

Commission Meeting on Complaints Handling and Investigations
Date: 9 April 2025

Venue: ZHRC Boardroom, Harare

Mashonaland East, Murehwa District: Political Rights Investigative Report

CASE NUMBER:

ZHRC/H/CHI/300/23

Complainants:

Ishmael Zungunde
Cuthbert Mugambe
Shakespeare Zungunde
Garikai Mutize
Robson Nyamaropa
Charles Matsika
Stewart Pairemanzi
Tendai Chihwayi
Steven Ndundu

Respondents:

Zimbabwe Republic Police
Judicial Service Commission

Period of Investigation:

16 – 20 September 2024

Nature of Violations:

- (1) Political Rights
- (2) Equality and non-discrimination
- (3) Right to administrative justice

1. Introduction and Factual Background

- 1.1.** The Constitution is the supreme law of Zimbabwe and the obligations imposed by the 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.¹ The guiding precincts when it comes to political rights are found in section 67 of the Constitution which provides (1) (b); every Zimbabwean citizen has the right to make political choices freely. Further, the same Constitution dictates the right to administrative justice as administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial, and both substantively and procedurally fair.
- 1.2.** In accordance with Section 243 (1) of the Constitution, the Zimbabwe Human Rights Commission (ZHRC) has a dual mandate. This includes the responsibility to protect, promote, and enforce human rights and fundamental freedoms, as well as to safeguard the public against acts of maladministration by State and public institutions and their officers.
- 1.3.** Section 9 (1) of the Zimbabwe Human Rights Commission Act² empowers the ZHRC to initiate investigations into the conduct of any authority or individual accused of violating rights and freedoms outlined in the Declaration of Rights in the Constitution of Zimbabwe. This authority was invoked by the ZHRC Commission Board to investigate the actions of the police and relevant public officials regarding a reported case that took an excessive amount of time to resolve.
- 1.4.** The reported case involved complainants who are Citizens Coalition for Change Political Party (CCC) members. They alleged that on the 23rd of August 2022, they convened their party meeting in Ward 14, Murewa District, Mashonaland East Province. Soon after their meeting, they were allegedly

¹ Chapter 1, Section 2 (1) and (2) of the Constitution of Zimbabwe.

² Chapter 10:30. The Commission may on its own initiative investigate any action or omission on the part of any authority or person that constitutes or may constitute a human rights violation.

attacked by the ruling Zimbabwe African National Union – Patriotic Front (ZANU –PF/Ruling party) party members from their ward.

- 1.5. No arrests were ever made up to the time they made their report to the ZHRC in June 2023. The trial was later held more than one year later and the accused persons were found not guilty and acquitted. This left the complainants with queries about the manner the police handled the matter, particularly how the accused persons who are Ruling party members were handled by the police.
- 1.6. The ZHRC therefore carried out an investigation in Mashonaland East Province from the 16th to the 20th of September 2024, to establish facts and ascertain the circumstances surrounding the reported matter including perusal of the court documents to verify what took place during the trial leading to the acquittal of the accused persons. This report seeks to proffer the findings of the investigation. The findings of the investigation will illustrate that apart from the infringement of human rights and freedoms which were raised by the complainants, there may be elements of administrative injustice on the part of the public officials which may need to be addressed by stakeholders identified.

2. Methodology of Investigation

In conducting the investigation, the ZHRC employed the following number of methods.

2.1. Desktop Research

The ZHRC conducted extensive legal research into the domestic, regional, and international legal framework governing human rights. This was done in a bid to identify and assess the manner in which human rights were allegedly violated.

2.2. Interviews

The Commission held one-on-one interviews as follows;

- 2.2.1. The team interviewed one of the complainants Mr. Steward Pairemanzi to get an insight into the complaints concerning how the matter was handled by the

police and the court. Another one-on-one interview was held with the Officer Commanding Murewa District Police, Chief Superintendent Richard Moyo. ZHRC highlighted to him the complaints it received as well as inquiring about how the matter was handled by the Zimbabwe Republic Police (ZRP).

2.2.2. A further one-on-one interview was held with the Officer-In-Charge (OIC) of Mutawatawa Police Station, the Police Station is in custody of the docket of the matter under investigation.

2.3. Participant Observation

The ZHRC team utilised participant observation to gain an in-depth understanding of the ZRP approach to the report made by complainants. This approach allowed the team to comprehend the process from the time of reporting the matter until the matter is finalised by the court.

3. The Complaint

3.1. The complainants were nine (9) villagers from Uzumba who are also members of the opposition Citizens Coalition for Change (CCC) political party namely; Ishmael Zungunde, Cuthbert Mugambe, Shakespeare Zungunde, Garikai Mutize, Robson Nyamaropa, Charles Matsika, Stewart Pairemanzi, Tendai Chihwai and Steven Ndundu.

3.2. They alleged that on the 23rd of August 2022 they convened their party meeting in ward 14, Murewa district. Soon after their meeting, they were allegedly attacked and assaulted by the ruling party members from their ward. The Ruling party members went on to confiscate their CCC party t-shirts and strip-searched them. The complainants further alleged that during the attack their valuables including cell phones, money and bags were stolen.

3.3. The complainants reported the matter to ZRP Nhakiwa Police Base on the 25th of August 2022. However, no arrests were made at the relevant time, further after the accused persons were summoned, it took long for the trial to kick-start. The trial only commenced in March 2023 seven months after the incident.

- 3.4. The complainants furthermore stated that the accused persons were found not guilty and acquitted after trial at Mutawatawa Magistrates Court. They also alleged that they were assaulted by nine (9) people but only three (3) of them were subsequently charged. The complainants were also unhappy that the issue of assault was the only one dealt with at court, the issue theft of their belongings and cell phones among other items was not addressed by the court.
- 3.5. Further, the complainants were aggrieved by the manner in which the ZRP handled this matter and were of the view that there was no justice in the trial since the accused persons were all not arrested and charged, those who were charged were acquitted and the State failed or neglected to pursue their loss of property case.

4. The Response

- 4.1. **The Officer Commanding Murewa District Police, Chief Superintendent Richard Moyo.**
- 4.1.1. ZHRC held a meeting with the Officer Commanding Murewa District (DISPOL), Chief Superintendent Moyo, at Murewa Police Station. He indicated that he was aware of the matter and that it was a completed docket filed at their station in Mutawatawa. He called the Officer-in-Charge (OIC) of Mutawatawa Police Station and advised him to look for the docket of the matter in question and confirm if it was indeed filed with the office.
- 4.1.2. The DISPOL, also called the OIC Criminal Investigations Department (CID) Murewa as the matter was handled by this department since it was a political violence matter. The OIC CID Murewa stated that the matter was handled by CID Marondera as per the police protocol when handling political violence matters. The OIC CID Murewa confirmed that initially theft of property was reported, but that he was not sure how it ended up not on the charge. He speculated that it could have been at the instance of the Prosecutors.

4.1.3. Following advice from Mutawatawa that the docket was indeed in their possession, the DISPOL advised ZHRC to proceed to Mutawatawa Police station to verify any outstanding issues that the ZHRC had.

4.2. Officer-In-Charge - Mutawatawa Police Station

4.2.1. ZHRC held a meeting with the OIC Mutawatawa Police Station and requested to have a look at the docket. The OIC highlighted that he could not give the ZHRC the docket as it was a security document. He advised ZHRC to make an application to the Commissioner General of Police requesting to be furnished with same. Further, he indicated that the only information that he was able to furnish was the outcome of the court proceedings only. He could not state anything else that was of use to the ZHRC.

4.3. Clerk of Court – Mutawatawa Magistrates Court (Criminal)

4.3.1. ZHRC proceeded to the office of the clerk of court and perused the record of proceedings in respect of the three accused persons who were taken to court. The clerk of court advised that the ZHRC apply for an electronic copy of the record of proceedings, which the ZHRC duly did. However, the Clerk of Court furnished the ZHRC with the docket in January 2025. *or record?*

4.3.2. From the reading of the record of proceedings MWT69-71/23, it was apparent that the court raised queries in the manner in which the ZRP handled this matter. The Court stated that it was 'astonishing that the accused persons before it were never arrested following the report by the complainants'.

4.3.3. The Court also questioned the reason why the normal arrest and bail process was not done, with the State resorting to summoning the accused persons to court.

4.3.4. The Court further stated that it also found it "perplexing that while summoning the accused persons to court, the State did so through the accused person's political party Chairman instead of personal service." This, the Court held, was the reason for the delay, and it had to intervene to ensure that the State

summoned the accused persons personally. The trial commenced in March of 2023.

4.3.5. Further, the Court also questioned why, given the political nature of the matter, the State opted to charge the accused persons with common assault, and despite the complainants stating it during the trial, the issue of their missing property was not brought before it.

4.3.6. The ZHRC was unable to get any information or answers from the State. The full record is available for perusal.

5. Legal Analysis

5.1. Application of Legal and Human Rights Standards and Norms to the Facts

5.1.1. The investigation aimed at assessing whether or not the conduct of the respondents violated the rights of the complainants as provided for by the Constitution. This section will assess whether the rights, as stated above or any other rights were violated. The application of the legal norms to the facts will assist in assessing whether there were violations of the rights mentioned.

5.2. Political Rights

5.2.1. This right is provided for in terms of section 67 of the Constitution which provides that:

“(1) Every Zimbabwean citizen has the right—

(b) To make political choices freely.

(2) Subject to this Constitution, every Zimbabwean citizen has the right— (a) to form, to join and to participate in the activities of a political party or organisation of their choice; (b) to campaign freely and peacefully for a political party or cause; (c) to participate in peaceful political activity; and (d) to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.”

5.2.2. The assault of the complainants for their political beliefs is a violation of their political rights to make political choices freely. It also violated their right to personal security in terms of section 52 of the Constitution. Such violations can undermine democratic processes and foster fear and repression thereby stifling political discourse and engagement.

5.2.3. Political rights are also enshrined in several regional and international human rights instruments that the government of Zimbabwe is party to. Regionally, the African Charter on Human and Peoples' Rights (ACHPR), particularly Article 13, guarantees citizens the right to freely participate in government without fear of reprisal. The African Charter on Democracy, Elections, and Governance underscores the importance of political pluralism and tolerance, both of which were compromised in this instance.

5.3. Right to equality and Non-discrimination

5.3.1. Section 56 provides as follows:

“(1) all persons are equal before the law and have the right to equal protection and benefit of the law”,

5.3.2. The facts indicate that the ZRP violated Section 56 of the Constitution of Zimbabwe which states that every person is equal before the law and has the right to equal protection and benefit of the law. The failure of the ZRP to arrest the individuals accused of assaulting the complainants after receiving the report demonstrates a lack of impartiality and integrity in law enforcement, contradicting the professional standards outlined in the Police Act [Chapter 11:10] as read together with the Section 223 (1) (d) and 208 (2) of the Constitution

5.3.3. The right to equal protection before the law is a fundamental principle that ensures all individuals are treated equally by the legal system, regardless of their race, gender, religion, socio-economic status, or political affiliation.

5.3.4. The apparent differential treatment received by the complainants, characterized by a delayed response and inadequate investigation of property theft related to their political affiliation, constitutes a violation of their right to equality and non-

discrimination. Furthermore, this mishandling contravenes Section 219 of the Constitution which states as follows: -

- (1) There is a Police Service which is responsible for—*
 - (a) detecting, investigating and preventing crime;*
 - (b) preserving the internal security of Zimbabwe;*
 - (c) protecting and securing the lives and property of the people;*
 - (d) maintaining law and order; and*
 - (e) upholding this Constitution and enforcing the law without fear or favour.*
- (3) The Police Service must be non-partisan, national in character, patriotic, professional and subordinate to the civilian authority as established by this Constitution.*

5.3.5. The ZRP's partisan conduct undermines the principles stated in S219 (3) stated above as well regional and international human rights standards of equality, non-discrimination, and impartiality. Such actions can erode public trust in law enforcement and the judicial system, leading to broader implications for justice and human rights.

5.3.6. The rights to non-discrimination and equal protection before the law are also safeguarded in the African Charter on Human and Peoples' Rights (ACHPR), which includes provisions prohibiting discrimination on several grounds, including race, gender, and political affiliation. Article 3 affirms the right to equality before the law and equal protection for all individuals.

5.3.7. Additionally, Article 7 of the Universal Declaration of Human Rights (UDHR) states that "All are equal before the law and are entitled without any discrimination to equal protection of the law." Article 26 of the ICCPR similarly emphasizes equal treatment before the law and the right to protection against discrimination.

5.4. The right to administrative justice

5.4.1. Section 68 guarantees every person the right to administrative justice, ensuring that decisions affecting individuals are lawful, reasonable, and made fairly. It is

evident that from the onset of this case, the police showed a lack of commitment to proper investigation. The investigating officer failed to arrest and bring the respondents to court until compelled by the court, and despite acknowledging the report of property theft, there was no action taken by the police. Furthermore, the complainants did not recover their stolen property. Such negligence/omission undermines the rule of law and public trust in law enforcement's capability to uphold citizens' rights.

5.4.2. The right to administrative justice serves as a guiding principle in the relationship between individuals and public authorities, ensuring protection from arbitrary, unjust, or biased administrative actions adversely affecting their rights or interests. Upholding this right is crucial for maintaining the rule of law and safeguarding individual rights against power misuse by public authorities, fostering trust in governmental institutions, and promoting democratic governance.

5.4.3. The conduct of the ZRP in this instance is a clear violation of the Complainants' right to administrative justice and a violation of Section 208 (2) (d) of the Constitution, which states that the security service or its members should not violate the fundamental rights or freedoms of any person.

6. Findings

- 6.1.** The ZRP delayed in finalising its investigations, they did not arrest the accused persons and did not handle the case as they normally do.
- 6.2.** The accused persons were summoned to court through their party offices and not personally which further delayed the hearing of the matter as the accused were not making court appearances until the court intervened to have them served personally.
- 6.3.** The accused persons were charged with common assault despite the fact that this was a politically related matter which under normal circumstances has a more serious charge.
- 6.4.** Only three accused persons were prosecuted with ten counts of assault each.

- 6.5. The complainants reported theft of property, but this aspect was not put before the court. The police failed/neglected to investigate and recover the stolen items, leading to dissatisfaction with the outcome.
- 6.6. The three accused persons were found guilty of most of the counts of assault and were sentenced to at least twenty (20) months in prison each they were acquitted on at least 2 of the counts. They however, appealed against both conviction and sentence and were granted bail pending appeal. It is unclear if the appeal has been heard by the High Court.
- 6.7. The manner in which the police handled this matter was not in line with their mandate of upholding the Constitution and enforcing the law without fear or favour.

7. Conclusion

- 7.1. It is clear from the law that ZRP are entrusted with the duty of maintaining law and order which is necessary for the enjoyment of human rights. When carrying out their duties, police should always apply human rights standards. The main examples of human rights standards that should be adhered to when using this police power are plenty. Police powers entail great responsibilities and impact heavily on the relationship between police and the public. If the police do not respect human rights or fail to apply human rights standards; the relationship with the public will be impaired and will make policing difficult. Effective policing requires both maximum adherence to law and maximum co-operation with the public.
- 7.2. The Zimbabwe Republic Police's handling of this matter fell short of their constitutional mandate. By violating the complainants' rights to equal protection, non-discrimination, and access to justice, the police failed to uphold the law and compromised their professionalism. Their inaction and selective application of the law undermine public trust and confidence in the institution. Such conduct cannot be condoned, as it erodes the rule of law and perpetuates impunity. The police must be held accountable for their actions and take corrective measures to ensure adherence to the Constitution and the law, upholding the highest standards of professionalism, impartiality, and service to the public."

8. Recommendations

Minister of Home Affairs

- 8.1. To monitor the ZRP's implementation of the ZHRC recommendations in this report.

The Zimbabwe Republic Police (ZRP):

- 8.2. Ensure timely investigations and avoid unnecessary delays that can affect the credibility of justice delivery.
- 8.3. Effectively manage its case management system to ensure that all aspects of a reported crime are fully investigated and brought before the courts.
- 8.4. To hold accountable all the officers involved in this matter for their acts/omissions and to arrest the remaining accused persons and take the matter to court.
- 8.5. Enhance training for officers on human rights standards, especially concerning politically motivated violence.

To the National Prosecuting Authority- Mutawatawa Magistrates Courts

- 8.6. Correctly vet dockets to ensure proper charges are preferred against accused persons to weed out bias, malice or other malpractices.

To Zimbabwe African National Union – Patriotic Front ward 14 Murewa District Mashonaland East ZANU- PF leadership and members:

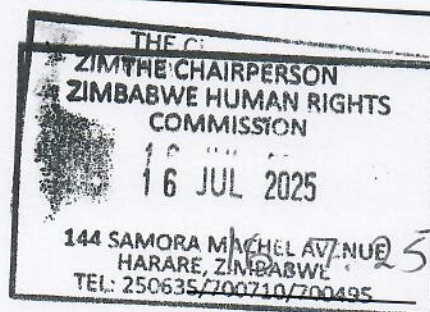
- 8.7. To promote tolerance and respect for the rights of their political opponents.
- 8.8. Establish or enhance internal mechanisms for addressing and disciplining members involved in violent acts.
- 8.9. Make public statements in their area, e.g., in this District, denouncing violence and that they are not associated with violence, violence leads to internal disciplinary hearings.

Adopted by the Commission

Signed by:



MS. F.J. MAJOME (CHAIRPERSON)



DATE