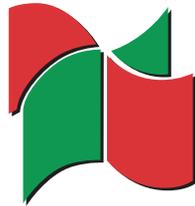




# STATE OF HUMAN RIGHTS REPORT 2019



Zimbabwe  
**HUMAN RIGHTS**  
NGO Forum



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**HUMAN RIGHTS**  
NGO Forum

**STATE OF HUMAN  
RIGHTS REPORT  
2019**

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## ABOUT THE FORUM

The Zimbabwe Human Rights NGO Forum (the Forum) is a coalition of 20 human rights organisations working towards the realisation of a society that respects all human rights in Zimbabwe.

### MEMBERS OF THE FORUM

- Amnesty International-Zimbabwe (AI- Z)
- Catholic Commission for Justice and Peace – Zimbabwe (CCJP- Z)
- Civic Education Network (CIVNET)
- Counselling Services Unit (CSU)
- Gays and Lesbians of Zimbabwe (GALZ)
- Justice for Children (JC)
- Legal Resources Foundation (LRF)
- Media Institute of Southern Africa (MISA)
- Media Monitors (MM)
- Research and Advocacy Unit (RAU)
- Transparency International-Zimbabwe (TI- Z)
- VERITAS
- Women of Zimbabwe Arise (WOZA)
- Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender (ZACRO)
- Zimbabwe Association of Doctors for Human Rights (ZADHR)
- Zimbabwe Civic Education Trust (ZIMCET)
- Zimbabwe Human Rights Association (ZIMRIGHTS)
- Zimbabwe Lawyers for Human Rights (ZLHR)
- Zimbabwe Peace Project (ZPP)
- Zimbabwe Women Lawyers Association (ZWLA)

### ACKNOWLEDGEMENTS

The Forum acknowledges the assistance it received from its friends and partners in compiling this report. Members of the Forum and other organisations not part of the Forum participated in the provision of data for this report. The Forum is indebted to several individuals who gave testimonies regarding their personal experiences during 2019, as well as information about what they witnessed with regards to human rights conditions in the country. These accounts are captured throughout the report. The Forum applauds the Secretariat for effectively managing and facilitating the compilation and production of this report. This work would not have been possible without the essential support from our development partners who generously invest in human rights for the dignity of humanity.

# FOREWORD

The year 2019 started on a dreadful note for human rights in Zimbabwe and will infamously stick out as one of the worst years in the history of the country due to the deplorable human rights situation experienced throughout the year. The year was characterised by the violation of socio-economic and political rights of citizens through both overt and covert violence.

In January, citizens protested en masse against the sudden increase in fuel prices. The State responded by brutally cracking down on the protests resulting in at least 17 cases of extrajudicial killings at the hands of the army and the police. Hundreds of people were also arrested, detained and sentenced to lengthy prison sentences without adherence to due process of law. Women, children, older people, and people living with disabilities were not spared the excessive use of force by the State in its desperate attempts to quell the protests. The State went a step further by shutting down the internet throughout Zimbabwe violating the fundamental rights to access to information and freedom of speech. In retrospect, the internet shutdown was another callous attempt to hide the widespread assault, torture and rape of innocent civilians.

After the January protests, the State went on to target human rights defenders, government critics, and political activists. The efforts of human rights defenders to champion rights were met with a lot of resistance from State agents. The resistance was characterised by arbitrary arrests of human rights defenders under trumped-up charges of seeking to subvert a constitutionally elected government. In this regard, the Forum documented 11 such cases in which human rights defenders were dragged to court for allegedly plotting to overthrow the government.

Apart from Human Rights Defenders, the State also persecuted anyone who stood up against injustices. Political activists, leaders of labour unions, and even comedians, all felt the wrath of the State. Abductions and torture were used to silence the perceived dissenting voices. In total, the Forum documented 67 cases of abductions and torture of perceived government critics. It is deplorable that Zimbabweans trying to earn a living like comedian Samantha Kureva (known as Gonyeti) were also persecuted and subjected to abduction and torture, including being forced to drink raw sewage water. Civil society organisations were also targeted mainly through the unlawful request of memorandums of understanding by district co-ordinators. Leaders of civil society organisations also reported increased surveillance to a point where it was difficult to assist and work freely in communities.

In August 2019, with the increasing protests driven by rising poverty and economic difficulties, there was a breakdown in the rule of law with suspected state agents going on an abductions spree and police brutality rising to unprecedented levels. Unarmed civilians peacefully demonstrating in Harare were brutally assaulted in full view of the world. The State-sponsored brutality did not end in Harare, there were arrests, torture and assault of citizens cases were also witnessed in Bulawayo, Mutare and Gweru. During the month of August alone, 124 arrests, 18 abductions and torture and 49 assaults were documented nationally.

Apart from incidents of physical violence and torture, citizens also suffered covert violence mainly driven by the deteriorating economy which affected the quality of life for citizens. Price increases resulted in starvation which affected the majority of citizens in town and rural areas.

During this period, cases of politicisation of food and agricultural aid also increased, further subjecting citizens to abject poverty and starvation. Government doctors embarked on a massive stay-away which lasted for over 100 days. The doctors cited lack of adequate equipment and incapacitation which the government ignored and failed to address. People could not get medical attention amidst rising cases of waterborne diseases in Harare and Bulawayo resulting from poor service delivery. The State instead, mounted attacks on doctors who were raising legitimate concerns on the state of public hospitals.

Two special mandates of the United Nations, the special rapporteur on the rights to freedom of assembly and the special rapporteur on the right to food, visited the country in 2019. Their preliminary reports confirmed the unprecedented violations of human rights in Zimbabwe. The special rapporteur on the right to food rightfully pointed out that more than half of our population is facing hunger and starvation. The special rapporteur on the rights to freedom of assembly also noted that the involvement of the military in civilian affairs contradicts the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, as they provide that military forces must only be used in exceptional circumstances and only if absolutely necessary.

Through this report, the Forum proposes key recommendations to redress the human rights situation in Zimbabwe. The Forum further makes recommendations on the need for transparency and accountability as the basis for eradicating impunity to effectively deal with cycles of violence in the country. The Forum reiterates its calls for the respect and protection of human rights by the State as a starting point to redress past violations.

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## ACRONYMS

The following abbreviations and acronyms are used in this report:

ACHPR	African Charter on Human and Peoples' Rights
ARCWC	African Charter on the Rights and Welfare of the Child
ARTUZ	Amalgamated Rural Teachers' Union of Zimbabwe
BAZ	Broadcasting Authority of Zimbabwe
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBD	Central Business District
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
COSMO	Conservation Society of Monavale
CPEA	Criminal Procedure and Evidence Act
CWA	Community Water Alliance
DZT	Deaf Zimbabwe Trust
EMA	Environmental Management Act
FDI	Foreign Direct Investment
GBV	Gender-based Violence
GDP	Gross Domestic Product
HWT	Harare Wetlands Trust
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
IMF	International Monetary Fund
IMMT	Intermediated Money Transaction Tax
JC	Justice for Children
JSC	Judicial Service Commission
LGBTQIA	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual
MDCA	Movement for Democratic Change Alliance
MISA	Media Institute of Southern Africa Zimbabwe
MPOA	Maintenance of Peace and Order Act [Chapter 11:23]
NASCOH	National Association of Societies for the Care of the Handicapped
NCA	National Constitutional Assembly
NGOs	Non-Governmental Organisations

# ACRONYMS

The following abbreviations and acronyms are used in this report:

POLAD	Political Actors Dialogue
POSA	Public Order and Security Act [Chapter 11:17]
PWDs	Persons With Disabilities
RBZ	Reserve Bank of Zimbabwe
RTGS	Real Time Gross Settlement
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNICEF	United Nations Children’s Fund
UNPF	United Nations Population Fund
WALPE	Women’s Academy for Leadership and Political Excellence
WHO	World Health Organisation
YETT	Youth Empowerment and Transformation Trust
ZACC	Zimbabwe Anti-Corruption Commission
ZACRAS	Zimbabwe Association of Community Radio Stations
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZBC	Zimbabwe Broadcasting Authority
ZCTU	Zimbabwe Congress of Trade Unions
ZEC	Zimbabwe Electoral Commission
ZESN	Zimbabwe Election Support Network
ZGC	Zimbabwe Gender Commission
ZHRC	Zimbabwe Human Rights Commission
ZLHR	Zimbabwe Lawyers for Human Rights
ZIMSTATS	Zimbabwe National Statistics Agency
ZMC	Zimbabwe Media Commission
ZNA	Zimbabwe National Army
ZNCWC	Zimbabwe National Council for the Welfare of Children
ZRP	Zimbabwe Republic Police

## DEDICATION

*This report is dedicated to the memory of those who died as a result of excessive and disproportionate state force used against unarmed civilians. Our thoughts and prayers are with their families and loved ones.*



## EXECUTIVE SUMMARY

An analysis of some key governance, human rights, constitutionalism and rule of law publications reveals a gloomy picture of the year 2019 in Zimbabwe. Despite the ushering in of a “*new political dispensation*” in August 2018, touted as the Second Republic, Zimbabwe remained a case of the proverbial ‘*new wine in old bottles.*’ Zimbabwe continued to be burdened by bad governance and lack of respect for human rights, exacerbated by a virtually collapsed economy that negatively impacted the socio-economic situation of the general populace. During 2019 there was significant shrinking spaces for civic engagement and clampdown on dissenting voices. The following human rights challenges characterised the year under review:

- The continued violations of human rights characterised by arbitrary arrests, unjustified detentions, abductions and torture of government critics with impunity.
- Failure of what should be independent bodies of the State such as Parliament, the judiciary and independent constitutional commissions to provide checks and balances and to hold the executive arm of government accountable.
- Economic turmoil coupled by the State’s marginalisation and social exclusion of the majority of citizens from free participation in political and socio-economic affairs.
- Disregard of the rule of law and constitutionalism.
- State-led high-level corruption, opaque public financing and illicit loan contraction between political elites and public and private investors that left the nation burdened with a huge odious debt.

These factors cumulatively weighed down on the general citizenry and negatively impacted the enjoyment of human rights as provided for in the Constitution of Zimbabwe (established in 2013) and under international law. On paper, the constitutional framework together with the various binding international human rights instruments provide an array of fundamental rights and freedoms to the people of Zimbabwe. However, the actual realisation of these rights remained a challenge due to a number of factors including the very slow pace of aligning all laws to the constitution to ensure that all laws and regulations are consistent with the Constitution and do not stifle people’s rights and freedoms. For example, provisions in such laws as the Access to Information and Protection of Privacy Act [Chapter 10:27] (AIPPA), the Criminal Procedure and Evidence Act [Chapter 9:07] (CPEA) and the Criminal Law (Codification and Reform) Act [Chapter 9:23] (Criminal Code) remained part of the law even as they retained some provisions that are inconsistent with the Constitution. More worryingly, some laws were repealed in the guise of constitutional alignment to enact retrogressive and more oppressive laws. For example, the new

Maintenance of Peace and Order Act [Chapter 11: 23] (MPOA), gazetted on 16 November 2019, still retains some of the repressive and restrictive provisions that were in the repealed Public Order and Security Act [Chapter 11: 17] (POSA), the law it supposedly replaced to achieve constitutional compliance.

Elsewhere, the year 2019 saw the State pursuing unconstitutional policies and practices. The year got off to a bad start in so far as the enjoyment of rights is concerned. Following a stay-away and subsequent protests in the second week of January, triggered by a sharp increase in fuel prices, the Zimbabwe National Army (ZNA) and the Zimbabwe Republic Police (ZRP) carried out sustained and widespread attacks on civilians to quell the protests. From the ensuing combined interventions, the ZNA and the ZRP were reported to have been responsible for the death of at least 17 people, 17 cases of rape and sexual violence, 26 abductions, 80 gun-related injuries, 586 assault and torture cases, and 954 cases of arbitrary arrests and detentions among other human rights violations. To date, most of those responsible for these serious human rights violations have not been held accountable for their actions.

Overall, the problems of clamping down on the enjoyment of human rights and stifling of freedoms, arbitrary arrests, abductions and unlawful detentions targeting opposition political activists, civil society actors, labour activists and the general citizenry recurred throughout the year. These challenges were worsened by a poorly performing economy that continued to burden the populace and negatively affect the enjoyment of social and economic rights. It is therefore important that the State takes stock of the year 2019 in retrospect and embarks on corrective measures that strengthen the protection and promotion of fundamental human rights in line with its domestic and international obligations.

Below are some of the key recommendations:

- **Rights-based approach to maintenance of peace and order**  
The government must order the police and the army, when deployed to maintain law and order, not use excessive and unnecessary force. Those who violate human rights and policing standards and principles must be punished in accordance with the law. In the exceptional circumstances where the ZNA is required to assist the police in civilian policing, the legal process should be followed to the

The ZNA and the ZRP were reported to have been responsible for the death of at least

17

People,

17

Cases of rape and sexual violence,

26

Abductions,

80

Gun-related injuries,

586

Assault and torture cases,

954

Cases of arbitrary arrests and detentions among other human rights violations.

strict letter of the law with the President's authority to deploy the army unequivocally expressed. Members of the ZNA should carry out such civilian policing mandate, subject to police authority, with due regard to rights of citizens as provided for in the Constitution and other international instruments. A rights-based approach also calls for substantive institutional reforms which break the cycle of impunity. As part of security sector reforms, members of security sector should compulsorily be trained in human rights. For the purposes of justice and accountability, there is an urgent need for the establishment of the Independent Complaints Mechanism (ICM) as provided for under section 210 of the Zimbabwe Constitution.

- **Commitment towards upholding constitutionalism and human rights**

There is need for the government to adopt great political resolve to get the country back on track in terms of human rights protections in line with the Constitution and international human rights obligations and normative standards. It is recommended that, as a first step, the current administration must embrace a culture of constitutionalism, human rights and respect for the rule of law. To give effect to principles of constitutionalism and human rights, the government should ensure that subsidiary laws, particularly those enhancing human rights are urgently aligned with the Constitution.

- **Enhancing Human rights awareness**

It is important that the State leads human rights awareness initiatives as it is the primary duty bearer and custodian of the promotion and protection of all human rights. More resources should be directed towards such

initiatives that educate the people on their human rights entitlements. Other secondary actors such as non-governmental organisations (NGOs) should be allowed to play their supportive and complementary role to the State of spreading knowledge and awareness of human rights in Zimbabwe, without unnecessary restrictions.

- **Political will and impetus to address Zimbabwe's political and socio-economic fortunes**

The government should urgently address the myriad human rights challenges that can be traced back to the underlying problem of lack of political will to address root causes. These challenges have drowned the economy into an abyss, negatively impacting the population's standard of living. The political leadership must recommit to the values of good governance and improve the livelihoods of people.

- **Dialogue between political parties and other stakeholders**

All major political parties and other civic actors such as churches and labour unions should congregate and focus on national dialogue towards nation-building. Frank dialogue between the main political parties should include addressing issues such as violence perpetrated by the police and the military on unarmed citizens.

- **Expedite a rights-based law reform agenda**

Law reform should not be a "going-through-the-motions," half-hearted process that sometimes results in new laws that are worse than the old, or amendments that are not comprehensive or substantial enough to satisfy constitutional alignment requirements.

Conformity of the laws with the Constitution is imperative if government is to be viewed as committed to constitutionalism and respect for the rule of law. Findings from consultative meetings with stakeholders should be implemented and incorporated into the new laws or amendments thereof. Alignment of laws with the Constitution remains a critical and urgent process towards realisation of human rights and government should accelerate the law reform agenda.

- **Public finance management, transparency and accountability**

Transparency and accountability are two of the founding values in the Constitution. The Constitution demands of the State to expend public funds transparently, prudently, economically and effectively so as to ensure that public borrowing and all transactions involving the national debt are carried out transparently and in the best interests of Zimbabwe.<sup>1</sup> The government ought to handle its public finance management transparently and this can be achieved by giving effect to the right to access information.

- **Prioritising social-economic rights in budgeting, resource allocation, and funding**

The Constitution requires the State to take reasonable legislative, administrative, and other measures to achieve the progressive realisation of socio-economic rights such as the rights to health, education, food and water. The government should set its priorities by being mindful of its obligations to fulfil social and economic rights set out in the Constitution and in line with international targets in the

United Nations Sustainable Development Goals (SDGs) and other applicable human rights instruments. This entails making prudent and strategic budgetary, legislative and policy decisions that are people-centred and focussed on improving the socio-economic environment in the country.

- **Strengthening and supporting Independent Commissions Supporting Democracy**

The State should ensure that Constitutional Commissions are adequately resourced. In addition, the State should note various recommendations made by these Commissions and implement such recommendations fully. Further, the State should guarantee the independence of the Commission and not interfere with their operations in any way. The State and all institutions and agencies of government are obliged to adopt legislative and other measures to assist the independent Commissions and must protect their independence, impartiality, integrity and effectiveness.

- **Combatting Corruption**

The government should take a robust approach in its efforts to combat corruption that is rampant in the public and private sectors. It should not pursue what appears to be a “*catch and release*” strategy whereby the State arrests high ranking government officials on corruption charges but promptly releases them without bringing them to justice. Such strategies only contribute to the public losing confidence in government and its institutions. Corruption is deeply rooted in Zimbabwe; the

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1. Principles of public financial management, section 298 of the Constitution

State should introduce strong policies and laws in all sectors aimed at fighting corruption and should prosecute those accused of being corrupt.

- **Business and Human Rights**

The government should be vigilant when it comes to regulating the business sector. It should not leave the business community to perpetrate human rights abuses across the country with impunity. The government should craft policies to monitor business and ensure accountability when human rights abuses are committed. There can be no sustainable development without the observance and respect for basic human rights. As such, the State should be at the forefront when it comes to protecting people and monitoring business to ensure full compliance with the Constitution and the country's human rights and labour laws.

- **Women's Rights**

While the Constitution provides a robust framework for the protection of women's rights, the government should ensure that the constitutional provisions guaranteeing the

principle of equality and non-discrimination between men and women are implemented at all levels of society. The State should take all necessary measures to guarantee the effective implementation of the laws criminalising domestic violence and prohibiting discriminatory customary practices; strengthen support mechanisms for victims, including by strengthening a country-wide legal aid system; and sustaining an awareness-raising campaign for the general populace and training for all law enforcement personnel.

The Zimbabwe Gender Commission (ZGC) should lead this work by increasing efforts to ensure women's equal access to employment and decision-making positions, including by strengthening measures to combat sexual harassment in the workplace; and implementing quotas in the representation of women in political positions. In line with the right to health, the State must ensure women's access to health services, including obstetric care and family planning; and ensure access to sexual and reproductive health education.

*The State must adopt all necessary measures to reform or eliminate discriminatory cultural practices, including through raising awareness programmes targeting women and men in society including religious, traditional and community leaders.*

A photograph of a stone wall under construction, with large, irregular stones being laid. The image is overlaid with a semi-transparent green filter. A vertical white line is positioned to the left of the text.

# PART 1

## LAYING THE FOUNDATION

# 01

## CHAPTER 1 INTRODUCTION, METHODOLOGY AND OVERVIEW

### About the Report

This report presents the state of human rights in Zimbabwe in 2019. It gives an insight into some of the key events that transpired throughout the year under selected human rights themes, subheadings and indices which were considered the most relevant in evaluating the human rights situation in Zimbabwe. The report discusses the extent to which the State complied with its domestic and international human rights obligations and flags out some of the key challenges the country faced during 2019. The report highlights the human rights violations committed by various actors of Zimbabwean society and discusses the impact of those violations, accountability on the part of the perpetrators, if any, and aspects relating to the availability of legal remedies to victims. The report further discusses how the socio-economic and political environment in the country affected the human rights situation. The report is also forward-looking as it sets out some key recommendations on how the State can improve the enjoyment of human rights by all people in the country.



### Methodology

The report was compiled through the use of both qualitative and quantitative research methods. Most of the research primarily relied on the review and analysis of primary and secondary data produced by human rights organizations, civil society players, State institutions and government departments. The report relied on and distilled data and statistics from recognised domestic and international research institutions and think-tanks. A review of applicable domestic laws, international human rights instruments and mechanisms was conducted in order to benchmark them. Interviews with key human rights informants were carried out in order to gather first-hand information on the data acquired and used for this report and to also triangulate and check the veracity of the collected information.

## Overview

In his 26 August 2018 inauguration speech, following elections, President Emmerson Mnangagwa committed to upholding a culture of human rights, constitutionalism and the rule of law. In the same speech, he expressed regret over the August 2018 shooting incident stating that the, “*unfortunate incident of violence that reared its ugly head on 1st August 2018 was regrettable and most unacceptable.*” He undertook to bring finality to the matter by setting up a commission to investigate the post-election violence.

What emerges from this report is that, despite the good intentions that Mnangagwa expressed in his inauguration speech, he went on to preside over a new government that in many ways failed to break with the past and continued to witness widespread human rights violations in 2019. In January 2019, a stay-away and nation-wide protests triggered by sharp fuel price increases were met with excessive force and heavy-handedness by the army and the police who committed serious human rights violations including extra-judicial killings, torture, rape and assaults. On the economic front, government promulgated several statutory instruments as part of measures to stabilize the volatile economy. Through Statutory Instrument (SI) 33 of 2019, government abandoned the 1:1 valuation of the Real-Time Gross Settlement System (RTGS) dollar against the US dollar, a move that was met with some legal challenges on the basis that the law was unconstitutional because it violated property rights. Economic and legal commentators were critical of the legislative measures chosen to address the obtaining economic challenges. From an economic point of view, the laws were criticized for introducing further confusion to the monetary and fiscal space and worsening an already unstable economic environment. From a legal viewpoint, it was argued that the legal instruments were both procedurally and substantively unconstitutional.

Elsewhere, the Zimbabwean media space has been characterized by the monopoly of the State-controlled media houses, such as the Zimbabwe Broadcasting Corporation (ZBC) and the Zimbabwe Newspapers Group (Zimpapers) accused of biased coverage of national events and issues. The issue of freedom of expression and media rights came to the fore in a court challenge brought by the Firinne Trust before the High Court against the two media houses’ biased reportage and failure to uphold their constitutional mandates.<sup>2</sup> In determining the case, Justice Mafusire ordered ZBC and Zimpapers to ensure their communications are not biased in favour of one political party or its candidates and that they exercise impartiality and independence in their duties. The judgment declared that both ZBC and Zimpapers had breached section 61 of the Constitution in that they had not been impartial and

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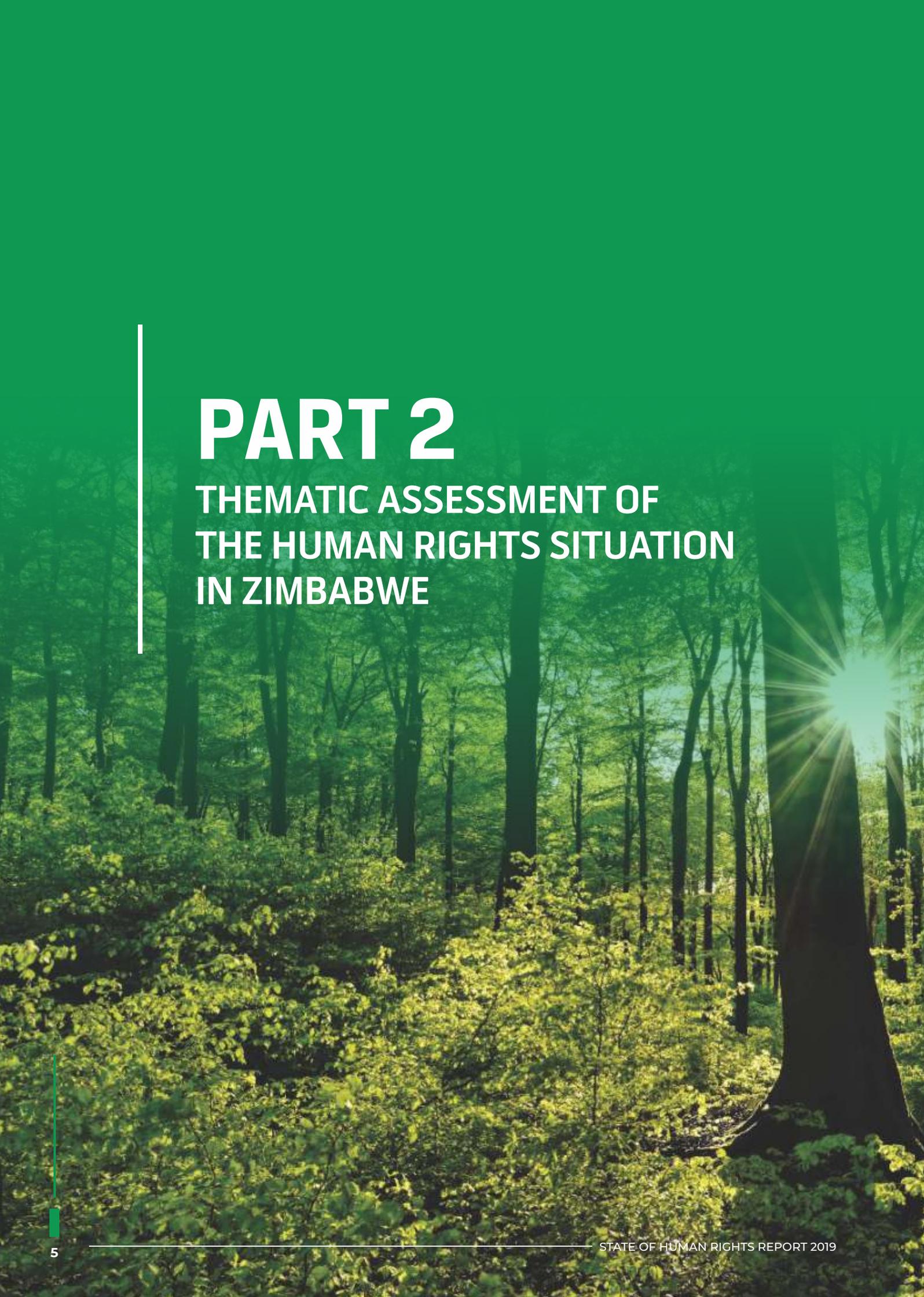
<sup>2</sup>. *Firinne Trust & 2 Others vs. Zimbabwe Broadcast Corporation & Others*, HMA23/19

free to determine independently the editorial content of their broadcasts or other communication. The media houses had also failed to afford a fair opportunity for the presentation of divergent views and dissenting opinions. Whilst the judgment represented a victory for media freedom, it still remains to be seen whether the judgment will be enforced and actually adhered to in practice.

While the Constitution entrenches the rights of persons living with disabilities, their actual realisation remained a mirage due to the absence of enabling legislation, policies and practice. Young women with disabilities lamented the lack of impetus from the government to make sure that the country's education system was inclusive to accommodate persons with disabilities in fulfilment of their basic rights. The country remains far from achieving key international human rights targets as the State keeps suppressing many of the freedoms guaranteed by the Constitution.

The year 2019 also saw half-hearted attempts by the legislature at law reform and constitutional alignment of archaic pieces of legislation such as POSA. The new Maintenance of Peace and Order Act [Chapter 11:23] that replaced Public Order and Security Act [Chapter 11:17] still retains restrictive and unconstitutional provisions that are, in some ways more repressive than the law it replaced. Generally, there remains political unwillingness by the legislature to align laws with the Constitution and the furthering of critical human rights protections.

On the socio-economic front, the State, bearing the constitutional mandate to look after its citizens, failed to put measures in place to address poverty and unemployment as per the promises made by ZANU PF - the winning political party during the 2018 harmonized elections. During the course of the year, the Zimbabwe Anti-Corruption Commission (ZACC) was also accused of applying a '*catch and release*' strategy on high profile cases. Instead of curbing corruption in the country as per its constitutional mandate, the Commission appeared complicit as it failed to take decisive action with the myriad cases it was presented with. As part of measures to reconnect Zimbabwe's economy with the global financial spaces, government pursued diplomatic and economic overtures with the West and lobbied for the uplifting of economic sanctions. Unfortunately, the State failed to meet some of the set preconditions for the lifting of the sanctions, which included the protection of fundamental human rights in the country. This report will present the findings on the human rights situation in detail as observed in 2019.



# PART 2

## THEMATIC ASSESSMENT OF THE HUMAN RIGHTS SITUATION IN ZIMBABWE

# 02

## CHAPTER 2 THE JANUARY 2019 PROTESTS

On 12 January 2019, President Emmerson Mnangagwa announced a sharp increase in fuel prices that was to take effect from midnight of the same day. With the general Zimbabwean populace already feeling the adverse impact of a weakening economy, this move was not well received. In response to the increase, labour movements and other civic groups called for a three-day stay-away to protest the arbitrary move announced by president Mnangagwa. The stay-away evolved into protests in various suburbs in Harare and Chitungwiza as well as in some parts of Bulawayo and Kadoma, which saw the deployment of members of the army and the police who used excessive force in attempts to quell the protests.

From 14 January to 5 February 2019, cases of extra-judicial killings, rapes, assaults, arbitrary arrests, destruction of property and other human rights violations were reported across the country.<sup>3</sup> The unprecedented extent, intensity and severity of the response by the State apparatus has given rise to serious questions on whether some of the abuses can be classified as crimes against humanity. During the same time, the State arbitrarily shut down internet access and only restored it after a High Court ruling that declared the internet shutdown illegal.



3. Zimbabwe Human Rights NGO Forum: *On the days of darkness in Zimbabwe, An Updated Report on the Human Rights Violations Committed between 14 January, 2019 to 5 February, 2019*, available at <http://kubatana.net/2019/02/07/on-the-days-of-darkness-in-zimbabwe-an-updated-report-on-the-human-rights-violations-committed-between-14-january-2019-to-5-february-2019/>

## Extra-judicial Killings

To crush and suppress the protests, the government deployed members of the military and the police on to the streets and in some residential suburbs considered epicentres of the protests. The security forces unleashed a wave of violence over the two-week period, which resulted in the death of at least 17 people.<sup>4</sup> The security services used excessive force, including live ammunition, resulting in the deaths of unarmed citizens. These human rights violations by members of the security services were strongly condemned by several domestic and international human rights bodies. In its report on the disturbances, the Zimbabwe Human Rights Commission (ZHRC) made the following observations:<sup>5</sup>

*“The Commission remains concerned by the use of the military to control law and order in the country. After the events of August 1 2018, it was to be expected that the country would have learnt something and would in future do things differently. From reports received to date, indications are that more citizens have died during the current protests than those who died during the August 1, 2018 protests.”*

The repetitive nature of the excessive use of force with fatal consequences is most concerning as it shows that the government did not learn lessons from the violence that ensued in the aftermath of the 2018 elections. Below are some of the documented cases relating to the January extra-judicial killings.

### Specific Cases

- A 22-year-old young man, TC died as a result of gunshots by the police and was buried on Saturday 19 January 2019. A postmortem report read to family members by the authorities confirmed the cause of death as gunshots. Eyewitnesses confirmed that the young man was shot by police near Makoni Police station in Chitungwiza.

4. *Id.*

5. ZHRC report: *Monitoring Report in the Aftermath of the 14 January to 16 January 2019 “Stay Away” and Subsequent Disturbances*, page 9 <https://www.zhrc.org.zw/monitoring-report-in-the-aftermath-of-the-14-january-to-16-january-2019-stay-away-and-subsequent-disturbances>

- In Mbare, a high-density suburb in Harare, eyewitnesses and family members said that police and soldiers fatally shot TN, a 36-year-old driver, in the neck as he stood in front of his house on 15 January. TN was not part of the protestors.
- IM of Warren Park, Harare died from injuries sustained due to severe and brutal beatings by security forces as witnessed by his relatives. The security forces covered up their hand in his death by reportedly claiming that he was mugged.
- On 14 January, in Kadoma, security forces shot TMM, in the heart, killing him instantly, according to a relative.
- On 15 January, a policeman fatally shot SN, from Marondera city east of Harare, according to a family member.
- TBM, Harare, died on 30 January as a result of gunshot injuries.
- TN, a 54-year old woman from Epworth in Harare was run over by an army truck in unclear circumstances and was killed.
- NN from Mutare died on the 1 of February, succumbing to injuries after being assaulted by soldiers on 22 of January.

## Rape and Sexual Assault

During the same period, disturbing reports of rape cases implicating soldiers were also documented. From the documented reports, members of the army were accused of committing 16 rapes and one sexual abuse attack.<sup>6</sup> Such human rights violations have no place in a democratic society and the State must ensure that thorough investigations are done and perpetrators are punished by law.

### Specific Cases

- Eight women from Hopley, Southlea Park, and Epworth in Harare province told Human Rights Watch (HRW) in separate interviews that they were raped by uniformed and armed soldiers and police, some of the perpetrators concealing their identities with masks.
- A 46-year-old woman said nine armed men, six in army uniform, came to her house in Epworth on January 15 at about 9 pm. According to a Human Rights Watch (HRW) report, *“two soldiers raped her without condoms in front of her teenage son. At the local police station, the police refused to record her complaint, telling her: “These things happen, these things are happening all over the country, so we cannot receive your report or open a police case docket.”*

6. Zimbabwe Human Rights NGO Forum report, note 1, page 6.

- In another incident, on January 17, a group of soldiers broke into another woman's house in Hopley and two soldiers took turns raping her without using condoms as her three children watched.

## Torture and Assault

From the reports on the January protests, it is clear that members of the military and the police were at the centre of the majority of the documented cases of torture and assault. In the wake of the protests, the Zimbabwe Human Rights NGO Forum recorded at least 586 cases of torture and assault mainly in Harare, Chitungwiza and Bulawayo.<sup>7</sup> The security agents used metal rods, sjamboks and button sticks to indiscriminately assault protestors and innocent civilians. In a number of cases, the army together with the police broke into private homes and indiscriminately assaulted residents. Some of the Harare suburbs that experienced indiscriminate door to door raids included Epworth, Dzivarasekwa and Mabvuku.<sup>8</sup> The army and the police also fired live ammunition to quell the protests, with Bulawayo, and Harare being the main areas targeted.<sup>9</sup> In some instances, the police deployed dogs that savagely mauled people.

Within the Harare CBD, some street vendors going about their daily business were rounded up by police, severely beaten and then later dumped at different police stations.<sup>10</sup> The nature of torture and assault of ordinary citizen was quite systematic and showed levels of pre-meditated intention on the part of the security services. In Bulawayo, more than 50 homes in the western suburbs were pounced on by security agents and scores of civilians were severely beaten while in their own homes. In Mabutweni specifically, males were forced to lie down on their stomachs and were severely assaulted by members of the army using fan belts and baton sticks. The ZHRC observed that the torture inflicted on the masses by the police was systematic.<sup>11</sup>

The Forum assisted 169 victims with regard to human rights abuses they suffered in January 2019, including cases of women who lost their husbands and children who lost their fathers in January clampdown on protests. These cases are now at different stages in the High Court of Zimbabwe. Impunity on human rights violations by security services is the root cause of the continuation of these violations. The Forum is still instituting legal proceedings on additional cases of violations that occurred in January and these are against the Minister of Defense, Security and War Veterans

7. *Id.* page 7

8. *Id.* page 11

9. *Id.* page 7

10. *Id.*

11. ZHRC: *Monitoring report in the Aftermath of the 14 January to 16 January 2019 "Stay Away" and subsequent disturbances*, Zimbabwe Human Rights Commission, January 28, 2019, page 6, available at <https://www.zhrc.org.zw/monitoring-report-in-the-aftermath-of-the-14-january-to-16-january-2019-stay-away-and-subsequent-disturbances/>

and the Commander of the Zimbabwe Defense Forces. Cases against the ZRP have since prescribed in terms of section 70 of the Police Act [Chapter 11:10] which requires cases against the ZRP to commence within eight months after the cause of action arises. The time constraints imposed by this law acts against the majority of victims who failed to bring their cases due to ignorance of law. Further, section 5 of the State Liabilities Act [Chapter 8:14] does not allow attachment of State assets to satisfy a court judgment. As a result, even after successful litigation efforts on behalf of the victim, the State can just ignore the judgment and victims are left without a remedy and compensation for the damage suffered. Such laws allow impunity and shield the government from accountability on human rights violations.

### Specific Cases

- In Chitungwiza scores of people were assaulted by uniformed soldiers. One of them tried to escape by jumping a hospital fence and sustained cuts from the razor wire.
- There were soldiers patrolling the suburbs in Harare and Bulawayo, knocking on doors of private dwellings in the evening. They would target and beat up every male at each homestead.
- In Epworth, eight people were severely injured after being beaten by uniformed soldiers. They were in need of medical attention but there was no transport for them to access medial facilities.
- In Chinhoyi, 15 people were seriously injured after they were assaulted by police and soldiers.

### Arbitrary Arrests and Abductions

During the same period, the police arbitrarily arrested and detained people suspected of taking part in the protests. There were at least 26 cases of abductions of civilians by suspected State agents.<sup>12</sup> About 954 arbitrary arrests were recorded across the country during the clampdown by the State, with the majority of the cases being in Harare and Bulawayo.<sup>13</sup> The police were mainly targeting trade unions members, human rights activists, street vendors and members of the general public who were rounded up and subsequently dumped at police stations. Prominent political activists and suspected civic leaders of the protests such as Pastor Evan Mawarire, and ZCTU president Peter Mutasa, were also arrested by the police. This was a method devised to quell the increasing unrest that had gripped the country following the announcement of the steep fuel hikes by President Mnangagwa.

12. Zimbabwe Human Rights NGO Forum: *On the days of darkness in Zimbabwe, An Updated Report on the Human Rights Violations Committed between 14 January, 2019 to 5 February, 2019*, page 6 available at <http://www.hrforumzim.org/wp-content/uploads/2019/02/Shutdown-Atrocities-Report-6-February-2019.pdf>

13. *Id.* Page 9

## Specific Cases

- On 16 January 2019, RJ was abducted by State security agents at Progress Shopping Centre in Ward 12, Bindura North. He was taken away to a secluded place where he was assaulted before being dumped near his home. He had been condemning the President for a failed economy.<sup>14</sup>
- On 17 January, JN was abducted from his residential place in Chitungwiza. The circumstances are that six men, two of which were wearing army uniforms seized the victim from his place of residence in a white pick-up truck. His current whereabouts are unknown.
- There were cases of dragnet arrests/detention by the police working in common purpose with the military that resulted in several people being detained with no clear legal process followed. For instance, on 21 January 2019 members of the security services arbitrarily raided a treatment facility where they arrested, assaulted and detained 28 patients who were receiving treatment. The 28 were later released by the police after spending the entire day at Harare Central Police Station without charge.
- Mass arrests of groups of as big as 60 people, who would have been rounded by the police either from their homes or at marketplaces, were carried out.
- The police made use of a database to arrest anyone who they would have profiled and arrested before in relation to political activity. As a result, many opposition activists who had been arrested before, were also targeted and arrested, even when they were not involved in the protests.

## Violence Against Children

Among those arrested, detained and tried after the January 2019 protests were children aged between 9 and 17 years. Although some children participated in the January 2019 protests as perpetrators of violence, children were victims of economic and political decay whether they found themselves willingly participating in the skirmishes or they were caught in the crossfire. Several rights of children were affected, among them arrests and detention that violated the law, the rights to assembly and education, freedom of movement, access to health care due to the closure of facilities, exposure to violence, and separation of children from their parents. Children were physically abused as the police were beating people randomly and throwing teargas indiscriminately to disperse crowds. The repercussions for children were beyond physical injuries and psychological trauma. Belligerent behaviour and attitudes were inculcated in children, with some children getting desensitised to violence.<sup>15</sup>

14. *Quarterly Political and Human Rights Violations Report – January to March 2019, Zimbabwe Human Rights NGO Forum*

15. *Zimbabwe Human Rights NGO Forum (Nov 2019): 'Hear them cry' An Analysis of State Violence Against Children During the January 2019 Protests available at <http://www.hrforumzim.org/news/hear-them-cry/>*

## Destruction of Property

In some areas, the protests turned violent with some protesters destroying property, in violation of the right to property and privacy as embedded in the Constitution. For example, in Harare CBD and some parts of Chitungwiza, it was reported that there was looting of retail shops, torching of vehicles by angry protesters, and the burning of part of a police station.<sup>16</sup> There were reports of running battles between the protesters and the police which resulted in the tear-gassing of private residences by the police.

In its report on the disturbances, the ZHRC stated that:

*“At Makoni Police Station, the ZHRC noted that from the entrance, the guard rooms of the police station had been set on fire and the windows had been broken by protesters. At least 6 cars and 3 buses in the yard of the police station were burnt. An additional 6 cars had been vandalized with most of the windscreens and windows shattered.”<sup>17</sup>*

## Harassment, Threats and Intimidation

The army and police continuously harassed, intimidated and threatened innocent civilians who would be going on with their private business during the period of the disturbances. Ordinarily, members of the army are supposed to stay in their designated army barracks and not be found interfering with civilian peace. Following their deployment, members of the army sent chilling warnings to civilians as they patrolled in and around Harare suburbs. This was a clear example of State-sanctioned harassment and intimidation. Though there were no officially recorded a number of cases of harassment and threats, it is reported that of all the violations perpetrated over this period, the cases of harassment of innocent civilians constituted the bulk of the human rights abuses. Aided by the total social media blackout, civilians were terrified to even leave their homes since they were unaware of events happening outside the walls of their houses. During the same time, in what amounted to psychological torture, baton stick-wielding anti-riot police patrolled the streets whilst army helicopters hovered above in a chilling demonstration of force by the State.

16. ZHRC: Monitoring report in the Aftermath of the 14 January to 16 January 2019 “Stay Away” and subsequent disturbances, Zimbabwe Human Rights Commission, January 28, 2019, page 3, available at <https://www.zhrc.org.zw/monitoring-report-in-the-aftermath-of-the-14-january-to-16-january-2019-stay-away-and-subsequent-disturbances/>  
17. *Id.*

Several human rights defenders' such as lawyers from Zimbabwe Lawyers for Human Rights (ZLHR) and doctors from Zimbabwe Association of Doctors for Human Rights (ZADHR) received threats from suspected State security agents.

A shadowy organization calling itself the Citizens' Forum made some baseless and spurious allegations against ZLHR, accusing the organization of organizing the protests and being responsible for causing deaths of people and loss of property. The Citizens' Forum followed this up by visiting ZLHRs' head office in Harare on 7 February 2019 and handed in a petition, giving ZLHR an ultimatum to respond to its demands within 48 hours failing which it would besiege the organisation's offices.<sup>18</sup> However, the Citizen's Forum did not besiege the ZLHR offices as indicated in their ultimatum.

## **Invasion of Privacy**

In violation of the constitutional protection to the right to privacy, the armed forces and other security agencies carried out unlawful raids on private homes. The door-to-door raids on the homes were without warrants or justifiable cause. The main aim was to instil fear and intimidate the victims. This unacceptable invasion of privacy was unwarranted and a clear human rights violation. Civilians were subjected to body searches and some individuals were assaulted in the process. During these searches by the police and the army, some people reported that their valuable items were stolen. The wanton breaking down of doors and windows during the raids was also reported especially in Harare's high-density suburbs such as Kuwadzana, actions that violate section 57 of the Constitution that entrenches the right to privacy.

## **Freedom of Movement**

After the announcement of the stay-away by civil groups and trade union movements, the police and members of the army threatened the generality of the citizenry not to move from one point to another. Many people had their movement inhibited because of the warnings from the security forces. In areas such as Highfields, Epworth and Glen Norah in Harare, members of the public burned tyres on the roads, thereby unlawfully hindering free movement of traffic. Some demonstrators in Epworth set up barricades by rolling boulders onto the roads hindering the free movement of traffic. This was also the case in Bulawayo where minibuses heading into the city were impeded from plying their normal routes because of the burning tyres and stones blocking roads. Between mid and the end of January, the army and the police erected roadblocks across the country, conducting a heavy-handed stop-and-search operation, making it virtually impossible for civilians to move freely.

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*18. See the ZLHR Statement: Attacks on human rights defenders unwarranted, 28 February 2019, available <http://kubatana.net/2019/02/28/attacks-on-human-rights-defenders-unwarranted/>*

## Freedom of Expression: The Internet Blackout

On 15 January 2019, in a bid to quell the spread of the protests, government through the State Security Minister, Owen Ncube, ordered a national shut down of the internet. The Minister issued a warrant purportedly in terms of the Interception of Communications Act [Chapter 10: 20], to suspend all internet services across all networks. The directive not only violated the right to freedom of expression, it also violated the people's rights to access to information and media freedom. While a part of the country's population utilized the Virtual Personal Networks (VPNs) to circumvent the shutdown of internet services and maintain an online presence, the majority of the citizens could not access internet services. Businesses and ordinary civilians were severely affected by the blackout. A legal challenge brought before the High Court, challenging the arbitrary shutting down of internet services saw the High Court in Harare declaring the internet shutdown illegal and ordering government to restore full internet services across the country.



# 03

## CHAPTER 3 GOVERNANCE

President Mnangagwa made several policy statements focussed on enhancing good governance in his inauguration speech in August 2018. He committed to leading a government that embraced constitutionalism, entrenched the rule of law, and respected the principle of separation of powers and the independence of the judiciary. However, the year 2019 was characterised by a dearth of action on the numerous promises made especially on the key indices stated above. This was due, in part, to the government's lack of impetus to implement necessary political reforms in line with constitutional and policy framework goals. For example, while Chapter 14 of the Constitution recognises devolution as a form of government to be implemented, the State took lacklustre legislative, policy or administrative measures to achieve a decentralised and devolved State. There seems to be no political will to fulfil the constitutional ethos of a decentralised government, even as devolution seems to offer the best avenue to address the serious regional inequalities that persist among the ten provinces of Zimbabwe.



### Devolution

The Constitution section 3(2)(l) provides for the devolution and decentralisation of governmental power and functions as a principle of good governance which binds all State institutions. Chapter 14 of the Constitution also mandates the government to implement devolution of power and responsibilities to lower tiers of government in the country. In working towards devolution, the 2019 National Budget committed US\$ 310 million for devolution, of which US\$ 46 million was said to have already been disbursed for that cause.<sup>19</sup>

*19. See Hon. Prof. Mthuli Ncube the Minister of Finance & Economic Development's Budget Statement dated 22 November 2018 available here <https://www.parlzim.gov.zw/component/k2/2019-budget-speech>*

On the progressive front, the government managed to establish the office of the provincial and metropolitan coordinators responsible for the administration of provinces. In as much as the government committed millions of dollars towards devolution, inadequacies remained as more resources were certainly required to support a genuinely decentralised system of governance. It was also quite unfortunate that local authorities and provinces had little or no information regarding the resources needed to fully implement the devolution programs.

The duty to disseminate adequate information to local authorities on the modalities for decentralisation lies with the central government, and it was found wanting in that regard. The amendment to the Provincial Councils and Administration Act [Chapter 29:11] which seek to align the Act with the Constitution in as far as devolution principles are concerned dragged through the year and were incomplete when the year ended.

## Law Reform

Since the inception of the current constitutional dispensation in 2013, the government has in successive years, spoken of prioritizing the constitutional alignment agenda, but little has been done to achieve that, with 2019 being no exception. Of the few laws that were either amended or repealed, questions are raised on the quality of these laws in light of the applicable constitutional provisions. According to the Inter-ministerial Taskforce on the Alignment of Legislation to the Constitution (IMT) as of January 2020, 63 laws needed to be aligned, and of these 13 had been signed into law and 50 were still outstanding. Resultantly, alignment of laws with the Constitution remains work in progress.

Section 210 of the Constitution provides that an Act of Parliament must be enacted that provides an effective and independent complaints mechanism for receiving and investigating complaints of misconduct on the part of members of the security services from members of the public. This provision is meant to provide effective remedies by addressing cases of impropriety and abuse of power by members of the security services. Unfortunately, no subsidiary legislation has been established to date, to give effect to section 210 and a gap of alignment of laws with the Constitution remains. Given the documented cases of human rights violations perpetrated by the members of the security services in 2019, the urgent need for the enactment of a law that provides effective remedies to civilians against the security agents cannot be overemphasised. There is need for government to urgently address this gap in law by passing the necessary laws in accordance with the Constitution.

The Maintenance of Peace and Order Act was enacted in November 2019, replacing the much-criticised POSA. Unfortunately, the new law is a case of “*new wine in old bottles*” and in some areas the new legislation is potentially worse than the previous one to the extent it curtails fundamental human rights and freedoms enshrined in the Constitution.

The year 2019 also saw the deliberation on the Marriages Bill, a Bill meant to align Zimbabwe's marriage laws with the Constitution. Amongst other things, the Bill seeks to outlaw child marriages by raising the minimum marriage age to 18. The Bill is reformist insofar as it attempts to provide for the protection of women's proprietary interests regardless of their marital status. This is in sync with constitutional tenets of equal protection and benefit of the law. While it has been hailed as progressive in some respects in as far as it seeks to align marriage laws with the Constitution, the Bill has attracted controversy because of provisions that will allow a party to a civil marriage to simultaneously be in a civil partnership. Critics primarily challenged this provision on the basis that it potentially violates the sanctity of the marriage institution and may end up leading to unintended impact on inheritance rights. By end of year, the Bill was still being deliberated in Parliament.

Overall, it is hoped that the process of alignment of laws as part of the law reform agenda is accelerated given that the Constitution turned six years old in 2019. It is imperative that all the country's laws are *intra vires* the Constitution.

## Corruption

The abuse of entrusted power for private gain by public officials and the political elite or those connected to political power remains one of the cancers corroding the fabric of the Zimbabwean society. Zimbabwe's economy has been bled by corrupt practices, exacerbated by the failure of those in power to take decisive action to nip corruption in the bud.



Resultantly corruption remains a deadly cancer crippling the country's economy. Corruption is a serious institutional problem, deeply rooted in the system of governance of the country. Like in previous years, President Mnangagwa and other senior officials continued to speak against corruption, but no concrete action was taken to curb the rot. The effects of corruption were far-reaching especially in a year where the economic burden took its toll on the citizenry. The State failed to decisively tackle corruption despite having the Zimbabwe Anti-Corruption Commission (ZACC) - a constitutional body specifically established to fight corruption. In early 2019, all ZACC commissioners tendered their letters of resignation to the President. Their resignation en-masse raised questions on whether the resignations had been done voluntarily. There were allegations that the commissioners were forced to resign to pave way for a reconstituted Commission that held allegiance to the political leadership. Even after the Executive published a list of 'corrupt' companies and individuals in the year 2018, this was never actioned on in 2019, thereby raising questions on the sincerity of the move. Government was also accused of employing the 'catch-and-release' formula when it came to party 'big wigs' such as former Minister of Public Service, Labour and Social Welfare, Prisca Mupfumira. The country has been calling for the eradication of corruption at all levels of society, but the problem seems to perpetuate in the absence of decisive action from political leadership.

## International Re-engagement

When President Emmerson Mnangagwa came to power after replacing the late Robert Mugabe in November 2017, he emphasised prioritising political reforms and international re-engagement as twin strategies he would pursue to end the 'pariah state' tag of the country. Towards the run-up to the 2018 harmonized elections, he also continued with his mantra of opening the country for business through international re-engagement. During the year 2019, Mnangagwa embarked on several international shuttle-diplomacy and business missions as he sought to re-engage with the international community and re-establish broken diplomatic links with the outside world. In early January, Mnangagwa visited Russia on a trade mission but had to skip Davos and head back home due to the fuel protests in Zimbabwe. Between January and September, Mnangagwa and his often-large entourage gobbled up millions in taxpayers' money through their foreign trips, trips which by the end of the year had yielded little tangible positive results on the economic front. The news was awash with issues of the signing of mega-deals between Zimbabwe and foreign countries particularly those in the East. However, back home there was no discernible evidence of the impact of the so-called mega-deals.

Despite significant investment in having the restrictive measures removed, the Mnangagwa administration failed to make headway as the leaders of the West

remained sceptical of the genuineness of the political reform agenda. Towards the end of the year, the ruling ZANU PF party staged a march/demonstration dubbed the *'anti-sanctions march'*, where it sought to exert political pressure on the countries that imposed sanctions to lift them.

The year 2019 ended without any meaningful foreign investment being injected into the country, but with the President seemingly enjoying foreign trips made on the pretext of opening up frontiers for business for the country.

Whilst President Mnangagwa had been driving the narrative that he and his regime were committed to re-engaging with the international community, his actions, policies and those of his government were self-defeating in 2019. In August, the USA, European Union and other members of the international community issued a damning statement on Zimbabwe's human rights situation. The devastating effect of this was to throw government's hopes of re-engagement into disarray. In the same month, President Mnangagwa clashed with the European Union's Head of Delegation to Zimbabwe (Timo Olkkonen) after the Head of Delegation slammed Zimbabwe's human rights situation. In response, President Mnangagwa said,

*"Your Excellency, you referred to human rights. However, this platform was for corruption. May I urge civil society to restrict themselves to their mandate. The rule of law observance is not needed for the purposes of pleasing other countries, we need it because it is proper for ourselves."*<sup>20</sup>

This is a clear indication that whilst the President said that the government sincerely wanted to re-engage with the international community, this goal could not be achieved since the country was failing to address the requisite pre-conditions for that re-engagement.

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20. Zimbabwe Independent, *Re-engagement goes off the rails*, August 30, 2019 available at <https://www.theindependent.co.zw/2019/08/30/re-engagement-goes-off-the-rails/>

## Use of Presidential Powers

The President has powers to make regulations in a matter of urgency or necessity through the Presidential Powers (Temporary Measures) Act [Chapter 10:20]. Such sweeping powers can only be used in exceptional circumstances given that they usurp the law-making function ordinarily vested with Parliament. Like his predecessor, President Mnangagwa continued to invoke presidential powers whenever he deemed it fit. In February 2019, President Mnangagwa invoked these powers to enact Statutory Instrument 33 of 2019,<sup>21</sup> a piece of subsidiary law that essentially converted RTGS balances into currency and made them legal tender for purposes of the exchange in Zimbabwe. The regulations also set out that the local currency would no longer be at par with the United States dollar. There was widespread panic as people were wary of having a repeat of getting their hard-earned cash confiscated by the government. Security of their private property was at risk, as had been several times before. Further, later in 2019, the President promulgated two statutory instruments to regulate exchange control, namely Statutory Instruments 212 and 213. Statutory Instrument 212 outlawed the use of foreign currency for the settlement of domestic debts, whilst Statutory Instrument 213 was the enforcement instrument in support of Statutory Instrument 212. In all these instances there seemed to be no clear rationale why these issues were not dealt with in the ordinary way through the legislation-making process via Parliament as provided for in the Constitution. The President's sweeping powers to enact regulations on issues that can ordinarily be legislated by an Act of Parliament represents an affront on the principle of separation of powers.

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21. SI 2019-033-Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act & Issue of Real Time Gross Settlement Electronic Dollars (RTGS Dollars)) Regulations, 2019

# 04

## CHAPTER 4 ECONOMIC PERFORMANCE AND IMPACT ON HUMAN RIGHTS

According to the Economist Intelligence Unit, Zimbabwe's real Gross Domestic Product (GDP) declined by 18% in 2019.<sup>22</sup> The International Monetary Fund (IMF) in September 2019 reported that the year-on-year inflation soared up to 300%.<sup>23</sup> After Venezuela, Zimbabwe had the highest inflation in the world.<sup>24</sup> The government stopped releasing inflation results in what appeared to be a bid to hide the economic rot from the public. 2019 also saw the steep hike in prices of basic commodities as inflation in the country skyrocketed to unprecedented levels. The poverty datum line for families and individuals in Zimbabwe continued to rise on a monthly basis in 2019 as a result of the hyperinflationary situation. According to official statistics released by the Zimbabwe National Statistics Agency (Zimstat),



*“The TCPL (Total Consumption Poverty Line) for an average of five persons stood at ZWL 4,188.42 in December 2019. This means that an average household required that much to purchase both food and non-food items for them not be deemed poor”.*<sup>25</sup>

With civil servants earning a paltry average of ZWL 1,000 a month, this meant that the majority of the population was living way below the official poverty datum line.

22. *The Independent: Zim's economic outlook gloomy, 11 October, 2019 Available at <https://www.theindependent.co.zw/2019/10/11/zims-economic-outlook-gloomy/>*

23. *IMF: Zimbabwe has the highest inflation rate in the world, Al Jazeera, 27 September 2019 available at <https://www.aljazeera.com/ajimpact/imf-zimbabwe-highest-inflation-rate-world-190927004536305.html>*

24. *MF: Zimbabwe has the highest inflation rate in the world, Al Jazeera, 27 September 2019 available at <https://www.aljazeera.com/ajimpact/imf-zimbabwe-highest-inflation-rate-world-190927004536305.html>*

25. *Zim poverty datum line tops \$4.2k in December 2019, Business Daily, 29 January 2020 available at <https://www.ebusinessweekly.co.zw/zim-poverty-datum-line-tops-4-2k-in-december-2019/>*



## A Health Sector in Crisis

In 2019, the health sector experienced one of its worst phases in recent history. This was largely due to the absence of government-employed health workers at their workstations. Junior medical doctors employed by the government went on strike in early September 2019, protesting against poor remuneration and working conditions. It is reported that the junior doctors were receiving salaries worth less than US\$ 100 per month.<sup>26</sup> The government claimed that it was failing to meet the demands of the junior doctors as a result of the poorly performing economy. The absence of junior doctors from the country's government medical health facilities meant that most hospital services were unavailable with the only functional divisions being the casualty wards. Patients seeking medical treatment were turned away as there were no medical practitioners available to treat them at medical facilities.

Around February 2019, doctors around the country raised concerns over the lack of resources necessary for them to fulfil their duties. Dr. Azza Mashumba appeared on a broadcast aired by Newsday Zimbabwe lamenting the dire situation that had hit Zimbabwe's medical healthcare

system.<sup>27</sup> She raised concerns on the lack of basic necessary resources such as syringes and medicines required for the treatment of patients. This dire situation was prevalent in the country's various government hospitals in 2019.

Government failed to provide basic health care services to its citizens hence infringing on their basic rights to health. These deplorable situations experienced in 2019 put Zimbabwe's human rights situation under international scrutiny with many international players questioning the priorities of government. The State bears the duty to guarantee all citizens and permanent residents of Zimbabwe the right to have access to basic health-care services, including reproductive health-care services.<sup>28</sup> In this case it can be argued that the State failed in fulfilling its constitutional obligations.

## The Cancer of Livelihood: Poverty

The poor performance of the Zimbabwe economy discernible from all the key economic and human development indices severely affected the generality of the populace, with various consequences flowing from it including long fuel queues, exorbitant basic commodity prices, high inflation rates and dire poverty.

26. Zimbabwe doctors strike over poor wages and working conditions, Al Jazeera, 5 September 2019 available at <https://www.aljazeera.com/news/2019/09/zimbabwe-doctors-strike-poor-wages-working-conditions-190904102437057.html>  
27. <https://www.newsday.co.zw/2019/03/hospitals-now-death-zones-striking-doctors/>  
28. Section 76 of the Constitution

In December 2019, the Zimbabwe Human Rights NGO Forum noted that the country's economic crisis had escalated to unprecedented levels gravely affecting the state of human rights. The Forum remarked thus:

*The Forum notes with concern the economic crisis that has resulted in erosion of disposable income and unemployment resulting in widespread poverty primarily because of poor governance, pervasive corruption and mismanagement of funds.<sup>29</sup>*

In combination with several other factors, the economic crisis contributed to extreme poverty experienced by the majority of the Zimbabwean population. A report by the World Bank in Zimbabwe noted that,

*“Extreme poverty is estimated to have risen from 29% in 2018 to 34% in 2019, an increase from 4.7 to 5.7 million people. The increase is driven by economic contraction and the sharp rise in prices of food and basic commodities. Contraction of agricultural production following an El Nino induced drought worsened the situation in rural areas. One-tenth of the rural households currently indicate they are going without food for a whole day, about double the proportion of urban households. Additionally, Cyclone Idai has worsened the situation in three key provinces that typically account for 30% of agricultural output. The drought has also led to a broader impact on the electricity and water sectors, causing widespread rationing and tariff adjustments to manage costs.”<sup>30</sup>*

With approximately 5.7 million Zimbabweans living in extreme poverty, the economic situation prevailing in the country, half of the Zimbabwean population barely managed a decent living in 2019. With the devastating effects of cyclone Idai, many families were left without shelter and had to rely on tents provided by well-wishers and different organizations.

The government had to rely mostly on foreign aid in order to assist the victims, because of the economic turmoil characterised by bad governance, gross mismanagement of public funds and corruption.

Extreme poverty is estimated to have risen from

**29%** in 2018 to

**34%** in 2019, an increase from

**4.7 – 5.7** million people.

29. Zimbabwe Human Rights NGO Forum: Statement on the occasion of the International Human Rights Day, 10 December 2019 available at <http://www.hrforumzim.org/press-releases/statement-on-the-occasion-of-the-international-human-rights-day-3/>  
30. The World Bank In Zimbabwe Report: available at <https://www.worldbank.org/en/country/zimbabwe/overview>

## Poor Service Delivery

Basic service delivery in Zimbabwe has remained poor over the years, with residents in major cities continuing to receive contaminated water, delayed refuse collection and erratic supply of electricity amongst several other poor service delivery modes. The economic crisis, mismanagement of available funds, political meddling and bureaucracy are some of the reasons attributed to this failure to deliver the requisite social services. In 2019, it was no different, as the trend of poor service delivery continued, worsened by the crippled economy. Lack of clean water and general sanitation negatively affected the enjoyment of the right to healthcare. Section 77 of the Constitution obliges the State to provide clean, safe and potable water to its citizens. Lack of key water treatment chemicals forced the Harare City Council to temporarily halt production at the water treatment plant Morton Jaffray on 23 September 2019, leaving over one million people without running water. Harare Deputy Mayor, Enock Mupamawonde exhorted the government to declare the water situation a national disaster, stating that the local authority needed at least 40 million Zimbabwean Dollars (US\$2.7 million) a month for water chemicals, against revenue of 15 million Zimbabwean dollars they collect per month.

It is a national disaster that over a million people were left without access to water after the closure of Morton Jaffray water treatment plant. The lack of water exposed people to health hazards including water-borne diseases like cholera and typhoid that have previously wreaked havoc in Harare and other cities. It was also reported that refuse collection and general waste management

in most of Harare's high-density suburbs remained erratic. This was largely due to the failure by the State to adequately capacitate the councils in order for them to fulfil their service delivery mandate. The State, on the other hand, blamed the prevailing economic situation and mismanagement on the part of the councils for the poor service delivery. Overall, the economy adversely affected the optimum functionality of councils and their ability to provide quality services.

## Unemployment and Meagre Wages

The Youth Empowerment and Transformation Trust (YETT) commissioned a youth situational analysis report carried out from 2018 to 2019 which revealed that millions of educated youth in Zimbabwe are unable to find jobs locally.<sup>31</sup> This is reflective of the economic hardships the country faced in 2019 and is still facing till today. Recent years have seen Zimbabwean graduates protesting whilst clad in their graduation gowns as a way of raising their plight of failing to secure jobs after graduating. As a result of the economic quagmire, hundreds of companies closed down. This points to massive deindustrialization whilst the population is growing, leaving millions of unemployed graduates and other labourers stranded. Poor remuneration was also another concern reported in 2019, especially that of government workers. The majority of the salaries were far below the poverty datum line. The government was pressured by civil servants to rate their salaries in terms of the prevailing interbank market rate to no avail. The year ended with the majority of Zimbabweans being denied a decent living wage as the actual value of the RTGS dollar kept plummeting against the US dollar, upon which prices of goods and services were pegged.

31. Youth Empowerment and Transformation Trust (YETT): *Decades of struggle and hope: A Zimbabwean Youth Compendium*, 1 October 2019

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## CHAPTER 5 CIVIL AND POLITICAL RIGHTS

Zimbabwe is party to, and bound by, a number of international human rights treaties that entrench civil and political rights. Zimbabwe ratified the International Covenant on Civil and Political Rights (ICCPR) on 13 May 1991 and also became a party to the African Charter on Human and Peoples Rights (ACHPR) on 30 May 1986. A number of the rights and freedoms guaranteed by these international and regional legal instruments are incorporated into the Declaration of Rights in the Constitution. The entrenched rights and freedoms include, among others, the freedom of assembly and association, freedom of expression and freedom of media, freedom to demonstrate and petition and right of access to information. Despite the incorporation of these rights into the Constitution, the Zimbabwean space continued to be repressive in 2019 in as far as those rights are concerned. The State continued to rely on restrictive subsidiary laws to violate guaranteed civil and political freedoms.

### Freedom to Demonstrate and Petition

Section 59 of the Constitution guarantees the freedom to peacefully demonstrate and to present petitions. Despite the entrenchment of this right in the Constitution, the State continued to stifle its enjoyment, relying on repressive laws such as POSA and provisions of the Criminal Code to undermine the constitutional provision. In some cases, the State deployed its security agents who used excessive force and heavy-handedness to suppress, disrupt or block the enjoyment of these rights.



## Specific Cases

- Following the announcement of the sharp fuel hike by the President Mnangagwa on the 12 January 2019, civil society groups, trade unionists and citizens movements called for a stay-away to protest the move by government. The police and military were deployed to crush the ensuing protests. Massive human rights violations were committed during the operation by the army and the police including 17 killings, 17 rape and sexual assault incidences, 26 abductions, 586 assaults, 81 gun-related attacks internal displacements of many people across the country.
- The Vice Chairperson of the Movement for Democratic Change Alliance (MDCA), MP Job Sikhala, was arrested in July for allegedly inciting people to overthrow the government by unconstitutional means in terms of section 22 (2) (a) of the Criminal Code. Following his arrest, Sikhala was blindfolded, handcuffed and bundled into a motor vehicle before being driven from Harare to Bikita. He claimed that he was denied food and high blood pressure medicine for the two days he was in detention before his first appearance in court.
- On 15 August 2019, the police used excessive force to disperse an MDCA-organized protest to demonstrate against the country's worsening economy, in defiance of a police ban. The police had adamantly refused to sanction the march and the MDCA was unsuccessful in its attempts to overturn the ban at the High Court. Anti-riot police fired teargas and assaulted demonstrators as they cracked down on opposition supporters who had gone onto Harare's streets despite the police ban. There were complaints of police brutality and excessive use of force, with innocent bystanders being caught in the indiscriminate attacks by the police. About 128 activists were arrested and placed on remand in connection with the protests. It was also reported that at least six people were abducted and heavily tortured by suspected State agents in a pre-emptive move on the evening before the anticipated protest.
- On 23 August 2019, a human rights lawyer, Douglas Coltart and a human rights activist, Obert Masaraure, leader of the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) were arrested in Harare during a protest over the paltry teachers' salaries. Coltart was assaulted by police during the arrest, despite the fact that he was legitimately providing legal representation services to his clients.
- On 14 September 2019, Doctor Peter Magombeyi, the then leader of the Zimbabwe Hospital Doctors Association, was abducted by three unidentified men, tortured, and was later released following protests by

other doctors for his immediate release. This followed a series of protests organised by the Zimbabwe Hospital Doctors Association to petition the government for better salaries for government doctors.

- After the disappearance of Magombeyi, doctors marched to deliver a petition to the government for the return of the Acting President of the Zimbabwe Hospital Doctors Association. As they attempted to march towards the President's offices, the doctors were confronted by police officers who blocked their way.
- On 15 November 2019, Harare Institute of Technology students were suspended two days before sitting for their examinations on charges of misconduct for allegedly beating drums and singing in a disruptive manner during a demonstration held over mismanagement of the institution.
- On 29 November 2019, lawyers marched during a demonstration to protest against harassment and assault of legal practitioners and ordinary citizens. They submitted their petition to the Minister of Home Affairs' office and to the Commissioner-General of Police.



## Abductions and Disappearances

There was a pattern of cases of abductions of anyone critical of the government throughout the year. The abductions suggested a pre-meditated modus operandi by State agents meant to silence dissenting voices, as part of a pre-emptive move to stop planned actions by activists or as part of a strategy to disrupt ongoing protests. In total, the Forum documented 67 cases of abductions involving labour activists, political activists, and ordinary citizens who spoke against the government. The perpetrators of the abductions included members of the Zimbabwe military, ZANU PF supporters and unidentified State security agents.

## Specific Cases

- On 21 August 2019, comedian Samantha Kureya, popularly known by her stage name 'Gonyeti' was abducted from her home by a group of unidentified armed men who beat and stripped her while forcing her to drink raw sewage.<sup>32</sup> The abductors accused her of undermining the government's authority in her comedy skits. She was later dumped in a bush in the suburbs of Harare.
- On 14 September 2019, Dr Peter Magombeyi was abducted by suspected State security agents for leading government doctors' strikes and demonstrations against poor remuneration and working conditions.<sup>33</sup> Magombeyi was released by his captors a few days later but up to today, no arrests have been made in connection with this abduction.
- In June 2019, leader of the ARTUZ, Obert Masaraure, was abducted by armed and masked men from his home in Waterfalls. He was assaulted, stripped and later dumped in a bushy area close to Manyame Air Base in Harare.
- On 17 August 2019, MDC Alliance Provincial Youth Chairperson Councillor Tinashe Kambarami who is the Deputy Mayor of the City of Bulawayo was allegedly abducted outside his residence. It is further alleged that Councillor Kambarami's dreadlocks were shaved off using glass and that he was tortured and left for dead naked. During the abduction and subsequent torture, the victim was interrogated about the MDC Alliance, Bulawayo protests and threatened not to continue with the demonstrations.
- On 18 August 2019, Raphael Sibanda the father of the MDC Alliance Youth Chair for Nkulumane Partial Sibanda, was allegedly abducted around midnight by seven unknown men who were driving an unmarked car. He was assaulted and later dumped at Mancabeni gravesite.
- On 18 August 2019, Masiza Ndlovu, an MDC Alliance youth provincial member was abducted from his home in Nketa by unknown assailants. He was tortured and dumped near Hillside shops. The assailants threatened him against participating in the protests that took place in Bulawayo on 19 August 2019.
- During the January 2019 protests, State agents were reported to have carried out at least 26 abductions.

32. BBC: Zimbabwean comedian Gonyeti 'abducted and beaten' in Harare, 22 August 2019 accessed at <https://www.bbc.com/news/world-africa-49433387>

33. SALC Statement: SALC condemns the abduction and enforced disappearance of Dr Peter Magombeyi, President of Zimbabwe Hospital Doctors Association (ZHDA), 17 September 2019, available at <https://www.southernafricalitigationcentre.org/2019/09/17/salc-condemns-the-abduction-and-enforced-disappearance-of-dr-peter-magombeyi-president-of-zimbabwe-hospital-doctors-association-zhda>

The culture of abductions of persons considered “enemies of the State” in the country has not stopped and threatens to continue haunting the nation as long as the State does not take decisive steps to stop abductions and also prosecute and punish individuals responsible for carrying out these heinous crimes.

## **Freedom of Expression and the Media and Access to Information**

The pattern of attacks and suppression of freedom of expression and media freedoms remained a recurring theme of 2019 as the State sought to silence dissenting voices. The environment remained oppressive as there was a lot of intimidation and arrests of media practitioners in the course of carrying out their work. The Criminal Law Code continued to be used to infringe on the fundamental rights to expression and media rights.

During the shutdown in January 2019, 10 cases reported alleging attacks of journalists by army and police officers. It was reported that soldiers and police in riot gear detained and harassed 7 journalists in Harare despite having produced their press cards. It was also reported that 3 journalists were assaulted in Bulawayo by soldiers whilst filming the protests and the subsequent violence. On 16 August 2019, 2 journalists were assaulted during the crackdown on MDC Alliance protestors by anti-riot police at the Africa Unity Square in Harare. On 23 August, another journalist Leopold Munhende was arrested whilst covering the arrest of ARTUZ members at the Ministry of Finance and Economic Development offices in Harare.



In total, the Forum documented 19 cases of attacks on journalists in the line of duty by state security agents and political party supporters.

On 4 April, 2019 the Media Institute of Southern Africa (MISA) Zimbabwe reported that the ZRP officers fired tear gas canisters into the offices of online publication '263 Chat' in Harare.<sup>34</sup> The environment became increasingly intimidating and volatile for media personnel on the back of such unjustifiable attacks. There was further evidence of the State's continued attacks on free expression and media freedoms throughout the year. According to a MISA Zimbabwe report,

*"Cases such as the reported assault and abduction of BUSTOP TV comedienne Samantha Kureya by unidentified armed men from her home in Harare's high-density suburb of Mufakose, only serves to dent the country's human rights record. The armed masked men reportedly forced their way into the house around 10 p.m. and assaulted Kureya's family members as well including minors. Her brother filed a report at Marimba Police Station. The report number is RRB 4149688."*<sup>35</sup>

In January, during the protests against fuel hikes, government ordered the shutting down of the internet, which directive was subsequently overturned by the High Court. Such dictatorial and arbitrary clampdowns on the rights to access to information have no place in any democratic society. The United Nations Special Rapporteur on the Rights to freedom of peaceful assembly and of association had the following to say concerning the shutdown of internet and the subsequent overturning of that decision by the High Court,<sup>36</sup>



34. MISA Zimbabwe Communiqué: Journalists petition police over media attacks, 8 April 2019, available at <https://zimbabwe.misa.org/2019/04/08/journalists-petition-police-over-media-attacks/>

35. MISA: Statement on abduction of Bustop tv comedian, 22 August 2019, available at <https://zimbabwe.misa.org/2019/08/22/Statement-on-abduction-of-bustop-tv-comedian/>

36. Mr. Clément Nyaletsossi Voule: End of Mission Statement of the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, on his visit to Zimbabwe (17-27 September 2019), available at <https://zw.one.un.org/newsroom/news/end-mission-statement-united-nations-special-rapporteur-rights-freedom-peaceful>

*“I strongly believe that network disruptions are in clear violation of international law and cannot be justified under any circumstances. Network shutdown orders often lack a legal basis and these events in Zimbabwe were no exception. In this sense, I applaud the High Court’s decision ruling that the Minister of State responsible for national security in the President’s Office did not have the authority to issue any directives in terms of the Interception of Communications Act”.*

The regime’s tactics to illegally stifle the various media freedoms is reflective of a State that is far from attaining internationally acceptable human rights standards as espoused in instruments such as the ICCPR and the ACHPR which Zimbabwe is party to. Given the political, social, language and culturally diversity of the nation, national broadcasters and public media have a duty to provide unbiased media coverage across the diverse spectrum of the nation. Unfortunately, this has not been the case with the Zimbabwe Broadcasting Cooperation (ZBC), the national broadcaster and Zimpapers, the State print media house. The two entities were found by the High Court of Zimbabwe to have acted unconstitutionally due to their failure to give different political players the opportunity to air their divergent views during the 2018 harmonized elections.

### **Extra-judicial Killings**

The pervasive culture of extrajudicial killings by the State was on show in 2019. During the January 2019 protests, 17 extra-judicial killings were recorded as civilians lost lives at the hands of military personnel that had been deployed onto the streets in order to quell the protests. Others were shot at died on the spot, while others later died in hospital. The situation around the country remained volatile throughout the year as the fundamental right to life continued to be disregarded.

The Forum was able to interact with either families or eyewitnesses to the killings. In most cases, the postmortem reports that corroborated eyewitness accounts. Forum lawyers and doctors from ZADHR accompanied some of the victims throughout the post-mortem process.

**This report withholds the names of the deceased whose details are as follows:**

1. TN, male, 36, Mbare, Harare died on 14 January 2019.
2. TC, male, 22, Makoni, Chitungwiza, died on 14 January 2019.
3. TM, male, 29, Kuwadzana, Harare, died on 14 January 2019.
4. TN, male, 53, Epworth, Harare, died on 14 January 2019.
5. SN, male, 37, Dombotombo, Marondera, died on 14 January 2019.
6. ES, male, 26, Mbare, Harare, died on 14 January 2019.
7. TM, Male, [age unknown], Kadoma, died on 14 January 2019.
8. AM, female, 32, Bulawayo, died on 14 January 2019.
9. EZ, female, [age unknown], Harare, buried on 22 January 2019.
10. KR, male, 22, Mbare, died on 27 January 2019.
11. IOM, male [ age unknown], Warren Park, Harare, died on 23 January 2019.
12. TJ, female, Harare.
13. TB, male, 27, Mbare, died on 30 January 2019.
14. TM, male, Glenview, Harare.
15. MC, male, [age unknown], Harare.
16. NS, male, 29, Mutare, died on 1 February 2019.
17. ND, male 24, Chitungwiza, died on 3 February 2019.



In total, the Forum documented

**743**

cases of assaults,

torture,

cruel,

inhuman

degrading treatment

in 2019.

## Assault and Torture

In total, the Forum documented 743 cases of assaults, torture, cruel, inhuman and degrading treatment in 2019. The major perpetrators in this category were ZRP officers, soldiers, ZANU PF supporters and MDCA supporters.

Between 14 January 2019 and 5 February 2019, cases of assault and torture were witnessed at a shocking scale such that the actual number was difficult to ascertain. The cases documented by the Forum are a small fraction of people who sought help from members of the Forum. The total number of documented cases of torture, assaults including dog bites for the period are 586. The reports were received mainly from Harare, Bulawayo, Chitungwiza, Marondera, Chinhoyi, Karoyi, Kadoma, Mutare and Epworth. The majority of the reports cited security sector personnel as the main perpetrators. The largest volume of reports was received during the joint ZNA and ZRP crackdown on suspected protestors. The crackdown included door to door raids which resulted in the assault and torture of women, children, people with disabilities and older people. Of these, 63 women reported varying degrees of assault, including falanga,<sup>37</sup> and 339 men reported aggravated indecent assault and torture by soldiers and police in riot gear using baton sticks, fists, metal rods and rifle butts. In some reported incidents, protestors were also identified as perpetrators of violence.

Between August 15 and 23, 2019, the MDCA lined up a series of protests nationally against the government following which the Forum documented 75 cases of assault. On 15 August, 48 people were assaulted by anti-riot police officers with baton sticks at the corner of Jason Moyo and Second street in Harare of which 15 of the protestors were injured, The protestors were not posing any threat to police officers as they were seating down. On 19 August, 15 people were assaulted by police officers and soldiers with baton sticks and booted feet in Bulawayo during the MDCA protests while 12 people were assaulted in Gweru on 20 August.

Amnesty International's Deputy Regional Director for Southern Africa, Deprose Muchena, had the following to say concerning the State's crackdown on civilians,

37. A form of torture wherein the soles of the feet are beaten with a hard object

*“We are witnessing a violent crackdown on activists and civil society leaders, with authorities using some of the brutal tactics seen under the government of Robert Mugabe. Instead of listening to protestors’ concerns about the economy, the authorities have used torture and abduction to crush dissent and instil fear”.*<sup>38</sup>

The assault and torture that was administered on Zimbabwean civilians by their own security personnel during 2019 can be branded as systematic and well organized and planned. The horrific attacks represent a grave violation of the right to dignity of the person and protection against torture and degrading treatment as guaranteed under the Constitution.

### **The Plight of Human Rights Defenders (HRDs) and Activists**

Zimbabwe has a significant number of individuals and organizations that have committed themselves to advocate the protection, promotion and fulfilment of human rights in the country. They continue to do so at great cost as the State continues to treat HRDs as enemies of the State. In 2019, HRDs faced persecution throughout the year that ranged from arbitrary arrests based on baseless charges, malicious prosecutions, assaults, torture, harassment, surveillance, criminalisation of human rights work and other forms of human rights violations meant to intimidate HRDs from carrying on with their work. Between 20 and 27 May 2019, seven human rights defenders were arrested at the Robert Mugabe International Airport on allegations of seeking to subvert a constitutional government. Those arrested were:

- George Makoni (Centre for Community Development Trust),
- Nyasha Frank Mpahlo (Transparency International Zimbabwe),
- Tatenda Mombeyarara (Citizens Manifesto),
- Gamuchirai Mukura (Community Tolerance Reconciliation and Development Trust),
- Farirai Gumbonzvanda (Rozaria Memorial Trust),
- Stabile Dewa (Women’s Academy for Leadership and Political Excellence),
- Rita Nyampinga (Female Prisoners Support Trust).

38. Amnesty International: Zimbabwe: Violent crackdown on activists underway ahead of opposition protests, 15 August 2019, available at <https://www.amnesty.org/en/latest/news/2019/08/zimbabwe-violent-crackdown-on-activists-underway-ahead-of-opposition-protests/>

The fabricated charges emanated from a training organised by the Center for Non-Violence Action and Strategies (CANVAS) in the Maldives that the seven had attended.

Other activists that were arrested and faced trumped-up charges of seeking to subvert a constitutionally elected government in 2019 include Pastor Evan Mawarire of the *“This Flag” movement*, Peter Mutasa and Japhet Moyo, leaders of the Zimbabwe Congress of Trade Unions (ZCTU), all of whom were arrested in January 2019.

In February, Rashid Mahiya of the civic group, Crisis in Zimbabwe Coalition, was also arrested and charged with seeking to subvert a constitutionally elected government. Mahiya was one of a number of human rights defenders to have been included on a police 'wanted' list, following the national protests that took place in mid-January.

It was quite clear that a paranoid State continued to view HRDs as *“enemies of the State”* despite the constitutional recognition of the human rights work done by HRDs and the recognition and protections afforded to HRDs by various international human rights instruments that are binding on Zimbabwe.

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## CHAPTER 6 SOCIO-ECONOMIC RIGHTS

Despite the entrenchment of socio-economic rights in the Constitution, their realisation remains a mirage. 2019 was a generally difficult year for most Zimbabweans primarily because of the underperforming economy that especially affected the ordinary Zimbabwean. The realisation of basic socio-economic rights remained a privilege limited to the very few due to the worsening economic environment, a situation exacerbated by the continued bad governance, flawed economic policies, mismanagement of public resources and corruption. The situation was not helped by the deadly weather hazards that struck some parts of the country leaving a trail of destruction. Whilst the earnings of most remained stagnant, and effectively lost value due to the currency value loss, prices of most services and commodities went up, negatively impacting the overall socio-economic environment. The devastating Cyclone Idai that struck the eastern parts of the country and other parts of Masvingo province left victims in its pathway with no accommodation, food, and access to all basic amenities as the cyclone destroyed virtually everything in its path. Cyclone Idai exposed the level of ill-preparedness of the government to external shocks such as natural disasters as the State failed to meaningfully intervene and assist the Cyclone Idai victims.



Access to basic health care remained a challenge for most people who could not afford health insurance, or the cash payments required for treatment and medication. The healthcare system was brought to its knees due to the strike by government doctors that affected the major referral hospitals that were already limited by lack of medicines and inadequate and demotivated staff. Overall, the State failed to fulfil its various obligations relating to socio-economic rights, as required by the Constitution and under binding international treaties such as the International Convention on Socio-Economic and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (ACHPR).

## The Right to Health

The worsening economic situation and inadequate investment in healthcare by government crippled the health sector leading to the non-realisation of the fundamental right to healthcare as provided for by the Constitution.<sup>39</sup> Earlier in the year, doctors had complained of the lack of basic essential resources, including personal protective equipment, necessary for them to fulfil their duties.

In September 2019, the situation had degenerated with the junior doctors embarking on industrial action to demand better salaries and other work-related conditions. Following their industrial action and failure to reach an agreement with government the junior doctors were fired from their employment. This meant that the nation's government hospitals were left incapacitated to service patients in most public hospitals. On 27 November, senior doctors also joined in the industrial action which eventually ended in January 2020 with the government not having addressed the concerns of medical practitioners. At Parirenyatwa and Harare hospitals, for example, only the casualty sections remained barely functional. The absence of medical practitioners from their stations was detrimental to the healthcare of the country. The State is required by section 29 of the Constitution to take all practical measures in order to ensure the provision of basic healthcare services. The State is further required via section 76 to take necessary steps within the limits of resources available to it to achieve the progressive realisation of healthcare rights. The state should have taken all measures to reach consensus with the junior doctors in order to alleviate the ailing health sector by providing much needed medical personnel in public health centres. Unfortunately, the State allowed the situation in government hospitals to deteriorate whilst it engaged in protracted tussles with doctors' representatives that ultimately produced no positive results.

The lack of due care and appreciation of the gravity of its actions/inactions exposed the general lack of care by government to fulfil its responsibilities in affording the right to basic healthcare services for the ordinary Zimbabwean. It was ironic that the government failed to meet the needs of the doctors whilst, elsewhere the cancer of corruption, and extravagant use of resources in foreign trips and other unnecessary governmental expenditures continued. Zimbabwe, as in previous years failed once again to meet the 15 percent health budget



*The absence of medical practitioners from their stations was detrimental to the healthcare of the country*



<sup>39</sup>. Section 76 of the Constitution.

threshold as required by the Abuja Declaration of 2001 obligating signatories to guarantee quality health services through adequate national budget allocations. Unsurprisingly, the government was not able to alleviate the situation in 2019 resulting in the consequential violation of the rights to health of the end users. With the hyper-inflationary situation that was experienced in 2019, the salaries of employees were eroded at an unprecedented level. This left the majority of the population unable to afford to pay for basic health care services.

The challenge of access to health care was even worse in rural communities due to the long distances between health facilities and the communities. With many districts in Zimbabwe dependant on a single ambulance, lacking syringes and even the most basic latex gloves, one questions the priorities of the government in as far as providing quality healthcare services is concerned. For a country that is not engaged in any war or facing any imminent threat of an attack, it seems to be an anomaly that Zimbabwe's budget allocation for defence is much higher than that of the healthcare sector. Zimbabwe is a state party to a number of international human rights instruments that obligate it to ensure that its citizens enjoy the right to basic health care.<sup>40</sup> It should take its treaty and constitutional obligations more seriously and invest in quality health care for the benefit of the general citizenry.



## Rights to Food and to Water

The right to food is inextricably connected to the right to health. One cannot be healthy without also enjoying the right to nutritious food and the right to safe, clean and potable water.<sup>41</sup> Therefore, the right to food and water is key in keeping a nation healthy. A combination of the drought that affected Zimbabwe in 2019, the mismanagement of available funds, corruption, and a struggling productive sector left Zimbabwe barely able to address issues of food security. During her visit to Zimbabwe, the United Nations Special Rapporteur on the right to food, Ms Hilal Elver took note of the deteriorating food security situation that was ravaging the country with the majority unable to access adequate food supplies.

40. See for example, Article 16 of the African Charter on Human and People's rights that guarantees the right to health; Article 12 of the International Covenant on Economic, Social and Cultural Rights that guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Article 12 to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which obliges States to take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services.  
41. Section 76 of the Constitution of Zimbabwe, 2013.

In her preliminary report after her visit, Ms Hilal Elver noted that,

*“Man-made starvation is slowly making its way into Zimbabwe and most households are unable to obtain enough food to meet their basic needs.”<sup>42</sup>*

She further went on to reiterate that,

*“Because of hyperinflation, which has reached some 490%, more than 60% of the population is now ‘food insecure’, in a country once seen as the breadbasket of Africa. In rural areas, a staggering 5.5 million people are currently facing food insecurity, as poor rain and erratic weather patterns are impacting harvests and livelihoods. In urban areas, an estimated 2.2 million people are food-insecure and lack access to minimum public services, including health and safe water. I saw the ravaging effects of malnutrition on infants deprived of breastfeeding because of their own mothers' lack of access to adequate food.”<sup>43</sup>*

The UN Special Rapporteur’s report graphically revealed the extent of the dire shortage of food in the country. It showed how the constitutionally guaranteed right to food remained elusive to many Zimbabweans. The situation was quite dire and with increasing food prices on the back of rampant inflation, basic foodstuffs went beyond the reach of ordinary Zimbabweans. According to FAO’s quarterly Crop Prospects and Food Situation Report, Zimbabwe was one of the 42 countries that needed external assistance for food in 2019.<sup>44</sup>

42. Ms. Hilal Elver, *Preliminary observations of the United Nations Special Rapporteur on the right to food, on her Official visit to Zimbabwe from 18 - 28 November 2019*, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25348&LangID=E>

43. *Id.*

44. See *The Food and Agriculture Organisation (FAO) Food Price Index*, available at <http://www.fao.org/giews/country-analysis/external-assistance/en/>

FAO predicted that *“the unfavourable harvests and significantly high staple food prices in Zimbabwe set against an economy that had sharply deteriorated, will likely almost double the number of food-insecure people in the country during the first three months of 2020.”*<sup>45</sup> The year ended with Zimbabwe experiencing acute mealie meal shortages, plunging the majority of the population into untold panic and despair.

The Forum and the Zimbabwe Peace Project (ZPP) documented 253 cases of partisan distribution of food and agricultural aid. In most of the documented cases, ZANU PF supporters hijacked food distributions programs by the Ministry of Public Service, Labour and Social Welfare. In August 2019 Minister of Local Government, Public Works and National Housing, July Moyo who is also the Chairperson of the Cabinet Committee on Environment, Disaster Prevention and Management assured Zimbabwe that the local leadership who include local government councillors and village heads would not be directly involved in the distribution of aid to avoid issues of partisan distribution. However, this did not alleviate the partisan distribution of food.

On 18 October 2019 in Ward 11, Guruve South at Mupinyuri Primary School, ZANU-PF Councillor Samuel Machumi reportedly ordered village secretaries to compile a farming inputs database excluding perceived MDC Alliance supporters. Machumi stated that all MDC Alliance supporters should denounce their party first for them to benefit from government aid. A similar message was reiterated in Gokwe Gumunyu on 19 October 2019 by Ward 14 Councillor Stewart Mbulawa, who is also the Council Chairperson for Gokwe North. Mbulawa called a meeting at the Ward Centre for purposes of listing beneficiaries of the Presidential Inputs Scheme whose inputs were awaiting distribution in the ward. 14 village heads in attendance were instructed to register beneficiaries, but that they should start by listing ZANU-PF members.<sup>46</sup>

According to section 77 of the Constitution, every person has the right to safe, clean and potable water, and sufficient food, and the State must take reasonable measures, within the limits of the resources available to it, to achieve this right. Access to clean water is a basic and universal right that ought to be enjoyed by every individual. On 23 September 2019, the Morton Jaffray water treatment plant in Harare was closed down due to lack of water treatment

45. See *The Food and Agriculture Organisation (FAO) Food Price Index*, available at <http://www.fao.org/giews/country-analysis/external-assistance/en/>

46. *The Zimbabwe Peace Project October 2019 Monthly Monitoring Report*: <https://www.zimpeaceproject.com/tag/october-2019-mmr/>

chemicals. This meant that the over one million people, who rely on this water treatment plant were left without running water. The plant halted production due to the lack of key water treatment chemicals. The lack of these chemicals was as a result of the lack of foreign currency necessary to procure them. The over one million people had their right to clean and safe water violated due to the disconnection of water supply. The World Health Organisation (WHO) stipulates that, ideally, every person should access between 50 and 100 litres of water per day to ensure the most basic needs are met and the outbreak of diseases is prevented. Unfortunately, the government has not been able to provide reliable water services to its citizens and this is potentially catastrophic for a nation that has a recurring challenge of cholera and typhoid epidemics that are water-borne diseases. The State should, therefore, take the requisite steps to ensure that its citizens enjoy their constitutionally enshrined right to clean, safe and potable water.

## The Typhoid Outbreak - A Case of Recurring Health and Water Crisis

In 2019 the city of Harare was once again ravaged by the typhoid outbreak, an epidemic that continues to recur in Harare and other cities largely due to the absence of clean water.

According to media reports<sup>47</sup> and monitoring reports from the Community Water Alliance (CWA) health monitors, more than 800 cases of typhoid had been recorded between January and June and the numbers of typhoid and other water-borne diseases like diarrhoea cases continued to surge by each day. The 2019 cases of typhoid are not isolated incidents. They are part of a historical trend of cholera and typhoid outbreaks dating as far back as 2008 when more than 90 000 cholera cases were reported.<sup>48</sup> The problem of typhoid and cholera must, therefore, be seen in the context of a systemic failure by the State to address the issues of the rights to health and access to clean and potable water.



47. *The Herald*: 850 typhoid cases reported in Harare 26 July 2019 <https://www.herald.co.zw/850-typhoid-cases-reported-in-harare>

48. World Health Organization Global Task Force on Cholera Control (2009): *Cholera Country Profile: Zimbabwe*, available at <https://www.who.int/cholera/countries/ZimbabweCountryProfileOct2009.pdf?ua=1>

The repetitive nature of typhoid and cholera outbreaks is symptomatic of the State's failure through the central government and local authorities to plan adequately and anticipate the outbreak of such diseases every season. The key drivers of the typhoid outbreak are known and have been repeatedly highlighted over the years. The epidemic is triggered by the erratic supplies of clean water in most urban communities, the supply of contaminated water, and failure to effectively fix leakages of raw sewage into the environment, use of shallow wells, and generally poor hygiene practices in communities. The epidemics thrive in areas that do not have clean water and lack proper sanitation. The State bears the responsibility to formulate and execute short and long-term strategies that address the endless problems of lack of clean water and adequate sanitation in urban areas.

Globally typhoid and cholera are now considered medieval diseases that are easily preventable. That they have become a common recurrence in Zimbabwe is an indictment of central government's capacity to actually run affairs of the country. The failure to allocate adequate resources and properly plan for the country's public health system and provide basic services such as water and sanitation infrastructure is reflective of a government unable to fulfil its constitutional obligations.<sup>49</sup> The State must urgently and robustly respond to the scourge of typhoid and cholera outbreaks by crafting and implementing a well-resourced comprehensive plan that is both responsive and proactive in addressing the challenges of the epidemic. A starting point is the provision of safe, clean, potable water as a direct measure to combat the spread of typhoid. The government must consider increasing the funding allocation on water, sanitation and hygiene and strive to attain the 15% allocation to health set in the Abuja Declaration in order to ensure the right to health of the general populace is achieved.

## Shelter and Internal Displacement

During the January protests, forced displacement as a result of State-sponsored violence were documented around the country on a large scale. The actual number of displacements cannot be ascertained due to the widespread nature of the violation. However, the Forum documented at least 61 cases of displacements mainly due to violence. The displacements were related to continuous harassment, threats and intimidation of opposition party supporters, human rights defenders and purported planners of the January protests by alleged State security agents. Of the 61 people who were displaced, 59 were male while 2 were female. In Domboshava alone, 15 people were

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*49. Section 48 entrenches the right to life, section 51 entrenches the right to human dignity, section 73 entrenches environmental rights, section 76 entrenches the right to health care and section 77 entrenches the right to food and water*

were displaced as a result of receiving threats from alleged State security agents. In most recorded incidences, the families of the displaced are also victimized to coerce them to reveal the location of their loved ones. Such reports have been received from Harare, Chitungwiza and Bulawayo. ZRP, and ZNA officers have been identified as the major perpetrators in this category.

While the majority of Zimbabweans have shelter and enjoy this right without disturbance, some communities were not so fortunate in 2019. In March 2019, a devastating Cyclone Idai struck parts of Manicaland, Mashonaland East, Midlands and Masvingo provinces, leaving people with no homes, and directly affecting 270 000 people.<sup>50</sup> The cyclone destroyed scores of homes, leaving the families stranded, without shelter and confronted by a serious health hazard. It was reported that at least 90 000 people were displaced and were left without shelter because of the floods.<sup>51</sup> Despite meteorological data that suggested an impending cyclone, the State failed to take steps to anticipate and mitigate the effects that would follow. Government is obligated in terms of section 28 of the Constitution to ensure that every person has access to adequate shelter, subject to availability of resources. In the aftermath of the cyclone, the victims were left to put up in makeshift tents which were earmarked to sustain them in the interim whilst more permanent structures were provided. However, by November, nine months after the cyclone had hit the area, about 700 people were still housed in those tents without any permanent structures having been erected.<sup>52</sup> This shows a serious failure by the government to provide shelter to its people even after receiving foreign aid in order to assist victims of the floods.

## Right to Education

Education is a fundamental human right indispensable for the exercise of all other human rights. It has been stated that its recognition as a human right is derived from the indispensability of education to the preservation and enhancement of the inherent dignity of the human person.<sup>53</sup> Education is both a means and an end in itself, and is an empowering right, providing the avenue to realise other rights.<sup>54</sup> For these reasons, the realisation of this right must be prioritised at every level at all times by the State.



50. World Bank Press Release: World Bank Supports Recovery Efforts for Cyclone-Affected People in Zimbabwe, 16 July 2019, available at <https://www.worldbank.org/en/news/press-release/2019/07/16/world-bank-supports-recovery-efforts-for-cyclone-affected-people-in-zimbabwe>

51. Amnesty Report: One year after Cyclone Idai, tens of thousands of people still homeless <https://www.amnesty.org/en/latest/news/2020/03/one-year-after-cyclone-idai-tens-of-thousands-of-people-still-homeless/>

52. Herald, 4 November 2019: Idai survivors remain in tents as rainy season nears, available at <https://www.herald.co.zw/idai-survivors-remain-in-tents-as-rainy-season-nears>

53. Manoj Kumar Sinha, *Right to Education: Indian and International Practices*, pg. 1 available at <http://rwi.lu.se/app/uploads/2012/04/Right-to-Education-Indian-and-International-Practices-Manoj.pdf>

54. *Id.*

It is therefore commendable that, in 2019, the government prioritised the amendment of the Education Act to bring it in line with the Constitution and applicable international human rights instruments. In February 2019, Parliament introduced the Education Amendment Bill, a piece of legislation meant to improve the realisation of the right to education. Amongst the notable amendments to the Act were new sections providing for establishing an inclusive education system and also catering for the vulnerable groups such as girls who fall pregnant whilst in school. Abolition of corporal punishment in schools is also provided for. These provisions are progressive as they contribute towards the realisation of the right to education as envisaged by the Constitution and other international human rights instruments. However, some limitations in the Bill have been flagged out by commentators. For example, the Human Rights Watch suggested that the Bill should be explicit in its text on how free basic education would be realised.<sup>55</sup> Overall, the Bill is a welcome addition that is expected to enhance the enjoyment of the right to education in the country.

The country's hyper-inflationary environment has caused tuition fees in educational institutions to soar beyond the reach of many parents and individuals thereby restricting the enjoyment of the right to education. In addition, disgruntled teachers were reported to have failed to report for duty absenting themselves from classes, for long periods, leaving students unattended and unable to enjoy their right to education. The State ought to take the necessary measures in order to ensure that every child receives basic education as prescribed for by the Constitution. Another key issue related to the right to education was the inaccessibility of learning institutions to students especially those from rural and remote areas across the country. This meant that students had to walk long distances in order to access educational facilities. Resultantly thousands of learners were negatively impacted as they either were always tired by the time they got to school or ended up not attending school consistently thereby compromising their enjoyment of the right to education.

*The State ought to take the necessary measures in order to ensure that every child receives basic education as prescribed for by the Constitution.*

55. Human Rights Watch, "Open Letter regarding the Zimbabwe Education Amendment Bill of 2019" available at <https://www.hrw.org/news/2019/05/10/open-letter-regarding-zimbabwe-education-amendment-bill-2019>



## Standard of Living

From meagre wages and salaries to lack of access to social security and social amenities, the year 2019 was a difficult and painful one for the ordinary Zimbabwean. It was reported that approximately 5.7 million Zimbabweans were living below the poverty datum line, in extreme poverty.<sup>56</sup> The general standard of living spiralled downwards for the average citizen. Civil servants continued to receive low salaries, which by the end of the year were worth less than the equivalence of US\$38 a month for teachers under government employment. The situation was made worse by the steep hikes in fuel prices that had the ripple effect of causing the soaring of prices of basic commodities. Local authorities also reeled under the lack of foreign currency and general funds necessary for them to perform their mandates. For example, in Harare, the water crisis experienced during 2019 exposed the inadequacies and ill-preparedness of the local authority to deliver core services to its residents. It exposed the population to diseases such as typhoid that thrive in unclean environments. Altogether, the general collapse of the economy in 2019 adversely affected the enjoyment of fundamental rights to human dignity, health and wellbeing of the citizens of the country.

*It was reported that approximately*  
**5.7 million**  
*Zimbabweans were living below the poverty datum line, in extreme poverty.*

<sup>56</sup> See <http://povertydata.worldbank.org/poverty/country/ZWE>

# 07

## CHAPTER 7 ENVIRONMENTAL RIGHTS

Section 73 of the Constitution entrenches environmental rights. These rights are meant to guarantee the highest possible quality of life to humans in respect of their proximal environment, and also to protect the environment from unmonitored exploitation which may eventually prove detrimental to the survival of humanity. Zimbabwe is a signatory to several multilateral environmental agreements such as the Basel Convention, The Stockholm Convention, Rotterdam Convention, Ramsar Convention and the Bamako Convention. The Environmental Management Agency as established by the Environmental Management Act [Chapter 20:27] (EMA) of 2002 is Zimbabwe's main regulatory authority dealing with environmental matters. It works with various government subsidiaries, departments and non-governmental organizations in the fight to protect the environment.

### Protection of Wetlands

The Ramsar Convention places an obligation on the State to take measures that promote the conservation and wise use of wetlands and their resources. The Constitution obliges the State to protect the environment for the benefit of present and future generations. The State is also required to secure ecologically sustainable development and use of natural resources while promoting economic and social development. Notwithstanding these peremptory provisions on the State, Zimbabwe continued to take a lackadaisical approach towards conservation of the



environment and in particular the protection of wetlands from destruction by public and private actors. On several occasions, it took environment-conscious communities and individuals together with some human rights organisations to stop the degradation of wetlands through litigation. In November, the Environment Management Agency (EMA) was forced to act and issue an order against a property developer, Maizeville Projects barring it from constructing housing developments at Monavale Wetland, a globally recognised Ramsar site and one of the primary water sources for City of Harare. The order followed an objection filed with the city authorities by the Harare Wetlands Trust (HWT) and Monavale suburb residents represented by the Conservation Society of Monavale (COSMO) and ZLHR. The targeting of these world-recognised wetlands for infrastructure and construction projects, and for unregulated cultivation by individuals remains a major concern. These activities particularly pose serious dangers to cities like Harare, which already faces a major crisis of shortage of clean water against its history of waterborne diseases like cholera and typhoid. Wetlands are known to be key in filtering water by breaking down harmful pollutants such as chemicals and separate them from the water.

Wetlands also act as natural sewage systems, filtering out waste and running clean water into rivers. The degradation of wetlands negatively impacts the ecological integrity of the environment upon which human beings rely on for clean water and air. The State through the relevant agencies must educate citizens, policymakers, and local and national government authorities on the role wetlands play in strengthening human rights protections. The State must protect the wetlands by not allowing any harmful activities on them in fulfilment of the State's human rights obligations articulated above. There is a relationship between wetlands and the realisation of the right to clean water, environment and the rights to health and ultimately the right to life. The preservation of wetlands is therefore crucial to the ultimate realisation of the various human rights enshrined in the Constitution.

*Wetlands are known to be key in filtering water by breaking down harmful pollutants such as chemicals and separate them from the water.*

## **Human-Wildlife Conflict**

There is need for harmony between animals and humans living in areas within the proximity of wildlife reserves or game parks. Whenever there is an interaction between the two, which interaction leaves a trail of harmful effects, the issue of human-wildlife conflict arises.

Human-wildlife conflict is not novel in Zimbabwe, as several deaths have resulted from this conflict. It normally affects people residing close to the natural or artificial habitats of wild animals. These areas include national parks and game reserves. The main centres where human-wildlife conflict has been reported in Zimbabwe are Gonarezhou National Park, Kariba, Hwange, National Park and Victoria Falls. Many of these conflicts occur as a result of humans encroaching into the habitats of the animals, the animals leaving their sanctioned land and attacking humans and even in the course of the animals searching for food and water. Human-wildlife conflict is an environmental rights issue and it affects both wildlife and humans.

Section 73 (1a) of the Constitution states that every person has a right to an environment which is not harmful to their health or wellbeing. However, in the affected areas, several people have lost their lives. The Environmental Management Agency has been blamed for not doing enough to fix this problem, with the burden of averting the problem mainly being carried by the management of Zimbabwe Parks. This state of affairs is quite unfortunate since EMA is mandated with ensuring a healthy and safe environment for Zimbabweans. These conflicts clearly fall within the purview of the agency's statutory mandate. Continuous loss of life and livestock can be averted if all the stakeholders put up a consented effort to address the issues at hand. Communities in affected areas have since accepted the fate that the government will not put any effort to assist their cause. As reported by some village heads, many of the incidents of human-wildlife conflict are not even reported to the authorities due to the remoteness of the areas they take place and also as a result of the loss of faith in government's capacity/willingness to address the

conflicts. It is also regrettable that the country does not have a human-wildlife conflict policy. Such a policy would go a long way in effectively dealing with this problem and protecting environmental rights.

**Human-wildlife**  
*conflict is an environmental  
rights issue and it affects both  
wildlife and humans*

### **Presidential Clean Up Campaigns**

On 5 December 2018, President Mnangagwa issued a presidential declaration dubbed the '*Presidential Clean-Up Day Declaration*'. According to this declaration, the President set aside the first Friday of each calendar month from 8 am to 10 a.m. as a time for cleaning up the environment. The declaration resonates well with environmental rights as provided for in section 73 of the Constitution. The campaign set up by the President is a welcome initiative in as far as the cleaning of the environment is concerned. However, some have criticised the clean-up campaigns as more publicity stunts. Residents of most of Harare's high-density suburbs complain of poor service delivery when it comes to waste disposal which problems cannot be addressed by a one-day-per month cleaning exercise. They argue that this campaign ought to extend to revamping local authorities so as to make sure they boost their service delivery. Many of these residents resort to dumping refuse in undesignated areas thereby posing grave health hazards. Complaints have also been lodged of EMA's failure to make follow up visits to areas that would have been cleaned during the campaign.



## Mining and Environmental Protection

Mining contributes the most foreign currency to the country, with the export of gold topping the list. Approximately 60 minerals are mined in Zimbabwe, making mining one of the country's biggest industrial focus. The Ministry of Mines and Mining Development has the vision of attaining a stable and sustainable US\$12 billion mining industry by the end of the year 2023. While the ministry and its various stakeholders have developmental goals meant to promote the industry and overall performance of the economy, the ministry has allowed several illegal mining activities to continue under its watch. These mining activities, documented in 2019, severely damaged the environment particularly affecting the environmental rights of the local communities. Such destructive mining practices were seen in areas like Mutoko where there is ongoing mining of granite stone. The companies extracting granite in the area transformed agricultural land into dumpsites and damaged some houses through the use of their blasting machinery. It was reported that mining companies happily took the cheaper route of paying EMA fines than incur the exorbitant cost of environmental rehabilitation.<sup>57</sup> The government was also deprived of much-needed revenue as a result of illicit mining activities in the same area. There were reports of massive revenue loopholes because the authorities did not weigh the produced stone.<sup>58</sup>

Artisanal and small-scale mining has been a source of livelihood for many Zimbabweans for decades. While most of these miners practise illegally, their practices continue unabated due to weak enforcement mechanisms of laws by the mining authorities. There were reports of the abuse of women working in the artisanal and small-scale mining sector. This abuse ranged from name calling, sexual harassment, indecent assault and public display of private parts by the male counterparts in the sector. Such abuses also extended to women being dispossessed of their mining claims. The mining sector is a male dominated industry, but due to the economic hardships gripping the country, a number of women have been forced to venture into the sector to make a living.



*It was reported that mining companies happily took the cheaper route of paying EMA fines than incur the exorbitant cost of environmental rehabilitation.*

57. *The Independent: Black diamond curse for Mutoko, 1 February 2019, available at <https://www.theindependent.co.zw/2019/02/01/black-diamond-curse-for-mutoko/>*  
58. *Id.*

According to IPS/ZELA's report on the mining activities carried out in the Runde district, mercury and cyanide were still being used by artisanal miners in several sites, chemicals that pose significant health hazards.<sup>59</sup> The report noted that,

*"On 112 of the gold sites, processing was conducted on a milling point outside of the site and half of the milling point (3 out of 6) visited by the surveyors were using mercury or cyanide. Therefore, there is a strong possibility that half or more of the gold production goes through milling points using mercury. Miners were not aware of specific health hazards associated with use of mercury. According to them, they have no alternative means of extracting their gold. Zimbabwe imports 50 tons of mercury while 150 tons are brought in illegally, and it is all being used by the small scale gold miners".<sup>60</sup>*

The report made further observations stating the following:

*"Other environmental impacts were reported on most of the sites. It mostly included the presence of open pits, land degradation and deforestation. Besides the negative environmental impact reported on these 135 mining sites, we should add 142 non-active sites where abandoned pits continue to threaten the local landscape. When a mine operation ceases, miners state that the rehabilitation process is expensive for them even if they acknowledge awareness of the Environmental Management requirements on mining site closing procedures."<sup>61</sup>*

59. International Peace Information Service (IPIS)/ Zimbabwe Environmental Law Association (ZELA): Artisanal and small-scale mining mapping in the Runde Rural District of Zimbabwe, IPIS report, April 2019. Available at <https://ipisresearch.be/wp-content/uploads/2019/06/20190628-Zimbabwe-data-analysis-IPIS.pdf>

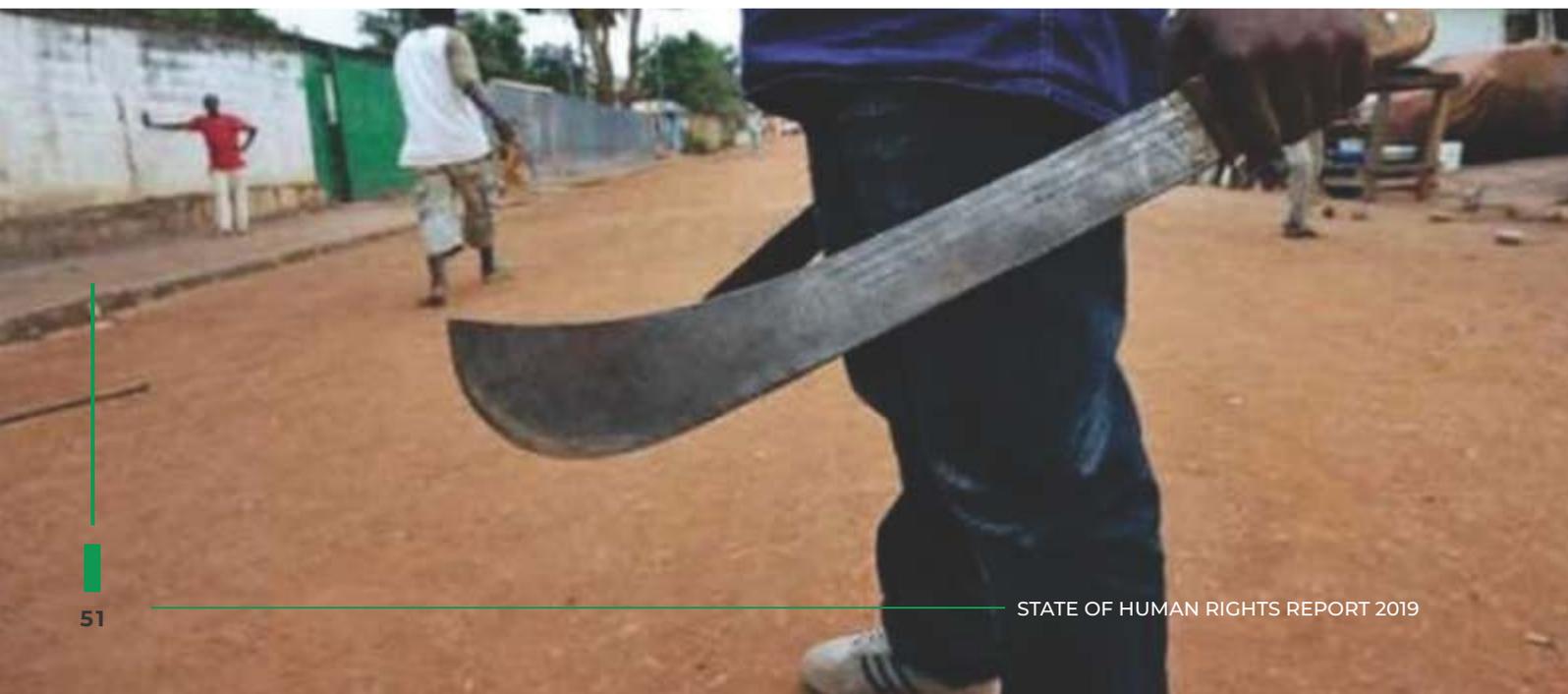
60. International Peace Information Service (IPIS)/ Zimbabwe Environmental Law Association (ZELA): Artisanal and small-scale mining mapping in the Runde Rural District of Zimbabwe, IPIS report, April 2019. Available at <https://ipisresearch.be/wp-content/uploads/2019/06/20190628-Zimbabwe-data-analysis-IPIS.pdf>

61. International Peace Information Service (IPIS)/ Zimbabwe Environmental Law Association (ZELA): Artisanal and small-scale mining mapping in the Runde Rural District of Zimbabwe, IPIS report, April 2019. Available at <https://ipisresearch.be/wp-content/uploads/2019/06/20190628-Zimbabwe-data-analysis-IPIS.pdf> Page 16

The report shows that illegal gold mining damaged the environment and the use of dangerous chemicals posed significant health hazards against the miners themselves. Lack of knowledge on the effects of such chemicals on their health, perpetuates their usage despite the dangers posed. Further degradation of the environment continued to be witnessed at a large scale, affecting the balance of the eco-system. People living in mining areas such as Zvishavane were left to grapple with environmental hazards emanating from the mining activities being undertaken in those areas. These hazards ranged from water, air and noise pollution. Land degradation also took its toll on these areas as a result of the miners not practising safe and sustainable mining methods.

A terror gang known as 'Mashurugwi' terrorised civilians, policemen and other miners during the year under review. This gang is believed to be comprised of artisanal miners who operate in gold-rich areas such as Kwekwe and Gweru. These miners are reported to have killed, robbed and maimed several people since their reign of terror began. Civilians living in these mining towns were continuously at risk to these gangs. It is troubling that the State failed to control these machete-wielding gangs. Intervention in these risk-prone areas would have saved multiple lives from being needlessly lost.

*These miners are reported to have killed, robbed and maimed several people since their reign of terror began. Civilians living in these mining towns were continuously at risk to these gangs.*



## Specific Cases

- In August 2019, a gardener at Mzimukhulu Lodge was trampled to death by an elephant near Lomagundi Lodge in Kariba on his way to work. The Zimbabwe Parks and Wildlife Management Authority (ZimParks) noted that another life, *“has been lost because we all know that our animals have exceeded the ecological carrying capacity and they are now invading human settlements causing a lot of problems. There is need for us to be allowed to cull these animals so that people are safe.”*
- In September 2019, Kariba mourned the death of a victim of human-wildlife conflict, Matoundi Butawu, the son of Chief Sahi of Gokwe who was buried in Gokwe a few days later.
- On 8 May 2019, the High Court prohibited the Harare City Council from developing and constructing on wetlands in Greendale, until the local municipality had fully complied with the requirements of the Environmental Management Act and the Regional, Town and Country Planning Act [Chapter 29:12].<sup>62</sup> This followed a court action brought by ZLHR on behalf of the Greendale Residents and Ratepayers Association, challenging the construction of structures on wetlands without a proper environmental impact assessment. The residents argued that the continued destruction and disturbance of wetlands had far reaching implications on the sustained availability of ground water, which was also heavily relied upon by many households that were not able to access municipal water.
- On 27 September 2019, the High Court issued a contempt order against the City of Harare in a case brought by ZLHR on behalf of the Greendale Residents and Ratepayers Association.<sup>63</sup> In their application, the Greendale Residents.
- Ratepayers Association argued that the City of Harare had continued with housing developments on the Latimer/Greengroove Wetland Area in Greendale suburb in flagrant defiance of and total contempt of a lawful court order issued by Justice Erica Ndewere, on 8 May 2019.

62. *Greendale Residents and Ratepayers Association v. City of Harare & 4 Ors HC 2000/19*

63. Reported by Kubatana, available at <http://kubatana.net/2019/10/02/amid-water-crisis-zim-court-faults-city-of-harare-for-construction-of-houses-on-wetlands/>

# 08

## CHAPTER 8 CHILDREN'S RIGHTS

The Constitution places particular primacy on the rights of children, stating that in all matters relating to and involving children, the best interests of the child take precedence.<sup>64</sup> The crafters of the Constitution clearly prioritised the rights of children in line with international human rights instruments and normative standards. Zimbabwe is party to a number of international and regional human rights instruments that focus on the rights of children.<sup>65</sup> While Zimbabwe has these strong provisions in the Constitution complemented by the international human rights instruments that together protect the rights of the child, the actual realisation of these rights remains a challenge in practice. There are various reasons why this is so, including legal, structural, societal and cultural issues. From a legal perspective, the failure to expeditiously align the outdated subsidiary laws, relating to children's rights with the Constitution negatively impacted the realisation and enjoyment of rights. 2019 was dominated by parliamentary and public debate on the Education Amendment Bill H.B.1, 2019, a Bill gazetted to amend the 2006 Education Act. The Education Act had been widely criticised for not meeting constitutional standards of the right to education. The Education Amendment Bill thus sought to bring the Education Act in line with the Constitution.

### Right to Education

On 15 February 2019, the Education Amendment Bill was gazetted. The Bill sought to bring wholesale amendments to the Education Act so that it would reflect the letter and spirit of the Constitution. Some of the key proposed amendments included the provision of a right to a basic State-funded education; the protection of female learners who fell pregnant from being expelled from school; the full inclusion of learners with disabilities into the education system; and the protection of learners from corporal punishment and other forms of cruel, inhuman, and degrading treatment.

The Bill was applauded by different stakeholders for some of these aforementioned progressive provisions. It, however, received criticisms from other commentators who noted that the Bill failed to give enough protection to learners in line with applicable international human rights instruments and normative standards.

64. Section 81(2) of the Constitution.

65. Zimbabwe is state party to the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).

The global human rights watchdog, Human Rights Watch (HRW), made the following observations:<sup>66</sup>

- The Bill's current focus on "*State-funded basic education*" did not include an explicit guarantee of the right to free education. The Bill should state that primary education for all learners, including those with disabilities, is free and immediately realizable, and that free secondary education is available and accessible.
- Although the Bill includes learners with disabilities, it remains focused on providing "*special needs education*." Parliament should amend the Bill to protect the right to inclusive education and be in compliance with Zimbabwe's obligations under the UN Convention on the Rights of Persons with Disabilities.
- "*Inclusive education*" must be defined to mean educating children and young people with disabilities in mainstream schools in their neighbourhood with supplementary aids, support, and services, known as "*reasonable accommodations*," if necessary. Experts say it is the best way for governments to guarantee the right to education to everyone without discrimination.
- The Bill's provision that "*no child shall be discriminated against on the basis of pregnancy*" is a positive measure. The Bill should explicitly guarantee pregnant girls and young women and those who are parents the right to remain in school during pregnancy and to have the support they need to return to school.



*The Bill should state that primary education for all learners, including those with disabilities, is free and immediately realizable, and that free secondary education is available and accessible.*

Human Rights Watch's analysis tackles some of the pertinent issues that ought to be addressed by the Bill if the law is to give stronger protections to the enjoyment of the right to education.

As has been the norm over the years, pupils continued to be sent back home over the non-payment of fees at the beginning of the school terms in 2019. The situation was worsened by the fact that prices of goods and services increased while salaries, especially for government employees, remained stagnant, making it difficult for parents to fulfil their obligation of paying school fees for their children. Due to these harsh economic conditions, education essentially became a luxury as opposed to it remaining a basic human right. With a section of the government teachers having

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66. Human Rights Watch, "Open Letter regarding the Zimbabwe Education Amendment Bill of 2019" available at <https://www.hrw.org/news/2019/05/10/open-letter-regarding-zimbabwe-education-amendment-bill-2019>

been engaged in industrial action or go-slows during different times of the year, the right of children to education was highly compromised. The government ought to ensure the undisturbed enjoyment of this right for children. The inflated prices of uniforms, text and exercise books and other necessary school resources was also reported in 2019 meaning that more students were prejudiced in their quest for education. The devastating effects of cyclone Idai were also felt on the education front as 140 schools were destroyed by the natural disaster, leaving students without learning space.<sup>67</sup> The ZIMVAC report of 2019 revealed that 8 per cent of children aged 13 - 17 were out of school due to pregnancy or child marriage.<sup>68</sup> These recurring challenges that affected the capacity of children to enjoy the uninterrupted right to education brought to the fore the urgent need of a new Education Act aligned to the Constitution and relevant international human rights instruments.

## Right to Health

The compromised healthcare situation that prevailed in Zimbabwe in 2019 had far-reaching effects with children not being spared. Their right to the highest standard of healthcare was extremely compromised throughout the year. In April 2019, it was reported that about 2.5 million children required assistance as a result of the natural hazards, increased food insecurity and an outbreak of diarrheal disease that had hit the country.<sup>69</sup> It was also reported that more than 30 000 children under five were severely

malnourished in 2019.<sup>70</sup> The malnourishment of these children was due to a combination of factors such as the crippled economy and resultant poverty that was experienced by the ordinary Zimbabwean, lack of the necessary medicines in the country's medical facilities and the natural disasters that ravaged the country during the year. The right to health of these affected children was a cause for concern, considering that it is one of the government's mandates to ensure the provision of quality healthcare services to its citizens, especially the vulnerable.

Cyclone Idai made landfall on 15 March 2019, affecting 270 000 people (including 129 900 children) mostly in Chimanimani and Chipinge districts east of Zimbabwe.<sup>71</sup> The number of children affected in the wake of this fatal cyclone is unprecedented. Access to healthcare facilities was impeded as roads could not easily be navigated. It is also reported that several infant deaths were recorded in the Chimanimani and Chipinge districts as a result of the inability or parents to promptly secure medical attention. Cyclone Idai destroyed dwellings, crop fields and food storages leaving the communities with no food reserves.

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*Overall, the country recorded*  
**3,700,000**  
*children in need of humanitarian assistance in rural and urban areas.*<sup>72</sup>  
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67. UNICEF Report: Zimbabwe Humanitarian Situation Report #9 (January-December 2019) available at <https://reliefweb.int/report/zimbabwe/unicef-zimbabwe-humanitarian-situation-report-9-january-december-2019>

68. *Id.*

69. UNICEF Report: Human Rights Action for Children 2019-Zimbabwe, pg. 1 available at <https://reliefweb.int/sites/reliefweb.int/files/resources/2019-HAC-Zimbabwe-rev-March%282%29.pdf>

70. *Ibid*

71. See World Bank Report: Restoring Zimbabwe's Livelihoods, Infrastructure After Cyclone Idai available at <https://www.worldbank.org/en/news/feature/2019/09/16/restoring-zimbabwes-livelihoods-infrastructure-after-cyclone-idai>

72. Zimbabwe Vulnerability Assessment Committee (ZimVAC), June to September 2019; available at <https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/2019/08/FS-Cluster---Consolidated-Food-Security-Monitoring-Report---June-2019.pdf>

## Rights of Children with Disabilities

Cyclone Idai was particularly devastating to children with disabilities in Manicaland province, due to their peculiar vulnerabilities.

Unfortunately, the segregation, on the basis of disability, that takes place in most of Zimbabwe's spheres also happened during the time of the cyclone especially impacting the more vulnerable children with disabilities. Stories were narrated on how families prioritised saving able-bodied children as they applied the discriminatory natural selection approach.<sup>73</sup>

*“On the night the cyclone hit, Gogo Sasa realised that her two roomed house was quickly flooding with water and sand. She grabbed three of her grandchildren and sought refuge at a local church. The fourth child, who is deaf, was left behind. When asked why she had not taken the child with her, she said that she thought it was more important to save the lives of her three able-bodied grand children. She believed the deafness affecting her fourth grandchild was caused by an avenging spirit from her paternal family, which gave his lifeless value.”<sup>74</sup>*

There were several documented instances where children with disabilities were left to face the raging floods whilst the able-bodied children were rescued. This is a practice that continues to be perpetuated in society, where children with disabilities continue to be discriminated against as they are considered to be lesser humans. The Chimanimani case study above is a good example showing how in the midst of an emergency, children with disabilities are considered a lower priority, and in extreme cases, may even be deliberately abandoned by their parents or caregivers. It is essential when responding to an emergency that children with disabilities are provided with appropriate nutrition, clothing, and shelter, access to healthcare and educational services. These children ought to be treated with the same respect as that accorded to able-bodied children. There is need for a comprehensive and holistic review of disability policies and legislation addressing the rights of children with disabilities.

As the Education Bill was being deliberated on in 2019, the provisions dealing with participation and full inclusion of children with disabilities in society and other activities were considered and debated. Whilst the amendment reflected some language in the text to strengthen rights of children with disabilities, there remains some scope for improvement of the contents of the Bill in as far as concretizing the rights of learners with disabilities is concerned. According to UNICEF, 52% of children with disabilities in Zimbabwe have no access to basic education despite the country having one of the highest highest literacy rates on the continent.<sup>75</sup>

73. See the UNICEF report: *Deafening silence on disability, Cyclone Idai, 2019*, available at <https://www.unicef.org/zimbabwe/stories/deafening-silence-disability-cyclone-idai>

74. An extract from a Chimanimani case, narrating how gogo (grandmother) Sasa frantically tried to save her three grandchildren, leaving behind the fourth child who was deaf, as they fled from the Idai storm that had struck. Extracted from the UNICEF report: *Deafening silence on disability, Cyclone Idai, 2019*, available at <https://www.unicef.org/zimbabwe/stories/deafening-silence-disability-cyclone-idai>

75. See the UNICEF report: *Disabled Zimbabwe Children Face Serious Challenges* available at <https://www.voazimbabwe.com/a/unicef-children-with-disabilities-facing-challenges/1680208.html>



This state of affairs is as a result of a combination of factors from lack of specialized facilities, lack of societal integration for children with disabilities and lack of social support from the community at large. Overall, more has to be done to ensure that the right to education for learners with disabilities is fully realised.

### **Human Rights Violations Against Children During the January 2019 Protests**

During the January protests that followed the announcement of the fuel hike by the President, it was reported that at least 51 children were arrested and processed through the court system facing public violence charges.<sup>76</sup> Most of the minors were victims of the dragnet arrests that were carried out in Harare, Chitungwiza, Muccheke and Bulawayo. Most of the children were treated like adults with no consideration or distinction made on the basis of their age by the arresting details. The minors were subjected to assault during the arrest by the army and police before being taken to various police stations where they were detained in overcrowded police cells with adults. In some of the cases, children were detained, beyond the constitutionally stipulated 48 hours. Virtually all the minors were subjected to pre-trial detention with one minor spending 10 days at Chikurubi Maximum Security Prison, despite rules stipulating that minors should only be detained as a last resort under very narrow strict exceptions which did not apply in the case of these minors. In Bulawayo, 14 children were detained at Khami Prison in Bulawayo after their initial appearance in court but were later released after their birth certificates were produced in court.<sup>77</sup> The detained children appeared in different courts across the country including at Rotten Row and Mbare Magistrates Courts in Harare, Chitungwiza Magistrates Court in Chitungwiza, and Tredgold and Western Commonage Magistrates Courts in Bulawayo. Of major concern was the court practice of truncating due process and fast-tracking trials in clear violation of fair trial rights. Despite the mostly circumstantial evidence, a number of the minor children were convicted, with a range of sentences inconsistently handed down.

76. Zimbabwe Human Rights NGO Forum: 'Hear them cry' An Analysis of State Violence Against Children During the January 2019 Protests, November 2019, Available at <http://www.hrforumzim.org/wp-content/uploads/2019/11/Hear-Them-Cry-Report-lr.pdf>

77. *Id.*

Some convicted minors were given wholly suspended sentences, others community service whilst some were sentenced to corporal punishment. A few others were warned and cautioned.

## The Draft Child Justice Bill

The government released the draft Child Justice Bill - a proposed law that seeks to provide separate legislation for a juvenile criminal justice system. The Bill seeks to create a separate criminal justice delivery system for children who are in conflict with the law, affording them greater constitutional protections that take into account their status of minors. The Bill will cover both procedural and substantive issues that arise in relation to a child alleged to have committed a criminal offence. The Bill will consolidate relevant provisions currently scattered in different legislation that includes the Constitution, the Children's Act, the CPEA and the Criminal Code. From a law-making perspective, it is still early days as the actual Bill has not yet been gazetted. But the direction taken by the government to initiate the consultative process building towards the law-making process must be viewed positively given the possibilities of better protections for juveniles that the Bill will offer. If the draft Bill eventually becomes law, it will represent a progressive development to the extent it will give primacy to the best interests of the child principle, and ensure minors are diverted from the procedural and substantive clutches of the harsher criminal justice laws that apply to adults.

### Specific Cases

- On 3 April 2019, The Constitutional Court decided the case of *The State v Willard Chokuramba*, CCZ 10/19 that judicial corporal punishment violated section 53 of the Constitution and was therefore unconstitutional. The Constitutional Court examined whether section 353 of the Criminal Procedure and Evidence Act on the "corporal punishment of male juveniles" violated section 53 of the 2013 Constitution which guarantees the right to be protected from physical or psychological torture or to cruel, inhuman or degrading treatment or punishment. The Court concluded that "The elimination of judicial corporal punishment from the penal system is an immediate and unqualified obligation on the State. Judicial corporal punishment constitutes a serious violation of the inherent dignity of a male juvenile offender subjected to its administration." Resultantly the Court struck down section 353 of the Criminal Procedure and Evidence Act as unconstitutional and further ruled that, with effect from 3 April 2019, no male juvenile convicted of any offence could be sentenced to receive corporal punishment.

# 09 |

## CHAPTER 9 WOMEN'S RIGHTS

Over the years, Zimbabwe has made significant progress in advancing the rights of women in Zimbabwean society. From legislation, policies, awareness campaigns and outreach programmes, the drive for the realisation and protection of women's rights has been apparent. Zimbabwe is a state party to international treaties that advance rights of women and the girl child such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) and the United Nations Convention on the Rights of the Child (UNCRC). These international human rights instruments are key in providing benchmarks for the protection of the rights of women and the girl child. Domestically, the Constitution provides a strong legal framework for the realisation and protection of gender equality and the broader rights of women and the girl child.<sup>78</sup> However, because of the patriarchal nature of part of Zimbabwean society, women and girl children still find themselves falling victim to a range of human rights challenges that include being forced into child marriages, failing to access equal employment opportunities with men in private and public sectors, being the main victims of violence and being discriminated against in political spaces.



78. Section 80(1) provides that "every woman has full and equal dignity of the person with men." Section 56 guarantees the right to equality and non-discrimination. Women have the right not to be discriminated against on the basis of their gender. Section 17 stipulates that, "the State must take positive measures to rectify gender discrimination and imbalances resulting from past practices." Section 80(3) outlaws laws, customs, traditions and cultural practices that infringe upon the rights and personal safety of women. Section 78 proscribes forced marriages and child marriages.

## Child Marriages

Despite progressive protections in law and judicial pronouncements<sup>79</sup> on the prohibition of child marriages, in practice, the problem of child marriages remains deeply steeped in parts of Zimbabwean society. Child marriages negatively impact the ability of minors to enjoy full rights as they deprive them of the opportunity to fully develop as a human being through the disruption of developmental milestones such as pursuit of education. The girl child is especially affected as she will not be physically or emotionally well-developed to become a mother at a tender age. Therefore, child marriages constitute a serious human rights abuse that should be addressed by the State. According to the United Nations Population Fund (UNFPA), globally, one in every five girls is married, or in a union before the age of 18 years.<sup>80</sup> In developing countries, more than 32% of girls are married before the age of 18 and 12% are married before the age of 15.<sup>81</sup> In Zimbabwe, approximately one in three girls are married before the age of 18 years.<sup>82</sup> The above statistics show just how dire the problem of child marriages runs deep in Zimbabwe and African society as a whole.

In order to consolidate the marriage laws and bring them in line with the Constitution, government gazetted the Marriage Bill in July 2019, legislation that, among other things, provides for the outlawing of child marriages and protection of minors from being betrothed against their will. The Bill was subjected to robust discussion by various public stakeholders and during debates in parliament. During the various consultations on the Bill, some stakeholders raised queries over the inconsistencies in the law since the age of consent for sexual intercourse is pegged at 16 but the marriageable age is 18. A key question flagged was whether it was logical to allow a minor to engage in sexual intercourse whilst forbidding the very same minor to begin a family.

Even though such inconsistencies still remain to be addressed, parliament has taken a positive step in aligning the subsidiary legislation with the Constitution. Section 26 of the Constitution obliges the State to put measures to ensure that children are not pledged in marriage and also proscribes marriages entered into without the consent of the parties concerned. Section 78 sets 18 years as the minimum age for one to get married. This constitutional framework was established in order to protect minor children from being forced into marriages, which marriages are a grave affront to children's rights and the Marriage Bill, if passed into law, will go a long way to operationalise the letter and spirit of the Constitution.

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79. See for example the case of, *Mudzuru & Another v Minister of Justice & Others* CCZ 12-15.

80. UNFPA: *Overview on Child Marriage*, Accessed at <https://www.unfpa.org/child-marriage>

81. *Girls not Brides* accessible at <https://www.girlsnotbrides.org/child-marriage/zimbabwe/>

82. *Ibid*

## Violence Against Women

In Zimbabwe, about one in three women aged 15 to 49 have experienced physical violence and one in four women have experienced sexual violence since the age of 15.<sup>83</sup> Sexual exploitation, domestic violence and gender-based violence remained prevalent in 2019 despite efforts by the State to address gender-based human rights violations. A positive development was the launch of the Spotlight Initiative on 26 June 2019, by the European Union and the United Nations in Zimbabwe together with the Government of Zimbabwe—a US\$34 million, 4-year program, to focus on eliminating gender-based violence against women and girls. In November and December 2019, the State, in partnership with development partners launched One Stop Centres in Chinhoyi and Hopley, Harare in an effort to ensure access to services for survivors of Gender Based Violence (GBV). This is a positive development by the State, human rights organisations and development partners targeted at providing multi-layered solutions to survivors of gender-based human rights violations. The One Stop Centres provide holistic solutions to survivors who will be able to access medical, psycho-social, legal and counselling services under one roof.

The government has also taken various measures to reduce incidents of gender-based violence through legislative and administrative measures in line with the Constitution and other international treaties such as CEDAW but has not been completely successful in that regard. Women continue to suffer violence and other forms of gross human rights violations.



83. United Nations Population Fund Zimbabwe (2019) Gender-based violence in Zimbabwe accessed at <https://zimbabwe.unfpa.org/en/topics/gender-based-violence-0>

As reported by the Forum, at least 17 women were raped during the anti-government protests that took place in January 2019. These cases of rape are said to have been perpetrated by members of the security services. The report, *'Burdened by disgrace'*,<sup>84</sup> which was published by the Zimbabwe Human Rights NGO Forum documents the voices of some of the victims of sexual violence during the aforementioned period. The report stated that one woman reported that after she was raped, the soldiers threatened her against reporting the crime lest they return and kill her.<sup>85</sup> Four other women who conduct sex work were raped after being accused of breaking the unofficial curfew.<sup>86</sup> Unsurprisingly, the perpetrators of these heinous crimes have not been arrested and the government even suggested that the victims had "staged" their own rape cases.<sup>87</sup> Women continue to be victims of violence perpetrated by State agents who should be custodians of the human rights and the law. Another example of the abuse of women by authorities manifests in the targeted violence witnessed during sporadic demonstrations in the urban centres and the unending city council running battles with vendors. Despite having progressive legislation and policy framework to protect women from violence and other forms of human rights violations, Zimbabwe still remains lacking in giving actual effect to the rights of women.

The Judicial Service Commission (JSC) on 8 November launched an updated protocol on the Multi-sectoral Management of Sexual Abuse and Violence. The protocol is geared towards regulating how different stakeholders, including the police, deal with sexual abuse and gender-based violence. The protocol is an updated version of the 2012 protocol. The update is in reaction to new trends and sophisticated crimes like cyber crime which are a threat, especially to women and children. The protocol implores stakeholders to improve pre-trial and post-trial support services with special attention to people with disabilities.

## Equality and Full Inclusion

Section 80(1) of the Constitution states that every woman has full and equal dignity of the person with men and this includes equal opportunities in political, economic and social activities. The history of inequalities that exist between men and women today dates back to previous centuries. Women have historically occupied the domestic space in society and have been viewed as inferior to their male counterparts. This tradition has been perpetuated over the years and today, women are still confined to the peripheries of society. In 2019, various initiatives were embarked on to attain parity in the enjoyment of rights by both women and men.

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84. See generally, the Zimbabwe NGO Forum Report, *Burdened by Disgrace, An analysis of Rape and Sexual Violence during the January 2019 protests*, available at <http://www.hrforumzim.org/news/burdened-by-disgrace/>

85. *Id.* Page 24

86. *Id.* Page 26

87. *Id.* Page 27

The Women's Academy for Leadership and Political Excellence (WALPE) - a women's political empowerment and leadership academy set up to advance knowledge and deepen the capacity of women in political participation - launched the "#LetsGo50/50 gender equality campaign" in Manicaland. This catalytic initiative was meant to sensitize and energize women to participate in public and political leadership. The campaign in Manicaland was timely given that this is one of the provinces suffering under-representation by women in political spaces. Of the 26 directly elected members of parliament in Manicaland province, only three of them are women. Lack of confidence, patriarchal stereotypes and lack of unity amongst the women themselves are some of the reasons cited for the lack of impetus by women to claim their space in mainstream society.

The Zimbabwe Human Rights NGO Forum noted that despite the progressive provisions in national laws, "*structural and administrative barriers continue to hinder progress towards gender balance even at the apex level of government. The government has consistently failed to satisfy the gender balance requirements of section 17 of the constitution as only a few women are represented in decision making positions.*"<sup>88</sup> The status quo is worsened by the fact that the Zimbabwe Gender Commission - the constitutional body mandated to enhance gender equality-continued to be incapacitated due to lack of adequate human and financial resources.

Women still face challenges in climbing the corporate ladder and assuming leadership positions remains a challenge due to misogynistic backlash from male counterparts where ambition is exhibited. For example, a female journalist, Faith Zaba was a victim of misogynistic attacks after she assumed the position of Chief Editor for a local weekly newspaper, the '*Zimbabwe Independent*'. Insults and abuses were directed at her following her appointment to this post. The attacks were personal and had nothing to do with her competence as an editor. The personal and unjustified attacks on her character and capacity are symptomatic of a wider problem of disrespect and the undermining of women, who aspire to break the so-called glass ceiling. Attaining gender equality remains a challenge requiring more effort if the desired goals, expressed in law and policy are to be achieved.

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88. The Zimbabwe Human Rights: NGO Forum International Women's Day Statement, 8 March 2019, available at <http://www.hrforumzim.org/news/international-womens-day-statement-8-march-2019/>

## Sexual and Reproductive Health Rights

According to the World Health Organization (WHO), “Sexual and reproductive health rights (SRHR) encompass efforts to eliminate preventable maternal and neonatal mortality and morbidity, to ensure quality sexual and reproductive health services, and to address sexually transmitted infections (STI) and cervical cancer, violence against women and girls, and sexual and reproductive health needs of adolescents.”<sup>89</sup>

Section 76(1) of the Constitution guarantees every Zimbabwean citizen and permanent resident the right to have access to basic health-care services, including reproductive health-care services. However, in reality, women still suffer challenges in making the realisation of sexual and reproductive rights a reality. On the ground, women still lack adequate knowledge and awareness on sexual and reproductive health rights in Zimbabwe. A survey carried out by the WALPE in Midlands, Bulawayo, and Matebeleland South, Masvingo and Harare province revealed that:

“Key findings show that there is unmet need and shortage of services and supplies which address SRHR needs due to the ongoing economic crisis. There is also challenges on a constrained policy and cultural environment which impact negatively on women satisfying their SRHR needs.”<sup>90</sup>

The Guttmacher Institute observes that 1, 38% of young Zimbabwean women have had sex by age 18 and this age keeps dropping, while a quarter of young women between 15-19 years have started childbearing with a third of these births unplanned.<sup>91</sup> The results of this survey confirm the importance of prioritising providing capacity and support to women on their sexual reproductive rights and wellbeing, especially focussing on young women.

With the major government hospitals having had to operate below usual capacity and without adequate resources, countless women in need of sexual health attention were turned back, including those set to have babies delivered.<sup>92</sup> This represents a violation of the right to the realisation of the highest standard of health

89. WHO: *Sexual and reproductive health and rights: a global development, health, and human rights priority* accessed at [https://www.who.int/reproductivehealth/publications/gender\\_rights/srh-rights-comment/en/](https://www.who.int/reproductivehealth/publications/gender_rights/srh-rights-comment/en/)

90. Women's Academy for Leadership and Political Excellence: *A baseline survey on the prevailing situation on sexual reproductive health rights (srhr) for women human rights defenders and political activists in Zimbabwe*, Page 3 available at <http://kubatana.net/2019/10/09/a-baseline-report-on-the-state-of-sexual-and-reproduction-health-rights-srhr-for-women-human-rights-defenders-wrhd-and-political-activists-in-zimbabwe/>

91. *Id.* Page 4

92. According to the Multiple Indicator Cluster Survey of 2019, Zimbabwe's maternal mortality rate dropped by 29% to 462 per 100 000 live births from the previous 614 per 100 000 live births recorded in 2014

possible. During 2019, consultations were done in order to review policies and laws on the access to reproductive health services which is currently capped at 16 years. Some argued that the age should be reduced to a minimum of 12 years since there is no criminal penalty imposed against two consenting minors between the ages of 12 and 16 that indulge in sexual intercourse. Since that freedom exists, it has been argued, they ought to be provided with the right to access contraceptives and other resources that protect them and keep them healthy. Whilst there are divergent views on the matter, it is critical that the State formulates and implement laws and policies that strengthen the enjoyment of sexual and reproductive health rights by women.

### Specific Cases

- *“Eighteen-year old Thandeka Sithole (not her real name) is a survivor of rape and a product of rape. She was conceived as a result of incest after her mother was raped by one of her uncles. The abuse was kept a secret by the family. When Thandeka was 9 years old her mother got married and left her in the custody of her grandmother. From the age of nine until she was 16 years old, Thandeka was repeatedly raped by her two uncles.”<sup>93</sup>*
- 24-year-old Lilian Dube was raped and left for dead by three men in August 2019 in Gwanda, Matabeleland South where she was working as a sex worker.
- Police officers beat up a woman who had joined an MDC Alliance demonstration in Harare on 16 August 2019
- A ZRP officer beat up a woman outside the MDC Alliance party offices at Morgan Tsvangirai House in Harare. She was part of the opposition party supporters who had gathered to listen to the Hope of the Nation address by the party’s leader Nelson Chamisa.

93. An extract from United Nations Population Fund (UNFPA) Zimbabwe: A tale of two generations surviving rape, 23 August 2019, available at <https://zimbabwe.unfpa.org/en/news/tale-two-generations-surviving-rape>

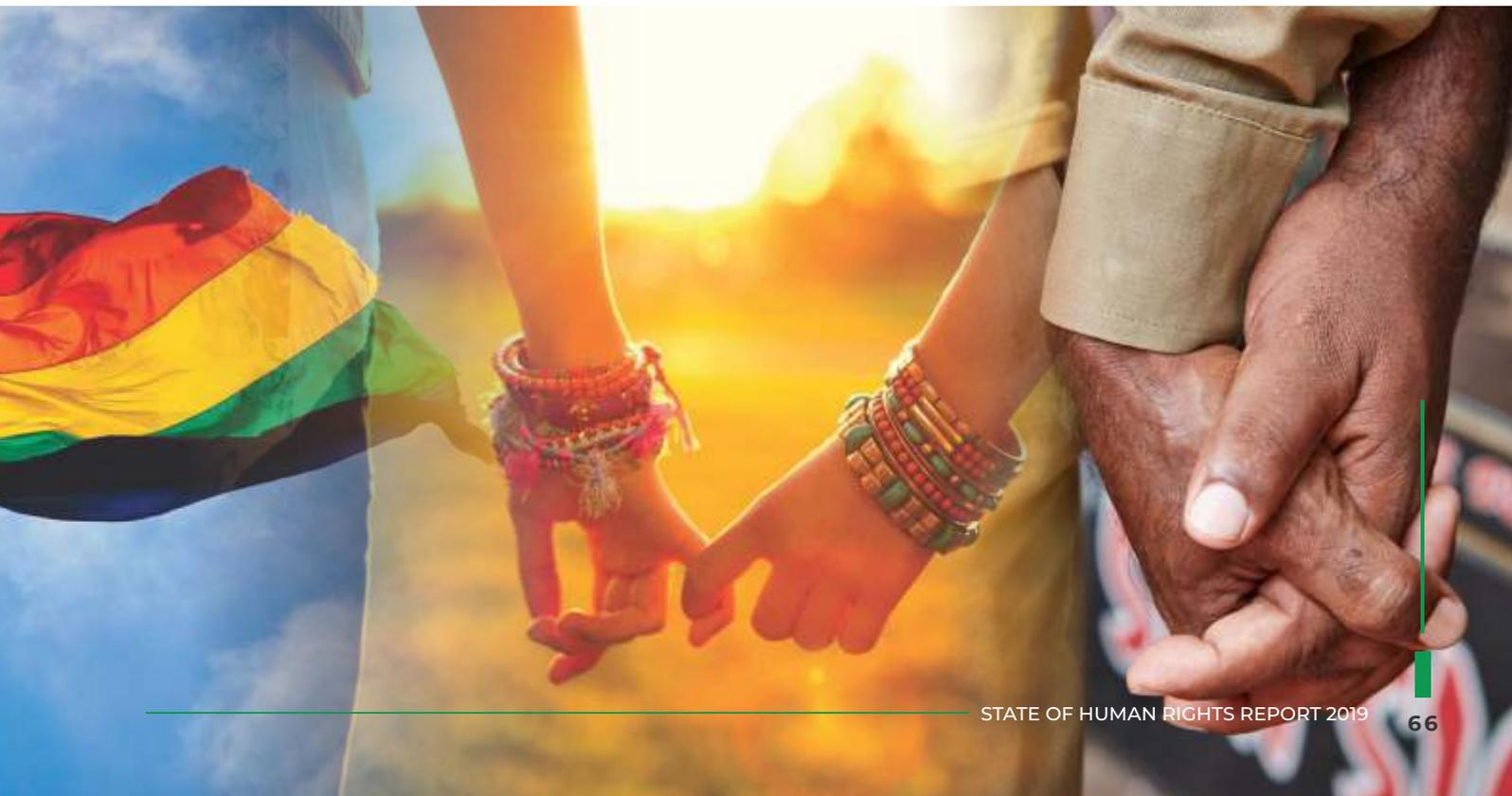
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## CHAPTER 10 SEXUAL MINORITIES

The lesbian, gay, bisexual, transgender, queer, intersex, asexual (LGBTQIA) community in Zimbabwe has historically suffered marginalization and segregation. In 2013, the then incumbent President Robert Mugabe labelled homosexuals as *'worse than dogs and pigs'*, a statement that reflects the attitude of some members of Zimbabwean towards sexual minority groups. The stigma they suffer as a result of their sexual orientation is unjustified given the protections afforded by the international human rights instruments that proscribe all forms of discrimination. Section 56(3) of the Constitution guarantees everyone the right to equality and non-discrimination. A gap, however, exists in the law since the same provision does not explicitly guarantee non-discrimination on the basis of sexual orientation. With the Criminal Code criminalising consensual homosexual acts between two males, the full realization of the sexual rights of this group of people remains, at best, vague, given gap in the constitutional framework.

### Discrimination, Harassment and Stigma

A significant number of people in Zimbabwe are lesbian and gay. However, not many of the people fitting in the LGBTQIA group are open about their sexual orientation due to fear of victimisation, stigma, discrimination and even harassment by a society that is largely intolerant of such people. Homosexuality itself is outlawed in 35 African countries and punishable by death in Sudan and Mauritania. This just shows how grave the task of protecting the rights of LGBTQIA is.



Homophobia has continued to haunt society leading to mass segregation and stigma against the sexual minorities. The Gays and Lesbians of Zimbabwe (GALZ) Stated that:

*“Homophobia permeates Zimbabwean society unchecked and manifests itself in different forms, ranging from verbal and physical assault on, to discrimination of, lesbian, gay, bisexual, transgender and intersex people on the basis of their sexual orientation or gender identity. Refusal by duty bearers and policymakers to address this issue has resulted in the public intolerance of lesbian, gay, bisexual, transgender and intersex persons becoming deeply ingrained in the community and reinforces the general stigmatization of sexual minorities in society.”*

GALZ has observed that the leaders of the country, the policymakers and legislators have not taken any progressive measures towards improving the rights of the sexual minorities. Consequently, the group has remained segregated and continue to occasionally face harassment from the State. Due to the discrimination exhibited towards the LGBTQIA community, it is difficult for them to access reproductive health services due to the fear of being harassed by the healthcare workers.

Discrimination of LGBTQIA persons remained a serious challenge<sup>94</sup> in 2019 in public and some places of employment. A report was made that a lesbian journalist had lost her job under circumstances believed to have been influenced by the hierarchy’s knowledge of her sexual orientation. It has also been difficult for gays and lesbians to secure employment as a result of how they identify

*Due to the discrimination exhibited towards the LGBTQIA community, it is difficult for them to access reproductive health services due to the fear of being harassed by the healthcare workers.*

94. Country Policy and Information Note Zimbabwe: Sexual orientation and gender identity and expression, 2019 accessible at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/775001/CPIN-\\_ZIM\\_-\\_SOGIE\\_V4.0\\_e\\_Jan\\_2019\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/775001/CPIN-_ZIM_-_SOGIE_V4.0_e_Jan_2019_.pdf)

themselves. In 2019, GALZ was reaching out to corporations to encourage them to enforce non-discrimination policies within their organisations. This is a difficult exercise especially when the government is not taking a stance to eradicate discrimination of sexual minorities. The harassment and discrimination have been exacerbated by the lack of a legal framework in the country to protect LGBTQIA persons from such abuses coupled with the general negative societal attitude towards them.

## Improvements on LGBTQIA Rights Situation

With the removal from power of the late Robert Mugabe, the LGBTQIA community hoped for a better and more inclusive future, given his well publicly pronounced revulsion of sexual minorities. In what is a positive development in the recognition of rights of the LGBTQIA community, 70 Members of Parliament from various portfolios including the portfolio committee on HIV and AIDS, Justice, Gender and Community development toured the GALZ Mutare Drop-In-Centre (DIC) on 14 June 2019, for a dialogue. During the dialogue, a number of issues were discussed including challenges faced by the LGBTQIA community in accessing health services and some of the legal barriers to justice. Members of the LGBTQIA community were able to share lived experiences in coming out, dealing with family and society, religion and culture.

The LGBTQIA community recorded fewer public attacks on LGBTQIA persons in 2019, under the new political leadership, compared to previous years. This shows a probable shift on perceived tolerance and understanding of the community. However, the relative silence from the often-scathing quarters of society should not be definitively interpreted as acceptance of the state of affairs. It may require more time to observe the general pattern and attitudes against the LGBTQIA community before conclusions can be made, given the strong homophobic views and prejudices held by a significant number of people against the LGBTQIA community.

## The Legislative Framework

Little has been done over the years to enhance the rights of the LGBTQIA community within the legislative framework. From the onset, it is imperative to note that no law prohibits the state of being 'gay.' What is criminalised by the law is the consensual sexual act between two males.<sup>95</sup> The Constitution does not explicitly prohibit The Constitution does not explicitly prohibit discrimination on the basis of sexual orientation. Section 56(3) lists categories of persons that are protected by the

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95. Section 73 of the Criminal law Code provides the crime of sodomy as follows: "Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both."

non-discrimination clause,<sup>96</sup> but its framing suggests the list is not exhaustive, and it may be argued that sexual minorities should implicitly be covered by section 56(3) of the Constitution. Elsewhere, the Constitution prohibits same-sex marriages and it may be argued that rights of gay couples can never be fully recognised as long as the limitation is drawn directly from the Constitution, as the supreme law of the land.

It should also be noted that whilst homosexual acts between men are criminalised, the same does not apply to those that take place between women. The year 2019 ended without any changes in the laws particularly affecting sexual minorities. Nevertheless, organisations such as GALZ continue to lobby for some of the law reforms that enhance the protection of rights of sexual minorities.

### Specific Cases

- Due to living with stigma, people from the LGBTQIA community continued to be susceptible to an increased risk of mental and psychological problems. These problems range from anxiety disorders and depression to substance abuse and risky sexual behaviour. In September 2018, GALZ established three counselling drop-in centres in Harare, Masvingo and Mutare. It noted that most of its clients accessing these centres often arrived with suicidal tendencies, paranoia, anxiety and other mental health challenges requiring counselling therapy sessions.
- Some members of the LGBTQIA society migrated to neighbouring countries like South Africa, Botswana or Namibia, where the environment is more open and tolerant.
- Homophobia still remained an issue in 2019. Another frequent problem was bad treatment by health-care workers. A number of hospital staff were reported to be homophobic to the extent of being unable to handle gay men seeking healthcare services. *“Some will even start preaching the Bible.”* Consequently, LGBTQIA persons often shy away from seeking support from even essential physical health services.
- Some families in rural areas continued to assume that their gay son or lesbian daughter is possessed by Satan or demons. Traditional leaders evicted them from their villages. A young man from western Zimbabwe, who prefers to stay anonymous, recounts that people in his village believed that *“even with a handshake, I would transfer homosexuality”*. The elders decided that he was unfit to stay in the community.

96. Section 56(3) is Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock. (emphasis added)

# 11

## CHAPTER 11 DISABILITY RIGHTS

It is estimated that between 900 000 and 1.4 million Zimbabweans have some form of disability, be it physical or mental disability.<sup>97</sup> About 53% of people living with disabilities acquired the disability before they attained the age of 20. Around 27% of people living with disabilities attained their disability from birth while 9% disability exists between the age limits of 1–5 years of age. The disability population of males is approximately about 56% while the disability population of women is around 44%. Together with the unaccounted-for cases, disability is quite rife in the country and a grave human rights concern for Zimbabwe.

Zimbabwe has a fairly progressive set of legislation and policies which aim at protecting the rights of people living with disabilities. Zimbabwe ratified the Convention on the Rights of Persons with Disabilities (CPRD) and its Optional Protocol on 23 September 2013. Domestically, the constitutional framework provides a reasonably strong legal framework to protect the rights of persons with disabilities. Section 56(3) prohibits discrimination on the basis of disability, among other grounds. Section 83 elaborates on the rights of persons with disabilities. However, one of the barriers to full recognition and enforcement of rights of persons with disabilities flows directly from the Constitution itself. As correctly noted by the Deaf Trust Zimbabwe (DTZ) in 2019, one of the major drawbacks to the full realization



97. UNDP: *Training of National Human Rights Institutions on Disability Inclusive Programming*, available at <https://www.zw.undp.org/content/zimbabwe/en/home/presscenter/articles/training-of-national-human-rights-institutions-on-disability-inc.html>

of rights for persons with disabilities is the 'subject to the availability of resources' clause embedded in the Constitution.<sup>98</sup> According to (DTZ), as long as all of the government's guarantees to end discrimination against people with disabilities are premised on the availability of resources, it will certainly take a lot of years to eradicate this marginalization.

## Discrimination and Exclusion

Because of more than two decades of socio-economic challenges, many children living with disabilities in Zimbabwe are among the most marginalized and excluded groups of children.

Compared to their peers, children with disabilities are often excluded from mainstream health, education, legal support and other social services.<sup>99</sup>

Persons with disabilities continued to face mass discrimination and exclusion in mainstream society in 2019. Zimbabwe, being an African country holds a plethora of superstitions concerning people with disabilities. Some believe that this group of persons is disabled as a result of the evils committed by their ancestors, and for others as a result of punishment for doing wrong on their own and whilst others are believed to have been sacrificed in wealth-making rituals. The overall effect of this is that people with disabilities are marginalized from mainstream society, be it in education, in the work environment, political spheres, social circles and other areas of society. Further, although there is legislation that protects persons with disabilities from segregation and marginalization, the lack of impetus from those in power to sanction perpetrators of such marginalization perpetuates the practice.

Persons with disabilities continued to be locked away at the peripheries of society and are rarely given the opportunity to interact and cross-pollinate and share ideas and views on issues that affect them at a personal level. There is also a disturbing practice of quarantining persons with disabilities as if they are afflicted persons with some contagious diseases.



*Persons with disabilities continue to be locked away at the peripheries of society and are rarely given the opportunity to interact and cross-pollinate and share ideas and views on issues that affect them at a personal level.*

98. Section 83 of the Constitution provides that, "The State must take appropriate measures, within the limits of the resources available to it, to ensure that persons with disabilities realise their full mental and physical potential, including measures..."

99. United Nations Children's Fund Zimbabwe (UNICEF) (2019) available at <https://www.unicef.org/zimbabwe/disabilities>

According to the National Association of Societies Care of the Handicapped (NASCOH), the public view persons with disabilities to be objects of pity rather than persons with rights. NASCOH stated that 75 per cent of children with disabilities had no access to education. There has also been systematic marginalization of learners with disabilities, with the majority of them having to attend specialized schools since the 'mainstream' schools are not conducive for their educational development due to lack of special facilities capable of accommodating their disabilities.

Persons with disabilities also faced discrimination within the justice delivery system. The problem of court interpreters well versed in sign language remained a challenge to the detriment of accused persons, complainants and witnesses during the course of court proceedings. While the court system catered for other officially recognised languages, a gap remained with the adequately trained sign language interpreters despite the constitutional recognition of sign language as an official language. In a model worthy replicating in other justice sectors, in July 2019, the Zimbabwe Prisons and Correctional Services (ZPCS) sent 10 of its officers for a six-month sign language course to enhance the prison system's capacity to effectively communicate with the diverse potential inmates to the country's prison systems. Such a move ensures that the ZPCS is able to give effect to the Constitution by ensuring that persons with disabilities get fair treatment without any form of discrimination if they end up in prison. This initiative especially targets inmates who would be having hearing impairments requiring communication using sign languages.

## The Legal Framework

The 2013 Constitution introduced some progressive provisions that sought to enhance the protection of rights of persons with disabilities. The Constitution now entrenches the inherent right to dignity and equal worth of every human being. This is especially important as persons with physical and mental disabilities are sometimes stripped of their dignity and treated as lesser human beings by society. More specifically, the Constitution entrenches the rights of persons with disabilities in letter and spirit. Recognition of the rights of persons with disabilities is stipulated as one of the anchor values of the Constitution that is binding on the State and all institutions and agencies of government at every level.<sup>100</sup> Section 22 of the Constitution provides that the State and all institutions and agencies of government at every level must recognise the rights of persons with physical or mental disabilities, in particular their right to be treated with respect and dignity. In a first in the constitutional history of Zimbabwe, the Constitution designated Sign language as one of the officially recognised languages of Zimbabwe.

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*100. Section 3(2)(i)(ii) of the Constitution*

This means that persons with challenges in hearing are entitled to and can demand access to information and platforms of communication in sign language. In another first as well for the constitutional history of Zimbabwe, there is a specific section in the Declaration of rights dedicated towards rights of PWDs. Section 83 of the Constitution states that:

*“The State must take appropriate measures, within the limits of the resources available to it, to ensure that persons with disabilities realize their full mental and physical potential, including measures:*

- a. To enable them to become self-reliant.*
- b. To enable them to live with their families and participate in social, creative or recreational activities.*
- c. To protect them from all forms of exploitation and abuse.*
- d. To give them access to medical, psychological and functional treatment.*
- e. To provide special facilities for their education; and*
- f. To provide State-funded education and training where they need it.”*

What becomes clear from above is that the Constitution set a strong legal framework to dismantle some of the barriers that PWDs have faced in trying to overcome discrimination. The major challenge, however, is that, in 2019, as in previous years, the State failed to align laws and policies with the Constitution so that the enjoyment of the rights could be fully operationalised. It is troubling that six years after the passage of a new Constitution, there still remains a law in the country’s statute books called the Disabled Persons Act - a crude, and totally inappropriate phrasing in the era of the

rights-based regime. It is unsurprising that the language in the Act largely retains the welfare phraseology and the Act fails to embrace the rights-based approach retained in the Constitution and the CPRD.

It is therefore imperative that the State prioritises the review and amendment of the subsidiary laws and enact rights-based legislation and adopt policies that give full effect to rights of PWDs.

## Exploitation and Abuse

The Constitution provides for the protection of persons with disabilities against exploitation and abuse. However, this group of people continue to suffer exploitation and abuse, mostly at the hands of able-bodied people. This is mostly due to their vulnerability. Reports have been received of men raping and molesting mentally ill women. Such practices are so widespread in Zimbabwe’s communities but are not usually actioned upon because such reports are downplayed as being of a false. Further, if the mentally challenged victim is the sole witness of their own abuse, she is regarded by the law as an incompetent witness, hence her testimony is treated as inadmissible in a court of law. This is just one of the myriad of forms of violations that persons with disabilities continue to suffer. There were also reports of gender-based domestic violence against women with disabilities in the past year. As a result of the various physical impairments, most of these women were unable to defend themselves and it also took them considerable time to report to the police due to the handicaps that impede their free movement. In most of the rural areas, such abuses take place. Several reports of emotional abuse of persons with disabilities were also rife. With some having physical deformities, society ridiculed them and in turn compromised their morale.

## Specific Cases

- Only 3 children with disabilities out of 170 at Copota School for the Blind in Masvingo are having their school fees paid by their parents or guardians. This is because they are either orphaned or their parents are uninterested. One visually impaired learner was left at the school in 2014 and has not heard from the responsible guardians since.
- In Kadoma, a 33-year-old man, Ndumiso Ngwenya, who was afflicted by leprosy spent the majority of his life hidden behind closed doors so as not to “disturb” neighbours or bring “bad luck” to them and his family.
- Kelvin Pato, a man accused of murder committed during a robbery in 2019 suddenly lost his sense of hearing in both ears and his trial could not kick-off as a result. The responsible authorities struggled through the year to secure sign language lessons for him so he could learn how to communicate using it.
- In the wake of Cyclone Idai that ravaged Chimanimani and Chipinge, persons with disabilities found it difficult to escape to safer places as a result of their disabilities. Other children with disabilities were abandoned by their parents since their disabilities were considered as impediments to movement. Some of them failed to access emergency services.
- Persons with disabilities still found it difficult to access healthcare facilities in 2019 as either the centres were remotely located or the persons themselves had no means of getting there.
- The abandonment of learners by their parents and guardians in schools specialising in special needs education was also reported in 2019.

# 12

## CHAPTER 12 MEDIA AND DIGITAL RIGHTS

### Freedom of Expression and the Media

Historically, the media space has been characterised by repression and a heavy-handed clampdown on media spaces and muzzling of free press in the country. Access to diverse sources of information and media has been restricted through the application of provisions in laws such as the Access to Information and Protection of Privacy Act (AIPPA) and the Criminal Code. Media practitioners and other key stakeholders in the media industry have been pushing for media law reform, primarily focussing on AIPPA. AIPPA has been widely criticised for, inter alia, failing to give effect to fundamental rights to freedom of expression and media freedoms, and the right to access to information to the letter and spirit of the Constitution and several international human rights instruments. The government acknowledged the deficiencies in the media and access to information laws, and to this end, in July 2019, it initiated a legislative process to effectively replace AIPPA. Government gazetted two Bills - the Freedom of Information Bill and the Zimbabwe Media Commission Bill - to replace most of the provisions contained in AIPPA. A third Bill focusing on cyber-crimes was also being prepared for gazetting. While the two gazetted Bills have introduced some progressive provisions in sync with constitutional provisions, they still fall far short of giving full effect to the freedom of expression and freedom of the media, and the right to access to information enshrined in the Constitution.



Section 61 of the Constitution provides for the right to freedom of expression and freedom of the media while section 62 entrenches access to information. Despite the entrenchment of these intertwined rights in the Constitution, the State continued to exhibit its paranoia by clamping down on the freedoms during the period under review. This was done primarily through the use of criminals' laws to clampdown on media practitioners. Nunurai Jena, a NewsDay correspondent was arrested for taking pictures at a police roadblock in Kadoma. The police threatened charge to him with 'disorderly conduct'. The Criminal Code was mainly used to suppress the voices of political figures and civil activists during a turbulent time of incessant protests and strikes by the citizens of the nation. The January protests saw the arrest of Pastor Evan Mawarire, a pro-democracy activist on charges of inciting public violence, which charges were eventually changed to those of subverting a constitutional government. This was after the pastor had called for an end to corruption and protest against the government. Intimidation, arrests and abductions of individuals after exercising their rights to freedom of expression were also recorded during the year. MISA Zimbabwe noted with concern how many of the attacks were targeted at journalists and media personnel, a trend that was aimed at gagging and extensively restricting this fundamental freedom.

Zimbabwe's media space in relation to the freedoms of radio stations and free to air television stations continued to be restricted as the government failed to license independent stations. Zimbabwe Association of Community Radio Stations (ZACRAS) is one of the organizations that has been lobbying for liberalization of the broadcasting space in a bid to bring radio to the people. As of 2019, most of the radio stations operating in Zimbabwe were government-owned, and the only licensed local television broadcaster is ZBC TV which is also government-owned. This monopoly by the State has the net effect of controlling what the public consumes from the airwaves and also limiting the fundamental freedoms to expression and media rights.

## AIPPA

*has been widely criticised for, inter alia, failing to give effect to fundamental rights to freedom of expression and media freedoms, and the right to access to information to the letter and spirit of the Constitution and several international human rights instruments.*



## Internet Access

The Internet has increasingly become a key component of communication in the digital age, and access to it is now considered to be more than just a privilege. On 15 January 2019 as the nationwide stay-away spilt into its second day, the government issued a directive for the shutting down of all internet services across the country. The Minister of State Security in the president's office was behind the issuing of that order. The issuance of the order was arbitrary, as only the President has the legal authority to exercise such powers. MISA Zimbabwe and ZLHR subsequently challenged the directive through an urgent application filed before the High Court. On 21 January 2019, following oral arguments in court, the High Court granted an order reversing the shutdown of the internet on the basis that the minister who had ordered the shutdown had no legal authority to do so. This was a victory for internet users as the reversal restored their right to access vital internet services and by extension the right to freedom of expression and access to information. However, as a result of the hyper-inflationary environment that ravaged the country, costs of data continued to rise beyond the reach of the ordinary. To this extent, access to the internet remained a luxury most could not afford as the harsh economic conditions continued throughout 2019.

## Arrests, Assault and Abductions of Media Practitioners

In 2019, the State continued to use unlawful means to clamp down on the space of media practitioners. There were several cases recorded where State agents arbitrarily arrested, assaulted and abducted media personnel who were legitimately exercising their rights to freedom of expression and freedom of the media. Samantha Kureya, a comedian attached to Bustop TV - an online satirical media channel, was abducted and assaulted by men believed to be State agents, at her home in Mufakose, Harare. Prior to the attack, she had been warned by State agents against producing material critical of the government. The actions by suspected State agents targeting comedians and journalists exercising their constitutional rights to

free speech and expression tarnished an already battered image of the country. The continual compromise of media practitioners' rights to human dignity is specifically worrying. The police, which is constitutionally mandated to protect the citizens of Zimbabwe continuously finds itself as the enemy of the civilian and journalist alike. The democratic space is thus restricted and will remain as such until key reforms are effected for the benefit of ordinary citizens and media practitioners.

## Legal Reform

There have been incessant calls for the repeal of AIPPA, a law that has been used countless times to suffocate fundamental freedoms within the media space. This is largely because the Act does not give effect to the rights of freedom of expression and of the media as encapsulated in sections 61 and 62 of the Constitution. In recognition of the shortcomings of AIPPA and other media laws, the government introduced the Freedom of Information Bill and the Zimbabwe Media Commission Bill. Unfortunately, an analysis of the two Bills reveals that they still fall short of conforming to the key constitutional provisions.

The Zimbabwe Media Commission Bill seeks to establish and regularize the Zimbabwe Media Commission. The Bill has several positives that are expected to improve the democratic space in the country. However, various criticisms have been raised against the Bill. The fact that the Commission can institute investigations on its own opens up the process to abuse. MISA Zimbabwe suggested that investigations of matters of public interest ought to be held in public for the sake of transparency and accountability. The Bill retains a role for the police in the activities of the Commission and this is undesirable as it promotes an atmosphere of repression as police have been known to victimize and assault civilians as opposed to actually protecting them.

In its statement to commemorate the International Day for Universal Access to Information, MISA Zimbabwe commented on the Freedom of Information Bill, observing that:<sup>101</sup>

*101. MISA Zimbabwe: Statement on international day for universal access to information 27 September, 2019 available at <https://zimbabwe.misa.org/2019/09/27/Statement-on-international-day-for-universal-access-to-information-2/>*





*“Parliament should ensure that contributions from public hearings are adequately captured and debated to fill identified gaps and inadequacies in the current Bill before it is passed into law. In doing this, parliament should not be influenced by narrow partisan political persuasions. Parliament should thus be driven by collective national resolve to set Zimbabwe on a clear democratic path that entrenches transparency and accountability of which access to information is a key ingredient”.*

The call by MISA Zimbabwe thus exhorted the legislators to come up with the best possible piece of legislation which would give full effect to the media rights of all Zimbabweans rather than just appease a certain section of the population, that section, being the ruling elite.

Overall, a number of laws that limit access to information and media rights remained on the statute books in 2019 despite the much-publicised legislative reform agenda to align laws with the Constitution. These laws include the largely discredited AIPPA with its restrictive provisions on licensing of journalists; the Official Secrets Act (OSA) that has overreaching provisions embargoing access to information held by public bodies; and the Broadcasting Services Act (BSA) that hinders the free establishment of private radio stations.

## **Access to Information**

Access to information is a fundamental human right provided for by section 62 of the Constitution. However, enjoyment of this right is frustrated but the retention in the statute books of subsidiary laws that curtail rights in the Constitution. The Freedom of Information Bill was introduced to cure the defects found in AIPPA but it has also faced criticism for failing to address shortcomings inherent in the existing law. For example, provisions restricting accessing of information on government borrowing have been criticized since they are largely mirror provisions found in AIPPA. This State of affairs clearly expose a government bent on the continuous suppression of fundamental rights.

## Specific Cases

- On 9 January 2019, Costa Nkomo, a journalist with 263Chat was assaulted by the police as they were rounding up vendors in Harare's central business district.
- On 4 April 2019, police fired teargas canisters into the 263Chat offices as they pursued journalist Lovejoy Mutongwizo who had been covering an operation by the police and Harare Municipal police. One of the police officers reportedly fired a canister at the journalist, which struck him in the abdomen.
- On 7 June 2019, Nunurai Jena, a correspondent with VOA's Studio 7, was arrested and detained for about three hours by police in Kadoma after they spotted him taking pictures of a roadblock (police checkpoint) mounted close to a polling station in Rimuka township.
- Leopold Munhende, a journalist with NewZimbabwe.Com, was on 23 August arrested at the New Government Complex in Harare while covering a demonstration by members of the ARTUZ, despite him duly producing his accreditation card.
- On 19 October 2019, anti-riot police assaulted Ruvimbo Muchenje, a journalist with Alpha Media Holdings when she was covering the running battles between the police and vendors in Harare's CBD. She sustained significant injuries as a result of the assault.
- On 19 June 2019, the High Court, in the case *Firinne Trust & 2 Others vs. Zimbabwe Broadcast Corporation & Others HMA23/19*, ruled that during the course of the country's 2018 elections, ZBC acted

# 13

## CHAPTER 13 BUSINESS AND HUMAN RIGHTS

Since assuming power, President Mnangagwa's government has propagated the "Zimbabwe is open for business" mantra. However, almost two years since its inception, the government has failed to demonstrate any discernible evidence of an investment-friendly country. Towards the end of 2019, the government seemed to have resorted to diverting attention to the sanction mantra, arguing that the restrictive measure imposed by the USA and the European Union were to blame for its failure to resuscitate the ailing economy. The laws and policies pursued by the government in the year proved disastrous and hardly business-friendly and harsh on the consumer. The government promulgated a law<sup>102</sup> that enabled it to continue collecting intermediated money transaction tax (IMMT) of 2% on mobile money and electronic financial transactions. The tax made it more expensive to do to electronic transactions and therefore ran counter to the 'ease of business' mantra as it essentially increased the cost of goods and services for the consumer. The expectation had been that the government would promote 'business-friendly' policies that would, among other things encourage foreign direct investment (FDI), economic development and general economic investment in the country so as to build the economy and create employment and ultimately improve the socio-economic environment. This was not to be in the year 2019.

A number of local communities were forced to fight off investors that sought to forcibly remove them from their lands to pave way for business ventures.<sup>103</sup>



102. Section 4 of the Finance Act No 1 of 2019.

103. The Standard; Chinese to evict scores of villagers: 28 April 2019 available at <https://www.thestandard.co.zw/2019/04/28/chinese-evict-scores-villagers/>

This was common mainly in the extractive sector. For example, In April 2019, a Chinese company was set to take over a mountain area in Domboshava, in the outskirts of Harare where it intended to commence mining operations. It was reported that the Chinese company, Aihua Jianye, had secured rights to a quarry mine and had already unveiled plans to invest 500 million dollars in the mining venture. According to Information, Publicity and Broadcasting Services deputy minister, Energy Mutodi, about 20 000 people were living in the area. Commenting on the proposed takeover of the area by the Chinese, Mutodi stated that he was not going against President Emmerson Mnangagwa's mantra that "Zimbabwe is open for business." He however argued that Zimbabwe was, "open to business, but not to the business that is going to affect our environment. We want to preserve the environment. We want our community to develop, yes. But let our environment remain intact. We cannot have a situation come here to take the proceeds, enjoy it in other countries, yet our people remain poor (sic)."<sup>104</sup> The local residents were told to evacuate from the area but they vowed to fight the order since it was a violation of their right to shelter. President Emmerson Mnangagwa came to the rescue of the villagers and ordered the company not to evict the villagers stating that the area was a tourism-designated area.

*The laws and policies pursued by the government in the year proved disastrous and hardly business-friendly and harsh on the consumer.*

The mining company was subsequently ordered not to carry out its mining operations in the area. This case was symptomatic of the many human rights violations mainly stemming from unlawful evictions of villagers, farm workers and ordinary citizens from areas where they had lived for considerable periods of time. The State must protect the ordinary citizenry from the continual infringement of the rights by businesses and multinational companies that seek to invest in local communities without due regard of rights of the local people.

104. VOA: *Zimbabwean Villagers Resist a Chinese Company's Mining Project*, 7 May 2019, available at <https://www.voanews.com/africa/zimbabwean-villagers-resist-chinese-companys-mining-project>

## Specific Cases

- On 27 November, the Zimbabwe Banks and Allied Workers Union filed an urgent chamber application before the High Court of Zimbabwe in Harare, in which they sought an order to overturn the ban of their demonstration by the Zimbabwe Republic Police (ZRP). They wanted to protest against the untold suffering brought by the austerity measures introduced by Finance and Economic Development Minister, Mthuli Ncube.
- During the month of April in the year under review, 127 families were evicted from Gardinier farm close to Harare. These evictions took place after claims that the farm had been sold to a new owner, Keith Taylor by the previous owner Andreas Gardinier. These families had to resort to staying in a foul run, exposing them to health hazards and natural weather hazards which clearly violated their rights to shelter and health.
- In October 2019, controversial businessman Billy Rautenbach sought to evict close to 1 000 families from a piece of land in Kambuzuma under his Rautenbach-Joshua Nkomo Housing Cooperative. This was land where the families had been settled by another housing cooperative. Rautenbach sought to evict the residents in order to establish his own corporate structures.
- Billy Rautenbach was also accused of denying thousands of Chingwizi villagers' access to potable water after fencing off boreholes and grazing land in Nuanetsi ranch. The villagers complained that the freshwater area had been fenced off from them whilst they only got to access salty water. President Emmerson Mnangagwa on hearing these allegations, '*summoned*' Rautenbach to his offices so he could answer to these allegations on his own.
- In July 2019, Centre for Natural Resource Governance, Farai Maguwu stated that an estimated 30 000 people from six communities countrywide were to be displaced in order to make way for mining activities without compensation. Maguwu accused the government of failing to give these occupants reasonable notice and also prepare adequate compensation for them. This action was clearly in violation of the people's rights to administrative justice, the right to the right to shelter, and the right to have the dignity of the person respected.

# 14

## CHAPTER 14 INDEPENDENT COMMISSIONS SUPPORTING DEMOCRACY

Section 232 of the Constitution establishes five independent commissions to support democracy. These Commissions are

- The Zimbabwe Electoral Commission (ZEC),
- The Zimbabwe Gender Commission (ZGC),
- The Zimbabwe Media Commission (ZMC),
- The Zimbabwe Human Rights Commission (ZHRC)
- and the National Peace and Reconciliation Commission (NPRC).

In addition to their unique mandates, the Commissions have common objectives as provided for in section 233 which include supporting and entrenching human rights and democracy, protection of sovereignty and interests of the people and promoting constitutionalism amongst other functions and objectives. The Commissions have on occasions been criticized for being ineffective in delivering on their mandates. Lack of funding and general incapacity have been cited as some of the reasons why the Commissions have failed to perform optimally.



### Zimbabwe Human Rights Commission (ZHRC)

The ZHRC is the constitutional body responsible for the promotion and protection, development and attainment of human rights and freedoms in Zimbabwe.<sup>105</sup> The ZHRC has continued to have visibility across the country, pursuant to its constitutional mandate, though it remains largely limited by lack of adequate resources.

*105. See, generally Section 243 of the Constitution*

In line with its protective mandate, the ZHRC produced human rights reports on a number of incidents of concern in 2019. In February 2019, the ZHRC published its findings following investigations into the January protests and the subsequent heavy-handed response by the military and the police. In the report entitled, *“Monitoring Report in the Aftermath of the 14 January to 16 January 2019 Stay Away and Subsequent Disturbances,”*<sup>106</sup> the ZHRC observed, among other things, that the police and the military were responsible for the violation of a plethora of rights during the clampdown on civilians. In its findings, the ZHRC stated that the *“armed and uniformed members of the Zimbabwe National Army and the Zimbabwe Republic Police instigated systematic torture.”*<sup>107</sup>

Following the devastating natural disaster caused by Cyclone Idai which ravaged parts of Manicaland, Masvingo and Mashonaland East earlier in the year, the ZHRC lauded the efforts by government and the people of Zimbabwe to alleviate the effects of the cyclone.<sup>108</sup>

The ZHRC made recommendations to government to put in place disaster mitigation strategies to limit the socio-economic impact to communities in case of recurrence of such natural disasters.<sup>109</sup> Among others, the ZHRC advised the government to ensure that, in future, there would be no settlement of people in low lying areas and wetlands – places which are prone to flooding. Such work by the ZHRC is quite laudable since it assists the nation in preserving life and protecting the fundamental rights of the people. On 12 March, the ZHRC commenced a year-long project, called the National Inquiry on Access to Documentation. The inquiry is looking into the issues related to challenges in accessing documentation in Zimbabwe and the human rights implications thereof. The ZHRC intends to have an in-depth appreciation and understanding of the challenges faced by people in Zimbabwe on access to documentation. The ZHRC will use findings from the country-wide national inquiry, once completed to make

*The ZHRC is the constitutional body responsible for the promotion and protection, development and attainment of human rights and freedoms in Zimbabwe.*

106. See generally the ZHRC report: *“Monitoring Report in the Aftermath of the 14 January to 16 January 2019 Stay Away and Subsequent Disturbances* available at <http://www.zhrc.org.zw/download/zhrc-monitoring-report-in-the-aftermath-of-the-14-january-to-16-january-2019-stay-away-and-subsequent-disturbances/>

107. *Id.* Pg. 6

108. ZHRC Report: *First Monitoring Visit to Chimanimani and Chipinge in the Aftermath of Cyclone Idai, 25-29 MARCH 2019* available at <http://www.zhrc.org.zw/download/zhrc-report-on-the-first-monitoring-visit-to-chimanimani-and-chipinge-in-the-aftermath-of-cyclone-idai-25-29-march-2019/>

109. *Id.*

recommendations to relevant stakeholders on protecting the citizens' rights to national documentation. Despite its noble efforts to enhance the enjoyment of rights, the ZHRC's work remains hampered by lack of adequate human and financial resources. These inadequacies limit the Commission's ability to effectively monitor and protect the enjoyment of rights where they are being infringed upon. For example, in its report entitled, "Monitoring Report in the Aftermath of the 14 January to 16 January 2019 'Stay Away' and Subsequent Disturbances," the ZHRC stated that, "due to 'capacity and logistical constraints' the Commission's field monitors only managed to visit areas in and around Harare and Bulawayo." This would suggest that the ZHRC was not able to fully investigate the human rights cases and tell a full picture of the extent of the human rights challenges, because of lack of resources. The issue of funding remains a problem for the ZHRC and this has not allowed it to fully exercise its mandate.

## Zimbabwe Gender Commission

The Constitution provides a comprehensive legal framework for the promotion and attainment of gender equality and women's empowerment across all levels of society. The Zimbabwe Gender Commission (ZGC) is the body established in terms of section 245 of the Constitution to promote and protect gender equality as envisaged by the Constitution.

During the year under review, the ZGC announced that it was mulling court action against public entities and institutions for failing to observe the need for gender parity in the appointment of senior executives, as required by the Constitution. The ZGC Chairperson stated that she had written several letters to government ministries and departments reminding them of their constitutional obligation, but this call went unheeded. Whilst this was a good initiative by the ZGC, it also reveals some of the challenges of political will on the part of the State to comply with the directives from independent constitutional commissions, thereby negating the realisation of human rights. The ZGC also threatened to file a case in the Constitutional Court, challenging appointments which did not adhere to the gender parity requirements of the Constitution. By the end of the year, no challenge had been launched. After the January protests, the ZGC was criticized for not taking any action in respect of documented

*The ZGC is a constitution that provides a comprehensive legal framework for the promotion and attainment of gender equality and women's empowerment across all levels of society.*

human rights violations that had taken place, especially given the well-publicised cases of gross human rights violations targeted at women. The ZGC subsequently issued a statement indicating that it had instituted investigations on the disturbances and was calling upon victims, the general public and organisations to report any gender-based violations to the Commission.<sup>110</sup> It would appear the ZGC only acted after pressure had been exerted. It would be desirable if the ZGC was proactive in such cases given its expansive powers in terms of the Constitution to initiate its own action without external influence or pressure.

## National Peace and Reconciliation Commission

The NPRC's core function is to drive the nation's processes on post-conflict justice, healing, reconciliation, truth-telling, rehabilitation, conflict prevention, dialogue facilitation and social cohesion. This NPRC has received some criticism from commentators, civil society groups and activists for not addressing the pertinent issues set out in its mandate. It has been argued that for there to be reconciliation, perpetrators need to tell the difficult truths so that the victims of the crimes committed find it in themselves to forgive the aggressors. However, the NPRC has to date failed to address the truth aspect that underpins a genuine reconciliation process. Zimbabwe has for long had conflicts that raise ethnic undertones as a result of unresolved matters such as the Gukurahundi tragedy that saw the massacre of thousands of the Ndebele people and other ethnic groups in the Matabeleland and Midlands provinces. It may be argued that the Gukurahundi tragedy is one of the conflicts requiring the urgent and focussed attention of the NPRC if national healing and cohesion is to be achieved. Unfortunately, as at year-end 2019, no substantial progress has been done in order to address this conflict and other yesteryear conflicts.

It was reported that the NPRC was financially incapacitated to fulfil its mandate and had been reduced to a mere 'talk show' instead of adequately addressing matters.<sup>111</sup> Commissioners who requested anonymity told Bulawayo24 News that they were unhappy over the

*The NPRC's core function is to drive the nation's processes on post-conflict justice, healing, reconciliation, truth-telling, rehabilitation, conflict prevention, dialogue facilitation and social cohesion.*

110. Zimbabwe Gender Commission: Investigation into gender dimensions of the disturbances of Monday 14 January 2019 and the aftermath, Accessible at <http://kubatana.net/2019/02/13/investigation-into-gender-dimensions-of-the-disturbances-of-monday-14-january-2019-and-the-aftermath/>

111. Bulawayo 24 News: Cracks emerge in the National Peace and Reconciliation Commission, 6 October, 2019 Accessed at <https://bulawayo24.com/index-id-news-sc-national-byo-172082.html>



government's lack of commitment in addressing past human rights abuses and conflicts.<sup>112</sup> Instead of the \$4.7 million bid, it had made to the government, the Commission received only \$1.7 million from the 2019 national budget, a figure which was deemed grossly inadequate for the Commission to fund its operations fully. The NPRC is mandated by section 323 of the Constitution of Zimbabwe to produce an annual report to the responsible Minister describing fully its operations and activities. Unfortunately, no such report was made. This shows recalcitrance on the part of the Commission in fulfilling its constitutional mandate.

There have also been reports of fissures within the Commission with one of the Commissioners quoted as saying, *"There are some even amongst us in the NPRC who are clearly sabotaging NPRC programmes, they are a stumbling block to frustrate the NPRC and one is left questioning whose interests they are representing, the State or the Commission? There is no political will, hence the NPRC has nothing to show for it besides being more of a talk-show body."*<sup>113</sup>

The government's lack of impetus to support the Commission greatly affected its capacity to bring reconciliation to those affected by decades-long deep-seated unresolved conflicts. It is imperative therefore that the commission receives enough funding so as to deal with these key issues and fulfil its constitutional mandate.

### **The Zimbabwe Media Commission**

This was arguably the most dormant Commission during the year. With the continued violation of media rights violations, it was expected to that the ZMC would be at the forefront of condemning attacks on media freedoms, but the Commission was notably mute throughout the year. On 9 August, the government gazetted the Zimbabwe Media Commission Bill, one of the three

112. *Id.*

113. *Id.*

Bills to replace AIPPA and also regularize the establishment of the Commission. The Bill received some criticisms from stakeholders in the media sector for failing to fully give effect to the Constitution.<sup>114</sup> MISA Zimbabwe stated that the Bill in its current form omitted the Commission's responsibilities to promote access to information. It still remains to be seen whether the Bill will be passed into law as it is or with the suggested amendments from different stakeholders.

## The Zimbabwe Electoral Commission

The Zimbabwe Electoral Commission was established in 2004 by an Act of Parliament. In 2013, the Constitution established it as one of the five independent commissions. In 2019, not much work was done except the conducting of by-elections, key appointments and other ancillary work necessary for the fulfilment of its constitutional mandate. On 1 July, Utloile Silaigwana was appointed to the position of chief elections officer for ZEC. This appointment was criticized by the opposition MDC Alliance as a retrogressive one. The party argued that Mr Silaigwana had a hand in the management of the flawed elections since 2002 when Zimbabwe's elections were still run by the Electoral Supervisory Commission. Further, they also alleged that since he is a former soldier, he is the link between the military and its interference with electoral processes.

Such mistrust from opposition parties and the public is detrimental to the credibility of ZEC as a whole. ZEC conducted by-elections for parliamentary seats in Lupane East, Bubi and Nkayi. All these seats were retained by the ruling ZANU PF party. Though the political climate during the by-elections was relatively calm, ZESN reported that there were incidents of vote-buying during the campaign period that were brought to their attention. It is also unfortunate that in three of these by-elections, only one female candidate contested. This shows how much women continue to be at the peripheries of election matters, and ultimately the spheres of political leadership and governance. As for the election processes, ZESN reported that the legal procedures were followed to the letter. This is a positive for a country that has marred by electoral irregularities for a long time.

*The ZEC was established in 2004 by an Act of Parliament and it is one of the five independent commissions.*

114. See generally, MISA Zimbabwe: *Commentary on the Zimbabwe Media Commission Bill, 2019* available at <https://crm.misa.org/upload/web/misa-zimbabwe-commentary-on-the-zimbabwe-media-commission-Bill-2019.pdf>

# 15

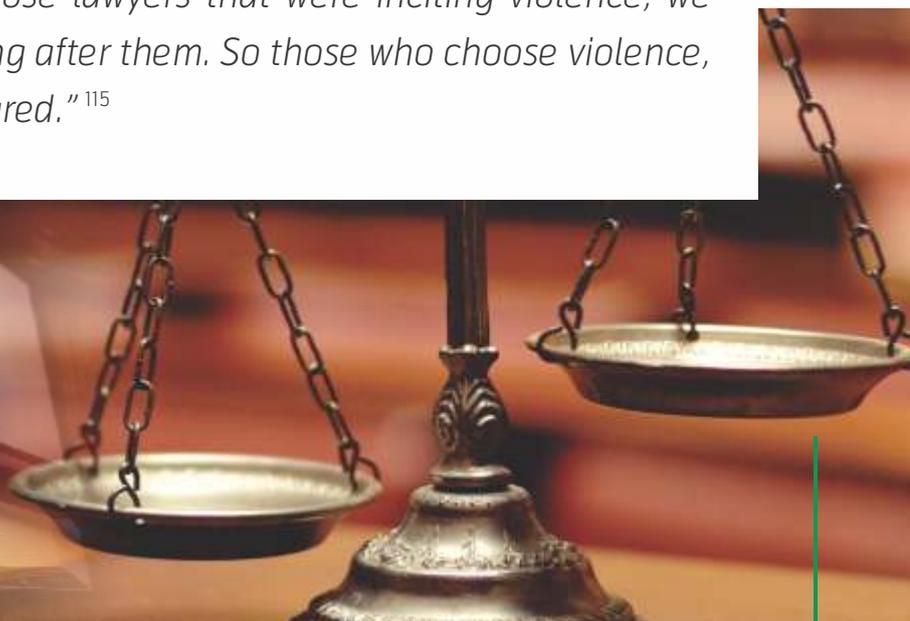
## CHAPTER 15 COURTS AND ACCESS TO JUSTICE

The courts are a key pillar of government and remain instrumental in the delivery of justice in the country. At the heart of a well-functioning court system is an independent, apolitical and impartial judiciary. The independence of the judiciary has been questioned in Zimbabwe with some concerns raised on some of the judicial appointments that were made. Access to justice still remained problematic for many persons as a result of the physical inaccessibility of superior courts and indigence of parties involved. There was an upsurge in the cases of harassment, arrest and attacks on lawyers, mainly by the police. This is quite worrying since all these violations were perpetrated on the lawyers for dispensing their professional duties.

### Attack and Harassment of Lawyers

President Mnangagwa statement on lawyers and doctors:

*“They told them that if anyone gets arrested, they should go to a certain place, there are lawyers waiting to defend them. If anyone gets hurt, they should go to a certain place, there are doctors waiting to treat them [...] We are now going after those doctors who were involved in those activities. Those lawyers that were inciting violence, we are now going after them. So those who choose violence, we are prepared.”<sup>115</sup>*



115. President Mnangagwa addressing a youth rally on 16 January 2019 following the fuel hike protests, *NewsDay: Shock as ED targets rights lawyers, doctors*, available at <https://www.newsday.co.zw/2019/02/shock-as-ed-targets-rights-lawyers-doctors/>

During the year under review, lawyers were harassed by the State, some beaten, incarcerated and others castigated for defending human rights and protecting the law as they are sworn to do. In February 2019, the President attacked lawyers and other professionals for merely doing their jobs. His speech at the beginning of the year made to ZANU PF seems to have set the tone for the subsequent attacks that lawyers faced throughout the course of the year. In an unprecedented attack, a group calling itself the Citizen's Forum made threats against the Zimbabwe Lawyers for Human Rights in January. ZLHR noted that,

*“Citizens’ Forum made some baseless and spurious allegations against ZLHR accusing the organisation of organising the protests and being responsible for causing the deaths of people and the loss of property. The so-called Citizens’ Forum followed this up by visiting ZLHR’s head office in Harare on Thursday 7 February 2019 and handed in a petition, giving ZLHR an ultimatum to respond to its demands within 48 hours failing which it would besiege the organisation’s offices”.*

The brazen attacks are totally unacceptable as the Constitution guarantees freedom for one to choose his profession and to have the liberty to practise in a chosen field. When the State and other groups begin to threaten and attack professionals in this manner, the environment becomes extremely toxic and an infringement upon the fundamental rights of these professionals. These attacks against the background of lawyers representing the incarcerated protesters. The harassment of lawyers breached section 69(4) of the Constitution and Article 7 of the African Charter on Human and People’s Rights which guarantee the right to legal counsel of one’s choice.

In November 2019, Douglas Coltart, a human rights lawyer, was assaulted by the police whilst discharging his professional duties. He was arrested and assaulted by the police after attending to offer emergency legal services to his client, the president of the ARTUZ, Obert Masaraure who had been arrested. Three months earlier, he was also assaulted by the police in the course of discharging his lawful professional duties. Such disregard for the dignity of the person as displayed by the police has no place in a democratic society and shows complete disrespect for the Constitution.

### **Delayed Justice Delivery**

The cliché ‘justice delayed is justice denied’ is apt in describing Zimbabwe’s justice delivery system. Zimbabwe’s courts have developed a reputation for delays in rendering of judgments and delaying the conclusion of court proceedings leading to protracted justice delivery processes. Such practices are detrimental to the affected parties as they have to bear the long wait for their matters to be resolved.

On 7 November 2019, the Constitutional Court released the detailed judgment for the 2018 harmonised elections petition filed by MDC Alliance leader Nelson Chamisa. This was more than a year later after the challenge was lodged. The case is symptomatic of a pattern of delays of finalization of court matters to the extent that sometimes the relief sought may have become academic. Rendering judgments expeditiously afford affected parties the opportunity to access justice and also bring finality to issues.

In addition to the foregoing, the judicial system of the country also struggled with resolving tax-related cases handled by the special court for income tax appeals as a result of the lack of qualified judges to handle the matters. As of 26 July 2019, the court only had one judge manning it with a backlog of 50 cases, a consequence of the understaffing problem of the specialised court. The state of affairs means that the parties to a tax-related matter are greatly prejudiced since such matters are highly protracted and may get resolved when the amounts claimed in damages or otherwise would have already devalued. Every person is entitled to efficient justice delivery, and the failure by the State to give effect to this has really been a regression in as far as access to justice is concerned.

The situation is even more prejudicial for accused persons held in remand prisons. Many have to endure months before their trials kick-start. This was the case for Kevin Pato, a murder suspect, whose trial was brought to a halt after he turned deaf in remand prison. After four years in remand prison, reprieve finally came for the accused in November 2019 after an NGO offered to teach him sign language in order to facilitate the commencement of his trial. An accused in pre-trial detention period still retains all the

constitutional protections of an innocent person and it is important that the State puts in place measures to ensure that pending matters are expeditiously resolved and accused persons have finality in their cases. There is need to improve the efficiency with which cases are handled so that accused persons' rights to access to justice are preserved.

## Judicial Independence

The judiciary is an important arm of the government whose independence is key to efficient and effective justice delivery. A captured judiciary is a threat to the delivery of justice in any country. Section 164 of the Constitution of Zimbabwe establishes the independence of the judiciary. In 2019 there were accusations of meddling in the justice sector by the executive thereby compromising the integrity of the justice delivery system. President Mnangagwa was in the spotlight for some appointments that he has made in the justice sector. The appointment of the incumbent Prosecutor General, Kumbirai Hodzi came as a surprise (*but not entirely unexpected*) as he had come a distant sixth in the mandatory public interviews that were held to choose the head of public prosecutions. The appointment inevitably received public criticism as critics wondered if political allegiance had been prioritised over competence.

On 29 January, over 150 lawyers marched in Harare in protest against the attack on the rule of law, delivery of justice and upholding of human rights. Their petition to the Chief Justice raised justice delivery issues of concern, with one of the major issues being that of the seemingly choreographed nature of denying bail to persons arrested during the January protests. Independence of the judiciary was also a major concern raised by the protesting lawyers.

The precedents that were set by the judiciary during this period were inexcusable as there was a clear unrestrained usurpation of power by the State in a bid to dictate the outcomes of cases that came before the courts.

In May, prosecutors went on strike protesting against the perceived attack on the independence of the judiciary, following the president's establishment of a parallel special prosecution unit in his office and the interference with the independence of their prosecutorial authority. Their complaint arose from the arrest of a fellow colleague Tapiwa Kasema, who was charged with criminal abuse of office after he consented to the release of former finance minister Ignatius Chombo's passport. It would appear that the independence of the judiciary and the Prosecutor Generals' office remained under attack from the overreaching arm of the executive thereby putting question marks on the overall integrity of the justice delivery system of the country.

### Legal Aid Access

Access to legal aid services is one of the essential elements of progressive access to justice. This is so because legal advice and representation fees are beyond the reach of many people in the country leaving the majority to stand as self-actors, which is prejudicial to the indigent especially when pitted against a party that is legally represented.

Before 2019, the legal aid directorate was only fully functional in Harare and Bulawayo. In 2019, the Minister of Justice, Legal and Parliamentary Affairs stated that the Legal Aid Directorate had been expanded beyond Harare and Bulawayo, with the new stations having been opened in Chinhoyi, Gweru, Mutare and Masvingo. He also reiterated that plans were underway to open new stations in all provincial capitals and eventually at the district level by the end of that year.





*Access to legal aid services is one of the essential elements of progressive access to justice.*

On 20 March, the International Commission of Jurists (ICJ) in conjunction with Great Zimbabwe University, Hebert Chitepo Law School launched a legal aid clinic project at the University's Muccheke campus. The aim of this legal aid clinic is to make legal services more accessible to persons from disadvantaged and marginalized groups in the community. Such initiatives immensely contribute to the realization of access to justice for all communities. According to Arnold Tsunga, the ICJ Africa Regional Director, the launch of the legal aid clinic is a building block towards greater access to justice for the people of Zimbabwe and a positive step towards the attainment of SDG 16 which speaks of the importance of peace, justice and strong institutions.

The University of Zimbabwe law school in Harare also runs a legal aid clinic at its Mt. Pleasant campus, which assists indigent clients at no cost. Such initiatives contributing to the national access to justice initiatives in a country where access to justice remains elusive to many people. Noteworthy is the fact that there are other organizations across the country that offer legal aid services. These organizations include Women and Law in Southern Africa (WILSA), Justice for Children (JCT), Zimbabwe Women Lawyers Association (ZWLA), Legal Resources Foundation (LRF), Zimbabwe Lawyers for Human Rights (ZLHR) and the Zimbabwe Human Rights NGO Forum. These organizations provide an essential service that the government struggles to give to its citizens.

### **Access to Courts**

Access to justice is intricately linked to access to the courts of law, particularly from the perspective of geographical proximity of communities to the courts of law. In May 2018, a division of the High Court of Zimbabwe was opened in the city of Mutare. This was a positive move in the decentralisation of justice by bringing courts with the wide jurisdiction closer to the people. However, other provinces such as Midlands remain without a High Court and continue to rely on the four High Courts available from other provinces which makes access to justice more expensive. Such a state of affairs should be addressed urgently given the negative impact on access to justice.

## Specific Cases

- In the aftermath of the January protests, accused persons were subjected to fast-track trials that violated several fair trial rights. Accused persons were not given adequate opportunity to prepare for their cases, present arguments and evidence to the court. Lawyers representing some of the accused persons were not granted sufficient time to take full instructions and offer effective legal assistance to their clients. The 'fast-track' trials were in breach of fair trial rights set out in section 69 of the Constitution and a violation of rights of accused persons to be given adequate time and facilities to prepare a defence in terms of section 70(1)(c) of the Constitution.
- Following the January protests, the State also condoned the use of police prosecutors, a practice which was deemed unconstitutional by virtue of section 208 of the Constitution.
- Pursuant to the January 2019 protests, there was a systematic denial of bail for accused persons. Reports were that prosecutors and magistrates were given instructions not to grant bail to the accused persons. The net effect of this was the continual detention of candidates deserving of being granted bail, including lactating mothers and juveniles.
- Excessive delays in the launching of trials were also witnessed in 2019. Notably, the cases against Pastor Evan Mawarire, the This Flag movement founder, and that of Obert Masaraure, the leader of the ARTUZ as the State continuously sought postponements while the accused persons were burdened with having to attend remand proceedings, awaiting trial.
- The High Court granted an order for default judgment amounting to US\$5000.00 on 22 May in favour of Mr. Magoshe in the case of *Donimore Magoshe v. Gabrus Sanyamaropa*.<sup>116</sup> Mr. Magoshe was stabbed in the back by the defendant together with a militia group known as the ZANLA forces.

116. HC 1863/09

# 16

## CHAPTER 16

# INTERNATIONAL CONVENTIONS, TREATIES AND INSTRUMENTS



International law is a vital mainstay of the relationships between countries. It is the heartbeat of regulation of interactions between nations and allows for States to operate harmoniously as part of the global village. International law creates the framework for some of the common normative standards and binding instruments creating obligations on States to uphold human rights. Zimbabwe is party to key international treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Covenant on Economic, Social and Cultural Rights (ICESCR), United Nations Convention on the Rights of the Child (UNCRC), International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of Persons with Disabilities (CRPD) among other key international conventions. Most of the rights guaranteed through these conventions have been domesticated into the laws of the country, primarily through the Constitution and in some cases through Acts of Parliament.

However, some of the international instruments have either not been ratified or made part of the domestic law. The government had not, as of the end of 2019 ratified important instruments such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), one essential instrument necessary for the protection of the dignity of the person at the hands of the State. It is imperative that the Zimbabwean government moves to ratify key international instruments so as to protect its people from human rights violations and also be open to monitoring by the treaty bodies of these conventions. The establishment of the key enforcement mechanisms is also important for the realisation of these rights in a country that prides itself in being a constitutional democracy.

## Conventions still to be ratified by Zimbabwe

### Convention against torture and other cruel inhuman or degrading treatment or punishment (CAT)

CAT was as of 2019 ratified by a total of 166 States across the world. Zimbabwe, however, was one of the very few countries in the world not to have signed, ratified or adopted the convention. Out of the 55 African countries that are State parties to the convention, only Zimbabwe and Tanzania have neither signed nor ratified CAT. CAT is a United Nations instrument that places a duty on State parties to adopt measures aimed at preventing torture within their territories and also from extraditing people to countries where they are likely to be subjected to torture and degrading treatment.

Questions have arisen over the years as to why the government has not yet taken steps in ratifying the convention. The Constitution of Zimbabwe in section 53 provides for the right against physical or psychological torture. This right is non-derogable and may not be limited by any other law. In as much as the State has these provisions in place, it would be more desirable for it to ratify the treaty so that the UN committee against torture assumes the powers of ensuring checks and balances on matters of torture in Zimbabwe and also offer technical cooperation to Zimbabwe to put in place mechanisms to eradicate incidents of torture. Zimbabwe continues to be haunted by cases of ordinary civilians and human rights defenders being tortured by State agents, a situation which the Committee would come in and assist the government to address.

### Second optional protocol to the International Covenant on Civil and Political Rights: Aiming for the abolition of the death penalty

The government of Zimbabwe ratified the International Covenant on Civil and Political Rights in May 1991, a convention which elaborates on the civil and political rights. The majority of these rights have been domesticated into Zimbabwean law via the Declaration of Rights contained in the Constitution. However, the government is yet to sign or ratify the second optional protocol to the ICCPR that aims at abolishing the death penalty. In its current state, the Constitution reserves the death penalty only for murder committed under aggravating circumstances. The second optional protocol to ICCPR was adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989. It seeks to abolish the imposition of the death penalty on any person for whatsoever crime is committed. The optional protocol advances a notion that the abolition of the death penalty enhances the dignity of the person and contributes to the progressive realisation of human rights. It would be a progressive move to totally scrap the death penalty in conformity with the international yardstick of protecting the inherent dignity of the person by removing the capital punishment.

### Convention for the Protection of all Persons from Enforced Disappearance

The convention has 98 signatories, a relatively low number in relation to the more common treaties such as ICCPR. Zimbabwe has neither ratified nor domesticated the convention into its laws. It is key that the government moves swiftly in order to ratify that convention since the protection of persons from crimes such as abductions is key in maintaining the dignity of the person. State security agents are usually the ones blamed for these enforced disappearances and their actions are not openly castigated by the government. If the convention is adopted and ratified by Zimbabwe, vital progress would have been made in order to protect the citizens from such crimes. In 2019, many cases of enforced disappearances were recorded, including the cases of Doctor Peter Magombeyi and Obert Masaraure.

Zimbabwe has a history of enforced disappearances over the decades. Some abductees like Itai Dzamara, who was allegedly also abducted by State security agents in March 2015 have never been seen again. This modus operandi adopted by the State through enforced disappearance to instil fear and stifle alternative voices is one of the most egregious tactics of the regime constituting crimes under international law. It is suggested that Zimbabwe stands to benefit from ratifying the Convention for the protection of all persons from enforced disappearance, as it would benefit from best practices and technical cooperation from the UN mechanism which would help the country turn a corner and eradicate the culture of enforced disappearances.

### International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families

Zimbabwe, like other countries, has migrant workers from around Africa and the world at large. These workers' rights ought to be protected. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families seeks to protect the rights of these people from being infringed whilst they are in a foreign land. Zimbabwe once again is not party to this convention. However, most of the non-derogable and fundamental rights found in the Constitution are applicable to 'all persons', meaning that migrant workers also fit into the matrix. Nonetheless, the government should consider ratifying the treaty so as to concretise these protections for the benefit of migrant workers and their families.



**PART 3**  
**CONCLUSION AND  
RECOMMENDATIONS**

# 17

## CHAPTER 17 CONCLUSION

The year under review was a difficult one in many respects for the generality of the population and particularly a challenging one with regard to the enjoyment of human rights. 2019 started badly from a human rights perspective, with the January protests leading to a plethora of gross human rights violations. The economic stress exacerbated an already challenging environment from a human rights point of view. The legal framework in place in the country, especially the Constitution is quite progressive since it guarantees quite an array of fundamental rights and freedoms to people of Zimbabwe. This in itself is a positive component to the progressive realisation of fundamental rights. However, several archaic laws are still to be aligned with the Constitution. It had been hoped that the President Mnangagwa administration would accelerate the alignment of laws as per the promise made at his inauguration. This was not to be as most Bills were either not introduced to Parliament at all or were debated throughout the year with no progression into law. The government needs to move with speed to make sure that these laws are aligned with the supreme law of the land. This process requires political will on the part of the ruling party. The Constitution should cease to be just a document, but the government should give it life by respecting and implementing its fundamental tenets. Overall, the recommendations on the next page are proffered as suggested approaches to address some of the human rights challenges set out above.

*The legal framework in place in the country, especially the Constitution is quite progressive since it guarantees quite an array of fundamental rights and freedoms to people of Zimbabwe.*



## Recommendations

- **Rights-based approach to the maintenance of peace and order:** A most concerning pattern of the Mnangagwa presidency has been the repeated deployment of the army to help police with civilian policing. A common thread to the deployments has been the use of excessive force resulting in avoidable fatalities and injuries to innocent civilians. It is important that the President decisively address the emerging pattern of State excesses when responding to civilian dissatisfaction expressed in the form of protests. The deployment of the army to control law and order in the country must be nipped in the bud and the buck stops with the President. The President must order the police and the army when deployed to not use excessive and unnecessary force. Those who violate human rights and policing standards and principles must be punished in accordance with the law. There are various domestic and international legal instruments and normative standards that emphasise the primary duty of the State to protect the rights of the citizenry. As a general rule, members of the Defence Force must be restricted to the barracks in times of peace. Their primary role is to defend and protect the citizenry from external attacks. They are ordinarily not trained in and should not be easily deployed to deal with civilian policing. In the exceptional circumstances where the Defence Forces are required to assist the police in civilian policing, the legal process should be followed to the strict letter of the law with the President's authority to deploy the army unequivocally expressed.

The military personnel should carry out such civilian policing mandate, subject to police authority, with due regard to rights of citizens as provided for in the Constitution and other international instruments. Further, there is urgent need to expedite the implementation of section 210 of the Constitution in order to ensure accountability of security forces who commit human rights infractions. Parliament ought to enact a law in compliance with section 210. The issue of accountability of human rights violators, specifically those in the security sector, is also important. This was one of the recommendations given by the Motlanthe Commission.

*The President must order the police and the army when deployed to not use excessive and unnecessary force.*

*The State will need to take administrative, policy and other measures that ensure that human rights are protected.*

The rebranding of the police force into the police service should also be expedited. It should not just be a renaming exercise but a holistic transformation of the police force in line with international human rights standards. Officers trained in the service ought to receive optimum education on the protection and promotion of human rights when fulfilling their mandates. Parliament ought to be non-partisan in its mandate of holding the executive accountable in as far as human rights violations are concerned.

- **Commitment towards upholding constitutionalism and human rights:** There is need for the President and his leadership to adopt great political resolve to get the country back on track in terms of human rights protections in line with the Constitution and international human rights obligations and normative standards. The government must embrace a culture of constitutionalism, human rights and respect for the rule of law. A clear step that can be taken to give effect to principles of constitutionalism and human rights is to ensure that subsidiary laws, particularly those enhancing human rights are urgently aligned with the Constitution. The State will need to take administrative, policy and other measures that ensure that human rights are protected. Where human rights are violated, there must be a clear mechanism supported by political action to guarantee effective remedies for victims of human rights, and accountability and deterrence against impunity.
- **Human rights awareness:** The government should lead human rights awareness initiatives since it has the constitutional mandate of protecting and promoting fundamental rights. More resources should be channelled towards such drives as they educate the people of their constitutional entitlements. So far, non-governmental organisations have carried the bulk of the work in as far as human rights awareness is concerned. In line with section 7 of the Constitution, the State must take a leading role in awareness campaigns so that the citizenry is enlightened and empowered as the rights holders. A citizen who is aware of their rights is able to bring the government to account whenever an infraction of such rights occur. Without the requisite knowledge, such violations continue unabated to the detriment of the citizen.

- **Political will and impetus to change fortunes:** The bulk of Zimbabwe's problems which result in human rights violations can be traced back to the lack of political will and impetus on the part of the government. Zimbabwe's political terrain has been toxic over the years, with government lacking the will to change the country's fortunes. Issues like corruption that have been derailing economic progress need to be fixed at a political level. These matters have derailed the economy into the abyss thereby greatly affecting the population's standard of life. There is need for the President and his leadership to have great political resolve so as to get the country back on track in terms of human rights protections. In a country where companies mine without the requisite documentation, where cartels dominate the industry causing undue hardship on the ordinary citizen, where the proceeds of minerals mined are unaccounted and where the extravagance of government spending is way beyond acceptable levels, political will goes a long way in assuring that such matters are dealt with for the benefit of the ordinary citizen.

*Issues like corruption that have been derailing economic progress need to be fixed at a political level.*

- **Dialogue between political parties and other stakeholders:** Political polarisation and intolerance has been ravaging the country leading to unnecessary extra-judicial killings, injuries and other gross human rights violations that have worsened the human rights crisis in the country over time. The attack on human rights defenders, opposition party members and the general citizenry need to be addressed through effective and honest dialogue by the political parties. The Political Actors Dialogue (POLAD) platform set up to stimulate dialogue between political parties has suffered a still-birth and legitimacy questions because the main opposition party, the MDC Alliance has refused to be part of the group. Dialogue between the main political parties would go a long way in addressing issues such as violence perpetrated by the ZRP and the ZNA on civilians since the ruling party's government has power over those institutions. Political dialogue is key in finding long term solutions to the economic crisis currently bedevilling the country. With a perceived '*legitimacy crisis*' coming as a result of the contested 2018 harmonised elections, dialogue would be key in resolving that issue and mapping a progressive plan for a country which is evidently in regression. Political

*The government should cease from the habit of discarding recommendations from the public when making new laws.*

parties need to look beyond their differences and focus on the development of the country and the protection of civilians. There is also need to include civic society groups in national dialogue programs. Their input is extremely crucial since they interact with the ordinary citizen on a daily basis. That feedback from the general citizenry is key in articulating specific issues requiring to be resolved at a national level.

- **Law Reform:** Zimbabwe has a number of archaic and repressive laws which have been used on different occasions to suppress the rights of the people. Such laws ought to be repealed and replaced with progressive ones that protect fundamental human rights. These laws include AIPPA and POSA, which laws fail the constitutionality challenge since they stifle various freedoms. Notorious sections in POSA included sections 26 and 27, which gave the regulating authority unrestrained discretion over the conduct of demonstrations and the allowance of the temporary prohibition of holding public demonstrations. Alignment of other laws with the Constitution is also key, and the government should move swiftly in that regard. It is quite unfortunate that while the government has made attempts to amend and replace several laws, this exercise has been half-hearted as either the new laws are worse than the preceding ones or the amendments are unsubstantial. Conformity of the laws with the Constitution is imperative if the government is to be viewed as committed to law reform. Findings from consultative meetings with stakeholders should be implemented and incorporated into the new laws or amendments thereof. The government should cease from the habit of discarding recommendations from the public when making new laws.

**Accountability and transparency:** Transparency and accountability are two of the founding values found in the Constitution. The government has been secretive in many of its dealings, leaving the people out in the dark. Such a mode of operation is undesirable since it makes government a law unto itself. Government ought to handle its operations in a transparent manner and this can be achieved by giving effect to the right to access of information. That way, it is then possible for citizens of the country to hold its leaders accountable. Parliament has a role to uphold the Constitution and especially

hold the executive and other agencies of government accountable. Parliament should actively pursue its mandate and hold ministers and the president accountable for commissions and omissions in the course of duty, without party biases. The government should establish platforms where the people of Zimbabwe are given the opportunity to engage it in a free manner without the latter fearing victimisation at the end of the day.

- **Priority budgeting, resource allocation and funding:** Progressive realisation of basic rights requires adequate funding in the right areas. The government needs to get its priorities straight and adequately fund relevant ministries so that they are able to deliver on their mandates effectively. Rights such as shelter, water and food require investment of resources and strategic budgeting and planning if they are to be realised. The State ought to finance the relevant government ministries so that they ensure the provision of amenities such as clean water and quality healthcare services. Government ought to desist from overspending through the funding of unnecessary foreign trips and instead focus on more pressing bread and butter issues back home.
- **Independent Commissions:** Independent Commissions supporting democracy are a key part of the human rights matrix. As such, the government ought to support their initiatives wholeheartedly to enable them to fulfil their constitutional mandates. These commissions have often-times been plagued by the lack of funding rendering them incapacitated to execute their tasks faithfully.

The government should, therefore, ensure that they are adequately funded.

In addition, the State should take heed of the recommendations made by these commissions and implement such recommendations so as to improve the human rights situation in the country. Further, the State should not interfere with the operations of the commissions, since this would mean their operations become less objective. Establishment of key operational frameworks for these commissions is also vital in ensuring that they fulfil their mandates as per the Constitution.

- **Combatting corruption:** Government ought to take a robust approach in its efforts to combat corruption. The cancerous nature of corruption in Zimbabwe has been felt across all institutions and sectors around the country. The Zimbabwe Anti-Corruption Commission ought to fulfil its mandate without fear or favour. The government should desist from the catch and release strategy that it has been accused of recently. Such strategies only contribute to the people losing confidence in the government and its commissions. Corruption is deeply rooted in Zimbabwean society and it would take an aggressive approach to uproot it and chart a corruption-free future for the country. The State should introduce strong policies in all sectors aimed at fighting corruption and actually prosecute those accused of being corrupt.
- **Business and Human Rights:** Government should be vigilant when it comes to regulating the business sector. It should not just be happy to rack in profits whilst leaving the business

community to perpetrate human rights abuses around the country. Business can never flourish without the people, so the people must be protected from human rights violations. Businesses ought to fulfil their responsibility mandates, which mandates stimulate social cohesion and promotion of basic human rights protections. Government ought also to craft policies that reign in businesses which commit gross human rights violations. There can be no development without the observance and respect of basic fundamental human rights. As such, the State should be at the forefront when it comes to protecting civilians from the predatory tendencies of the business community.

- **Women's Rights:** The government should ensure that the constitutional provisions guaranteeing the principle of equality and non-discrimination between men and women are actualised through administrative and policy steps at all levels of society. The State should take all necessary measures to guarantee the effective implementation of the laws criminalising domestic violence and prohibiting discriminatory customary practices; strengthen support mechanisms for victims, including by establishing a country-wide legal aid system; initiate awareness-raising campaigns for the general populace and training for all law enforcement personnel. The State through entities such as the ZGC should increase efforts to ensure women's equal access to employment and decision-making positions, including by strengthening measures to combat sexual harassment in the workplace; and implementing quotas on the representation of women in political positions. In line with the constitutional right to health, the State must ensure women's access to health services, including obstetric care and family planning; and ensure access to sexual and reproductive health education. The State must adopt all necessary measures to reform or eliminate discriminatory cultural practices and stereotypes, including through raise awareness programmes targeting women and men, traditional and community leaders.

*In line with the constitutional right to health, the State must ensure women's access to health services, including obstetric care and family planning; and ensure access to sexual and reproductive health education.*



Zimbabwe  
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