

THE SITUATION OF HUMAN RIGHTS DEFENDERS IN

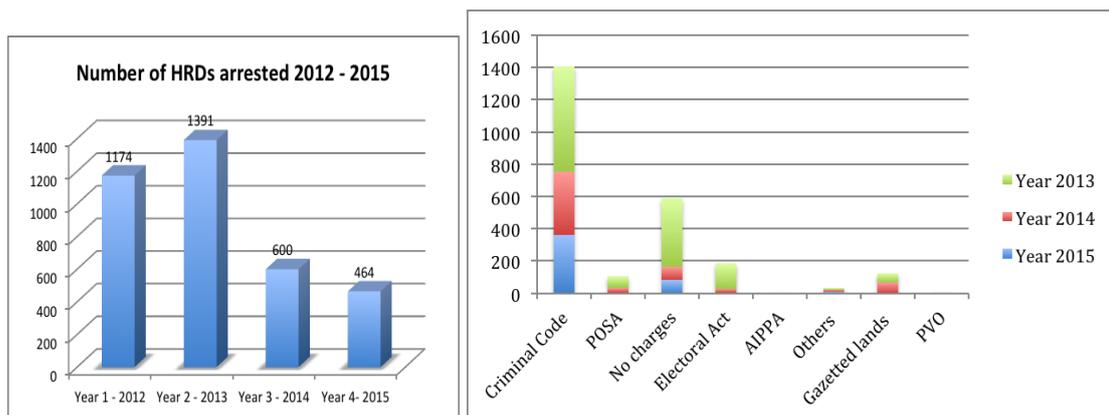
ZIMBABWE

March 2016

In its last Universal Periodic Review in 2011, Zimbabwe rejected all eight recommendations on human rights defenders (HRDs).¹ 17 recommendations relating more broadly to restrictions on freedom of expression, the press, assembly and association, and related legislation,² were also rejected. While a new Constitution was voted on and entered into force in May 2013, enshrining the rights to freedom of assembly, expression and movement, the Government has failed to align existing national laws with the Constitution. HRDs continue to face harassment, violence, arbitrary arrest and malicious prosecution. Civil society organisations (CSOs) remain subject to substantial legal restrictions. The establishment of the Zimbabwe Human Rights Commission was a welcome step forward, but its limited funding and restricted mandate has impinged its overall effectiveness.

TRENDS OF ATTACKS AGAINST HUMAN RIGHTS DEFENDERS

- A total of 3,629 HRDs were subject to arbitrary arrests or malicious prosecution and deprivation of liberty and received legal assistance from Zimbabwe Lawyers for Human Rights (ZLHR) between January 2012 and December 2015.³
- The arbitrariness of arrests and detention of HRDs is evident in the 1,005 HRDs arrested and released without charge following intervention by lawyers since 2012. In 2012, of the 1,174 HRDs assisted by ZLHR: 965 were new cases, of which 43% were released without charge; 209 were on-going from previous years.



- The increase in HRDs targeted and arrested in 2012 and 2013 has been attributed to an increase in the targeting of HRDs in the lead up to elections.⁴ In 2013, 755 out of the 1,369 HRDs arrested and assisted by ZLHR, were arrested in the context of elections and electoral activities, representing 55% of those targeted.

ATTACKS ON CIVIL SOCIETY ORGANISATIONS

- CSO representatives, such as Zimbabwe Human Rights NGO Forum, Zimbabwe Peace Project, and Gays and Lesbians of Zimbabwe (GALZ) have been arrested and charged with operating unregistered non-governmental organisations in contravention of the Private Voluntary Organization Act. These CSOs were prosecuted despite the fact that they lawfully operate as *Universitae* or Trusts. Fortunately, the courts decided these cases in favour of the CSOs and dismissed the cases against them.⁵
- At least 38 CSOs have also been targeted by state actors through **Raids, visits or search of offices, and/or seizure of property** – Zimbabwe Election Support Network (ZESN), Gays and Lesbians of Zimbabwe (GALZ), Zimbabwe Peace Project (ZPP), Counselling Services Unit (CSU), Radio Dialogue, Anti-Corruption Trust of Southern Africa. **Interrogation and/or detention** – Zimbabwe Human Rights NGO Forum (HR Forum), National Association of Non-Governmental Organisations, ZPP, Zimbabwe Civic

Education Trust, Women of Zimbabwe Arise (WOZA), Center for Community Development Zimbabwe, Freedom to the Disabled Persons of Zimbabwe, Habakuk Trust, Legal Resources Foundation, Zimbabwe Rural Teachers Union. **Arrest and or prosecution of staff or members** – Katswe Sisterhood, Zimbabwe Human Rights Association, Election Resource Center (ERC), Bulawayo Agenda, Zimbabwe Rural Teachers Association, Masvingo Residents Trust, National Youth Development Trust, National Vendors Union of Zimbabwe, Media Monitoring Project of Zimbabwe, Zimbabwe National Students Union, HR Forum, International Socialist Organisation, CSU, Christian Alliance, Sexual Rights Center, Masvingo Residents Trust, Chitungwiza Residents Trust, Combined Harare Residents Association, Resource Governance Watch, Chiadzwa Development Trust, Hwange Residents and Local Governance Community Capacity Building and Development Trust. **Disruption of activities and other threats** - Zimbabwe Congress of Trade Unions, WOZA, GALZ, Heal Zimbabwe Trust. **Torture and brutal attacks on staff or members** - ZLHR, Occupy Africa Unity Square. **Media attacks (including hate speech)** - Crisis in Zimbabwe Coalition, ZLHR, ZPP, ZESN, ERC.

None of these listed CSOs, or their staff, which were arrested, have ultimately been prosecuted.

LEGAL RESTRICTIONS FACED BY HUMAN RIGHTS DEFENDERS

- The Constitution of Zimbabwe came into force in May 2013, and contains expansive protections for fundamental rights. It enshrines the rights to freedom of assembly, freedom to demonstrate and petition, freedom of expression, freedom of the media, freedom of movement, as well as political rights.⁶ However, restrictive laws not aligned to the new Constitution, set out below, are selectively applied to restrict the activities of HRDs. Such laws cause individuals and organisations to censor themselves or engage in selective and thorough reviews before placing any information in the public domain.⁷
- Vague and broad provisions of the Criminal Law (Codification and Reform) Act (Criminal Code) are administered to limit the activities of HRDs. Between January 2013 and December 2015, a total of 1,407 HRDs were charged with violating various provisions of the Criminal Code; of whom 587 were released without charge.⁸ The Criminal Code criminalises insulting of the office or person of the President (Section 33), uttering words which are likely to undermine policing authority (Section 177), and communicating falsehoods prejudicial to the State (section 31). While the Constitutional Court has recently struck down criminal defamation and insult offences contained within the Criminal Code,⁹ authorities continue to apply these offences to restrict the right to freedom of expression.¹⁰
- The Public Order and Security Act (POSA), which regulates public gatherings, demonstrations, and marches, continues to be applied to disrupt the activities of HRDs and CSOs. The POSA requires notification for ‘public gatherings’; places restrictions on speech and advocacy activity, especially where the speech or advocacy is critical of government policy or focused on politically unpopular causes; and requires written notice of five to seven days in advance of a demonstration. In addition the police often ‘misinterpret’ these provisions and harass members of opposition political parties and CSOs who hold private meetings by requiring that they notify the police every time they want to hold a meeting even if it does not constitute a public gathering.¹¹
- The Electoral Act is also applied to criminalise the work of HRDs and political opposition. Offences including destroying election campaign material are often used against HRDs, even in non-election periods; as well general harassment of those critical of the ruling party.¹² In October 2012 and June 2013, there were amendments to the Electoral Act, which sought to bar CSOs from conducting any form of voter education, without accreditation from the Zimbabwe Electoral Commission.¹³

HUMAN RIGHTS DEFENDERS FACING PARTICULAR RISK

Women human rights defenders

- Women of Zimbabwe Arise (WOZA) members are subject to targeted attacks. On 14 and 15 February 2013, 189 WOZA members were arrested following peaceful Valentine’s Day demonstrations in Bulawayo and Harare.¹⁴ On 19 and 20 September 2013 WOZA members were beaten and arrested at a demonstration marking International Day of Peace.¹⁵ On 13 February 2014, in reliance on POSA, police violently dispersed a protest of hundreds of WOZA members petitioning parliament over Zimbabwe’s economic situation.¹⁶
- On 4 December 2013, police arrested 37 members of Katswe Sisterhood, along with three children, who were participating in a peaceful gathering as part of the 16 days of activism against gender based violence.

They were accused of violating section 25 of the POSA –a failure to notify the police of their intention to participate in a gathering. The women were later released after receiving a caution and warning.¹⁷

LGBTI human rights defenders

- Gross failings to implement Constitutional protections and international law, including the rights to non-discrimination; liberty and security of the person; privacy; freedom and expression and thought; association; and peaceful assembly, have led to continued attacks on the LGBTI community.¹⁸
- On 11 August 2012, police detained 44 members of Gays and Lesbians Zimbabwe (GALZ). Following their release, police visited those members at their homes and places of work.¹⁹ On 20 August 2012, police occupied the GALZ offices for six hours, confiscating documents and computers; the second raid in one month. Police and security forces have continually refused to investigate crimes committed against the LGBTI community. In 12 December 2014, 12-armed men invaded GALZ's private Christmas party injuring 35 people with chains, sjamboks and long sticks. No investigation or arrest was made.²⁰

Pro-democracy human rights defenders

- In April 2014, more than 12 pro-democracy HRDs were arrested for participating in peaceful protests in Masvingo.²¹
- Democracy activists from Occupy Africa Unity Square were repeatedly arrested, detained, harassed, brutally assaulted and tortured by police throughout 2014 and 2015,²² including the reported torture and disappearance of pro-democracy activist Itai Dzamara on 9 March 2015.²³
- In 2012 Paul Chizuze a pro-democracy HRD was disappeared. To date he has not been located.²⁴

Journalists

- Journalists in Zimbabwe face particular risks owing to criminal offences of defamation and slander formerly contained within the Zimbabwe Criminal Code. Notwithstanding that these offences have been abolished, ZLHR continue to receive reports of harassment and detention for publishing stories critiquing the Zimbabwe Government or its representatives.
- In 2012, there was a noticeable increase in the harassment of independent journalists. On 8 October 2012, two Daily News editors were arrested in connection with a report claiming that parliamentarian Munyaradzi Kereke may have faked his family's abduction for political purposes.²⁵
- At least 17 journalists were detained in 2013. In the lead up to the 2013 election at least four journalists were attacked.²⁶
- In April 2014, the editor of NewsDay was charged with violating the Zimbabwe Criminal Code after the organisation published allegations that the police were responsible for the death of a child. Additional journalists were arrested in June 2014 in connection with this incident; and NewsDay's offices were illegally searched in the process.²⁷
- In November 2015, three Sunday Mail journalists were charged with slander under the Criminal Code for publishing a story implicating an unnamed police officer and other officials in the poisoning of elephants.²⁸

Lawyers

- Lawyers promoting human rights and access to justice are harassed. ZLHR have received numerous reports of arrest, detention and abuse from lawyers; often associated with their client's cause.
- On 16 March 2013, human rights lawyer Beatrice Mtetwa was arrested and charged with obstructing justice. In November 2014, she was found not guilty due to lack of evidence; the prosecution appealed this decision, which was subsequently rejected by the court.²⁹
- On 7 November 2014, a ZLHR lawyer was brutally assaulted by police for representing Itai Dzamara (a democracy activist referred to above). The lawyer suffered a broken arm and required medical treatment.³⁰
- On 8 May 2014 human rights lawyer, Trust Maanda, was questioned on charges of obstructing the course of justice for serving police with 'Notices of Intention to Sue' concerning allegations his clients were tortured.³¹

RECOMMENDATIONS TO THE GOVERNMENT OF ZIMBABWE

- Take concrete measures to align domestic laws with international human rights instruments and the protections guaranteed in the new Zimbabwe Constitution.
- Repeal and amend legislation which infringes on the rights to freedom of association, expression, demonstration and petition, movement, media and peaceful assembly, including the Public Order and Security Act, Private Voluntary Organisation Act, Access to Information and Protection of Privacy Act and the Criminal Law (Codification And Reform) Act.
- Develop and enact specific laws and policies to recognise and protect work of HRDs that give full force and effect to the International Declaration on the protection of HRDs at the national level.
- Take steps to foster a pluralistic media environment ensuring freedom of expression, particularly for journalists.
- Combat impunity by ensuring prompt, thorough and transparent investigations of all violations against HRDs, the prosecution of perpetrators, and access to effective remedies for victims.
- Issue a standing invitation to Special Procedures mandate holders, and accept visit requests by the Special Rapporteur on freedom of opinion and expression and the Special Rapporteur on HRDs.
- Investigate and bring to account perpetrators of enforced disappearances against HRDs, and ratify the Convention for the Protection of All Persons from Enforced Disappearance.
- Assist to guarantee the effectiveness of the Zimbabwe Human Rights Commission by ensuring the secretariat receives adequate funding, it operates independently and it is in line with the Paris Principles.

Zimbabwe must undertake substantial reforms to its national legislation, policies and practices in the lead up to the 2018 election. In particular, Zimbabwe must ensure that HRDs and civil society are free to exercise their fundamental rights during election campaigning and action as demonstrable human rights violations and restrictions on fundamental freedoms are common.

¹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-14_en.pdf, recommendations 95.13, 95.14, 95.50, 95.54, 95.57, 95.58, 95.61, 95.62.

² Ibid, recommendations 95.9, 95.39-95.49, 95.51-95.53, 95.56, 95.59, 95.60.

³ Zimbabwe Lawyers for Human Rights Annual Reports 2012, 2013, 2014 and 2015.

⁴ Zimbabwe Lawyers for Human Rights 2013 Pre election Report (2013).

⁵ <https://www.hrw.org/world-report/2015/country-chapters/zimbabwe>, <https://www.frontlinedefenders.org/node/25236>.

⁶ Section 58, 59, 61, 66, 67 (respectively).

⁷ <http://www.icnl.org/research/monitor/zimbabwe.html>.

⁸ Zimbabwe Lawyers for Human Rights 2013, 2014, 2015 Annual reports.

⁹ <http://www.voanews.com/content/zimbabwe-court-strikes-down-criminal-defamation-law/3174897.html>

¹⁰ Zimbabwe Lawyers for Human Rights 2013, 2014, 2015 Annual reports.

¹¹ <http://www.icnl.org/research/monitor/zimbabwe.html>.

¹² Zimbabwe Lawyers for Human Rights Human Rights Defenders monthly report.

¹³ <http://www.icnl.org/research/monitor/zimbabwe.html>.

¹⁴ <https://www.amnesty.org.uk/woza-women-zimbabwe-arise>, <https://www.frontlinedefenders.org/node/21697>

¹⁵ <https://www.amnesty.org.uk/woza-women-zimbabwe-arise>, <https://www.frontlinedefenders.org/node/23838>

¹⁶ <https://www.hrw.org/world-report/2015/country-chapters/zimbabwe>

¹⁷ Zimbabwe Lawyers for Human Rights 2013, 2014, 2015 Annual reports.

¹⁸ <https://www.hrw.org/news/2012/08/27/zimbabwe-end-attacks-lgbt-people>

¹⁹ <http://www.amnestyusa.org/research/reports/annual-report-zimbabwe-2013?page=show>

²⁰ <https://www.hrw.org/world-report/2016/country-chapters/zimbabwe>.

²¹ <https://www.amnesty.org/en/latest/news/2014/05/zimbabwe-anniversary-new-constitution-no-cause-celebration/>.

²² Zimbabwe Lawyers for Human Rights Human Rights Defenders monthly report 2014, 2015.

²³ <https://www.amnesty.org/en/countries/africa/zimbabwe/report-zimbabwe/>, <https://www.amnesty.org/en/press-releases/2014/12/zimbabwe-authorities-must-act-against-attackers-pro-democracy-activists/>

²⁴ <https://www.newsday.co.zw/2016/03/09/one-year-itai-dzamara/>.

²⁵ http://en.rsf.org/zimbabwe-wave-of-harassment-of-independent-17-10-2012_43547.html.

²⁶ <https://www.cpj.org/2014/02/attacks-on-the-press-in-2013-zimbabwe.php>.

²⁷ <https://freedomhouse.org/report/freedom-world/2015/zimbabwe>.

²⁸ <http://www.theguardian.com/media/2015/nov/03/zimbabwean-journalists-arrested-for-linking-police-to-poaching>.

²⁹ Zimbabwe Lawyers for Human Rights 2013 Annual report.

³⁰ Zimbabwe Lawyers for Human Rights 2014 Annual report.

³¹ Ibid.

About this Briefing Paper: The International Service for Human Rights (ISHR), Zimbabwe Lawyers for Human Rights (ZLHR) and Lawyers for Lawyers, Zimbabwe (ZLFL) encourage States to consult UPR submissions by local activists and make recommendations to Zimbabwe regarding the protection of HRDs. This briefing is a result of compiling public information and direct contact and experience of ZLHR in the protection of local HRDs, including through its Human Rights Defenders Project <http://www.zlhr.org.zw/>. ISHR, ZLHR and ZLFL suggest readers consult the sources cited for additional information.

Contacts: Tess McEvoy at t.mcevoy@ishr.ch; Roselyn Hanzi at info@zlhr.org.zw; Adrie van de Streek at A.vandeStreek@lawyersforlawyers.nl.