



Submission to the Universal Periodic Review of Zimbabwe **For the Consideration of the 40th Session of the UPR Working Group** **in January 2022**

1. ARTICLE 19 Eastern Africa and Gender & Media Connect Zimbabwe welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Zimbabwe. The report analyses Zimbabwe's progress on recommendations it accepted during the second cycle of the UPR. This submission further assesses Zimbabwe's compliance with its international human rights obligations, examining progress against those accepted recommendations relating to the right to freedom of expression and information, and the right to freedom of peaceful assembly and association. It focuses on:

- Compliance of laws with the Constitution
- Legal framework for the freedom of expression
- Media and freedom
- Online expression and privacy
- Freedom of peaceful assembly
- Safe and enabling environment for journalists and human rights defenders
- Enforced disappearances

2. In the period under review, Zimbabwe changed presidents; with former Vice-President Emmerson Mnangagwa becoming President in November 2017, through a military assisted intervention which resulted in the former (now late) president Robert Mugabe resigning.¹

3. President Mnangagwa entered the presidency promising reforms under what he termed the second republic.² He was voted in to serve his first full term in July 2018, in an election that had to be decided by the Constitutional Court after opposition presidential candidates challenged the outcome citing poll irregularities.³

¹Zimbabwe's Robert Mugabe resigns, ending 37-year rule, BBC, 21 November 2017: [Zimbabwe's Robert Mugabe resigns, ending 37-year rule](#)

² Here cometh the Second Republic, The Herald, 31 July 2018: <https://www.herald.co.zw/here-cometh-the-second-republic/>

³OVERVIEW: ConCourt declares Mnangagwa as duly elected president of Zimbabwe, News24.com, 24 August 2018 <https://www.news24.com/news24/Africa/Zimbabwe/live-all-eyes-on-zim-concourt-as-ruling-on-election-challenge-expected-today-20180824>

4. The 2018 post-election period was marred with violence with the security forces using a disproportionate amount of force, firing live ammunition at protesters on 1 August which left 6 dead.⁴ The capital city was once again marred by protests in mid-January 2019 leaving scores injured.⁵
5. Zimbabwe is currently in a constitutional crisis which is playing out in the courts following the passing of Constitutional Amendment 2. Of note are two challenges: the constitutionality of the extension of the term of the Chief Justice,⁶ and the constitutionality of the amendment in its totality.⁷
6. The period under review has been fraught with harassment, abductions and incarceration of journalists, opposition politicians and human rights defenders, which has been further compounded by the COVID-19 outbreak.⁸

Compliance of laws with the Constitution

7. During its second UPR, Zimbabwe supported 12 recommendations to align domestic laws with its Constitution.⁹
8. As of March 2020, the government of Zimbabwe reported that at least 144 out of the 183 laws that needed to be aligned to the Constitution and international standards, as identified by the Ministry of Justice, Legal and Parliamentary Affairs, had been amended with efforts underway to work on the remainder. 19 statutes were identified as needing to be enacted by the Ministry and by March 2020, 14 had either been enacted or had Bills undergoing Parliamentary process.¹⁰
9. A number of these laws that have either been enacted or had bills gazetted as part of the harmonisation and compliance process are instrumental in the attainment of freedom of expression, media freedom and the right to peaceful demonstration and assembly such as the Freedom of Information Act, the Maintenance of Peace and Order Act and the Cyber Security and Data Protection Bill.
10. **Recommendations:**
 - Implement the 2013 Constitution by speedily aligning all the remaining domestic laws with the Constitution and refrain from constitutional amendments that reverse the gains of the Constitution.

⁴Zimbabwe: At Least 6 Dead in Post-Election Violence, Human Rights Watch, 3 August 2018: <https://www.hrw.org/news/2018/08/03/zimbabwe-least-6-dead-post-election-violence>

⁵ Zimbabwe: Excessive Force Used against Protesters, Human Rights Watch, 12 March 2019: <https://www.hrw.org/news/2019/03/12/zimbabwe-excessive-force-used-against-protesters>

⁶ Zimbabwe court orders chief justice to retire in blow for Mnangagwa, Africa News, 16 May 2021 <https://www.africanews.com/2021/05/16/zimbabwe-court-orders-chief-justice-to-retire-in-blow-for-mnangagwa/>

⁷ Biti Sues ED, Parly Over Breach of Constitution, 263Chat, 14 May 2021: <https://www.263chat.com/bit-sues-ed-parly-over-breach-of-constitution/>

⁸ <https://news.un.org/en/story/2020/07/1069011>

⁹ Ghana (131.3); Australia (131.5); Islamic Republic of Iran (131.6); Germany (131.7); Congo (131.8); Uganda (131.10); Egypt (131.11); Thailand (131.12); Togo (131.13); France (131.14); Czechia (131.15); the Netherlands (131.19).

¹⁰ <https://allafrica.com/stories/202003110947.html>

Legal framework for the freedom of expression

11. During the previous cycle, Zimbabwe accepted general recommendations on aligning domestic laws on freedom of expression with the 2013 Constitution.¹¹ However, it noted five more specific recommendations to amend or repeal certain pieces of legislation, including the Criminal Law (Codification and Reform) Act, Access to Information and Protection of Privacy Act and the Public Order and Security Act.¹²
12. Section 61 of the Constitution guarantees the right to freedom of expression, including the freedom to seek, receive and communicate ideas and other information; academic freedom; freedom of artistic expression and scientific research and creativity.¹³ It also provides for the freedom of the media, including for broadcast and other electronic media, subject to State licensing procedures, as well as protection of the confidentiality of journalists' sources of information.
13. Constitutionally, freedom of expression may be limited in instances where there is malicious injury to a person's reputation or dignity; incitement to violence; advocacy of hatred or hate speech and malicious or unwarranted breach of a person's right to privacy. Under Section 86 (Limitation of Rights and Freedoms), these rights and freedoms are limited only in 'terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom, taking into account all relevant factors'.
14. Nonetheless, there is absence of statutory laws that give effect to the relevant constitutional provisions, while other laws continue to directly undermine the right to freedom of expression.

Criminal Law (Codification and Reform) Act

15. The Criminal Law (Codification and Reform) Act is one of the notorious pieces of legacy legislation that have defined the repressive nature of the Zimbabwean state with regards to freedom of expression for the better part of the last two decades. As aforementioned, Zimbabwe noted one recommendation to amend this law during the previous cycle.¹⁴
16. Under Section 31, it is a serious crime to "publish or communicate to any other person a statement which is wholly or materially false" that is prejudicial to the State.¹⁵ Such an offence attracts a fine of up to level fourteen, which is currently ZWL 1,600,000 (about USD 18,824) or up to 20 years' imprisonment. Statements that are prejudicial to the State include "inciting or promoting public disorder or public violence or endangering

¹¹ For example, the Netherlands (131.19).

¹² Sweden (132.62); New Zealand (132.90); Norway (132.63); United Kingdom (132.64); Australia (132.66).

¹³ https://www.constituteproject.org/constitution/Zimbabwe_2013.pdf

¹⁴ New Zealand (132.90).

¹⁵ <https://www.veritaszim.net/node/225>

public safety”, “adversely affecting the defence or economic interests of Zimbabwe” or “undermining public confidence in a law enforcement agency the Prison Service or the Defence Forces of Zimbabwe”.

17. Section 31 was declared unconstitutional by the Constitutional Court in the case of *Chimakure and 2 others versus Attorney General* in 2014.¹⁶ However, the police have continued to charge citizens under this provision. For instance, on 28 April 2021, in a matter (review application) between journalist Hopewell Chin’ono versus Lazini Ncube and the National Prosecuting Authority, the High Court Judge Justice Charehwa ruled that indeed the provision relied on for the charges was declared unconstitutional and, therefore, cannot be relied on to press charges against the journalist.¹⁷ The Prosecutor General has challenged the review application and the courts are yet to hear the appeal.¹⁸
18. In their 2017 joint statement, the UN and regional free expression mandates affirmed that “general prohibitions on the dissemination of information based on vague and ambiguous ideas, including ‘false news’ or ‘non-objective information’, are incompatible with international standards for restrictions on freedom of expression ... and should be abolished”. In her 2020 annual report, the UN Special Rapporteur on freedom of opinion and expression similarly noted how overly broad laws on misinformation are not incompatible with international human rights law.
19. Section 33 further criminalises expressions undermining the authority of or insulting the President. This includes any abusive, indecent or obscene statement about or concerning the President or an acting President”. This means that jokes, slurs and accusations against the President, which are normal occurrences in a democratic dispensation, are unlawful. This carries a fine of not exceeding level six, which is ZWL 60,000 (about USD 705) and/or imprisonment for a period not exceeding one year.
20. Section 95 criminalises insult, particularly words or conduct which “seriously impairs the dignity of another person” or “seriously invades the privacy of another person”. This carries a fine of not exceeding level six (ZWL 60,000/USD 705) and/or imprisonment for a period not exceeding one year.
21. In May 2021, journalists Elias Mambo and Farai Machamire were arrested and charged under Section 95 following a complaint about a story lodged by a Member of Parliament. The story, published by the Zim Morning Post, written by Machamire, was on allegations by a woman who claimed to have been in a relationship with Mlisawa, who said that he wanted to become president and also made comments about his sex life. If convicted, they face up to one year in jail or a fine of ZWL 60,000 (about USD 705).
22. On 7 July 2020, police arrested Councilor Godfrey Kurauone of the Movement for Democracy Change-Alliance Youth Assembly and charged him with undermining authority of or insulting President Mnangagwa under Section 33. Kurauone had accused the President of leading a corrupt administration and urged his resignation while

¹⁶https://www.veritaszim.net/sites/veritas_d/files/CCZ%2006-14%20-%20CHIMAKURE%20%26%20%20ORS%20v%20THE%20ATTORNEY%20GENERAL.pdf

¹⁷<https://www.theguardian.com/world/2021/apr/28/zimbabwe-court-quashes-charges-against-journalist-hopewell-chinono>

¹⁸ <https://www.herald.co.zw/pg-seeks-rescission-of-chinono-judgment/>

addressing commuters waiting to board a bus. He was released on bail but later rearrested for singing anti-Mnangagwa songs at a funeral. Kurauone remained incarcerated for six weeks before his case was dismissed on September 10.

Freedom of Information Act

23. As recommended during the previous cycle,¹⁹ a positive development under the period under review was the repeal of the Access to Information and Protection of Privacy Act (AIPPA) in February 2019.²⁰ AIPPA was repealed through the enactment of the Freedom of Information Act in July 2020, the Zimbabwe Media Commission Act in April 2021 and the gazetting of the Cyber Security and Data Protection Bill in May 2020. These three address crucial thematic issues on access to information, media regulation and data protection and/or protection of personal information.²¹
24. The Freedom of Information Act is implementing Section 62 of the 2013 Constitution and is also premised based on correcting the grave weaknesses of AIPPA.²² However, the new law has its weaknesses.
25. The law does not make information disclosure from private entities mandatory. This means that even private entities receiving public funds are outside of the scope of this Act.
26. Furthermore, the State makes the Zimbabwe Media Commission board to have oversight for the right to information, while it is also the media regulator at the same time. This is problematic since freedom to information goes beyond access to information by the media, but is a human right and, therefore, the Zimbabwe Human Rights Commission could be more suitable as the appellate body.

27. Recommendations:

- Amend the Criminal Law (Codification and Reform) Act to fully align with international standards on the right to freedom of expression, including through the repeal of Sections 31, 33, 95 and 96;
- Clarify the legal status of Section 31 of the Criminal Law (Codification and Reform) Act;
- Ensure the Access to Information law fully aligns with international standards.

Media freedom

¹⁹ United Kingdom (132.64).

²⁰ <https://www.zbcnews.co.zw/pres-mnangagwa-repeals-aippa/>

²¹ <https://zimbabwe.misa.org/2020/07/02/new-information-law-should-set-pace-for-repeal-of-other-draconian-laws/>

²² <http://www.veritaszim.net/node/4282>

28. During the previous cycle, Zimbabwe received and supported four broad recommendations related to media freedom.²³ However, challenges in this area persist.
29. The Zimbabwe Media Commission Act (ZMC Act) was enacted on 2 April, 2021 as the second of three laws replacing the aforementioned AIPPA.²⁴ Its purpose is to give effect to Sections 61 (freedom of expression and freedom of the media), 248 (establishment and composition of Zimbabwe Media Commission) and 249 (Functions of Zimbabwe Media Commission) of the Constitution and regulate and control the functions of the media. It sets out the establishment of the Zimbabwe Media Commission (ZMC), established in Section 249 of the Constitution.
30. It has been hailed as progressive by media activists as it acknowledges the transformation of the media as an industry and the development of what is now termed 'media convergence', which refers to the merging of different types of mass media that were previously unrelated due to technological advances.²⁵ Likewise, the definition of media practitioner was also not restricted to journalists but includes a broader group of people who work together towards the seeking, receiving and sharing of information.
31. Other positives include Section 13 of the ZMC Act which makes provisions for the registration of any order of the commission in the High Court, giving it the capacity to be enforced as it was an order of the High Court.
32. However, contrary to international standards, the ZMC Act constrains the operations of the media by imposing State regulation at a time when the media in many parts of the world is taking the path of self-regulation. In addition to the functions of the ZMC as set out in Section 249 (1)(b) of the Constitution, to 'promote and enforce good practices and ethics in the media', the Act further mandates the ZMC to 'monitor and secure' compliance with any law that regulates media practitioners in Section 4 (1)(a)(1).
33. Section 29(3) of the ZMC Act also makes it possible to punish those who contravene the Act with up to 6 months' imprisonment, creating a chilling effect for the right to freedom of expression for media practitioners.
34. The government used accreditation laws to control international media journalists' entry into the country. The government requires foreign journalists to obtain permits 60 days before travelling to the country to report from the country. Foreign reporters pay more for permits and accreditation than do their local counterparts.²⁶ The Human Rights Committee has made clear that State systems of registration or licensing of journalists are incompatible with standards on the right to freedom of expression.²⁷ The Zimbabwe accreditation laws seek, instead, to control and limit who, how and when journalistic work may be carried out.
35. This is although accreditation requirements were contained under the repealed AIPPA and are not included in either the ZMC or Freedom to Information Act.
36. Accreditation still went ahead in 2021, through a Statutory Instrument issued by the Ministry of Information, Publicity and Broadcasting Services citing sections of the

²³ Sweden (132.62); the Netherlands (131.19); Namibia (131.93); Norway (132.93).

²⁴ <http://www.veritaszim.net/node/4905>

²⁵ <http://kubatana.net/2019/08/29/statement-on-the-recently-gazetted-zimbabwe-media-commission-bill/>

²⁶ As above

²⁷ <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

repealed AIPPA.²⁸

37. In May 2021, a *New York Times* correspondent Jeffery Moyo, was arrested in Harare and charged with violating the Immigration Act after allegedly presenting false information to authorities to help his colleagues into the country. The two visiting *New York Times* reporters, Christina Goldbaum and João Silva, were ordered out of the country four days into their trip after flying into Bulawayo on May 5 to report on the situation in Zimbabwe. Authorities told them that their accreditation credentials had been obtained without approval from the Information Ministry.²⁹
38. During the period under review, independent newspapers and commercial radio stations were active and expressed a wide variety of views, although with some restrictions. State-sponsored media, however, were more prevalent.³⁰ The Ministry of Media, Information, Publicity, and Broadcasting Services exercised control over State-run media and some independent media outlets, through regulation under the Broadcasting Authority of Zimbabwe and the ZMC.
39. There is a continuing challenge of bias within State-owned media, which followed the government's line under Mugabe and have continued to do so after the change in power.³¹ This practice is unconstitutional, as according to the Constitution, all State-owned or public media outlets should be free to determine the editorial content of their broadcasts and be able to publish dissenting views and opinions, regardless of political or commercial interests.³²
40. In a landmark legal development in July 2019, High Court Justice Joseph Mafusire ruled that the State-controlled ZBC and Zimbabwe Newspapers Group (also known as Zimpapers) had, "conducted themselves in material breach of section 61 of the Constitution" which governs freedom of expression and freedom of media during the 2018 election campaign. The judge ordered the two organizations to produce impartial and independent broadcasts and ensure communications did not favour any political party or candidate over another.³³
41. The Broadcasting Services Act establishes the Broadcasting Authority of Zimbabwe (BAZ) which has the licensing mandate for broadcasting players and other functions related to regulating the broadcasting sector and advising the relevant ministry. ³⁴ The BAZ board is appointed by the Minister of Information, Publicity and Broadcasting. The BSA has become an outdated piece of legislation which is no longer compatible with the broadcasting landscape that has significantly transformed especially within the context of the digital age and specifically the migration from analogue to digital broadcasting.

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http://www.veritaszim.net/sites/veritas_d/files/SI%202021-022%20Access%20to%20Information%20and%20Protection%20of%20Privacy%20%28Registration%2C%20Accreditation%20and%20Levy%29%20%28Amendment%29%20Regulations%2C%202021%20%28No.%201%29.pdf

²⁹<https://www.zimlive.com/2021/05/29/new-york-times-deeply-concerned-as-correspondent-jeffrey-moyo-remanded-in-custody/>

³⁰ <https://www.state.gov/wp-content/uploads/2021/03/ZIMBABWE-2020-HUMAN-RIGHTS-REPORT.pdf>

³¹ <https://www.state.gov/wp-content/uploads/2021/03/ZIMBABWE-2020-HUMAN-RIGHTS-REPORT.pdf>

³² https://www.constituteproject.org/constitution/Zimbabwe_2013.pdf

³³ <https://kubatana.net/2019/07/26/high-court-ruling-vindicates-calls-for-transformation-of-zbc-and-zimpapers/>

³⁴ <http://www.wipo.int/edocs/lexdocs/laws/en/zw/zw036en.pdf>

42. On a positive note, the government finally ended the monopoly of the public-owned television station ZTV. In November 2020, Zimbabwe issued six licenses for commercial radio stations.³⁵ The impartiality of the newly licensed stations is yet to be determined as they have not started broadcasting yet.
43. Between December 2020 and March 2021, the BAZ also licensed the first-ever community radio licenses, issuing six licenses to rural initiatives as well as six campus radio licenses.³⁶
44. During the period under review, radio remained the principal medium of public communication, particularly for the rural majority and urban poor. All urban commercial radio stations licensed in 2015 were operating during this period. Despite their perceived allegiance to the government, these stations included independent voices in their programming.
45. **Recommendations:**
- Refrain from imposing accreditation schemes and procedures that undermine independent media and the participation of the wide range of actors that practice the democratic function of journalism, including for foreign journalists;
 - Ensure all State-owned or public media outlets are independent and free to determine the editorial content of their broadcasts, as outlined in the 2013 Constitution;
 - Ensure the Broadcasting Authority of Zimbabwe (BAZ) licenses television and radio stations that have diverse editorial policies and not only those presumed to be less critical of the government;
 - Repeal the Broadcasting Services Act and replace it with a law that will promote diversity in the broadcasting space and merge the broadcasting and telecommunications sectors.

Online expression and privacy

46. During the previous cycle, Zimbabwe noted a recommendation on citizens' rights to engage in free and private exchanges of information on social media.³⁷ In the period under review, the government regularly monitored and interfered with use of social media. In January 2019, during protests, Zimbabwe imposed a total Internet shutdown. The High Court ordered the service providers to resume services to subscribers following an urgent court application by MISA-Zimbabwe and the Zimbabwe Lawyers for Human Rights.³⁸

³⁵ <https://kwekwenet.co.zw/six-new-tv-stations-licensed/>

³⁶ <https://www.chronicle.co.zw/baz-licenses-three-more-community-radio-stations/>

³⁷ Norway (132.92).

³⁸ http://www.veritaszim.net/sites/veritas_d/files/COURT%20WATCH%2001-2019%20The%20Internet%20Shutdown%20The%20High%20Court%27s%20Ruling%20of%2021%20January%20-%2030%20January%202019.doc

47. The Interception of Communication Act has facilitated surveillance and call interception by State security personnel. ³⁹ The law, in Section 5 (2) allows law enforcement officers to apply to the responsible minister for a warrant authorizing them to intercept communications, including calls, emails, and other messages. Regulations permit officers to apply for interception warrants if they know the identities of individuals whose calls and messages they want to intercept. There were no reported applications of this provision.
48. This clause authorising the minister, instead of an independent and impartial body, to issue warrants is problematic as it may give rise to a conflict of interest and the use of surveillance for political motives.
49. Section 6 (2) states that in instances of urgency or exceptional circumstances an oral application may be made to the minister if the authorized person believes that it is not reasonable to make a written application. This is open to abuse as the minister can decide the urgency of the matter and thus forgo laid down procedures, solely at their discretion.
50. On March 3 2020, the Zimbabwe National Army commander Edzai Chimonyo warned the military would begin monitoring civilian communication on social media that “poses a dangerous threat to national security”.⁴⁰
51. On 15 May 2020, the government gazetted the Cyber-Security and Data Protection Bill, one of three proposed laws that were brought into parliament to replace the repealed AIPPA, and the only one yet to be enacted into law. ⁴¹
52. While the major function of Zimbabwe’s Cyber Bill seems to be the introduction of a specific data processing law and harmonising existing laws, civil society argues that the clampdown on free speech has always been one of its functions.⁴²
53. Of major concern is Section 164 (c) which criminalises the spread of false news online, punishable with a jail term of five years or a level ten fine (ZWL\$280,000/USD3,294) or both.
54. Section 5 and 7 of the Bill seek to designate the Postal and Telecommunications Regulatory Authority of Zimbabwe (POTRAZ) as the Cybersecurity Centre and Data Protection Authority, respectively. This essentially gives POTRAZ the roles of three bodies, being the regulator of the telecommunications industry, the cybersecurity centre and the data protection authority, which could promote monopoly and compromise the independence and efficiency of this body.

55. Recommendations:

³⁹ <http://www.veritaszim.net/node/252>

⁴⁰ As above

⁴¹ http://veritaszim.net/sites/veritas_d/files/Cyber%20Security%20and%20Data%20Protection%20Bill.pdf

⁴² <https://www.transparency.org/en/press/zimbabwe-cyber-security-and-data-protection-bill-would-restrict-anti-corruption-watchdogs-1>

- Cease all measures that prevent or disrupt an individual's ability to seek, receive or impart information online, including Internet shutdowns;
- Respect the right to privacy and ensure all targeted surveillance and/or interception of communications is fully in line with international human rights law, including the principles of lawfulness, legitimacy, necessity and proportionality;
- Amend Section 5 (2) of the Interception of Communication Act to ensure warrants for surveillance and/or interception of communications is granted by the judiciary rather than the executive;
- Amend the proposed Cyber-Security and Data Protection Bill to fully align with international human rights standards on the right to freedom of expression and data protection.

Freedom of peaceful assembly

56. Under Section 58 of the 2013 Constitution of Zimbabwe, everyone has the right to freedom of assembly. However, this right is often violated in practice.
57. During the previous UPR cycle, Zimbabwe received nine recommendations on the right to peaceful assembly, including recommendations to amend or repeal the Public Order and Security Act (POSA).⁴³
58. In November 2019, the government duly repealed the POSA and enacted the Maintenance of Peace and Order Act (MOPA).⁴⁴ The law, however, falls short of any reformative agenda, securing the endurance of POSA under a different title. We note how most of the POSA provisions are replicated under the new law and the rights to freedom of expression and assembly remain constrained.
59. The MOPA conflates public demonstrations and public meetings under the moniker of public gatherings. This ensures the police maintain their regulatory powers over assemblies of both a demonstrative and deliberative nature beyond what is strictly necessary. It increases the scope of government powers whilst restricting the exercise of fundamental freedoms.
60. The MOPA gives authority to the police to receive notices as well as ultimately make a decision as to whether to allow or prohibit such gathering. Section 3 defines the regulating authority as the police officer in command of each police district and outlines the procedure for notification. Section 8 (9) gives powers to the police to prohibit gatherings, in contravention of Section 76 of the Guidelines on Freedom of Assembly

⁴³ France (131.14); Czechia (131.15); Botswana (131.92); Italy (131.95); Spain (131.90); Germany (132.98); Denmark (132.97); Canada (132.95); United States (132.91).

⁴⁴http://www.veritaszim.net/sites/veritas_d/files/Maintenance%20of%20Peace%20%20Order%20Act%20-%20Act%209%20of%202019.pdf

and Association in Africa which states that the 'designated authority shall be impartial'.⁴⁵

61. The powers to prohibit public gatherings must be reposed in the courts as the arbiters of constitutionally permissible derogations, per international human rights standards.
62. In March 2020, the government introduced the COVID-19 emergency rules which limit the size of public gatherings. Gathering restrictions persist to date and continue to be applied differently to ruling party members and opposition members.⁴⁶
63. Police issued prohibition orders against dozens of planned, nationwide labour and opposition party protests throughout the year, citing reasonable suspicion the protests would result in violence and property damage. Authorities often denied requests by civil society, trade unions, religious groups, or political parties other than ZANU-PF to hold public events if the agenda conflicted with government policy positions. A small group of persons, however, received a permit to camp in front of foreign embassies in Harare throughout the year.⁴⁷
64. In July 2020, opposition and civic groups attempted to organize major anti-government demonstrations, to protest against economic decline but authorities responded by deploying the army to patrol Harare. Transform Zimbabwe leader Jacob Ngarivhume and journalist Hopewell Chin'ono were arrested in the run-up to the 31 July rally on charges of inciting violence.⁴⁸ Scores of participants were arrested on the day, including MDC Alliance spokesperson Fadzai Mahere and renowned author Tsitsi Dangarembga⁴⁹
65. Arrests for protesting under the COVID-19 rules include the MDC Alliance trio of Joanna Mamombe, Cecilia Chimbiri and Netsai Marowa, as well as 13 nurses who were arrested for protesting against poor working conditions in 2020 but were later acquitted by the courts.⁵⁰
66. One citizen, Makomborero Haruzivishe was jailed for 14 months on charges of inciting violence in April 2021. The charges included, 'mobiliz[ing] members of the public by whistling a whistle code trying to canvas them to revolt against the police officers and ... [threw] some stones towards the police officers and their vehicles.'⁵¹

Disproportionate Use of Force

⁴⁵https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf

⁴⁶ <https://www.voanews.com/africa/zimbabwes-alleged-use-covid-excuse-stifle-dissent-draws-un-concern>

⁴⁷ <https://www.state.gov/wp-content/uploads/2021/03/ZIMBABWE-2020-HUMAN-RIGHTS-REPORT.pdf>

⁴⁸ <https://www.aljazeera.com/amp/news/2020/7/23/zimbabwe-politician-denied-bail-in-anti-government-protests-case>

⁴⁹ <http://www.702.co.za/articles/391617/author-tsitsi-dangarembga-and-mdc-s-fadzayi-mahere-arrested-during-protest/>

⁵⁰ <https://kubatana.net/2020/10/15/zim-nurses-acquitted-over-work-boycott-protest/>

⁵¹ <https://www.timeslive.co.za/amp/news/africa/2021-04-06-zimbabwe-activist-makomborero-haruzivishe-jailed-for-14-months/>

67. Under Clause 13 of the MOPA, the police may ensure the dispersal of a gathering "and may for that purpose order the use of force, excluding the use of weapons likely to cause serious bodily injury or death". It is further stated that "the degree of force which may be so used shall not be greater than is necessary for dispersing the persons gathered and shall be reasonable and proportionate to the circumstances of the case and the object to be attained".
68. In the period under review, there has been excessive use of force, deployment of the army against protesters, arbitrary arrests and unfair application of the law. On 1 August 2018, protesters gathered outside the Zimbabwe Electoral Commission to demonstrate against the delay in the announcements of the election results. The police and army were deployed and used excessive force leaving six people dead. In mid-January 2019 police once again used excessive force to quell fuel increase protests with human rights groups reporting 17 people dead, and at least 17 women raped, allegedly by law enforcement.⁵²
69. Following the 1 August 2018 killings, on 12 September 2018, the President appointed the Montlanthe Commission of Inquiry to inquire into the circumstances of the post-election violence, including the use of force, and to make recommendations.
70. The Commission found that 'the use of live ammunition directed at people especially when they were fleeing was clearly unjustified and disproportionate' and 'the use of sjamboks, baton sticks and rifle butts to assault members of the public indiscriminately was also disproportionate'.
71. On 24 November 2020, the Ministry of Justice, Legal and Parliamentary Affairs gazetted the Zimbabwe Independent Complaints Bill. This Bill seeks to provide for an independent complaints mechanism for members of the public against members of the security services under section 210 of the Constitution. The complaints mechanism is to be intermediated by a body independent from each of the security services, namely the police, defence, prisons and correctional and intelligence services. For this purpose, the Bill establishes a Commission to carry out this function to remedy any harm caused by any misconduct on the part of any member of the security services⁵³.

72. Recommendations:

- Amend the Maintenance of Peace and Order Act in line with international and regional human rights standards on the right to peaceful assembly, including Section 8 (9);
- Conduct impartial, prompt, thorough, independent and effective investigations into the disproportionate use of force during protest and ensure perpetrators are brought to justice; and,

⁵² <https://www.hrw.org/news/2019/03/12/zimbabwe-excessive-force-used-against-protesters>

⁵³ http://www.veritaszim.net/sites/veritas_d/files/Zimbabwe%20Independent%20Complaints%20Commission%20H.B.%205%2C%202020.pdf

- Ensure the Zimbabwe Independent Complaints Bill is passed into law and effectively implemented.

Safe and enabling environment for journalists and human rights defenders

73. During the previous cycle, Zimbabwe supported five and noted one recommendation to ensure a safe and enabling environment for human rights defenders.⁵⁴ However, no recommendation explicitly mentioned journalists.
74. In the period under review, the safety and security of journalists remain a cause for concern in the country with 8 assaults recorded in 2017; 14 assaults in 2018; 12 in 2019 and 7 in 2020.⁵⁵
75. In September 2016 and December 2017, media representatives, under the auspices of the Media Alliance of Zimbabwe, met with senior police officers led by then National Police Spokesperson Senior Assistant Commissioner Charity Charamba.
76. The two meetings were informed by deteriorating relations and hostility between the media and the police in the wake of increased cases involving the harassment, assault and arrests of journalists conducting their lawful professional duties by members of the police. During the meetings, the parties raised issues of mutual professional concerns and acknowledged that these needed to be addressed in the context of respective mandates and responsibilities as provided for by the Constitution.⁵⁶
77. It is against this background that the December 2017 follow-up meeting culminated in the production of key action points that needed to be taken to improve professional relations between the police and the media.
78. Commendably, the agreed action plans and interventions went a long way in not only improving relations between the two parties, but in reducing the number of cases involving unlawful arrests, assaults or harassment of journalists by the police.
79. Consequently, no journalist was arrested, detained or assaulted by the police in the first six months of 2018 following the December 2017 meeting and its attendant action plans. The situation, however, deteriorated after the July 2018 elections.
80. On 9 January 2019, Costa Nkomo, a journalist with 263Chat, was assaulted by the police as they were rounding up vendors in Harare's central business district. On 4 April 2019, police fired teargas canisters into the 263Chat offices as they pursued journalist Lovejoy Mutongwizo who had been covering an operation by the police and Harare Municipal police. One of the police officers reportedly fired a canister at the journalist,

⁵⁴ Czechia (132.94); Ireland (132.96); Sweden (131.97); Norway (131.94); Uruguay (132.99); Ukraine (132.100).

⁵⁵ <https://misa.org/wp-content/uploads/2020/02/State-of-the-media-report-2019-MISA-Zimbabwe.pdf>

⁵⁶ As above

which struck him on the abdomen.⁵⁷

81. During the COVID-19 pandemic, the Media Institute of South Africa-Zimbabwe and local journalist Panashe Makufa filed an urgent chamber application after police arrested and harassed journalists and media workers during the COVID-19 lockdown, which began on March 30. On April 20, High Court Justice Manzungu ordered police and other law enforcement agencies charged with enforcing the lockdown not to arrest, detain, or interfere “in any unnecessary way” with the work of journalists on the basis that their press cards issued in 2019 had expired.⁵⁸
82. The police and to a lesser extent, the army, have been the major perpetrators of assault on journalists and other communicators. Despite the existence of the court order, the violations have continued:
83. On 24 June 2020, journalists Munashe Chokodza and Leopold Munhende were reportedly assaulted by police in Harare for contravening lockdown regulations despite showing their press cards. The two were returning from work around 6.40pm when they encountered a group of soldiers and police officers who demanded to know where they were coming from. They explained that they were journalists and showed their press cards. They allege that it was at that point that the soldiers said journalists thought they were ‘special and needed to be dealt with’. Munhende said they were slapped, tripped to the ground, kicked and assaulted with truncheons and sjamboks. The two journalists were then ordered to get up and run. They were treated for minor abrasions and pain by a local doctor.⁵⁹
84. On 18 September 2020, three journalists were reportedly assaulted by unidentified men at a press conference by the Zimbabwe National Students Union President Takudzwa Ngadziore in Harare. The journalists assaulted were freelancer James Jemwa, VOA Godwin Mangudya and 263Chat Thomas Madhuku. Jemwa sustained injuries on his forehead and wrist and had his camera and mobile phone confiscated by the assailants. Mangudya’s recorder was damaged in the attack.⁶⁰
85. Security forces sometimes punished family members for offences allegedly committed by their relatives. On 29 July 2020, police searched the Bulawayo home of news site ZimLive.com editor Mduduzi Mathuthu for information on subversive materials linked to protests scheduled for July 31. Mathuthu was not at home when police arrived and remained in hiding as of November.⁶¹ Police detained his sister, Nomagugu Mathuthu, at the Bulawayo Central Police Station, then released her after arresting Mathuthu’s nephew, Tawanda Muchehiwa, on July 30. Muchehiwa reportedly disappeared from police custody and then was left at his residence on August 1, badly beaten by individuals suspected of being state security agents.⁶²

⁵⁷ <https://misa.org/wp-content/uploads/2020/02/State-of-the-media-report-2019-MISA-Zimbabwe.pdf>

⁵⁸ <https://www.nst.com.my/world/world/2020/04/586264/zimbabwe-court-orders-police-stop-harassing-journalists-covering-covid-19>

⁵⁹ <https://www.ifj.org/media-centre/news/detail/article/zimbabwe-journalists-beaten-and-humiliated-by-security-forces.html>

⁶⁰ <https://zimbabwe.misa.org/2020/09/18/journalists-assaulted-at-press-conference/>

⁶¹ <https://www.news24.com/news24/africa/zimbabwe/zimbabwe-crackdown-continues-as-police-raid-another-journalists-home-reports-20200731>

⁶² <https://mg.co.za/africa/2020-09-13-the-brutal-abduction-caught-on-camera-in-zimbabwe/>

86. The State has also continued to deal with foreign journalists or local correspondents with international stables in a particularly heavy-handed manner.

87. In August 2018, a foreign Journalist, Joseph Cotrell, was reportedly shoved with a rifle butt by a member of the anti-riot police while covering an MDC-Alliance election-related press conference in Harare.⁶³

88. Recommendations:

- Conduct impartial, prompt, thorough, independent and effective investigations into attacks and violence against journalists by public officials and ensure perpetrators are brought to justice;
- Establish prevention mechanisms, such as an early warning and rapid response mechanism, to give journalists and media workers, when threatened, immediate access to authorities competent and adequately resourced to provide effective protective measures;
- Develop and implement strategies for combating impunity for attacks and violence against journalists, including by, inter alia, (i) creating special investigative units or independent commissions, (ii) appointing a specialized prosecutor, and (iii) adopting specific protocols and methods of investigation and prosecution;
- Conduct training and awareness-raising among law enforcement officers and military and security personnel on international human rights and international humanitarian law obligations and commitments relating to the safety of journalists, in collaboration with media organisations, journalists and civil society.
- Ensure the Zimbabwe Media Commission engages with law enforcement officers and military and security personnel on the safety and security of journalists.

Enforced disappearances

89. In 2016, during the UPR in Geneva, then-Vice President Mnangagwa told the United Nations that the government was actively pursuing the search for journalist Itai Dzamara. However, the government has failed to give regular updates on the search efforts for the activist/journalist and to date, he remains unaccounted for.⁶⁴

90. In the period under review, while there haven't been cases of ongoing enforced disappearances, there are several cases of politically motivated violence and alleged

⁶³ <https://misa.org/wp-content/uploads/2020/02/State-of-the-media-report-2019-MISA-Zimbabwe.pdf>

⁶⁴ <https://www.amnesty.org/en/latest/news/2020/03/zimbabwe-five-years-on-whereabouts-of-journalist-and-pro-democracy-activist-still-a-mystery/>

enforced disappearances that have not been fully investigated and resolved.

91. In the period under review, there were several alleged abductions involving a doctor leading a workers' strike, Dr Peter Magombeyi,⁶⁵ MDC Alliance trio of Joanna Mamombe, Cecilia Chimhiri and Netsai Marova,⁶⁶ and comedian Samantha Kureya.⁶⁷ All these were later found but to date, no investigation into these has been made public.

92. Recommendations:

- Conduct impartial, prompt, thorough, independent and effective investigations into all instances of enforced disappearances.

⁶⁵ <https://www.hrw.org/news/2019/09/18/outspoken-zimbabwe-doctor-abducted>

⁶⁶ <https://www.theguardian.com/world/2020/may/17/zimbabwean-mdc-activists-abducted-and-sexually-assaulted>

⁶⁷ <https://www.bbc.com/news/world-africa-49433387>