the interests of political parties, prejudice the lawful interests of any political party or causes and violate fundamental rights of any person. The NPA works with courts of law that are also required through section 164 of the Constitution to be independent and subject only to the constitution and the law which must be applied impartially, expeditiously, and without fear, favour or prejudice. The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders' Guidelines on the Role of Prosecutors adopted on 7 September 1990 states that prosecutors should *"...perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system."*⁴⁴

The UN Guidelines on the Role of Prosecutors states that prosecutors shall:

1. Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
2. Protect the public interest, act with objectivity, take

proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

3. Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
4. Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

Prosecutors are also compelled professionally not to "initiate or continue prosecution" and even to "stay proceedings, when an impartial investigation shows the charge to be unfounded."⁴⁵

According to the UN's Status and Role of Prosecutors, States must ensure that prosecutors are able to perform their functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability: "The use of prosecutorial discretion, when permitted *in a particular jurisdiction, should be exercised independently and be free from political interference. If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be: transparent; consistent with lawful authority; subject to established*

⁴⁴ United National Human Rights Office of the Commissioner, Guidelines on the Role of Prosecutors, <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>.

⁴⁵ United National Human Rights Office of the Commissioner, Guidelines on the Role of Prosecutors, <https://www.ohchr.org/en/instruments-mechanisms/instruments/guidelines-role-prosecutors>.

*guidelines to safeguard the actuality and the perception of prosecutorial independence. Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.*⁴⁶

The dangers of a prosecutor who lacks professional independence and impartiality is highlighted in 2013 by James Hamilton the then President of the International Association of Prosecutors when he said *"It is essential that prosecutors have sufficient independence or autonomy to take their decisions regardless of any outside pressure, in particular from the executive power of the State. Where such pressures can be and are brought, the prosecutor will not be able to protect the interests of justice, will not be able to respect the rule of law or human rights, and will be powerless to deal effectively with cases of corruption or abuse of State power."*⁴⁷

The serial arbitrary arrests and detention of Job Sikhala allegedly for over 67 times without conviction and the baseless opposition for him to be admitted to bail, including when those arrested with him over the same offences have been granted bail, speaks to a prosecutorial function that has been instrumentalised, and that lacks sufficient independence and impartiality. When the prosecutor is not independent and impartial, s/he ceases to be an officer of the court, but a tool at the hands of the oppressor and a threat to the rule of law.

4.2 Independence of the Zimbabwean Judiciary and the Courts

Chapter 8 of the Constitution of Zimbabwe, 2013 establishes the court system, appointment and tenure of the judiciary, and the Judicial Service Commission. Section 164 of the same Constitution states that the courts are independent and are subject only to the Constitution and the law to which they must apply impartially, expeditiously and without fear, favour or prejudice. Section 164(2) further stresses that judicial independence, impartiality and effectiveness are central to the rule of law and democratic governance. In addition, the Bangalore Principles of Judicial Conduct establish standards for ethical conduct of judges. They set core standards/values that include: independence, impartiality, integrity, propriety, equality and finally competence and diligence.⁴⁸ However, this goes upstream against public opinion that perceives the Zimbabwean judiciary as allegedly captured

⁴⁶ United Nations (2015) The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide.

⁴⁷ Speech of the President of the International Association of Prosecutors, James Hamilton, at the opening ceremony of the 18th Annual Conference of the International Association of Prosecutors, on the theme "The prosecutor and the rule of law", held in Moscow from 8 to 12 September 2013.

⁴⁸ The Judicial Integrity Group (n.d) The Bangalore Principles of Judicial Conduct, <https://www.judicialintegritygroup.org/jig-principles>

and taking instructions from the Executive and politicians in the country. This is made worse by some cases of intra-judiciary conflicts such as that of the former High Court judge, Justice Erica Ndewere, who accused Chief Justice Luke Malaba of harassing her for defying his "unlawful orders" in court cases brought before her involving former Tourism Minister Priscah Mupfumira and then MDC Alliance senior member Job Sikhala.⁴⁹

It is difficult to imagine that a judiciary is independent and impartial when it keeps a suspect in custody for 10 months on a bailable offence and in circumstances where others in similar circumstances have all been granted bail under the same incidence and same charges.

4.3 The Right to Legal Representation

Job Sikhala was arrested and remains in custody for representing the interests of the family of Moreblessing Ali in his capacity as the family lawyer. Job Sikhala is a registered legal practitioner. He has a right and duty to represent his clients without being harassed. He was arrested during the course and scope of executing his duties as a legal practitioner representing the family of the murdered Moreblessing Ali. In his letter from prison, Job Sikhala lamented his being targeted for merely being a lawyer for the family of Moreblessing Ali when he wrote *"What I stood for was correct both on earth and in heaven. Moreblessing Ali was a woman, viciously kidnapped and brutally murdered. I was instructed by her family to be their lawyer. I am proud of having represented their interests to the best of my abilities."*

The Constitution of Zimbabwe, 2013 guarantees the right to legal representation under section 69(4) by stating that *"every person has a right, at their own expense, to choose and be represented by a legal practitioner before any court, tribunal or forum."* Zimbabwe is also obliged under article 7 (c) of the African Charter on Human and Peoples Rights (ACHPR) to ensure in proceedings that everyone is guaranteed *"the right to defence, including the right to be defended by counsel of his [her] choice"*.

In this case Moreblessing Ali's family counsel has not only been inhibited from freely representing his clients but has faced arbitrary arrest and prolonged detention merely for representing his clients. There is cause to conclude that the GoZ has violated the right to legal representation for the family of Moreblessing Ali in the way they have dealt with the case of Job Sikhala.

There were attempts by the Harare Magistrate Court

⁴⁹ "Mnangagwa Fires High Court Judge Ndewere" New Zimbabwe.com, 17 June 2021. <https://www.newzimbabwe.com/mnangagwa-fires-high-court-judge-ndewere/>

and the prosecution to deny Job Sikhala of his right to legal representation of his choice. On the 14th of March 2023, a Harare Magistrates Court tried to force the commencement of the trial of Job Sikhala without his lawyers but Job Sikhala refused to speak. The trial commenced on the 14th of March 2023, but his lawyers were not available whilst attending to other cases at the High Court. The Rotten Row Court refused postponement of the matter arguing that it could not work with the diary of the lawyers. Job Sikhala refused to plead and the court entered a not guilty plea.

Job Sikhala has not been afforded the right to have full and unimpeded access to lawyers of his choice in the way his trial has been undertaken so far, in particular the denial of access to some of his lawyers to see him at Chikurubi Maximum Security Prison.

4.4 Right to Freedom of Conscience, Opinion and Expression

It is fair to assess that Job Sikhala was also arrested and remains in custody for his views on the circumstances around the murder of Moreblessing Ali and more generally for his political views. In his letter from prison, he stated that *"If I am killed dear compatriots, I am prepared to meet the fate in defence of values and principles I hold dearly; values of a free and open democratic society, exuding happiness, free of impunity and fear"*.

Zimbabwe as a State Party to the International Covenant on Civil and Political Rights (ICCPR) is in violation of Article 19, which states that:

- "1. Everyone shall have the right to hold opinions without interference*
- 2. Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kind, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice"*

In addition, developments around Job Sikhala's case constitutes a violation of his Constitutional rights to freedom of conscience and of expression enshrined in Section 60 and 61 of the Constitution of Zimbabwe, 2013 and articles 8 and 9 of the ACHPR. Sections 60 and 61 of the Constitution of Zimbabwe state as follows:

- "60. Freedom of conscience*
 - 1. Every person has the right to freedom of conscience, which includes –*
 - a. freedom of thought, opinion, religion or belief; and*
 - b. freedom to practise and propagate and give expression to their thought, opinion, religion or belief, whether in public or in private and whether alone or*

together with others.
[...]

- 61. 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*
- [...]"

There is reason to conclude that the GoZ has violated the right to freedoms of conscience, opinion and expression in the way they have dealt with the case of Job Sikhala.

4.5 Right to Personal Liberty

Since his arrest on the 14th of June 2022, Job Sikhala remains imprisoned for over 10 months despite numerous attempts to apply for bail. Those who were arrested together with him were granted bail, though not yet acquitted of the allegations of public violence levelled against them.

Job Sikhala has suffered and continues to suffer irreparable harm as a victim of violations of several human rights as provided in numerous international instruments binding on Zimbabwe such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and Peoples' Rights (ACHPR). Zimbabwe has an obligation to respect, fulfil and protect human rights standards provided for in Treaties to which Zimbabwe is a party, customary international law, and domestic law.

Section 49 of the Constitution of Zimbabwe, 2013 guarantees the right to personal liberty.

- 49. Right to personal liberty*
 - 1. Every person has the right to personal liberty, which includes the right-- a. not to be detained without trial; and b. not to be deprived of their liberty arbitrarily or without just cause.*
 - 2. No person may be imprisoned merely on the ground of inability to full a contractual obligation.*

Zimbabwe is also obliged under article 9 of the ICCPR not to subject anyone "to arbitrary arrest or detention" and under article 14.2 to ensure that "everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law." Zimbabwe must also comply with article 7 of the ACHPR which provides "the right to be presumed innocent until proven

guilty by a competent court or tribunal”.

There is reason to conclude that given the totality of the circumstances that the right to personal liberty that is entrenched in the Constitution of Zimbabwe and in international treaties binding on Zimbabwe is being violated in Job Sikhala’s case with every day that passes and he remains imprisoned.

4.6 Right to Fair Trial before an Independent and Impartial Tribunal

On the independence of the judiciary the Constitution of Zimbabwe, 2013 provides in section 164 that:

- (1) *The courts are independent and are subject only to this Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice.*
- (2) *The independence, impartiality and effectiveness of the courts are central to the rule of law and democratic governance, and therefore—*
 - (a) *neither the State nor any institution or agency of the government at any level, and no other person, may interfere with the functioning of the courts;*
 - (b) *the State, through legislative and other measures, must assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness and to ensure that they comply with the principles set out in section 165.*

In a bid to claim his liberty, it is unprecedented that Job Sikhala through his lawyers made more than 10 bail applications that were all dismissed despite the granting of bail being a constitutional right. Most of the bail applications were made in the Magistrate Court and appeals against the refusal to grant bail pending trial were made in the High Court of Zimbabwe. Job Sikhala’s appeals against rulings of the Magistrates Courts rulings to the High Court were all dismissed. It can be argued that local remedies have been ineffective to Job Sikhala for him to regain his freedom.

In addition, the Zimbabwean criminal justice system provides for fair trial and presumption of innocence. This is captured under section 69 of the Constitution of Zimbabwe, 2013 which provides that every person accused of a crime has a right to a fair and public trial within a reasonable period of time before an independent and impartial court. Again, section 70(1) (a) provides that a person accused of a crime has the right to be presumed innocent until proven guilty. Section 18(1) of the Code provides that generally subject to limited exceptions a person may not be found guilty of a crime under the Code or other enactment if each essential element of the

crime is proved beyond a reasonable doubt. Zimbabwe is also obliged to guarantee the right to fair trial under international obligations binding on Zimbabwe such as article 7 of the African Charter on Human and Peoples Rights (ACHPR) which recognizes Job Sikhala’s entitlement to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The right to bail and the presumption of innocence are procedural safeguards to guarantee the right to fair trial. Without granting bail for no justifiable reason and with prolonged pre-trial imprisonment, Job Sikhala suffers potential irreparable harm through pre-trial punishment.

On the 14th of September 2022, Job Sikhala expressed his frustration in court after Magistrate Taurai Manuwere dismissed his application for the court to set timelines for the prosecution to furnish his defence team with State papers to prepare for his trial set for 16 November 2022.⁵⁰

On the 3rd of January 2023, Job Sikhala, requested that his trial be livestreamed, arguing it was in the public interest. However, the state was strongly opposed to livestreaming the court case, claiming that livestreaming would incite political violence in a nation preparing for crucial harmonized elections later during the year. Job Sikhala’s lawyers had argued that journalists should be allowed to livestream the court case on all platforms since Job Sikhala is a public figure. Indications are that the state feared that livestreaming the court cases will cause unrest in the country.^{51,52}

The right to fair trial before an independent and impartial tribunal for Job Sikhala is being violated.

4.7 Right to Equality Before the Law and to Equal Protection of the Law

Credible allegations of selective application of the law have been raised in Job Sikhala’s case, compared to treatment of individuals linked to ZANU PF who appear to be favoured by the Zimbabwean judiciary and legal system even when facing more serious offences. The following are examples used to support the thesis:

- Justice Mayor Wadyajena, the Gokwe-Nembudziya Member of Parliament was arrested on charges of fraud and money laundering amounting to US\$ 5 million that are more serious than that of Job Sikhala

⁵⁰ “Job Sikhala ‘explodes’ in court as magistrate dismisses his application”, Nehanda Radio, 14 September 2022, <https://nehandaradio.com/2022/09/14/job-sikhala-explodes-in-court-as-magistrate-dismisses-his-application/>.

⁵¹ “Sikhala Requests Court to Allow Journalists to Livestream His Trial on Charges of Obstructing Course of Justice”, VOA, 3 January 2023, <https://www.voazimbabwe.com/a/6902470.html>.

⁵² “Zimbabwe court denies opposition MP pre-trial bail for fifteenth time”, The Guardian, 5 January 2023, <https://www.theguardian.com/global-development/2023/jan/05/zimbabwe-court-denies-opposition-mp-pre-trial-bail-for-fifteenth-time-job-sikhala>.

but was given bail in a few days. In addition, he was acquitted within less than 3 months.

- The former Minister of Health, Dr. Obadiah Moyo who was charged with corruption over allegations of awarding a multi-million-dollar (US\$60 million) contract for medical equipment to a shadowy company Drax International with Directors that are close to the First family. He was not even detained in custody when he first appeared in court before being later acquitted by the High Court in unclear circumstances.
- Henrietta Rushwaya, the President of the Zimbabwe Miners Federation was arrested on the 26th of October 2020 after being caught allegedly trying to take 6 kg of gold (worth some US\$366,000) out of the country via the Robert Mugabe International Airport.⁵³ Despite being caught with gold, she was granted bail immediately after arrest.
- In November 2017, the former local government minister Ignatius Chombo was arrested,⁵⁴ but did not stay long in prison. On the 7th of December 2017, the former minister was granted bail by the High Court which overturned the dismissal by the Magistrates Court.⁵⁵ However, on 5 October 2021, the NPA failed to find any evidence linking him to the six criminal charges he was facing resulting in all his allegations collapsing.
- On the 17th of November 2018, Wicknell Chivayo, a local business person with strong links to ZANU PF was arrested⁵⁶ and he stayed in remand prison for 8 days only.⁵⁷ Regardless of not staying in detention, Chivayo was cleared of allegations of bribing former Zimbabwe Power Company (ZPC) ex-board chairman Stanley Kazhanje with US\$10,000 to influence the award of the controversial Gwanda Solar Project

These examples leave the public with perceptions of a compromised judiciary that lacks independence and impartiality in matters involving HRDs, pro-democracy activists and legitimate political opponents such as Job Sikhala.

Article 14 of the ICCPR which is binding on Zimbabwe provides that “all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at

⁵³ Economist Intelligence Unit (2020) Zimbabwe mining boss arrested on smuggling charges, http://country.eiu.com/article.aspx?articleid=1520315135&Country=Zimbabwe&topic=Politics&subtopic_3.

⁵⁴ “Top Zimbabwe ‘Minister’ Facing Corruption Charges Involving Billions of Dollars”, VOA, 25 November 2017, <https://www.voazimbabwe.com/a/top-zimbabwe-minister-facing-corruption-charges/4136489.html>

⁵⁵ “Zimbabwe’s former finance minister Chombo granted bail”, Africanews, <https://www.africanews.com/2017/12/07/zimbabwe-s-former-finance-minister-chombo-granted-bail/>

⁵⁶ “Chivayo, Kadungure arrested”, The Herald, 16 November 2018, <https://www.herald.co.zw/chivayo-kadungure-arrested/>

⁵⁷ “Chivayo turns to God” Nehanda Radio, 14 August 2018, <https://nehandaradio.com/2018/08/14/chivayo-turns-to-god/>

law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

The differential treatment when it comes to members of the ruling ZANU PF political party damages the reputation of the judiciary and legal system.

4.8 Right to Dignity

Article 5 of the ACHPR provides that *“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”*. These binding legal standards to which Zimbabwe committed itself to, have been and continue to be violated with each day that Job Sikhala remains in unnecessary detention.

Arbitrary arrest and prolonged detention without trial as a method of extra-legal punishment is an assault of incalculable proportion on the dignity and self-worth of Job Sikhala and his family. Job Sikhala has been held in cells since his arrest on the 14th of June 2022 with no prospects of justice and fairness in sight and far away from his family and unable to practice his profession, earn a living and look after his family. This has also created such mental anguish as to amount to an attack on the dignity and self-worth of Job Sikhala. This constitutes a violation of section 51 of the Constitution of Zimbabwe which states that *“Every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected”*.

4.9 Freedom from Torture Inhuman and Degrading Treatment or Punishment

The arbitrary arrest and detention of Job Sikhala, with the effect of preventing him from practising his profession and earning a living and being able to look after and support his family, qualifies for psychological torture, cruel, inhuman and degrading treatment. The arrest on the 14th of June 2022 is allegedly the 67th time with no conviction in all the times that he has been arrested.⁵⁸ The regularity and frequency of arresting and detaining Job Sikhala without there being a single conviction tends to give credence to the belief that the law has been serially weaponised against Job Sikhala. He can no longer live in peace and belief in his own personal security and that of his family. He and his family now live under permanent fear that they could be harmed, terrorised by a State that has a responsibility to protect them (and everyone) under

⁵⁸ “Job Sikhala has been targeted by the State for 25 years, arrested 66 times”, Nehanda Radio, 25 January 2023, <https://nehandaradio.com/2023/01/25/job-sikhala-has-been-targeted-by-the-state-for-25-years-arrested-66-times/>.

the Constitution of Zimbabwe. It can be argued that the continued denial of bail for Job Sikhala after more than 10 bail applications amounts to judicially sanctioned torture at the hands of the State. This constitutes a violation of section 53 of the Constitution of Zimbabwe:

“53. Freedom from torture or cruel, inhuman or degrading treatment or punishment

No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.”

In addition, Zimbabwe is violating regional and international human rights treaties to which it is a State Party. Reference is given to Article 5 of the ACHPR that provides that *“all forms of exploitation and degradation of man particularly ... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”*.

4.10 Freedom of Assembly and Association

It is a credible public perception that Job Sikhala is being persecuted for associating himself with the opposition CCC political party which is the main opposition in Zimbabwe. This explains why the Zimbabwean authorities have allegedly arrested him for the 67th time without any conviction, suggesting the vacuous nature of the charges. Section 58 of the Constitution of Zimbabwe, 2013 guarantees Job Sikhala his right to freedom of assembly and association.

“58. 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.”*

The same right is enshrined through Article 22 of the ICCPR which provides that *“everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”* The right to freedom of association is also guaranteed in the African Charter on Human and Peoples Rights, which provides in Article 10 that *“every individual shall have the right to free association provided that he abides by the law.”*

It can therefore be concluded that the way in which Job Sikhala has been serially targeted by the legal system as a result of his political association and views amounts to a breach of his rights to freedom of assembly and association.

4.11 Right to Political Rights

Section 67 of the Constitution of Zimbabwe, 2013

guarantees the right of every Zimbabwean *“to form, to join and to participate in the activities of a political party or organisation of their choice [and]... to stand for election for public office and, if elected, to hold such office.”*

In addition Zimbabwe is also bound by Article 25 of the ICCPR which provides that *“every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: To take part in the conduct of public affairs, directly or through freely chosen representatives; [and] To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.”*

Job Sikhala is a long-time opposition political leader and is a senior leader of the country's largest opposition political party the Citizens Coalition for Change (CCC). Job Sikhala's continued detention means that he will potentially suffer irreparable harm should he not be released as this would effectively affect his right to participate effectively in the elections that are due in Zimbabwe in July/August 2023. He might not get time to participate in the elections. This leaves one with the inescapable conclusion that Job Sikhala's political rights have been violated as a result of the serial arrests and detention.

4.12 Right to a Family Environment and to Education for Job Sikhala's Children

Article 18 of the African Charter on Human and Peoples' Rights provides that *“The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and morals [and that] The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.”* This is also buttressed by article 23 of ICCPR which provides that *“the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”*

Job Sikhala is a family man who has school-going children exclusively dependent on him for school fees and other educational and basic survival needs. The main source of his income is his services as a legal practitioner registered with the Law Society of Zimbabwe. His long detention means he cannot practice his profession.

In view of the above, the children's constitutional rights in terms of section 75 and 81 of the Constitution of Zimbabwe, 2013 are being violated with each day that Job Sikhala remains detained.



5 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The case of Job Sikhala demonstrates the extent of selective application of the law by the courts in Zimbabwe and raises significant concerns about the lack of independence and lack of impartiality by the country's courts in matters involving HRDs, pro-democracy activists and legitimate political opponents. The Zimbabwean judiciary has work to do to protect itself from the image of a compromised judiciary that lacks independence and impartiality in such matters. The judiciary should rigorously enforce and protect the Declaration of Rights in cases before it and build jurisprudence that strengthen implementation of the Constitution of Zimbabwe. It is important for the management of the judiciary, including the Chief Justice of Zimbabwe, to implement programmes of continuous judicial education to build the understanding of the judicial officers of their roles to discharge their duties with integrity, independence, impartiality, courage and without fear, favour or prejudice.

Whilst every person has a legal right to bail, it appears that Job Sikhala's constitutional right to bail has been infringed upon by the very courts meant to protect it. One leading legal expert in Zimbabwe said this about the case: *"Job's matter totally debunks and belies any pretence that there is rule of law in Zimbabwe. It reinforces strong views about judicial capture, the erosion of human rights and the selective application of the law. My view is that the judiciary must be put in the dock. It must be made to answer the critical issues raised above and pronounce itself on them one way or the other".*⁵⁹

In addition, there are strong views that there is weaponisation of the courts in Zimbabwe for political persecution. In the case of Job Sikhala, the violation of his rights using the legal system seem to receive judicial sanction when the courts themselves (including the High Court) have continuously, unjustifiably and unconstitutionally denied him bail.

A diversity of stakeholders have expressed strong views that Sikhala is being targeted because of his role as an HRD and a political opponent of the ruling Zanu PF political party.

The Open Society Foundations and UNDP state that detention of a person who is proven not guilty is one of the most draconian practices on the planet: *"The decision to detain a person before he is found guilty of a crime is one of the most draconian a State or an individual can make. A decision made in an instant by the arresting officer can have a severe, lasting, and adverse impact. Whether or not it is justified, and regardless of whether due process is followed, the arrest is likely to have a traumatic effect on the detainee and those who love and depend on him. Pre-trial detention is one of the worst things that can happen to a person: the detainee immediately loses his freedom, and can also lose his family, health, home, job, and community ties."*⁶⁰ The pre-trial detention of Job Sikhala is adjudged to be excessive and has potential to shatter individual lives, destroy families, degrade communities, undermines the rule of law, foster corruption, encourage criminality and expose people presumed innocent to torture, disease and overcrowding in conditions worse than most sentenced

⁵⁹ Interview with a legal expert on the 4th of March 2023.

⁶⁰ Open Society Foundations and UNDP (2011) Socio-Impact of Pretrial Detentions: Judit Kovacs / Createch Ltd, <https://www.justiceinitiative.org/uploads/84baf76d-0764-42db-9ddd-0106dbc5c400/socioeconomic-impact-pretrial-detention-02012011.pdf>.

prisoners experience.⁶¹

5.2 Recommendations

In keeping with the above, the following recommendations are made:

General Recommendations

- Job Sikhala should benefit from his constitutional right to due process through having the courts independently, impartially and expeditiously deal with his entitlement to bail and a fair trial.
- Job Sikhala is entitled to and should benefit from equal protection of the law, including access to effective judicial remedies as provided for under national and international law without any discrimination on political and other grounds.
- Job Sikhala is entitled to represent his clients without being associated with their causes and being persecuted for legitimately performing his duties as a lawyer.
- Instances of interference with exercise of judicial function by any State or non-state individual or entity must be investigated and dealt with, with individuals implicated being held to account through available legal avenues.
- Job Sikhala's undue and lengthy pre-trial incarceration should be redressed and insofar as economically assessable damages are concerned given the violation of his rights and the damages he has suffered.

Opportunities for development of Zimbabwe's jurisprudence emanating from Job Sikhala's case

There is need for the Constitutional Court to pronounce on the following key issues:

- Whether the courts in the case of Job Sikhala (and related cases, including the Nyatsime 14) have failed to protect the right to due process and a fair trial;
- Whether the courts have failed to protect the right to personal liberty by unduly denying bail, including delays in granting bail;
- Whether the courts have failed to protect the right to human dignity and related rights of Job Sikhala;
- Whether the Government of Zimbabwe (GoZ) is violating the civil and political rights by instrumentalising and weaponising the legal system to silence dissent, including pre-trial detention.

It is important for the Constitutional Court to provide

⁶¹ Open Society Foundations and UNDP (2011) Socio-Impact of Pretrial Detentions: Judit Kovacs / Createch Ltd, <https://www.justiceinitiative.org/uploads/84baf76d-0764-42db-9ddd-0106dbc5c400/socioeconomic-impact-pretrial-detention-02012011.pdf>.

judicial leadership given that the experiences of Job Sikhala are now becoming quite common where human rights defenders and political activists are concerned.

Recommendations to the Zimbabwean Judiciary

- The Zimbabwean judiciary must protect itself from the image of a compromised judiciary that lacks independence and impartiality in matters involving HRDs, pro-democracy activists and legitimate political opponents by rigorously enforcing and protecting the Declaration of Rights and building jurisprudence that strengthens the implementation of the 2013 Zimbabwe Constitution and accords with the Principles and Guidelines on The Right to a Fair Trial and Legal Assistance in Africa.
- The management of the judiciary, including the Chief Justice, must design and implement a programme of continuous judicial education to build a solid understanding on the part of judicial officers as to their role and duties which must be discharged with the highest levels of integrity, independence and impartiality. Focus should especially lean towards enforcing the Declaration of Rights specifically and the Constitution generally.
- A judicial inquiry should be instituted to inquire into the circumstances that led to the unusual treatment of bail in the case of Job Sikhala, and findings must be made public with a view to preventing the manipulation of the judiciary and its processes in similar cases in the future.

Recommendations to the Executive

- The Executive, including the President, should support the establishment of an independent and impartial judiciary, protection of fundamental human rights and freedoms and the rule of law as enshrined in section 90 and other sections of the Constitution of Zimbabwe and international instruments binding on Zimbabwe.
- The Executive must refrain from any conduct or action that interferes with judicial independence as this undermines the rule of law and erodes public trust and confidence in the judiciary.

Recommendations to Parliament

- The Parliament of Zimbabwe should consider enquiring into the treatment of politically exposed persons, human rights defenders and political activists by the courts of Zimbabwe, with a view to establish trends and patterns and develop concrete steps, including legislative if necessary to ensure equal treatment of all before the courts and under the law.
- Parliament of Zimbabwe should lend its voice in speaking against the failure of due process in the Job

Sikhala matter, given that Job Sikhala is a Member of Parliament.

Recommendations to Civil Society Organisations (CSOs)

- CSOs and citizens are encouraged to engage in advocacy that seek to promote and protect the independence of the judiciary, both individual and institutional independence.
- CSOs must work with and support the judiciary in Zimbabwe to build deeper knowledge of the Declaration of Rights and the Constitution, in the context of Zimbabwe's international law obligations. The goal is to ensure a robust judiciary that advances rule of law as envisaged in the Constitution of Zimbabwe.

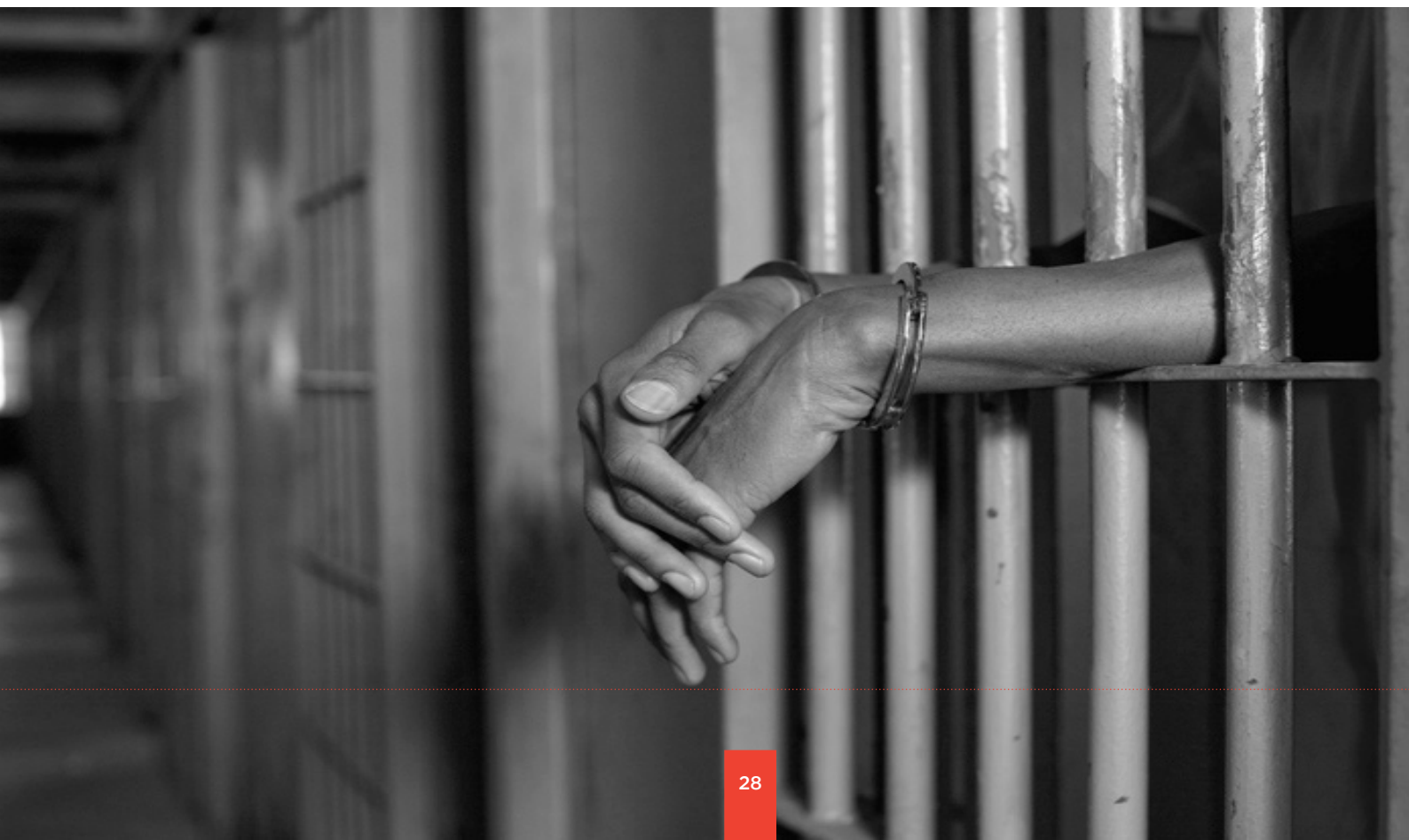
Recommendations to the legal profession

- The legal professions should actively defend the rights of lawyers to not be identified with the cause of their clients, and to do their work freely and without fear and favour. The independence of the profession and the judiciary must be protected.
- The legal profession must engage the judicial authorities and the government to advance the cause of due process, and the enforcement of constitutional safeguards in the criminal justice system.
- The legal profession must increase solidarity to Job Sikhala as a legal practitioner under persecution for doing his work, and because of his political affiliation.

- The legal procession must mount a trial observation process that will produce a report to spotlight the challenges of justice for political activists and human rights defenders in Zimbabwe.

Recommendations to the international community

- The international community, including governmental and non-governmental entities, must put pressure on the Zimbabwean authorities to abide by its international obligations to ensure independence of the judiciary and the legal profession, due process in the criminal justice system, and the protection of human rights.
- The United Nations (UN) and the African Union (AU) special mechanisms and procedures, including relevant independent experts and mandate holders, should engage with the authorities in Zimbabwe on the treatment of Job Sikhala and the challenges of judicial impartiality in Zimbabwe.





Southern African Human Rights Defenders Network
158 Jan Smuts Avenue, Rosebank 2196, South Africa