

ZIMBABWE

- **ZWE-45:** Joanah Mamombe (Ms.)
- **ZWE-46:** Job Sikhala



Inter-Parliamentary Union
For democracy. For everyone.

Zimbabwe

Decision adopted unanimously by the IPU Governing Council at its 210th session (Kigali, 15 October 2022)



Joanah Mamombe © Women's Academy for Leadership and Political Excellence (WALPE)

ZWE-45 – Joanah Mamombe

Alleged human rights violations

- ✓ Abduction
- ✓ Torture, ill-treatment and other acts of violence
- ✓ Threats, acts of intimidation
- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Other acts obstructing the exercise of the parliamentary mandate
- ✓ Impunity
- ✓ Other violations: discrimination

A. Summary of the case

Ms. Joanah Mamombe is the youngest member of the Parliament of Zimbabwe and belongs to the opposition Movement for Democratic Change (MDC Alliance) party. According to the complainants, at around 2 p.m. on Wednesday, 13 May 2020, Ms. Mamombe and two other young women leaders, namely Ms. Cecilia Chimбири and Ms. Netsai Marova, were abducted, tortured and sexually abused by suspected state security agents.

Case ZWE-45

Zimbabwe: Parliament affiliated to the IPU

Victim: Female opposition member of parliament

Qualified complainants: Section I.1(d) of the Committee Procedure (Annex I)

Submission of complaints: May 2020 and April 2021

Recent IPU decision: May 2021

Recent IPU Mission(s): - - -

Recent Committee hearing: Hearing with the Speaker of the National Assembly at the 145th IPU Assembly (October 2022)

Recent follow-up:

- Communication from the authorities: Letter from the Speaker of the National Assembly (February 2021)
- Communication from the complainants: September 2022
- Communication to the authorities: Letter to the Speaker of the National Assembly (September 2022)
- Communication to the complainants: September 2022

According to the complainants, after being intercepted at a roadblock by the police for breaking COVID-19 regulations by taking part in a peaceful flash demonstration, Ms. Mamombe and the two other young women leaders were taken to Harare Central Police Station. Then, instead of being fined or formally charged, they were allegedly forced into a minibus and taken to an undisclosed destination, where they were subjected to torture, sexual abuse and degrading treatment by a paramilitary group known as “the Ferrets”. The complainants report that, upon discovering that they were being abducted, the three women reached out to their family members and colleagues by phone and repeatedly texted them to share their location. After family members and colleagues raised the alarm about their whereabouts, the three women were reportedly dumped near Bindura at around 9 p.m. on Thursday, 14 May 2020. They were finally found and taken to safety at around 2 a.m. on Friday, 15 May 2020, by a team of family members and lawyers. The complainants further report that the three were then taken to hospital for treatment and stressed that medical and psychological reports were made on the spot that proved that the three women had been subjected to torture and abuse during their disappearance.

On 10 June 2020, five United Nations (UN) Special Procedures experts of the UN Human Rights Council issued a statement calling on the authorities of Zimbabwe to “urgently prosecute and punish the perpetrators of this outrageous crime, and to immediately enforce a policy of ‘zero tolerance’ for abductions and torture throughout the country to ensure the effective protection of women against sexual violence, and to bring those responsible to account”. The UN human rights procedures “expressed grave alarm over concerns this was not an isolated instance. In 2019 alone, 49 cases of abductions and torture were reported in Zimbabwe, without investigations leading to perpetrators being held to account”. The experts concluded that “enforced disappearances of women often involve sexual violence, and even forced impregnation, with enormous harm inflicted not only on their physical health and integrity, but also in terms of the resulting psychological damage, social stigma and disruption of family structures”.

According to the complainants, petitions regarding the alleged abuses suffered by Ms. Mamombe and her two colleagues have been submitted to Zimbabwe’s Gender Commission, Human Rights Commission and the National Peace and Reconciliation Commission. The complainants affirm that these petitions have been copied to the Ministry of Justice, Ministry of Home Affairs, Ministry of Women’s Affairs and the Parliament of Zimbabwe. Yet, more than two years since the events of May 2020, these complaints have still not yielded any result. Moreover, the complainants declare that, instead of carrying out an independent investigation into the allegations, the State actually arrested Ms. Mamombe and her two colleagues on 10 June 2020 on the basis of their statements about the treatment they had suffered and charged them with making false statements prejudicial to the State, a criminal offence. The women were later freed on bail after a widespread international campaign had pressured the authorities for their release. However, the complainants contend that Ms. Mamombe and her two colleagues’ rights were severely restricted as part of the conditions of bail, which compromise their freedom of movement and freedom of expression.

Ms. Mamombe has reportedly been arrested four times since then, most recently on 5 March 2021, when she was charged with allegedly breaching COVID-19 regulations after attending a press conference calling on the authorities to respect the right to a fair trial of a fellow opposition member. Since her last arrest, Ms. Mamombe has been held on remand in *Chikurubi* prison, together with convicted criminals, where she allegedly faced inhumane detention conditions. She was briefly taken from remand to hospital and was finally released on bail on 5 May 2021. Since then, the complainants has confirmed that Ms. Mamombe was able to partially recover and take part in several remote parliamentary sessions, although she has to report to the police on a weekly basis and make frequent appearances in court as part of her trial. In addition, her passport has allegedly been confiscated by the authorities to prevent her from going abroad, meaning that she cannot seek medical treatment overseas. In addition, Ms. Mamombe’s lawyers have reported numerous issues with the administration of justice, including the acceptance of falsified evidence meant to incriminate her and the unjustified dismissal of credible evidence in her defence by the courts.

The complainants report that Ms. Mamombe is one of the most prominent young women leaders in Zimbabwe. She has been vocal and outspoken over deteriorating economic conditions in Zimbabwe and their effect on women and girls. According to the complainants, her situation should also be seen in the context of the rising number of cases of human rights abuses against human rights defenders and activists, the shrinking of civic space and widespread harassment of opposition members in recent years in Zimbabwe.

During the 142nd IPU Assembly (May 2021), the Speaker of the National Assembly publicly invited a delegation of the Committee on the Human Rights of Parliamentarians to travel to Zimbabwe to discuss the issues and concerns that had arisen in this case with all the relevant stakeholders. Subsequent letters from the IPU Secretary General to the Speaker regarding the case and mission dated 30 June 2021, and 27 July and 13 September 2022 have remained unanswered. At the hearing with the Committee on the Human Rights of Parliamentarians at the 145th IPU Assembly, the Speaker stated that he was under the impression that he had replied once in writing to say that contacts were being pursued with the Ministry of Justice to organize the mission, which was still welcome.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Thanks* the Speaker of the National Assembly of Zimbabwe for the information provided at a hearing with the IPU Committee on the Human Rights of Parliamentarians during the 145th Assembly in Kigali, as well as for his renewed assurance that the Committee is welcome to visit Zimbabwe and meet with all relevant parties; *takes note* of the Speaker's ongoing commitment to make arrangements with the Ministry of Justice to facilitate the organization of the mission in Zimbabwe; and *looks forward* to receiving information on the specifics of a mission soon;
2. *Regrets*, once again, that none of the other authorities that were contacted by the IPU have provided any response that might facilitate the resolution of the specific concerns that have arisen in this case; and *expresses the firm hope* that a response is given to all questions raised by the Committee in its letters to relevant executive and independent institutions, as was previously assured;
3. *Reiterates its profound concern* about the allegations that Ms. Mamombe and two of her young female colleagues were arbitrarily detained and subject to torture and mistreatment on 13 May 2020; *considers* that such allegations have to be taken extremely seriously given numerous reports of the use of abductions and torture to silence the opposition in Zimbabwe, the prevalence of gender-based violence in the country and the gravity of the allegations; *is dismayed to learn* that, instead of carrying out an independent investigation into the allegations, the authorities proceeded to arrest Ms. Mamombe on 10 June 2020 on the basis of her statement of complaint and charged her with making false statements prejudicial to the State, as defined in Section 31(a)(ii) of the Criminal Law [Codification and Reform] Act, Chapter 9:23; *believes* that this provision is not in conformity with Zimbabwe's human rights obligations, including the right to freedom of expression and the right to an effective remedy; *recalls* in that regard that the reform of the Criminal Law Act was the subject of recommendations made by United Nations (UN) human rights bodies, most recently during Zimbabwe's third cycle of the Universal Periodic Review; and *calls on* parliament to fulfil its legislative responsibility by reviewing and reforming the Criminal Law Act in order to avoid the recurrence of such situations;
4. *Is particularly concerned* that the complaints to the relevant authorities have reportedly not set in motion investigations to identify the culprits of Ms. Mamombe's alleged abduction and torture; *fails to understand why*, more than two years after these complaints were sent to the relevant institutions and copied to the Ministry of Justice and the Parliament of Zimbabwe, they have still not yielded any results; *recalls* in this regard that the Republic of Zimbabwe is bound by the provisions of the International Covenant on Civil and Political Rights, to which it is a party, article 2(3) of which enshrines the duty of the State to ensure that any person whose rights are violated should have an effective remedy determined by competent authorities; *urges* the relevant authorities once more to carry out an in-depth investigation into the alleged violations reported by Ms. Mamombe, including by undertaking a full examination of the CCTV footage of what transpired that day at Harare Central Police Station, questioning the police officers on duty that day, inspecting the site and area where Ms. Mamombe was reportedly dumped, which is said to be relatively close to the place where the alleged abuses took place, and by examining the medical and physical reports drawn up at the hospital; and *wishes* to be kept informed as a matter of urgency of progress made in the investigations;

5. *Is deeply concerned* by allegations that Ms. Mamombe continues to face judicial harassment in relation to three cases against her; *is concerned* by allegations made by the complainants that Ms. Mamombe is facing numerous issues of maladministration of justice amounting to a denial of a fair trial, including the lack of judicial independence, the discriminatory application of the law and the dismissal of evidence of the trauma endured by Ms. Mamombe on 13 May 2020; *considers* that, while mindful of the constitutional arrangements in place in Zimbabwe regarding the separation of powers and the principle of *sub judice*, that parliament can look into allegations that impact the overall administration of justice by virtue of its oversight function, as reflected in Article 119 of the Constitution of Zimbabwe; and *looks forward* to hearing from the parliamentary authorities on this point;
6. *Decides* to send a trial observer to the criminal proceedings with a view to collecting information and reporting on how the fundamental human rights of Ms. Mamombe are being respected in the case at hand;
7. *Is dismayed* by the allegation that Ms. Mamombe was subject to heckling, insults and stigmatization by members of the ruling party when she returned to parliament in November 2020 after a period of convalescence due to the trauma she had endured, forcing her to leave the parliamentary chamber as she no longer felt safe; *deplores* that Ms. Mamombe therefore felt obliged to attend parliamentary sessions remotely; *notes* that the Speaker was unaware of these allegations; and *calls on* Ms. Mamombe and the Speaker to discuss the allegations and to see what measures can be taken to ensure her safe physical return to parliament;
8. *Calls on* the Zimbabwean authorities to do everything possible to ensure that Ms. Mamombe's rights are fully protected; and *hopes* that they will do their utmost to ensure that Ms. Mamombe will no longer be submitted to undue arrests and incarceration;
9. *Requests* the Secretary General to convey this decision to the parliamentary authorities, other relevant national authorities and independent institutions, the complainants and any third party likely to be in a position to supply relevant information;
10. *Requests* the Committee to continue examining this case and to report back to it in due course.



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Job Sikhala © Freddy Michael Masarirevu

ZWE-46 – Job Sikhala

Alleged human rights violations

- ✓ Arbitrary arrest and detention
- ✓ Inhumane conditions of detention
- ✓ Lack of due process in proceedings against parliamentarians
- ✓ Lack of due process at the investigation stage
- ✓ Lack of fair trial proceedings
- ✓ Excessive delays
- ✓ Violation of freedom of opinion and expression
- ✓ Violation of freedom of assembly and association
- ✓ Violation of freedom of movement
- ✓ Other acts obstructing the exercise of the parliamentary mandate

A. Summary of the case

Mr. Job Sikhala is a seasoned opposition parliamentarian who was arrested numerous times during his political career, even though he was never found guilty of committing a single offence. In a previous case before the IPU Committee on the Human Rights of Parliamentarians, the Committee concluded that the authorities had committed multiple violations against Mr. Sikhala and other opposition members of parliament, including arbitrary arrest and detention, torture and impunity.

According to the complainant, Mr. Sikhala was arrested on 14 June 2022 in connection with a speech he had made on 13 June at the funeral of Ms. Moreblessing Ali, a murdered opposition activist. The complainant stresses that Mr. Sikhala made the speech in his professional capacity as the grieving family's lawyer. According to the complainant, Mr. Sikhala's arrest and detention followed the posting of parts of the speech on social media, for which he was charged with the offence of incitement to commit public violence. While in prison, Mr. Sikhala was presented with the additional charge of defeating or obstructing the course of justice.

Case ZWE-46

Zimbabwe: Parliament affiliated to the IPU

Victim: Opposition member of parliament

Qualified complainant: Section I.1(d) of the Committee Procedure (Annex I)

Submission of complaint: August and September 2022

Recent IPU decision(s): - - -

Recent IPU Mission: September 2009

Recent Committee hearing: Hearing with the Speaker of the National Assembly at the 145th IPU Assembly (October 2022)

Recent follow-up:

- Communication(s) from the authorities:
- - -
- Communication from the complainant:
September 2022
- Communication to the authorities:
Letter to the Speaker of the National Assembly (September 2022),
- Communication to the complainant:
September 2022

The complainant further alleges that, immediately after the speech, senior politicians and government spokespersons, including the Permanent Secretary of Information, Mr. Ndabaningi Mangwana, made prejudicial statements presuming Mr. Sikhala's guilt and demanding his immediate arrest. According to the complainant, this in itself violated Mr. Sikhala's right to be presumed innocent until proven guilty.

In the following months, Mr. Sikhala remained in pretrial detention in the Chikurubi maximum security prison, as his multiple petitions for bail had been systematically rejected. The complainant claims that Mr. Sikhala's right to a fair trial has been violated, as he is being treated as a convicted criminal, despite being a sitting member of parliament with no prior convictions. Furthermore, the complainant stresses that there is no legal basis to detain Mr. Sikhala and insists that the courts are violating his right to bail as enshrined in the relevant sections of the Constitution and the Code of Criminal Procedure. The complainant also alleges that Mr. Sikhala faces inhumane prison conditions: he is reportedly shackled with leg irons at all times, forced to sleep on the bare floor and has repeatedly been denied medical care.

During the hearing with the Committee on the Human Rights of Parliamentarians at the 145th IPU Assembly, the Speaker of the National Assembly enquired as to why the Committee was not also examining the situation of parliamentarian Mr. Godfrey Sithole, who had been arrested together with Mr. Sikhala, to which the Committee responded that it could not examine cases of its own accord, but only on the basis of a complaint submitted by a qualified complainant, which was not the case in Mr. Sithole's situation.

B. Decision

The Governing Council of the Inter-Parliamentary Union

1. *Notes* that the complaint concerning Mr. Job Sikhala is admissible, considering that the complaint: (i) was submitted in due form by a complainant qualified under Section I.1(d) of the Procedure for the examination and treatment of complaints (Annex I of the Revised Rules and Practices of the Committee on the Human Rights of Parliamentarians); (ii) concerns a member of parliament at the time of the initial allegations; concerns allegations of arbitrary arrest and detention, inhumane conditions of detention, lack of due process in proceedings against parliamentarians, lack of due process at the investigation stage, lack of fair trial proceedings, excessive delays, violation of freedom of opinion and expression, violation of freedom of assembly and association, violation of freedom of movement, and other acts obstructing the exercise of the parliamentary mandate, allegations that fall within the Committee's mandate;
2. *Thanks* the Speaker of the National Assembly of Zimbabwe for the information, including legal documents, provided at a hearing with the IPU Committee on the Human Rights of Parliamentarians during the 145th IPU Assembly in Kigali, and for his assurance that the Committee is welcome to visit Zimbabwe and meet with all relevant parties; *takes note* of the Speaker's ongoing commitment to making arrangements with the Ministry of Justice to facilitate the organization of the mission in Zimbabwe; *looks forward* to receiving information on the specifics of the mission soon;
3. *Is deeply concerned* that Mr. Sikhala has been held in Chikurubi maximum security prison on remand since his arrest on 14 June 2022, his applications for bail having been denied on four occasions; *fails to understand* how his detention in a maximum security prison could possibly be justified; *is alarmed* by allegations that Mr. Sikhala is being held in inhumane conditions, with reports that he is shackled with leg irons at all times and forced to sleep on the bare floor; *fails to see* the legal basis for his prolonged incarceration and the excessive delays in his trial, which is scheduled to begin four months from his initial arrest; *is particularly concerned* by these different allegations, bearing in mind the findings of the Committee on the Human Rights of Parliamentarians, in an earlier case, that he had been subjected to arbitrary arrest and detention and torture; *calls on* the authorities to provisionally release Mr. Sikhala without delay so that he may return to his parliamentary duties without undue obstacles to his parliamentary mandate;
4. *Is concerned* by allegations of the violation of the right to a fair trial and maladministration of justice raised by the complainant, including the allegation that the trial is politically motivated, which would appear to be directly borne out by public statements reportedly made by certain executive authorities; *fails to understand* the factual basis for the arrest of Mr. Sikhala on

charges of inciting public violence and obstruction of justice in relation to a speech he had made in his capacity as the lawyer of a family of a murdered opposition activist; *wishes* to receive further information on this point from the authorities; and *requests* the parliamentary authorities to help make available a comprehensive transcript of the relevant statement(s) made by Mr. Sikhala that underpin the charges;

5. *Stresses* that, notwithstanding considerations of the separation of powers, the parliament of Zimbabwe can look into such allegations by virtue of its oversight function, as reflected in Article 119 of the Constitution of Zimbabwe; *looks forward* to hearing from the parliamentary authorities on this point;
6. *Decides* to send a trial observer to the criminal proceedings, with a view to gathering information and reporting on how the fundamental human rights of Mr. Sikhala are being respected in the case at hand;
7. *Requests* the Secretary General to convey this decision to the parliamentary authorities and other relevant national authorities, the complainant and any interested third party likely to be in a position to supply relevant information to assist the Committee in its work;
8. *Requests* the Committee to continue examining this case and to report back to it in due course.