



STATE OF HUMAN RIGHTS REPORT

ZIMBABWE | 2017



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Zimbabwe
HUMAN RIGHTS
NGO Forum

THE STATE OF HUMAN RIGHTS REPORT
ZIMBABWE | 2017

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About The Forum

The Zimbabwe Human Rights NGO Forum (The Forum) is a coalition of 22 human rights organisations working towards the realisation of a society that respects all human rights in Zimbabwe.

Members of The Forum

Amnesty International – Zimbabwe (AI-Z), Catholic Commission for Justice and Peace – Zimbabwe (CCJP-Z), Transparency International – Zimbabwe (TI-Z), Veritas, Counselling Services Unit (CSU), Zimbabwe Human Rights Association (ZIMRIGHTS), Zimbabwe Lawyers for Human Rights (ZLHR), Civic Education Network Trust (CIVNET), Legal

Resources Foundation (LRF), Justice for Children (JC), Zimbabwe Civic Education Trust (ZIMCET), Women of Zimbabwe Arise (WOZA), Zimbabwe Women Lawyers Association (ZWLA), Research and Advocacy Unit (RAU), Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender (ZACRO), Zimbabwe Peace Project (ZPP), Non-Visible Action and Strategies for Social Change (NOVASC), Student Solidarity Trust (SST), Gays and Lesbians of Zimbabwe (GALZ), Zimbabwe Association of Doctors for Human Rights (ZADHR), Media Monitors (MM), and Media Institute for Southern Africa (MISA).

Acknowledgements

The Forum acknowledges the assistance it received from many friends and partners in compiling this report. The following organisations that are not members of the Forum played key roles in the data collection that fed into this report: Heal Zimbabwe Trust, Centre for Natural Resources Governance (CNRG), Zimbabwe Environmental Law Association (ZELA), Deaf Women Included, Alive Albinism Initiative, and many other partners not named in this report, whose generosity made the production of this report possible. Special mention goes to the Zimbabwe Citizen Initiative (ZCI) for their investment in putting together the infrastructure for the Ziso/Ilihlo Human Rights Monitoring Platform and mobilizing citizens to participate in human rights monitoring. Of all the reports covered in this report,

the Ziso/Ilihlo Platform documented 118. The Forum salutes various groups of human rights monitors and citizen champions who put themselves in harm's way as they worked to report on and combat human rights violations.

All this work would not have been accomplished without the support from our development partners who invest in the dignity of humanity. The Forum further applauds the role played by the Secretariat in coordinating the various documentation platforms that fed into this report and compacting thousands of pages, video footage, and audio recording to reduce them into a compact report.

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ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
ARTUZ	Amalgamated Rural Teachers Union of Zimbabwe
BVR	Biometric Voter Registration
CBD	Central Business District
CHITREST	Chitungwiza Residents Trust
CIO	Central Intelligence Organisation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
IDPs	Internally Displaced Persons
FTLRP	Fast Track Land Reform Programme
GALZ	Gays and Lesbians of Zimbabwe
LGBTIQ	Lesbian, Gays, Bisexual, Trans, Intersex, Queer/ Questioning
MDC-T	Movement for Democratic Change – Tsvangirai
MDP	Malicious Damage of Property
NCA	National Constitutional Assembly
PDP	People's Democratic Party
PWD	People with Disabilities
PwA	People with Albinism
PIU	Public Interest Unit
RBZ	Reserve Bank of Zimbabwe
RDZ	Renewal Democrats of Zimbabwe
OVT	Organized Violence and Torture
UNCAT	UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
UPR	Universal Periodic Review
UZ	University of Zimbabwe
ZANU-PF	Zimbabwe African National Union – Patriotic Front
ZACC	Zimbabwe Anti-Corruption Commission
ZESN	Zimbabwe Election Support Network
ZDF	Zimbabwe Defence Forces
ZHRC	Zimbabwe Human Rights Commission
ZIMDEF	Zimbabwe Manpower Development Fund
ZimPF	Zimbabwe People First
ZRP	Zimbabwe Republic Police

IN SOLIDARITY WITH FAMILIES OF THE DISAPPEARED

This report is a tribute to the bravery and strength of the families whose loved ones have been subjected to enforced disappearance. May their hope never die and their light never extinguish. In the darkness of loneliness, may the efforts of human rights defenders across the world give them encouragement. Our thoughts and prayers are with them.



FOREWORD

TAKING STOCK OF OUR HUMAN RIGHTS JOURNEY

By Jestina Mukoko, Chairperson,
Zimbabwe Human Rights NGO
Forum

This year, 2018, the Zimbabwe Human Rights NGO Forum commemorates 20 years of service to advance human rights in Zimbabwe. In marking this milestone we take stock of how our country is faring in human rights. In that spirit, it gives me immense pleasure to introduce the 2017 State of Human Rights Report for Zimbabwe. This report, the first of its kind since the formation of The Forum, presents the most comprehensive review of the human rights situation in Zimbabwe for 2017 and identifies a broad range of human rights issues that require attention. It is a comprehensive audit of how far we are as a country from meeting those human rights goals that we have set ourselves in the Constitution and all other statutes that make up our human rights architecture. The report draws on the inaugural Human Rights Policy and Practice Reflective Meeting that we convened on 21 March 2018, bringing together members of The Forum to reflect on the journey that we traveled so far and identify the issues that the human rights community worked on in 2017. In reflecting further, the reflective meeting noted that while some progress was made in the realization of the rights guaranteed in our bill of rights, a lot still should be done.

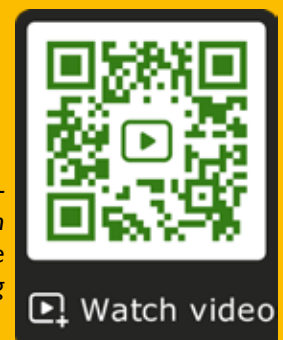
As this report makes clear, our expanded Bill of Rights has set for our society to pursue a very ambitious human rights programme with targets. It established a human rights architecture that creates rights and obligations for all of us. This report seeks to capture that inclusive spirit by looking at the obligations for the State and at the possible contribution for the private sector and interventions by non-state actors. While civil and political rights represent the traditional battleground between the State and citizens, in this report we cast our eyes beyond these two actors and invite everyone to play a role in the realization of all human rights. We look at the discourse of business and human rights and ask the question – what role



has business played in the violation of human rights in the past and how can that be remedied? We invite business to a conversation on how to create a partnership with the government and civil society for the furtherance of the human rights agenda. We consider and propose alternatives to current economic structures and ask how, as a country, we can build human-centric systems. We interrogate our adherence to the principles of transparency and accountability as set out in Chapter 17 of the Constitution. We look closely at the business and social spaces in our public life and ask – how inclusive and friendly are these spaces for minorities? These include

persons with disabilities – the easy with which our systems allow them to enjoy the basics of life like visiting a library or interacting with the court system. This report reveals how our society has been insensitive to sexual minorities including the LGBTIQ communities; persons with albinism, and proposes measures on how we can see beyond differences and promote human dignity for all including those who don't look like us, who do not see the way we see, and who don't love the way we love.

But what are human rights if we do not further the pursuit of happiness and prosperity for all? Anchored in the best practices as enshrined in section eight of our constitution on national objectives, we evaluate the broad ideals of what makes people prosper as a people and what are the policy deficits defeating such pursuits. In reaching deeper into territories uncharted before, this report puts transitional justice questions of our time under the spotlight, calling a spade a spade and proposing remedies that go beyond traditional condemnations. It is my hope that this report will contribute to an honest introspection for all of us. Beyond just reporting, may the real work begin, that of creating a society in which human dignity is sacred again, and those who violate this sanctity are held accountable.



Scan to watch the Chairperson's Address at the Human Rights Policy Reflective Meeting

Watch video



EXECUTIVE SUMMARY

by Blessing Gorejena,
Executive Director

Zimbabwe went through very dramatic experiences in 2017. Political temperatures within the ruling ZANU-PF party reached boiling point on 15 November 2017, when the military overthrew Robert Mugabe's government. Nine days later, Mugabe's former deputy, Emmerson Dambudzo Mnangagwa was sworn in as Zimbabwe's new President. The nine days in which the country was under the control of the military are shrouded in mystery. The country's constitution was completely overthrown as the President was effectively put under house arrest; members of the Presidential Guard and the police were reportedly disarmed. Scores of people were reportedly disappeared and others reportedly murdered during the so-called bloodless coup. Journalists at the Zimbabwe Broadcasting Corporation (ZBC) and Zimpapers were reportedly beaten as the military took control of State media information management. For human rights defenders, it was difficult to collect information and many violations that happened during the nine days of total military control will never be known.

On 15 November 2017, the Zimbabwe Human Rights NGO Forum convened a meeting and issued a statement calling for a speedy return to constitutionalism. The 15 November 2017 collapse of the government of Zimbabwe is testimony of

how weak the pillars of democracy in Zimbabwe are and vindicates the endless calls by the human rights community for reform of state institutions and for a separation between the institutions of government and the ruling party.

The year 2017 proved once again that the human rights violations in Zimbabwe are hardly sporadic violations but are systematic with state apparatus playing a key role. The interdependence nature of human rights was further reaffirmed. As the economic meltdown continued, social unrest increased. The police were the easy tool for the state to deal with social unrest as they continued to use heavy-handed tactics to deal with vendors and silence dissenting voices.

In past years, we have reported about perpetrators in general. In this report we introduce a ranking system to help identify the worst perpetrators of human rights. For 2017, quantitatively, ZANU-PF and the Zimbabwe Republic Police (ZRP) were the main perpetrators of human rights violations. In 2017 only, ZRP were the lead perpetrator in illegally evicting 933 families. In terms of severity, Zimbabwe Consolidated Diamond Company (ZCDC) was the worst violator of human rights leading to the death of five people in Chiadzwa, in Marange diamond fields. Other perpetrators included, the Zimbabwe National Army (ZNA), traditional leaders, municipal police, Central Intelligence Organisation (CIO), and some school authorities.

Other human rights violations in the form of murders, torture, abductions, arbitrary arrests and detention, assaults, harassment and intimidation and violation of fundamental freedoms were documented during the year. A total of five murder cases were documented from Chiadzwa in Marange diamond fields. Freedom of expression and of the media was severely restricted and journalists were sometimes assaulted during the scope of their employment. State agents continued to abduct and torture activists as a means of punishment and intimidation.

At policy level, the government continues to fall behind in obligations to protect and fulfill human rights. No commitment was shown to ratify the UN Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment (CAT) and its Optional Protocol. At the Universal Periodic Review of Zimbabwe in Geneva held in November 2016 and concluded in March 2017, the government rejected the recommendation by member States to ratify and domesticate the UN Convention against Torture. There was no sense of urgency on the part of government to align domestic laws with the constitution, four years after the Constitution Amendment (No. 20) Act 2013, came into effect.

The country came under threat of adverse constitutional amendments following the first amendment to the Constitution, which was passed in July as Amendment (No. 1) amending section 180 of the Constitution. The amendment gives the president power to appoint the Chief Justice, deputy Chief Justice and the Judge President of the High Court undermining constitutionalism and compromising the independence of the judiciary.

The political terrain was also influenced by voter registration that commenced in September using the new Biometric Voter Registration system. This resulted in voter registration mobilisation by different political parties that fuelled violence in some parts of the country. On a positive note, the right to register and vote in elections was extended to the so-called aliens following a High Court ruling in November. This means that registered “aliens” will for the first time, vote during the 2018 elections.

On the economic front, the economy was virtually at a standstill; prices of basic goods skyrocketed amid high unemployment. The spiraling unemployment rate, exacerbated by the closure of industries, relegated most Zimbabweans to abject poverty. Many Zimbabweans resorted to informal trading for their livelihoods. However, this occupation was beset with numerous challenges regarding regulation resulting in running battles with regulating authorities often assisted by the police.

The right to health, education and safe water were violated through the government’s inability to have these rights accessible to everyone. Service delivery in most towns and cities remained a challenge with poor waste management and erratic supplies of safe

and clean water. Systemic corruption in the public sector by political elites worsened the economic situation, as national resources were diverted into the pockets of a few politically connected individuals, at the expense of the provision of essential public services to most Zimbabweans. Food aid continued to be distributed along partisan lines.

Considering the above, the Forum recommends the following actions to the government of Zimbabwe:

- 1 Ratify and domesticate the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and its Optional Protocol and the International Convention on Protection of all Persons from Enforced Disappearances and criminalize and prosecute all cases of torture and enforced disappearances;
- 2 Uphold constitutionalism, democracy, and the rule of law through the holding of credible, free and fair elections in 2018. Legitimacy and authority to govern must only be derived from citizens through democratic elections;
- 3 Ratify the African Charter on Democracy, Elections and Governance (ACDEG) and speedily implement electoral reforms to ensure non-violent, free, fair and credible 2018 elections;
- 4 Investigate human rights abuses during the military coup of 15 November 2017 as called for by the National Transitional Justice Working Group (NTJWG) and endorsed by the Forum;
- 5 Urgently prioritize the realignment of all domestic laws with the Constitution; and
- 6 Improve the social, economic and political environment for all citizens to enjoy the rights and fundamental freedoms guaranteed both in the Constitution and under international law;

PART A

HUMAN RIGHTS ARCHITECTURE, MONITORING FRAMEWORK, AND FACTORS CONTRIBUTING TO VIOLATIONS

CHAPTER I

MAKING SENSE OF ZIMBABWE'S HUMAN RIGHTS ARCHITECTURE



INTRODUCTION

On 22 March 2018, the Zimbabwe Human Rights NGO Forum convened a reflective meeting to review the human rights situation in Zimbabwe in the year 2017. This report captures the substance of the reflective meeting and the identified key human rights priorities for Zimbabwe. The information is supplemented by reports supplied by other partners of the Forum. The outcome is this report, the most comprehensive national human rights appraisal for Zimbabwe, which represents the collective view of over 30 human rights organisations working in Zimbabwe.

The idea of a locally generated human rights situation report came from the realization that the Forum's member organisations are in constant contact with the grassroots at community level, therefore information gathered should be incorporated into a comprehensive national report because of its authenticity.

The report contains information on human rights violations; the nature and magnitude of abuses; the victims and perpetrators; events associated with human rights violations and factors that contributed to abuses in 2017. Case histories have also been incorporated to illustrate the nature and extent of these abuses. This report does not document every violation that took place in the year. It gives only an overview while detailed reports and cases are found in the Forum's Quarterly Human Rights Report (QHRP) and in the reports of other human rights organisations.

The Human Rights Monitoring Framework

The information used in this report was obtained from the following sources:

- Reports from members of the Forum;
- Citizen reports received via the Ziso/Illhlo platform;
- The Forum's Public Interest Unit;
- Partner organisations;
- General reports from walk in clients of the Forum;
- Verified press reports from the media; and
- Round table human rights policy & practice

reflective meeting convened by the Forum for its members.¹

The Forum collated and compiled all information received to produce a representation of the state of human rights in Zimbabwe in 2017.

THE HUMAN RIGHTS ARCHITECTURE

The following are the key elements of the human rights architecture used by the Zimbabwe Human Rights Forum in monitoring the human rights situation in Zimbabwe.

THE BILL OF RIGHTS

Chapter 4 of the Constitution of Zimbabwe Amendment (No. 20) Act 2013, which enshrines the bill of rights, is the baseline for all human rights reports. Zimbabwe's bill of rights protects the right to life, personal liberty, rights of persons in detention, right to human dignity, personal security, freedom from torture, slavery, forced labour, equality and non-discrimination, privacy, freedoms of assembly and association, freedom to demonstrate and petition, freedom of conscience, expression and media, access to information, language and culture, freedom of profession, trade or occupation, labour rights, freedom of movement and residence, political rights, the right to administrative justice, right to fair hearing, rights of accused persons, property rights, rights to agricultural land, environmental rights, freedom from arbitrary eviction, right to education, right to health care, right to food and water, marriage rights, women's rights, rights of the elderly, rights of persons with disabilities and rights of veterans of the liberation struggle. Although we have a progressive Bill of Rights, the Forum believes that section 78 (3) of the Constitution which prohibits same sex marriage conflicts with section 56 of the same Constitution, which provides for equality and non-discrimination and is not in line with the best practices the world over.

The United Nations Human Rights Council in the 2016 Universal Periodic Review Process encouraged the Government of Zimbabwe to repeal all discriminatory law. The Forum also believes that

¹ The Forum convened the human rights policy and practice reflective forum on 22 March to, among other things, review the Zimbabwe human rights situation in 2017.

the right to life guaranteed by section 48 (1) of the Constitution is absolute and that there must be no exceptions. The Forum thus monitors respect of human rights in line with the Constitution and the regional and international conventions.

OTHER STATUTES

Section 47 of the Constitution states that Chapter 4 of the Constitution does not preclude the existence of other rights and freedoms that maybe recognized or conferred by law, to the extent that they are consistent with the Constitution. As such, the Forum makes use of any other relevant law to monitor the protection, respect and fulfillment of any such rights as may be conferred by such laws and standards.

INTERNATIONAL OBLIGATIONS

Zimbabwe is a member of the United Nations (UN), the African Union (AU) and the Southern African Development Community (SADC). Several human rights instruments emanating from these bodies create obligations for Zimbabwe. We use such instruments to monitor adherence and make the necessary recommendations to the Zimbabwe authorities.

FACTORS THAT CONTRIBUTED TO HUMAN RIGHTS VIOLATIONS

The following are factors that directly or indirectly contributed to human rights violations during the year 2017:

- Succession disputes in the two main political parties, that is, ZANU-PF and the MDC-T which resulted in intra party violence;
- The Biometric Voter Registration (BVR) exercise. Heal Zimbabwe Trust recorded a total of 5 707 cases of human rights violations centered on the BVR²;
- The ZANU-PF youth interface rallies that were characterized by hate speech and verbal slurs;
- The 15 November 2017 military coup where several people are alleged to have been tortured, assaulted, harassed and intimidated with no official investigation or statistics;

- Non-alignment of domestic laws with the Constitution, especially repressive laws such as the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA) that undermine the enjoyment of fundamental freedoms;
- Failure by the state to prosecute perpetrators of human rights violations;
- The conflation of the State and ZANU-PF institutions leading to abuse of state resource for party business;
- Complete disregard of the law by the local municipalities leading to arbitrary eviction resulting in malicious damage to property and internal displacements;
- The capture of State institutions;
- Disregard by the State for the rule of law and judicial independence; and
- Shrinking space for civil society organisations (CSOs).

This year the Forum is commemorating 20 years of service to human rights. In this video, the Forum's founding Chairperson Tony Reeler reflects on this journey.



² See Heal Zimbabwe Trust's Biometric Voter Registration- Human rights Violations Report, February 2018, <http://www.healzimbabwetrust.org/wp-content/uploads/2018/02/BVR-Human-Rights-Violations-Report.pdf>

PART B

SUMMARY OF THE VIOLATIONS



CHAPTER 2

THE HUMANITY IN HUMAN RIGHTS

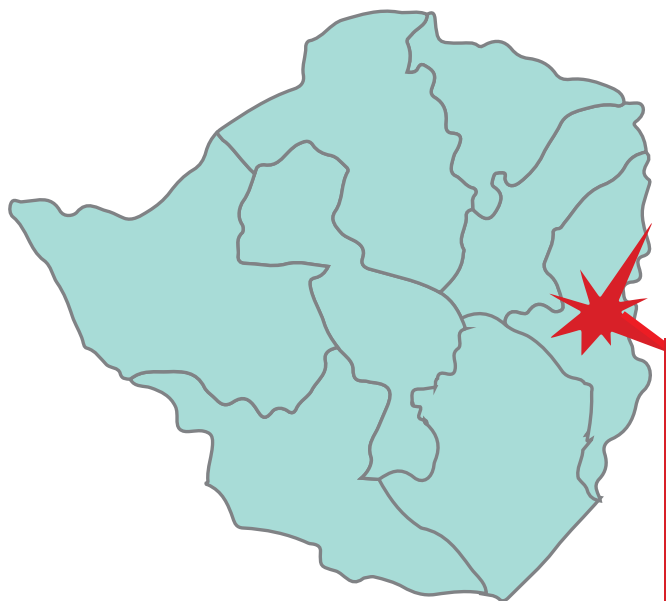
SECURITY OF PERSONS



VIOLATION OF RIGHTS RELATING TO HUMAN DIGNITY AND THE RIGHT TO LIFE

The Forum and the Centre for Natural Resources and Governance (CNRG) documented a total of five (5) cases of murder that occurred in Chiadzwa, in the Marange diamond fields involving the Zimbabwe Consolidated Diamond Company (ZCDC) security guards. Since the discovery of diamonds in the

Marange diamond fields in Manicaland province, artisanal miners trying to earn a living in Chiadzwa have fallen victim to the brutality of security companies contracted by businesses in Chiadzwa. Villagers and artisanal miners are subjected to various forms of violations including dogs being set to maul them, unlawful arrests and detention, arrests. The arrested persons are often subjected to torture, inhuman and degrading treatment and punishment, and assaults.



Marange

In August 2017, Didmus Ngorima, a former ZCDC employee was shot dead and buried at his home in ward 23 in Marange after being reportedly mistaken for an illegal diamond miner as he was taking a walk near the diamond mining area. Kudzai Zambuko, Marange, Wonder Kaiza and Kudzai Bariguru were also shot and later died in hospital days after the shooting. To cover up the deaths, the bodies were taken out of the minefield in an ambulance to create an impression that they were injured and not deceased.



Many villagers have been victims of violence by mining companies in the Marange area. Scan here to watch one of the victims telling his story.

³

See the Zimbabwe Human Rights NGO Forum, Monthly Political & Human Rights Violations Report, August 2017, available on, <http://www.hrforumzim.org/publications/>

ENFORCED DISAPPEARANCES AND ABDUCTIONS

In 2017, the Forum documented seven cases of abduction. The perpetrators were mainly members of the Zimbabwe National Army (ZNA), members of the Zimbabwe Republic Police (ZRP) and suspected agents from the Central Intelligence Organisation (CIO). The whereabouts of Itai Dzamara who was subjected to enforced disappearance on 09 March 2015 remain unknown. Although the High Court

ordered the government to provide information on his fate or whereabouts, ZRP has remained in contempt of that order. In the interest of justice to the victims it is imperative for the government to bring to account all those responsible for such heinous acts. During the 15 November military coup, it is alleged that several people were abducted although no formal reports were received.

SPECIFIC CASES

On 29 June 2017, Fanuel Keseke a University of Zimbabwe (UZ) student leader was abducted and disappeared by suspected State agents in Chitungwiza. This happened after he addressed a demonstration over fees hikes by medical students from the UZ college of Health Sciences. Keseke was offered a lift by unidentified men from Unit B Chitungwiza to an unknown place where he was held incommunicado and severely tortured until his release on 04 July 2017. On the day of his release, Keseke was given a bottle of some liquid to drink purported to be water. After drinking the so-called water, he passed out and only woke up at an open ground in Mbare, Harare. He eventually managed to walk to Mbare Police Station and made a report. The reference for his case at the police is RRB32004/17.⁴

On 15 September 2017, men in a Ford twin cab truck in Mufakose abducted Gerald Tabani Tshaka a member of the People's Democratic Party (PDP). Gerald was taken to Southerton police station where he was assaulted and tortured. He was released the following day and warned not to report the abduction and torture.⁵

On 9 October 2017, Munyaradzi Ndawana the Mashonaland West Provincial Chairperson of the Amalgamated Rural Teachers Union of Zimbabwe (ARTUZ) was abducted from his workplace, Slaughter Primary School in Makonde. Mr. Ndawana was taken to Chinhoyi NSSA building where six persons alleged to be members of the Central Intelligence Organisation (CIO) interrogated and harassed him for five hours before releasing him. He was threatened with unspecified action if he remains a member of ARTUZ.⁶

On 22 October 2017, ZANU-PF supporters in Chitungwiza assaulted Amos Kaliati an MDC-T activist and his wife. He was accused of campaigning for his party during the voter registration exercise. Amos was severely assaulted by ZANU-PF supporters, had his house destroyed. The youths then abducted him and took him to Betty Dokora's house where he was assaulted until the ZRP was called in and arrested him. Kaliati was accused of stoning councilor Betty Dokora's car. Amos was then charged with public violence.⁷

⁴ The Zimbabwe Lawyers for Human Rights, Statement on the disappearance of Fanuel Keseke, Available, on <http://www.thezimbabwean.co/2017/08/zlhr-slams-student-abduction-torture/>

⁵ Counselling Services Unit 2017, Political Violence Update, Unpublished report, September 2017

⁶ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, October 2017, Available on <http://www.hrforumzim.org/publications/>

⁷ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, October 2017, Available on <http://www.hrforumzim.org/publications/>

TORTURE & OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

The use of torture by members of the ZRP and CIO agents remained a serious human rights challenge in 2017. Due to a conflation of the state and the ruling party, torture is mostly used to achieve ZANU-PF political objectives. State officials involved, do so with impunity and the implicit support of State

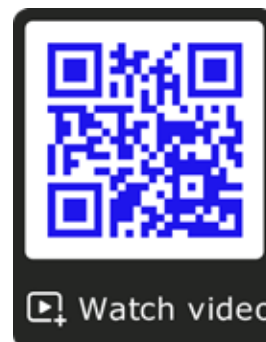
officials affiliated to the ruling ZANU-PF. The police continued to use brute force when dealing with vendors operating in the country's cities and towns. In the process many vendors and innocent civilians were affected as the police indiscriminately assaulted anyone in the process. The Forum documented a total of 184 cases of torture.



Hospitalised victim of torture



Scan here to listen to Samuel Wadzai speak about the plight of vendors in the face of police brutality.



Listen to Evans Gogo. talk about his torture.

SPECIFIC CASES

On 30 January 2017, Gershem Wakapira and another vendor who sell their wares close to Harvest House (MDC-T Headquarters) in Harare were severely assaulted by members of the police. One victim was attacked on the street. He sustained serious wounds in the head. The other victim was taken to the Harare Central Police Station, where he was severely tortured.⁸

On 7 March 2017, three villagers from Mola communal areas in Kariba district were severely tortured by members of the army. One of the villagers was severely assaulted by the soldiers for leaving a public road repair work before completion. The man had apparently worked for the entire day without food. Other villagers had advised him to leave early because his home was too far away from that point. The second one was falsely accused of stealing a cell phone and was taken to Chalala, a fishing camp along Zambezi River where he was tortured together with the Chief's son. The victims believe they were targeted because of their MDC-T activism. The police refused to record the cases against the soldiers.⁹

On 9 March 2017, as Mr. James Chikande a resident of Epworth, came from a beerhall, he was hit by a teargas canister fired by anti-riot police. The canister hit him in the face. The police were engaged in some running battles with members of the public at the shopping centre. The matter was reported at Dombo Police Station in Epworth. The Forum lawyers are representing Mr. Chikande. At the time of writing, the case was at the pre-trial stage.¹⁰

⁸ The Zimbabwe Human Rights NGO Forum, Monthly Political & Human Rights Violations Report, January 2017 Available on <http://www.hrforumzim.org/publications/>,

⁹ Counselling Services Unit, Political Monthly Violence Update, March 2017, Unpublished Report

¹⁰ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, March 2017, Available on <http://www.hrforumzim.org/publications/> Forum's

In 2017 the Forum documented a total of 52 cases of arbitrary arrests and detention.

ARBITRARY DETENTION

Arbitrary arrest and detention were used as tools of intimidation and harassment. Arbitrary arrests and detentions were used to target human rights defenders, political activists and members of the opposition political parties. The police often abuse section 24 of the Public Order and Security Act (POSA) to justify arrests of citizens exercising their right to demonstrate and petition, freedom of expression, association and assembly. According

ARREST

AND

to section 24 of POSA members of the public who intend to hold a public meeting must only notify police ahead of time about the public meeting. However, in practice, the police authorities insist those who wish to hold public meetings, gatherings or demonstrations must obtain police permission. This permission is often denied on flimsy grounds such as short notice period, non-availability of police escort in the case of a demonstration. Those who go ahead are often arrested for proceeding without police permission.

SPECIFIC CASES

- On 24 September 2017, Pastor Evan Mawarire was arrested over allegations of attempting to overthrow a constitutionally elected government as defined in Section 22 of the Criminal Law (Codification and Reform) Act. Mawarire was arrested during a church service at His Generation Church following a video he circulated on social media on 23 September 2017 over the country's worsening economic crisis. He however, was set free on 26 September 2017 after Magistrate Singano ruled that the State had violated his rights by failing to bring him to appear before the court within 48 hours as enshrined in Section 50 (2) (b) of the Constitution.¹¹
- On 28 October 2017, Fadzai Mahere an aspiring independent Member of Parliament for Mt Pleasant was arrested at a Shanduko soccer tournament she had organised at Groombridge Primary School. The tournament was part of her campaign for the 2018 elections. She was detained at Harare Central police station and was charged under the POSA.¹²
- On 10 November 2017, a young woman (foreign national) was arrested in Mutare after attending a commemoration of human rights atrocities that were perpetrated by members of security forces in Chiadzwa, Marange diamond fields. She was interrogated and detained under filthy conditions and later released.¹³
- On 31 December 2017, eight activists from the Mthwakazi Republic Party were arrested, illegally detained for five hours and tortured at Bred military barracks following a peaceful demonstration for justice, truth, healing and reconciliation during a prayer meeting held at Zimbabwe International Trade Fair (ZITF) in Bulawayo. The youths were later handed over to the police where they were detained for more than 48 hours and released without any charges.¹⁴

¹¹ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report September 2017, <http://www.hrforumzim.org/publications/>

¹² The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report October 2017, <http://www.hrforumzim.org/publications/>

¹³ Counselling Services Unit, Monthly Political Violence Update, November 2017, Unpublished Report.

¹⁴ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, December 2017, available on <http://www.hrforumzim.org/publications/>

POLITICALLY MOTIVATED ASSAULT

A total of 140 cases of assault were recorded and documented by the Zimbabwe Peace Project (ZPP). Cases of assault emanated mostly from inter and intra party disputes. Intra party battles in ZANU-PF emanated from factionalism. However, cases of violence within ZANU-PF were difficult to document, as information was not readily available. A case of intra party violence involving ZANU-PF supporters was documented in May. The violence broke at the ZANU-PF Bulawayo provincial headquarters, Davis Hall after a group of ZANU-PF supporters opposed to the National Commissar Saviour Kasukuwere disrupted a Provincial Co-ordinating Committee (PCC) meeting that was being chaired by Dennis

Ndlovu. This led to a violent confrontation between the two factions resulting in the stabbing of the district youth chairperson, Magura Charumbira, by youths from a rival faction who claimed that he was supporting an anti Kasukuwere campaign. The Chairperson of the Youth League Anna Mokgohloa was also severely assaulted.

A major cause of concern observed during the year was the frequent refusal by the police to investigate and prosecute cases of political violence involving ZANU-PF supporters as the perpetrators against opposition political party supporters, particularly the MDC-T activists.

SPECIFIC CASES

- On 13 May 2017, Allan Tivapasi an MDC-T ward official, who was participating in a door-to-door campaign for his party, was severely assaulted by local ZANU-PF supporters at Chiroti Business Centre in Hurungwe.¹⁵
- On 21 May 2017, the ZANU-PF District Youth Chairperson Magura Charumbira and the Youth League Chairperson Anna Mokgohloa were respectively stabbed and severely assaulted during an intra-party violence that erupted at Davies Hall in Bulawayo ahead of the ZANU-PF Provincial Coordinating Committee (PCC) meeting.¹⁶
- On 25 June 2017, Cosmas Katsuro an MDC-T youth member from Sanyati was assaulted by ZANU-PF supporters namely Tonderai Wadesango, William Ruzvidzo, Emmanuel Ruzvidzo, Brighton Ruzvidzo and Patrick Musona for wearing his party t- shirt. The matter was reported to the Sanyati ARDA police station under docket RRB2039782 by Sergeant Charamba but no arrests were made.¹⁷
- On 9 September 2017, Wilson Benhura the MDC-T district organising secretary and Wellington Jowa were reportedly assaulted at Makoni Business Centre in Chitungwiza by Lady Manhango and approximately 15 other ZANU PF supporters for wearing MDC-T party regalia. Wilson and Jowa were coming from a party meeting held at Chapungu Gardens when they met the attackers who were coming from a ZANU- PF presidential interface rally that was held in Bindura on the same date. Victims were taken to Makoni Clinic and the matter was reported to Makoni Central Police Station under CR 232/9/17.¹⁸

¹⁵ Ibid, May 2017

¹⁶ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, May 2017, available on <http://www.hrforumzim.org/publications/>

¹⁷ The Zimbabwe Human Rights NGO Forum, Monthly Political & Human Rights Violation Report, June 2017, available on <http://www.hrforumzim.org/publications/>

¹⁸ Ibid, September 2017

HARASSMENT AND INTIMIDATION

Cases of harassment and intimidation peaked from September with the commencement of voter registration using the Biometric Voter Registration system. The ZPP documented a total of 1089 cases of harassment and intimidation. The main perpetrators were ZANU-PF supporters and traditional leaders

ZANU-PF supporters and traditional leaders were

accused of harassing and intimidating villagers. Villagers were being intimidated that the BVR system captures an individual's face and this enables the system to link an individual to their vote. Zimbabweans have for a long time not been able to participate freely in political processes due to harassment and intimidation by mostly ZANU-PF politicians and youths who constantly remind villagers of the violent 2008 elections.

SPECIFIC CASES

On 16 July 2017, Kenneth Saruchera the ZANU-PF Manicaland provincial secretary for finance, together with a war veteran called Mutonhodza, visited St Noah primary school in ward 19 Nyanga South and allegedly ordered all teachers and non-teaching staff to attend a ZANU-PF rally which was to take place on 23 July 2017 at Sedze business centre. Kenneth Saruchera warned them that failure to attend is not an option as they will be dealt with the 2008 way (a reference to the widespread political violence in 2008).¹⁹

On 9 August 2017, teachers at Ruwangwe Secondary school, in Nyanga North ward 4 were forced to make contributions for Heroes Day commemorations that were to be held on the 11th and 12th of August 2017. A letter was read out from Mr. Zimunya, Chairperson of the District Development Fund in Nyanga demanding all civil servants to contribute US\$1 per head. It was also announced that failure to contribute would mean that the teachers were anti-government and would lose their jobs.²⁰

On 5 September 2017, ZANU-PF ward chairman Denshot Mazarura and Councilor Norman Chizeya for Muzarabani North ward 8 allegedly intimidated community members during a funeral in Gunduza village. It was reported that the two threatened to evict all opposition supporters from the area before the voter registration process commences. The two also forced everyone at the funeral to chant ZANU-PF slogans, thereby turning the funeral into a political rally as they took turns to forcibly address the mourners.²¹

On 28 September 2017, Honorable Joseph Chinotimba disrupted the mobile registration of births and National Identification Cards at Mutiusinazita in Buhera by demanding to address those queuing for registration. In his address Honorable Chinotimba threatened the people with an unknown future if they do not vote for him for a second term.²²

This year, Zimbabwe holds general elections. In this report we cover some acts that infringe on the rights to assembly and participation. In this video, the Director of ZimRights talks about civil society role in activating participation and ensuring a credible election.



¹⁹ The Zimbabwe Human Rights NGO Forum, Monthly Political & Human Rights Violations Report, July 2017, available on <http://www.hrforumzim.org/publications/>

²⁰ Ibid, August 2017

²¹ The Zimbabwe Human Rights NGO Forum, Monthly Political & Human Rights Violations Report September 2017, available on <http://www.hrforumzim.org/publications/>

²² Ibid

CHAPTER 3

**GIVE ME LIBERTY OR GIVE ME DEATH
FUNDAMENTAL FREEDOMS**





RESPECT FOR CIVIL LIBERTIES

Under this section, we document violations of rights focusing on freedom of assembly and association, freedom to demonstrate and petition and freedom of expression and of the media. These rights are all constitutionally guaranteed in sections 58, 59, 61 and 66 respectively. In practice, the most important human rights problems remained government's reluctance to respect civil liberties especially rights relating to freedom of association, assembly, and expression and of the media.

FREEDOM OF EXPRESSION AND OF THE MEDIA

The right to freedom of expression and of the media was under serious threat in 2017. There were no media reforms necessary to align the law with the Constitution. There was increased repression and silencing of journalists. Journalists were assaulted during the scope of their employment. State media remained captured by ZANU-PF, which manipulated it for its own benefits.

The Forum documented eleven cases in relation to freedom of expression and of the media. MISA-Zimbabwe documented eight cases of journalists who were assaulted during their duties. However, the 2017 statistics might be higher than documented as there are reports that Zimbabwe Broadcasting Corporation

(ZBC) staffers were allegedly assaulted on the 15th and 16th of November during the military coup. For fear of losing employment or further victimization, victims have been unwilling to make formal reports.

The creation of the Ministry of Cyber Security, Threat Detection and Mitigation was a highlight for the year. Presidential Spokesperson, George Charamba, appraised the nation that the new Ministry was aimed at "protecting the nation from cyber threats posed by the abuse of social media and to catch the rats that do mischief in cyberspace." Former President Mugabe added his voice by urging the then responsible minister to learn from the so called "success stories" of nations such as North Korea, Russia and China that have been able to stifle social media.

The first victim of this short ministry now falling under the Ministry of Media, Information and Communication Technology and Cyber Security was an American journalist Martha O' Donovan. Martha was arrested on the 2nd of November on charges of abuse of social media for retweeting a tweet insulting the then President Mugabe. Donovan was released on 04 January 2018. The State was ordered to proceed by way of summons if it intends to pursue prosecution of the journalist.



*Zimbabweans holding a flag with candles outside the Harare Magistrate court during the trial of #ThisFlag leader Evan Mawarire in 2016
Pic Shepherd Tozvireva*

SPECIFIC CASES

On 20 February 2017, the Newsday editor Wisdom Mdzungairi and reporter Everson Mushava were questioned by the police in Harare following publication of a story arising from a press conference held by former ZANU-PF Mashonaland Central youth leader Godfrey Tsenengamu, who was alleged to have encouraged war veterans to push for President Mugabe's ouster.²³

On 22 June 2017, journalists Garikai Chaunza and Frank Chikowore were arrested by police while covering the invasion of Lesbury Farm in Manicaland Province.

On 27 July 2017, three (3) Newsday journalists: Obey Manayiti, Shepherd Tozvireva, Abigail Mutsikidze, and their driver, Raphael Phiri were assaulted by plain clothes police in Harare. The assault left Manayiti with a swollen eye and bruised lip.

On 24 September 2017, pastor Evan Mawarire was arrested over allegations of attempting to overthrow a constitutionally elected government following a video he circulated on social media on 23 September 2017 on the country's worsening economic crisis. He however, was set free on 26 September after Magistrate Singano court ruled that the State had violated his rights by failing to bring him to appear before the court within 48 hours as enshrined in Section 50 (2) (b) of the Constitution.²⁴

On 29 September 2017, Daily News journalists, Mugove Tafirenyika and Brighton Goko suffered serious injuries after being assaulted by the police while covering demonstrations in Harare's central business district.

On 12 October 2017, Sten Zvorwadza, the chairperson of the National Vendors Union of Zimbabwe was arrested for allegedly undermining and insulting the President under Section 33 (2) (a) (ii) of the Criminal Law (Codification and Reform Act) Chapter 9:23. He was arrested for allegedly calling the President a day dreaming, old and dead -walking man in an interview he had with the Daily News. Sten was detained for 48 hours before being released on \$200 bail.²⁵

On 19 October 2017, Newsday senior reporter Richard Chidza was roughed up and slapped by ruling ZANU-PF party youths at the end of a press conference in Harare, as they demanded to know his source for a story on the rift in the youth league's leadership.

On 3 November 2017, Martha O'Donovan, an American citizen working with social media network Magamba Cultural Activist Network Trust, was arrested and charged with subversion and insulting the person and office of the president through retweeting a tweet insulting former President Mugabe. Martha was charged under Section 33 (2) of the Criminal Law (Codification and Reform) Act [Chapter 9:23] Donovan was released on 04 January 2018. The State was ordered to proceed by way of summons if it intends to pursue with prosecuting.²⁶

²³ MISA Zimbabwe <http://zimbabwe.misa.org/2017/06/23/journalists-arrested-detained-rusape/>

²⁴ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, September 2017, available on <http://www.hrforumzim.org/publications/>

²⁵ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, October 2017, available on <http://www.hrforumzim.org/publications/>

²⁶ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, November 2017, available on <http://www.hrforumzim.org/publications/>

FREEDOM OF ASSEMBLY AND ASSOCIATION

Freedom of assembly and association was curtailed during 2017 mainly using the Public Order and Security Act (POSA). ZRP were the main category of perpetrators. Restrictions on freedom of assembly and association targeted mainly journalists, political activists and human rights defenders (HRDs). As noted in previous reports by the Forum, the police conveniently misinterpreted the POSA provision regarding gatherings making it difficult for individuals and groups to assemble.²⁷ The provision on gatherings

was selectively applied in favour of ZANU-PF, which held public gatherings, and protest marches without following the provisions of POSA while other parties and organisations were denied authority and in some instances arrested.

There were also reports of ZANU-PF supporters who assaulted opposition party supporters for wearing their respective party regalia. Incidences of forced attendances to rallies and disruption of meetings were documented.

SPECIFIC CASES

On 11 February 2017, three members of the Transform Zimbabwe namely, Nicholas Magaya, Kudak washe Chikwama and Farai Justice were assaulted by ZANU-PF youths in Chitungwiza while on a clean-up campaign at Makoni Shopping Centre.²⁸

On 17 April 2017, Emma Efelemu was attacked whilst on her way to Mufakose to attend a funeral of an MDC-T official. Emma was wearing the MDC-T regalia and had a misunderstanding with a conductor over bus fare change. The argument later turned into a brawl when the conductor insulted Emma for wearing an MDC-T t-shirt. The unidentified conductor then pulled out Emma's dreadlocks and picked up a bottle from the grass, which he used to strike Emma on her nose, front teeth and knee. The matter was reported at Marimba Police Station.²⁹

On 9 August 2017, armed police officers disrupted an MDC-T Mashonaland Central Provincial meeting in Bindura. The MDC-T Provincial Youth Chairperson Tonderai Samhu reported that party supporters from all districts in the province were gathered to be addressed by the MDC-T party President Mr. Tsvangirai when the meeting was prematurely ended by police on grounds that the it had not been cleared regardless of it being an indoor meeting.³⁰

On 30 August 2017, residents in Mbare (Mupedzanhamo, Siyaso and Magaba areas) in Harare were forced to shut down business and attend a ZANU-PF First Family Solidarity March and Youth Interface Rally at the ZANU-PF Party Headquarters. Anyone who resisted was threatened with harassment and told never to conduct business in Mbare or Harare.³¹

²⁷ Refer to Part IV of the Public Order and Security Act

²⁸ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report February 2017, available on <http://www.hrforumzim.org/publications/>

²⁹ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report April 2017, available on <http://www.hrforumzim.org/publications/>

³⁰ Ibid, August 2017

³¹ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, August 2017, available on <http://www.hrforumzim.org/publications/>

FREEDOM TO DEMONSTRATE AND PETITION

Law enforcement agencies continued with the use brute force when either quelling peaceful demonstrations and protests or dealing with vendors. Protests were held mostly by activist challenging the government to address the deteriorating socio economic and political crisis. ZRP resorted to using

excessive force to crush protests exposing the knack for violence in the policing system. However, following the 15th November 2017 military coup, Zimbabweans were allowed to march against Robert Mugabe. Zimbabweans from all walks of life, including opposition political leaders and social movements marched peacefully and demanded Mugabe's resignation.



Riot police watch a man with a Zimbabwean flag over his shoulders saluting during a protest in Harare, 2016
Pic Shepherd Tozvireva

SPECIFIC CASES

On 12 July 2017, protesting MDC-T youths were violently disrupted by anti-riot police along the streets of Harare. The victims intended to present a petition to the Zimbabwe Electoral Commission (ZEC) on issues of electoral reforms. The victims were attacked with water cannons; rubber bullets baton sticks, booted feet and teargas, as they were gathering near the ZEC offices. Five of the victims had several gunshot (multiple lead pellets) wounds, eight were severely assaulted and two MDC-T youth leaders were arrested, detained and charged with malicious destruction of property. One of these victims was accused of murdering a police officer on 29 June 2017.³²

On 29 September 2017, members of the police violently quelled a demonstration in Harare organized by the ARTUZ under the banner, #Pockets Out/ #Izikhwama Pandle/ #Homwe Panze. The people were protesting cash shortages and the deteriorating economic conditions. The State responded by deploying heavily armed anti-riot police with teargas canisters, baton sticks, shields and dressed in black combat regalia. Areas such as Town House, Africa Unity Square and Copacabana had heavy police presence.

³² The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, July 2017, available on <http://www.hrforumzim.org/publications/>

CIVIC SPACE AND HUMAN RIGHTS POLICY FRAMEWORK

“A healthy or open civic space implies that civil society and individuals are able to organize, participate and communicate without hindrance, and in doing so, influence the political and social structures around them.” These three fundamental freedoms—of association, assembly, and expression define the boundaries of civic space (CIVICUS).

The state of civil society in Zimbabwe has been rated by international NGO, CIVICUS, as ‘repressed’

which is just second to the worst case of ‘closed’. The situation of human rights defenders in Zimbabwe was ‘under constant threat of prosecution’. There was no attention given to the development of a human rights policy for Zimbabwe. Calls by civil society and the international community to scrap POSA and AIPPA were ignored. Arrests of journalists continued closing space for information, assembly and expression. The following journalists were victims of police crackdown on the media – Obey Manayiti, Shepherd Tozvireva, Abigail Mutsikidze, Garikai Chaunza, Frank Chikowore, Wisdom Mudzingairi, Everson Mashava, Kholwani Nyathi among many others.

SPECIFIC CASES

- A major threat to constitutionalism and respect for the separation of powers principle was in July 2017 when the first Constitutional Amendment (Amendment No 1) was introduced to change section 180 of the Constitution and give the President power to appoint the Chief Justice, deputy Chief Justice and the Judge President of the High Court. This amendment severely undermines the independence of the judiciary.
- Victor Matemadanda, a leader of the war veterans, was charged with undermining the office of the president after he called for Mugabe’s resignation as president.
- Several journalists were arrested in violation of freedom of the media. These include Kenneth Nyangani who was arrested for reporting that the then First Lady Grace Mugabe had donated used underwear;
- Martha O’Donovan who was arrested and charged with attempts to subvert a constitutionally elected government after she retweeted a tweet allegedly assaulting the former president Robert Mugabe. Police raided the offices of Magamba Network and confiscated computers.
- The government established the short-lived Ministry of Cyber Security, Threat Detection and Mitigation to deal with what they called ‘threats from social media.’

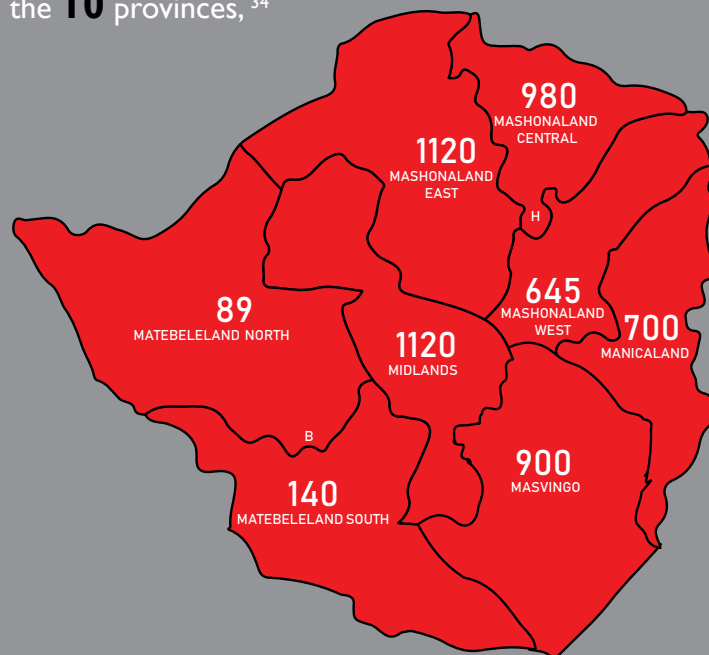
INTERVENTIONS BY CIVIL SOCIETY

- Civil society through the UPR carried out extensive advocacy for the government to stop the crackdown on civic space.
- In March 2017, Zimbabwe Lawyers for Human Rights (ZLHR) and International Service for Human Rights (ISHR) issued a statement at the UN Human Rights Council calling on the Zimbabwean Government to improve the situation of human rights defenders and align domestic laws with international human rights instruments and protections guaranteed in the Constitution.
- On 28 July 2017, the Media Institute of Southern Africa (MISA, Zimbabwe) led a journalists’ march to the Harare Central Police Station protesting police assault on private media journalists.
- ZLHR represented Evan Mawarire, Martha O’Donovan, and Victor Matemadanda.
- On 15 November 2017, the Forum members met and issued a statement calling for return to constitutionalism following the military coup.

DEVELOPMENTS

- Attacks on civil society have continued in 2018 with the Ministry of Social Welfare attempting to order all NGOs to come under its control and authority.
- ZANU-PF has continued to use the old infrastructure for repression, controlling the state media and its members taking over private media.
- The government has not shown the will to strike out of the statute books such laws that restrict civic space like POSA and AIPPA.
- The government has sort of abolished the notorious Ministry of Cyber Security but maintained the portfolio under the Ministry of ICT but with the same terms of reference.
- The Cyber Crime and Cyber Security Bill still needs a lot of cleansing.

The voter registration process was, however, characterized by human rights violations. Heal Zimbabwe Trust recorded a total of **5 707** cases of human rights violations centered on the BVR and “of the **10** provinces,”³⁴



Human rights violations distribution

GOVERNANCE, ELECTIONS AND PARTICIPATION

The year 2017 saw the intensification of the preparations for the 2018 national elections. This commenced with voter registration following the gazetting of the Presidential Powers (Temporary Measures) (Amendment of Electoral Act) Regulations 2017 as Statutory Instrument 117/2017, amending the Electoral Act. Voter registration was carried out using the BVR system for the first time. The BVR blitz lasted 72 days from the 10th of October to the 19th of December 2017. However, the BVR mop up exercise is still ongoing. According to the Zimbabwe Election Commission as of 7 February 2018, a total of 5 264 674 people had registered to vote.³³

Notable violations noted during the registration process included harassment and intimidation of registrants where registrants were asked to submit serial numbers on their registration slips to traditional leaders or ZANU-PF supporters and inter party violence. The violations were also accompanied with threats of withdrawal of food aid and agricultural inputs. The main perpetrators were identified in reports produced by the Forum³⁵, ZESN³⁶ and Heal Zimbabwe³⁷ as ZANU-PF leadership mainly ward Chairpersons, traditional leaders, ZANU-PF youth officers, councilors and war veterans.

³³ See the Zimbabwe Election Support Network, Biometric Voter Registration Update 14, <http://www.zesn.org.zw/wp-content/uploads/2018/02/BVR-Update-Number-19.pdf>

³⁴ See Heal Zimbabwe's Biometric Voter Registration- Human rights Violations Report, February 2018 <http://www.healzimbabwetrust.org/wp-content/uploads/2018/02/BVR-Human-Rights-Violations-Report.pdf>

³⁵ See the Forum's monthly Human Rights Violations Reports October- November 2017, available on <http://www.hrforumzim.org/publications/>

³⁶ See ZESN's Biometric Voter Registration Update reports, available on <http://www.zesn.org.zw/>

³⁷ See Heal Zimbabwe Trust's Biometric Voter Registration update reports. <http://www.healzimbabwetrust.org/wp-content/uploads/2018/02/BVR-Human-Rights-Violations-Report.pdf>

Traditional leaders continued to be partial in their conduct by openly declaring their allegiance to ZANU-PF. At the official opening of the National Conference of Chiefs in Bulawayo on 28 October 2017, the President of the Chiefs Council, Chief Fortune Charumbira called upon all chiefs to campaign for the then President as the ZANU-PF 2018 presidential candidate. Such behaviour violates section 281(2) of the Constitution. In past elections traditional leaders have been known for shepherding villagers to the poll centers making sure that they voted ZANU-PF.

There were also reports of ZANU-PF members forcing people to attend their meetings and to make contributions to national events such as Independence Day and Heroes and Defence Forces Day celebrations. The youth interface rallies convened by ZANU-PF were also characterized by forced attendance.

A violent pre-election environment characterized the two by-elections that were held in Bikita West and Chiwundura constituencies in January and July 2017 respectively. The electorate was subjected to harassment and intimidation, assaults, partisan distribution of food aid and farming inputs, disruption of political gatherings among other forms of violence.

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In line with its constitutional mandate as stated in section 243 (1), the Zimbabwe Human Rights Commission (ZHRC) carried out a monitoring and investigation mission with regards to the Bikita West constituency by-elections from the 13-16th of January and from

the 18th to the 24th of January 2017.³⁹ In its findings the ZHRC noted that although the voting process was conducted in a peaceful manner, the pre-election environment was very hostile to the opposition political parties whose members were subjected to harassment and intimidation, assault, violation of freedom of conscience, forced attendance to ZANU-PF rallies disguised as programs for distribution of food aid and agricultural inputs and minimal state media coverage for opposition parties. The Election Day witnessed a considerable number of assisted voters both young and the old. The Commission came up with a number of recommendations to political parties, the police, legislature, journalists, civil society, and the media commission which included a call to the ZRP to continue investigating politically motivated violence during election period, for ZEC to increase accessibility of polling stations especially by special interest groups such as the elderly and the disabled, and to expedite the alignment of POSA and AIPPA with the constitution amongst many recommendations.⁴⁰

*SABC TV crew running from Police water canon vehicle attack during a protest in Harare, 2016
Pic Shepherd Tozvireva*



³⁸ See on Bikita West by-election report, Heal Zimbabwe, available on <http://www.healzimbabwe.co.zw/wp-content/uploads/2017/01/Bikita-West-By-election-REPORT.pdf>

³⁹ See the ZHRC, Report on the Bikita west by-election, 21 January 2017, <http://www.zhrc.org.zw/download/bikita-west-by-election-report-21-january-2017/>

⁴⁰ Ibid

SPECIFIC CASES

On 17 January 2017, Maddock Chivasa the National Constitutional Assembly (NCA) candidate for the Bikita West by-election and his election agent Thomas Mudzamiri were assaulted by about 10 ZANU-PF youths at Nyika growth point in Bikita. The ZANU-PF youths were traveling in an unmarked vehicle and trailed the two of them as they were doing their campaigns. As they were about to depart Nyika Growth point in the evening, the ZANU-PF youths ambushed them armed with guns and started assaulting them accusing them of being “sell-outs”. Mr. Chivasa was assaulted by a gun in the face and sustained a broken arm while Mr. Mudzamiri sustained broken ribs. The assault took place in full glare of people present at the growth point.⁴¹

On 23 October 2017, in ward 4, Mt Darwin, Mashonaland Central, John Karikoga, a ZANU-PF member 2017 told community members at Kaporiri School that BVR kits will record videos as people vote in the 2018 elections. He further stated that the information would be used to detect who would have voted for the opposition.⁴²

On 29 October 2017, in ward 12, Mbire, Mashonaland Central, village head Sandauka's Secretary John Tembo from Jurujena village and acting on a directive from ZANU-PF District Chairperson Wellington Mukawa ordered all registered people to submit their serial numbers to him. Tembo also highlighted that those who refuse were going to have their names removed from the food aid beneficiaries list.⁴³

On 28 October, Chief Fortune Charumbira, the President of the Chiefs Council, called upon chiefs to campaign for President Robert Mugabe in the 2018 national elections. Chief Charumbira made these remarks at the official opening of the 2017 National Conference of Chiefs in Bulawayo. Chief Charumbira also said that the chiefs must support President Mugabe as the ZANU-PF 2018 presidential candidate because, he recognizes and respects traditional leaders. He further indicated that Mugabe was the candidate for chiefs in 2014 as agreed during the congress at the time.⁴⁴

On 06 November 2017, in ward 3, Nyanga North, Manicaland, village heads Mukunza, Nyamuvhuruza and Kwawa forced villagers to surrender their registration slips. Those who failed to comply were threatened with unspecified action.⁴⁵

⁴¹ See the ZHRC, Report on the Bikita west by-election, 21 January 2017, <http://www.zhrc.org.zw/download/bikita-west-by-election-report-21-january-2017/>

⁴² Heal Zimbabwe Trust Biometric Voter Registration Process Update 7, 20-28 October 2017, [http://www.thezimbabwean.co/2017/11/biometric](http://www.thezimbabwean.co/2017/11/biometric-http://www.thezimbabwean.co/2017/11/biometric-voter-registration-process-update-6/-voter-registration-process-update-6/)
<http://www.thezimbabwean.co/2017/11/biometric-voter-registration-process-update-6/-voter-registration-process-update-6/>

⁴³ Ibid Update 7, 29 October -06 November 2017, <http://www.thezimbabwean.co/2017/11/biometric-voter-registration-process-update-7/>

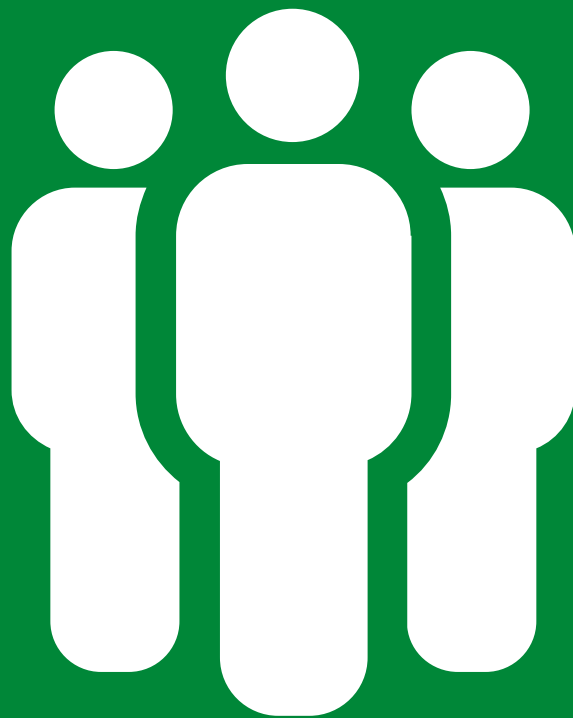
⁴⁴ Zimbabwe Lawyers for Human rights, Charumbira's call for chiefs to back Mugabe in 2018 elections, a blatant violation of the constitution, <https://www.zlhr.org.zw/?p=1027>

⁴⁵ The Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations report, November 2017, available on <http://www.hrforumzim.org/publications/>

CHAPTER 4

SEEING BEYOND DIFFERENCE

EQUALITY & NON-DISCRIMINATION



WOMEN'S RIGHTS

Although Zimbabwe has signed and ratified regional and international conventions that advance gender equality and women's rights, Zimbabwe continues to fall behind in upholding gender balance. Women's representation in key decision-making institutions such as parliament, local government and cabinet is far below the 50%.⁴⁶ Section 17 of the Constitution lists gender balance among the 34 national objectives. In this national objective, the Constitution obliges the state to promote full gender balance. Section 80 guarantees women's rights. Section 81 of the Constitution guarantees children's rights.

Zimbabwe Women Lawyers Association (ZWLA) assisted a total of 9309 cases in which women reported violations of their rights. The nature of the violations that women faced in 2017 include issues of divorce, reproductive health issues, inheritance, administration of estates, custody rights over children after a divorce or separation, access to justice, among many others. Despite the adoption of the Domestic Violence Act (2006), there is a high prevalence of violence against women especially domestic and sexual violence, which remains underreported in many cases.

Structural and administrative barriers continue to hinder women's participation in political and governance processes. Further political violence, a marked feature of Zimbabwe's elections impedes women from freely participating in political processes.

Despite the government's policy on free maternal health services, local authorities continued to be charged fees for such services in public health facilities. Some women were reportedly detained with their babies in public hospitals and clinics over non-payment of maternal fees.



SPECIFIC CASES

At policy level, the government in 2017 failed at the very highest level to meet the obligations created by section 17 of the Constitution regarding gender balance. Both Mugabe and Mnangagwa failed to uphold the Constitution in their successive administrations. On 9 October 2017, Mugabe announced a 42-member Cabinet with only nine women. On 30 November, Mnangagwa appointed his new Cabinet with 39 members of which just six were women, strengthening his predecessor's legacy of leading through a boys' club.

The country continued to experience deficits in the full implementation of commitments, allocation of adequate resources and political will to enable a conducive socio-economic and political environment for advancement of the agenda for women and girls to enjoy and assert their rights.

The Zimbabwe Gender Commission (ZGC) was appointed in June 2015 but has since been faced with many challenges, which include inadequate resources. The government has failed to provide sufficient resource to enable the ZGC to have a full Secretariat to enable it to fulfill its constitutional mandate as provided for by section 234 of the Constitution. By failing to provide adequate funding to the ZGC, the government has failed to meet the obligations established by section 325 (1) (a) of the Constitution which states that the Government must ensure that adequate funds are provided to the Commissions to enable them to perform their functions effectively. In the 2017 Budget, the ZGC was allocated US\$1,105,000.

⁴⁶ See the Zimbabwe SADC Gender Protocol Barometer 2017, available on <http://genderlinks.org.za/what-we-do/sadc-gender-protocol/sadc-protocol-barometer/>

CHILDREN'S RIGHTS

Despite progressive constitutional provisions on children's rights, there was no considerable progress towards realization of these rights in 2017. In January 2016, the Constitutional Court outlawed child marriages in Zimbabwe.⁴⁷ However, the government is still to repeal marriage laws in line with this ruling. As such, child marriages continued to be witnessed in 2017. According to Justice for Children, child sexual abuse cases for 2017 amounted to 106 with rape accounting for 37% of the cases. In 2017 Amalgamated

Rural Teachers Union of Zimbabwe (ARTUZ) recorded 42 772 violations targeting teachers while 48 200 violations were recorded targeting school children. Children's right to education which is guaranteed in section 75 of the Constitution was also violated by school authorities who were either withholding results or sending children away for not paying school fees. Child labour remained a challenge with reports of children being forced to drop out of school to supplement family income as farm workers or vendors.

SPECIFIC CASES

- On 4 July 2017, the headmistress of Avila Primary School, in Nyanga North, Manicaland province turned away three quarters of the school children over non-payment of fees.⁴⁸
- On 5 July 2017, the headmaster of Mvurwi Primary School, Mr. Richard Mudavanhu turned away school children over non-payment of fees.⁴⁹
- On 3 August 2017, Macrode Kariwo, a 9-year-old girl in grade 3 at Forrester J primary school was barred from attending school since the beginning of second term by the school head Mr. Takwara Ngoche. The headmaster reportedly asked Mr. Nicholas Kariwo the father of the child to enroll his daughter elsewhere or have her stay at home as she is "very dull in class" and visually impaired.⁵⁰
- In Manicaland, Mashonaland and Masvingo Provinces, schools and teachers were forced to contribute funding for ZANU-PF functions.



Credit: Andrew Shiva

⁴⁷ Judgment No. CCZ 12/2015

⁴⁸ Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, July 2017, available on <http://www.hrforumzim.org/publications/>

⁴⁹ Ibid

⁵⁰ Zimbabwe Human Rights NGO Forum, Monthly Political and Human Rights Violations Report, August 2017, available on <http://www.hrforumzim.org/publications/>

SEXUAL MINORITIES

Section 56 of the Constitution guarantees equality before the law and the right to non-discrimination. Zimbabwe, however, has over a long time resisted the recognition of sexual minorities like the members of the LGBTIQ communities who face stigmatization and discrimination based on their sexual orientation. Section 78 of the Constitution, which prohibits same sex marriage, expresses this long standing policy. Because of this policy, members of the LGBTIQ community have been subjected to discrimination, which manifests itself in many ways, which include refusal of access to emergency health care services. Zimbabwe NGO and leading cam-

paigner for LGBTIQ issues, GALZ, has in the past been raided at their offices, property confiscated and staffers arrested.

The major task for Zimbabwe remains destigmatisation, leading to efforts at acceptance and respect for difference. This is better achieved through dialogue and education on sexuality and development of policy on social inclusion. In 2017, GALZ held dialogue sessions with Parliamentarians on sex, sexuality and the rights of LGBTIQ persons. However, despite these initiatives, attacks on members of the LGBTIQ community continued in 2017.

SPECIFIC CASES



In 2017, GALZ documented 42 cases of human rights violations against the LGBTIQ community.



There were 5 cases of blackmail, which were reported directly to the police.



Two cases were taken to court by the Zimbabwe Lawyers for Human Rights (ZLHR)



One case was reported to the Zimbabwe Human Rights Commission (ZHRC) being a case against a pastor.

On matters of policy, for Zimbabwe to take its rightful place and gain respect in the international community, retrogressive and discriminatory policies, which violate its human rights obligations, must end.



PEOPLE WITH ALBINISM (PWA)

People with Albinism belong to a group of minorities in Zimbabwe. There are nearly 40 000 people with albinism in Zimbabwe. In Zimbabwe, the discourse recognizing the rights and needs of the PwA has been slow to take shape. Violations remain underreported. Among many minority groups mentioned in the Constitution, the Albino community is conspicuous by its absence; it was totally ignored. However, that sad reality is slowly changing because of the activities of many organisations that are raising awareness of the situation of the Albino community. Among the more severe violations against the community of people with Albinism are the violation of the right to life owing to cultural practices that treat babies with

Albinism as cursed hence are killed. In other places, persons with Albinism are victims of ritual killings owing to the false belief that body parts of people with Albinism have mystical or magical powers. From a health rights perspective, communities of people with Albinism have special needs like sunscreen lotion, which provides protection for their skin against the sun, enabling them to live a healthy life and continue to be active in their communities. However, these protective products are expensive and beyond the reach of many. Failure to access protective products is a matter of life and death. People with Albinism are at higher risk of getting skin cancer, which is a fatal infection. Other human rights violations emanated from discrimination by persons and institutions that have no appreciation of differences.

SPECIFIC CASES

- In October 2017, Albino Charity Organisation of Zimbabwe (ALCOZ) reported that landlords across Zimbabwe are shunning people with albinism creating a crisis of accommodation for people with albinism and perpetuating the stereotypes that advance the marginalisation of people with albinism.
- On the policy level, ALCOZ called on the government to reinforce its efforts in spearheading albino-friendly policies that can economically empower the group in self-sustenance and help eliminate the ongoing harsh stereotypes.
- Right to health- PwA suffer sudden deaths due to cancerous sores and limited access to treatment.
- Discrimination in the workplace, continued in 2017. PwA are constantly denied the right to employment because of their skin colour.
- Domestic violence was a major issue for 2017. Mothers of children with albinism were reported to have been abused by their spouses because they had given birth to children with albinism.
- Ritual killings that are perpetrated against people with albinism. The existence of myths and superstitious beliefs that PwA possess charm that can provide good fortune and wealth has led to ritual killings for people affected by the condition.

PEOPLE WITH DISABILITIES

The Constitution contains progressive provisions with regards to the realization of the rights of people with disabilities (PWDs.) The Constitution recognizes the rights of PWDs among its founding values and principles and as part of the national objectives. Section 22 provides that all institutions and agencies of the government at every level must recognize the rights of persons with physical or mental disabilities, particularly their right to be treated with respect and dignity and sign language is one of the officially recognized languages of Zimbabwe.⁵¹ The Constitution also addresses other issues aimed at promoting the rights of PWDs e.g. reserving seats for PWDs in Parliament. Zimbabwe ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2013 and is yet to adopt legislative measures to implement its commitments under the Convention. Of immense importance is the Disabled Persons Act [Chapter 17:01] 2001 which regulates several matters as they relate to the rights of the disabled persons. The Act provides for the right to access social, and public services as enshrined under subsection 8 of the Disabled Persons Act [Chapter 17:01] and section 83 of the Constitution.

PWDs are one of Zimbabwe's most marginalized groups. They suffer from widespread violation of their fundamental freedoms and rights. They face exclusion from education, employment, cultural activities, festivals, sports and social events and are especially vulnerable to poverty, physical and sexual violence, lack of access to health care, emotional abuse and neglect.

BUILDING A DISABILITY FRIENDLY SOCIETY

Realising the rights for persons with disabilities listed in the Constitution requires a great deal of investment in making public spaces friendly for persons with disabilities. This goes beyond simply what government can do but brings in the private sector especially such institutions that provide services for the public. Section 22 (4) of the Constitution obliges the State to take appropriate measures to ensure that buildings and amenities to which the public has access and are accessible to persons with disabilities.

The same obligation on the state must apply on all institutions that offer services to the public like banks. In considering what society can do, the Forum carried out a survey on how friendly the social services in Harare Central Business District are for persons with disabilities. The Forum visited 21 institutions in Harare to assess disability friendliness in three areas:

- 1 access for physically impaired persons into the building
- 2 readiness and capacity to assist the visually impaired
- 3 readiness and capacity to assist the hard of hearing

The results are an indictment on both government and private institutions.

Of the 21 institutions investigated, only three were ready and capable of assisting persons who are deaf or experience difficulties with hearing. Both state and private hospitals visited do not have sign language interpreters effectively placing an obstacle in the way of the right to health care for affected persons (section 76). 11 buildings out of 21 (including hospitals) have wheelchair ramps and elevators that work. However, there are still old buildings, which do not have provisions for wheelchair ramps. These accounted for 10 of the visited institutions. On a positive note, assistance for the visually impaired among the visited institutions were 16 though it could not be ascertained if the assistance comes from trained professionals and is sanctioned by the institution or it is just courtesy from security guards and compassionate staff members. Three leading banks were visited in the CBD and none of them had the capacity or showed readiness to assist the deaf.

This was also true of the Reserve Bank of Zimbabwe. Munhumutapa Building, the seat of government showed no readiness or capacity to assist disabled persons in all three categories assessed. Although the authorities interviewed claimed there were ready to assist, such assistance was not made readily available when our undercover team attempted to use such

⁵¹ See section 6 of the Constitution of Zimbabwe Amendment (No. 20) Act 2013

facilities. The same is true of the passport office. The High Court of Zimbabwe showed readiness and capacity in all three categories. Rotten Row Courthouse and the Master of High Court checked one out of three. Harare City Council's main facilities of service showed lack of readiness and capacity to

assist the deaf and mute. These results show that it is difficult to survive in Harare if you are a person living with a disability. A special report will be released with more details on this aspect.

SPECIFIC CASES

- As the country prepares for the 2018 elections (expected between 22 July and 21 August), PWDs remain excluded from voting with privacy. The Electoral Act requires that assistance be granted to visually handicapped persons in voting essentially denying such persons of their privacy and exposing them to harassment after the vote.
- Many buildings in cities remain inaccessible to persons with disabilities. These include Cleveland House, the service centre for the city of Harare.
- The Forum noted that all the country's major banks did not have disability friendly service points making their services inaccessible to persons with special needs.
- At policy level, Zimbabwe has not yet ratified the Convention on the Rights of Persons with Disabilities (CRPD)
- Section 193 of the Criminal Procedure and Evidence Act provides for different conditions for the detention of accused persons proven or suspected to be deaf or mute in a manner that shows unconstitutional discrimination and unnecessarily causes suffering on such persons.
- On 26 April 2017, a group of persons living with disabilities were evicted from a flat run by Leonard Cheshire Disability Zimbabwe Trust in the Avenues of Harare.⁵²
- On 23 June 2017 268 people (67 households) in Kingsdale had their houses demolished under a directive from Cuthbert Mupame. The reason surrounding the demolition was the failure to pay inflated monthly instalments from \$5 to the \$27. It is alleged that Mupame destroyed these structures with the help from the Zimbabwe Republic Police. The people who included children, women and the elderly were left homeless and in desperate need for shelter.
- Violation of the right to access to information for example the national budget was not translated into sign language
- Right to a fair hearing continued to be violated because of the lack of sign language translators and Braille services in courts and the differences between official sign language and other variants
- Deaf people are not represented in parliament and major political platforms.
- Violation of the right to health - there is communication breakdown in health care systems as nurses and other hospital staff have no training in sign language.

⁵²

<https://www.newsdia.co.zw/2017/04/evicted-people-disabilities-refused-help/>

CHAPTER 5

CARING FOR OUR COMMON HOME ENVIRONMENTAL AND PROPERTY RIGHTS



ENVIRONMENTAL RIGHTS

It is widely acknowledged that environmental rights have a direct impact on human life, human conditions and the quality thereof and that these are all inextricably intertwined. One such example is the effects of environmental damage on human lives and the various types of harms that can occur. Environmental damage can undermine human health immediately or increase the risk of future health problems. It can destroy a resource upon which humans rely for their livelihood and it can invade the privacy of their persons or their homes, or take away their property.

These impacts, from the individual to the social, potentially violate rights protected by binding regional and international human rights treaties. Therefore, the recognition of environmental rights as human rights in the constitution is a crucial step of progress towards the human rights discourse because of the interconnection between environmental damage and human rights.

Environmental rights which have always been based on the premise that human beings are entitled to a generally satisfactory environment has not yet received the support of a singular binding international agreement focusing primarily on environmental rights. However, it has found recognition in binding regional instruments such as the African Charter on Human and Peoples Rights (ACHPR), the European Convention on Human Rights (ECHR) American convention on Human Rights (ACHR) and the Aarhus convention United Nations Economic Commission for Europe (UNECE)'s Convention on Access to information, public participation in decision making and access to justice in environmental matters).

International and regional human rights agreements and customary international law create obligations for the governments that are parties to them. Not only must governments refrain from violations of these rights but they also have a duty to prevent such violations from occurring within their borders (Inter-Ministerial Task-Force on alignment Legislation (IMT) Technical Committee, 2017).

Uncollected refuse near businesses

The Environmental Management Act was promulgated in 2002 and was the product of several influences including the 1992 Rio Earth Summit conference whose focus was the state of the global environment and the relationship between economics, science and the environment in a political context. The conference concluded with the Earth Summit, at which leaders of 105 nations gathered to demonstrate their commitment to sustainable development. All nations present accepted without change the Rio Declaration, a non-binding statement of broad principles for environmental policy (Rio Earth Summit 1992).

Section 73 of the Constitution guarantees every person's right to an environment that is not harmful to their health or well-being and to have the environment protected for the benefit of present and future generations. The Environmental Management Act (Chapter 20:27) provides for the sustainable management of natural resources and protection of the environment, the prevention of pollution and environmental degradation, the preparation of an environmental plan and other plans for the management and protection of the environment and the establishment of the Environmental Management Agency (EMA). The main perpetrators of violations against environmental rights for 2017 were the firms operating in the extractive industry through mineral exploration and mining activities. Mining companies linked to government have been cited as the main culprits, in violating environmental regulations because they insist on starting operation before fulfilling the requirements. They were followed by the local municipalities through failure to offer refuse collection services to residents and failure to protect wetlands. Among the local municipalities, City of Harare topped the list of perpetrators in 2017. Most residential places have become health hazards because of uncollected refuse.





Examples of uncollected refuse

SPECIFIC CASES

In October and November 2017, the Environmental Management Agency (EMA) recorded four accidental spillages of hazardous substances. The spillages included sulphuric acid, cooking oil and liquid oil. EMA fined four companies namely Western Transport, Zim Bulk and Devbel.

In February 2017, the Chitungwiza Municipality was fined by EMA for dumping raw sewage near people's homes.

On 29 November 2017 The Zimbabwean newspaper in a headline entitled, 'Construction on Wetlands Ramps Up Water Stress in Zimbabwe' EMA reported that 27 wetland areas in Harare and Chitungwiza have been partially built on. In Chitungwiza, 14 out of 15 wetlands have been built on, and 13 of Harare's 29 wetlands have been taken over for construction. Approximately 60% of Harare and Chitungwiza's wetlands have been invaded or taken over for construction purposes and all these constructions on wetlands are unlawful.

The Environment Management Act (Chapter 20:27) through section 113 provides for the protection of the wetlands. Wetland management is regulated by the Environmental Management Act (Chapter 20:27) that states that "no person shall, except in accordance with the Board and the Minister responsible for water resources, disturb any wetland by drilling or tunneling in a manner that has or is likely to have an adverse impact on any wetland or adversely affect any animal or plant therein or introduce any exotic animal or plant species into the wetland".

According to the Independent Online newspaper (IOL) of the 17th of April 2017 in a headline entitled, 'Gold fever leaves trail of destruction in Zimbabwe' reported that, in Tarka Forest, a timber estate owned by Allied Timbers in Chimanimani district, more than 600 hectares of prime timber have been damaged to make way for the illegal digs, according to company executives.

The illegal gold mining in Tarka Forest reached "alarming levels", and resulted in the pollution of streams and rivers, and destruction of standing timber. The sad thing is that not only did the illegal gold panning cause extensive environmental damage; it also aided the trade of gold on the black market as the panners did not have legal authority to be on the timber farm and therefore the gold they got would not be sold on the informal market which is Fidelity Printers. Such huge revenue losses for a struggling government like the Zimbabwean one is a real gargantuan tragedy as the monies could have gone into service delivery in key social services like health, education and water and sanitation. Instead of the Zimbabwean government intervening in this imploding situation the then Minister for Mines and Mining Development Walter Chidhakwa said that it was the responsibility of landowners or affected businesses to evict the illegal miners. The illegal mining reduces the timber resource, thus affecting direct and indirect employment, economic development, foreign currency earnings and leading to environmental degradation and reduced resilience to climate change effects.

The Zimbabwe Environmental Law Association (ZELA) (2017) reported that Chrome mining activities have desecrated some cultural heritage sites in Shurugwi and Zvishavane.⁵³ Mining operators are said to have carried out excavation of mineral resources in sacred hills of Chikupa and Guruguru and at Kaposi site a natural spring and wetland as well as at Dzivarasekwa in Mapirimira another natural spring. Traditional leaders alleged they were not adequately consulted before mining commenced as they would have ordinarily conducted some rituals. Because of this violation the natural springs have since dried up. The sites are significant to the community because this is where traditional leaders conduct annual rain making ceremonies, which can no longer, take place as the area is now under mining.

⁵³

Chrome mining in Shurugwi and Zvishavane, curse or blessing? Report by the Zimbabwe Environmental Law Association, 2017, <http://www.zela.org/publications.php>

PROPERTY RIGHTS

The year 2017 marked 17 years of the government's fast track land reform programme (FTLRP), which rapidly changed Zimbabwe's land ownership structure; removing almost all white commercial farmers from the land and replacing them with African farmers. Among the factors that have been most disruptive to the overall Zimbabwean economy are the violent farm invasions and the 2000 chaotic FTLRP, which did untold damage to Zimbabwe's international reputation and standing. A renewed wave of black on black land expropriation has been on the increase as powerful politicians and those connected to them have been evicting earlier beneficiaries of the land reform programme especially those producing high end value crops and those prime agricultural land and rich wildlife sanctuaries. In 2017, land invasions and arbitrary evictions continued unabated. To our knowledge, no white farmer from year 2000 up to

now has been compensated for improvements to the land they had prior to the FTLRP and no agreed valuation mechanism/matrix has been set by the government to determine the value of developments on the acquired farms. Zimbabwe's evicted white farmers have reportedly demanded a US\$9billion payout for assets expropriated during the country's controversial land redistribution programme.⁵⁴ 2017 also witnessed an intensification of black on black land invasions with black farmers losing prime land to the powerful politicians and to those who are politically connected.



Image Credit: COSV

⁵⁴

News24 'Zim's evicted white farmers 'demand \$9bn pay-out from govt', 27 January 2018

<https://www.news24.com/Africa/Zimbabwe/zims-evicted-white-farmers-demand-9bn-pay-out-from-govt-report-20>

SPECIFIC CASES

In January 2017, two Chiredzi farmers, brothers, Jeffrey and Henry Sommer were on the verge of losing their thriving intensive crocodile farming venture in a fresh land grab spree in the Lowveld, even after they reportedly incorporated locals. The disturbances at the farm, with an annual export value of US\$1 million, were threatening the future of more than 62 workers and the 23 500 reptiles kept at the farm. The Sommers were on the verge of losing their 71-hectare farm after one Gilbert Nyasha invaded the farm, armed with an offer letter he received in 2012 and therefore one wonders why it took Nyasha 5 years to produce his offer letter and demand the eviction of the Sommers. All this mayhem came at a time when the Sommers had already lost an initial 100 hectares of their farm which had been gazetted by the government and the two were only left with the 71 hectares that Nyasha was now coming after as well.⁵⁵

In June 2017, the military and several ZANU-PF politicians invaded Blackfordby College of Agriculture one of the best agricultural training institutes in Southern Africa, amid concerns that equipment worth thousands of dollars could be seized from the tertiary institution. The farm measuring 1 350 hectares, on which the agricultural college is situated in Concession, Mashonaland Central province, is owned by Tetrad Investment Bank which is under provisional judicial management.⁵⁶

On 30 October 2017, police officers raided and demolished Mazowe villagers' homesteads at Manzou Farm in Mashonaland Central province without a court order to justify the forced evictions. During the forced evictions, the ZRP officers destroyed homesteads, household furniture and the villagers' crops including maize grain and groundnuts. In destroying their homesteads and evicting them, ZRP officers violated the farmers' fundamental rights including their right to property. However, on a positive development on 2 March 2018, the villagers were awarded more than US\$30 000 as compensation by the courts. The villagers were represented by ZLHR.

In November 2017, ZANU-PF party activists reportedly invaded a white-owned commercial dairy farm just outside Chinhoyi town. This invasion came after former President Mugabe, who was seeking re-election in polls due in 2018, urged his supporters in June 2017 to grab all the few remaining white-owned commercial farms in the countryside to pave way for Zimbabweans who did not have access to land.⁵⁷

In December 2017, it was reported that, four out of 17 farmers resettled in 1989 in Mpapa in Mwenezi under a Triangle Ltd (now Tongaat Hewlett) programme, received letters of eviction. They were ordered to wind off business at their 50-hectare farms by the end of December 2017. The four had already written to the former Lands and Rural Resettlement Minister Douglas Mombeshora, contesting their evictions before the change of government in November 2017. According to the eviction letters reported on by Newsday Weekender dated October 16 and signed by Boaz Vurayayi the District Lands Officer for Mwenezi, Shane Warth was being ordered to wind off farming activities on Lot 12 of Lot 15 of NRA by December 31 to make way for Solicitor Mutendi.⁵⁸ The letters stated that the farms were gazetted in 2017 for compulsory acquisition by the Lands and Rural Resettlement Ministry on behalf of the Government of Zimbabwe and were now State land.

⁵⁵ Commercial Farmers Union Report on 'Chiredzi croc farm invaded' 26 January, 2017 www.cfuzim.org/~cfuzimb/index.php/newspaper.../7755-chiredzi-croc-farm-invaded

⁵⁶ The Independent newspaper 'Military, ZANU-PF bigwigs invade Tetrad college farm' 09 June 2017, <https://www.theindependent.co.zw/2017/06/09/military-zanu-pf-bigwigs-invade-tetrad-college-farm/>

⁵⁷ News 24 'Why are you sympathizing with the white man?' 03 November 2017, <https://www.news24.com/Africa/Zimbabwe/why-are-you-sympathising-with-the-white-man-mugabes-zanu-p>

⁵⁸ Newsday 'White farmers still being kicked out of Zimbabwe farms' 30 December 2017, <https://www.newsday.co.zw/2017/12/white-farmers-still-being-kicked-out-of-zim-farms/>



A child reading books outside a house burned during political violence in Chinhoyi in 2010 Pic Shepherd Tozvireva

The total number of displaced households was 1 873. The total number of people affected is estimated at 6 644.

DEVELOPMENTS

The Mnangagwa led government has made a good start on redressing land disputes by allowing the remaining 300-400 white farmers to also get 99-year leases for their farms. Some cases in point include that of white Zimbabwean farmer Robert Smart who got back his Lesbury farm, which is in Makoni district of Rusape post November 2017. Gun-wielding police evicted Smart and a mob associated with the ruling ZANU-PF party in June 2017 and a ruling party aligned cleric, Bishop Trevor Manhanga. Smart, however, returned to a hero's welcome in December 2017 after the government facilitated for him to get his farm back.

INTERNAL DISPLACEMENTS

From the surveys conducted mainly by the Forum and ZPP, IDPs were reported in four provinces across Zimbabwe.

Apart from the fact that these people were left homeless, children lost out on education. Economic activities were disturbed and social relationships were disrupted. These challenges were exacerbated by the ailing economy, uncertain political situation and the lack of state capacity in assisting internally displaced persons. These factors have subjected the displaced persons to nasty and brutish conditions leaving them vulnerable to hunger and diseases.

Mashonaland central was the worst affected province accounting for 38% of all internal displacements.

Followed by Harare province with 33%, Mashonaland West with 15% and Mashonaland East with 14%. Mashonaland Central and Harare Province had the highest number of internal displacement. Women and children constituted 57% of the total number of displaced people.

DEVELOPMENTS

The first meeting of the Conference of state parties to the Kampala Declaration to discuss the Plan of Action for the implementation of the Kampala Convention adopted by conference of states parties was held in Harare, Zimbabwe 5 April 2017.⁶² This marked a crucial step in Zimbabwe and Africa about the welfare of IDPs. The conference sought to address five objectives of the Kampala convention:

- Establish a framework for solidarity, cooperation and promotion of durable solutions between states parties;
- Establish a policy framework for the prevention, protection of and assistance to internally displaced persons (IDPs) at national level;
- Promote and strengthen regional and national measures to prevent and eliminate the root causes of internal displacement and provide for durable solutions;
- Promote the obligations and responsibilities of State Parties; and Identify specific obligations, roles and responsibilities of armed groups, non-state actors and other relevant actors including civil society organisations.

We recommend that the Government of Zimbabwe must urgently translate the provisions of the Kampala Convention into national legislation in a way that establishes a national framework addressing internal displacement in a comprehensive manner.



Children playing outside a house burned during political violence in Chinhoyi in 2010 Pic Shepherd Tozvireva

SPECIFIC CASES

On 2 February 2017, about 80 households (357 people) were evicted at Saint James Craig farm in Goromonzi by the police. The eviction was allegedly carried out on behalf of Chris Thandi, the purported new owner of the farm. Property was destroyed in the process.⁵⁹

On 07 April 2017, members of the police attacked Manzou villagers from Nehanda Village, Arnold Farm, and had their property destroyed. A total of 644 households residing at the farm since the year 2000 were affected. Non-uniformed officers came in UD trucks and unregistered Nissan vehicles, which they used to ferry the villagers' property to Rivers Farm and to some unknown destinations. On the 4th of October 2017, the 24 newly deployed ZRP Support Unit officers reportedly went on a rampage assaulting and demolishing all the villagers' houses, giving them a 24-hour ultimatum to leave the farm. They also instructed villagers to refrain from all farming activities. They alleged that this was a directive from the former First family.⁶⁰

On 3 August 2017, a total of 250 households were evicted from Maganga Farm by ZANU-PF assisted the ZRP officials who claimed that the Maganga Farm had been redistributed to a certain senior government official. This left 643 people homeless. Reports also indicated that the houses, which were mainly constructed using mud and thatch roofed, were torched together with property and food belonging to the incumbents.

On 10 November 2017, approximately 700 houses belonging to Chitungwiza Eyestone Youth Housing Cooperative were destroyed leaving 2500 people homeless. There was no court order issued to the residents in preparation of the demolitions. No alternative accommodation was provided for those arbitrarily evicted and having their houses demolished.⁶¹



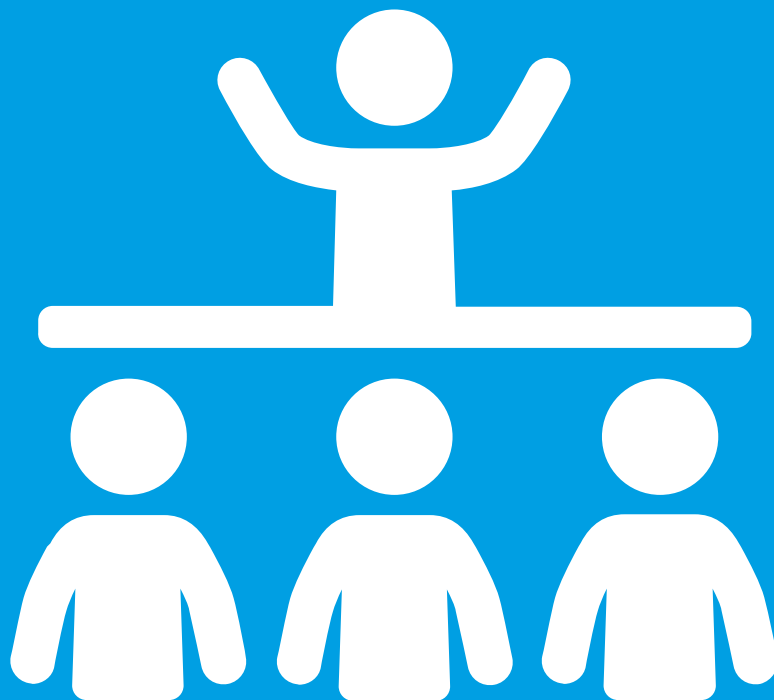
Men showing their burned house by alleged Zanu PF youths during the the Presidential run off in June 2008 Pic Shepherd Tozvireva

⁵⁹ ZPP Monthly Monitoring Report, February 2017 <https://www.zimpeaceproject.com/monitoring-reports/>
⁶⁰ The Zimbabwe Human Rights NGO Forum, Monthly political and Human Rights Violations Report, August 2017, available on <http://www.hrforumzim.org/publications/>
⁶¹ ZPP Monthly Monitoring Report, November, 2017 <https://www.zimpeaceproject.com/monitoring-reports/>
⁶² <https://au.int/en/newsevents/20170403/1st-meeting-conference-states-parties-kampala-convention>

CHAPTER 6

TOWARDS DEPENDABLE STEWARDSHIP

TRANSPARENCY, ACCESS TO JUSTICE AND
TRANSITIONAL JUSTICE



TRANSPARENCY ACCOUNTABILITY

Transparency and accountability are some of the founding values and principles listed in section 3 of the Constitution. Transparency and accountability requires the government to conduct its business in a transparent manner, allowing for public scrutiny of its policies. Transparency involves clear and public disclosure of information, rules, plans, processes and actions by governments, companies, organisations and individuals. It is the principle that public affairs need to be conducted in the open.⁶³ Accountability means holding individuals and organisations responsible for executing their powers properly (in accordance with the rules and duties of their post), and for paying consideration to vulnerable parties. The 2018 Corruption Perception Index Transparency International has ranked Zimbabwe number 157 out of 180. Many factors have contributed to this ranking.

AND

This report highlights the key issues that show progress or regression on the area of transparency and accountability. Failure by the government to live up to the standards set by the Constitution constitutes a violation of the very Constitution which government is established to uphold. Besides the violation of the supreme law, lack of transparency and accountability has far reaching consequences on the country's struggle for human rights. Without transparent and accountable governance, it is difficult for the society to overcome poverty and improve the well-being of the people. Resources meant to serve the public good end up being diverted or used recklessly hence the ultimate value for the people is lost. Section 9 of the Constitution creates an obligation for the state to implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of government at every level and in every public institution.

SPECIFIC CASES

Manipulation of State Institutions and Asset Looting - Chapter 13 of the Constitution established Institutions to Combat Corruption and Crime. Under this Chapter, the Constitution established the Zimbabwe Anti-Corruption Commission (ZACC). The ZACC encountered serious challenges in its duties because of interference from politicians. The case in point was the case of alleged fraud at the Zimbabwe Manpower Development Fund (ZIMDEF). After the ZACC attempted to arrest Prof. Jonathan Moyo, a then influential member of Mugabe's Cabinet, it came under attack from the then Vice President P. Mphoko who accused ZACC of being used by politicians. Until the collapse of the Mugabe regime, the ZIMDEF fraud case was never solved and no one was held accountable. However, the case exposed the fact that ZANU-PF has a culture of looting parastatals to fund party business. Prof. Jonathan Moyo did not deny that funds from ZIMDEF were looted. Instead, he acknowledged that they used the funds for ZANU-PF business. Attempts by the Parliament to investigate the role of the National Youth Council in the matter did not yield any results. Jonathan Moyo, the then Minister of Higher Education was accused of siphoning over \$270 000 from ZIMDEF.⁶⁴

Public Financial Management Principles – Section 298 provides principles of public financial management which includes the need for transparency and accountability in the public finance system. The government has not been able to develop a resource distribution strategy to realise the principles outline in section 298 of the Constitution. Both the 2017 and 2018 budgets did not take into consideration the principle that revenue raised must be shared equitably between central, provincial, and local tiers of government. This is because the government has failed or is unwilling to implement the devolution provisions of the Constitution. As a result, the central government gobbles the entire cake. As a result, marginalised groups continue being deprived to the benefits of national resources.

⁶³ http://www.un.org/en/ecosoc/newfunct/pdf/luxembourg_tisda_south_africa_report_web.pdf

⁶⁴ The Independent Newspaper, 7 October 2016, 'Jonathan Moyo in corruption storm'
<https://www.theindependent.co.zw/2016/10/07/jonathan-moyo-corruption-storm/>

Lack of Transparency in Public Borrowing – Section 298 of the Constitution requires that public borrowing and all transactions involving the national debt must be carried out transparently and in the best interests of Zimbabwe. Section 300 (3) provides that within 60 days of entering a loan agreement, the terms of the agreement must be published in the Government Gazette. Twice a year, the Minister responsible for finance must report to Parliament the performance of such loans. Many so-called mega deals have been entered into by government without meeting the requirement of the Constitution. From 2016 to 2017, the Executive has evaded Parliamentary oversight over financial agreements.

In 2015, the government signed the Lima Agreement intended to resolve the country's foreign debt and unlock fresh capital. There has been no transparency regarding the source of the funds used to service the debt. The debt management plan has not been disclosed in reports to Parliament in line with Constitution.

Introduction of Bond Notes – On 28 November 2016, the Reserve Bank of Zimbabwe (RBZ) introduced bond notes which the RBZ Governor alleged were export incentives and would operate at 1:1 with the United States Dollar. The RBZ said in a statement that the bond notes were anchored to a US\$200 million facility from the African Export and Import Bank (Afrexim Bank).⁶⁵ The details of the facility were never made public and Parliament was not informed of the loan as required by the Constitution. Afrxim Bank never acknowledged the facility. Clearly, the people of Zimbabwe were not told the truth and the Constitutional provisions on accountability were violated.

Externalised Funds – Former President Mugabe has previously stated that over US\$15 billion dollars from diamond revenue could not be accounted for. This matter has remained shady with no clear information as to what process reached at that figure and what leaks existed to cause such a loss. Political statements have been made around the figure but without details that show a serious approach to truth recovery and accountability. Upon assumption of office in November 2017, President Emmerson Mnangagwa issued a 90 days amnesty for the return of externalised funds. The state media later reported that over US\$1 billion has been returned. There was not transparency regarding these claims. It was not revealed how these funds were repatriated and where they were housed.

Debt Assumption – Following the passage of the RBZ Debt Assumption Bill in 2015, the government has gone on a spree of debt assumption for non-performing parastatals. On the cards for 2017 was the ZISCO Steel Debt Assumption Bill ultimately gazetted in January 2018. Most parastatals including Air Zimbabwe and the National Railways of Zimbabwe (NRZ) have also queued in tow with their own debts to be assumed. These entities have been victim to wholesale looting by government officials. Transferring such debts to the taxpayer is making the ordinary person pay for the corruption that government officials have committed.

Following the assumption of power by the Mnangagwa government, several high-ranking officials have been arrested and brought before the courts on allegations of abuse of office and corruption. These include the former minister of Finance Dr. Ignatious Chombo, Gudyanga and Dr Walter Chidhakwa. However, observers have argued that the Zimbabwe Anti-Corruption Commission seemed to be targeting only members of the deposed G-40 faction.

⁶⁵ See RBZ statement on this link <http://www.rbz.co.zw/assets/press-statement-on-the-introduction-of-bond-notes.pdf>

“Access to justice is the hallmark of any civilised and democratic society.”
Justice Luke Malaba, 15 January 2018

ACCESS TO JUSTICE

Access to justice can be defined as the rights of individuals and groups to obtain quick, effective and fair responses to protect their rights, prevent or resolve disputes, and check abuse of power through a transparent and efficient process in which mechanisms are available, affordable and accountable. It is also the ability of people to seek and obtain remedy through formal and informal institutions of justice in compliance with human rights standards. The ability to access justice is important in the enjoyment of all other rights. Critical to this realization is the judiciary, which in Zimbabwe is run by the Judicial Service Commission, the prosecution that come under the National Prosecuting Authority (NPA), the Legal Aid Directorate that provides legal aid to persons who cannot afford legal costs. Also important are institutions in whose custody persons in detention find themselves and the correctional facilities where convicted persons are committed to.

Several provisions of the Constitution speak to various elements of access to justice. The Constitution in section 69(3) guarantees to every person the right of access to the courts, or to some other independent and impartial tribunal or forum established by law for

the resolution of disputes. Other relevant sections are listed below.

These are:

- 1** The right to equal protection of the law - section 56 (1)
- 2** The duty of the State to provide legal aid to persons who cannot afford legal representation – section 32
- 3** Rights of arrested and detained persons – section 50
- 4** Access to information – section 62
- 5** Right to administrative justice – section 68
- 6** Right to a fair hearing – section 69
- 7** Rights of accused persons – section 70



*A tout man handles a police officer who brutally assaulted him
 Pic Shepherd Tozvireva*

SPECIFIC CASES

The rising cost of justice for the poor – The biting economic conditions in 2017 saw the cost of justice increasing on many fronts. Most persons appearing before the courts were unrepresented because legal fees are beyond their reach. The Legal Aid Directorate remained underfunded and understaffed to deal with the increasing demand for legal assistance. The Legal Aid Directorate only has 10 offices throughout the country with an average of two lawyers per office. This leaves many people especially in the rural centers without access to legal service. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems state that “legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law” and that “it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.” The government must allocate more resources to the Legal Aid Directorate to ensure that legal aid is accessible not only to the urban folk but also to those in rural areas.

Proximity of the Courts to the People – Courts are a critical ingredient in the access to justice process. Many people fail to access justice because of the distance between the communities they live in and the courts. 60 % of the people of Zimbabweans live in rural areas of which most courts are in the urban centers. This creates a divide between the people and the courts making it difficult for the rural folk to access the courts. While Magistrates courts are available in at least every province, High Courts are still to fully decentralize. In 2017, the Judicial Service Commission opened a Magistrates Court in Murambinda in Buhera. The High Court was also able to open in Mutare and Masvingo. The High Court now operates in four out of 10 provinces in the country.

Judicial Integrity – One of the obstacles to justice for 2017 has been corruption in the justice delivery chain including the judiciary. Allegations of corruption rocked the judiciary in 2017, reaching even the highest level with controversy surrounding appointment to the Judiciary and the Prosecution. Information released by warring ZANU-PF factions in the government alleged attempts by certain groups to capture the judiciary, influence the appointment of judges and the Prosecutor General. The process leading to the appointment of current Prosecutor General Advocate Ray Hemington Goba became a battlefield for ZANU-PF factionalism. These developments are disturbing as they expose the vulnerability of systems of government to ZANU-PF political battles hence compromising the independence and integrity of the judiciary. Apart from the infrastructure for access to justice, the quality of justice delivered through these structures becomes critical. If judges and prosecutors become stooges of political gods, they cease to serve the values of justice but will begin to dance to the whims of politicians, compromising the entire human rights architecture which rests upon the protection of the law. Following these attacks, the Judiciary faces a great task to redeem and cleanse itself and demonstrate its independence and professionalism. To that end, the Judicial Ethics and Advisory Committee provided for in the JSC (Code of Ethics) Regulations 2012, may become a necessary mechanism to activate and help restore the confidence in the judiciary.

The role of civil society – The huge gaps left by official justice systems are in some instances filled by civil society organisations. Many people seeking remedy for violation of human rights do not trust the Legal Aid Directorate as many times their cases are against government. Civil society organisations have provided the much-needed legal support for victims to pursue justice. Some victims who live in the rural areas away from the infrastructure have depended on assistance by civil society organisations. For instance, the Forum’s Public Interest Unit in 2017 provided legal assistance to over 360 victims intending to access justice. The cases attended to include cases of organized violence and torture, inheritance, women’s rights and failure by the government to implement certain constitutional provisions.

Obstacles to justice for victims

The Government of Zimbabwe continues being delinquent on its outstanding obligations about honouring court judgments in cases where the state is accused of human rights violations. Since 1998, the Forum has been litigating on behalf of victims of organized violence and torture.

Over US\$160 000 has been awarded by the courts in compensation for human rights violations. The government has refused to cooperate with the judgments and used the State Liabilities Act to evade paying judgment debts. The Forum condemns this behavior, which is an obstacle to justice for victims and in contempt of the judiciary. The State Liabilities Act has no place in a just society and measures must be taken for its repeal in line with a progressive human rights policy that promotes justice and accountability.

However, in a landmark ruling on 15 March 2017, Justice Mushore struck down Section 5(2) of the State Liabilities Act (Chapter 8:14) stating that it was ‘unconstitutional and invalid’. The ruling followed an application by Tendai Blessing Mangwiro, a Mutare businessman, who sought an order against this section. Mangwiro had struggled for years to recover more than US\$1,5 million he won in court from government without success as government ministers repeatedly ignored the court order and evoked this law to frustrate him.⁶⁶

Reserve Bank of Zimbabwe Credit Baynham Goredema



⁶⁶ See the Financial Gazette “End of impunity for government, parastatals?” <http://www.financialgazette.co.zw/end-of-impunity-for-government-parastatals/>

BUSINESS AND HUMAN RIGHTS

The broad quest for accountability about human rights violations has made it necessary that human rights defenders develop an interest in the role of business in the protection and promotion of human rights. One of the foundational principles on the corporate responsibility to protect human rights states that business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.⁶⁷ While there exists no legal framework currently in Zimbabwe for adherence to principles on business and human rights, Section 44 of the Constitution creates a clear obligation for all actors to respect, protect, promote and fulfill the bill of rights. Over the years, it has become increasingly clear that the promotion of human rights cannot

ignore the contribution of the business community. Thus in 2017, the Forum started monitoring this aspect of human rights. Various sections of this report have paid attention to the contribution of business to human rights. The media, as both a business and a civic actor has also played a role on human rights in 2017.

Reporting on Business and Human Rights

Monitoring the role of business in human rights requires a vibrant and truly independent media. Over the years, many publications have emerged and provided coverage on issues on business and human rights. The leading publications that have cast light on the usually shady business deals have been the Zimbabwe Independent, the Financial Gazette, the Business Connect and the Source.

SPECIFIC CASES

Suspicious Corporate Donations – Corporate donations usually come with invisible strings. To see the strings, one needs to follow the money and monitor relationships. In the previous years, powerful political actors have been known to use the carrot and stick incentives to force businesses to contribute towards political objectives. Events such as ZANU-PF fundraising dinners, 21st February celebrations usually draw a lot of interests with corporates outdoing each other to pour gifts on the ruling elite. This usually happens during campaigns season before an election. In June 2017, the Zimbabwe Independent reported that Anjin Investments, a joint venture between the Anhui Foreign Economic Construction (Group) Co Ltd (Afec), and a military company, Matt Bronze Enterprises, which was formed by the Defence ministry and the Zimbabwe Defence Forces (ZDF), contributed US\$650 000 towards the construction of the US\$6,5 million ZANU-PF conference centre in the Midlands. The paper reports that Anjin was granted a mining licence by then Defence minister Emmerson Mnangagwa in his capacity then as the acting Mines minister at the time.

On 8 September 2017, the Zimbabwe Independent reported that BancAbc was being used as a conduit for moving funds looted from Marange diamonds. The article documents how BanAbc was used by several political connected individuals in many shady transactions.

The Zimbabwe Independent of the same article above reports that the same bank was also used by Sakunda, an energy fund to bankroll ZANU-PF's election campaign.

The Zimbabwe Mail of 21 October 2017 reported that CBZ Holding Group Chief Executive Officer Never Nyemudzo had been retired because he has assisted former First Lady Grace Mugabe's diamond ring scandal. The same paper reported that the bank was being used to bankroll Grace Mugabe's campaign to succeed her husband.

News24 reported on 4 October 2017 that new evictions were looming in Tsvingwe area in Chiadzwa as Zimbabwe Consolidated Diamond Company (ZCDC) had deployed an exploratory team to hunt for mineral deposits.

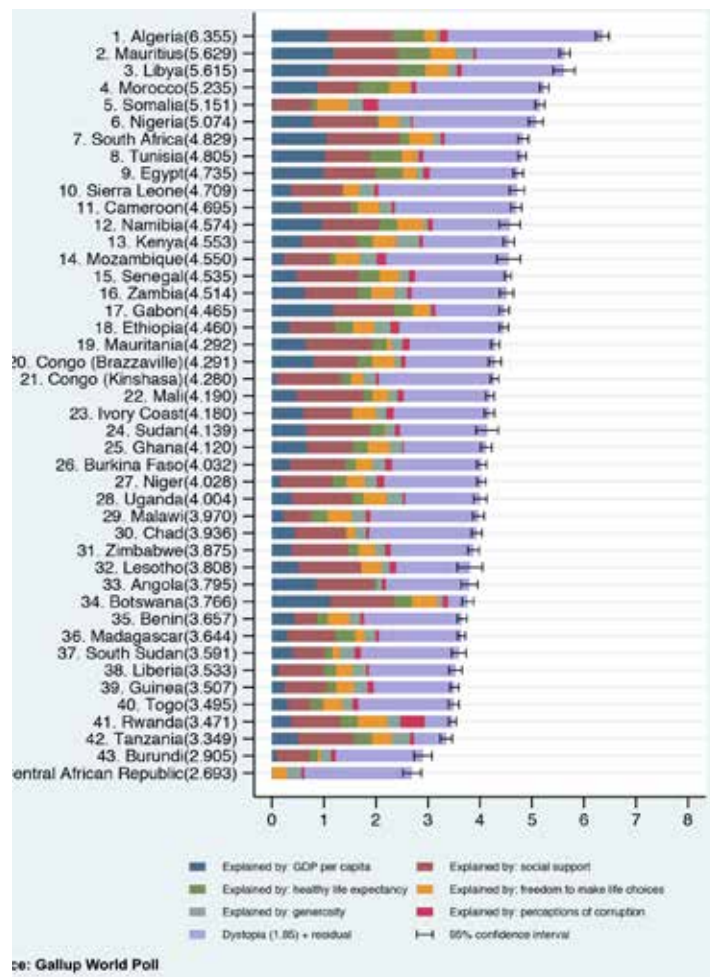
⁶⁷ See Guiding Principles on Business and Human Rights, OHCHR, HR/PUB/11/04, 2011 United Nations

HUMAN WELFARE, PROSPERITY AND HAPPINESS

Section 8 of the Constitution, in introducing national objectives states that the objectives set out in the Constitution guide the State and all institutions and agencies of government at every level in formulating and implementing laws and policy decisions that will lead to the establishment, enhancement and promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling lives.

Since 2012, happiness has been used to measure social progress in countries and the need to ensure that policies were being targeted at the well-being of citizens, not only economic development. The idea to measure happiness was mooted in 2011, when the UN General Assembly adopted a resolution recognising happiness as a “fundamental human goal” and called for “a more inclusive, equitable and balanced approach to economic growth that promotes the happiness and well-being of all peoples”.⁶⁸ In 2012, the first ever UN conference on Happiness took place.

Zimbabwe was ranked at 138 out of 155 on the World Happiness Report with 3,875 points. This poor placing is exacerbated by the fact that the country is outperformed by war-torn Iraq, at number 117 and having 4,497 points, according to the 2017 World Happiness Rankings.⁶⁹ In Africa, Zimbabwe was ranked number 31 out of 44, and on world rankings was beaten by Zambia (116), Mozambique (113), Sudan (130) and Malawi (136), though outscoring Rwanda (151) while the Central African Republic anchors the list. The fact that Zimbabwe ranked higher than Rwanda proves that human happiness is not necessarily about the economic performance of a country. Respect for human rights and responsiveness to human needs are some of the determinant of happiness. A security-dominated state like Rwanda can perform better on economy but do badly on happiness.



Determinants of Happiness

The Gallup model looks at determinants of happiness in the 155 countries where at least 1,000 people per year in each country respond to questions on the quality of their lives and 0 represents the worst possible happiness while 10 is the best possible

Happiness is measured using six variables, which are GDP per capita and healthy life expectancy (which can be objectively measured), social support (as measured by having someone to count on in times of trouble), social freedom (perceived freedom to make life decisions), generosity (as measured by recent donations), and absence of corruption (in government and business).

GDP per capita stands for Gross Domestic Product (GDP) per capita (per person). Challenge is that GDP per capita may be high, but that will not necessarily mean all the populace is enjoying a good standard

⁶⁸ The UN General Assembly, Resolution Adopted by the General Assembly on 19 July 65/309. Happiness: towards a holistic approach to development http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/65/309,

⁶⁹ World Happiness Report, 2017, <http://worldhappiness.report/ed/2017/>

of living. This is referred to as the “tyranny of GDP” because wealth could just be concentrated in the hands of a few people. As of 2017, Zimbabwe had a GDP per capita of US\$980,⁷⁰ which is way below the average for a developed country, which should be around US\$10,000.

According to the WHO data published in 2015 life expectancy in Zimbabwe is: Male 59.0, female 62.3 and total life expectancy is 60.7 which gives Zimbabwe a World Life Expectancy ranking of 160.

Social Support is measured by having someone to count on in times of trouble. Zimbabweans are found wanting in this regard due to high unemployment, and they have turned to religion to wipe their tears, find fellowship, comfort and hope for the future. This has resulted in the proliferation of faith movements that promise ‘miracle money’ and instant breakthroughs.

Social freedom is another indicator, and this is based on perceived freedom to make life decisions. Generosity on the Gallup poll is measured by whether one has made any donations recently.

Corruption is another determinant; whether there is corruption in business and or government has a bearing on citizens’ happiness. Zimbabwe is on position 157 out of 180 on the corruption index by corruption watchdog Transparency International.⁷¹

The World Happiness Ranking report also notes that in authoritarian states such as Chad and Zimbabwe, and in South Africa’s new democracy, though living conditions are poor, people will still be happy because of optimism for the future. This is true of the Zimbabwe Diaspora, which had remained engaged in the processes and home and remains eager to participate in economic and democratic processes.

Government Performance

It is no wonder that Zimbabwe finds itself in the bottom 10 on the happiness ranking. This reflects badly on the government’s performance in relation to the enhancement and promotion of a sustainable, just, free and democratic society in which people enjoy prosperous, happy and fulfilling life. The Mugabe

regime has pursued destructive economic policies which resulted in over four million Zimbabweans fleeing the country, high levels of unemployment and isolation of Zimbabwe from the international community. Investment in social amenities became a luxury as the government struggled to maintain the bare minimum. The economic situation became increasingly unbearable with no access to the bare minimum like access to cash. The government failed to provide health care, access to clean water, electricity, refuse collection, social infrastructure like roads. Increasingly, Zimbabwean learnt to do without government. This saw a bulge in the informal sector, use of alternative source of energy like solar energy, and use of boreholes for those who could afford. This creativity did not translate to improvement in the quality of life but rather simply survival. The government became preoccupied with its own political struggles, while government official depended on healthy care in foreign lands and send their children overseas for education. This non-attention to the well-being of the people must be a cause for indictment as an abrogation of the constitutional obligation to pursue the promotion of a society in which people enjoy prosperous, happy and fulfilling lives.



TRANSITIONAL JUSTICE

Zimbabwe has a history of gross violation of human rights, which has characterized the governance system for the past century. Section 251 to 253 of the Constitution makes a clear acknowledgement of

⁷⁰ <https://tradingeconomics.com/zimbabwe/gdp-percapita>

⁷¹ Transparency International: <https://www.transparency.org/country/ZWE>

Life expectancy: https://www.indexmundi.com/zimbabwe/life_expectancy_at_birth.html

the need to address the legacy of violence through various transitional justice processes. Key among these processes is the establishment of the National Peace and Reconciliation Commission (NPRC) established to ensure post-conflict justice, healing and reconciliation. Central to the transitional justice mechanisms established by the Constitution is the need to realize the right to know for society and the victims, ensuring the healing and rehabilitation of victims and survivors, and guaranteeing non-recurrence of past violations. This is in line with the African Union Transitional Justice Policy Framework, which is a practical and actionable tool at the regional level. The United Nations also emphasises compliance with transitional justice processes and mechanisms as specified in international norms and standards. The normative foundation for the work of the UN in advancing transitional justice is the Charter of the UN, along with the Joint principles against impunity, which were approved by the UN in 1997. These principles are; the right to know, the right to justice, the right to reparations and non-recurrence. These principles can be found in various sections of the Constitution of Zimbabwe. This section reports on to what extent such provisions of the Constitution have been complied with.⁷²

Implementation of the provisions relating to the NPRC

The government's implementation of section 251 to 253 of the Constitution establishing the NPRC has been at a snail's pace. Established in 2013, the Commissioners of the NPRC were only appointed towards the end of 2015 and the relevant law only introduced in Parliament in 2016 but the law was rejected for being too defective and out of sync with the expectations of the people of Zimbabwe. 2017 saw the revision of the law, which was only passed in the National Assembly on 3 October 2017. The NPRC Act was only signed in February 2018, five years from the year the NPRC was constitutionally established. By any standards, a five-year delay in operationalizing such a vital constitutional body is unacceptable and qualifies to be deemed a violation of section 324 of the Constitution which states that all constitutional obligations must be performed diligently and without delay.

Implementation of the provisions relating to the Ethics and Integrity Committee

The institution of traditional leadership predates the current Constitution and indeed the current state. It is acknowledged by the Constitution in Chapter 5. However, since the advent of colonialism, the institution has been adulterated and manipulated by political leaders of the day. During 38 years of ZANU-PF rule, traditional leaders have been reduced to tools of violence. An example of this manipulation is Chief Kasekete of Muzarabani, whose name is Faxwell Mutinhima who led a brutal campaign of violence that resulted in the death of more than 22 MDC-T supporters in 2008.⁷³ It is this manipulation of traditional leaders that led to section 287 of the Constitution providing for an Act of Parliament to provide for the establishment, membership and procedures of an Integrity and Ethics Committee of Chiefs to among others, deal with complaints against traditional leaders. Five years later, this provision of the Constitution has been totally ignored by the government, in violation of section 324 of the Constitution, which obliges the government to implement constitutional provisions with speed and diligence.

Implementation of the provisions relating to the Independent Complaints Mechanisms

Zimbabwe's security sector has been implicated in human rights violations for the past century. All gross human rights violations of the post-independence era have had one common denominator – the security sector. This is true of Gukurahundi, Operation Murambatsvina, the 1998 Food Riots and the bloody election related political violence. This legacy of an unaccountable security sector has necessitated section 210 of the Constitution which establishes the Independent Complaints Mechanism which makes provision for an Act of Parliament to establish such an institution for purposes of receiving and investigating complaints from the public against security services and remedying the harm caused. During and post the November 15, 2017 military coup, such complaints against the security services have increased. Five years

⁷² Constitution of Zimbabwe Amendment (No. 20) Act 2013.

⁷³ See Hall of Shame by Nehanda Radio. <http://nehandaradio.com/2013/05/01/zimbabwe-wall-of-shame-chief-kasekete/>

later, this provision of the Constitution has been totally ignored by the government, in violation of section 324 of the Constitution, which obliges the government to implement constitutional provisions with speed and diligence. In 2016, Mr. Rashid Mahiya, the Executive Director of Heal Zimbabwe Trust brought before the Constitutional Court a suit seeking to compel government to implement this provision. The case was instituted by the NGO, VERITAS, a member of the Forum case number CCZ42/15: Rashid Mahiya v Minister of Justice & Others.

The Military Coup d'état and violation of the Constitution

Other major violations of the constitution happened in 2017 which have 'raised new transitional justice questions' for Zimbabwe⁷⁴. On 15 November 2017, the military staged a military coup, which overthrew the government of Robert Mugabe. The event exposed the military face of the ZANU-PF ruling elite and placed Zimbabwe in a very precarious state with military people occupying key positions in the 'new government'. Following this development, there is widespread fear that the military is increasingly getting involved in the public sphere, which might also further shrink the civic space in Zimbabwe. Citizens have since grappled with calling the military intervention as a 'coup', some have even decided to call it a 'military assisted transition' some a 'new dispensation,' yet military encroachment in public life is glaringly evident. All being said it remains a fact that the military intervention was unconstitutional as it violated section 208, which stipulates that the security services must not be involved in politics or

civilian affairs. This development has set a dangerous precedent that will see Zimbabwe struggling with keeping the military out of politics. Following the military coup, Zimbabwe's status on Freedom House ranking declined from Partly Free to Not Free and its political rights rating declined from 5 to 6 due to the process by which president Robert Mugabe was compelled to resign in November under pressure from the military⁷⁵. President Mnangagwa took office 9 days after the military coup and subsequently appointed several high-ranking military figures to his cabinet.

The High Court of Zimbabwe ruled that the military takeover that ousted Mugabe was 'constitutionally permissible' and lawful in terms of section 212 and not considered a coup. However, the reasons for this decision are yet to be provided. The African Charter on Democracy, Elections and Governance (ACDEG) signed by the government of Zimbabwe in March 2018 is one of the key instruments on the continent that advances democracy, peace and security and does not recognize any unconstitutional change of government. It therefore becomes imperative for the government of Zimbabwe to ratify and domesticate the ACDEG, which is premised on principles of democracy the supremacy of the constitution and rule of law.

Devolution of power provisions facilitating for the equitable allocation of resources and development; gender parity



NOVEMBER 2017

⁷⁴ See the National Transitional Justice Working Group's statement following the NPRC What's Next Conference held on 7 February 2018, available on the link <http://www.ntjwg.org.zw/downloads/NPRC%20Statement%202018.pdf>

⁷⁵ This is according to Freedom House Ranking for 2018. See the report here <https://freedomhouse.org/report/freedom-world/2018/zimbabwe>

Other Developments

Several non-state actors have provided much needed support in the push for the attainment of transitional justice goals. This support has seen victims and survivors receiving the much-needed psycho-social services and capacity building to enable them to take advantage of the necessary transitional justice processes.

- Developing transitional justice policy proposals – The Forum has for the past four years successfully coordinated the work of the National Transitional Justice Working Group (NTJWG) which has seen the scaling up of policy advocacy which saw the passage of a much-improved version of the National Peace and Reconciliation Bill on 3 October 2017.

- The Welfare of Survivors of Violence – Forum members have in 2017 provided support to many victims of human rights violations.
- The Counselling Services Unit (CSU) has responded to many urgent matters of victims under distress, providing medical support and counseling. Between 2015 and 2017, CSU has provided psycho-social support to over 25 000 survivors of human rights violations. In these interventions, CSU has integrated access to justice with mental health support for victims.

Such interventions are critical as the National Peace and Reconciliation Commission starts work. Transitional justice processes with their rigors need to prioritise the welfare of survivors of past violations.



ZNA Tanks In Harare Credit: independant.co.uk

CHAPTER 7

WAKING THE TALK

RECOMMENDATIONS



“Good intentions don’t work, but mechanisms do.”

-Jeff Bezos

This report is an audit of Zimbabwe’s progress towards fulfillment of human rights obligations established by the Constitution and any other instruments and statutes relevant to the human rights agenda. As is clear from this report, Zimbabwe is not walking the talk and lags in implementing the obligations and commitments set out in its own constitution. The magnitude of violations experienced in 2017 is an indictment on any claims of progress that the government may present to the international community. What makes this situation deplorable is that the greatest assaults on fundamental freedom is a result of acts of commission and not omission the State, like unlawful and corrupt destruction of shelter for over 900 families by the police. The solution therefore calls on the State to stop perpetrating violations and this does not require any financial resources.

On the same note, it is clear in this report that the answer to the realization of human rights set out in the constitution lies not in government alone, but in building a partnership for human rights that brings together both state and non-state actors.

It takes more than just good intentions but mechanisms for ensuring that the rights guaranteed in our law become a living reality for our country. The Forum expresses its commitment in working with the government in ensuring greater protection and respect for human rights. We share here some of the measures which can be adopted to achieve a society in which human rights are respected.

- 1** Dismantling the pillars of impunity. The perpetrators named in this report are mainly apparatus of the state and persons that are politically connected. They are named in every subsequent report. Since Murambatsvina, political actors have used the local municipalities as tools of violence. They continue to be perpetrators because the political actors protect them. This is the depth of impunity. Unless these institutions are held accountable at institutional level and justice is upheld, such institutions will continue to perpetrate.
- 2** Unmasking the actors behind institutions of violence and pursuing justice. Institutions that are named repeatedly in human rights reports continue doing so because the individuals that drive such institutions are not held accountable at a personal level. As a result, there is no cost paid for the violence they cause. A thorough accountability audit must be carried and those responsible for driving the institutions of violence and executing unlawful instructions must be held accountable at personal level.
- 3** Fiscal accountability reporting. For decades now, the government of Zimbabwe is not used to being asked what kind of mega deals they entered. New measures for auditing public finance management must be developed together with all stakeholders. Parliament and civil society must play a significant role to ensure that every deal that the government enters into is transparent and its terms and obligations are understood by the people of Zimbabwe.

- 4 International human rights obligations. The government of Zimbabwe does not hesitate to append its signatures on international human rights instruments. A mechanism must be put in place to ensure that international obligations signed upon by the government are followed up to their practical implementation. Parliament must be fully capacitated and equipped with tools to track any such obligations and ensure all legal processes are undertaken for the country to enjoy the benefits of such commitments.
- 5 Implementation of all constitutional obligations. Section 324 of the Constitution itself requires that its obligations be implemented with speed and diligence. Five years since the Constitution was adopted, some institutions established by the constitution remain outstanding. These include provisions relating to devolution and transitional justice. There are no options to cherry pick. Implementation of all outstanding provisions of the Constitution including alignment of laws must be treated as a matter of urgency.
- 6 Provision of resources to independent institutions supporting democracy. It is a priority that the independent institutions supporting democracy can do their work. Sufficient resources must be deployed to such institutions as the Zimbabwe Human Rights Commission, the Zimbabwe Gender Commission, the National Peace and Reconciliation Commission among others to ensure that they are able to be effective in their work.
- 7 The Zimbabwe Anti-Corruption Commission must be migrated from the President Office to a fully independent institution. In the recent past, the ZACC has lost the trust of the people because of its proximity to the Office of the President. Such a scenario makes it difficult for the ZACC to carry out investigations for matter that may involve the Office of the President.
- 8 Reports of Commissions. The government of Zimbabwe has an obligation to implement the recommendations from the findings of independent Commissions. In the past, reports by the Zimbabwe Human Rights Commission have been ignored.
- 9 Relevant government Ministries must develop regulations that put in place mechanisms to make schools, children, personnel and equipment is protected from political abuse in line with the recommendations of the ZHRC.
- 10 The Legal Aid Act must be revamped in line with the Model Law on Legal Aid in Criminal Justice Systems proposed by the United Nations. In the same line, the Legal Aid Directorate must be reformed and made independent to align with international best practices to regain the confidence of the people.

THE STATE OF HUMAN RIGHTS REPORT ZIMBABWE I 2017

Zimbabwe went through very dramatic experiences in 2017. Political temperatures within the ruling ZANU-PF party reached boiling point on 15 November 2017, when the military overthrew Robert Mugabe's government. Nine days later, Mugabe's former deputy, Emmerson Dambudzo Mnangagwa was sworn in as Zimbabwe's new President. The nine days in which the country was under the control of the military are shrouded in mystery. The country's constitution was completely overthrown as the President was effectively put under house arrest; members of the Presidential Guard and the police were reportedly disarmed. Scores of people were reportedly disappeared and others reportedly murdered during the so-called bloodless coup. Journalists at the Zimbabwe Broadcasting Corporation (ZBC) and Zimpapers were reportedly beaten as the military took control of State media information management. For human rights defenders, it was difficult to collect information and many violations that happened during the nine days of total military control will never be known.

On 15 November 2017, the Zimbabwe Human Rights NGO Forum convened a meeting and issued a statement calling for a speedy return to constitutionalism. The 15 November 2017 collapse of the government of Zimbabwe is testimony of how weak the pillars of democracy in Zimbabwe are and vindicates the endless calls by the human rights community for reform of state institutions and for a separation between the institutions of government and the ruling party.

In other aspects, the year 2017 proved once again that the human rights violations in Zimbabwe are hardly sporadic violations but are systematic with state apparatus playing a key role. The interdependence nature of human rights was further reaffirmed. As the economic meltdown continued, social unrest increased. The police were the easy tool for the state to deal with social unrest as they continued to use heavy-handed tactics to deal with vendors and silence dissenting voices.

In past years, we have reported about perpetrators in general. In this report we introduce a ranking system to help identify the worst perpetrators of human rights. For 2017, quantitatively, ZANU-PF and the Zimbabwe Republic Police (ZRP) were the main perpetrators of human rights violations. In 2017 only, ZRP were the lead perpetrator in illegally evicting 933 families. In terms of severity, Zimbabwe Consolidated Diamond Company (ZCDC) was the worst violator of human rights leading to the death of five people in Chiadzwa, in Marange diamond fields. Other perpetrators included, the Zimbabwe National Army (ZNA), traditional leaders, municipal police, Central Intelligence Organisation (CIO), and some school authorities.

In this report, we also bring out the voices of the victims. As you read through the violations, you will see QR Codes which allow you to unlock special features of the report and listen to the stories of the people who are affected by human rights violations.



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