

# STATE OF HUMAN RIGHTS REPORT ZIMBABWE 2021



Zimbabwe  
**HUMAN RIGHTS**  
NGO Forum



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# **STATE OF HUMAN RIGHTS REPORT 2021**

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# TABLE OF CONTENTS

ABOUT THE FORUM .....	iii
MEMBERS OF THE FORUM .....	iii
VISION .....	iii
MISSION .....	iii
ABOUT THIS REPORT .....	iv
ACRONYMS .....	v
DEDICATION .....	vi
EXECUTIVE SUMMARY .....	vii
RECOMMENDATIONS .....	viii
<b>PART 1: SETTING THE AGENDA .....</b>	<b>1</b>
<b>CHAPTER 1 INTRODUCTION, OVERVIEW AND METHODOLOGY .....</b>	<b>2</b>
Human rights architecture .....	3
Constitution of Zimbabwe .....	3
Regional and International Human Rights Treaties .....	4
Key Human Rights Issues Arising in 2021 .....	5
<b>PART 2: THEMATIC ASSESSMENT OF THE HUMAN RIGHTS SITUATION IN ZIMBABWE .....</b>	<b>6</b>
<b>CHAPTER 2 CONSTITUTIONALISM AND THE RULE OF LAW IN ZIMBABWE .....</b>	<b>7</b>
Constitutionalism and the rule of law .....	7
Malaba Saga: Legitimacy deficit in the judiciary .....	14
Recommendations .....	15
<b>CHAPTER 3 SOCIO-ECONOMIC RIGHTS .....</b>	<b>16</b>
Overview .....	16
Covid-19 Pandemic Two years on .....	17
Socio-economic Rights Spotlighted .....	20
Right to Health: A healthcare emergency in Zimbabwe .....	20
Right to Water and Sanitation .....	22
Right to food .....	23
Right to Education: A future that is under siege .....	24
Freedom from arbitrary evictions .....	25

<b>CHAPTER 4 CIVIL AND POLITICAL RIGHTS .....</b>	<b>27</b>
Violations at a glance .....	28
Specific violations spotlighted .....	29
Respect for the integrity of the person .....	29
Arbitrary deprivation of life and politically motivated killings .....	29
Organized violence and torture .....	30
Arbitrary arrest and detention .....	32
Respect for civil liberties .....	34
Freedom of Assembly and Association .....	34
Freedom of Expression, Including for the Press.....	35
Freedom of movement .....	38
The Right to Participate in the Political Process .....	38
Abuse of Covid-19 Pandemic to violate participation rights .....	39
Attacks on electoral democracy.....	40
Increase in political violations and repression .....	40
Hate speech and political intolerance .....	41
Politicization of aid distribution; intimidation and harassment .....	42
Recommendations .....	42
<b>CHAPTER 5 GROUP RIGHTS AND SPECIAL GROUPS .....</b>	<b>43</b>
Women’s Rights.....	43
Children’s Rights .....	44
Rights of Persons With Disabilities .....	45
LGBTIQ Rights .....	46
Environmental Rights .....	46
<b>CHAPTER 6 CSO OPERATING ENVIRONMENT.....</b>	<b>49</b>
Restrictive Laws .....	50
<b>PART 3: CONCLUSION AND RECOMMENDATIONS.....</b>	<b>54</b>
<b>CHAPTER 7 CONCLUSION .....</b>	<b>55</b>
Recommendations .....	56

# ABOUT THE FORUM

The Zimbabwe Human Rights NGO Forum (the Forum) is a coalition of twenty-two human rights NGOs in Zimbabwe who, while having their own objectives, are concerned with the level and nature of organized violence and torture in the country perpetuated mainly, though not exclusively, by state agents and their ancillaries. It came into existence at the time of the Food Riots in 1998.

At the outset, the Forum comprised 8 members. It has subsequently attracted support from the major human rights NGOs in Zimbabwe and liaises closely with its colleagues and peers such as National Association of Non-Governmental Organisation (NANGO), the Crisis in Zimbabwe Coalition, Zimbabwe Elections Support Network (ZESN) and Zimbabwe Congress of Trade Unions (ZCTU), among other CSO coalitions and networks.

## MEMBERS OF THE FORUM

- Amnesty International – Zimbabwe (AI-Z)
- Catholic Commission for Justice and Peace Zimbabwe (CCJPZ)
- Civic Education Network (CIVNET)
- Counselling Services Unit (CSU)
- Gays and Lesbians of Zimbabwe (GALZ)
- Justice for Children Trust (JCT)
- Legal Resources Foundation (LRF)
- Media Institute of Southern Africa (MISA)
- Media Monitors (MM)
- Research and Advocacy Unit (RAU)
- Transparency International – Zimbabwe (TI-Z)
- Tree of Life (TOL)
- VERITAS
- Women and Law in Southern Africa (WLSA)
- Women of Zimbabwe Arise (WOZA)
- Zimbabwe Association for Crime Prevention and Rehabilitation of the Crime 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 Lawyer's Association (ZWLA)

## VISION

*The vision of the Forum is a society which promotes and protects all human rights of all people.*

## MISSION

*To provide leadership and coordination on the human rights agenda in Zimbabwe.*

## ABOUT THIS REPORT

*This report is published primarily to document the state of human rights in Zimbabwe for 2021. While members of the Forum may have their own thinking, the ideas presented here are based on the best practices recognised by international law and in tandem with our Zimbabwean Constitution. We present this report as a part of the documentation project of the Forum.*



# ACRONYMS

<b>ACHPR</b>	African Commission on Human and Peoples Rights
<b>ACRWC</b>	African Charter on the Rights and Welfare of the Child
<b>ACDEG</b>	African Charter on Democracy, Elections and Governance
<b>African Charter</b>	African Charter on Human and Peoples Rights
<b>ARTUZ</b>	Amalgamated Rural Teachers Union Zimbabwe
<b>CIZC</b>	Crisis in Zimbabwe Coalition
<b>CNRG</b>	Centre for Natural Resource Governance
<b>CSOs</b>	Civil Society Organisations
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>ERC</b>	Election Resource Centre
<b>HRDs</b>	Human Rights Defenders
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic Social and Cultural Rights
<b>LGBTIQ</b>	Lesbians, Gays, Bi-Sexual, Trans-Gender, Intersex, Queer
<b>LSZ</b>	Law Society Zimbabwe
<b>MDC-T</b>	Movement for Democratic Change - Tsvangirai
<b>MDC-A</b>	Movement for Democratic Change – Alliance
<b>MDP</b>	Malicious Damage to Property.
<b>PWD</b>	Persons with Disabilities People with Disabilities
<b>OVT</b>	Organised Violence and Torture
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNCAT</b>	United Nations Convention Against Torture
<b>ZANU-PF</b>	Zimbabwe African National Union- Patriotic Front African
<b>ZESN</b>	Zimbabwe Election Support Network Zimbabwe Election Support
<b>ZHRC</b>	Zimbabwe Human Rights Commission
<b>ZIMCODD</b>	Zimbabwe Coalition for Debt and Development
<b>ZNA</b>	Zimbabwe National Army
<b>ZRP</b>	Zimbabwe Republic Police

# DEDICATION

*This report is dedicated to the millions of ordinary Zimbabwean citizens who continue to bear the brunt of the civil and political as well as the socio-economic ills bedeviling the country. In your name, we commit to continue the struggle and advance the causes of constitutionalism, human rights and good governance.*



# EXECUTIVE SUMMARY

2021 proved to be another appalling year in terms of Zimbabwe's democracy and human rights record. Democracy declined significantly and Freedom House classified Zimbabwe as not being free. The government intensified its attacks on the rule of law and fundamental freedoms, clearly demonstrating a complete disregard for the Constitution. Arbitrary exercise of power by the executive manifested in the unprocedural and unconstitutional passing of amendments to the 2013 Constitution for the second time, whose net effect was concentrating power in the President, while subordinating the other arms of government to the overweening power by the executive thus consequently, eliminating the checks and balances underpinned by the doctrine of separation of powers.

In this report we highlight the failure by government to take meaningful action to ameliorate the plight of citizens as the socio-economic situation continued to implode. We highlight the general impact of the COVID-19 on the livelihood of the population and lament that instead of coalescing efforts around the common enemy of the COVID-19 pandemic, the government decided to channel its energy and resources towards fighting civil society and HRDs, who ideally should be its partners for sustainable development. Regrettably the COVID-19 response measures continued to be weaponised to target those who are disfavoured by the government, leaving the populations to suffer the debilitating effects of the pandemic alone.

We also document the accelerated efforts by the government to close civic space through the introduction of the Private Voluntary Organisations (PVO) Amendment Bill, 2021 and amendments to the Constitution of Zimbabwe. The government announced that it had passed principles for the Patriotic Bill. These laws are not only designed to target HRDs, journalists and members of the opposition but to criminalise human rights work in Zimbabwe. This is a retrogression of significant proportions.

Attacks on human rights defenders (HRDs), journalists, opposition activists and citizens asserting their rights intensified. As fundamental freedoms continued to be stifled, we lament the use of criminal justice system and judicial processes as tools of repression. We emphasise that an independent judiciary is not only imperative, but it is a bastion for democracy, rule of law and protection of human rights and fundamental freedoms.

Corruption remained endemic as well as a major factor contributing to the deteriorating economic situation in the country. The government delivered poorly on social services. Invariably, special, and vulnerable groups such as women, children, people living with disabilities (PWDs) and the elderly continue to be disproportionately affected by the situation resulting from the economic decline and poor service delivery. Poverty levels have increased significantly. This has affected the quality of life for the people.

As the Forum, we stand firm in upholding our vision of a society that respects all human rights for all people. We continue to call on the government to respect its social contract and respect and fulfil all human rights and fundamental freedoms of its people. The people of Zimbabwe must enjoy their rights and freedoms without undue interferences. We commit to monitoring, documenting, and exposing the violations including government excesses, challenge impunity and call on the government to be accountable to its people.

## **Recommendations**

- 1. Government must uphold constitutionalism and respect the rule of law** – Judicial independence must be safeguarded and the executive must respect separation of powers. The government must desist from further arbitrary amendments to the Constitution and to fully implement the Constitution. It must expedite the constitutional alignment process, with substantive reforms aligning legislation to the Constitution and in particular, government must, without any further delays operationalise the Independent Complaints Mechanism contemplated in section 210 of the Constitution.
- 2. Government must take active measures in ensuring that the socio-economic rights guaranteed by the Constitution translate into a living reality for the population** – There must be a genuine desire and sufficient political will by the government to combat corruption. All public goods and services must be delivered to the population without discrimination. Socio-economic policies must be people-centric and must take a human rights-based approach in their development and implementation.
- 3. Government must fulfil all its obligations arising from Constitution and regional and international treaties to respect, protect and fulfil all human rights and fundamental freedoms** – The government of Zimbabwe must ensure that citizens enjoy all their fundamental freedoms without undue interference. It must ratify outstanding key international human rights treaties such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) and the International Convention for the Protection of All Persons from Enforced Disappearance. All violations against HRDs must be investigated and the perpetrators must be held accountable. The pillars of impunity must be dismantled. Recommendations from the Motlanthe Commission of Inquiry into the 2018 politically motivated violence must be fully implemented.
- 4. Government must ensure and safeguard a conducive operating environment for HRDs and journalists** – The government of Zimbabwe must desist from imposing undue restrictions on civil society and civic space in general. The ongoing efforts aimed at criminalising and over-regulation of CSOs must be discontinued and the PVO Amendment Bill must be withdrawn.
- 5. Government must respect and safeguard democratic processes** – It must accelerate and adopt meaningful and genuine electoral reforms. The government of Zimbabwe must also put in place concrete, transparent and targeted measures to facilitate national peacebuilding, political tolerance and eradicate hate speech and other actions which fuel inter-party and intraparty violence.
- 6. Government must take concrete measures to address the plight of women and children in Zimbabwe** – Specifically, it must take measures to eliminate gender-based violence (GBV), address its root causes including discrimination and guarantee sexual and reproductive health rights for women and girls. It must adopt concrete measures that ensure the security and development of the child.
- 7. Government must enact and implement the law to align the Disabled Persons Act with the Constitution and to domesticate the United Nations Convention of the Rights of People living with Disabilities (UNCRPD).**
- 8. There is need for constructive dialogue and development of a policy on social inclusion in Zimbabwe.**

# PART 1

## SETTING THE AGENDA



# INTRODUCTION, OVERVIEW AND METHODOLOGY

## Overview

This report is an assessment of the human rights situation in Zimbabwe for 2021. It documents and analyses key political, legal, social, and economic developments and factors that impacted the human rights environment in Zimbabwe. Through this report, the Forum aims to present a comprehensive review of the human rights situation in Zimbabwe for 2021. By placing emphasises on the role of government as the primary duty-bearer in ensuring the respect and protection of all human rights, the report provides an audit of how the government of Zimbabwe has been faring in meeting the human rights obligations set in the Constitution and various international treaties, declarations and guidelines that make up our human rights architecture. The report identifies a broad range of human rights issues and challenges that require attention, with a specific purpose to;

- raise awareness on the human rights situation in Zimbabwe;
- give a voice to the victims of human rights violations, in particular victims of Organised Violence and Torture (OVT) and call for redress;
- challenge impunity and push for accountability for human rights violations; and
- provide feedback and recommendations on steps and measures that need to be taken to ensure and safeguard the enjoyment of human rights for all people.

## Methodology

The research provides an overview of the human rights situation in Zimbabwe for 2021 using both qualitative and quantitative data to highlight notable developments that hindered or advanced the observance of human rights in Zimbabwe in 2021. It documents key human rights violations, their nature and magnitude. It identifies the victims and perpetrators including those aiding and abating human rights violations and highlight factors that contributed to the human rights situation in 2021. Case histories and in some instances victim impact testimonies have also been incorporated to illustrate the nature and extent of the violations and afford victims the opportunity to express their feelings about the violations and its impact on them and their families. However, the report does not document every violation that took place in 2021.

It identifies only the violations that had significant impact on the human rights situation for the year while the detailed cases and testimonies are found in the Forum's Quarterly Political Violence Reports (QPVR) and the reports of Forum members and other human rights organisations. In doing so, the research uses the following sources of information;

- verified data and statistics documented by the Forum secretariat and the Forum members;
- information gathered from interviews conducted with selected Forum members on the human rights situation in the country;
- statements and reports from national and international human rights institutions such as the Zimbabwe Human Rights Commission (ZHRC) and regional and international human rights mechanisms;
- information from key and leading national and international human rights organisations;
- credible information derived from verified media sources; and
- information gathered from key informant interviews from other stakeholders in the human rights sector.

## Human Rights Architecture

The human rights situation in Zimbabwe for 2021 was assessed using human rights standards based on the Constitution of Zimbabwe,<sup>1</sup> international and regional human rights treaties signed and ratified by Zimbabwe as well as relevant key international and regional human rights guidelines, principles, and standards. The Forum believes this is the framework that should or ought to shape the human rights culture in Zimbabwe.

## Constitution of Zimbabwe

The Constitution is the supreme law of the land. Any legislation, policy, practice, custom and conduct must align with the principles and values of the Constitution. It imposes obligations on every person (natural and juristic) including the state and all institutions of government to respect, promote and fulfil the Constitution.<sup>2</sup> It sets out the supremacy of the Constitution; the rule of law; fundamental human rights and freedoms; recognition of the inherent dignity of every human being; equality; and good governance as some of its founding principles and values.<sup>3</sup> Chapter 4 of the Constitution is the declaration of rights, and guarantees and protects the right to life; right to personal liberty; rights of arrested and detained persons; right to human dignity; right to personal security; freedom from torture cruel, inhuman and degrading treatment, slavery and forced labour; equality and non-discrimination; right to privacy; fundamental freedoms of assembly and association, to demonstrate and petition, of conscience, of expression and the media; the right to access to information; language and culture; freedom of profession, trade or occupation; labour rights; freedom of movement and residence; political rights; right to administrative justice; fair trial rights; property rights; environmental rights; freedom from arbitrary eviction; right to education; right to health care; right to food and water; marriage Rights; children's right; women's rights; rights of the elderly; and rights of persons with disabilities, among others.

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<sup>1</sup> *The Constitution of Zimbabwe Amendment Act (No. 20) 2013.*

<sup>2</sup> *Section 2 of the Constitution of Zimbabwe Amendment Act (No. 20) 2013.*

<sup>3</sup> *Section 3 of the Constitution of Zimbabwe Amendment Act (No. 20) 2013.*

## Regional and International human rights treaties

Zimbabwe has signed and ratified the following key human rights treaties, among others:

Treaty	Obligations/Commitments by Zimbabwe
SADC Treaty	Committed to the principles of human rights, democracy and the rule of law.
SADC Protocol on Gender and Development	Committed to elimination of gender discrimination and the promotion of gender equality and equity through gender responsive legislation, policies and programmes and projects.
SADC Protocol Against Corruption	To promote and strengthen the development of mechanisms needed to prevent, detect, punish, and eradicate corruption in the private and public sector.
The Constitutive Act of the African Union	To promote and protect human and people's rights, consolidate democratic institutions and foster a culture of democracy, ensure good governance and the respect for the rule of law.
African Charter on Human and Peoples Rights	To promote and protect human and Peoples rights and freedoms that is civil, political, economic, social, and cultural rights as well as group rights.
The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)	To eliminate discrimination against women. To protect and ensure women's right to dignity, the right to life, integrity, and security of person; right to access to justice and equal protection before the law; right to participate in political and decision -making processes; right to peace; and improved autonomy in their reproductive health decisions.
The African Charter on the Rights and Welfare of the Child	To promote and protect the civil and political, social, and economic and cultural rights of the child.
African Union Convention on Preventing and Combating Corruption	Commit to the respect for human rights, rule of law and good governance; to condemn and reject acts of corruption and impunity; to promote socio-economic development by removing obstacles to the enjoyment of economic, social, and cultural rights as well as civil and political rights; and to establish the necessary conditions to foster transparency and accountability in the management of public affairs; among others.
African Charter on Democracy, Elections and Governance–	Committed to: adhere to the universal values and principles of democracy and respect for human rights, the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutionalism; holding of regular free and fair elections; promote and protect the independence of the judiciary; nurture, support and consolidate good governance, building and strengthening governance institutions and inculcating political pluralism and tolerance; promote sustainable development and human security; combat corruption; promote effective citizen participation, transparency, access to information, freedom of the press and accountability; promote gender balance and equality; and respect Separation of powers.

Treaty	Obligations/Commitments by Zimbabwe
Universal Declaration of Human Rights	Committed to ensuring the protection and enjoyment by every individual of their basic rights and fundamental freedoms, affirming their universal character as inherent, inalienable, and applicable to all human beings
International Covenant on Civil and Political Rights	Committed to ensuring the protection and enjoyment of civil and political rights as well as fundamental freedoms by all persons in Zimbabwe.
International Covenant on Social, Economic and Cultural Rights	Committed to ensuring the protection and enjoyment of economic, social, and cultural rights by all persons in Zimbabwe
Convention on the Rights of the Child (CRC)	Committed to protect and ensure the fundamental rights of children including among others the right to life, survival, and development; the right to protection from violence, abuse and neglect; right to education; the right to be raised by and have a relationship with their parents and the right to express their opinions and be listened to.
Convention on the Rights of Persons with Disabilities (CRPD)	Committed to ensuring the protection and enjoyment of all human rights and fundamental freedoms by all persons with disabilities.

## Key Human Rights Issues Arising in 2021

Human rights issues that were topical with significant impact on the human rights situation in Zimbabwe in 2021 include among others.

- Constitutional Amendments that marked a departure from the democratic spirit and tenor embodied in the Constitution.
- Deliberate failure by the government to fulfil and implement the Constitution.
- Continued attacks on democracy and disregard of the rule of law.
- Accelerated efforts towards closing democratic and civic space and intensified attacks on fundamental freedoms.
- Intensified attacks on human rights defenders and pro-democracy activists.
- State brutality and continued violations of human rights with impunity
- Corruption, poor governance, and lack of accountability.
- Weaponisation of the COVID 19 pandemic restrictions.
- Severe water and sanitation crisis.
- Safety and protection of the child especially the girl child. Child marriages and access to basic education remains a cause for concern.
- and internal displacements.
- Threats to a sustainable environment, that is not harmful to the health and well-being of the people.

# PART 2

## THEMATIC ASSESSMENT OF HUMAN RIGHTS SITUATION IN ZIMBABWE



## CONSTITUTIONALISM AND THE RULE OF LAW IN ZIMBABWE

### Constitutionalism and the Rule of Law

The Constitution is the supreme law of the land. In addition to providing a comprehensive declaration of rights and its enforcement mechanism, the Constitution of Zimbabwe obligates every person, natural or juristic, including the state to honour and fulfil the Constitution.<sup>4</sup> Section 324 provides that all constitutional obligations must be performed diligently and without delay.

Constitutionalism is concerned with the concept of limited government. It refers to a government authority that is limited by law and postulates that rulers need to be restrained. Constitutionalism prevents arbitrary governance where rulers rule wilfully, with complete discretion to serve their own interests and not of the people<sup>5</sup>. It seeks to ensure the balance of power between all relevant groups or parties within a polity and places the people's interest at the core of every government rule. It also seeks to prevent interference of individual rights and establishes protection for them through the separation of powers and a judiciary protected constitution. Constitutionalism is therefore closely associated with the rule of law which prevails through upholding the separation of powers, equality before the law and basic human rights and fundamental freedoms. Constitutionalism and the rule of law are fundamental to good governance and the building of fair and equitable societies.<sup>6</sup> Zimbabwe has ratified the African Charter on Democracy Elections and Governance (ACDEG) and committed to among others adhere to the universal values and principles of democracy and respect for human rights, the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutionalism.

<sup>4</sup> Section 2 of the Constitution of Zimbabwe Amendment Act (No.20) 2013.

<sup>5</sup> Stephen Buchanan and Sikhululekile Mashingaidze; "Rebuilding constitutionalism and the rule of law in Zimbabwe", August 3, 2021; <https://gga.org/rebuilding-constitutionalism-and-rule-of-law-in-zimbabwe/>.

<sup>6</sup> Stephen Buchanan and Sikhululekile Mashingaidze; "Rebuilding constitutionalism and the rule of law in Zimbabwe", August 3, 2021; <https://gga.org/rebuilding-constitutionalism-and-rule-of-law-in-zimbabwe/>.



In 2021, The government deepened the disregard for constitutionalism and accelerated systematic efforts to capture and undermine the Constitution and key rule of law institutions. Government actions mainly served the interests of the ruling elites while neglecting the population. Classic examples include:

#### **A. Attacks on the Constitution**

This was done through the rush by the government to amend the Constitution through Constitution of Zimbabwe Amendment (No. 2) Act, to concentrate power in the president while disregarding the will of the people<sup>7</sup>. Using a 2020 Constitutional Court judgment,<sup>8</sup> Parliament found itself having to take a vote on the Constitution of Zimbabwe Amendment (No. 1) Bill. The process of passing these amendments was marred with procedural irregularities that impacted the supremacy of the Constitution and severely undermined the core values and principles of the Constitution. This was done against a background of non-compliance with and failure by the government to fully implement the Constitution. Crisis in Zimbabwe Coalition (CiZC) described this act as an attempt to consolidate authoritarian rule through judicial capture and therefore merely seeking to serve the interests of ruling party politicians at the expense of the will of the majority of the people<sup>9</sup>. By acting in this manner, the ZANU PF government did not only impact adversely the quality and integrity of the Constitution as a governance instrument<sup>10</sup>, it also undermined the very values and principles upon which the Constitution is founded which include inter alia, supremacy of the Constitution, rule of law, separation of powers, respect for human rights and fundamental freedoms and good governance<sup>11</sup>.

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<sup>7</sup> Constitution of Zimbabwe Amendment (Number 2) Act, 07 May 2021.

<sup>8</sup> *Gonese and Another v Parliament of Zimbabwe and 3 Others* – CCZ 2020-04

<sup>9</sup> Crisis Coalition concerned over consolidation of authoritarian rule through constitutional amendments; April 7, 2021; <https://kubatana.net/2021/04/07/crisis-coalition-concerned-over-consolidation-of-authoritarian-rule-through-constitutional-amendments/>.

<sup>10</sup> Greg Linington; "Constitutionalism in Zimbabwe", July 8, 2021; [https://saiaa.org.za/wp-content/uploads/2021/07/01\\_Constitutionalism-in-Zimbabwe\\_GLinington.pdf](https://saiaa.org.za/wp-content/uploads/2021/07/01_Constitutionalism-in-Zimbabwe_GLinington.pdf).

<sup>11</sup> Section 3 of the Constitution of Zimbabwe Amendment Act (No. 20) 2013.

## B. Repressive legislative agenda

Even though the Constitution has been in effect for eight years, the government has not shown genuine desire to translate the Constitution into a living reality that offer tangible benefits to its people. The alignment process has been painstakingly slow. The Inter-Ministerial Taskforce on the Alignment of Legislation to the Constitution (IMT) Bill Tracker of January 2020 cited 63 laws as needing to be aligned, of which 13 had been signed into law with 50 still outstanding – seven years after the 2013 Constitution was adopted.<sup>12</sup> On the contrary, the government has fast-tracked the passing of legislation and gazetting of Bills clearly designed to undermine or reverse the progressive values and principles of the Constitution. For example:

- the Maintenance of Peace and Order Act (MOPA)<sup>13</sup> that repealed POSA has done little to substantively align it with the Constitution. The UN Special Rapporteur on Freedom of Assembly and Association has expressed concern that many of the restrictive provisions of POSA are replicated in the MOPA<sup>14</sup>. Several Bills were also introduced that draw back on the enjoyment of human rights and fundamental freedoms enshrined in the Constitution. In 2021 alone, parliament fast-tracked the unprocedural passing of the Cyber Security and Data Protection Bill, 15 enacted into law on 3 December 2021 now under the title “Data Protection Act”.<sup>16</sup> The Act severely undermine freedoms of expression and of the media<sup>17</sup>. Transparency International-Zimbabwe (TI-Z) laments that “the Bill [Act] contains provisions that will obstruct the crucial role of civil society and the media in the fight against corruption and undermine any recent progress.<sup>18</sup>
- On 5 November 2021, the government gazetted the Private Voluntary Organisations (PVO) Amendment Bill, seeking to amend several provisions of the PVO Act (Chapter 17:05). If passed into law, the PVO Bill, will have severe consequences on the exercise of freedoms of expression, assembly, association and political rights. It does so by giving too much power to the government to control and interfere with the work of CSOs; increasing surveillance and monitoring of NGOs and HRDs; criminalising human rights work; and creating real dangers of expropriation of NGOs funds and assets without due process and compensation.<sup>19</sup>

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<sup>12</sup> IMT Bill Tracker, *Status of Bills under review for Constitutional Alignment (January 2020)*; <https://kubatana.net/wp-content/uploads/2020/02/IMT-Bill-Tracker-as-@-January-2020.pdf> See also ZHRNGOF, 2019 State of Human Rights Report at page 16; <https://www.hrforumzim.org/publications/>

<sup>13</sup> Chapter 11:23

<sup>14</sup> UN Special Rapporteur on the Right to Freedom of Peaceful Assembly and Association; “End of Mission Report to Zimbabwe 17 – 27 September 2019”, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/121/31/PDF/G2012131.pdf?OpenElement>

<sup>15</sup> MISA Zimbabwe, “MISA Appeals to President Mnangagwa to decline to Sign the Cyber Bill into Law”, September 7, 2021; <https://zimbabwe.misa.org/2021/09/07/misa-appeals-to-president-mnangagwa-to-decline-signing-cyber-bill-into-law/>.

<sup>16</sup> Analysis of the Data Protection Act, December 6, 2021; <https://kubatana.net/2021/12/06/analysis-of-the-data-protection-act/>.

<sup>17</sup> Analysis of the Data Protection Act, December 6, 2021; <https://kubatana.net/2021/12/06/analysis-of-the-data-protection-act/>.

<sup>18</sup> Transparency International, “Zimbabwe: Cyber Security and Data Protection Bill would restrict anti-corruption watchdogs”, September 11, 2020; <https://www.transparency.org/en/press/zimbabwe-cyber-security-and-data-protection-bill-would-restrict-anti-corruption-watchdogs-1>.

<sup>19</sup> Zimbabwe Lawyers for Human Rights, *Analysis of the Private Voluntary Organisations Amendment Bill 2021*, December 7, 2021; <https://kubatana.net/2021/12/07/analysis-of-the-private-voluntary-organisations-amendment-bill-2021/>.

Surprisingly, pertinent issues relating to the Constitution, such as the establishment and operationalisation of the Section 210 independent complaints mechanism to deal with complaints against members of the security services, remain outstanding. This is despite well documented cases of abuse of power including acts of violations of human rights by members of the security service. Given the unfortunate role the security sector has played in committing, aiding and abating violations of human rights in Zimbabwe, this provision remains momentous as much as it remains pending.

### C. Excessive executive overreach

Section 134 of the Constitution lays down that parliament can, in an Act of Parliament, delegate power to make statutory instruments (SIs) within the scope of and for the purposes laid down in that Act but it must not delegate its primary law-making power. This accords with the doctrine of separation of powers where parliament is the law-making body, and the executive administers the country within the confines of the powers given to it by the law. The SI must satisfy the requirements set out in Section 134, that include among others; that it must not infringe on or limit any of the rights and freedoms under the declaration of human rights; and must be consistent with the Act of parliament under which they are made.

There has been a disturbing phenomenon on the use of these subsidiary legislations in Zimbabwe in a manner that circumvent the checks and balances provided by the Constitution. In fact, the use of SIs has always been problematic in Zimbabwe, and this intensified following the Covid 19 pandemic. Between January 2020 and December 2021 alone, more than 70 SIs and Orders were enacted dealing with COVID – 19 alone and majority of them were still extant by December 2021. These SIs and Orders covered several issues that infringed and limited human rights and fundamental freedoms, such as political rights, freedoms of movement, expression and the media, assembly, and the right to protest. Some of the regulations/orders were arbitrary and unreasonable in violation of the Constitution and international law. For example:

- In October 2020, the Minister of Health and Child Care issued an order through SI225A of 2020, indefinitely suspending the holding of By-elections. In March 2021, the Zimbabwe Electoral Commission (ZEC) issued an official statement confirming that the holding of elections remains suspended except for other activities such as the voter registration. The Minister of Health imposed the order at a time when a number of vacancies in both Parliament and local authorities had occurred through deaths and recalls of office holders. The opposition MDC-T had recalled at least 30 legislators from the House of Assembly and Senate and a number of councillors in local authorities throughout the country. The order is a clear violation of section 67 of the Constitution and Article 25 of the ICCPR. Section 67 of the Constitution provides for political rights and gives every citizen the right to free, fair and regular elections for any elective public office and to make political choices freely. Article 25 of the ICCPR provides for citizens' right, without unreasonable restrictions, to take part in the conduct of public affairs directly or through chosen representatives. In its statement, the Zimbabwe Human Rights Commission (ZHRC), raised concern over the arbitrariness of the ban as it violates the Constitution and international law, calling on the government to respect the separation of powers and not use the pandemic to unleash absolute power.<sup>20</sup>

<sup>20</sup> Zimbabwe Human Rights Commission Statement on the Suspension of Holding of By-Elections in Zimbabwe, October 12, 2020 <https://kubatana.net/2020/10/12/zimbabwe-human-rights-commission-zhrc-statement-on-the-suspension-of-elections-in-zimbabwe/>.

Since 2020, there has also been disturbing and worrisome trend on the excessive enforcement of these SIs especially COVID – 19 related regulations resulting in violations of non-derogable rights such as the right to life and freedom from torture.<sup>21</sup> There have been reports of killings, abductions and torture related to the enforcement of COVID-19-related regulations. Numerous incidences were documented of police and army brutality including abductions and torture that remained uninvestigated in 2021. Prominent examples include:

- The abduction and torture of MDC Alliance Harare West Member of Parliament Joana Mamombe and MDC Alliance Youth Assembly leaders Cecilia Chimbi and Netsai Marova on 13 May 2020 by suspected security agents;
- the abduction of Tawanda Muchehiwa in Bulawayo on 30 July 2020 by suspected security agents;
- the assault by the police of two Bulawayo sisters Nokuthula Mpfu and Ntombizodwa Mpfu on 16 April 2020, for allegedly violating the national lockdown.<sup>22</sup>

These persisted into 2021 and no meaningful action has been taken by the government to investigate and bring to account those responsible.

In addition, the subsidiary legislations were not subjected to any review by parliament. Judicial oversight has not been effective. The majority of the cases brought before the courts challenging the legality or seeking a review of these SIs have been either dismissed on technical grounds or suffered incessant delays. For example.

- On 13 October 2020, Women Academy for Leadership and Political Excellence (WALPE), Election Resources Centre (ERC) and six Harare and Marondera residents filed a court application challenging the ban on elections (SI225A of 2020) arguing that the suspension was a breach of the Electoral Act and the Constitution as government should have held by-elections before 30 September 2020 to fill in vacancies in local authorities and in the National Assembly. The high Court reserved judgement on the matter on 24 May 2021.

The excessive use of statutory instruments as opposed to Acts of Parliament has always been problematic in Zimbabwe. This has undermined the rule of law and led to violation of constitutional rights. In his remarks at a meeting of lawyers in November 2020, a leading human rights lawyer in Zimbabwe, Alec Muchadehama raised the concern over the abuse of the statutory instruments by the executive to circumvent the checks and balances provided by the Constitution. He noted that since the year 2017 the use of these statutory instruments as opposed to Acts of Parliament has been quite pervasive.<sup>23</sup>

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21 African Judges and Jurists Forum; "COVID-19 and the State of Compliance with Human Rights Standards in SADC", December 2020: <https://africajurists.org/covid-19-and-state-compliance-with-human-rights-standards-in-sadc/>.

22 Zimbabwe Human Rights NGO Forum, "180 Days of What?: A Summary Review of the Forts 180 Days of the COVID-19 National Lockdown in Zimbabwe, October 2, 2020; <https://kubatana.net/wp-content/uploads/2020/10/180-Days-of-What-lr.pdf>.

23 COVID-19 Series: The impact of the crisis in Zimbabwe – Lawyers for Lawyers; 18 November 2020: <https://lawyersforlawyers.org/en/covid-19-series-the-impact-of-the-crisis-in-zimbabwe/>.

## D. Arbitrary amendments to the Constitution

The executive continued to subordinate other branches of government and weaponised the judiciary with its overweening dominance. This has gained currency through the unprecedented amendments to the Constitution introduced by Constitution of Zimbabwe Amendment (No. 2) Act, which was passed against the will of the people as expressed during public hearings. This was in addition to the passing for the second time of the Constitution of Zimbabwe Amendment (No.1) Bill. The process leading to the passing of these Bills was untenable at law. In addition, the substantive amendments themselves severely undermine democracy, the rule of law and promotion of human rights and fundamental freedoms as we detailed below:

- i. The Constitution of Zimbabwe Amendment (No.1) Bill was passed by the Senate on 6 April 2021. This was after it had stalled for 5 years on account of irregularities found by the Constitutional Court during the first attempt to pass it. The Amendment gives power to the President to appoint heads of the judiciary, that is the Chief Justice, Deputy Chief Justice and Judge President without the need for public interviews. It increases the power of the executive while reducing transparency, openness and accountability of the process. The passing of the Bill by the Senate was illegal and violated the Constitution in that it was passed despite the absence of a Constitutional Bill before parliament. In terms of Section 147 of the Constitution, the old Bill lapsed with the end of the 8<sup>th</sup> parliament in 2018. Section 147 provides that all Bills before parliament lapse when it dissolves.

The illegality of Constitution of Zimbabwe Amendment (No. 1) Bill is currently being challenged before the Constitutional Court in a case brought by the Law Society of Zimbabwe<sup>24</sup>.

- ii. In May 2021, the government enacted the Constitution of Zimbabwe Amendment (No. 2) Act. Most of the amendments therein adversely impact on the quality and integrity of the Constitution. The amendments related to critical issues such as the appointment and retirement of judges of the superior courts, appointment, and dismissal of the Prosecutor General, removal of running mate provisions, extension of proportional representation provisions for female parliamentarians, composition of executive and legislative oversight role among others. The amendments have the net effect of concentrating power in the executive in particular, the president thereby cutting back on the checks and balances and severely attacking the doctrine of separation of powers. It grants the president greater powers in appointing judges, diluting judicial independence, and expanding the power of the executive with limited oversight.<sup>25</sup> This undermines the foundational tenets of democracy.

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<sup>24</sup> Law Society challenges constitutional amendments, May 22, 2021; <https://thenewshawks.com/law-society-challenges-constitutional-amendments/>.

<sup>25</sup> Zimbabwe Human Rights NGO Forum Statement On Amendment Number 2 Bill, April 22, 2021 <https://www.zimeye.net/2021/04/22/zimbabwe-human-rights-ngo-forum-statement-on-amendment-number-2-bill/>.

The nature of the amendments violates established international norms accepted into Zimbabwe's constitutional order by the Constitution. Notwithstanding the retrogressive substantive elements of the Constitution of Zimbabwe Amendment (No.2) Act, the procedure adopted in fast-tracking the Bill through Parliament was unlawful and unconstitutional as it contravenes s328 (3) and (4) of the Constitution. As remarked by Veritas, a constitutional watchdog,

*"The haste with which the Bill is being [was] rushed through Parliament is almost indecent. It is certainly inappropriate for a Bill that will amend the Constitution, the country's supreme law. So rushed has the process been that Members were given no proper notice of the Minister's amendments, and some additional amendments were made to the Bill that were not notified in the day's Order Paper".<sup>26</sup>*

According to section 328(3) and (4) of the Constitution the precise terms of a constitutional amendment Bill must be published in the Government Gazette at least 90 days before being introduced into Parliament. This is to give the public a chance to debate the Bill before its passage through Parliament. Although the Bill was introduced after the expiry of the 90-day period, Justice minister Ziyambi Ziyambi, the minister in charge of the Bill, introduced substantial amendments at the Committee stage of the Bill and these were passed by the National Assembly on the same day. This certainly flouted the 90-day requirement and is therefore unconstitutional. Besides, the amendments were enacted despite their overwhelming rejection by the people during the public hearings.

- iii. In addition, judicial independence has been deteriorating in Zimbabwe. This crisis has been further exacerbated by the 2021 constitutional amendments that removed public interview-based judicial appointments in favour of executive appointments for judges of the superior courts. Independent judges face the risk of removal from office. In May 2021, three judges of the High Court who ruled on the question of the propriety of the extension of the Chief Justice's tenure on reaching retirement age, at the behest of the President, were publicly vilified and threatened with unspecified action by the executive through a press statement issued by the Minister of Justice.<sup>27</sup>

This is certainly a backward step in the pursuit of democracy, good governance, accountability, representativeness, the rule of law and human rights in Zimbabwe. The current status is such that President's powers have been strengthened while weakening the mechanisms intended to hold the President to account for his or her actions, wrongdoing and in some cases, illegal conduct. A monumental regression to autocracy!

<sup>26</sup> Constitution Watch 1-2021, "Constitution of Zimbabwe Amendment (No 2) fast-tracked with unconstitutional Amendments", April 20, 2021; <http://www.veritaszim.net/node/4929>.

<sup>27</sup> New Zimbabwe, "Govt issues thrilling threat against 'captured' judges who ruled against Malaba stay", May 15, 2021; <https://www.newzimbabwe.com/govt-issues-chilling-threat-against-captured-judge-who-ruled-against-malaba-stay/>

## Malaba Saga: Legitimacy deficit in the judiciary

One of the catastrophic effects of the unconstitutional amendments to the Constitution was the legitimacy deficit it created in the judiciary. This emanates from the serious procedural irregularities associated with the constitutional amendments extending Chief Justice Luke Malaba's tenure. A leading constitutional law expert, Dr Alex Magaisa remarked thus,

*"the natural course of the Constitution was rudely, controversially, and arguably illegally interrupted by the politicians for the benefit of Chief Justice Malaba."*<sup>28</sup>

Constitutional amendment 2 extends the length of time that the chief justice and other judges of the superior courts may hold office. The Forum is of the view that the effect of this provision extends the term of office and therefore regulated by Section 328 of the Constitution. Two critical issues arise therefore, that is; any amendments that seeks to change Section 328 must be subjected to a referendum; and that any changes to the term-limit should not benefit the incumbent, that is Chief Justice Luke Malaba himself as well as his fellow judges of the superior courts. On 11 May 2021, the president, in defiance of the Constitution, extended Chief Justice Malaba's term of office for another five years. Chief Justice Malaba should have retired on 15 May 2021 on his 70<sup>th</sup> birthday. This attracted serious resistance from the legal profession, civil society, and citizens, leading to the ongoing crisis of legitimacy.

The procedural irregularities associated with the enactment of constitutional amendments extending Chief Justice Malaba's tenure, contributed to this crisis of legitimacy in the judiciary. This was an act of illegality that seriously violates the Constitution and severely undermines the rule of law. The fact that the amendment was rushed through Parliament and was passed just a few days before Malaba's birthday created an impression that it was solely meant to benefit him. This prompted the Executive Director of the Forum, Dr Musa Kika to challenge the legality of this action before the High Court of Zimbabwe<sup>29</sup>. The court held that:

*"the extension of the retirement age amounts to extension of tenure. Tenure is defined by both the fixed time and the stipulated retirement ages. In terms of s 328(7) of the Constitution, such an extension of tenure is an amendment to the Constitution. It cannot benefit the persons who held or occupied the office at any time before the amendment. Any extension of the length of time that persons who were judges of the Constitutional Court and Supreme Court prior to the amendment of s186 through the Constitution of Zimbabwe Amendment (No. 2), 2021 would be a violation of the applicants' rights as protected by s 56(1) and s 69(3) of the Constitution of Zimbabwe"*<sup>30</sup>

28 Alex Magaisa, "Big Saturday Read, Chief Justices Rendezvous – A host in Precarious Circumstances", September 2021; Available at: <https://bigsr.africa/bsr-chief-justices-rendezvous-a-host-in-precarious-circumstances/>.

29 See *Musa Kika v. Minister Of Justice Legal and Parliamentary Affairs, the Luke Malaba and 17 Others, HC2128/21, Unreported Judgement HH 264-21; joined together with The Young Lawyers Association of Zimbabwe v. The Judicial Services Commission and 2 Others, HH 2166/21.*

30 *Ibid.* .

The Court further declared that

“Luke Malaba ceased to be the Chief Justice of Zimbabwe and judge by operation of law on 15 May 2021 at 0400 hours...”<sup>31</sup>

However, this was later quashed by the Constitutional Court in a matter filed by a ZANU PF activist Marx Mupungu.<sup>32</sup> This has created a legitimacy deficit within the judiciary, eroding citizens trust in the judiciary. This is a great deception to the will of the people, undermining the principle that judicial authority derives from the people of Zimbabwe with the independence of the judiciary being at the core of the rule of law in terms of Sections 162 and 164 of the Constitution.

## Recommendations

- Government must uphold constitutionalism and respect the rule of law.
- Judicial Independence must be safeguarded, and the executive must respect separation of powers
- Government must desist from further arbitrary amendments to the Constitution and must fully implement the Constitution
- Government must expedite the constitutional alignment process, with substantive reforms aligning legislation to the Constitution.
- Government must urgently consider and implement bona fide amendments to the Independent Complaints Commission Bill H.B. 5, 2020 so as to align the Bill with the spirit and purport of section 210 of the Constitution<sup>33</sup> A summary analysis by Forum member, Zimbabwe Lawyers for Human Rights which assessed if the proposed amendments are indeed reasonably justifiable in a democratic society raised concern that various provisions undermined the objectives that are set out in the Constitution of Zimbabwe, 2013.<sup>34</sup>

<sup>31</sup> *Supra* note 29.

<sup>32</sup> See Marx Mupungu v Minister of Justice, Legal and Parliamentary Affairs & 6 Others (7 of 2021) [2021] ZWCC 7 (22 September 2021); Error! Hyperlink reference not valid.<https://zimlil.org/zw/judgment/constitutional-court-zimbabwe/2021/7>

<sup>33</sup> The Independent Complaints Commission Bill H.B. 5, 2020 received its second reading in the National Assembly on 3 November 2021 thereby clearing the way for the Committee Stage with two proposed amendments appearing on the National Assembly Order Paper for Tuesday 7 December 2021. Committee Stage amendments proposed by Forum member, Veritas, highlighted, *inter alia* defective definitions in the Interpretation Clause eg the definition of ‘misconduct’ which only covers conduct that is contrary to section 208(2) of the Constitution, i.e. conduct which is politically partisan but does not cover other forms of illegal conduct such as misuse of government property, incompetent or inadequate investigation of a crime – all of which Veritas posited the Commission should be able to investigate.

<sup>34</sup> See ZLHR, Summary Analysis of the Independent Complaints Commissions Bill, 2020, June 8, 2021; <https://kubatana.net/wp-content/uploads/2021/06/ZLHR-Summary-Analysis-of-the-Independent-Complaints-Commission-Bill-2020.pdf>

### Overview

The socio-economic situation in Zimbabwe remains deplorable. The government has done little to improve the quality and standard of life of the population. The plight of ordinary populations continued to deteriorate as the government delivered poorly on its people in 2021. Poverty level is deepening all the time.<sup>35</sup> The chronic high inflationary environment continues to erode real incomes and has thrown many citizens into absolute poverty. According to the World Bank Zimbabwe Economic Update of June 2021, the number of extremely poor Zimbabweans reached 7.9 million – almost 49% of the population in 2020, up from 42% in 2019. Thus, nearly half the population can now be classified as “extremely poor”.<sup>36</sup> Corruption, mismanagement, and political interference account as some of the major drivers of poverty and social decline in Zimbabwe. These factors seriously hampered delivery of public service. ZIMCODD remarks that

*“Corruption is one of the major causes of poor service delivery in Zimbabwe.... there is too much political interference in public sector governance.”<sup>37</sup>*

Cumulatively this impacted negatively on the enjoyment of social and economic rights by the population in Zimbabwe.

On 16 November 2020, President Mnangagwa launched the National Development Strategy 1 (NDS 1), a 5-year national economic blueprint running from 2021 to 2025 under the title “Towards a Prosperous and Empowered Upper Middle - Income Society by 2030”. The overarching goal of the NDS 1 is to ensure high, accelerated, inclusive and sustainable economic growth as well as socio-economic transformation and development towards an upper middle-income society by 2030.

While it can be argued that the NDS 1 is one of the progressive measures taken by the government to ensure socio-economic development, the NDS 1 is coming against a background of a failed era of economic blueprints by the government.

<sup>35</sup> RAU (2021), *Organised Violence and Torture and Elections in Zimbabwe, June 2021*, Harare: Research & Advocacy Unit [<https://researchandadvocacyunit.org/report/organised-violence-and-torture-and-elections-in-zimbabwe/>]

<sup>36</sup> The World Bank, “Zimbabwe Economic Update: Covid-19 further complicates Zimbabwe’s economic and social conditions”, June 10, 2021; <https://www.worldbank.org/en/country/zimbabwe/publication/zimbabwe-economic-update-covid-19-further-complicates-zimbabwe-s-economic-and-social-conditions>

<sup>37</sup> ZIMCODD; <https://twitter.com/ZIMCODD1>.

Its successor, the Transitional Stabilization Programme (STP) adopted by President Mnangagwa's regime failed dismally. The conditions that led to the failure by the previous blueprints are still very much present and there has not been a genuine attempt by the government to address them. These include among others corruption; governance crisis characterised by human rights abuses and violations and a political crisis that has become endemic; devolution; lack of innovation and technology and the impasse between government and civil servants over wages.

It took a year after the launch of NDS 1 before any tangible action could be seen on the implementation of this strategy. The government held a workshop to discuss the roll out plan in November 2021<sup>38</sup> and indications are that nothing further has taken place. It must be emphasised that the primary goal of socio – economic measures to be adopted by government should not be merely to have well designed frameworks and plans, but to have frameworks and plans that deliver food on the table and to improve the lives of its people and the measures must be crafted and adopted with meaningful participation of the citizens.

An important development in 2021 was the alleged attempt by ZANU PF to takeover critical voices of the labour unions. There are allegations that there was massive vote rigging which culminated in the voting out of office of longstanding president of the Zimbabwe Congress of Trade Unions (ZCTU) Peter Mutasa who lost to a state parastatal employee, Florence Taruvinga who is employed by Telone<sup>39</sup>.



## COVID-19 Pandemic two years on

Confronted with an already ailing socio economic situation, the pandemic further exacerbated the plight of citizens in Zimbabwe. As noted by Steven and Williams, the COVID-19 pandemic struck the world at a time when the relationship between governments and their citizens and the relationship between different sections of society were already under pressure<sup>40</sup>. The lockdown measures adopted by government in March 2020 were still extant by end of year 2021, albeit in different iterations.

38 United Nations, Sustainable Development Goals, 'Workshop on the rollout of the Zimbabwe National Development Strategy 1 (NDS1) – Integrating the 2030 Agenda', 8-12 November 2021; [https://sdgs.un.org/sites/default/files/2021-11/Draft%20programme%20VIC%20Falls%20Workshop\\_4%20Nov.pdf](https://sdgs.un.org/sites/default/files/2021-11/Draft%20programme%20VIC%20Falls%20Workshop_4%20Nov.pdf)

39 New Zimbabwe, "Florence Taruvinga new ZCTU president", October 30, 2021; <https://www.newzimbabwe.com/florence-taruvinga-new-zctu-president/>

40 Steven, D., & Williams, M. (2021). COVID-19. Governance and COVID-19: Background Paper for the 2021 SDG16 Conference . .

These measures had more disastrous impact on the poor and vulnerable communities who constitute most of the population. Access to water, food and basic health amenities became a major challenge for communities. In fact, before the COVID-19 pandemic, Zimbabwe was already battling high levels of unemployment with most of the possible workforce confined to the informal sector, eroded sources of livelihood, acute and persistent shortages of water and sanitation, an ailing economy crippled by corruption and poverty, with more than half of the population being food insecure.<sup>41</sup> The restriction on informal trading, on which almost 90% of Zimbabweans rely, severely affected the ability of families to survive. The government was accused of targeting the informal sector in favour of big businesses that were allowed to operate without interference.

On 8 April 2020, Harare North constituency legislator Allan Norman Markham and Mfundo Mlilo, a human rights activist, had to approach the courts seeking an order compelling the President, Emmerson Mnangagwa together with Finance and Economic Development Minister Mthuli Ncube, the then Health and Child Care Minister Obadiah Moyo and Local Government, Rural and Urban Development Minister July Moyo to come up with measures that support the limitation of movement of people by providing subsidies in the form of food, cash handouts and water so as to meet the objectives of national lockdown restrictions. They argued that without provision of safety nets, the aims of national lockdown restrictions, were rendered less effective and detrimental to the citizens' right to life and health care.<sup>42</sup>

As a result, the government introduced economic stimulus packages that include among others;

- a ZWL600 Million cash transfer programme targeting 1 million vulnerable households over a period of three months from 30 March 2020
- a cash pay-out of ZWL200 later reviewed to ZWL300 (US\$12) to vulnerable households that include child-headed families, the elderly and informal traders
- introduction of subsidised mealie meal
- a ZWL\$18 billion Economic Recovery and Stimulus Package unveiled by the president on 1 May 2020, aimed at reinvigorating the economy and providing relief to individuals, families, small businesses and industries;<sup>43</sup>
- expenditure restructuring away from capital projects to health-related expenditures;
- ring-fencing of the 2 percent money transfer tax for social protection and other pandemic related expenditures;
- availed USD2 million for urgent and immediate importation of health-related supplies;
- approved immediate hiring of over 4000 health personnel;
- Set up an Athletes and Arts Relief Fund (AARF) valued at 20 million ZWL (US\$ 55,000) to aid artists and athletes;<sup>44</sup>
- established a National Disaster Fund to which individual and corporate entities may make contributions; and Reintroduction of the multicurrency system, previously banned in June 2019.

41 WFP (2020) 8,6m Zimbabweans facing food insecurity, August 13, 2020; <http://newsouth.com/86m-zimbabweans-facing-food-insecurity/> retrieved 4 April 2021.

42 Zimbabwe Lawyers for Human Rights, "Legislature, Human Rights Activist Demand Safety Nets to Cushion Vulnerable People during #COVID-19 National Lockdown", 13 April 2020; <https://kubatana.net/2020/04/13/legislator-activist-demand-safety-nets-to-cushion-vulnerable-people-during-covid-19-national-lockdown/>.

43 Republic of Zimbabwe, 'Details on the Covid-19 Economic Recovery and Stimulus Package', May 4, 2020; [https://www.veritaszim.net/sites/veritas\\_d/files/Details%20on%20the%20COVID-19%20Economic%20Recovery%20and%20Stimulus%20Package.pdf](https://www.veritaszim.net/sites/veritas_d/files/Details%20on%20the%20COVID-19%20Economic%20Recovery%20and%20Stimulus%20Package.pdf).

44 UNESCO, Zimbabwe's grant relief programme for artists, July 2020; <https://en.unesco.org/creativity/covid-19/zimbabwe-grant-relief-programme-artists>

However, the level and effectiveness of these measures in alleviating the plight of the vulnerable populations remain questionable. The measures were mostly on paper and most of them were not implemented, and when they were implemented, they were either delayed or inadequate.<sup>45</sup> No consultations were held with relevant stakeholders to ascertain the extent of the needs. The policy measures were not informed by research and the disbursement process remain opaque. There have been allegations of corruption and politicisation of the relief funds and food aid.<sup>46</sup> At the end of 2021, there had not been an audit of funds disbursed including the list of beneficiaries.

The government has not published information relating to the actual number, including details of the beneficiaries. In addition, the value of the cash pay-outs was rendered meaningless by inflation with some reporting that by the time some of the citizens received the funds, they could barely pay for 10kg of mealie meal.

This resulted in the lockdown measures facing resistance from communities whose livelihoods were under threat. Conversely, this contributed to an increase in the number of human rights violations as the government, instead of adopting viable social security measures to mitigate the impact of the pandemic on the poor and vulnerable populations, resorted to the use of excessive force and arbitrary measures to quell any form of dissent. For example,



*The Forum reports that on 4 February 2021, a male victim alleged that police officers assaulted him with baton sticks in St Mary's, Chitungwiza while he was walking towards Chigovanyika Shopping Centre, where he was going to replenish his groceries when a truck full of police officers descended on vendors selling their wares on the roadside. The police officers fired teargas, during which the victim temporarily lost his sight as he tried to flee.<sup>47</sup>*

Of concern was the impasse between health professionals and teachers with the government in relation to wages and salaries. The low salaries and the apparent inability to address this issue has resulted in the incapacitation of these essential service providers. The far-reaching effects being unnecessary deaths in health institutions and the violation of the right to education for children. The ICESCR guarantees the right of everyone to the opportunity to gain a living by work in Article 6. This right not only entails access to employment opportunities but also the ability to survive from the remuneration. However, the government seems to be ignorant of this right despite having ratified the Convention.

<sup>45</sup> Zimbabwe Peace Project; "The Impact of COVID-19 on Socio-Economic rights in Zimbabwe", April 2021; <https://data.zimpeaceproject.com/en/entity/dm142d2ofr4>.

<sup>46</sup> VOA News, "Zimbabwe playing politics with food aid distribution", May 7, 2020; <https://www.voanews.com/covid-19-pandemic/amenesty-zimbabwe-playing-politics-food-aid-distribution>.

<sup>47</sup> Zimbabwe Human Rights NGO Forum, QPVR January – April 2021 (Unpublished)

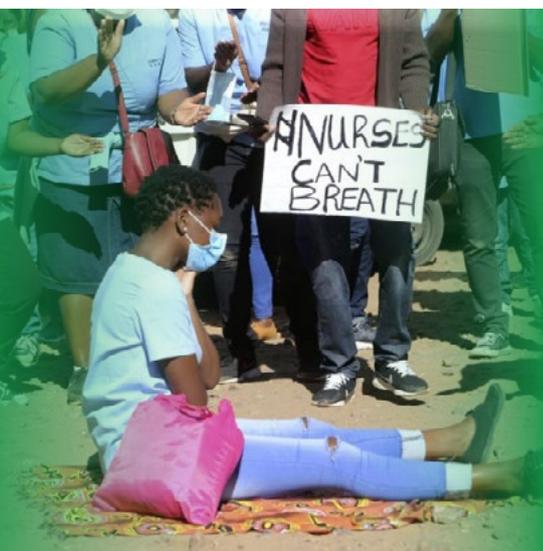
## Socio-Economic Rights Spotlighted

### ***Right to health: A healthcare Emergency in Zimbabwe***

Zimbabwe is still lagging on its commitments. Health sector financing remains a challenge. Although there was an improvement in the public health funding which accounted for 13% of the 2021 total budget, this is still below the 15% Abuja Declaration target.<sup>48</sup> In addition, there are still huge variances between the approved budget and the actual expenditure outturn, particularly for wages and salaries and capital budget.<sup>49</sup>

The health sector is still saddled with several challenges that continue to affect the delivery and access of quality health. Corruption, shortage of health workers and basic drugs, poor referral system and dilapidated health infrastructure and equipment, in addition to poor funding are the major factors contributing to the situation.

According to UNICEF, maternal and child mortality remains high at 651 per 100,000 and 69 per 1,000 live births respectively.<sup>50</sup> Zimbabwe is still lagging in ensuring equitable provision of quality maternal and child services. Discrepancies still exist in access to and provision of services between rural and urban populations.



Mental healthcare services are not in line with the international best standards. The Mental Health Act of 1996 and the Mental Health Regulations of 1999 have not been updated to align with international best standards and practices. Although the recently adopted mental health policy and strategic plan classify mental health as a fundamental human right and promotes the provision of quality and professional services and ethical treatment of patients, very little has been done towards achieving this aspiration.<sup>51</sup> There is a critical shortage of mental health workers. Only 18 psychiatrists, about 917 mental health nurses, 6 clinical psychologists, 10 occupational therapists and 13 social workers cover the entire country. There are also very few mental health facilities in Zimbabwe.<sup>52</sup>

48 In April 2001, Heads of state of the African Union countries met and pledged to set a target of allocating at least 15% of their annual budget to improve the health sector.

49 UNICEF, '2021 Health Budget Brief'; Available at: <https://www.unicef.org/zimbabwe/media/5176/file/2021%20Health%20Budget%20Brief%20-%20Final.pdf>.

50 UNICEF Zimbabwe, 'Every Child Survives and Thrives', <https://www.unicef.org/zimbabwe/health>.

51 Medical and Dental Practitioners Council of Zimbabwe (MDPCZ); Available at: <http://www.mdpcz.zw/wp-Content/Uploads/2018/10/Mental-Health-Act-Chapter15-12-1.Doc>.

52 WHO; <https://www.who.int/workforcealliance/countries/Zwe/En/>.

The COVID-19 pandemic has only piled more pressure on Zimbabwe's crumbling healthcare system. This has translated into an inefficient response by the government to the COVID -19 pandemic. In January 2021, some of the major hospitals such as Parirenyatwa and Mpilo, were forced to close for non-COVID -19 related cases after they became overwhelmed with COVID-19 patients.<sup>53</sup> Several people failed to access critical health services such as maternity services for pregnant women, cancer treatment services, access to life -saving support in case of emergencies and access to medication for chronic illness.<sup>54</sup> UNICEF reported that 19% of rural households and 23% of urban ones were unable to access medical treatment when needed.<sup>55</sup>

In August 2020, very disturbing images of seven still born babies at one of the major hospitals were reported in the news.<sup>56</sup> In a media interview, Zimbabwe Association of Doctors for Human Rights secretary general, Dr. Norman Matara reported that:

*"We [public Health personnel] have no PPEs and all the government does is promise. There are no medicines in the hospitals. It is difficult to do our job".*

He further mentioned that 15% of the national recorded virus infections have been detected among health workers.

*"That's a huge number. It shows that we are at high risk of getting infected as such we can't continue working without protective clothing." <sup>57</sup>*

In 2021, Government did nothing to fix the challenges in the health sector.

Consequently, public health care personnel have been on persistent industrial action, citing lack of adequate equipment and incapacitation which the government continued to ignore and or failed to address. The State instead, mounted attacks on doctors and other public health personnel who were raising legitimate concerns on the state of public hospitals, leaving the populations without access to medical care, resulting in this long-term impasse.<sup>58</sup>

53 Aljazeera, 'Rich or poor, in Zimbabwe crumbling healthcare is a disaster for all', April 28, 2021; <https://www.aljazeera.com/features/2021/4/28/rich-or-poor-in-zimbabwe-crumbling-healthcare-is-deadly-for-all>.

54 Ibid.

55 UNICEF, '2021 National Budget Brief'; <https://www.unicef.org/zimbabwe/reports/unicef-zimbabwe-2021-national-budget-brief>.

56 France 24, Zimbabwe's health care crisis deepens as virus rage, August 2, 2020; <https://www.france24.com/en/20200802-zimbabwe-s-health-care-crisis-deepens-as-virus-rage>.

57 Ibid.

58 The Guardian, 'Zimbabwe sacks thousands of nurses on strike for better pay', April 18, 2018; <https://www.theguardian.com/world/2018/apr/18/zimbabwe-sacks-thousands-of-nurses-on-strike-for-better-pay>;

## **Rights to water and sanitation**

Section 77 (a) of the Constitution guarantees everyone's right to safe, clean, and potable water. However, freshwater scarcity in urban and rural communities has remained acute, leading to conflicts and violence at urban water points especially targeting women, girls, people with disabilities and the elderly. Construction on wetlands remains endemic threatening natural sources of clean water. UNICEF reported that 21% of the urban population did not have enough water to drink.<sup>59</sup> According to Human Rights Watch:

*“during 2021, hundreds of thousands of residents of Zimbabwe’s capital, Harare, including nearby municipalities of Chitungwiza and Epworth, continued to face a potable water crisis. The authorities have failed to ensure clean water. Several factors have contributed to the city’s severe water problems, including economic decay; perennial droughts affecting Lake Chivero, which is dammed to supply Harare with water; the lack of maintenance of the old water infrastructure; the inability to procure the necessary chemicals to treat water sources; political struggles between the central government under the ruling party and the opposition-controlled city council; and corruption. The water crisis has affected Harare residents’ rights to water and sanitation as well as other related rights, including the rights to life, food, and health. Many common water sources, namely shallow wells, taps, and boreholes—deep, narrow wells—are often contaminated. However, despite the known risk of contaminated water, there is no specific official information on which water sources are safe, leaving residents to take their chances.”<sup>60</sup>*

The failure by local authorities to manage the sewer retention has resulted in outbreaks of water borne diseases in major urban cities. Between February and March 2021, at least 26 suspected cases of typhoid were reported in Bulawayo. This was after 13 people from Luveve suburb of Bulawayo, had died of typhoid and dysentery in 2020.<sup>61</sup>

Zimbabwe’s long-standing severe water and sanitation crisis has been worsened by the COVID-19 pandemic which increased demand for access to clean water for hygiene and the government’s imposition, since March 30, 2020, of a nationwide lockdown that continues to be in force during the period under review. The provision of safe water is an important measure to combat the spread of the virus that causes COVID-19 and other medieval diseases such as cholera and typhoid.

59 UNICEF, '2021 National Budget Brief'; <https://www.unicef.org/zimbabwe/reports/unicef-zimbabwe-2021-national-budget-brief>.

60 Human Rights Watch, "World Report 2022, events of 2021", Available at: <https://www.hrw.org/world-report/2022/country-chapters/zimbabwe>.

61 Chronicle, 'Unicef warns of waterborne diseases outbreak in Byo, Hre', May 11, 2021; <https://www.chronicle.co.zw/unicef-warns-of-waterborne-diseases-outbreak-in-byo-hre/>

## Right to Food

Section 77 (b) of the Constitution guarantees everyone's right to sufficient food. Article 11 of the ICSECR recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, as well as freedom from hunger.

Article 25 of the UDHR recognises every person's right to a standard of living adequate for the health and well-being of himself and of his family, including food.

The Government of Zimbabwe is still failing to ensure an adequate standard of living for its population. More than half of the population are food insecure and faces hunger. This situation has been persisting since 2019. In 2020, the World Food Program projected that the number of Zimbabweans facing food insecurity would reach 8.6 million by the end of 2020, and this is estimated to be 60% of the total population<sup>62</sup>.

The Zimbabwe food security question is marred by a complex web of policy variables that have a bearing on the economy. Hilal Elver, the UN Special Rapporteur on the Right to Food, in her 2019 country report on Zimbabwe, noted that the food security situation in the country is a man-made phenomenon highlighting that in the rural areas, a staggering 5.5 million people were then facing food insecurity and in urban areas, an estimated 2.2 million people were food-insecure and lacked access to minimum public services, including health and safe water.<sup>63</sup> UNICEF reported that 30% of the extreme poor were unable to buy maize meal in 2021. This is 26% for rural households and 19% for urban households.<sup>64</sup>

*This situation has been compounded by politicization of food aid and agricultural inputs. With the increase in poverty and inequality resulting from the COVID-19 lockdown measures, many families, particularly in the rural areas, were left in dire need of food aid and agricultural inputs. The government took advantage of the situation and converted food aid into a political tool. There are several reports of politicisation of food aid, a subtle form of vote buying. The ZHRC found that food aid distribution in the country is often politicised especially in the rural areas where most vulnerable people live.<sup>65</sup>*



ZPP reported that ZANU PF was using its access to the food distribution chain to fully manipulate the social welfare food aid and the Pfumvudza agricultural input scheme to benefit ZANU PF members only.<sup>66</sup>

62 WFP (2020) 8.6m Zimbabweans facing food insecurity available at <http://newsouth.com/86m-zimbabweans-facing-food-insecurity/>

63 Report on the UN Special Rapporteur on the Right to Food: Visit to Zimbabwe, November 2019; Available at [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A\\_HRC\\_43\\_44\\_Add2\\_AdvanceUneditedVersion.pdf](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session43/Documents/A_HRC_43_44_Add2_AdvanceUneditedVersion.pdf).

64 UNICEF, '2021 National Budget Brief'; <https://www.unicef.org/zimbabwe/reports/unicef-zimbabwe-2021-national-budget-brief>.

65 Zimbabwe Human Rights NGO Forum: The Politics of Food: A Contextual Analysis of the Distribution of Food Aid in Zimbabwe, 2021.

66 ZPP & Zimbabwe Human Rights NGO Forum (2021): The Politics of Food: A Contextual Analysis of the Distribution of Food Aid in Zimbabwe, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/1615803851127r38eqzh83co.pdf> retrieved 4 May 2021

Under the Pfumvudza scheme, government provided farming inputs to farmers as a measure to address the problems of low productivity, low production and low profitability. Between January and October 2021 alone, the Forum documented at least 126 incidents of partisan distribution of food aid and agricultural input.<sup>67</sup>

Incidents documented include:

- On 4 January 2021, at Hoya Business Centre, in Ward 1, Muzarabani South, MDC supporters were reportedly denied access to benefit from the rice that was being distributed by social welfare. Councillor Proud Pfofso of ZANU PF gave Fiton Mupinga, their ZANU PF chairman and other village heads 2kgs per head to facilitate the process.
- On 4 June 2021, about 50 villagers convened at Zihute Hall, Ward 30, Murehwa North to be registered to benefit from social welfare aid. It is alleged that, Zanu PF Ward Chairperson, Lovemore Mhuteyebani openly told the gathered villagers that MDC Alliance supporters were not to be registered as beneficiaries and were not welcome to Zanu PF social welfare meetings. He was quoted saying “MaMDC muri nyoka hatidi kukuonai mu ward, vese vanoita zveMDC ngavaende Harare” (MDC supporters are snakes, we do not want to see you in this ward. All those who support MDC should go to Harare).
- On 24 July 2021, at Dandamera Township, Ward 15, Mazowe West, ZANU-PF Councillor Peter Chinyoka warned beneficiaries that the only candidate they were supposed to vote for in 2023 is President Mnangagwa at a community meeting to distribute maize;
- In July 2021, in Matobo, Ward 6, one of the ZANU PF activists, Moses Sibanda, told members of the community that the government command livestock scheme was for ZANU-PF supporters and therefore one had to join the party in order to benefit.

### ***Right to Education: A future that is under siege***



The government has persistently failed to ensure provision of basic education to citizens due to its failure to address the perennial challenges bedeviling the education sector. Thus, compromising the right to education which is central to the wellbeing and future of children. In addition to failing to resource public schools so that they can deliver quality education, the Government has also failed to properly remunerate teachers over successive years and to improve their working conditions. This coupled with a non-performing economy, has induced perennial teacher strikes claiming incapacitation to provide services that has affected learning at schools, while lack of infrastructure investments at rural schools has widened the inequality gap in the education sector.

<sup>67</sup> Zimbabwe Human Rights NGO Forum, *Quarterly Political Violence Reports, 2021* [Unpublished]

The Zimbabwe Human Rights NGO Forum represented the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) after a nine-year-old Gwanda primary school pupil had filed an urgent chamber application at the Bulawayo High Court seeking an order barring teacher from embarking on strike. The pupil from Mafuko Primary School, represented by her grandmother had filed his papers at the Bulawayo High Court. The Zimbabwe Teachers Association (Zimta), Progressive Teachers Union of Zimbabwe (PTUZ), and Zimbabwe Confederation of Public Sector had been cited as some of the respondents.

The matter was however dismissed after the court ruled that it was not urgent and that the grandmother was not the legal guardian of the pupil as his father was alive.

COVID-19 exacerbated the situation as lockdown measures forced schools to close-down. The e-learning programme introduced to mitigate the impact was only accessible to a few children from privileged family backgrounds. Children from low-income families who are the majority in the remote and rural parts of the country, have no access to e-learning due to poverty and lack of funding of the e-learning infrastructure by the government. In addition, the cost of data is inhibitive for many parents including the teachers. UNICEF reports that only 25% of rural households continued learning vs 70% of urban households.<sup>68</sup> The school dropout rates also increased in vulnerable communities who could not afford school fees and lack adapted learning amenities. The government has failed to address these challenges, but instead targeted the teachers' union leaders for attacks and reprisals.

### ***Freedom from arbitrary Evictions***

The government continue to violate this right. During 2021, Indigenous communities faced evictions to make way for mining and commercial farming projects adopted by government elites without consultation with the communities. Between January and October 2021 alone, the Forum documented at least 27 incidents of arbitrary evictions and politically motivated forced displacements.<sup>69</sup>



These include:

- On 26 February 2021, the local government and rural public works minister, July Moyo, published a legal notice ordering thousands of people of Chilonga communal land in Chiredzi, to either acquire fresh rights of use or occupation or immediately vacate approximately 12,940 hectares of Chilonga communal land in Chiredzi, South Eastern Zimbabwe. The legal notice, SI 50 of 2021, which the government later repealed and replaced, said the land was being set aside for lucerne grass production – farming grass for stockfeed. Chilonga community members went to court, which ordered the arbitrary evictions to be stopped until the government provides alternative land, compensation, and shelter.

<sup>68</sup> UNICEF, '2021 National Budget Brief'; Available at: <https://www.unicef.org/zimbabwe/reports/unicef-zimbabwe-2021-national-budget-brief>.

<sup>69</sup> Zimbabwe Human Rights NGO Forum, *Quarterly Political Violence Reports, 2021* [Unpublished]

- In October 2021, at least 600 families in Dinde village in Hwange were still facing threats of imminent eviction from their ancestral land to pave way for a planned coal-mining project by a Chinese company. A 17 May 2021 statement on the Beifa Coal Project and persecution of the Dinde Community in Hwange cited a report by the Dinde Residents Association which indicated how Chinese investors had begun exploring for coal in the Dinde areas from February to December 2019.<sup>70</sup>
- In August 2021, Chingamuka, Pasirai, Tome and Karimazondo villagers in Nyamukapa, Ward 11 in Mutoko faced imminent eviction from their ancestral land after a Chinese company, Shanghai Haoying Mining Investments P/L arrived to conduct mining activities in their area.<sup>71</sup>
- In September 2021, hundreds of villagers in Chivhu faced eviction from their ancestral land to pave way for a 12,000-hectare iron and steel mining project by a Chinese company.<sup>72</sup>
- In June 2021, at Maganga farm which is near Marondera, over one hundred children, five people with disabilities and countless women and the elderly were left homeless after they were forcefully evicted from the farm where they had resided for more than 50 years without any alternative accommodation to pave way for the farm's original owner, Hunyani Estate.<sup>73</sup>

During the period under review, multiple demolitions sanctioned by the Ministry of Local Government and Public Works leaving countless families exposed to the harsh cold season were documented in areas such as Melfort, Chitungwiza, and Harare. The Forum noted that “the seemingly nationwide demolitions of “illegal structures” when the country is battling the socio-economic effects of COVID-19 is nothing short of regrettable.”<sup>74</sup>

These arbitrary evictions have raised the vulnerability of communities, leaving them susceptible to political manipulation.

### Recommendations

- The government must demonstrate a genuine desire and sufficient political will in fighting corruption.
- The government must ensure delivery of all public goods and services without discrimination.
- The government must ensure a human rights-based approach and a people centric-approach to its socio-economic policies.

<sup>70</sup> Heinrich Boll Stiftung, Cape Town, ‘Stop the Beifa Coal Project and the persecution of the Dinde Community in Hwange, Zimbabwe’, 18 May 2021; <https://za.boell.org/en/2021/05/18/media-release-stop-beifa-coal-project-and-persecution-dinde-community-hwange-zimbabwe>

<sup>71</sup> Bustop TV, ‘Mutoko villagers face eviction by Chinese mining company’, August 16, 2021; <https://bustop.tv/mutoko-villagers-face-eviction-by-chinese-mining-company/>

<sup>72</sup> ZimEye, ‘Hundreds of villagers evicted by another Chinese iron project’, September 4, 2021; <https://www.zimeye.net/2021/09/04/hundreds-of-villagers-evicted-b-another-chinese-iron-project/>

<sup>73</sup> Zimbabwe Human Rights NGO Forum QPVR, May to August 2021, [Unpublished]

<sup>74</sup> Zimbabwe Human Rights NGO Forum QPVR, May to August 2021, [Unpublished]

# 04

## CHAPTER 4

# CIVIL AND POLITICAL RIGHTS

Zimbabwe's Constitution expressly guarantees civil and political rights in line with regional and international human rights instruments such as the UDHR, the ICCPR and the African Charter ratified by Zimbabwe.

Zimbabwe's record on human rights and open governance has historically been poor, with abuses continuing into the present. Impunity remained the norm. The Human rights situation in Zimbabwe continued to decline in 2021 as the ZANU PF government stepped up repression to consolidate its authority with more than two thousand politically motivated violations being recorded in the year 2021.<sup>75</sup> Zimbabwe has been classified as not free by the latest Freedom House score and status for 2021.<sup>76</sup> This is attributed to the government's intensified crackdown on the political opposition, critical media, Human Rights Defenders (HRDs) and civic activists. Fundamental freedoms continue to be stifled, and the continued weaponisation of the law to target dissent and those known or perceived to be critical of government excesses remains worrisome. Civic space continues to shrink at an alarming rate. Proposed new laws such as proposed amendments to the Private Voluntary Organisations (PVO) Act, proposed amendments to the Criminal Law (Codification and Reform) Act (Criminal Code), and the "Patriotic Bill", undermine the work of HRDs and NGOs, especially those working on governance issues. The government continued to exploit and weaponised the COVID-19 crisis to launch fresh attacks on human rights. COVID-19 response measures were used to justify rolling back on human rights protections and as pretext to retrogress on human rights and constitutionalism. The selective partisan and violent enforcement of COVID-19 measures, and conditions imposed on the exercise of rights and freedoms, unduly limited enjoyment of human rights. Between January and December 2021, the Forum and its member the Zimbabwe Peace Project documented more than 170 COVID -19 related human rights violations.

<sup>75</sup> ZPP Monthly reports (January to December 2021) available at <https://data.zimpeaceproject.com/en/>

<sup>76</sup> Freedom House, 'Zimbabwe: Freedom in the World 2021 Country Report', <https://freedomhouse.org/country/zimbabwe/freedom-world/2021>.

## Violations at a glance

**Table 1: Violations recorded from January to December 2021**

*[Source: ZPP monthly reports]<sup>77</sup>*

	Total
Unlawful Killings	12
Abduction	2
Assault & torture	306
Sexual Harassment	7
MDP	101
Arbitrary arrest and Detention	135
Harassment and Intimidation	997
Displacements and arbitrary Evictions	27
Discrimination	300
Partisan distribution of food/agricultural aid	126
COVID-19 related human rights violations	174
Attacks against journalists	12
<b>Total</b>	<b>2199</b>

Forum member ZPP reports that ZRP, ZNA and various state agents accounted for 62% of the perpetrators. It also notes with great concern the increase in number of “unknown perpetrators” responsible for the abduction, assault, and torture of civilians. Incidences involving these “unknown perpetrators” have been prevalent since 2020 when they were involved in the abduction, assault, and torture of Tawanda Muchehiwa<sup>78</sup> and the ZINASU president Takudzwa Ngadziore.<sup>79</sup> Unidentified perpetrators are a very serious threat to state security, heightening fears amongst citizens. Of particular concern is the lack of interests by the government to investigate these cases despite availability of evidence. Members of the ruling ZANU-PF party have also been cited as perpetrators, particularly in cases relating to politicisation of food aid and harassment and intimidation of opposition party supporters.

<sup>77</sup> ZPP Monthly reports (January to December 2021) available at <https://data.zimpeaceproject.com/en/>

<sup>78</sup> Zimbabwe: Student thought he was going to die after ‘abduction by state security services’ available at <https://news.sky.com/story/zimbabwe-student-thought-he-was-going-to-die-after-abduction-by-state-security-services-12099212> retrieved 5 May 2021.

<sup>79</sup> Watch ZINASU President Takudzwa Ngadziore being taken away by suspected state security agents while holding a press conference near Impala Car Rental offices. Available at <https://twitter.com/pacheduzw/status/1306901180371533824?lang=en> retrieved 5 May 2021.

## Specific Violations Spotlights

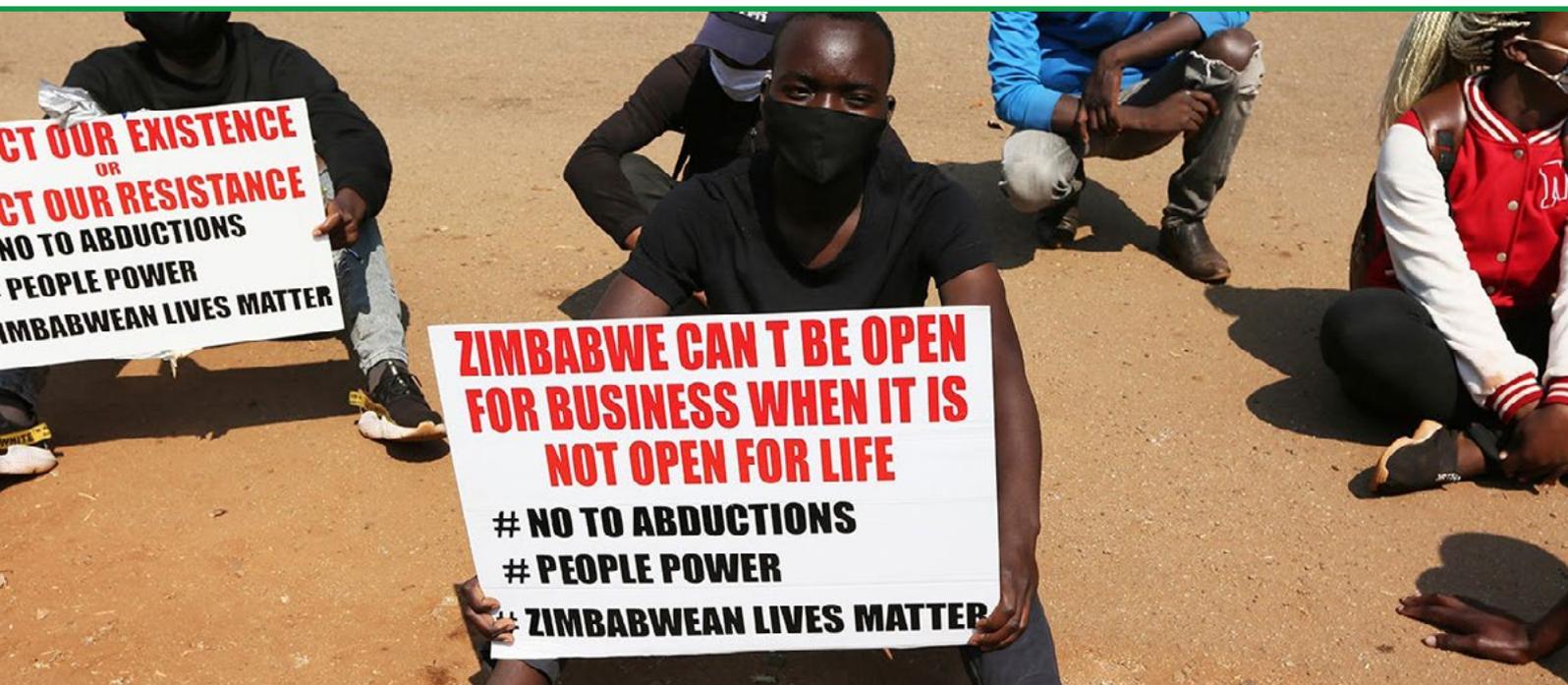
### Respect for the Integrity of the Person

#### ***Arbitrary deprivation of life and politically motivated killings***

The right to life is the most basic of all human rights guaranteed under Section 48 of the Constitution. Article 3 of the UDHR states that

*“Everyone has the right to life, liberty and security of person.”*

Further, Article 4 of the of the African Charter and Article 6 of the ICCPR also provides for the inherent right to life and that no one shall be arbitrarily deprived of his life. Principle 1 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states that:



*“Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognised as offences under their criminal laws and are punishable by appropriate penalties which take into account the seriousness of such offences.”*

There were several reports that state agents committed arbitrary or unlawful killings with impunity. The Forum documented at least 5 cases of Arbitrary deprivation of life and politically motivated killings by security agents between January and October 2021.

## Case examples include:

- On 13 February 2021, ZRP officers reportedly shot and killed one Maxwell Matembudze at his home in Zaka. It is alleged that Matembudze, who is a village head in Ward 23 in Zaka was suspected to be part of a syndicate that robbed two businessmen - Chivi South ZANU PF parliamentary candidate Munyaradzi Zizhou and Arnold Ncube on 11 February 2021 and got away with \$20 000 and cell phones. In their defence, the police officers alleged that the deceased tried to attack them though his relatives present at the time counter alleged that Matembudze was shot the moment he opened the door to his house.
- On 28 February 2021, police officers in Gweru arrested Tatenda Pasinyore for possessing methamphetamine and pelting stones at an elderly citizen's roof. It is alleged Pasinyore was subjected to torture by the police officers and succumbed to the injuries he sustained whilst in police detention.
- On 26 February 2021 members of the ZNA, Vitalis Dube and Terence Kagogoda, assaulted to death Gift Mahembe. The soldiers allegedly assaulted Mahembe with open hands, booted feet, sticks and a baton stick several times all over his body. He was seriously injured and rushed to Mount Selinda Hospital where he was pronounced dead upon arrival. Mahembe's body was medically examined by Doctor Brian Makumbo who concluded that death was due to severe head injury secondary to assault.
- On 4 April 2021, police officers also shot and killed Tonderai Chihuri in Beatrice in a case of mistaken identity.

Impunity remained a problem. There has not been any meaningful and/or thorough investigations into violence from previous years, including state-sponsored violence, that resulted in the deaths of 17 civilians in January–February 2019 and seven during post-election violence in 2018. Recommendations from the Motlanthe Commission of Inquiry remain unimplemented. The government did not establish an independent complaints mechanism to investigate allegations of security force misconduct as called for by section 210 of the Constitution

### ***Organised violence and torture***

There were several reports of security agents engaging in torture and organised violence with impunity. A study commissioned by the, the Forum and its members, Research and Advocacy Unit (RAU), VERITAS, and the Counselling Services Unit (CSU) together with a partner organisation Heal Zimbabwe Trust (HZT) revealed a disturbing phenomenon of a rising involvement of members of the security services in organised violent crimes.<sup>80</sup> The report spotlights Zimbabwe's gradual degeneration towards failed State status. This is demonstrated by the country's low ranking on the Fragile States Index because of weakening political and social indicators. It further reveals that serving or former members of the ZRP were reported to have taken part in 8,9% of reported criminal cases and serving or former members of the ZNA participated in 4%.<sup>81</sup> The increased involvement of security sector forces in violent criminal activities is also acknowledged by senior government officials.<sup>82</sup> This undermines the confidence of citizens in those who have the duty to protect them.

<sup>80</sup> The Zimbabwe Human Rights NGO Forum, Heal Zimbabwe Trust, Research and Advocacy Unit, VERITAS, and the Counselling Services Unit, "Who Guards the Guards? Monitoring Crime and Security Force Involvement in Crime", August 2021; Available at: <https://kubatana.net/2021/08/24/who-guards-the-guards-monitoring-crime-and-security-forces-involvement-in-crime/>.

<sup>81</sup> Ibid

<sup>82</sup> New Zimbabwe, 'Soldiers criminal activities: Generals feel the heat', January 1, 2022; <https://www.newzimbabwe.com/soldiers-criminal-activities-generals-feel-the-heat/>

Between January and October 2021 alone, the Forum documented at least 253 cases of Organised violence and torture and 2 cases of abductions involving security agents. Most of these cases were recorded mainly in high-density suburbs across Zimbabwe, including Harare, Mutare, Bulawayo and Masvingo. During lockdown due to COVID-19, uniformed and plainclothes army and police officers systematically used clubs to beat civilians for violating national lockdown regulations including violating curfews, failure to wear masks, or failure to exercise social distance.

**Case examples include:**

- On 1 February 2021, soldiers assaulted Shadreck Muchena at Mutora Growth Point in Midlands Province after they accused him of loitering and failing to adhere to the COVID-19 national curfew. The soldiers also forced him to stand on his head and to roll in muddy water. His ear, waist and back were badly injured. Efforts to make a police report were futile as the Police officers told him to bring the name of his perpetrators first before they could open a docket.
- On 9 February 2021, Victor Musinga was tortured by a group of police officers in Highfields after they mistook him for a convict on the run identified as Captain. Victor's friend, Jack Mapanga was also assaulted during the incident. Police officers at Machipisa and Mbizi police stations refused to take the report.
- On 29 March 2021, Vincent Gunyere was assaulted by police officers for allegedly violating the national lockdown regulations relating to mandatory wearing of face masks in Bindura. Gunyere sustained injuries to his right arm as well as bruises to his face.
- On 21 July 2021, Tamari Chigwende was assaulted by 5 police officers at her place of residence in Mbare on false allegations of insulting the police and for violating the lockdown curfew regulations. Chigwende sustained injuries to her left knee because of being dragged by the police officers during the assault. Chigwende's Tshirt which she was wearing was allegedly torn during the assault leaving her naked in front of the male officers. It is alleged that a male officer identified as Guda inappropriately dragged her into the police vehicle. She was later charged with disorderly conduct in a public place and received legal assistance from the Forum.
- On 20 August 2021, police officers in Chivhu set dogs on one Enerty Chimedza for violating lockdown rules. She was forced to pay a fine of ZWL\$1000.00 for violating lockdown regulations. The police refused to take responsibility of treating her wounds.
- On 16 October 2021, a ten-year-old boy (name withheld) was tortured by police officers at Kutama police on allegations of stealing their money. The boy had picked a plastic with USD140 which he handed over to his mother. The boy's received legal assistance from the Forum. A complaint was lodged with the local police against the police officer who assaulted the boy and no arrests had made at the time of writing the report.

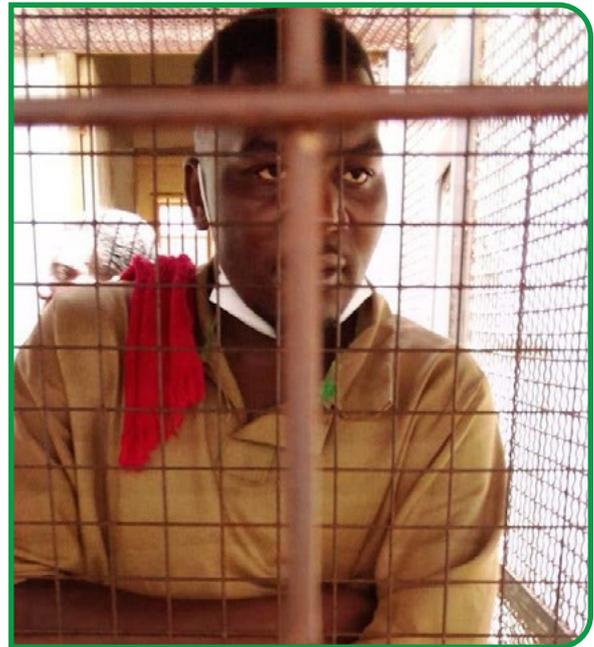
Impunity remains a significant problem. No investigations have been carried out in the abduction and torture in May 2020, of the National Assembly member Joana Mamombe and opposition party members Cecilia Chimbiri and Netsai Marova by suspected state agents. The three young women were allegedly removed from a police station, then abducted and tortured by unknown individuals whom credible sources believed to be government security agents, after they were arrested at a protest at a roadblock on 13 May 2020.

They sustained severe injuries from 36 hours of physical, sexual, and psychological torture. After the three women reported the crimes to police, they were rearrested and charged with making false statements to police and for faking their own abductions. Their case remained pending in 2021.

The government has delayed in ratifying the UN Convention Against torture and the UN Convention on Enforced Disappearance as well as establishing the section 210 constitutionally mandated independent complaints mechanism.

### **Arbitrary arrest and detention**

Security agents arbitrarily arrested and detained persons, particularly political and civil society activists, labour leaders, and journalists perceived as opposing the government. Section 50 of the Constitution provides for the right to bail. However, bail has been routinely denied by the state in all cases involving persons perceived to be opposed to the government and ZANU PF and the judges or magistrates upholds the motion. In fact, at the Magistrates Court, the right to bail has been routinely denied for political activists, civil society members, journalists and ordinary citizens asserting their rights resulting in their prolonged pre-trial incarceration.



This is mainly aimed at punishing dissenting voices. Whenever an HRD or opposition political activists is arrested, there is a consistent pattern whereby bail is denied at the Magistrates Court, an appeal is lodged at the High Court, the matter is postponed more than once, judgement is reserved for some days or weeks, and eventually bail is granted.

As a result, HRDs and political activists have spent an average of 30 days in detention. In contrast, the state does not usually oppose bail in cases involving known ZANU PF party supporters even those facing serious charges such as corruption. For example, the case of Henrietta Rushwaya allegedly found with unbeneficiated 6 kgs of gold bars, ostensibly smuggling them out of the country. The state did not initially oppose bail, although they later changed following a public outcry. The same was noted in the year 2020 when the former Minister of Health and Child Care Obediah Moyo was arrested, allowed to sleep at his house and was granted bail at his first court appearance. Hopewell Chin'ono who had written on the alleged corruption by the Minister was arrested and languished in prison after being denied bail.

Human rights lawyers have raised concern that the government uses arbitrary arrest and lengthy pre-trial detention as a weapon to silence or intimidate persons who openly opposed oppressive methods of governance, with the main targets being political activists, civil society members, journalists and ordinary citizens asserting their rights.<sup>83</sup> During the period under review, the government used COVID-19 lockdown restrictions to arrest individuals perceived as threats against the government.

<sup>83</sup> Lawyers for Lawyers, 'Report: Attacks on Human Rights Lawyers in Zimbabwe', September 21, 2021; <https://lawyersforlawyers.org/en/report-attacks-on-human-rights-lawyers-in-zimbabwe/>.

Between January and December 2021, the Forum and its members documented a total of 135 cases of arbitrary arrests and detention nationally involving HRDs, labour leaders, opposition activists, vendors, and members of the general public accused of violating various national lockdown regulations, particularly defying social distancing regulations, “suspicious” exemption letters, and not wearing face masks.

**Case examples include:**

- On 9 January 2021, Job Sikhala, Fadzai Mahere, and Hopewell Chin’ono were arrested and charged under section 31 of Criminal Code ‘Publishing or communicating false statements prejudicial to the state’ specifically section 31(a)(i) –publishing or communicating a statement intending or realising the risk or the possibility of inciting or promoting public order or public violence or endangering public safety, with alternative charge, section 31(a)(iii) – undermining public confidence in law enforcement agency, after they tweeted about a child who had allegedly been assaulted by police officers on his mother’s back. This section of the law was struck down by the Constitutional Court in 2014.<sup>84</sup>
- On 22 January 2021, Vongai Nomatter Chiminya aged 20 and Devine Panashe Maregere were arrested and charged with communicating falsehoods after sharing a message on a WhatsApp Group stating that President Mnangagwa had died on 25 January. The duo was ordered to pay 15 000 bail each by Beitbridge Magistrate Toendepi Zhou and ordered not to post any material on social media to do with government business.
- On 13 February 2021, ZRP officers from Machipisa Police Station arrested a pregnant woman, Fungai Mutsvairo, in Highfield for not wearing a face mask and detained her for over 48 hours after she failed to pay a solicited bribe of US\$10 to police officers. She was subsequently released without charge.
- On 10 March 2021, police officers arrested 5 members of Masvingo Residents Forum who had gathered at Civic Centre to submit a petition to Acting Town Clerk Edward Mukaratirwa. The petition lamented poor service delivery including poor state of roads and water shortages among other issues. The arrested members were detained at Masvingo Central police station. They were charged with criminal nuisance and were released after paying RTGS\$500 fine each.
- On 17 February 2021, State security agents arrested pro-democracy campaigner Makomborero Haruzivishe. Haruzivishe was ambushed by men in two unmarked vehicles and shots were fired as they subdued him and later took him to Harare Central Police Station where they surrendered him to the police. Haruzivishe was charged with kidnapping, participating in a gathering to promote public violence and contravening COVID-19 protocols.
- On 11 February 2021, the police at Rhodesville Police Station arrested and detained a woman with two minors for allegedly violating lockdown regulations. It was only after the image went viral that the police issued a statement promising to investigate the matter.

The law absolves individual security agents from criminal liability regarding unlawful arrests and detention. Police officers routinely argued that they merely followed orders in conducting arrests and were not responsible for compensating victims of unlawful arrests.

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<sup>84</sup> Human Rights Situational Report to 30 April, 2021 | ZIM NEWS .... <https://zwnews.com/human-rights-situational-report-to-30-april/>

## Respect for Civil Liberties

### ***Freedom of Assembly and Association***

The government of Zimbabwe is under an obligation to facilitate the right to peaceful assembly and association. There should not be undue restrictions such as state authorisation for individuals to exercise this right.

However, there were severe restrictions imposed by the government that prevented individuals from exercising their freedoms to assemble and associate in 2021. The criminal justice system and judicial processes were used to restrict freedoms of association and assembly in 2021. The Maintenance of Peace and Order Act (MPOA) remains a key tool for restricting freedoms of association, assembly, and expression. Both MPOA and COVID-19 lockdown regulations were used to restrict free peaceful assembly during the year. The government used the COVID-19 regulations to impose a blanket ban on demonstrations. The Forum noted with concern this abuse by government of the COVID-19 regulations to justify curtailing civil liberties.<sup>85</sup> Security agents were deployed to unleash violence at peaceful protesters as a result protests and demonstrations were met with disproportionate force, leading to the arrest, assault and harassment of leaders of these protests.<sup>86</sup> With the exception of those by the ruling party, any form of organised groupings was labelled as political to justify their closure through COVID-19 regulations. The government's intention to suppress opposition and activism has also had a strong impact on the work of lawyers in the country, particularly those working in the field of human rights. ZLHR has stated that there is

*“a worrying rise in the intimidation, threats and reprisals of lawyers in Zimbabwe”.*<sup>87</sup>

There was also selective application of the COVID-19 regulations relating to gatherings. For example:

- ZANU-PF openly flouted the 30 people per gathering restriction in Headlands and Kwekwe Central constituencies where ZANU-PF officials presided over gatherings of more than 100 party supporters, risking people contracting COVID-19.<sup>88</sup>
- MDC- Alliance supporters were arrested in Chivi when they tried to convene their meeting which had a stipulated maximum of 30 people. Despite protestors adhering to COVID-19 regulations, state security agents descended on them under the guise of enforcing the national lockdown regulations.<sup>89</sup>
- On 30 March 2021, police officers disrupted an MDC-Alliance meeting in Harare West and briefly detained top MDC-Alliance leaders.<sup>90</sup>
- In February 2021, a teenager in Chinhoyi was fined ZWL15 000 for violating COVID-19 regulations. However, ZANU-PF politburo member and Bindura North legislator Kenneth Musanhi held a rally on 27 January 2021 without any restrictions.<sup>91</sup>

<sup>85</sup> Zimbabwe Human Rights NGO Forum, *“180 Days of What?: A Summary Review of the Forts 180 Days of the COVID-19 National Lockdown in Zimbabwe; September 2020*; <https://kubatana.net/wp-content/uploads/2020/10/180-Days-of-What-Ir.pdf>.

<sup>86</sup> Zimbabwe Human Rights NGO Forum, QPVR, January – April 2021; [Unpublished]

<sup>87</sup> Lawyers for Lawyers, *‘Report: Attacks on Human Rights Lawyers in Zimbabwe’*, September 21, 2021; <https://lawyersforlawyers.org/en/report-attacks-on-human-rights-lawyers-in-zimbabwe/>.

<sup>88</sup> Zimbabwe Human Rights NGO Forum, QPVR, January – April 2021; [Unpublished]

<sup>89</sup> Ibid

<sup>90</sup> Supra note 89.

<sup>91</sup> Ibid.

Other notable incidences related to violent disruption by security agents of peaceful protests against the deteriorating economy. These were in the form of spontaneous demonstrations that are permissible under the law. For example:

- On 25 January 2021, the police violently disrupted a protest by members of the Zimbabwe National Students Union (ZINASU) at the Harare Magistrate Court over judicial capture. The leaders of the protest were arrested and detained.
- On 1 February 2021, ZINASU Members again staged another demonstration at the Ministry of Finance offices in Harare over the deteriorating economy. This led to the arrest and detention Makomborero Haruzivishe, who was charged with inciting public violence. Makomborero was still in detention at the time of writing.
- On 10 March 2021, Bulawayo Central Police Station officers fired live shots to disperse Mthwakazi Republic Party (MRP) activists who had stormed the station protesting over the alleged harassment of their leader Mqondisi Moyo by state security agents.
- Makomborero Haruzivishe, a pro-democracy activist and MDC-Alliance youth leader, was imprisoned after being sentenced 14 months for allegedly inciting public violence when he whistled at Harare's busy Copa Cabana terminus in April 2021. In his appearance in court, he pleaded innocent to the charges and was then moved from Chikurubi Maximum Security Prison to Harare Central by the High Court. Makomborero's incarceration continued despite a court order granting him bail pending appeal.
- Leaders of the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) reported continuous surveillance and harassment by state security agents after they expressed their intention to protest over poor remuneration and working conditions for teachers.
- In October 2021, Zimbabwe police arrested 40 freedom fighters who held a peaceful demonstration against poor pension earnings. The veterans were detained for a period of four days after they tried to petition President Emmerson Mnangagwa about the low monthly pensions which are insufficient for them to make ends meet. They were charged with inciting public violence and released on bail with a condition to report to the police station once a week.<sup>92</sup>
- In early November 2021, 28 residents from the Marange area of Manicaland province and their traditional leader, Headman Chiadzwa, were arrested for holding a peaceful demonstration against Chinese diamond mining company Anjin, in protest against the company's failure to consult them in its activities, and its human rights abuses. The 28 community members were charged with inciting public violence<sup>93</sup>.

### ***Freedom of expression, including for the press***

The government continued to arrest, detain, and harass journalists and critics for expressing their opinions. The criminal justice system and Judicial processes continue to be used as tools to punish those who criticised or questioned the government actions through arbitrary arrest, arbitrary detention and denial of bail resulting in undue and prolonged pre-trial incarceration. HRDs, journalists and opposition activists have been the main targets. Of concern is the continued weaponization against HRDs and journalist of section 31 charges of Criminal Code which were declared unconstitutional in 2014 and the insult laws under section 33(2)(b) of the Criminal Code which were also declared unconstitutional by the Supreme Court in 2013.

<sup>92</sup> Civicus Monitor: tRackign Civil Space, 'Pro-democracy activist Makomborero Haruzivishe released on bail after months in detention', January 21, 2022; <https://monitor.civicus.org/updates/2022/01/21/pro-democracy-activist-makomborero-haruzivishe-released-bail-after-months-detention/>.

<sup>93</sup> Kubatana, 'Statement on the arrest of Headman Chiadzwa, Community Members in Marange Mutare', November 4, 2021; <https://kubatana.net/2021/11/04/statement-on-the-arrest-of-headman-chiadzwa-community-members-in-marange-mutare/>.

In December 2021, the government enacted into law a Cybersecurity and Data Protection Act which severely undermines freedoms of expression and of the media<sup>94</sup>. Transparency Zimbabwe International (TI-Z) laments that

*“the Bill [Act] contains provisions that obstruct the crucial role of civil society and the media in the fight against corruption and undermine any recent progress.”<sup>95</sup>*

While independent media continued to operate, journalists and editors practiced self-censorship. Government’s failure to investigate or prosecute attacks on HRDs, journalists and peaceful protesters led to de facto restrictions on freedom of expression, assembly, and association.

### Case examples include:

- In January 2021, police arrested Journalist Hopewell Chin’ono, Lawyer Fadzayi Mahere and spokesperson of the opposition political party MDC- Alliance and Job Sikhala human rights lawyer, the MDC-Alliance Vice National Chairperson, and MP for Zengeza West. The three were charged with contravening section 31 of the Criminal Code which prohibits “publishing or communicating false statements prejudicial to the state”. The alleged offences arise from posts made on social media and comments issued by all three in connection with an incident at a Harare taxi rank in which a police officer is alleged to have assaulted a mother with a baby on her back. They all suffered long term pre-trial detention.
- Makomborero Haruzivishe, a pro-democracy activist and MDC Alliance youth leader, was imprisoned after being sentenced to 14 months for allegedly inciting public violence when he whistled at Harare’s busy Copa Cabana terminus in April 2021. In his appearance in court, the activist pleaded innocent to the charges and was then moved from Chikurubi Maximum Security Prison to Harare Central by the High Court. Makomborero’s incarceration continued despite a court order granting him bail pending appeal.
- On 27 October 2021, student and pro-democracy activist Allan Moyo was released from remand after spending more than two months in detention for calling for a revolt against President Mnangagwa’s government in December 2020.
- On 28 October 2021, police officer Maxwell Guvava was arrested and charged with insulting or undermining the authority of President Mnangagwa after he told ZANU-PF supporters that “nyika yaora” (Zimbabwe is a rotten country) and also questioning the President’s ability to solve the ongoing economic crisis. Represented by Zimbabwe Lawyers for Human Rights, Guvava was later released on bail ZWL5 000 (USD 13) and ordered to report at a police station once a week as part of his bail conditions.

94 Media Institute for Southern Africa, Zimbabwe (MISA-Z), ‘Analysis of the Data Protection Act’, December 6, 2021; <https://kubatana.net/2021/12/06/analysis-of-the-data-protection-act/>.

95 Transparency International, ‘Zimbabwe: Cyber Security and Data Protection Bill would restrict anti-corruption watchdogs’, September 11, 2020; <https://www.transparency.org/en/press/zimbabwe-cyber-security-and-data-protection-bill-would-restrict-anti-corruption-watchdogs-1>.

## Violence and harassment against journalists

Security agents, state officials, and supporters from ZANU-PF, the ruling political party, routinely harassed journalists in 2021. MISA-Zimbabwe consistently raised concern over arrest of journalists by members of the ZRP during the course of their work despite the journalists having produced accreditation cards and advised the police that they are undertaking their professional duties.<sup>96</sup> The ZRP must desist from unjustifiably interfering with the work of media practitioners.

### Case examples include:

- On 11 February 2021, police officers arrested journalist Simbarashe Sithole while he was on duty. Sithole was detained at Machipisa Police Station for over 5 hours despite producing his press card. Sithole was charged with unnecessary movement, and it was alleged that his face mask was not properly placed as it left his nose exposed. Sithole, who is an accredited journalist, was covering skirmishes between the police and illegal foreign currency traders when he was arrested and detained. He elected to pay an admission of guilt fine as he expressed concerns over the risk of COVID-19 transmission in the police cells.
- On 26 February 2021, police officers arrested journalist Nyashadzashe Ndoro while covering a Zimbabwe National Students Union (ZINASU) demonstration at the Harare Magistrate Court. Ndoro was taken to Harare Central Police Station where he was later released without any charge.
- On 26 February 202, another journalist, journalist Kumbirai Mafunda, was also arrested at the Harare Magistrate Court where he was covering the court appearance of pro-democracy campaigner Makomborero Haruzivishe. Mafunda was accused of practising journalism without accreditation from Zimbabwe Media Commission (ZMC). Mafunda was also detained at Harare Central Police Station before also being released without any charges.
- On 16 March 2021 journalist Molleen Chisveto, was arrested by police officers for allegedly taking a video of police officers involved in an altercation with a vendor. Chisveto was taken to Harare Central Police Station, where police officers forced her to delete her pictures and videos. Chisveto was released after she showed Police officers a letter confirming that she was a student on attachment.
- On 4 September 2021, Journalist Gilbert Munetsi was arrested and detained overnight at St Mary's Police Station in Chitungwiza on allegations of violating the COVID-19 curfew measures. He was released from police custody after legal intervention by MISA Zimbabwe. Munetsi was ordered to report back at the police station on 6 September 2021 for purposes of recording his warned and cautioned statement. He denied the allegations on the grounds that he was coming from work at the time of his arrest.<sup>97</sup>

<sup>96</sup> MISA-Zimbabwe, 'Nine journalists arrested and detained', September 30, 2021; [https://zimbabwe.misa.org/media\\_violations/nine-journalists-arrested-and-detained/](https://zimbabwe.misa.org/media_violations/nine-journalists-arrested-and-detained/).

<sup>97</sup> MISA-Zimbabwe, 'Journalist arrested for violating curfew regulations', September 6, 2021; [https://zimbabwe.misa.org/media\\_violations/journalist-arrested-and-detained-for-violating-curfew-regulations/](https://zimbabwe.misa.org/media_violations/journalist-arrested-and-detained-for-violating-curfew-regulations/)

- On 6 September 2021, Senior journalist and MISA Zimbabwe Board Member, Pamenus Tusso and freelance journalist Brenda Lulu Harris were detained by members of the military police and forced to delete their footage. The two were covering the MDC-Alliance 22nd anniversary commemorations that happened in Burnside, Bulawayo. They were approached by a plain-clothed police officer who asked them why they were taking pictures before taking them to his superior who identified himself as a member of the military police. They were detained for over thirty minutes at the venue, despite having identified themselves as journalists and produced accreditation cards.<sup>98</sup>
- On 30 September 2021, 9 journalists were arrested by members of the ZRP while at the Zimbabwe Electoral Commission (ZEC) offices in Harare. The journalists, Leopold Munhende, Thomas Madhuku, Nyashadzashe Ngoro, Robert Tapfumaneyi, Marshal Bwanya, Gaddaffi Wells, Adrian Matutu, Tongai Mwenje and Tinashe Muringai had gone to ZEC offices to cover a demonstration by members of the MDC Alliance. The journalists were taken to Harare Central Police Station before being released without charge, following the intervention of MISA lawyers.

### **Freedom of movement**

The government restricted the freedom of movements and used COVID-19 regulations to justify its actions. Police regularly interrupted freedom of movement with checkpoints throughout major cities and nationwide along most major routes. They used these checkpoints to screen vehicle occupants for potential participation in anti-government protests, as well as to enforce COVID-19 regulation compliance.

In December 2021, the president issued an order imposing stringent restrictions for travellers to Zimbabwe including returning residents. The restrictions were viewed as punitive, especially the decision to quarantine returning residents, citizens and also travellers who test negative for COVID-19 with two PCR results. Although there was no traction to enforce the restrictions, the rules remained extant throughout the remainder of the year and prevented a lot of people from travelling to Zimbabwe to spend the festive holidays with their loved ones.

### **The Right to Participate in the Political Process**

Political process continued to be heavily biased in favour of the ruling ZANU-PF party, which dominated politics and government. Electoral reforms recommended by the 2018 observer missions as well as in line with the Constitution to ensure free, fair and credible election in Zimbabwe remained unaddressed.<sup>99</sup> In September 2021, opposition leader Jacob Ngarivhume, together with activists Diana Saungweme, Lilian Chipati, Takaruzo Tangai and Farai Muridzo handed a petition to the speaker of parliament demanding electoral reforms. ERC has raised concerns over the lack of progress by government in ensuring electoral reforms.<sup>100</sup>

<sup>98</sup> MISA-Zimbabwe, 'Journalists detained and forced to delete footage', September 11, 2021; [https://zimbabwe.misa.org/media\\_violations/journalists-detained-and-forced-to-delete-footage/](https://zimbabwe.misa.org/media_violations/journalists-detained-and-forced-to-delete-footage/)

<sup>99</sup> Zimbabwe Election Support Network (ZESN), 'Electoral Reforms Tracking Report: January – July 2021', September 27, 2021; <https://kubatana.net/2021/09/27/electoral-reforms-tracking-report-january-july-2021/>.

<sup>100</sup> All Africa, Zimbabwe: ERC intensifies Electoral Reforms Agenda, September 1, 2021; <https://allafrica.com/stories/202109010672.html>.

## ***Abuse of COVID – 19 Pandemic to violate Participation rights***

Citing government-mandated lockdowns due to COVID-19, in October 2020, the minister of Health and Child Care issued an order issued through SI 225A of 2020, suspending the holding of by-elections for an indefinite period. In March 2021, ZEC issued an official statement confirming that the holding of elections would remain suspended except for other activities such as the voter registration. As a result, the holding of elections in Zimbabwe remained banned throughout 2021. In a statement presented to diplomats by the ZEC Chairperson 20<sup>th</sup> of October 2021, ZEC refuted claims that it was the obstacle towards the holding of by-elections and asserted that ZEC is mindful of its constitutional obligations to support and strengthen human rights and democracy and hence stands ready once the Statutory Instrument issued by VP Chiwenga is amended to allow for the resumption of by-elections.

The health minister imposed the ban on elections at a time when a number of vacancies in both Parliament and local authorities had occurred through deaths and recalls of office holders. The opposition MDC-T had recalled at least 30 legislators from the House of Assembly and Senate and a number of councillors in local authorities throughout the country. At the time of writing, there were 28 vacancies among the elective seats of the National Assembly as well as 105 vacancies in local authorities as well as 1 vacancy for the Senator representing Persons with disabilities and 1 among the Proportional Representation Seats of the National Assembly. The order is a clear violation the Constitution and international law. Thus, the indefinite banning of elections renders SI 225A of 2020 arbitrary and therefore illegal.

On 13 October 2020, WALPE, ERC and six Harare and Marondera residents filed a court application challenging the ban arguing that the suspension was a breach of the Electoral Act and the Constitution as government should have held by-elections before 30 September 2020 to fill in vacancies in local authorities and in the National Assembly. The matter was heard on 24 May 2021 and judgment was reserved. The decision on the matter was still pending at end of year. However, the ZHRC, issued a statement raising concerns over the arbitrariness of the ban as it violates the Constitution and international law.<sup>101</sup>

In April 2021, CiZC petitioned SADC to intervene and push the Zimbabwean government to hold by-elections in all vacant local council and parliamentary seats.<sup>102</sup> The Coalition raised the concern that the Zimbabwean government has weaponised COVID -19 response measures by imposing an indefinite ban on by-elections as part of its efforts towards battling the global pandemic yet elections were being held in other SADC countries amidst the pandemic.<sup>103</sup> Zambia held its general elections on 12 August 2021 and South Africa held local council elections on 1 November 2021.

The prolonged failure to conduct by-elections has resulted in at least 20% of the citizens not represented in Parliament and this places the democratic ethos of the country in jeopardy.<sup>104</sup>

101 Zimbabwe Human Rights Commission Statement on the Suspension of Holding of By-Elections in Zimbabwe, October 2020: Available at <https://kubatana.net/2020/10/12/zimbabwe-human-rights-commission-zhrc-statement-on-the-suspension-of-elections-in-zimbabwe/>

102 Lawrence Pakanga (20 September 2021) Rights groups petition SADC Over ED's Continued Ban On Holding By-Elections available at: <https://www.newzimbabwe.com/rights-groups-petition-sadc-over-eds-continued-ban-on-holding-by-elections/>

103 Lawrence Pakanga (20 September 2021) Rights groups petition SADC Over ED's Continued Ban On Holding By-Elections available at: <https://www.newzimbabwe.com/rights-groups-petition-sadc-over-eds-continued-ban-on-holding-by-elections/>

104 Leopold Munhende (20 April 2021) 17 Zim Women's Groups Urge Lifting Of By-Election Ban available at:

## ***Attacks on electoral democracy***

There has been sustained attacks on electoral democracy evidenced by the recalls in 2020 of elected parliamentarians and local government councilors.<sup>105</sup> This was pursuant to a controversial judgment by the Supreme Court in March 2020 which ordered that Nelson Chamisa was not the legitimate leader of the MDC-T. The controversial judgment empowered the newly bestowed Douglas Mwonzora and Thokozani Khupe led MDC-T leadership to recall MPs elected under the MDC-A banner – a coalition of parties led by Nelson Chamisa. This left various constituencies and wards in the country unrepresented in a grave affront to the democratic principles of representative democracy as enshrined in the Zimbabwean Constitution. The attacks on electoral democracy strengthened in 2021 posing a huge threat to citizens’ participation building up to the 2023 harmonised elections. The legal system has also played a huge role in this matrix. The legal system has largely appeared to be an instrument for repression, a “rule by law” as opposed to rule of law. In addition, the efficacy of the legal system in defending electoral democracy was also severely undermined. Evidence is present in the recent recalls of elected officials and most importantly the flawed Electoral Dispute Resolution (EDR) mechanisms. The judiciary has become part of the problem in not aiding the process of free and fair elections.

## ***Increase in political violence and repression***

Political violence is endemic in Zimbabwe and intensified in 2021.

### **Case examples include:**

- In July 2021, ZPP recorded intra-party violence in Lupane West and Nyamandlovu involving PF ZAPU.
- In August 2021, members of the MDC-A, led by Joseph Mpofu, threw stones at the house of a Mthwakazi Republic Party member who had just hosted a political meeting at his house.
- On 24 September 2021, ZANU-PF’s chairperson for Harare province Godwills Masimbirembwa had a chair thrown at him by his deputy Godwin Gomwe during preparations for chaotic district elections. Gomwe allegedly accused Masimbirembwa of creating fictional party districts to facilitate the rigging of internal elections in favour of Harare’s minister of state, Oliver Chidau, in the forthcoming ZANU-PF provincial elections.
- In Manicaland Province, tensions between rival ZANU-PF factions were reported in October 2021, demonstrators were calling for the ouster of Mike Madiro – accused of fanning factionalism. Stanley Sakupwanya, Makoni DCC secretary for youth affairs was assaulted in the melee and had to be hospitalised at Victoria Chitepo Provincial Hospital for injuries sustained during the brawl. In the month of October alone, ZPP documented at least 15 cases of intra-party political violence within ZANU-PF.<sup>106</sup>

Violence against the opposition MDC-A was also prevalent and intense.

- On the 11 October 2021, a video footage circulated on various social media platforms in which a belligerent mob was seen blocking a vehicle procession of Nelson Chamisa’s convoy and advance delegation from gaining entry into Charumbira village in Masvingo province.

<sup>105</sup> <http://www.veritaszim.net/node/4278>; <https://www.dailymaverick.co.za/article/2020-06-18-zimbabwe-election-suspended-after-recall-of-opposition-mps/>

<sup>106</sup> ZPP, *Silly Season Episode One (October 2021 Monthly Monitoring Report)*, October 2021, <https://reliefweb.int/report/zimbabwe/zpp-monthly-monitoring-report-october-2021>

Subsequent video footage later emerged on the same day in which a gathering of villagers can be heard recounting events in the aftermath of the attack. In the leaked video, an elderly woman can be heard bearing witness that the MDC-A motorcade made up of six vehicles was blocked using boulders, burning logs and stationary vehicles. The gathering is then heard chanting ZANU PF party slogans and bellowing to the announcement that the MDC-A entourage retreated after having sustained injuries. A woman in the gathering can be heard exclaiming: “Kana vari veMDC vakuvava zvakarongeka” which loosely translates to: “If the MDC entourage sustained injuries then it is very good”.<sup>107</sup>

- A separate incident was also documented in which ZANU-PF youths allegedly unleashed an orgy of violence at Gutu in Mupandawana in the afternoon of 14 October 2021.<sup>108</sup> On its Twitter page, MDC A claimed that its cars were stoned, and six MDC-A members were stoned and beaten after a meeting had been held there by Chamisa in that area.

Former government minister, Patrick Chinamasa was quoted at a ZANU-PF press conference on 15 October 2021 as saying that the people of Charumbira village were showing Chamisa that they did not want to be addressed by him and that Chamisa had no right to impose himself on them and ultimately that if he chose to campaign where he is not wanted he had to be ready to face the consequences. This position directly contravenes section 67(2)(b) of the Constitution which guarantees everyone’s right to campaign freely.

The government has failed and or refused to investigate the violence. To date, no one has been arrested or sanctioned for this violence.

### ***Hate speech and political intolerance***

- Hatespeech and political intolerance has continued to dominate the political environment in Zimbabwe as the nation gears up for the 2023 harmonised elections. Hate speech has been defined as any form of public expression through which the speaker intends to vilify; humiliate or incite hatred against a group or a class of persons. In Zimbabwe, hate speech and political intolerance go hand in hand: the former is invariably indicative of the latter’s existence in Zimbabwe’s political landscape. Examples include:
- On 14 July 2021, at a ZANU-PF Politburo meeting to set the tone for its 2023 ambitions for five million votes, President Emerson Mnangagwa threatened to ‘silence’ those perceived to be ‘enemies’.<sup>109</sup>
- In July 2021, in Bulawayo, a ZANU-PF member, Natiou Dube was assaulted at Makokoba Bus rank over his praises of President Emerson Mnangagwa and one of the perpetrators allegedly and in reference to Dube indicated only a foolish and stupid Ndebele can shower praises on Mnangagwa.<sup>110</sup>
- Again in July 2021, in Bulawayo, some ZAPU party members denounced Joshua Nkomo’s son – Sibangilizwe as a fool and “mafikizolo”/new comer riding on the fame of his deceased father after he won the elections.

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<sup>107</sup> ZHRNGOF, *Statement: Forum condemns political violence, October 15, 2021*; <https://kubatana.net/2021/10/15/forum-condemns-political-violence/>

<sup>108</sup> *Ibid.*

<sup>109</sup> ZPP (July 2021 Monthly Monitoring Report) *Do you remember? Documenting broken promises and a lot of violations happening all over again?*; Zimbabwe Peace Project; <https://kubatana.net/2021/08/06/do-you-remember-zpp-july-monthly-monitoring-report/>

<sup>110</sup> *Ibid.*

The increased levels of political intolerance were partly triggered by the landslide victory of the Zambian opposition presidential candidate Hakainde Hichilema. To dampen the momentum spurred on by this landslide victory and to prevent expectations of a similar outcome occurring in the upcoming elections in Zimbabwe, ruling party officials and some senior government officials threatened that if ZANU–PF, and in particular Emerson Mnangagwa, were to lose in the 2023 election, they would not concede. President Mnangagwa echoed the same sentiments while officiating the opening of an oxygen plant in Mutare asserting that anyone who dreams of what happened in Zambia also happening in Zimbabwe should wake up, return to their senses and brew some beer – the latter being in reference to a traditional practice for appeasing ancestral spirits. The President’s spokesperson George Charamba, using his pseudonym @Jamwanda2, tweeted that ZANU–PF would not hand over power to Nelson Chamisa if he won the next election. In essence, according to the ZANU PF, the only candidate fit to ascend to the presidential seat is one with legitimate liberation war credentials; anyone outside of that bracket would not be acceptable to them.

Such divisive utterances do not engender a culture of political tolerance which involves acceptance and respect for the basic rights and liberties of persons and groups whose opinions differ from one’s own. The Forum notes with grave concern this growing and disturbing trend of political intolerance in Zimbabwe’s political discourse that negatively impact on the ability by citizens to exercise their rights and freedoms.

#### ***Politicisation of food aid distribution; intimidation and harassment.***

Politicisation of food is also another endemic problem in Zimbabwe. Reports of intimidation, harassment, and politicisation of food aid and agricultural inputs particularly increased during 2021 due to increased levels of vulnerabilities and poverty resulting from the COVID-19 pandemic. Between January and October 2021 alone the Forum documented at least 997 incidences of harassment and intimidation and 126 incidences of partisan distribution of food aid and agricultural inputs<sup>111</sup>. While the law obliges traditional chiefs to be impartial, in rural areas traditional leaders mobilized voters and canvassed support for ZANU–PF. In return, traditional leaders continued to receive farms, vehicles, houses, and other benefits.

#### **Recommendations**

- The government of Zimbabwe must, respect, protect and fulfil all human rights and fundamental freedoms.
- The government of Zimbabwe must ensure that citizens enjoy all their fundamental freedoms without undue interference
- The government must investigate all violations against HRDs and hold the perpetrators to account.
- The government must ensure and safeguard a conducive operating environment for HRDs and journalists.
- It must desist from imposing undue restrictions on civil society and must withdraw the PVO Amendment Bill and the Patriotic Bill
- The government must implement the recommendations from the Motlanthe Commission of Inquiry into the 2018 politically motivated violence
- All electoral reforms must be enacted without delay



<sup>111</sup> See Section 3.2, a above for the detailed case examples

## GROUP RIGHTS AND SPECIAL GROUPS

### Women's Rights

Section 80 of the Constitution guarantees the rights of women to equal opportunities in political, economic, and social spheres and prohibits any customs, traditions or cultural practices that infringes on women's rights. In addition, Section 17 of the Constitution provides for gender equality in all spheres of Zimbabwean society. Zimbabwe has ratified several regional and international treaties and protocols that advance gender equality and women's rights.<sup>112</sup>

However, there was no concrete action taken by the government to achieve gender justice and advancing women's rights in Zimbabwe. The COVID-19 has further exacerbated the plight of women in Zimbabwe. The decline in the socio-economic situation in the country disproportionately affected women and girls.

Despite the adoption of the Domestic Violence Act (2006) there is still a high prevalence of violence against women and girls especially domestic and sexual violence. WALPE reported that gender-based violence against women and girls heightened during the COVID-19 pandemic.<sup>113</sup> Since the beginning of the year, until the end of September 2021, the national GBV hotline- run by Musasa, an organisation dealing with issues of violence against women and girls and providing relief to victims of Gender Based Violence (GBV) recorded more than 6 800 calls. About 94% of the calls were from women, 69.5% of identifiable perpetrators were intimate partners.<sup>114</sup>

Sexual harassment against women and girls has also been on the increase. Investigations conducted by the joint Parliamentary Portfolio Committee on Public Service, and Women Affairs to ascertain the prevalence of sexual harassment in the country and its impact on victims in 2021, revealed that this is a very worrying phenomenon prevalent throughout the country. The investigations also singled out the police as major perpetrators of sexual harassment against women.<sup>115</sup> The chairperson of the Public Service Parliamentary Committee, Emma Ncube expressed concern that

<sup>112</sup> See the SADC Gender Protocol, Maputo Protocol; CEDAW

<sup>113</sup> WALPE, 'State of women's rights and wellbeing in the era of Covid-19 in Zimbabwe', October 2, 2021; <https://walpe.org.zw/state-of-womens-rights-and-well-being-in-the-era-of-covid-19-in-zimbabwe/>

<sup>114</sup> UNICEF, *Delivering justice to survivors of sexual and gender-based violence through DNA based evidence*, 15 September 2021; <https://www.unicef.org/zimbabwe/stories/delivering-justice-survivors-sexual-and-gender-based-violence-through-dna-evidence>

<sup>115</sup> WALPE, 'Police major perpetrators of sexual harassment: Parly' September 13, 2021, <https://walpe.org.zw/police-major-perpetrators-of-sexual-harassment-parly/>.

*“while sexual harassment is regulated by various pieces of legislation such as the Labour Act, Public Service Act and the Criminal Law (Codification and Reform) Act, all fall short of fully addressing sexual harassment in its various forms”<sup>116</sup>*

Women’s representation in key decision-making institutions such as parliament and cabinet are still far below the 50% threshold. Structural and administrative barriers continue to hinder women’s participation in political and governance processes. In addition, political violence that has become an endemic feature of the Zimbabwean political landscape prevented women from freely participating in political processes as well asserting their rights and freedoms.



*As a key recommendation, the Government of Zimbabwe (GoZ) must take concrete measures to address the plight of women and girls in Zimbabwe. Specifically, it must take measures to eliminate GBV, address its root causes including discrimination and guarantee sexual and reproductive health rights for women and girls.*

## Children’s Rights

Children’s rights are listed among the national objectives of the Constitution under Section 19. In addition, Section 81 of the Constitution guarantees the rights of children in line with international standards. Zimbabwe has also ratified regional and international treaties such as the ACRWC and CRC that sets out the rights of children.

However, in 2021 there has not been considerable progress towards realisation of these rights. Children continue to be affected by the decline in the socio-economic situation in the country impacting negatively on their access to basic health care, education, adequate standard of living that is good for their development and food. [A detailed discussion on these rights is already covered under Chapter 3 above.]

A 2021 study by UNICEF on child poverty in Zimbabwe revealed that an estimated 60.7 per cent of all children in Zimbabwe are multidimensionally poor.<sup>117</sup> Multidimensional child poverty is significantly higher in rural areas compared to urban areas (69.2% and 37.6% respectively). Of all regions, Bulawayo (37%), Harare (39%) and Mashonaland East (56.3%) have the lowest proportion of multidimensionally poor children. The province of Matabeleland North, on the other hand, has the highest rate of multidimensional child poverty, as more than 7 out of 10 children are multidimensionally poor (73.4%).<sup>118</sup>

<sup>116</sup> Ibid.

<sup>117</sup> UNICEF, *Child Poverty in Zimbabwe : A multiple overlapping deprivation analysis*, November 9, 2021; <https://www.unicef.org/zimbabwe/media/5216/file/MODA%20final%20report%20for%20printing%209%20November%202021.pdf>.

<sup>118</sup> Ibid

The scourge of child marriages in the country remains worrying. According to recent statistics by the Zimbabwe National Statistical Agency, (ZimStats), 33.7% of girls under the age of 18 in the country are married. In addition, Zimbabwe is among the top 20 African countries with high prevalence of child marriages. Child marriage has been linked to intergenerational poverty as it causes missed opportunities and exclusion in spheres like education, social development, and healthcare.

Child marriages remained a challenge and prevalent among the poorest, where parents are forced to give away their young daughters in marriage to reduce the burden of their upkeep. The Constitution prohibits child marriages however there is no law penalising adults who enter marriages with children. As a result, the country is far behind in achieving the global target of ending child marriages by 2030. Although the government launched the National Action Plan to End Child Marriage in May in 2021, the process of adopting legislative measures to amend the Marriages Act to outlaw marriage to any person under the age of 18 years has taken forever.

One case whose gory details have remained permanently imprinted upon the nation's psyche is that of Anna Machaya. Anna was 14 years old when she fell pregnant after being married off to Hatirarami Momberume of Taguta Farm in Kwekwe. Machaya died aged 15 years due to complications while giving birth at a Johanne Marange Apostolic Church shrine after her 26 year old "husband" – 11 years her senior, took her there for their child to be delivered by the church's midwives. Her case generated such a huge outcry that led to the eventual arrest of Momberume on rape charges and Anna's parents for obstructing the course of justice after initially providing a false name and identification documentation in a bid to cover up for the church; what was essentially a normal practice to them. Her story brought into even sharper focus the decades-long lack of political will to end the doctrinal practice of child marriages in indigenous apostolic churches. The Johanne Marange Apostolic Church in particular has been receiving preferential treatment from the ruling ZANU PF party for years due to its ability to control its members which has made it of political significance to the ruling ZANU PF party.<sup>119</sup>

## Rights of Persons with Disabilities (PWDs)

The state and all institutions of government are mandated to recognise the rights of PWD under Section 22 of the Constitution. Further Section 83 of the Constitution elaborate in the rights of PWDs that the government must guarantee. Zimbabwe has ratified the UNCRPD. On 9 June 2021, the government launched the National Disability Policy, seeking to address the marginalization and discrimination of PWDs, to empower them to improve their own quality of life and enable them to contribute towards the national development agenda. On inclusive education, the new section 68B of the Education Act mandates every registered school to provide infrastructure suitable for use by pupils with disabilities.<sup>120</sup>

However, as of December 2021, parliament had not enacted the law to align the Disabled Persons Act with the Constitution and to domesticate the UNCRPD. PWDs is one of the most marginalised groups in Zimbabwe. They continue to suffer violations of their basic rights and fundamental freedoms. The COVID-19 pandemic disproportionately affected PWDs as they continued to suffer exclusion from education, health, and other social amenities. Educational institutions discriminated against children with disabilities.

<sup>119</sup> For more on the story behind the Johanne Marange sect's political significance, its doctrine of coercion, abuse and the sect's history see: ZPP, *Hard Done – August 2021 Monthly Monitoring Report*.

<sup>120</sup> Zimbabwe CSO Stakeholder, *3rd Cycle UPR Report, 2021*, Available at <https://kubatana.net/2022/01/18/zimbabwe-3rd-cycle-united-nations-universal-periodic-review-csos-stakeholder-report/>.

Essential services, including sign language interpreters, braille materials, and ramps, were not available and prevented children with disabilities from attending school. Moreso, the introduction of the e-learning due to the COVID-19 lockdowns did not cater for children with hearing impairments.

Persons with mental disabilities also experienced inadequate medical care and a lack of health services.<sup>121</sup> There is a critical shortage of mental health workers. Only 18 psychiatrists, about 917 mental health nurses, 6 clinical psychologists, 10 occupational therapists and 13 social workers cover the entire country. There are only 25 mental health institutions including referral centres.<sup>122</sup>

*Government must enact and implement the law to align the Disabled Persons Act with the Constitution and to domesticate the UNCRPD*

### **Lesbians, Gays, Bi-Sexual, Trans-Gender, Intersex, Queer (LGBTIQ) Rights**

Although the Constitution guarantees equality before the law and the right to non-discrimination under Section 56, same sex marriages remain prohibited under Section 78 (3). According to the criminal code, “any act involving physical contact between men that would be regarded by a reasonable person to be an indecent act” carries a penalty if convicted of up to one year in prison or a substantial fine. However, there were no known cases of prosecutions of consensual same-sex sexual conduct.

As a result, LGBTIQ persons continue to be subjected to discrimination which manifest in many ways including refusal of access to emergence healthcare services. According to a 2020 report by GALZ, a leading campaigner for LGBTIQ issues, there was a decline in the arrest and detention of LGBTIQ community members, but half of gay men had been physically assaulted and 64 percent had been disowned by their families.<sup>123</sup> Of lesbians, 27 percent reported harassment, assault, or disownment

LGBTIQ persons were vulnerable to blackmail because of the criminality and stigma associated with same-sex conduct. LGBTIQ advocacy organizations reported blackmail and being “outed” as two of the most common forms of repression of LGBTIQ persons. It was common for blackmailers to threaten to reveal one’s sexual identity to the police, the church, employers, or family if the victim refused to render payment.

There is need for constructive dialogue and education on sexuality and also development of a policy on social inclusion in Zimbabwe.

### **Environmental rights**

Violations against environmental rights intensified in 2021 with the firms operating in the extractives constituting the main perpetrators. Mining companies linked to the government elites have constantly been singled out as the main culprits in violating environmental rights. The Centre for Natural Resources Governance (CNRG) has expressed concern over what it calls

<sup>121</sup> Medical and Dental Practitioners Council of Zimbabwe (MDPCZ); Available at: [Http://www.mdpcz.zw/wp-Content/Uploads/2018/10/Mental-Health-Act-Chapter15-12-1.Doc](http://www.mdpcz.zw/wp-Content/Uploads/2018/10/Mental-Health-Act-Chapter15-12-1.Doc).

<sup>122</sup> WHO; <https://www.who.int/workforcealliance/countries/Zwe/En/>.

<sup>123</sup> D+C (Development and Cooperation), ‘Homophobia in Zimbabwe hurts the mental health of LGBTI people’, August 1, 2019; <https://www.dandc.eu/en/article/homophobia-zimbabwe-hurts-mental-health-lgbti-people>

*“a new form of colonialism that is growing louder and increasing in visibility with each passing day. It is called extractivism .. the new form of colonialism is engineered by the Zimbabwean government in the name of ‘investments’. Throughout the country, Zimbabweans are living on the edge as hundreds of special grants are issued to so-called investors, predominantly from China, to explore for minerals and ultimately displace our people from their ancestral homes... The future of many Zimbabweans is precariously uncertain. Even the dead are not spared as evidenced by drilling in cemeteries and reburials.”<sup>124</sup>*

The depletion of wetlands has also posed hazards to the environment affecting water sources, contributing to the perennial water shortages in Zimbabwe. Unlawful authorisation of construction on wetlands remains endemic despite Zimbabwe being a party to the Ramsar Convention on wetlands which obliges state actors to work towards the protection and wise use of wetlands. This has contributed to the rapid depletion of wetlands in urban areas thereby eroding the benefits that are provided by wetlands to the environment and the local communities that depend on them for freshwater. In 2021, the Supreme Court in case of *Sharadkumar Patel & Anor v COSMO Trust & Ors* upheld the Administrative Court’s decision to revoke permits for a cluster home development on Monavale Wetland. The wetland has been designated as a wetland of international importance under the Ramsar Convention. The court noted extensive procedural irregularities and a lack of due process, including a lack of stakeholder consultation by the City of Harare and the Environmental Management Agency in the issuance of the permits.<sup>125</sup> The violation of environmental rights has had a direct impact on human life and the standard of life. Cases of damage to human life were reported during 2021. Case examples include:

- In 2020, the **Zimbabwe Environmental Law Association (ZELA)** had to approach the courts on behalf of a Hwange resident **Fidelis Chima** against Chinese mining company **Zimbabwe Zhongxin Mining Group T/A Tongmao Coal Company (PVT) Ltd, Zimbabwe Mining Development Corporation, Minister of Mines & Mining Development and the Environmental Management Agency**. Government issued a Special Grant to the mining company in February 2020 before Environmental Impact Assessment in violation of **section 97** of the **Environmental Management Act**. **The Hwange resident’s** home district was threatened by the company’s mining activities inside of Hwange National Park. Environmental rights including the rights of wildlife were threatened. There was acute risk of irreversible ecological degradation including unmitigated loss of animal and vegetative species, reduction of animal habitats of many rare species including black rhino, pangolin, elephant, and wild (painted) dogs. Hwange National Park and its wildlife faced imminent disruption if not devastation from coal mining activities with the attendant water and air pollution.<sup>126</sup>

<sup>124</sup> NewsDay Zimbabwe, ‘CNRG concerned over new form of colonialism’, August 9, 2021; [https://www.newzimbabwe.com/201067-2/Error! Hyperlink reference not valid.](https://www.newzimbabwe.com/201067-2/Error!%20Hyperlink%20reference%20not%20valid.)

<sup>125</sup> Zimbabwe Lawyers for Human Rights Statement on World Wetlands Day, February 2, 2022; <https://www.zlhr.org.zw/?p=2660>

<sup>126</sup> Zimbabwe Environmental Law Association, ‘The Zimbabwe Environmental Law Association (ZELA) files a case against Chinese miners’, September 6, 2020; [http://www.zela.org/zela\\_infor-files-a-case-against-chinese-miners/](http://www.zela.org/zela_infor-files-a-case-against-chinese-miners/)

- In March 2021, ZELA filed an urgent chamber application seeking to interdict the government from displacing more than 12000 villagers from Chilonga in Chiredzi to pave way for a lucerne farming project and a constitutional challenge to SI50 of 2021 that ordered the community to permanently depart from Chilonga communal land effective 26 February 2021.<sup>127</sup>
- **On 4 October, 2021**, CNRG reported the death of two men in Hwange on the 27th of September 2021 after a mining dumpsite collapsed on them while they were reclaiming coal waste for brick making. The dumpsite is in an area locally known as M.Block located in Hwange Colliery Company Limited concession. The site was formerly mined by Hwange Colliery Company Limited where it had an underground mine. Driven by unemployment and grinding poverty, local residents go to restricted areas with the intention to take coal for resale on the black market or to fetch scrap metal. In this case, the two men, who are reportedly from Empumalanga, had gone to fetch coal waste for brick moulding.<sup>128</sup>
- In November 2021, the Marange community recently held a protest against Anjin resulting in 29 of them, including the Headman being arrested.
- In Mutare, there was a recent outcry after a Chinese company, Freestone Mines, started ground preparation for quarrying at Dangamvura mountain without an environmental impact assessment. The Ministry of Mines, Mutare City Council and Freestone itself all confirmed that an environmental impact assessment was a prerequisite requirement but had not been carried out. The local traditional leadership was not consulted either. Dangamvura Mountain is an ecologically sensitive site that is situated in Mutare's green zone and very close to educational institutions and residential areas.



<sup>127</sup> *Newsday, Chilonga Villagers Challenge eviction, March 6, 2021; <https://www.newsday.co.zw/2021/03/chilonga-villagers-challenge- eviction/?s=08>.*

<sup>128</sup> *Centre for Natural Resource Governance, 'Two more lives claimed at coal dumpsite in Hwange', October 4, 2021; <https://www.cnrzgm.org/two-more-lives-claimed-at-coal-dumpsites-in-hwange/>*

It is widely acknowledged that Civil society organisations are an important facet of an open and democratic society. They make a significant contribution towards the development and realisation of democracy, rule of law and human rights. CSOs play a critical role in helping and supporting citizens, ensuring that their voices are heard; assisting in policy making, legislative drafting ensuring that policies and laws respond to citizen's needs; monitoring the activities of the three arms of state, holding them accountable for their actions especially when they infringe on the rights of the people. It follows therefore that an independent and empowered civil society is an essential component and ingredient of a healthy country conducive for growth, development, and prosperity. When civic space is safeguarded, citizens and CSOs can organise, participate, and communicate without hindrance or without fear of reprisals.

Yet the government continued to view civil society with intense hostility, accusing CSOs of advancing a foreign agenda, regime change agents, terrorist groups, and purveyors of fake news. The operating environment for CSOs deteriorated significantly in 2021 with the government intensifying its attacks against CSOs and democratic space through threats of closure, suspension, and arrests. Onslaught against independent civil society has intensified under the current administration of President Mnangagwa that has cranked up efforts at over-regulation of the sector and curtailing the independence of CSOs. Civic space is vital in upholding democracy, human rights, and fundamental freedoms.

Hate speech and propaganda against CSOs increased in 2021.

For example:

- On 15 July 2021, President Mnangagwa made unsubstantiated claims that “As the election season unfold, we are observing portable number of NGOs, diverting from their operational mandates to dwelling into political matters that amounts to interference in the internal affairs of our sovereign mother country.”<sup>129</sup>
- On 13 October 2021, ZANU-PF Secretary for Information, Patrick Chinamasa also made unsubstantiated claims that some NGOs were receiving funding from the West to topple the government and the [ZANU-PF] party will soon be issuing a directive to party supporters to shun them. “So, we will be writing a directive mentioning the NGOs that are proxies of countries wanting to topple the ZANU-PF government. We will tell our supporters, don’t have anything to do with those people, don’t associate with those people, they are no good, they are going to bring misery to you”.<sup>130</sup>

<sup>129</sup> “We’re watching you’: Zim’s Mnangagwa guns for ‘hostile’ NGOs”, *The New Zimbabwe.com*, 15 July 2021, <https://www.newzimbabwe.com/we-are-watching-you-mnangagwa-warns-ngos/>

<sup>130</sup> “Mad’ Chamisa provoked us: Zanu PF” *Newsday*, 13 October 2021, <https://www.newsday.co.zw/2021/10/mad-chamisa-provoked-us-zanu-pf/>

- Again, on 15 November 2021 President Mnangagwa ordered communities to report any new NGOs to the Minister of State so that it is established whether the NGO is for good or not. He warned the communities that if they just accept such NGOs they will end up regretting because some have ulterior motives and they may land themselves in trouble.<sup>131</sup>
- On 21 June 2021, The Provincial Development Coordinator for Masvingo province circulated a memorandum directing all CSOs and CBOs that are programming around youth issues to be cleared and granted memorandum of Understanding with the ministry of youth, sports, arts and culture with immediate effect. CSOs and CBOs were given only seven working days to regularise this.
- On 30 June 2021, the Harare Metropolitan Provincial Development Coordinator Tafadzwa Muguti issued a directive that all NGOs were now required to submit their workplans and projects by 9 July 2021. CSOs criticised this move as it was illegal and unconstitutional. Muguti's office has no mandate to regulate the operations and clearances of NGO activities.<sup>132</sup>
- Again, on 29 July 2021, the Provincial Development Coordinator for Harare Metropolitan Province, Tafadzwa Muguti issued a ban on NGOs operating in the Harare Metropolitan Province who had refused to comply with his illegal directive of 30 June 2021 and instructed law enforcement agents to stop the operations of all defiant NGOs. The ban was overturned by the High Court in a case brought by the Zimbabwe Human Rights NGO Forum and the Crisis in Zimbabwe Coalition. The Court held that Muguti's directive violated the applicants' constitutional rights and unduly interfered with, disrupt or stop the operations of NGOs in Harare and bared Tafadzwa Muguti from interfering with the work of CSOs in Harare.<sup>133</sup>

## Restrictive laws

In 2021, the government proposed laws that severely curtail civic space, and undermine freedoms of expression and association.

For example:

### A. Proposed amendments to the Criminal Code<sup>134</sup>

On 27 October 2020, the Minister of Information, Publicity and Broadcasting Services, Monica Mutsvangwa announced Cabinet's approval of proposed amendments to the Criminal code advising that the proposed amendments also included, among other things, criminalising "unauthorised engagements" with foreign governments and their agents, making "unsubstantiated" allegations of torture, and "inviting sanctions".

<sup>131</sup> "Be wary of politicking NGOs", *The Herald*, 15 November 2021, <https://www.herald.co.zw/be-wary-of-politicking-ngos/>

<sup>132</sup> Comprised of Crisis in Zimbabwe Coalition; the National Transitional Justice Working Group; the Zimbabwe Human Rights NGO Forum among others

<sup>133</sup> *Zimbabwe Human Rights NGO Forum and Crisis in Zimbabwe Coalition Trust v Provincial Development Coordinator (Harare Metropolitan Province) and 4 Others* HH 501-21, At page 14.

<sup>134</sup> *Criminal Law (Codification Reform) Act* [Chapter 9:23].

## B. Patriotic Bill

In March 2020, government proposed a law on patriotism that criminalises any utterances deemed to be a negative portrayal of the image of the state. During the submission of the motion in parliament in March 2020, supporters of the motion singled out opposition politicians and CSOs as the targets of the law. On the 2<sup>nd</sup> of March 2021, the former and late legislator for Mberengwa Alum Mpfu (ZANU–PF) moved a motion in the National Assembly for the enactment of the Patriotic Bill. In his lengthy presentation Hon Mpfu emphasised why Zimbabwe needs a good reputation in order to re-engage with the rest of the world but was vague on why and how a law curtailing freedom of speech and other fundamental rights would promote this and lead to investment and development. Without naming her, he quoted the words of a former opposition Senator who had just joined ZANU PF and who was obviously trying to discredit her former colleagues by saying they had made

*“deliberate and relentless efforts within the country to thwart efforts by the Second Republic to create unity of purpose within the country’s body politic and [they were] always putting spanners at [sic] the Second Republic’s endeavours to reengage positively with the outside world”.*

In concluding Hon Mpfu posed the following question:

*“...what do we do when your members of the team, when they score goals, when Knowledge Musona scores goals and Nakamba scores goals, it behooves all of us to stand up and celebrate. What should we do when team players or those people who are supposed to be team players stand up and score own goals, what in that circumstance should we do? I rest my case.”<sup>135</sup>*

On 16 of November 2021, Patience Dhokwani – senior official in the Justice Ministry, appearing before the Parliamentary Portfolio Committee on Foreign Affairs chaired by Webster Shamu, renewed calls for the crating of a Patriotic Bill, asserting that her ministry has discovered lacuna (gap) in Zimbabwe’s current legal system that “criminalises the unauthorised communication or negotiations by private citizens with foreign governments that have a direct or indirect implication on Zimbabwe foreign policy relations”.<sup>136</sup>

This creates the fair possibility that opposition, HRDs or CSOs collaborating with international governments in seeking equal justice, advancing human rights and the end to state sponsored violence and corruption could face politically motivated prosecution under the pretext of protecting the nation’s interests.

<sup>135</sup> VERITAS, ‘BILL WATCH 15/2021 – Debate on the need for a “Patriotic Bill”’, March 9, 2021; <http://www.veritaszim.net/node/4827>

<sup>136</sup> Harriet Chikandiwa, ‘Zim has no law against sanctions advocates’ *Newsday*, Nov 17 2021 available at <https://www.newsday.co.zw/2021/11/zim-has-no-law-against-sanctions-advocates/>

### C. Private Voluntary Organisation Amendment Bill (PVO Amendment Bill)

On 5 November 2021, the Government gazetted the PVO Amendment Bill. The PVO Amendment Bill seeks to amend the PVO Act: to comply with recommendations made by the Financial Action Task Force (FATF); to streamline administrative procedures and allow for the efficient regulation and administration of PVOs; and to prevent PVOs from undertaking political lobbying. The PVO Amendment Bill also prohibits Trusts that are registered with the High Court, but are not registered PVOs, from collecting contributions from the public or from outside Zimbabwe for any of the purposes specified in the definition of ‘private voluntary organisation’ (i.e. charitable purposes, social welfare assistance, legal aid and animal welfare).

If passed into law, the PVO Amendment Bill would provide the government with unfettered discretionary power to overregulate and interfere in the governance and operations of NGOs. For instance, its provisions provide the government with unchecked power to designate any PVO as “high risk” or “vulnerable” to terrorism abuse, thereby allowing them to revoke a PVO’s registration and remove or replace its leadership. In addition, to avoid civil penalties, PVOs would be required to receive approval from the government for any “material change” including changes to its management and internal constitution. Furthermore, PVOs would be prohibited from supporting or opposing any political party or candidate.

The government claim that the PVO Amendment Bill is necessary to comply with counterterrorism and anti-money laundering recommendations of the FATF. However, this is unrealistic and not true for the following reasons:

1. The proposed amendments do not comply with the very FATF (recommendation 8, clause 10) standards it seeks to address. The provisions are neither focused nor proportionate.
2. There is no proof that NGOs in Zimbabwe are a high-risk sector when it comes to money -laundering and terrorism financing. No NGO in Zimbabwe has been implicated in money laundering and terrorist financing. According to the 2020 2<sup>nd</sup> Money Laundering and Terrorist Financing National Risk Assessment Report on Zimbabwe, the main offenses used to generate money laundering are corruption; fraud; and contravention of customs and exercise laws, Gold Trade Act and the Income Tax Act. The highest risk sectors are Mining; Banking; motor vehicle dealers; mobile money dealers; and real estate. There is therefore no justification for targeting NGOs; and
3. Besides, there are already laws in place to address the issues.

A number of civil society organisations and Forum members have produced detailed analysis of the PVO Amendment Bill and its impact on the operating space for civil society. In 2021, the Zimbabwe Lawyers for Human Rights (ZLHR) produced a position paper titled:

*“The Operating Space for Civil Society Organisations in Zimbabwe: A Critical Analysis of the Proposed Regulation of Civil Society.”<sup>137</sup>*

<sup>137</sup> ZLHR, *The Operating Space for Civil Society Organisations in Zimbabwe: A Critical Analysis of the Proposed Regulation of Civil Society (2021)* available here <https://kubatana.net/2021/12/07/analysis-of-the-private-voluntary-organisations-amendment-bill-2021/>

On 7 December 2021, ZLHR, The Forum, LRF and Kubatana published a fact sheet on the PVO Bill.<sup>138</sup> ZimRights also published a special report,

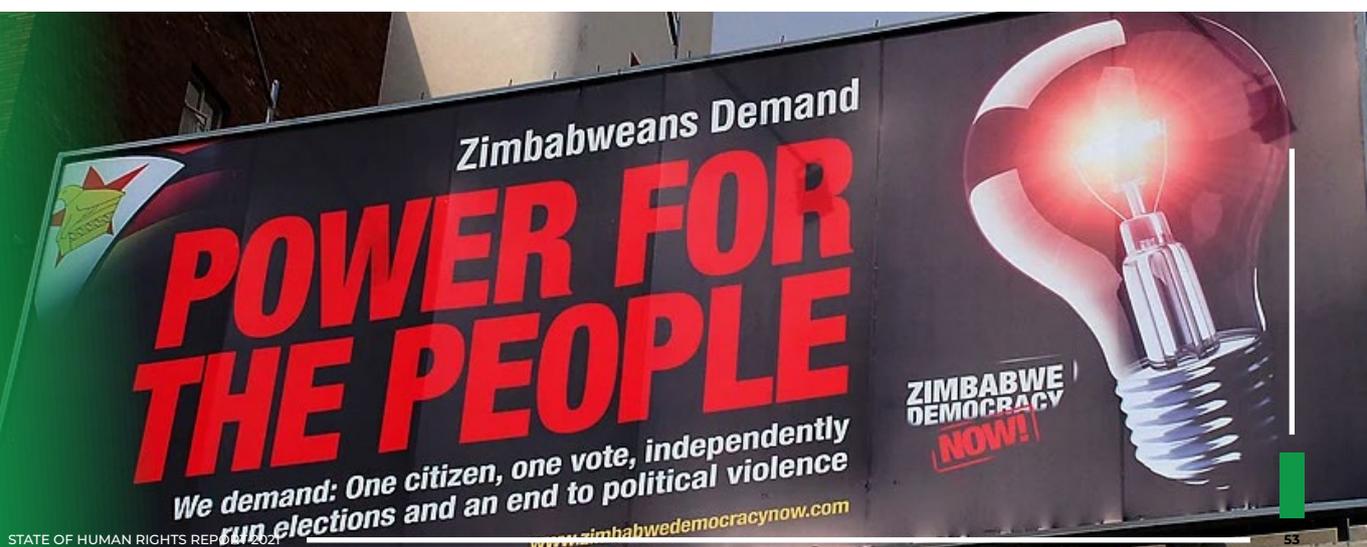
*“The Great Gift of Active Citizens: How the PVO Bill Threatens Active Citizenship in Zimbabwe.”<sup>139</sup>*

In all these publications, civil society organisations raised genuine concerns on the negative implications of the PVO Bill on the operations of CSOs and the general capacity for citizens to self-organise for their own good.

Four United Nations Special Rapporteurs on the rights to freedom of peaceful assembly and of association; on the promotion and protection of the right to freedom of opinion and expression; on the situation of human rights defenders and on the promotion and protection of human rights and fundamental freedoms while countering terrorism, wrote a joint communication to President Emmerson Mnangagwa criticising the PVO Amendment Bill highlighting that the Bill will have grave consequences for the exercise of civil and political rights, including the right to freedom of association.<sup>140</sup> They stressed that the PVO Bill grants unchecked discretion to authorities and its provisions contain overly broad and vague language ripe for abuses against politically disfavoured organizations.<sup>141</sup>

If passed into law, the PVO Amendment Bill, will have severe consequences on the exercise of freedoms of expression, assembly, association and political rights. It does so by giving too much power to the government to control and interfere with the work of CSOs; increasing surveillance and monitoring of NGOs and HRDs; criminalising human rights work; and creating real dangers of expropriation of NGOs funds and assets without due process and compensation.<sup>142</sup>

It is apparent that the PVO Amendment Bill severely undermines fundamental rights and freedoms guaranteed under the constitution and international treaties. Freedom of association guaranteed under section 58 of the Constitution also extend to association for political purposes. Section 67 of the Constitution guarantees the right to form, join or participate in the activities of a political organisation. The restriction by the government also undermines the critical role CSOs play in a democratic society. The PVO Amendment Bill is a retrogression in advancing democracy in Zimbabwe and only increases the country’s risk premium. **It must not be passed into law!**





# **PART 3:**

## **CONCLUSION AND RECOMMENDATIONS**

### Conclusion

The report depicts a very sad picture of the state of human rights in Zimbabwe. There has not been any meaningful action by the government to ameliorate the plight of citizens as the socio-economic situation continued to implode. Instead of coalescing efforts around the common enemy of the COVID-19 pandemic, the government decided to channel its energy and resources towards fighting civil society and HRDs, who ideally should be its partners for sustainable development. As a result, the COVID-19 response measures were weaponised to target those who are disfavoured by the government, leaving the populations to suffer the debilitating effects of the pandemic alone.

Democracy continued to decline, with the rule of law situation deteriorating. A climax was reached when the government enacted amendments to the Constitution whose net effect was to concentrate power in the executive in particular the president, while subordinating the other arms of government to the overweening power by the executive. The independence of the judiciary was severely undermined. This was a major retrogression in the history of the four-year rule by “second republic” led by president Mnangagwa. The outlook is quite deplorable.

Intensified attacks on HRDs, journalists and opposition activists and the accelerated efforts to close civic space has also increased the risk premium of the country. This was evidenced by introduction of a legislative agenda aimed at restricting operations of NGOs in Zimbabwe through the PVO Amendment Bill, Patriotic Bill and proposed amendment to the Criminal Code.

Corruption remained endemic and this has resulted in the poor delivery of public services and goods. Invariably, special, and vulnerable groups such as women, children, PWDs and the elderly continue to be disproportionately affected by the situation resulting from the economic decline. Poverty levels have increased significantly.

*There is therefore need for a robust approach in monitoring these human rights infractions by civil society and the media and call the government to account.*

## Recommendations

- 1. Government must uphold constitutionalism and respect the rule of law**—Judicial Independence must be safeguarded and the executive must respect separation of powers. The government must desist from further arbitrary amendments to the Constitution and to fully implement the Constitution. It must expedite the constitutional alignment process, with substantive reforms aligning legislation to the Constitution and in particular, Government must, without any further delay operationalise the Section 210 Independent Complaints Mechanism.
- 2. Government must take active measures in ensuring that the Socio-economic rights guaranteed by the Constitution translate into a lived reality for the population** - There must be evident a genuine desire and sufficient political will by the government to combat corruption. All public goods and services must be delivered to the population without discrimination. Socio-economic policies must be people-centric and must take a human rights-based approach in their development and implementation.
- 3. Government must fulfil all its obligations arising from Constitution and regional and international treaties to respect, protect and fulfil all human rights and fundamental freedoms**—The government of Zimbabwe must ensure that citizens enjoy all their fundamental freedoms without undue interference. It must ratify outstanding key international human rights treaties such as the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT); and the International Convention for the Protection of All Persons from Enforced Disappearance. All violations against HRDs must be investigated and the perpetrators must held accountable. The pillars of impunity must be dismantled. Recommendations from the Motlanthe Commission of Inquiry into the 2018 politically motivated violence must be implemented.
- 4. Government must ensure and safeguard a conducive operating environment for HRDs and journalists** - It must desist from imposing undue restrictions on civil society. The ongoing efforts aimed at over-criminalization and over-regulation of CSOs must be discontinued and the PVO Amendment Bill and the Patriotic Bill must be withdrawn.
- 5. Government must respect and safeguard democratic processes** – In particular it must accelerate and adopt meaningful and genuine electoral reforms and put in place concrete, transparent and targeted measures to facilitate national peacebuilding, political tolerance and eradicate hate speech and other actions which fuel inter-party and intraparty violence.
- 6. Government must take concrete measures to address the plight of women and children in Zimbabwe** - Specifically, it must take measures to eliminate GBV, address its root causes including discrimination and guarantee sexual and reproductive health rights for women and girls. It must adopt concrete measures that ensure the security and development of the child.
- 7. Government must enact and implement the law to align the Disabled Persons Act with the Constitution and to domesticate the UNCRPD**
- 8. There is need for constructive dialogue and education on sexuality and also development of a policy on social inclusion in Zimbabwe.**



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