

COVID-19 Response in Africa: Together for Reliable Information



Figure 1: Journalist Hopewell Chin'ono raises his fist to colleagues, relatives, and friends while getting into a prison vehicle on 23 July 2020 outside Harare Magistrates Court. (Photo: Columbus Mavhunga)

Zimbabwe: Briefing on attacks against journalists

March 2020–July 2021

At a glance

Global Expression
Report 2021 score:

18/100

5

journalists arrested
and detained

4

journalists assaulted

2

Acts enacted

1

Bill gazetted

About this briefing¹

Journalist Zororo Makamba was only the second recorded case of COVID-19 in Zimbabwe. Sadly, he also became its first victim, [dying on 23 March 2020](#). He was just 30 years old.

Journalists like Zororo play a vital role in ensuring the right to freedom of expression and access to information – particularly in the context of a pandemic. This right is protected under international human rights law, Zimbabwe's [Constitution](#), and national legislation.

However, as this briefing shows, changes made to laws and regulations in Zimbabwe during the first year of COVID-19 – as well as police attacks and arbitrary arrests of journalists – violated this fundamental right and put media freedom and journalists' safety at grave risk.

We urge the Government of Zimbabwe to follow the recommendations in this briefing to ensure the right to freedom of expression and the safety of journalists are guaranteed – especially in the COVID-19 pandemic.

¹ The evidence presented in this briefing was sourced from media houses, media watchdogs, journalists' unions, and legal analysis between March 2020 and July 2021. It is limited to human rights violations against journalists in the context of COVID-19 during that time (rather than non-pandemic-related violations against journalists, or violations against non-journalists during COVID-19). For our methodology, see www.article19.org/covid-19-response-in-africa/.

Physical attacks against journalists

The protection of journalists and human rights defenders, and ending impunity for attacks against them, is a global priority for safeguarding freedom of expression. Threats, attacks, arbitrary arrests, and detention, and, in the gravest cases, enforced disappearance or killings, constitute not only a violation of the right to freedom of expression but also a violation of the right to life and bodily integrity, and sometimes the right to health. Physical attacks are those that inflict pain, harm, or injury, including death, against a person.

As ARTICLE 19 has repeatedly pointed out, under [international freedom-of-expression standards](#), accreditation schemes for journalists are appropriate only where necessary to provide them with privileged access to certain places and/or events. Accreditation should never be subject to withdrawal based only on the content of an individual journalist's work, and should never be used as a work permit for journalists to cover public institutions. During a pandemic, it becomes even more crucial that law-enforcement authorities do not use expired press cards as an excuse to prevent journalists from conducting their work, as the cases below illustrate.

Police beat journalist and force him to delete footage of police operation

Journalist Panashe Makufa reports that, on 3 April 2020, police officers approached him as he filmed them dispersing people in a lockdown-enforcement operation. When the police questioned him, Makufa showed them his press card, which the police dismissed as having expired. According to his report to MISA-Zimbabwe, two officers then instructed Makufa to get into a police vehicle, where they beat him and [forced him to delete his footage](#). They then released him without charge.

Although police may use force in exceptional circumstances only, the use of force against anyone who contravenes lockdown regulations is legally [unnecessary and excessive](#). By dismissing Makufa's press card as having expired, the police were also ignoring an explicit Zimbabwe Media Commission (ZMC) directive that legally allowed journalists to continue using their 2019 press cards throughout 2020.

As far as ARTICLE 19 is aware, no one has been held accountable for the unnecessary and excessive use of force against Makufa.

Police and army repeatedly assault journalist on way to report on lockdown

Members of the police and army reportedly [assaulted](#) freelance journalist Terence Sipuma on a roundabout in Kuwadzana, Harare, on 11 April 2020. Sipuma was on his way to Chegutu to report on the 21-day lockdown. After telling the officers where he was going and producing his accreditation card, he was made to lie on the ground and beaten. He was released about 15 minutes later.



They asked where I was going and the moment I showed them my journalism I.D. (accreditation) card, I was asked to lie down (on the ground) and was beaten being accused of exposing them. They took my phone and promised me that they were going to do more if I had videos or pictures of that operation.



Terence Sipuma, journalist
(as told to MISA Zimbabwe).

Police assault journalists with truncheons and sjamboks

In Harare on 24 June 2020, police reportedly assaulted two journalists, Munashe Chokodza and Leopold Munhende, claiming they were contravening lockdown regulations. This was despite the High Court having recognised journalists as essential workers on 20 April (which authorities confirmed in the third amendment of Statutory Instrument 83 of 2020 on COVID-19 Prevention, Containment and Treatment of the Public Health Order ('the Public Health Order') 2020), meaning that police could not arrest journalists for working during the pandemic or for violating lockdown.

According to Chokodza and Munhende, they were returning from work when they encountered a group of soldiers and police officers, who demanded to know where they had come from. They explained that they were journalists and showed their press cards. The soldiers then said journalists thought they were "special and needed to be dealt with." Munhende said the police slapped, tripped, and kicked them; assaulted them with truncheons and sjamboks; and ordered them to get up and run.

As above, it is illegal for police officers to use force against anyone who contravenes lockdown regulations, least of all those designated as key workers.

Arbitrary arrests and detentions of journalists

An arbitrary arrest or detention is one carried out, among other things, when it is clearly impossible to invoke any legal basis justifying the arrest, without due regard for international fair-trial standards, or in response to the legitimate exercise of human rights – including the right to freedom of expression. They are violations of the right to liberty and/or a fair trial.

Police arbitrarily detain journalists for 'working with invalid cards'

Due to administrative delays caused by the pandemic, on 31 March 2020, the ZMC confirmed that journalists would not need to renew their press cards from 2019 and should be allowed to work unhindered. Despite this directive, police forces continued arresting journalists for contravening lockdown, claiming they were 'working with invalid cards', between March and April 2020. All these arrests were made under either the Public Health Order 2020 or the Criminal Law (Codification and Reform) Act (Chapter 9:23).

On 30 March 2020, police arbitrarily detained Kudzanai Musengi, a correspondent with Voice of America, for working with an expired press card. Musengi was taking pictures of major retail shops for a story on lockdown compliance. While he was detained, police officers demanded to look through his mobile phone – which he refused, since he had not been charged. He was released later that day without charge, after the police's public-relations department intervened.

A few days later (2 April), police arrested Nunurai Jena – another Voice of America journalist – in Chinhoyi, where he was photographing police inspecting the public's compliance with COVID-19 regulations. Jena was initially accused of operating with an expired accreditation card – despite the ZMC not yet having started the 2020 accreditation for journalists outside Harare. Jena was later charged for disorderly conduct in a public place, with an alternative charge for contravening the Public Health Order 2020 (Section 11(a)(b)). He appeared in court and was released on free bail the next day. His trial began in November 2020; as of September 2021, it is yet to be concluded.

Arrest of journalists reporting on activists tortured by police

On 22 May 2020, police arrested journalists Frank Chikowore and Samuel Takawira in Harare. The journalists had sought to interview three political activists who the police had reportedly kidnapped, tortured, and arrested. Police alleged that the journalists had failed to obey a police officer's order to maintain social distancing, as per lockdown regulations, in contravention of the Public Health Order 2020 (Clause 11(b)). The two were [held in custody](#) until 26 May, when they were granted bail, before finally being [acquitted](#) by a Harare court on 10 September 2020.



Figure 2: Journalists Samuel Takawira and Frank Chikowore stand with a police detective outside a Harare court on 23 May 2020. (Photo: Columbus Mavhunga)

Journalist detained for 44 days following tweets about government corruption

On 20 July 2020, police [arrested](#) Hopewell Chin'ono (see Figure 1) for 'inciting public violence' (as defined in Section 31(a) of the Criminal Law (Codification and Reform) Act, Chapter 9:23). This was ahead of a mass protest, planned for 31 July ([#ZanuPFmustgo](#)), which opposition politician Jacob Ngarivhume organised to call for a change of government. Chin'ono had [tweeted](#) in support of the protest, as well as around 'Draxgate' – government officials' misappropriation of COVID-19 funds, which online publication *ZimLive* had [exposed](#). Chin'ono live-streamed his arrest until police officers ordered him to put down his phone. His lawyer said about eight security agents, who broke down doors at the journalist's house, were involved. He spent 44 days in pre-trial detention before being granted bail – after four attempts – on 2 September 2020. He is yet to be tried.

Public Health Order: Stifling media reporting, restricting freedom of information

In response to the pandemic, the government enacted the [Public Health Order 2020](#), which prohibited gatherings, restricted the public's movement (except for those providing essential services), and had an adverse impact on both media reporting and the right to freedom of expression.

Section 14 prohibits 'false reporting during national lockdown' and publishing or communicating 'false news about any public officer, official or enforcement officer involved with enforcing or implementing the national lockdown in their capacity'. This offence is punishable with a fine and/or imprisonment for up to 20 years. To avoid criminal liability, media practitioners therefore became overly cautious about their COVID-19 reporting.

ARTICLE 19 [expressed its concern](#) over the Public Health Order in general, and Section 14 in particular, urging 'the immediate elimination of this provision in its entirety, as it is very problematic on multiple levels' – including its lack of clarity on what is meant by 'false'.

Both the Zimbabwean [courts](#) and [international human rights bodies](#) have also stated that laws that criminalise false statements are unnecessary and disproportionate in a democratic society, and should be abolished. We note that Section 14 of the Public Health Order is based on Section 31(a)(iii) of the Criminal Law Codification Act, which was declared unconstitutional, in terms of the 1980 Constitution, in the 2013 case of *Chimakure v. The Attorney-General*.



Some elements of the [Public Health] Order have no discernible nexus to the COVID-19 pandemic or are otherwise overbroad, thus threatening to severely undermine public health and Zimbabwe's compliance with its international human rights obligations



– [ARTICLE 19](#)

Laws regulating access to information during COVID-19

In February 2019, the Access to Information and Protection of Privacy Act (AIPPA) was [repealed](#), meaning that no effective law regulated access to information during the pandemic. Three different legal instruments to replace the AIPPA were gazetted or enacted during the first year of COVID-19.

The Zimbabwe Media Commission Act

[The Zimbabwe Media Commission Act](#) was enacted on 2 April 2021. This is an important law, as it determines the accreditation of journalists in the country and regulates the conduct of employers and employees in the media. Under the Act, the ZMC is named as the regulator of the media industry in Zimbabwe.

The Act provides a wide definition of 'media', which includes the dissemination of information through the Internet and any other electronic means. Likewise, the definition of 'media practitioner' is not restricted to journalists but includes a broader group of people who work together towards seeking, receiving, and sharing information. In relation

to COVID-19, Section 13 of the Act provides for the enforcement of the ZMC's orders and makes provisions for the registration of the orders in the High Court. This means that journalists may approach the ZMC, rather than the courts, for resolution on issues to do with accreditation, access to information, and safety, which could provide for a swifter and more affordable resolution. The Act further allows for the ZMC's decisions to be appealed to the High Court.

A further positive aspect of the Act is the establishment of a media fund (Section 22) to promote and contribute towards research and development in media services, to promote public awareness on the right of access to information and protection of privacy, and to build the capacity of media services to maintain high standards of quality, among other purposes. This is a timely and relevant intervention, especially in light of COVID-19's impact on media sustainability and viability. As technology continues to advance, it is equally important that a fund is available to assist the media through training, capacity-building, and reviewing business models in light of the pandemic.

The Cyber Security and Data Protection Bill

The [Cyber Security and Data Protection Bill](#) (gazetted on 15 May 2020) is the only one of three laws proposed to replace the AIPPA that has been enacted.

Data protection is important, particularly in the context of a pandemic and where legislative frameworks have not been developed for enforcement of laws protecting personal data and privacy. For example, there have been instances where media houses have had access to personal data pertaining to COVID-19 patients, which has led to a breach in their [privacy](#). In one such case, local media published stories about a patient violating isolation laws, but had actually [misidentified](#) the patient. This calls for data-protection laws – but such laws should not suppress expression or access to information held by authorities, which the public should legitimately have access to.

While the major function of the Bill, [as the Bill itself states](#), seems to be to introduce a data-processing law and harmonise

existing laws, watchdogs [argue](#) that its actual function is to clamp down on free speech.

ARTICLE 19 has [previously expressed](#) concern that this Bill contains numerous provisions that undermine freedom of expression and freedom of the media, including false-information and

criminal-defamation provisions punishable by up to five years' imprisonment. These provisions, particularly in light of the Public Health Order's false-information provisions, exacerbate concerns regarding misuse of laws to suppress reporting in relation to COVID-19.

The Bill must therefore undergo all relevant public hearings, as set out by the Constitution and amended, to address such concerns before being passed into law.

Freedom of expression: a fundamental – but not absolute – right

Everyone has the right to express themselves freely – orally, in writing, and online. The right to freedom of expression includes the right to access information, which is particularly important in a pandemic. It is guaranteed under the [Universal Declaration of Human Rights](#), the [International Covenant on Civil and Political Rights](#) (ICCPR), the [African Charter on Human and Peoples' Rights](#), the [African Commission's Declaration of Principles on Freedom of Expression and Access to Information in Africa](#), and the [Zimbabwe Constitution of 2013](#) (sections 61–62).

While the right to freedom of expression is fundamental, it is not absolute. Under Section 62(4) of Zimbabwe's Constitution:

'Freedom of expression and freedom of the media exclude—

- a. incitement to violence;
- b. advocacy of hatred or hate speech;
- c. malicious injury to a person's reputation or dignity; or
- d. malicious or unwarranted breach of a person's right to privacy.'

– Zimbabwe Constitution of 2013, Section 62(4)

Under international law, freedom of expression can be limited for the purposes of protecting public health – but any limitation must be **legitimate**, **necessary**, and **proportionate** (Article 19 of the ICCPR).

Recommendations

ARTICLE 19 calls on the Government of Zimbabwe to:

- **Take all measures necessary to guarantee the safety and security of journalists**, by ensuring that all law-enforcement officers are aware that arbitrary arrests, detentions, and police brutality will not be tolerated.
- **Ensure that, in cases of violations, investigations are carried out and perpetrators held accountable** in trials meeting fair-trial standards.
- **Ensure there are reparations for victims** of such violence by law-enforcement officers, including adequate compensation.
- **Send a clear message to police** that lack of accreditation and/or expired press cards can never be used to prevent journalists from reporting or justify arresting them.
- **Ensure the requirement for accreditation is never misused** to prevent journalists from reporting.

- **Desist from promulgating and using laws that criminalise the communication of falsehoods,** and instead promote media-literacy and fact-checking training for citizens and media practitioners. In particular:

- **Amend Section 14 of the Statutory Instrument on Public Health,** as the provisions on the 'communication of falsehoods' do not meet the requirement of legality, thus threatening to severely undermine public health and Zimbabwe's compliance with its international human rights obligations.
- **Ensure the Cyber Security and Data Protection Bill undergoes all relevant public hearings,** as set out by the Constitution and amended, to address provisions that undermine freedom of

expression and freedom of the media – including false-information and criminal-defamation provisions, punishable by up to five years' imprisonment – before being passed into law.

- **Apply the test of legality, necessity, and proportionality** before limiting freedom of expression in cases of public-health threats.
- **Implement the provisions of the African Commission Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019,** including in relation to the safety of journalists.
- **Adopt the recommendations of the [resolution on the safety of journalists](#),** adopted by the UN Human Rights Council on 6 October 2020.

