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CIVIL & POLITICAL RIGHTS IN ZIMBABWE

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Introduction.

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council¹. The purpose of this report is to address civil and political rights in the Republic of Zimbabwe [hereinafter Zimbabwe] for the 2016 Universal Periodic Review (UPR). We will primarily discuss the entrenchment of rights and obligations under the new Zimbabwean Constitution into the laws and governing bodies of the land.

The Zimbabwean Government Must Continue to Work To Protect the Civil and Political Rights of Its Citizens By Fully Entrenching Its New Constitution Into Its Legal System.

2. In 2013, Zimbabwe adopted a new constitution, crafted under the oversight of a national unity government and created to end a decade-long political, land reform, and human rights conflict.² In 2015, the Zimbabwean government began to modify laws that were out of alignment with the new constitution. To begin the process, the General Laws Amendment Bill (GLA) was gazetted on May 8 in the *Government Gazette*.³ The bill proposed amendments to 126 of Zimbabwe's more than 400 existing Acts of Parliament. Many of the amendments dealt with existing statutory provisions referring to sections of the former Constitution or to offices or institutions under the former Constitution which now have different titles.

3. The GLA is a step towards constitutional alignment in Zimbabwean law, but there is significant work to be done to ensure that the rights afforded to Zimbabweans in their Constitution are protected throughout the legal system. In particular, amendments proposed by the GLA to the Anti-Corruption Commission Act, Access to Information and Protection of Privacy Act [AIPPA], Administrative Justice Act, and Zimbabwe Human Rights Commission Act need considerably further amendment to protect the rights of citizens. Additionally, statutes such as the Official Secrets Act and the Presidential Powers (Temporary Measures) Act are so unconstitutional that any adequate amendments would completely change their existing scope and structure. Thus we recommend that many of these statutes be repealed and new laws that reflect the Constitution and international human rights norms be enacted in their place. The Working Group on the UPR must encourage Zimbabwe to continue to align their current laws with their new Constitution, and when acts are fundamentally inconsistent with the Constitution encourage Zimbabwe to repeal these laws and enact new laws that align with the Constitution.

¹NGO Branch, U.N. Dep't of Econ. & Soc. Affairs, Consultative Status for the European Centre for Law and Justice (2007), <http://esango.un.org/civilsociety/> (accessed by searching "European Centre for Law and Justice" in the iCSO Database).

² CONSTITUTION OF ZIMBABWE (NO. 20) ACT, 2013, available at http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment_No_20_-_14-05-2013.pdf.

³ General Laws Amendment Bill (H.B. 3, 2015), available at http://www.veritaszim.net/sites/veritas_d/files/General%20Laws%20Amendment%20Bill%202015.pdf.

The Laws of Zimbabwe Designed to Protect Freedom of the Press are Inconsistent with the New Constitution.

4. The Access to Information and Protection of Privacy Act [AIPPA], which governs print and electronic media in Zimbabwe, needs significant reform in order to be in alignment with the Constitution.⁴ Historically, AIPPA has been used to limit freedom of expression in Zimbabwe. Yet, Section 61 of the new Constitution guarantees that all people in Zimbabwe have the right to freedom of expression and freedom of the media.⁵ Although AIPPA is expected to be amended through the GLA, the proposed amendments only change surface language in the law like updating references to the “Comptroller-General,” which should read “Comptroller and Auditor-General”.⁶ In order to protect freedom of expression, the amendments must do more than change titles. They must cut to the heart of the law’s effect on the freedom of the press.

5. As an example of necessary substantive changes, under section 5 of AIPPA, aliens and persons who are not permanent residents are not entitled to access information from public bodies.⁷ Under section 62(2) of the Constitution, on the other hand, they are entitled to do so if they need the information for the exercise or protection of a right.⁸ Thus, Section 5 of AIPPA needs to be amended to accord with the Constitution. There are many sections of AIPPA that must be substantively changed to align with the Constitution, thus AIPPA should to be repealed and replaced with Acts dealing separately with Access to Information; Protection of Privacy; Media Freedom and Diversity; and Freedom of Expression, as rights guaranteed by the Constitution.

6. Additionally, the Broadcasting Authority of Zimbabwe [BAZ], which issues broadcasting licences, is not consistent with the Constitution as it is not independent of governmental or political control.⁹ The majority of the board members of BAZ are appointed by the President after consultation with – not with the agreement of – the Parliamentary Committee on Standing Rules and Orders. There is no provision for the appointments to be made on a non-partisan basis. Similar to AIPPA, BAZ will need many more substantive amendments than those proposed by the GLA, if it is to be brought in line with the Constitution.

⁴ Access to Information and Protection of Privacy Act (Act No. 5/200, 5/2003) (Zim.), available at <http://www.parlzim.gov.zw/acts-list/access-to-information-and-protection-of-privacy-act27>.

⁵ CONSTITUTION OF ZIMBABWE (NO. 20) ACT, Section 61, 2013, available at http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment_No_20_-_14-05-2013.pdf.

⁶ General Laws Amendment Bill (H.B. 3, 2015), available at http://www.veritaszim.net/sites/veritas_d/files/General%20Laws%20Amendment%20Bill%202015.pdf.

⁷ Access to Information and Protection of Privacy Act (Act No. 5/200, 5/2003) (Zim.), available at <http://www.parlzim.gov.zw/acts-list/access-to-information-and-protection-of-privacy-act27>.

⁸ CONSTITUTION OF ZIMBABWE (NO. 20) ACT, Section 62(2), 2013, available at http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment_No_20_-_14-05-2013.pdf.

⁹ Broadcasting Services Act (Act No. 3/2001, 22/2001, 26/2001, 6/2003, 19/2007) (Zim.), available <http://www.parlzim.gov.zw/acts-list/broadcasting-services-act-12-06>.

7. The Working Group on the UPR must encourage Zimbabwe to repeal laws like AIPPA and BAZ, and replace them with acts that will protect freedom of expression, as outlined in the Constitution and protected by international human rights norms.

Zimbabwe Has Yet to Enact a Law to Establish an Effective and Independent Mechanism for Complaints Against Security Forces as Required By Section 210 of the Constitution.

8. Section 210 of the Zimbabwean Constitution provides mechanisms for complaints against security services.¹⁰ This mechanism is crucial to securing the civil rights of the Zimbabwe people. It ensures that security forces are held accountable for their actions if they act outside of the bounds of the Zimbabwean Constitution and international human rights norms. There are no current laws or proposed bills that create an effective and independent complaint mechanism. The Working Group on the UPR must encourage Zimbabwe to enact such a law in order to protect the civil and political rights of the people of Zimbabwe.

The Independent Constitutional Commissions That Protect the Rights of Citizens are Not Autonomous as Required By the Constitution.

9. In order to protect democracy and ensure that injustices are remedied, Chapter 12 of the new Constitution created five “independent constitutional commissions supporting democracy,” which include the Zimbabwe Electoral Commission, the Zimbabwe Human Rights Commission, the Zimbabwe Gender Commission, the Zimbabwe Media Commission, the National Peace and Reconciliation Commission.¹¹ Additionally, the Zimbabwe Anti-Corruption Commission named in Section 256 of the Constitution is given independent status equivalent to that of the Chapter 12 commissions.¹² To ensure that these commissions are free from undue government control, Section 305(3) of the Constitution requires separate “estimates revenue and expenditure must be presented to the National Assembly” be given for each of the independent commissions.¹³

10. However, under current law none of the independent commissions supporting democracy have their own stand-alone votes in the Estimates, but have mere sub-votes under the votes of a Ministry or “parent office”. This means the commissions’ funding is subject to the discretion of their parent office, thus compromising their independent status. This is inconsistent with Section 305(3) of the Constitution, and hinders their ability to “exercise their functions without fear, favour or prejudice” as outlined in Section (231)(c).¹⁴ The Working Group on the UPR must encourage Zimbabwe to disentangle the independent commissions from parent ministries and

¹⁰ CONSTITUTION OF ZIMBABWE (NO. 20) ACT, Section 210, 2013, available at http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment_No_20_-_14-05-2013.pdf.

¹¹ *Id.* at Chapter 12.

¹² *Id.* at Section 256.

¹³ *Id.* at Section 305(2).

¹⁴ *Id.* at Section 231(c).

provide them with the necessary funding to protect the Zimbabwean people from any governmental corruption.

Conclusion.

11. Zimbabwe has made strides to protect the human rights of its citizens through the adoption of its new Constitution and the gazetting of the General Laws Amendment Bill. More work is needed to fully entrench the new Constitution into the Zimbabwean legal system and to safeguard the civil and political rights of its citizens. The Working Group on the UPR must encourage Zimbabwe to continue to align their current laws with their new Constitution, and, fully repeal laws that are fundamentally inconsistent with the Constitution. The Working Group on the UPR must encourage Zimbabwe to repeal laws like AIPPA and BAZ, and replace them with acts that will protect freedom of expression, as outlined in the Constitution and protected by international human rights norms. The Working Group on the UPR must encourage Zimbabwe to enact a law that creates an effective and independent complaint mechanism against security forces. The Working Group on the UPR must encourage Zimbabwe to disentangle its Independent Constitutional Commissions from parent ministries and provide them with the necessary funding to protect the Zimbabwean people from any governmental corruption.