



**Joint Submission to the UN Universal Periodic
Review**

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Republic of Zimbabwe

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**CIVICUS: World Alliance for Citizen
Participation, NGO in General Consultative Status
with ECOSOC**

And

Zimbabwe Human Rights NGO Forum

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1. (A) Introduction

1.1 CIVICUS is a global network of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS proudly promotes marginalised voices, especially from the Global South and has members in more than 170 countries throughout the world.

1.2 Zimbabwe NGO Human Rights Forum (The Forum) is a coalition of 21 (twenty-one) human rights organisations based in Zimbabwe. The vision of the Forum is a society that promotes and protects all human rights of all people. The Forum is engaged in research, public interest litigation, transitional justice work as well as lobby and advocacy at the domestic, regional and international levels.

1.3 In this document, CIVICUS and The Forum examine the progress the Government of Zimbabwe has made in ensuring the protection, promotion and fulfilment of the rights to freedom of expression, assembly and association since its examination under the first UPR cycle in October 2011.

1.4 During its initial review, Zimbabwe accepted 131 recommendations¹ including committing to reviewing and amending legislation which excessively and unwarrantedly restricts civil society space such as the Public Order and Security Act (POSA) which regulates protests and public gatherings and the Private Voluntary Organisations (PVO) Act by which CSOs are legally registered and allowed to operate in the country. However, despite these pledges, the government has failed to take effective steps to address deficits in these laws. Moreover, the authorities have continued to invoke both the POSA and PVO Act to suppress the work of human rights defenders and civil society.

1.5 Zimbabwe further accepted recommendations from several states to investigate instances of harassment and persecution of human rights defenders. However, during and subsequent to the 2013 election period, Zimbabwean authorities have continued to deny civil society groups the right to assemble without hindrance and done little to investigate violations against human rights defenders. CIVICUS and The Forum are particularly alarmed by the recent enforced disappearance of human rights defender Itai Dzamara and the failure to conduct a thorough and impartial investigation into his enforced disappearance.

1.6 Zimbabwe also undertook to implement all agreements of the Global Political Agreement (GPA)² that ushered in a government of national unity. The GPA was signed between the ruling party Zanu-PF and the opposition the MDC as a power-sharing agreement after the disputed 2008 presidential and general elections. The

¹ 'Ministers statement of the HRC' http://www.upr-info.org/sites/default/files/document/zimbabwe/session_12_-_october_2011/zimbabweplenarystatement2012-2.pdf, accessed 28 February 2016

² 'Global Political Agreement' http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/transitions/Zimbabwe_7_Global_Political_Agreement.pdf, accessed 14 March 2016

agreement was a set of reforms that the country would implement and use to set up a power-sharing government. One of the most positive reforms of the GPA that has been achieved has been the new Constitution adopted in 2013. However, the failure to harmonise all laws in line with the new Constitution remains a prevailing concern.

1.7 While the government has taken some positive steps to create a more enabling environment for independent media, a regressive legislative framework and persecution of media outlets and journalists continue to subvert media freedoms. While freedom of the media in the has been explicitly incorporated into the new Constitution, licencing of media outlets remains restricted and centralised with few new licences being granted to operators. The Access to Information and Protection of Privacy Act also remains a hindrance to media. Moreover, the arrest and general harassment of media members by the state and its organs remains a key concern to CIVICUS and The Forum.

- In section B, CIVICUS and The Forum state concerns over restrictions on freedom of expression and attacks on journalists.
- In Section C, CIVICUS and The Forum highlight concerns over judicial persecution, harassment and intimidation of human rights defenders and members of civil society organisations.
- In section D, CIVICUS and The Forum express concerns over restrictions on freedom of assembly.
- In Section E, CIVICUS and The Forum highlight concerns over restrictions on freedom of association.
- In Section F, CIVICUS and The Forum make recommendations to the government of Zimbabwe in the areas of concern listed.

2 (B) Restrictions on freedom of expression, intimidation and attacks on journalists

2.1 Zimbabwe's new Constitution³, guarantees freedom of expression and freedom of the media, including the protection of the confidentiality of journalists' sources of information. However, the Access to Information and Protection of Privacy Act (AIPPA) undermine the above-mentioned constitutional freedoms. Even though the Constitutional Court has repealed some sections of the AIPPA and the offence of criminal defamation, law enforcement agencies and prosecuting authorities are continuing to invoke them to harass journalists.

2.2 The Broadcasting Services Act creates several bureaucratic hurdles for media freedom in Zimbabwe. The power to grant new licences under the Act is vested in the Broadcasting Authority of Zimbabwe⁴ which is not independent and reports directly to the Minister of Information who appoints board members in consultation with the

³ 'Zimbabwe Constitution', Chapter 4, Section 61

<http://www.parliament.am/library/sahmanadrutyunner/zimbabwe.pdf>, accessed 29 February 2016

⁴ <http://www.baz.co.zw/>, The Broadcasting Act of Zimbabwe, Chapter 12, section 6 accessed March 10 2016

President. The board is not only not free from political interference but also⁵ limits the number of broadcasters that may operate nationally and limits majority ownership to resident citizens only⁶.

2.3 From the time it was passed in 2002, the Access to Information and Protection of Privacy Act (AIPPA) has been used to tighten the operating environment for media through a compulsory registration process for journalists⁷. AIPPA sets up a Media and Information Commission with whom it is compulsory for all media houses, local and foreign, and journalists to be registered under. Even NGOs that produce publications for small or specialised audiences must also obtain licencing from the Commission. The Commission is subject to direct government control as its board is appointed by and directly reports to the Minister of Information.

2.4 Wellington Mukhanairi, a journalist of the *Weekly Messenger* was arrested on 11 February 2016 and charged for operating without accreditation under the AIPPA Section 83 that had been repealed in 2007. His lawyer argued in court that the state prosecution knew the law is non-existent but had charged him with the view to intimidate him⁸. The charges against him were later withdrawn.

2.5 On 7 January 2016, deputy editor of *NewsDay* Nqaba Matshazi and reporter Xolisani Ncube were arrested and charged for publishing falsehoods. The two had published an article that the cash-strapped Zimbabwe government had secretly paid annual bonuses to members of the intelligence services ahead of other civil servants including teachers, nurses and soldiers who had not been paid salaries⁹.

2.6 In June 2015, freelance journalist Patrick Chitongo was sentenced to one year in prison for publishing an unregistered newspaper *The Southern Mirror*. He was charged under the Access to Information and Protection of Privacy Act¹⁰ which states: "No person shall carry on or operate a mass media service without a valid registration certificate"¹¹.

2.7 On 2 November 2015, the police arrested three journalists, *The Sunday Mail's*

⁵ 'Submission and position paper on broadcasting in Zimbabwe', <http://www1.umn.edu/humanrts/research/ZIM%20Broadcasting%20Draft.pdf>, accessed 15 March 2016

⁶ 'Broadcasting Services Act', Part III, Section 8 <http://www.mmpz.org/sites/default/files/articles/Broadcasting%20Services%20Act%20as%20amended%20January%202008.pdf>, accessed 15 March 2016

⁷ 'Access to Information and Protection of Privacy Act' <https://www.article19.org/data/files/pdfs/publications/zimbabwe-aippa-report.pdf>, accessed March 2 2016

⁸ 'Journo charged under non-existent law freed', *Chronicle* <http://www.chronicle.co.zw/journo-charged-under-non-existent-law-freed/>, accessed March 3 2015

⁹ 'NewsDay staffers released on bail, vow to challenge case', *NewsDay*, <https://www.newsday.co.zw/2016/01/09/newsday-staffers-released-on-bail-vow-to-challenge-case/>, accessed 14 March 2016

¹⁰ 'Journalist jailed for publishing unregistered newspaper', *Newsday* <https://www.newsday.co.zw/2015/06/26/journalist-jailed-for-publishing-unregistered-newspaper/>, accessed 1 March 2016

¹¹ 'Access to Information and Protection of Privacy Act', Section 72 <https://www.article19.org/data/files/pdfs/publications/zimbabwe-aippa-report.pdf>, accessed March 2 2016

editor Mabasa Sasa, investigations editor Brian Chitemba and reporter Tinashe Farawo after they published an article that a police syndicate, including a top unnamed policeman, was behind the poisoning of elephants in a game reserve. They are charged under the Criminal Law (Codification and Reform) Act¹². The police said in a statement the arrest was due to “publishing falsehoods” and that the newspaper has tarnished the image of the police and jeopardised an investigation. Media practitioners slammed the arrest saying it was an attempt by the police to force the media to disclose their sources of information, which is unconstitutional.¹³.

2.8 On 16 June 2014, freelance reporter Paul Pindani was abducted from his home in Chinhoi, about 130km north of the capital Harare, by masked men who knocked on his door and shoved a cloth into his mouth. He was taken away from his home and severely beaten. He lost consciousness and received intensive care treatment at a hospital¹⁴. The motive for the attack remains unknown and no one has been charged for the attack.

2.9 Editor of the weekly *Zimbabwe Independent* newspaper Dumisani Muleya and reporter Owen Gagare were picked up by the police and questioned in detention on 7 May 2013 over an article they published that detailed alleged private discussions between the opposition and the pro-Zanu PF military. They were charged for ‘publishing falsehoods’. They were released but never tried¹⁵.

3 (C) Concerns over judicial persecution, harassment and intimidation of human rights defenders and members of civil society organisations

3.1 Article 12 of the United Nations Declaration on Human Rights Defenders mandates member states to take necessary measures to protect human rights defenders. Zimbabwean authorities continue to use restrictive legislation, some of which are no longer in harmony with the new Constitution to intimidate civil society organisations and human rights defenders. Verbal threats made in public speeches by senior government officials towards civil society organisations remain an area of worrying concern.

3.2 On March 9 2015, political and human rights activist Itai Dzamara was abducted from his neighbourhood in Harare. He was forced into an unmarked vehicle in a manner consistent with that employed by the Central Intelligence Organisation of Zimbabwe. Itai Dzamara is the founder of Occupy Africa Unity Square which urges

¹² ‘Editor, reporter, arrested’ *Herald* <http://www.herald.co.zw/editor-reporters-arrested/>, accessed 28 February 2016

¹³ ‘Sunday Mail trio challenges placement on remand’, *Herald*, <http://www.herald.co.zw/sunday-mail-trio-challenges-placement-on-remand/>, accessed 15 March 2016

¹⁴ ‘Journalist in Zimbabwe battling for life after abduction, attack’, https://www.ifex.org/zimbabwe/2013/06/18/zimbabwe_alert_journalist/, accessed 7 February 2016

¹⁵ ‘Editor, journalist arrested, charged with publishing falsehood’ <http://www.misa.org/media-and-elections/item/1601-zimbabwe-editor-and-senior-journalist-arrested-charged-with-publishing-falsehoods>

President Mugabe to resign. He has previously been beaten and arrested by the police for his protests¹⁶. Itai's Dzmara's whereabouts are currently unknown¹⁷.

3.3 Patrick Mugadza a one-man protestor was jailed from December 18-31, 2015 under the Criminal Law (Codification and Reform) Act for being a criminal nuisance after he held a march holding a poster that read: "Mr President, the people are suffering. Proverbs 21: 13"¹⁸. He is on bail and has since challenged the constitutionality of the charge in the Constitutional Court.

3.4 In May 2014, the Gays and Lesbians Association Youth Coordinator was detained at Harare Central Police Station for six hours. The coordinator had been conducting a digital security training workshop at a local hotel and was stopped by two plain clothes police officers. The officers also ordered the meeting to disperse immediately. A charge was laid against the coordinator under the Public Order and Security Act for convening a meeting with no police clearance¹⁹.

3.5 On 14 January 2013, the director of Zimbabwe Human Rights Association (ZimRights), Okay Machisa was arrested and charged for allegedly conducting illegal voter registration under Section 31 of the Criminal Law (Reform and Codification) Act²⁰. The police had weeks earlier swooped on and searched the offices of ZimRights seeking Machisa who was not in the country at that time. The arrest appeared to be part of the state's intimidation tactics against human rights defenders ahead of the election in 2013 to deter them from participating in election related issues²¹.

3.6 On 11 February 2013, the police raided the offices of Zimbabwe Peace Project and confiscated materials that included DVDs, radios and political violence reports. The Zimbabwe Peace Project monitors and documents breaches of peace and human rights violations.

3.7 Threats by senior government officials took place in the period under review. In November 2013, Abednico Ncube, a provincial affairs minister attempted to intimidate NGOs and also used derogatory language²² stating that: "NGOs your mandate is to provide food assistance to people, politics is none of your business, leave that to us. If you deviate from your core business, the law provides that we chuck you out."

¹⁶ 'Where is Itai Dzamara?', <https://www.amnesty.org/en/latest/campaigns/2015/09/zimbabwe-where-is-itai-dzamara/>, accessed 10 March 2016

¹⁷ 'One year after abduction calls to bring back Itai Dzama yield little', <http://civicus.org/index.php/en/media-centre-129/news-and-resources-127/2383-one-year-after-abduction-calls-to-bringback-zimbabwean-activist-itai-dzamara-yield-little>, accessed 22 March 2016

¹⁸ 'Mugabe demo pastor goes to Con Court' *The Zimbabwean* <http://www.thezimbabwean.co/2016/02/mugabe-demo-pastor-goes-to-concourt/>, accessed 1 March 2016

¹⁹ 'GALZ 2014 Violations report' Gays and Lesbians Association of Zimbabwe. 2014

²⁰ Statement on the arrest of Zimrights director Okay Machisa" <http://www.hrforumzim.org/press-releases/statement-on-the-arrest-of-zimrights-director-okay-machisa/>, accessed 3 March 2016

²¹ "Release on bail of Mr Machisa" <https://www.fidh.org/en/region/Africa/Zimbabwe,204/Zimbabwe-Release-on-bail-of-Mr-12819>, accessed February 12 2016

²² Minister threatens to expel NGOs, *Zimbabwe Situation* http://www.zimbabwesituation.com/news/zimsit_minister-threatens-to-expel-ngos/, accessed February 15 2016

4 (D) Concerns over restrictions on freedom of assembly

4.1 Zimbabwe's Constitution and the ICCPR allow for the freedom to assemble peacefully²³. The Constitution further guarantees the right to deliver petitions peacefully. However, the Public Order and Security Act (POSA) is often used by the state to refuse the right to assemble. POSA gives much power to the police to deny assembly and no opportunity to appeal any decision made by the police where they deny assembly and protest.

4.2 The Public Order and Security Act (POSA) (2002)

The Public Order and Security Act (POSA) regulates the right to demonstrate peacefully. Under the POSA, individuals and groups wishing to demonstrate must notify the police of such a demonstration. The regulating authority being set out in this law as the police officer commanding the district where permission is sought. Section 24 of POSA instructs that at least four days of notice must be given to the police in written notice in advance of the gathering. Failure to notify the police attracts a criminal prosecution. The police are also allowed by this law to restrict a gathering for a further three months on their own discretion if they believe it would endanger public safety. However, the police generally interpret the notification as an opportunity to deny protest resulting in selective application of POSA by the police²⁴.

4.3 In February 2016, veterans of Zimbabwe's liberation war gathered to protest statements made by the First Lady Grace Mugabe at a political rally in the same month castigating war veterans. The police violently dispersed the gathering using teargas, water cannons and batons to beat the protestors. The police said the organisers of the gathering had not sought clearance under POSA and this was a Constitutional offence²⁵. In the past, war veterans have convened such gatherings without the blessing of the police.

4.5 Women of Zimbabwe Arise (WOZA), a protest movement, have routinely had their protest action curtailed by the police in recent years through the breaking up of their demonstrations. This has continued under the UPR period in review. In May 2015, WOZA protestors who marched on Parliament to protest tribal remarks by President Robert Mugabe were stopped by the police, assaulted and forced to disperse²⁶. In

²³ 'Zimbabwe Constitution', Part II, Section 58

<http://www.parliament.am/library/sahmanadrutyunner/zimbabwe.pdf>, accessed 29 February

²⁴ 'Freedom to demonstrate and petition' <http://www.hrforumzim.org/wp-content/uploads/2015/07/Bulletin-105-Freedom-to-demonstrate-and-petition.pdf>, accessed March 1 2016

²⁵ 'Police thwart war vets protest', *Zimbabwe Independent*

<http://www.theindependent.co.zw/2016/02/19/police-thwart-war-vets-protest/>, accessed February 20 2016

²⁶ 'WOZA stage protests in Harare over Mugabe insults at Kalangas', *Nehanda Radio*

<http://nehandaradio.com/2015/05/13/woza-stage-protests-in-harare-over-mugabe-insults-at-kalangas/>, accessed March 9 2016

2013, the police set dogs on WOZA members marching in Bulawayo city to deliver a petition on gender-based violence to mark Valentine's Day²⁷.

4.6 The Counselling Services Unit, a CSO providing treatment and counselling care to victims in Harare, told CIVICUS in a February 2016 UPR consultative meeting that it documented that on 6 November 2014, four people sought treatment from the organisation after sustaining injuries by the police. The protestors were members of the Occupy Africa Unity Square movement. They had been denied a police clearance to protests but still convened their meeting. The CSU said the members presented with "severe, extensive injuries". Their lawyer who was not named but had tried to intervene in the attack also presented to the CSU with "extensive bruising and a fractured left wrist", according to the CSU.

4.7 In another case, the CSU also documented that on 1 December 2014, activist Itai Dzamara and other members of the Occupy Africa Unity Square movement were marching blowing whistles in the capital calling for the President to step down. They were bundled into vehicles and taken to Zanu-PF headquarters where they were beaten and assaulted. They were taken to Harare Central Police where they allege they were further assaulted naked with batons and pieces of hose pipes. They were released without charge. They were all subsequently admitted to hospital due to the severity of injuries sustained.

5 (E) Concerns over restrictions on freedom of association

5.1 Zimbabwe's new Constitution and the ICCPR²⁸ allow for freedom of association but this is hindered by restrictive laws including the Public Order and Security Act.

5.2 The Private Voluntary Organisations Act (PVO) (2002) creates a web of bureaucratic red tape for the registration of NGOs. Legislative and practical impediments make registration an onerous process which can take three months to a year²⁹.

5.3 Of particular concern to CIVICUS and The Forum is that the PVO is onerous in its requirements and is used more as a surveillance tool of the sector than for purely administrative purposes. The law is also used to routinely harass organisations the state may not like such as those advocating for the rights of gays and lesbians and those critical of the state's policies. For example, offices of the Gays and Lesbians Association of Zimbabwe (GALZ) were raided in August 2012 by the police who confiscated property of the organisation, including computers, and charged the organisation for the second time with "running an unregistered organisation" in

²⁷ 'WOZA activists brutalised on women human rights defenders day' *Nehanda Radio* <http://nehandaradio.com/2013/11/30/woza-activists-brutalised-on-women-human-rights-defenders-day-pictures/>, accessed March 9 2016

²⁸ 'Zimbabwe Constitution', Part II, Section 58 <http://www.parliament.am/library/sahmanadrutyunner/zimbabwe.pdf>, accessed 29 February 2016

²⁹ 'Registering in Zimbabwe' <http://www.nango.org.zw/index.php/about-ngos/how-to-start-an-ngo/registerring-in-zimbabwe>, accessed February 1 2016

contravention of Section 6 of the Private Voluntary Act³⁰. The High Court later ruled on the case in 2014 finding that legally GALZ is not obliged to register under the PVO Act³¹.

5.4 Furthermore, civil society organisations that seek to undertake activities at the district level are required to obtain police clearance and or sign a memorandum of understanding with the District Administrator. This is not a legal requirement to operate at district level but is being imposed by local authorities³². The law requires for registration only under the PVO Act. Those CSOs who do not seek such clearance find it difficult to operate in districts. This is a form of control on CSOs and extra judicial monitoring of their activities contributing to a closing space in the districts for CSOs³³.

6 (F) Recommendations to the Government of Zimbabwe

6.1 CIVICUS and The Forum urge the Government of Zimbabwe to create an enabling environment for civil society to operate within, in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made.

6.2 Restrictions on freedom of expression and attacks on journalists

- The Access to Information and Protection of Privacy Act should be repealed on account of its incompatibility with constitutional provisions. Any future legislation to regulate the media should be subjected to an extensive consultation with media practitioners.
- The Broadcasting Services Act should be suitably amended to ensure its independence from unwarranted government interference and influence.
- Instructions must be issued to law enforcement agencies and state prosecutors to immediately cease the application of Chapter 9 of the Criminal Code (Reform and Codification) Act on criminal defamation which has been struck off by the Constitutional Court.

³⁰ '2014 Annual Report' HRDs and their freedom of association: Gays and Lesbians of Zimbabwe' Page 25. Zimbabwe Lawyers for Human Rights. 2014

³¹ 'Zim gay community in landmark ruling', *New Zimbabwe* <http://www.newzimbabwe.com/news-14629-Galz%20wins%20landmark%20court%20victory/news.aspx>, accessed March 7 2016

³² 'NGO Law Monitor: Zimbabwe' <http://www.icnl.org/research/monitor/zimbabwe.html>, accessed March 14 2016

³³ NGO Law Monitor: Zimbabwe <http://www.icnl.org/research/monitor/zimbabwe.html>, accessed March 9 2016

- All cases of physical attacks and intimidation of journalists should be subjected to a thorough and impartial investigation with a view to bringing perpetrators to justice.
- Efforts should be made to educate the police and other arms of the state on media freedoms protected by the Constitution.

6.3 Concerns over judicial persecution, harassment and intimidation of members of civil society organisations

- Instructions should be issued to public officials to desist from threatening and intimidating civil society organisations. Offenders should be subjected to an official censure.
- The Zimbabwe Human Rights Commission should be capacitated to investigate complaints of persecution and intimidation of civil society members.
- State authorities should initiate an independent investigation into the disappearance of missing activist Itai Dzamara.
- Instructions should be issued to law enforcement agencies including the police and the Central Intelligence Organisation to enable civil society organisations and human rights defenders to carry out their work without fear of intimidation. The practice of raiding and searching of the homes and offices of human rights defenders by the police must be stopped and the carrying out of arbitrary arrests and detentions should be immediately ceased.

6.4 Concerns on restrictions on freedom of assembly

- Police powers under the Public Order and Security Act should be reviewed with a view to enabling the constitutional right to protest peacefully. The amendment must be done from the premise that the police are not to misuse the notification as a form of denying peaceful protest.
- The review of the Public Order and Security Act should make provision for an independent and timely appeal process in cases of denial of the right to protest by police authorities.
- The use of violence, including beating by baton sticks and the use of teargas and water cannons should be discouraged. Police officials should be trained in crowd control methods in accordance with the UN Basic Principles on the Use of Force and Firearms.

6.5 Concerns regarding restrictions on freedom of association

- The Private Voluntary Organisations Act should be amended in consultation with civil society organisations to enable the constitutional freedom of association. In

particular, the maximum statutory limit of one year to review an application should be reduced to a maximum of three months.

- Instructions should be issued to district administrators to cease the practice of requiring police clearances for civil society organisations operating on the ground which has no basis in law.

6.6 Regarding access to UN Special Procedures mandate holders

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on the Independence of Lawyers and Judges.