



ZIMBABWE

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 26TH SESSION OF THE UPR WORKING GROUP, OCTOBER/NOVEMBER 2016

FOLLOW UP TO THE PREVIOUS REVIEW

Harmonization of domestic laws with international human rights instruments and rights protections guaranteed in the 2013 Constitution¹

In May 2013, Zimbabwe adopted a new Constitution with stronger guarantees for economic, social, cultural, civil and political rights. However, the process to harmonize domestic laws with the new constitutional provisions has been exceedingly slow thereby effectively denying people the full enjoyment of their human rights. The authorities, in particular the police, continue to enforce old laws some of which are in contravention of the Constitution leaving people resorting to costly litigation to assert their rights. Although the Constitutional Court has upheld the rights in the Constitution when petitioned by victims, the process is very costly and out of reach for the majority of people in Zimbabwe who struggle to afford the basics, such as food, housing, health and education.

Restrictions of the rights to freedom of expression – the media

The government has failed to make improvements to ensure freedom of expression, including for mass media,² and a more pluralist media environment.³ The authorities continue to target journalists and other media workers with arbitrary arrests, harassment and intimidation. Journalists from both private and state-controlled media organizations have been arrested and charged merely for carrying out their legitimate work, especially when they have published articles critical of state security agents, the president or other officials.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

In May 2013, Zimbabwe adopted a new Constitution with a stronger Declaration of Human Rights containing justiciable economic, social, civil and political rights.⁴ Chapter 12 of the Constitution provides for independent commissions, including the Zimbabwe Human Rights Commission.⁵ However, the independence of the Zimbabwe Human Rights Commission is compromised through budgetary control by the Ministry of Justice, Legal and Parliamentary Affairs. Since its establishment, the Commission has not been adequately funded and often depends on support from civil society to enable it to interact with victims of human rights violations.

Although Section 53 of the Constitution recognises the right to freedom from torture and cruel, inhuman or degrading treatment or punishment Zimbabwe has not ratified the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It has also yet to ratify other key international human rights treaties, including the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Zimbabwe*, 19 December 2011, A/HRC/19/14, recommendation 93.4 (South Africa).

² A/HRC/19/14, recommendation 93.50 (Japan).

³ A/HRC/19/14, recommendation 93.51 (Italy).

⁴ Chapter 4 of the Constitution of Zimbabwe.

⁵ Section 242 of the Constitution of Zimbabwe

Protocol to the Convention of the Elimination of All Forms of Discrimination against Women, the First and Second Optional Protocols to the International Covenant on Civil and Political Rights, and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

THE HUMAN RIGHTS SITUATION ON THE GROUND

Forced evictions

Despite a provision in the 2013 Constitution that protects people against arbitrary eviction,⁶ forced evictions have continued across the country affecting thousands of households who have lost their homes or livelihoods or both. The government and local authorities continue to evict people without adequate notice, alternative housing compensation, and due process. The Zimbabwe Republic Police and municipal police often use excessive force during forced evictions and against protestors. The government regularly fail to provide effective remedies to victims of forced eviction, including those affected by the 2005 mass forced evictions, known as *Operation Murambatsvina*. In all these circumstances, the victims of forced eviction are driven deeper into poverty in a context of a shrinking economy which is limiting the ability of households to access their rights to food, health, education, work and housing.

In August 2014, the government forcibly shut down Chingwizi Holding Camp in Masvingo province which had been set up to accommodate an estimated 20,000 people displaced by the floods in Chivi district. The floods were caused by the construction of the Tokwe-Mukosi dam which had started in 1998 but which experienced major delays due inadequate funding. The humanitarian crisis at the camp was a result of the government's failure to plan for the relocation of the flood victims that saw them living in deplorable conditions lacking basic services. The government even restricted humanitarian access by barring NGOs from the settlement.

The camp was closed amid protests against attempts to close down the clinic in the camp that had turned violent. The government responded by using brutal force, beating the protestors and indiscriminately arrested some 300 people, mainly men and community leaders. Their arrest facilitated the forcible relocation of the women and children in the camp to one-hectare dry plots, thereby condemning them to a lifetime of poverty as they could not derive viable livelihoods from farming on small plots in a dry region. However, only 29 people were charged with committing public violence in contravention of Section 36 of the Criminal Law (Codification and Reform) Act. The detainees allege they were tortured by police while in custody. Most of the persons charged were acquitted apart from four men who were convicted, and who are currently serving time in prison.

In September 2014, hundreds of homes were demolished by the Epworth Local Board and the Chitungwiza Town Council with police support, but without court orders. The evictions were carried out at night with no time given to remove belongings. Police used teargas during the demolitions. At least 30 people were arrested and released without charge and 12 people were injured. The evictions in Epworth were only stopped through a High Court order obtained by the victims.

On 12 January 2015, the High Court stopped the removal of some 150 families settled at Arnold Farm in Mazowe district. The families' homes had been indiscriminately demolished by police on 7 January, leaving them homeless and with no cover from the elements in the middle of the rainy season. The forced evictions had been carried out despite an earlier High Court order issued in August 2014 protecting the residents from arbitrary eviction under Section 74 of the Constitution.

In June 2015, the government issued an ultimatum for the removal of informal traders from cities and towns with the support of the army. Following the announcement, the Harare City Council began removing informal traders in July 2015, leading to violent clashes between municipal police and informal traders in the Central Business District. Dozens of informal traders, including the leaders of the National Vendors' Union of Zimbabwe, were arrested and detained. Sixteen were charged with public violence. They were released on bail and their trials are continuing. Forced evictions were also carried out in December 2015 when 200 structures were destroyed by the City of Harare near Kambuzuma suburb.

⁶ Section 74 of the Constitution of Zimbabwe states that "No person may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances."

Abductions, enforced disappearance of Itai Dzamara and lack of accountability for past disappearances

After a long break in reports of enforced disappearance of government critics, on Monday 9 March 2015, five men suspected of being state security agents abducted journalist and pro-democracy activist Itai Dzamara, who is also the leader of the Occupy Africa Unity Square (OAUS) protest group.⁷ The men approached Itai Dzamara while he was having a haircut at a barber's shop near his home in the Harare suburb of Glen View and accused him of stealing cattle before handcuffing him and driving off with him in a white truck. Two days earlier, on Saturday 7 March 2015, Itai Dzamara had delivered a solidarity speech at a rally in Harare held by the opposition *Movement for Democratic Change*, led by former Prime Minister Morgan Tsvangirai. In his speech, Itai Dzamara had called for protests against the deteriorating situation in the country.

Despite a High Court ruling ordering state security agents to investigate Itai Dzamara's disappearance, there has been no independent evidence to suggest that the state has carried out an investigation with due diligence. Before his disappearance Itai Dzamara and members of the OAUS had been targeted by state security agents on several occasions with beatings, harassment and intimidation for staging peaceful protests mainly at the Africa Unity Square in front of the Parliament in Harare. On 6 November 2014, Itai Dzamara was brutally assaulted by anti-riot police with batons in central Harare and left unconscious. Human rights lawyer Kennedy Masiye, from the Zimbabwe Lawyers for Human Rights, was also beaten by the anti-riot police despite identifying himself as a lawyer. He was also hospitalized.

On a previous occasion, on 2 December 2014, Itai Dzamara and two OAUS members, Allan Chinewaita and Jerry Mugweni, were abducted by men in three cars while engaging in a peaceful protest in Harare. They were reportedly taken to the headquarters of President Robert Mugabe's ruling party, *Zimbabwe African National Union – Patriotic Front* (ZANU-PF), where they were robbed, slapped, beaten and spat at by party youths. They were then driven to Harare Central Police Station and handed to security agents who tortured them again before releasing them without charge. They were severely injured and hospitalized.

In an earlier incident, on 26 November 2014, four members of OAUS, Tichaona Danho, Charles Nyoni, Terry Manzini and Shungu Mutize, were arrested and detained after submitting a petition to the Speaker of the Parliament and staging a peaceful protest in the Speaker's gallery. They were taken to Harare Central Police Station where they were ordered to undress and then whipped by three police officers who also ordered them to beat each other, demanding to know their group's mission and urging them to stop protesting against President Mugabe. Efforts by human rights lawyers to represent the detained activists were frustrated by police officials who denied holding them. After about six hours the activists were ordered to dress, go home and not inform anyone about their detention.

On 12 November 2014, former ZANU-PF Harare province chair for youths, Jim Kunaka, was abducted by unknown people in Mbare township. Kunaka was reportedly forced into a car, blind-folded and driven to a bushy area where he was assaulted with iron bars and dumped. The incident was reported at Harare Central Police Station, but no arrest was made. Kunaka's abduction took place at a time of intense jockeying for positions within ZANU-PF which led to the expulsion of senior party officials, including former Vice President Joice Mujuru.

The government has not conducted any investigations into the political violence in the run up to the second round of the presidential elections in 2008 which saw the abduction and disappearance of hundreds of opposition supporters and human rights activists. Some of the victims were killed by their abductors while others were later found in police custody. The government has effectively provided immunity from prosecution for the security agents responsible for the abduction of dozens of activists, including Jestina Mukoko, in 2008 when the then Minister of State Security, Didymus Mutasa, issued a ministerial certificate prohibiting the disclosure of the identities of the security agents involved.

The death penalty

There are currently 117 men on death row in Zimbabwe, although the country has not carried out any known executions since 2005. During the last UPR, Zimbabwe undertook to abolish the death penalty and to consider ratifying the Second

⁷ The Occupy Africa Unity Square protest group was founded by Itai Dzamara in 2014. In October 2014 the group submitted a petition to President Mugabe criticizing his rule and called on him to resign.

Optional Protocol to the International Covenant on Civil and Political Rights as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁸ Zimbabwe also supported the recommendation to consider introducing a moratorium on capital punishment.⁹ However, contrary to this, the government has proposed an amendment of Criminal Law (Codification and Reform) Act through the General Laws Amendment Bill (2015) which seeks to reintroduce the death penalty for men between the ages of 21 and 70 years who commit “aggravated murder”. The Constitution of Zimbabwe does not make it mandatory to pass a law that allows capital punishment; rather Section 48 (2) of the Constitution only states that “A law *may* permit the death penalty to be imposed only on a person convicted of murder committed in aggravated circumstances”, and stipulates that such punishment cannot be imposed on women, or on men under the age of 21¹⁰ or over the age of 70.¹¹

Restrictions on the rights to freedom of expression, association and assembly

Since passing the Broadcasting Services Act in 2001, Zimbabwe has refused to issue broadcasting licenses to community radio stations thereby denying millions of people living in rural and urban areas the ability to freely express themselves through the airwaves. Activists campaigning for the licensing of community radio stations have been subjected to harassment and intimidation, including raids at their offices, by state security agents and in some instances activists have been arbitrarily arrested, unlawfully detained and charged.¹²

Moreover, human rights defenders, journalists and other government critics continue to face arbitrary arrest and unlawful detention. Journalists from the private as well as state-controlled media houses have been targeted for carrying out their legitimate work, especially after reporting on state security agents and government officials. At least 10 journalists were arrested in 2015 alone.

The police routinely use the Public Order and Security Act and the Criminal Law (Codification and Reform) Act to deny perceived government opponents their rights to freedom of expression, association and assembly, including by using excessive force to break up peaceful assemblies. Ever since the period leading up to the December 2014 congress of the ruling ZANU-PF party, state security agents have continued to suppress dissenting voices, including individuals aligned to former Vice President Joice Mujuru or individuals critical of First Lady Grace Mugabe’s political activities. In February 2016, the police used water cannons to break up a meeting of members of the Zimbabwe National Liberation War Veterans Association.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Zimbabwe to:

Forced evictions

- Immediately and unconditionally withdraw all threats of forced eviction by the government and local authorities and compensate those affected by previous evictions;
- Immediately declare an official moratorium on mass evictions until all legal and procedural safeguards are in place as required under international human rights law and standards;
- Undertake a comprehensive review of all cases of forced evictions with the aim of providing effective remedies for the victims;
- Ensure access to minimum essential levels of education, healthcare, water and sanitation, including through the provision of humanitarian assistance to all victims of forced evictions, including victims of *Operation Murambatsvina* and the Tokwe-Mukosi flooding in Masvingo.

⁸ A/HRC/19/14, recommendation 94.12 (Romania).

⁹ A/HRC/19/14, recommendation 94.21 (Russian Federation).

¹⁰ Section 48(b)(i) of the Constitution of Zimbabwe.

¹¹ Section 48(b)(ii) of the Constitution of Zimbabwe

¹² Amnesty International, *Beyond Tokenism – The need to license community radio stations in Zimbabwe* (Index: AFR 46/1613/2015).

Abductions, enforced disappearance of Itai Dzamara and lack of accountability for past disappearances

- Immediately set up an independent judge-led Commission of Inquiry into the disappearance of Itai Dzamara with powers to subpoena witnesses, and ensure that its findings are made public and that those suspected of being implicated are brought to justice in fair trials;
- Allocate adequate financial and material resources to the Zimbabwe Human Rights Commission and the National Peace and Reconciliation Commission to enable the Commissions to fully and effectively fulfil their constitutional mandates;
- Ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance;
- Take effective measures to address past human rights violations, including abductions and enforced disappearances by security agents, with a view to establishing the truth, giving access to justice to the victims, bringing perpetrators to account, and providing remedies to the victims, including compensation and treatment.

The death penalty

- Immediately establish an official moratorium on executions;
- Abolish the death penalty in national legislation for all crimes;
- Commute without delay all death sentences to terms of imprisonment;
- Ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

Restrictions on the rights to freedom of expression, association and assembly

- Implement its obligations relating to the right to freedom of expression and the right to information by providing sufficient broadcasting licenses, particularly at the community level, to ensure pluralism of voices in debates;
- Conduct an immediate, full, transparent and impartial investigation into all reports of harassment and intimidation of activists by security agents with the view to holding the perpetrators accountable;
- Repeal or amend sections of the Public Order and Security Act and other laws that place unnecessary restrictions on human rights defenders when exercising their rights to freedom of expression, association and peaceful assembly, in line with the Constitution of Zimbabwe, International Covenant on Civil and Political Rights, and the UN Declaration on Human Rights Defenders;
- Invite the UN Special Rapporteur on Human Rights Defenders to visit Zimbabwe to investigate the situation of human rights defenders in the country;
- Create platforms for regular interaction between government officials and human rights defenders to build mutual trust.