

UNITED

FOR HUMAN RIGHTS

A Zimbabwe Human Rights NGO Forum newsletter
MAY 2023



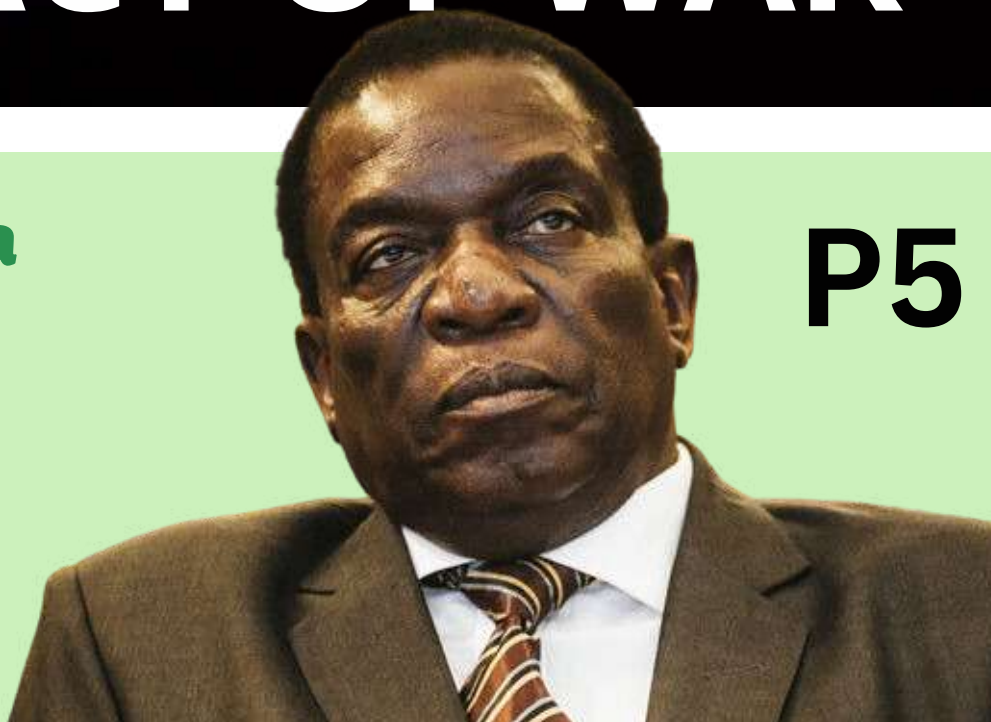
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**Mnangagwa
repressive
law to be
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Foreword:

The laws are just unconstitutional

I hope the newsletter for the month of May finds you well.

The month ended with two important developments, the proclamation by President Emmerson Mnangagwa of 23 August as the date the country will conduct its harmonised elections and the passing of the Criminal Law (Codification and Reform) (Amendment) Bill otherwise being referred to as the Patriotic Bill by the National Assembly.

The election date has been proclaimed. We expect political parties and candidates to invigorate their election campaigns. As history has been having it, we are likely to see an escalation in violent cases. I urge you to be vigilant during this period. Whilst we continue to call for peace before, during and after elections, we remain sceptical that the coming three months could be tough. Please be safe. We hope that the recent timely launch of a report - A Short History of Organised Violence and Torture in Zimbabwe (1972-2020) - compiled by the Research and Advocacy Unit in conjunction with the Forum, Heal Zimbabwe Trust, Counselling and Services Unit, and Veritas will invoke the dark memories of violence and remind the stakeholders on the need to uphold peace.

On the Patriotic Bill, I think most of you will agree with me that this is the most draconian law that we have seen in independent Zimbabwe. Laws like the Public Order and Security Act (POSA) and Access to Information and Protection of Privacy Act (AIPPA) and even the Private Voluntary Organisation (Amendment) Bill that is currently in the making come nowhere near the kind of infringements to be brought by this law. It is certainly an insult to our Constitutional democracy and the rights of all people. As for recourse if this law is passed, obviously it will be challenged in the Constitutional Court. If not, all of it, then significant parts of it, because the bill is manifestly and patently unconstitutional. It infringes on freedom of speech, freedom of assembly, freedom of association, you name it. All sorts of civil and political rights that the Constitution gives, are infringed by this kind of bill.

Now that the bill has passed through the National House of Assembly, the chances of it becoming law even before the elections are now very high. The bill still must go to the upper house, the House of Senate which is known to pass things within an hour. The Senate will pass it, and then it finds its way to the President for his signature. Parliament is still able to discharge its duties between now and the elections, and the President is still able to sign bills into law.



Forum Director Dr Musa Kika

However, this would be very unfortunate if at all, the President finds himself signing this bill. The government has committed itself to certain governance reforms in line with the Arrears and Debt Clearance process that is ongoing. Under governance, there are issues to do with constitutionalism and civic space. This kind of law, unfortunately, takes back or takes away whatever commitments the government has made or is making in that process. Let us just hope the President will decide not to sign it, but to send it back to Parliament and possibly, be handled in such a way that it will lapse before parliamentary processes or legislative processes have been completed.

Early this month, we participated in the 75th Ordinary Session of the African Commission on Human and Peoples' Rights in The Gambia where we spotlighted the closure of civic space in Zimbabwe. The NGOs, after being convinced that the Zimbabwean government has to comply with its obligations under the African Charter on Human and People's Rights, managed to place Zimbabwe under the agenda, in a position paper submitted to the African Commission. The Forum also acknowledged its dialogue with President Mnangagwa on the PVO Amendment but still appealed to the ACHPR's intervention to ensure that President Mnangagwa does not sign the PVO Bill into law. I would like to end by once again calling on you to be diligent in your indispensable effort in ensuring the pursuit of peaceful elections in Zimbabwe.

Dr Musa Kika
Executive Director.

Zimbabwe elections 'an act of war'

...as country braces for yet another bloody poll

United Reporter

Despite a progressive Constitution with a broad Bill of Rights, Zimbabwe is unable to shake its legacy of brutality, rendering its people powerless, its government a “monster”, and its elections “an act of war”.

The country has failed to transform beyond its name, according to Dzikamai Bere, renowned human rights activist and national director of the Zimbabwe Human Rights Association (ZimRights).

Bere made the remarks on 24 May during the online launch of a Research & Advocacy Unit (RAU) report titled *A Short History of Organised Violence and Torture in Zimbabwe — 1972 to 2020*.

The report was compiled by RAU in conjunction with the Zimbabwe Human Rights NGO Forum (the Forum), Veritas, Heal Zimbabwe Trust and the Counselling Services Unit.

Also at the launch were Tony Reeler, senior researcher at RAU; Human Rights and constitutional lawyer who is also the executive director of the Forum Musa Kika; the executive director of Zimbabwe Lawyers for Human Rights, Roselyn Hanzi, and Annah Moyo-Kupeta of the Centre for the Study of Violence and Reconciliation.

The release comes as the country prepares to head to the polls for general elections on 23 August.

“The report is an indictment on our nation, and on the nation-building project of Zimbabwe,” said Bere.

“At a time when we are supposed to be celebrating 10 years of a new Constitution, that Constitution, as the report finds, has not helped us to conquer [our] problems.”



Soldier beating up a civillian during the 1 August 2018 post electoral protests in Harare

“The report provides a detailed overview of the organised violence and torture (OVT) that has afflicted Zimbabwe since 1980, as well as the violations that took place from 1972, when the country was still known as Rhodesia, to 1980, when independence was finally attained, according to RAU.

It found that although there had been changes in the players over the decades, torture, abductions and displacements were still experienced in 2022:

“The biggest problem is that OVT has become normalised. It is a normal part of political problem-solving and is frequently advocated as normal and necessary.

“The evidence for this comes from the violent rhetoric that always follows challenges to the political power of Zanu-PF. This has been the case since 1980, with the use of hate speech and violent rhetoric being comprehensively documented over the decades.”

Said Bere: “Organised violence and torture has not decreased since 2013 when we adopted a new Constitution, it has not decreased since the establishment of the second republic in 2017 through a military coup [The report] is an indictment on us as a people. It confronts one of the worst evils of mankind — violence, a pre-colonial evil that persists today.”

The Zimbabwean government has been harshly criticised by local and international human rights groups under the administrations of former president Robert Mugabe and the current president, Emmerson Mnangagwa, as a country where freedom of association, peaceful assembly and expression remain threatened.

Harassment and intimidation of the media and opposition politicians and party members have made international headlines, as have violent attacks on opposition party members. Political violence is known to flare up before and during elections, which the report also highlights.

The report projected another violent poll in August.

“Every decade since the 1970s has seen significant amounts of OVT, ranging from frank civil war, the inevitable consequence of the settler state of Rhodesia failing to meet the legitimate aspirations of most of its citizens, through the low-intensity civil conflict of the 1980s, and two decades of very violent elections. In every decade, perhaps excepting the Liberation War, the state and the government has been identified as the major perpetrator.”

Between the country's liberation war and Gukurahundi — the massacre of Ndebele by Mugabe's Fifth Brigade — at least 20 000 people died, according to the report, “but the actual figures can only come from a fully-fledged transitional justice process”.

The prevalence of organised violence and torture over the decades can only mean that there are hundreds of thousands of torture victims in the country, according to the report.

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Zanu PF continues abuse of traditional leaders

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“This is a shameful history, and the fact that it persists today in the 21st century, in a country that has been independent for 40 years, is unacceptable. No amount of rhetoric about the threats of neo-colonialism or imperialism can disguise the fact that OVT continues in a country that claims to be democratic and playing by the rules of the democratic game: the continuous OVT belies these claims.”

The desire to transform the state was rhetoric, said Bere, mere “public relations”.

“On the ground, the violence continues.

“Elections are supposed to bring hope, they are a moment to embrace the promise of power to the people, rule by the people. But when elections are held in a context of violence, they become a war, a tragedy, because they deliver dead bodies.”

The report predicted a rise in organised violence and torture and called for the need for vigilance as the country moves closer to polls.

Data presented in the report shows that Zimbabwe is already in a precarious state going closer to the polls, with reported cases of violence against opposition parties and human rights activists on the rise.

Kupeta said the report captures episodes of violence in Zimbabwe, gross human rights violations, post-election violence, corruption and many other social ills.

“There has not been a breaking away from the past way of dealing with disputes - violence remains the language the leaders use to resolve issues, as is the case in Zimbabwe,” Kupeta said.

“The leaders are not peace carriers because they lead from wounds. Violence is all they have known. If we are to achieve sustainable peace, the need to treat the trauma our leaders have should be a priority.”

Hanzi said one of the greatest shortcomings or challenges that Zimbabwe continue to have which is resulting in repeated violence, is that as a country, “we have not dealt with transitional justice cases properly.”

“There have been attempts by the authorities to only deal with the past when it benefits them,” Hanzi said.

“Those driving the transitional justice process are the perpetrators.

“The process has not been victim centred but spearheaded by perpetrators.”

UNITED REPORTER

Former Vice President Kembo Mohadi revealed that traditional leaders agreed to gather their subjects at polling stations on voting day and ensure that they vote for Zanu PF.

He delivered this message during the official opening of the refurbished Mhondoro Hospital on April 20 in Mubaira, Mashonaland West province, according to the Monthly Monitoring Report for April produced by the Zimbabwe Peace Project.

Mohadi stated that in the meetings he had with chiefs, village heads and headmen, they assured Zanu PF of a victory.

The Zanu PF's second secretary further mentioned that on voting day, each headman will marshal his/her subjects and ensure they have all voted before he/she votes last.

According to CITE, Mohadi also used Chief Maduna's installation ceremony in Filabusi to openly campaign for the ruling party as he 'reminded' chiefs to persuade their supporters to vote for the ruling party in the upcoming elections.

Since Zimbabwe's independence from colonial rule in 1980, Zanu PF has used traditional leaders as part of its campaign machinery in rural areas.

According to a survey by the Zimbabwe Democracy Institute (ZDI), traditional leaders are being used to campaign for Zanu PF and facilitate the closure of their communities from opposition penetration.

However, the Zimbabwe Constitution says traditional leaders should be non-partisan and not belong to any political party.

Chapter 15:2 of the Constitution states that: traditional leaders must not be members of any political party or in any way participate in partisan politics, act in a partisan manner, further the interests of any political party or cause or violate the fundamental rights and freedoms of any person.



Zimbabwe Council of Chiefs president Chief Fortune Charumbira

Mnangagwa's scary law will be challenged

UNITED REPORTER

The Zimbabwe NGO Forum director Musa Kika says the Patriotic Bill that was railroaded by President Emmerson Mnangagwa's Zanu PF party and sailed through the National Assembly is very unconstitutional and will be challenged in a court of law.

Mnangagwa's ruling party on May 31 moved a step closer to having the so-called Patriotic Bill come into law after Parliament passed the Criminal Law (Codification and Reform) Amendment Bill.

The bill that imposes a death penalty on 'unpatriotic' Zimbabweans and will now be debated by the Senate before it is sent to Mnangagwa for his signature seeks to introduce so-called patriotism provisions.

Most Zimbabweans have described the bill as an assault on human rights to freedom of assembly and penalise citizens and residents for merely attending a meeting where sanctions are considered.

First gazetted on December 23, 2022, the proposed law seeks to criminalise Zimbabweans involved in actions that "undermine Zimbabwe's sovereignty, dignity and independence".

Some of the offences listed in the bill include "wilfully injuring the sovereignty and national interest of Zimbabwe".

It also seeks to criminalise "participation by Zimbabweans in meetings inside and outside Zimbabwe on issues of military intervention, subverting/ upsetting/ overthrowing or overturning the constitutional government, or on economic sanctions and trade boycotts."

Musa Kika, a constitutional lawyer who is the Executive Director of the Zimbabwe Human Rights NGO Forum, said it will be unfortunate if Mnangagwa signed the bill into law.

"This is an unconstitutional law. It infringes on all sorts of civil and political rights that the constitution gives," Kika said.

"In my estimation, this bill is the most draconian law that we have seen in independent Zimbabwe.

"If this law is [passed and signed], obviously it will be challenged in the court of law.

"If not all of it, then the significant part of it because the bill is manifestly and patently unconstitutional."

Mnangagwa has been criticised for failing to keep his promises to return Zimbabwe to a democratic path after taking over from the late Robert Mugabe following a military coup in 2017.

The Zimbabwe Lawyers for Human Rights (ZLHR) said the bill was not going to pass the constitutional test if Mnangagwa goes ahead to sign it.

"Following a critical analysis of these provisions, ZLHR concluded that the provisions are vague, lack certainty, are imprecise, and are thus prone to abuse by law enforcement," ZLHR said.

"The bill does not define "sovereignty" and "national interest", which could be interpreted broadly and subjectively to criminalise the legitimate conduct of those asserting their freedom of expression.

"ZLHR is gravely concerned that the bill penalises citizens and residents for merely attending a meeting where sanctions are considered whether the sanctions target any individual or official or class of individuals.

"The vague criminalisation of meetings between Zimbabwean citizens and foreign governments violates human rights to freedom of assembly, association and expression guaranteed in the constitution.

"Zimbabwe has also voluntarily agreed to be bound by numerous United Nations and African Union human rights instruments providing these rights."

The group of lawyers said if the bill becomes law it would be used to silence civil society organisations and other government critics.

Zanu PF legislators, abusing their majority in Parliament, early this year also passed the controversial Private Voluntary Organisations (PVO) Amendment Bill, which was condemned by United Nations experts saying it would severely restrict civic space and the right to freedom of association in the country.

Mnangagwa is yet to sign the bill into law over three months after it was passed by the Senate.

ZLHR said the latest law targeting government critics will have the chilling effect of silencing Zimbabweans.

"Once enacted into law, these patriotism provisions will have extraterritorial application and criminalise participation by Zimbabweans in meetings held in other countries," the lawyers added.

"This will have a chilling effect of silencing Zimbabwean civil society organisations' international advocacy efforts to promote human rights protection in Zimbabwe."

ZLHR added: "The right to participation of civil society organisations at regional and international meetings is guaranteed under international law.

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“Of grave concern in the bill are the excessive penalties for wilfully injuring the sovereignty and national interest of Zimbabwe, which include the death penalty, lengthy imprisonment, revocation of citizenship, prohibition from being registered as a voter or voting at an election for a period of at least five years.”

Some of the penalties are manifestly unconstitutional, the lawyers said.

They argued that the death penalty can only be imposed on a person convicted of murder in aggravating circumstances, as provided for in section 48 of the constitution.

“The penalty of prohibition of registration as a voter or voting at an election violates political rights as provided for in section 67 of the constitution as read with paragraph 2 of the Fourth Schedule to the constitution, which provides for disqualification for registration as a voter only if a person has been convicted under the Electoral Act,” ZLHR said.

“Revocation of citizenship can only be done in terms of section 39 of the constitution of Zimbabwe, and conviction for so-called unpatriotic conduct is not a ground for revocation in terms of section 39 of the constitution.”

Introducing the bill in parliament in December last year, Justice Minister Ziyambi Ziyambi said the bill sought to prohibit private citizens from making false statements or undermining the country or acting as self-appointed ambassadors meeting foreign officials to undermine national interests.

Trial of CCC Budiriro 26 postponed

The trial of opposition MPs Amos Chibaya and Costa Machingauta and 24 others who were arrested in Budiriro in January for disturbing peace which was supposed to kick start on 18 May has been moved to 13 June.

This was after the activists’ defence counsel from the Zimbabwe Human Rights NGO Forum asked for more time to go through the State papers to prepare for trial. The papers were only saved to them on Tuesday, 16 May.

Pamelah Musimwa, from Justice for Children, representing a minor who was among those arrested in Budiriro, also indicated that she wanted to apply for separation of the minor. She was asked to file the application by 2 June 2023.

The State will respond on 6 June and a ruling will be made on 9 June. The activists are being accused of disturbing public peace at a private meeting on January 14 this year held at Machingauta’s house.

They are being accused of chanting: “Ngaapinde hake mukomana, 2023 Chamisa chete chete.” The police argue that their actions were unlawful. They were granted bail after spending two weeks in remand prison.

Mother retains child custody after WILSA intervention

United Reporter

An embattled mother Lilian Rufaro Madyara has retained the custody of her minor child following the intervention of the Women and Law in Southern Africa – Zimbabwe.

This was after Madyara’s estranged husband William Mutumanje popularly known as Acie Lumumba kidnapped the child from school while under the custody of his aunt and fled with him to South Africa.

But High Court Judge Justice Priscilla Munangati-Manongwa in her ruling delivered on 30 May 2023, ordered Mutumanje, to return the minor child to his estranged wife within two hours of the granting of the order.

Mutumanje was also prohibited from removing the child from the school where he is enrolled, or from the custody of his mother.

On 23 May 2023, Mutumanje removed the child from school without the consent of his wife’s sister, Angeline Chido Madyara, who had been left with the child when his mother had gone to China.

In an urgent application, through her lawyer Choice Damiso, who was taking instructions from Women in Law in Southern Africa, Madyara accused Mutumanje of harassing his former wife with the help of the police.

She cited Mutumanje, Home Affairs Minister Kazembe Kazembe, and the Zimbabwe Anti-Corruption Commission as respondents, among six others.

Madyara said on May 2, 2023, Mutumanje obtained an order from the courts awarding him access to the minor on alternate weekends and two weeks of every school holiday.

His ex-wife has, however, filed an appeal against the judgment at the High Court and the case is still pending.

“Notwithstanding that, the judgment of the magistrates’ court was suspended upon the filing of the appeal, the first respondent has sought to enforce it through the instrumentality of the second (Police Commissioner-General Godwin Matanga to the fifth respondents (Highlands Police Station),” Madyara said.

“He and the respondents have conducted themselves in a way to harass Mrs Madyara and her relatives as more fully set out in the founding and supporting affidavits herein.”

She claimed that she filed a police report at Avondale Police Station on May 23 and 24, but the officer in charge at the station (sixth respondent) reportedly refused to record the complaint.

Lawyers raise red flag over undue delays in UZ students' case

United Reporter

Lawyers representing the four members of the Zimbabwe National Student Association (Zinasu) who were arrested on May 17 have raised a red flag over undue delays in their clients' treatment and determination of bail.

The four, Emmanuel Sitima; Comfort Ncekuyenkosi Mpofu; Tawanda Benjamin Watadza; and Lionel Andrew Madamombe are facing charges of malicious damage to property, alternatively criminal nuisance, for allegedly protesting for the release of Job Sikhala and putting "Free Job Sikhala" graffiti on government buildings and a church in Harare Central Business District.

They made their initial appearance in court on 19 May and more than 10 days later, no determination on bail has been made due to some delays in handling the matter.

In a letter to the Harare provincial magistrate, the quartet's lawyer, the Zimbabwe Human Rights NGO Forum (Forum), wrote to the Harare provincial magistrate raising concerns over the delays in determining bail for their clients.

"We are concerned about what we consider undue delays in the treatment and determination of bail for our clients, who were arrested on 17 May 2023 and to this day, 30 May 2023, bail proceedings are yet to be finalised on account of delays for which we think should and can be avoided, given that bail proceedings are inherently urgent," Dr Musa Kika, the Forum executive director wrote in a letter dated 30 May.

"We have been instructed by the four accused persons to bring to your attention their concerns about the undue delays in dispensing with the bail proceedings in the matter in view of the urgency and importance attached to bail proceedings in terms of the law,"

Kika added: "Section 50(1)(d) of the Constitution provides that any continued detention of an accused person must be on the basis of compelling reasons. Bail is inherently urgent and section 117A (3) of the Criminal Procedure and Evidence Act [Chapter 9:071 which regulates bail applications states that every application in terms of subsection (2) shall be disposed of without undue delay".

"It is our considered opinion that the delays which have visited this matter and the reasons thereof as documented above, invoke a sense of shock, and can only have the result and effect of subtracting from what both section 50(1)(d) of the Constitution and section 117A (3) of the Criminal Procedure and Evidence Act [Chapter 9:071 require."

According to Kika, the four were arrested on May 17 and were charged with Malicious Damage to Property as defined in section 140 of the Criminal Law



(Codification and Reform) Act [Chapter 9:23], alternatively, Criminal Nuisance as defined in section 46 as read with paragraph 2(n) of the same Act.

They were brought to the Harare Magistrates Court on May 19 for initial remand and bail determination.

On the same day at around 1115hrs, they appeared in Court 3 before Magistrate Learnmore Mapiye. The State led by Tariro Alice Janhi opposed bail and proceeded to lead evidence on the unsuitability of accused persons to be admitted to bail. After leading evidence from one witness, the proceedings were adjourned to 1415hrs.

At 1415hrs, the hearing proceedings could not resume as the presiding Magistrate Ms. Mapiye was not available. She allegedly had been assigned other urgent administrative duties.

The matter was referred to Court 8 for another magistrate to postpone it. The matter was then postponed to 24th May 2023, at 0830hrs.

On May 24, at the scheduled time of 0830hrs, the Court failed to sit, and no reason was given. Upon the resumption of the Court proceedings at 1115hrs, the State, which was now represented by Anesu Chirenje, made an application to postpone the matter to June 1 so that he could get time to peruse the record.

At the instructions of the accused persons, Darlington Marange, of the Forum, opposed the application.

The Court adjourned to 1415hrs to make a ruling, and at 1415hrs, the Court ruled in the State's favour and postponed the matter to 1 June 2023. This was a postponement of three days just for a prosecutor to peruse a bail record, in a matter which is supposed to be urgent.

The four are still battling to secure bail.

UN calls for protection of civic space

United Reporter

The UN High Commissioner for human rights Volker Türk has implored governments to respect protect and expand the civic space where citizens are free to play a role in political, economic, and social life across the globe.

Türk made the call in a statement on May 26 as the UN Human Rights is spotlighting offline and online civic space and human rights defenders as part of its monthly spotlights for the 75th year of the Universal Declaration of Human Rights.

"We all want to help shape our futures, our communities, and our countries, but it is not possible when we do not have space to speak up and debate different viewpoints safely," Türk said. "Civic space is a human rights issue, it is a peace issue, it is a development issue. It is key for sustainable and resilient societies, yet it is under increasing pressure from undue restrictions and repressive laws."

Zimbabwe is one of the countries noted by the UN as experiencing closure in the civic and democratic space under President Emmerson Mnangagwa who has employed crude tactics to silence voices of dissent.

Mnangagwa's government is making strides in passing the worst law, the Patriotic Bill which will impose death penalties on Zimbabweans deemed to be "unpatriotic."

The Zanu PF government is also on the verge of passing the draconian Private Voluntary Organisations (PVO) Amendment Bill into law to silence non-governmental organisations known for calling the government to order over the deteriorating human rights situation in the country.

"From threats and attacks on journalists and human rights defenders, online bullying and harassment, crackdowns on peaceful assembly, to internet shutdowns," said the High Commissioner.

"States must step up efforts to protect and expand civic space as the precondition for people to be able to sustainably enjoy all other entitlements enshrined in the Universal Declaration of Human Rights, from access to health care and clean water and quality education to social protection and labour rights."



He added: "Civil society is a key enabler of trust between governments and the populations they serve and is often the bridge between the two. For governments to reduce barriers to public participation, they must protect this space, for the benefit of all – both online and offline.

"As crucial decisions about our lives are increasingly made online, with private companies playing an outsized role, having an open, safe digital public square has never been more important."

"Yet we see states struggling, and often failing, to protect online civic space and those who use it, swinging between a laissez-faire approach that has allowed violence and dangerous hate speech to go unchecked, and overbroad regulations used as a cudgel against those exercising their free speech rights, including journalists and human rights defenders," he added.

He also thanked civil society for its tireless and invaluable work, describing civic space as the best indicator of a state's commitment to upholding the noble aspirations of the Universal Declaration of Human Rights, a state truly willing to recognise violations when they occur and work continuously to better protect human rights.

"It is about the key question of whose voices we hear in decision-making – and ultimately, whose rights will be respected."

8 mistakes in Zimbabwe's 2013 Constitution



*Dr Musa Kika, the
Forum Executive
Director*

On May 22 2023, Zimbabwe's Constitution turned 10, having become effective on 22 May 2013. This year, we mark the 10-year anniversary. I choose to mark this day with a reflection, and my reflection is on the mistakes we made when we crafted that Constitution.

That we made mistakes is not the death of our constitutional project. Firstly, yes, we made monumental mistakes, but the fact remains that we are not where we used to be, and our Constitution ranks among some of the best in the region and elsewhere.

Secondly, we are a young constitutional democracy. We have no experience with these things; we are learning. Thirdly, constitutions are living documents; they will forever be in a never-ending state of pursuing perfection and weaving through to cover any loopholes, those apparent in the instant, and those to become apparent later. It is experiences and testing times that show us the weak points.

Thus, even as I attempt this exercise, many mistakes remain embedded, camouflaged from the naked and discerning eye, simply because time and experience are yet to test the relevant provisions. In this paper, I discuss what I believe to be apparent mistakes illustrated by our experiences in the first decade of our nascent Constitution.

We have many great and novel aspects of modern-day constitutionalism in our Constitution: Chapter 12 institutions supporting democracy; and an expansive and justiciable Declaration of Rights with first, second and third-generation rights. Section 44 is novel in its formulation: it imposes obligations to respect, promote, fulfil and protect the Declaration of Rights to all, state and non-state, juristic and natural persons, alike.

Thus, we will find no equivalence elsewhere. We have 16 official languages (section 6(1)); this has no match. We have devolution of power and responsibilities (Chapter 14). We have a transitional justice mechanism — the National Peace and Reconciliation, albeit with a 10-year sunset clause (sections 251-253). And never mind the controversies and ineffectuality this body has been up to. We have a corruption-fighting mechanism, the Zimbabwe Anti-Corruption Commission (sections 254-257) – something many constitutions do not have.

The President is not allowed to veto legislation in law-making (section 131); this is a great thing. And many more.

But there are things we should have done better, some of them only in hindsight. These are architectural issues. I am alive to the fact that the Constitution was negotiated; there were many drafts. There were long days and nights and debates. There were walkouts. There were stalemates. There were compromises. Nonetheless, even compromise documents must be critiqued.

Click the Link for the full article: <https://www.hrforumzim.org/8-mistakes-in-zimbabwes-2013-constitution/>

Election result announcement rules need to be interrogated

BY Dr MUSA KIKA

In law, we are always taught that when regulating, we look at the mischief. The mischief is defined as the problem that we are trying to solve; the actual problem.

In practice, we learn that there is the other side to mischief: mischievously using the law to entrench nefarious intents. Section 66A of Zimbabwe's Electoral Act gives us a perfect case study.

The section is titled "Unofficial or false declaration of results prohibited". The summary of this provision is that it is a badly framed provision seeking to stop people, who are not the Zimbabwe Electoral Commission (Zec) from announcing election results and declaring winners.

In a recent Sapes Trust dialogue on Zimbabwe's preparedness for the upcoming polls, the question dominated discussion of whether people can or should be stopped for announcing what they are seeing as election results.

Last week I then got a question, this time coming from journalists: can journalists publish what parties may be pronouncing as election results, and can journalists report on the results as they are seeing them?

The Electoral Act

On August 20 2014, Electoral Amendment Act (No. 6) took effect and introduced a new section 66A. It says as follows:

"66A. Unofficial or false declaration of results prohibited (1) Subject to subsection (3), any person who—

(a) purports to announce the result of an election as the true or official results; or

(b) purports to declare any candidate to have been duly elected; before an electoral officer, acting in accordance with this Act, has announced the result of that election or declared a candidate to have been duly elected in that election, as the case may be, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) Subject to subsection (4), any person who, with intent to deceive or to discredit the electoral processes in an election, falsely—

(a) reports or announces the number of votes received by a candidate or political party in an election; or

Z(b) declares any candidate to have been elected in an election; shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) Subsection (1) shall not be construed as preventing any person from reporting the number of votes received by a candidate or political party in an election, where the report is based on polling station returns and constituency returns from the election concerned.

(4) Subsection (2) shall not be construed as preventing any person from making any allegation regarding the result or conduct of an election in or for the purposes an election petition."

I said earlier this law is badly written. I say so for two reasons: its heading suggests that it prohibits "unofficial" "or false" declaration or election results, suggesting that all forms of pronouncements of results other than by Zec is prohibited. The body of the provision then suggests that the prohibition is only on pronouncing results and claiming them to be "official" and declaring a candidate as duly elected.

So, the heading and the substance contradict each other. The "or false" in the heading incoherently suggest that pronouncement becomes prohibited when false, but not when true. But we may not need to read much into this, because, under our rules of statutory interpretation, headings are not part of the law – just interpretive aids. So, in this case, we will go with the content on

the provision, which at proper reading prohibits purporting to announce the result of an election "as the true or official results" or purporting to "declare any candidate to have been duly elected".

This suggests that when one announces results but does not suggest them to be true and official, and does not declare a winner, they have committed no offence.

What is actually prohibited is to announce results "as the true or official results and/or to declare any candidate to have been duly elected". This does not mean you cannot announce results as preliminary and yet-to-be-confirmed.

And this does not mean suggesting that a certain candidate is winning or appears to have won is prohibited. The clause also prohibits "intently deceiving or discrediting the electoral processes by falsely" reporting or announcing the number of votes received by a candidate or political party in an election or declaring any candidate to have been elected in an election.

So, if there is no intention to deceive, and if the announced results — which are announced as preliminary — are true and correct, then there is no offence.

That is what a plain reading of this provision suggests. The mischief is to curb misinformation, disinformation and purporting results to be official when Zec has not pronounced. That is reasonable and rational.

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The problem becomes when we want to read this provision to mean or suggest that all forms of announcing results are illegal unless that is done by Zec. That is not correct. Section 66A requires that only the Zimbabwe Electoral Commission should announce official results. Is that not obvious? Who else would be in a position to announce official results if not Zec?

It is settled that electoral candidates and their supporters shall accept and respect the outcome of elections that have been proclaimed by the Electoral Management Body in accordance with the law of the land as final and that results of elections and processes that led to such outcome shall be challenged only in accordance with the law of the land.

It is also settled that results announced by the Electoral Management Body having followed due process prescribed in the electoral law shall be the final result of the poll unless challenged and set aside by a competent court of law upon application by aggrieved candidates or political parties.

This is the position whether one looks at the SADC Principles and Guidelines Governing Democratic Elections or the African Charter on Democracy, Elections and Governance.

As for misinformation? Well, everyone knows only Zec announces official results, and it is not the results of party A or party B or of Musa Kika that count as the final official result.

If someone believes what Musa Kika announces over what Zec announces, it is not on Zec or the government. In the interest of transparency and checks and balances, parties are surely allowed to collate their own results and tabulate. Civil Society Organisations are allowed to do parallel voter tabulation. V11s are posted outside each polling station. The V11 form is an original

document carrying results from a polling station and is signed by agents of all contesting parties.

After the signing of the V11 form, information is then recorded on the V23 form, a collation of polling station results within a ward. Surely one can collate all the V11s outside polling stations and calculate ward results, or constituency results, and even national results when one has been able to collate and calculate the information on all V11s.

After all, the national results that Zec must announce is a collation of the V11s, or so it should be. However, we know that one of the grey areas in Zimbabwe's electoral management is what happens in the transmission of results from the polling station high up to the national command centre. That area remains a nebulous affair.

If one calculates correctly and then states what they have seen, publicly, that is him or her simply presenting a factual position.

Granted, one may make errors in calculating. But even Zec can make errors; some errors are so elementary like the infamous case of Dexter Nduna, who spent a term in Parliament as Chegutu West legislator on a sit which was not his because Zec made an accounting mistake, which it admitted.

How bad is that?

It is checks and balances that unearth these kinds of mistakes. It is no cure that section 66A (4) states that the prohibition in subsection (2) shall not be construed as preventing any person from making any allegation regarding the result or conduct of an election in or for the purposes of an election petition.

Credibility, freeness and fairness of an election is fortunately, or unfortunately, not solely the remit of the electoral court or any other court. This is notwithstanding that election results should be contested exclusively through legal channels.

World over, the media plays a critical role in vigilance during elections. They track processes and outcomes in real-time and immediately transmit such information.

That real-time and immediate transmission of information serves a purpose: to not give time to those with nefarious intent to manipulate the results.

Recall the over four weeks of "meticulous verification" of results by Zec after the March 29 2008 polls? That is what happens when we gag CSOs, political parties, media and citizens from publicly communicating what they have seen as preliminary results.

In today's elections, political parties, CSOs, media and citizens will have immediate access to individual results posted at polling stations. So preliminary results are not meant to announce or declare that any particular candidate or political party is the winner.

In various countries, including our neighbour South Africa, the media have set up platforms to compile preliminary results based on breakdowns provided by the electoral commission. The Mail and Guardian newspaper has done it before.

The second reason I say section 66A is bad law is its capacity to be misconstrued, misinterpreted, or mischievously used to gag, silence, control narratives and limit free speech and free flow of information.

This is not an unintended by-product; it appears very deliberate and nefarious.

Bear in mind this amendment was brought about in a context: the context is one of the results transition and declaration that has been contested in Zimbabwe for a long time, as recently as 2018 before the Constitutional Court.

Obviously, this section will be misinterpreted for many reasons and will be taken to mean you cannot announce any results at all under whatever circumstances.

That is incorrect. But the very fact alone that this clause is susceptible to misinterpretation, with dire consequences of prosecution and possible conviction, makes the provision problematic.

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The fine line makes it constitutionally offensive. True to fears of misinterpretation and misinterpretation, there have been arrests and charges under section 66A. In 2019, Zimbabwe's former finance minister and senior opposition politician Tendai Biti was convicted and fined \$200 for unlawfully and falsely announcing the results of 2018's presidential election that was won by Emmerson Mnangagwa.

Biti was alleged to have announced on July 31 2018 that MDC-Alliance leader Nelson Chamisa had won the presidential election. Biti indicated that he would appeal the decision. There has always been a penchant to arrest people for "unofficial" announcements of results in Zimbabwe. Even before the Electoral Act was amended in 2014, Biti, then MDC-T secretary-general had been arrested in 2008 following the inconclusive 2008 elections, and charged with treason for, among others, declaring MDC-T leader Morgan Tsvangirai as duly elected.

The Constitution

But assume for once that section 66A means how the government may prefer it interpreted, and that section 66A is an actual limitation of freedom of speech and the free exchange of information.

Section 61 ("Freedom of expression and freedom of the media") grants the right to every person to expression, which includes freedom to seek, receive and communicate ideas and other information.

Under section 61(5) freedom of expression and freedom of the media exclude a. incitement to violence; b. advocacy of hatred or hate speech; c. malicious injury to a person's reputation or dignity; or

1. malicious or unwarranted breach of a person's right to privacy.

Announcement of preliminary poll results, without more, cannot fall foul of any of these.

Limitation then invokes section 86 of the Constitution which is the country's regime under which rights can be limited in any situation other than a state of emergency.

Under section 86 of the Constitution, rights may be 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.

All relevant factors must be taken into account, which include:

- The nature of the right or freedom concerned;

- The purpose of the limitation, in particular, whether it is

necessary in the interests of defence, public safety, public order, public morality, public health, regional or town planning or the general public interest;

- The nature and extent of the limitation;
- The need to ensure that the enjoyment of rights and freedoms

by any person does not prejudice the rights and freedoms of others;

- The relationship between the limitation and its purpose, in particular, whether it imposes greater restrictions on the right
- or freedom concerned than is necessary to achieve its purpose; and whether there are any less restrictive means of achieving the

purpose of the limitation. It is difficult to see how gagging people from pronouncing on preliminary election results meets this tall order. The Electoral Act and its provisions are subject to the Constitution.

What then is the purpose of posting V11s? What then is the watchdog role of the media? What then is parallel voter tabulation?

What then is the role of civil society? What then does vigilance mean for political parties?

The conclusion

I started with the question of mischief; let me end with it. The mischief being pursued by section 66A of the Electoral Act and the restrictive interpretation given to it is to gag and control the election outcome narrative.

It is to suggest that no one else must speak of the results except the official body, which by now we know its independence is dented beyond redemption.

For now, our hopes are in courts that will give section 66A the correct kind of interpretation which is non-restrictive. But in the fullness of time, section 66A must be struck off the statute books.

The argument that having other voices other than Zec pronounce on preliminary results may cause unrest or misinformation is presumptuous.

It inherently assumes falsity and makes the non-sequitur argument that announcing results equal announcing violence. The price to pay on the other hand in having anything that looks like the restriction of free speech is sacrificing transparency, openness, and checks and balances, without which there are no credible, free and fair elections.

Musa Kika is a Zimbabwean human rights and constitutional lawyer.

Trial of former Chitungwiza mayor kick starts



*Maiko's lawyer,
Noble Chinhanu*

United Reporter

The trial of the former Chitungwiza mayor Lovemore Maiko who is facing charges of falsely trying to regain control of the Local authority after he was ousted kick-started at the Chitungwiza Magistrates Court on 18 May.

Maiko is alleged to have falsely acted as a Mayor in October 2022 after a quorum of the Chitungwiza Town Council held a council meeting and conducted an election which saw Maiko appointed to the mayoral post.

Local Government Minister July Moyo subsequently declared the election null and void, resulting in Maiko being slapped with criminal charges.

He is one of five other councillors facing further charges of abuse of office stemming from the same circumstances.

On 18 May, the Magistrates Court heard the evidence from Chitungwiza town clerk, Evangelista Machona who stated that the former mayor had acted illegally.

Maiko, through his lawyer, Noble Chinhanu of Zimbabwe Human Rights NGO Forum, questioned the State witness who eventually admitted that the act of council, even if wrong, is presumed valid until declared invalidated by the Minister.

She also confirmed that wrongful acts of the council are attached to the council as a whole and not to individuals singled out randomly.

But Maiko claimed that he was being victimised by the Acting Mayor who wishes to preserve his position and thus use his power through the Minister to eliminate the perceived threat.

Maiko and the other five accused are also facing disciplinary hearings before a tribunal appointed by the Minister.

This is despite provisions of section 111 of the Urban Councils Act which give immunity from liability to any elected councillor of a town council in the event that they commit or omit to do anything wrongful in the exercise of their public duties. Maiko is set to appear again in Court on 30 May 2023 for the continuation of the trial.

Patriarchy continues to hinder women's political participation

United Reporter

Women's political participation is crucial for advancing gender equality and ensures that diverse perspectives and experiences are represented in decision-making.

A dialogue session organised by Women and Law in Southern Africa "Thematic Dialogue Session with Elections Management Body, Political Parties and Parliament" in Kwekwe highlighted that patriarchy continues to hinder Women's Political participation.

MDC legislator, Memory Mboniya chronicled how her relatives did not support her when she contested in her rural area in 2013. She recounted:

"When I contest an election in 2013, I lost the primaries in my ward in my own rural area. Even my own relatives did not believe in me because I am a woman. When you are a female politician, people will lie and denigrate you, so much that even your partner will dump you."

Josephine Shava, a legislator from Mashonaland West echoed the same troubles faced by women, saying she was arrested just before the nomination day and had to be replaced despite having participated in primaries.

All the present legislators reiterated that women aspiring to enter the political space must be bold and develop a thick skin in the face of insults and name-calling from men.

During the thematic session, the participants discussed the necessity of achieving equal representation for women in parliament.

They emphasised the importance of ensuring a 50/50 representation in leadership positions and urged political parties to facilitate women's equal involvement in politics.

Zimbabwe has been struggling to establish a 50/50 representation in both parliament and the executive, with observers blaming violence as an impediment to women's participation in politics and reluctance to take up political offices.

ZLHR condemns prison amnesty for child sex offenders

BY KUMBIRAI MAFUNDA

ZIMBABWE Lawyers for Human Rights (ZLHR) is greatly concerned by the government's decision to release some inmates, who include convicted sexual offenders, from the country's prisons under a presidential amnesty declared recently by President Emmerson Mnangagwa.

On 12 May 2023, President Mnangagwa gazetted Clemency Order No. 1 of 2023, where he exercised his prerogative of mercy to release some offenders from some jails located across the country in a move hailed by Zimbabwe Prisons and Correctional Services as aimed at reducing the prison population.

The Clemency Order gave amnesty to different categories of prisoners throughout Zimbabwe.

Section 12(d) of the Clemency Order provides that some prisoners were to be excluded from the proposed general amnesty, including any inmate convicted of committing any specified offence.

Section 13(c) of the Clemency Order provides that for the purpose of the amnesty: "specified offence" includes rape or any sexual offence.

However, in some sections of the same 'Clemency Order' President Mnangagwa's Clemency Order provided exceptions, where inmates convicted of crimes that include rape and sexual offences would be granted amnesty.

Such exceptions included inmates aged 60 and above who would have effectively served one-tenth of their sentence to be released on amnesty.

ZLHR is shocked and disheartened that the release of sexual offenders significantly lowered the seriousness of sexual offences, considering that some of the sexual offenders were released having just served a tenth of their sentences.

Some of the sexual offenders being released after only serving prison terms of less than one year were quoted telling journalists during interviews that they had raped children as young as nine.

It is abhorrent that most of these inmates were released into the same communities, where they committed the crimes and where their victims still reside.

These offenders have a high propensity to re-offend, and the consequences will be catastrophic for individual victims, the victims' families and the community.

ZLHR also notes that according to Zimbabwe Republic Police, there has been an increase in domestic violence cases which has seen the law enforcement agency recording a spike in the number of murder cases throughout the country and yet authorities have the audacity to release some dangerous offenders from prison.

While the Constitution provides that the President exercises the power of mercy under section 112, section 90(2)(c) of the Constitution provides amongst the duties of the President that he/she must ensure the protection of the fundamental human rights and freedoms and the rule of law.

Among the fundamental rights that the President must protect is that every child in Zimbabwe must be protected from economic and sexual exploitation or abuse.

The Constitution also provides that the child's best interests are paramount in every matter concerning the child. The best interest of the child principle is also well articulated in the African Charter on the Rights and Welfare of the Child and the United Nations Convention

on Children's Rights. Zimbabwe has voluntarily ratified these human rights instruments and has obligations to implement them fully. The decision to release child rapists is an affront to the protection of a girl child and to the best interest of the child. The powers of clemency by the President and government are not exercised in isolation but are exercised with due regard to other duties imposed on the President by the Constitution, and these duties place an obligation on the President to protect fundamental human rights.

As such, releasing inmates convicted of child sexual offences offends the Constitution.

Over the years, ZLHR has been advocating for respect and protection of the rights of girls and women and has lauded the government for reforming laws on child marriages and consent.

However, all the progress made in advancing, protecting and safeguarding girls' rights is eroded when decisions that seek to harm the girl child are made in haste without considering other constitutional imperatives.

In light of the current process to reform the law on sexual offences and calls to impose a mandatory minimum sentence on rape, the decision to grant amnesty to sexual offenders is very retrogressive and an abomination.

Therefore, ZLHR calls upon President Mnangagwa and the government to carefully consider the decision to release child sex offenders from prison, protect victims of rape and sexual assault and ensure that in matters relating to children, the best interests of the children concerned are always paramount. Victims of rape and communities should be protected from perpetrators through offenders serving their full-term sentences.

Polls: The Forum approaches AU

The Zimbabwe Human Rights NGO Forum (the Forum), has taken the country's human rights fight to the African Union, predicting a bloody election due to the government's hardline stance against critics, which is likely to perpetuate the violation of civil liberties.

Zimbabwe is heading towards general elections on 23 August amid concerns that the violence witnessed in previous polls may occur once again.

For instance, in the aftermath of the previous general election, six unarmed citizens were killed by security forces on 1 August 2018 after opposition supporters protested the Zimbabwe Electoral Commission's delay in releasing the poll results.

Victims have not been compensated since then. The Forum, in its submission to the 75th African Commission on Human and People's Rights (ACHPR) in early May, said violence has been evident in the period before the election, which is likely to influence the process itself.

"On political violence, Zimbabwe is due to hold its harmonised elections in the next three to four months. The President has called for a violence-free election. Notwithstanding, the country has already witnessed politically linked violence.

"The escalation in incidents of politically-motivated human rights violations in Mbare, Matobo and Insiza districts after the last intersession points to a deepening political crisis in the country as the nation trudges closer to the 2023 general elections.

The Forum said in Matobo Ward 2, CCC members were assaulted while mobilising support ahead of the 26 March by-elections last year.

"Victims of violence received a report that several vehicles had blocked the road at a bridge leading to the Mlotshwa family and people were being harassed. A member of Parliament (MP) from Nkulumane Constituency, Kucaca Phulu in Bulawayo was present.

"They (the victims) were met with violence and assaulted, including the MP. A gun was pointed at the MP before he was assaulted. The victims, including the MP, claimed over 15 vehicles were blocking the road, led by one vehicle branded Zanu PF Mashonaland Central.

"The group proceeded to one of the victims' homesteads where they destroyed the windows of houses. About nine elderly women who were mobilising support for CCC were stripped of their blouses and left with bras, or bare-breasted," read the submission.

The Forum condemned the shrinking of civic space since Mnangagwa rose to power in 2017.



Advocate Wilbert Mandinde

Shrinking civic and democratic space since the last intersession, the Private Voluntary Organisations (Amendment) Bill sailed through the House of Senate. A positive development was that as civil society organisations (CSOs), we requested an audience with the President, who kindly acceded to our request.

"A high-powered CSOs delegation met the President and senior government officials where the Bill was discussed. The President undertook to consider the CSOs' views after consultation with the Attorney-General of Zimbabwe. We remain concerned about over-regulation and the unconstitutional manner in which the consultations took place," read the report.

The Bill awaits presidential assent. The Forum has also condemned the selective application of the law by the government. In an interview with The NewsHawks in February this year, CCC president Nelson Chamisa said over 70 of his party's rallies had been stopped by police since the party has in 2022.

"As the country prepares for elections, perceived voices of dissent are being subjected to selective application of the law with the space being restricted for other political players and the space being open for others.

"On 14 January 2023, Zimbabwe saw the arrest of 26 opposition political party activists. The 26 were arrested on allegations of attending an unsanctioned meeting at the house of a member of Parliament. The meeting was violently disrupted by the Zimbabwe Republic Police who also threw teargas in the residential home," read the report.



Jesmine Toffa, CCC MP who was attacked by Zanu PF supporters in Insiza, October 2022

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“During the last session, we highlighted the plight of a member of Parliament, lawyer and opposition leader, Honourable Job Sikhala, who has been in pre-trial detention for over 300 days when his conviction and sentencing were passed yesterday. The prolonged duration of his pre-trial detention before sentencing is a cause for concern.”

“And more recently, on 27 April 2023, opposition Transform Zimbabwe leader Jacob Ngarivhume was convicted of public violence incitement charges stemming from a July 2020 tweet in which the opposition politician called for a national shutdown in protest over corruption and poor leadership and was sentenced to an effective 3-year custodial sentence,” read the report.

The Forum urged the government to employ regional best practices regarding pre-trial detention and timely detention and to abide by principles and guidelines on the right to a fair trial and legal assistance in Africa proclaimed by the African Commission on Human and People’s Rights.

Speaking to ENCA, a South African Television Station said, The Forum programmes Coordinator Advocate Wilbert Mandinde said: “We presented before the Commission our concerns and in particular, we were concerned about a number of things, such as the electoral period. We are heading towards elections and electoral violence is rising. And we are concerned about the aspect of civic space. We are concerned with the closure of civic space.”

“

Corruption has made our world a more dangerous place. As governments have collectively failed to make progress against it, they fuel the current rise in violence and conflict – and endanger people everywhere.

Delia Ferreira Rubio
Chair, Transparency International



#cpi202



#Chinese firms lauded for investing in Zimbabwe

#Zimbabwe govt workers reject pay offer, public health strike looms

#Zimbabwe state workers scoff at 100% raise, as inflation hits 132%

The Zimbabwe Human Rights NGO Forum turned 25 this year.

A Silver Jubilee has a special significance in the life of any institution.

It signifies a coming of age and maturity.

Forum@25

It is a time to pause and reflect on our gruelling human rights journey

Celebrate with us for this milestone

ABOUT US




The Zimbabwe Human Rights NGO Forum is a coalition of 22 human rights organisations that was formed in 1998 as a mechanism to react to the many human rights violations that arose from the food riots. The coalition over the years has become a strong network with organisations working in different humanrights fields all to promote the human rights agenda in Zimbabwe. It liaises closelywith its colleagues and peers such as the National Association of Non-Governmental Organisation (NANGO), the Crisis in Zimbabwe Coalition, the National Constitutional Assembly (NCA) and the Zimbabwe Congress of Trade Unions (ZCTU). Membership of the Forum is open to any organisation which is based in Zimbabwe, and which is bona fide concerned with human rights, with the elimination of organised violence and torture. After realising that Zimbabwe’s legacy of violence goes beyond the daily violations and goes to the roots that hold the pillars of social trust, the Forum, in 2008, launched the transitional justice advocacy programme to motivate more comprehensive redress of the root causes of violence.


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