



F R E E M U S E
DEFENDING ARTISTIC FREEDOM



Joint stakeholder submission to the UPR of Zimbabwe by Freemuse and Nhimbe Trust
For consideration at the 40th Session of the Working Group in January 2022
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FREEMUSE – Freemuse is an independent international non-governmental organisation advocating for freedom of artistic expression and cultural diversity. Freemuse has United Nations Special Consultative Status to the Economic and Social Council (UN-ECOSOC) and Consultative Status with UNESCO. Freemuse operates within an international human rights and legal framework which upholds the principles of accountability, participation, equality, non-discrimination and cultural diversity. We document violations of artistic freedom and leverage evidence-based advocacy at international, regional and national levels for better protection of all people, including those at risk. We promote safe and enabling environments for artistic creativity and recognise the value that art and culture bring to society. Working with artists, art and cultural organisations, activists and partners in the global south and north, we campaign for and support individual artists with a focus on artists targeted for their gender, race or sexual orientation. We initiate, grow and support locally owned networks of artists and cultural workers so their voices can be heard and their capacity to monitor and defend artistic freedom is strengthened.

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NHIMBE TRUST – Nhimbe Trust is a non-profit non-governmental advocacy organisation working at the intersection of culture and development to foster political, social, and economic justice. Through research and advocacy that engages regional and international human rights instruments, the organisation advocates for the establishment, implementation and review of policies, administrative measures, constitutional provisions and legislative frameworks that implicitly or explicitly have a bearing on the exercise and enjoyment of cultural rights and their concomitant leverage rights.

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Executive Summary

Freemuse and Nhimbe Trust welcome the opportunity to contribute to the third cycle review of the Universal Periodic Review (UPR) of Zimbabwe.

The submission evaluates the implementation of recommendations made in the second cycle UPR and assesses the Zimbabwean authorities' compliance with international human rights obligations as well as constitutional guarantees with respect to fundamental freedoms and cultural rights, particularly concerning:

- Criminalising of artistic expression
- Censorship of artists and artworks in Zimbabwe
- Harassment and intimidation of cultural actors

Between 2016 to 2021, Freemuse and Nhimbe Trust have documented a clampdown on the right to freedom of artistic expression in Zimbabwe, where artists and cultural actors have been subjected to systematic censorship, criminal prosecution as well as harassment and intimidation. Such violations of Zimbabwe's obligations arise from the existence of legislative frameworks that are utilised to silence artistic voices as well as other forms of democratic dissent. Despite constitutional guarantees to the right to freedom of artistic expression, the Government of Zimbabwean has not undertaken adequate measures to ensure the full realisation of the right.

This UPR third cycle review was compiled based on information collected and verified by Freemuse and Nhimbe Trust.



Implementation of second cycle recommendations

Following the second cycle UPR in 2016, 13 recommendations were presented to the Government of Zimbabwe regarding the adoption of measures to guarantee the right to freedom of expression in accordance with constitutional provisions (131.14) and in full compliance with international obligations on human rights (131.15). The Government of Zimbabwe noted five recommendations on the right to freedom of expression, specifically those requiring reform of the Criminal Law (Codification and Reform) Act and the Public Order and Security Act (132.90, 132.91), and recommendations calling for the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (132.46, 132.29).

The government also noted Canada's recommendation calling for an end to human rights violations and abuses against civil society, media, and political opposition, a repeal of the ban on public demonstrations, and insurances on the rights to freedom of expression, association, and peaceful assembly (132.95). Norway's recommendation on the right to engage in free and private exchanges of information on social media (132.92) was similarly noted. Finally, whilst the Government of Zimbabwe accepted part of Sweden's recommendation concerning the broad right to freedom of expression and freedom of media, it noted the component calling for a repeal of the Access to Information and Protection of Privacy Act and the Public Order and Security Act (132.62). The Government of Zimbabwe also accepted recommendations 131.93, 132.93 and 131.95 concerning the need to guarantee freedom of the media and freedom of assembly.

Legislative protections on freedom of artistic expression in Zimbabwe

Freedom of artistic expression entails the right to experience and contribute to artistic and creative expressions, to disseminate artistic expressions or creations, and to enjoy the arts. Zimbabwe is a party to multiple international covenants that protect freedom of expression, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and Peoples' Rights. However, Zimbabwe is yet to sign or ratify the Optional Protocol to the ICESCR which establishes the complaint and inquiry mechanisms for the ICESCR, despite recommendations following the second cycle of the Universal Periodic Review in 2016 (132.46, 132.29). Freemuse and Nhimbe Trust call on the Government of Zimbabwe to implement these recommendations pertaining to the complaint and inquiry mechanisms.

At the national level, freedom of artistic expression is protected under the Zimbabwe Constitution, which was adopted in 2013 following a national referendum and incorporated an expansive Declaration of Rights, including civil, political, and cultural rights. In particular, Section 61 of the Zimbabwe Constitution upholds the right to freedom of expression and freedom of the media. The Constitution also recognises other rights and liberties which are crucial for the realisation of the right to freedom of artistic expression, including the right of access to information (Section 62), right to freedom of conscience (Section 60(1)), cultural rights (Section 63), right to freedom of assembly and association (Section 58), right to freedom of profession (Section 64) as well as the right to freedom of movement (Section 66).

Section 61(5) of the Constitution also outlines admissible restrictions on the right to freedom of expression, which includes incitement to violence, hate speech, injury to a person's reputation or dignity, or breach of the individual right to privacy. This runs counter to international human rights norms which protect all forms of expression, including that which is not truthful, and determines that expressions deemed insulting must only be restricted after satisfying the principles of necessity

and proportionality.¹ The same norms apply to content which is considered to offend, shock, and disturb.²

Since the adoption of the 2013 Constitution of Zimbabwe (Amendment no. 20), the government has undertaken a legislative reform programme that is aimed at aligning legislation to the new constitution. An Inter-Ministerial Taskforce chaired by the Attorney General was established in 2015 to lead the process and in March 2021, the task force reported that as of January 2021, it had completed 20 bills, with 43 still outstanding.³ Despite a process of legislative realignment, constitutional protections and international human rights guarantees, Freemuse has documented violations relating to the exploitation of pre-existing legislations and regulations to suppress artistic voices. Legislative mechanisms have arbitrarily been used to harass, intimidate, and prevent artists from exercising their cultural rights.

1. Criminalising artistic expression

Since the second cycle UPR in 2016, Freemuse has documented an increase in criminal law being used to restrict artistic freedom in Zimbabwe, with the criminal prosecution of artists preventing their free participation in cultural activities for fear of reprisals, leading to an environment of self-censorship and fear. In the period between 2016 and 2020, Freemuse has documented that at least five artists have faced legal prosecution for their exercise of freedom of expression in Zimbabwe, whilst another three artists were subject to censorship directed by state-sponsored bodies. Furthermore, through interviews with artists and cultural institutions in Zimbabwe, Freemuse and Nhimbe Trust have noted that violations of the right to freedom of artistic expression and other cultural rights are exercised through a combination of legislative measures, formal state mechanisms, and intimidation and harassment of artists and cultural actors. Specifically, the Criminal Law (Codification and Reform) Act, the Censorship and Entertainment Controls Act, and the Broadcasting Services Act provide a mechanism for the government to restrict various rights and freedoms which are essential for artists and cultural actors to exercise their right to artistic freedom.

The Criminal Law (Codification and Reform) Act [Chapter 9:23] of 2004 is often employed by government authorities to criminalise artistic expression that is deemed as inciting public disorder of violence, endangering public safety, affecting the defence or economic interests of Zimbabwe, undermining public confidence in a law enforcement agency, or disrupting any essential service. Section 31 of the Act criminalises the publication or communication of false statements prejudicial to the state, punishable with a fine of up to 4195 euros or imprisonment up to 20 years. Further, various provisions of the law prosecute artists for their expressions, including Section 33 which criminalises expressions that ‘undermine the authority of or insult the President’, Section 36 which criminalises public violence, Section 37 on participation in gatherings with an intent to promote public violence, breaching peace or bigotry, and Section 46 on criminal nuisance.

On 16 June 2020, Victor Majoni was arrested and charged with ‘insulting and undermining the authority’ of the President under the Criminal Law (Codification and Reform) Act [Chapter 9:23] after sharing a cartoon video on his WhatsApp portraying a character criticising the President of

¹ Article 19 (2020). Viral Lies: Misinformation and the Coronavirus, <https://www.article19.org/wp-content/uploads/2020/03/Coronavirus-briefing.pdf>

² Recommendation CM/Rec(2014)6 of the Committee of Ministers to member States on a guide to human rights for Internet users – Explanatory Memorandum, Council of Europe, 16 April 2014, para. 40.

³ The Inter-Ministerial Taskforce (2021). *The Inter-Ministerial Taskforce Newsletter*, <https://imt.gov.zw/resources/newsletters/>.

Zimbabwe in response to the coronavirus pandemic.⁴ He was arrested under Section 33(2) of the Act which criminalises actions deemed to insult or undermine the authority of the President.⁵ The government's prosecution was premised on the allegation that there was a real risk or possibility that the statement was false and could engender feelings of hostility towards or cause hatred, contempt or ridicule of the President. The proceedings lasted for one year and the closing submissions were made on 28 June 2021. Majoni's prosecution demonstrates the silencing of democratic dissent in Zimbabwe and the silencing of artistic voices that question or criticise the authorities. In an interview with Freemuse in July 2021, Majoni's lawyer Nqobani Sithole highlighted the reluctance of the Zimbabwe judiciary to impartially address politically motivated cases.

Further, the legal framework under the Criminal Law (Codification and Reform) Act [Chapter 9:23] has established mechanisms for an increased intolerance for, and impunity against, any form of political dissent. On 26 February 2019, comedians Gonyeti (given name Samantha Kureya) and Maggie (given name Sharon Chideu) were arrested by members of the Criminal Law and Order section of the Harare Police Station for performing a comedy skit depicting police brutality that was broadcasted on the internet,⁶ for which they wore clothes resembling the uniform of the police forces in Zimbabwe.⁷ They were charged with 'criminal nuisance' under Section 46 of the Act on the grounds of illegally impersonating police officers, and fined 16.45 euros before being released. Freemuse and Nhimbe Trust are concerned about the clampdown on artistic expressions that question and challenge state authorities, and the consequential negative impact this has on Zimbabwe's democracy.

Impact of COVID-19 on artistic expressions

Zimbabwean human rights organisations have also documented a proliferated clampdown on artists and human rights defenders during the COVID-19 pandemic, which has been used as a guise to restrict and suppress civil and political liberties in Zimbabwe. On 31 July 2020, novelist Tsitsi Dangarembga was arrested and detained by the police for engaging in a two-women anti-corruption protest march in Harare. Dangarembga was charged with intending to incite violence under the Criminal Law (Codification and Reform) Act and breaching the COVID-19 regulations promulgated by the government through a Statutory Instrument.⁸ The novelist was released on bail on 1 August 2020 and in September 2020, her case was transferred to the Anti-Corruption court, which she challenged before the High Court of Zimbabwe. Noting a lack of evidence of corruption relating to Dangarembga's case, the High Court quashed corruption charges against her in June 2021.⁹ At the time of the drafting of this report, Dangarembga's trial proceedings have been postponed on several occasions on numerous grounds, such as unavailability of prosecutors, compounding the harassment

⁴ New Zimbabwe (2020). *MSU student in soup for using ED cartoon character as whatsapp status*, <https://www.newzimbabwe.com/msu-student-in-soup-for-using-ed-cartoon-character-as-whatsapp-status/> (last accessed on 29 June 2021).

⁵ The State vs. Victor Majoni BRB BYO P 1826/20

⁶ BBC News (2019). *Zimbabwean Comedian Gonyeti 'abducted and beaten' in Harare*, <https://www.bbc.com/news/world-africa-49433387> (last accessed on 15 July 2021)

⁷ Eyewitness News (2019). *Zim comedians fined for wearing police uniform in skit*, <https://ewn.co.za/2019/02/28/comedians-in-zimbabwe-fined-for-wearing-police-uniform-in-skit> (last accessed on 29 June 2021); Newsday (2019). *We hope Gonyeti's arrest does not signal onslaught on artistic expression*, <https://www.newsday.co.zw/2019/02/we-hope-gonyetis-arrest-does-not-signal-onslaught-on-artistic-expression/> (last accessed on 29 June 2021) June 2021)

⁸ The Guardian (2020). *Charges against Tsitsi Dangarembga must be dropped, argue writers*, <https://www.theguardian.com/books/2020/oct/06/charges-against-tsitsi-dangarembga-must-be-dropped-argue-writers> (last accessed on 29 June 2021)

⁹ Zimlive (2021). *Judge blocks anti-corruption court trial of Dangarembga for breaking COVID-19 rules*, <https://www.zimlive.com/2021/06/19/judge-blocks-anti-corruption-court-trial-of-dangarembga-for-breaking-covid-19-rules/> (last accessed on 14 July 2021)

she faces and delaying access to a fair trial. This constitutes an undemocratic assault on the right to freedom of assembly and association in Zimbabwe, which is an essential foundation for the exercise of other rights and liberties in a democracy, including the right to freedom of expression.

2. Censorship of artists and artworks in Zimbabwe

Since the second cycle UPR in 2016, Freemuse and Nhimbe Trust have documented how legislative frameworks on censorship and broadcasting in Zimbabwe are often used by the authorities to censor and restrict the right to freedom of artistic expression on grounds authorities deem to be the protection of public morals. Freemuse's research demonstrates that 33 percent of documented violations of artistic freedom in Zimbabwe since the second cycle UPR were on the basis of indecency, a vaguely defined term that has been instrumentalised to arbitrarily ban artistic expressions considered offensive and contrary to public morals.

Censorship and Entertainments Control Act of 1967

Central to the censorship of artistic and creative content in Zimbabwe is the Censorship and Entertainments Control Act [Chapter 10:4] of 1967 which establishes a Board of Censors that regulates recorded material including films, videos, publications, pictures, and statues, alongside theatres and places of public entertainment. Section 10(2) of this legislation specifically allows for censorship of films or film advertisement content considered indecent, obscene, harmful to public morals, as well as that which is likely to be contrary to the interests of defence, public safety, public order, or public health. Zimbabwe's Ministry of Home Affairs and Cultural Heritage has jurisdiction over the administration of this legislation. Among other points of authority, the Minister is empowered by the Act to appoint all members of the Board of Censors as provided in Section 3, and two of the three members who constitute the Appeals Board, as provided in Section 18(1). The Minister may alter any decision of the Board or that of the Appeals Board without a hearing or solicitation of information (Section 23) and can bar the public from accessing any proceedings related to the execution of the Act (Section 21). The absence of mechanisms providing for accountability and transparency in Zimbabwe allows for an illegitimate misuse of power by the Government.

Freemuse has also documented how the vague standards of censorship established in the Censorship and Entertainments Control Act confer excessive powers to the Board of Censors to arbitrarily remove content through subjective interpretations of the provisions. Further, the absence of precise and narrow limitations on terms such as 'indecent,' 'offensive' and 'obscene' in the law contravene constitutional requirements as well as Zimbabwe's international law obligations under Article 19(3) of the ICCPR. On 12 May 2018, Zimbabwe dancehall musician Seh Calaz (given name Tawanda Mumanyi) was found to have violated the Censorship and Entertainments Control Act after publicly distributing *Kurova Hohwa*, a song which had not been cleared by the Board of Censors and was considered to have contained lyrics that are indecent, unethical and undesirable to the public. The musician was fined 85 euros by a Harare magistrate, with a pronouncement that failure to pay within 15 days would incur a prison sentence of 30 days.¹⁰ In 2016, the Board of Censors made a recommendation for the song to be banned on the grounds that it 'polluted public morals' through references to sexual intercourse. The case is illustrative of how the vague provisions of the Censorship and Entertainments Control Act enable the Board of Censors to arbitrarily interpret definitions on public morals, consequently silencing artistic voices and limiting the breadth of artistic

¹⁰ Freemuse (2019). *The State of Artistic Freedom 2019*, <https://freemuse.org/wp-content/uploads/2019/03/saf-2019-online.pdf> ; Nehanda Radio (2018). *Zim dancehall singer fined over lewd lyrics*, <https://nehandaradio.com/2018/05/11/zimdancehall-singer-fined-over-lewd-lyrics/> (last accessed on 29 June 2021).



work being produced.

Broadcasting Services Act of 2001 and Broadcasting Authority of Zimbabwe

The Broadcasting Services Act [Chapter 12:06] of 2001 is also often invoked to restrict the right to freedom of artistic expression in Zimbabwe. Amongst other objectives, the law regulates the licensing and operations of broadcasters and establishes the Broadcasting Authority of Zimbabwe whose members are appointed by the Minister of Information, Publicity and Broadcasting Services, in consultation with the sitting President of Zimbabwe. Freemuse and Nhimbe Trust note that the nature of this appointment, as well as the absence of transparency and accountability mechanisms in the governing legislation, provide for an unstable environment for Zimbabwean musicians with regard to how they and their music is regulated.

The Broadcasting Authority of Zimbabwe has been conferred a broad range of powers including the censorship of content that includes ‘material that is harmful or offensive to members of the public or allows for unfair treatment of individuals in television or radio programmes.’ Section 46 empowers the Minister of Information, Publicity and Broadcasting Services to introduce regulations to carry out or give effect to the Act. The Broadcasting Services (Licensing and Content) Regulations [Statutory Instrument 185 of 2004] further provides that programmes being broadcast must observe ‘good taste and decency, uphold public morality and protect children from negative influences,’ consequently leading to the authorities moral policing artistic content produced for broadcasting.

On 1 June 2019, the Broadcasting Authority banned the song, *African Queen (Binga)* by dancehall musician Tocky Vibes (given name Obey Makamure) after deeming the lyrics “if you stay in Binga you will see naked people, if you stay in Binga you will be naked” to be offensive to the people of the Zimbabwean district of Binga.¹¹ In the absence of a reasonable justification for imposing the ban, the Broadcasting Authority’s decision greatly weakens the constitutional guarantee of right to freedom of artistic and creative expression, and limits the capacity for artists to engage in political or social discussions without consequences or censorship.

Similarly, on 29 December 2019, the Broadcasting Authority of Zimbabwe banned *Ngoro*, a song by musicians Enzo Ishall and Rachel J, from being broadcast on radio and television platforms. The ban was issued on the grounds that the lyrics could be considered sexually suggestive, offensive, and a negative influence for children.¹² The absence of strict standards to narrowly define standards such as ‘negative influence for children’ restricts the right to artistic expression in Zimbabwe and has a chilling effect on the free speech of artists, who consequently subject their content to self-censorship for avoidance of potential legal implications for creative expressions.

3. Harassment and intimidation of cultural actors

In the period between 2016 and 2021, Freemuse documented how government harassment and intimidation is utilised to prevent artists from exercising their right to freedom of artistic expression. Zimbabwean authorities have a commitment under national and international human rights mechanisms to respect, protect and fulfil guaranteed human rights, including the right to life which includes protection from attacks on an individual’s physical integrity. Under these terms, governmental bodies are obliged to investigate and prosecute non-state actors who use violence.

¹¹ Freemuse (2020). *The State of Artistic Freedom 2020*, <https://freemuse.org/wp-content/uploads/2020/04/State-of-Artistic-Freedom-2020-1.pdf>

¹² The Connect (2019). *Rachel J & Enzo Ishall’s Ngoro gets radio ban*, <http://theconnect.co.zw/rachel-j-enzo-ishalls-ngoro-gets-radio-ban/> (last accessed on 29 June 2021)

Civil society organisations in Zimbabwe have documented several cases of abductions and torture of activists and human rights defenders who actively voice their dissent against actions of the state.¹³ In the End of Mission Statement of the United Nations Special Rapporteur on the right to freedom of peaceful assembly and of association, the Special Rapporteur made note of the allegations of arrests, detentions and abductions of trade union leaders as well as of persons protesting the existing regime.¹⁴

On 21 August 2019, the aforementioned Zimbabwean comedian Gonyeti was abducted from her home in Harare by unidentified men who claimed that they were police officers. Gonyeti was beaten, stripped of her clothing, made to drink sewage water and left in a bushy area in an urban setting at Crowborough North in Harare.¹⁵ According to the comedian, her registered complaint with the police has not led to a subsequent investigation and she expressed that her assailants had indicated that she was being monitored because of her satirical work that addresses themes of politics and state leadership. Gonyeti's case illustrates that the absence of institutional mechanisms to facilitate access to justice negatively impact the space for free artistic and creative expressions in Zimbabwe and the consequential impact on artists self-censoring to avoid potential harassment.

Additionally, on 5 October 2019, popular radio personality DJ Blesh (given name Blessing Nyanhete) was threatened with abduction and death by unidentified individuals in the city of Gweru. On being threatened again the following day, the DJ registered a complaint at the Gweru Police Station and claimed he was being subjected to this intimidation on account of his critique of the current President of Zimbabwe over the state of the Zimbabwean economy.¹⁶ In the absence of robust institutional mechanisms to address the illegitimate harassment faced by artists and cultural actors in Zimbabwe, the full realisation of the constitutional guarantees of freedom of expression are not fulfilled.

Recommendations

Freemuse and Nhimbe Trust recommend that the Government of Zimbabwe should:

1. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which establishes the complaint and inquiry mechanisms of the covenant.
2. Re-align all existing legislation with the Constitution of 2013 and Zimbabwe's obligations under international human rights law, including Article 19 of the International Covenant on Civil and Political Rights (ICCPR). This includes reforming or repealing in part or its entirety, the Broadcasting Services Act, the Censorship and Entertainments Controls Act and the Criminal Law (Codification and Reform) Act, where it is established that its legislative provisions are contrary to international human rights law, standards, and principles.
3. Ensure the application of existing legislative and criminal law frameworks to prosecute state authorities for misuse of powers to harass or intimidate artists and cultural actors. This

¹³ Amnesty International (2019). *Violent crackdown on activists underway ahead of opposition protests*, <https://www.amnesty.org/en/latest/news/2019/08/zimbabwe-violent-crackdown-on-activists-underway-ahead-of-opposition-protests/>; Human Rights Watch (2021). *World Report 2021 – Zimbabwe*, <https://www.hrw.org/world-report/2021/country-chapters/zimbabwe>

¹⁴ Clément Nyaletsossi Voule, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association. *The End of Mission Statement* (2019), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25041&LangID=E#:~:text=The%20overarching%20purpose%20of%20my,to%20the%20exercise%20of%20the>

¹⁵ Freemuse (2020). *The State of Artistic Freedom 2020*, <https://freemuse.org/wp-content/uploads/2020/04/State-of-Artistic-Freedom-2020-1.pdf>

¹⁶ News Day (2019). *Gweru DJ claims death threats*, <https://www.newsday.co.zw/2019/10/gweru-dj-claims-death-threats/>

extends to actively establishing measures on the sensibilisation and training of law enforcement personnel.

4. Develop a national strategy and action plan to uphold the safety of artists and cultural workers in advance of the next UPR Review. Priority should be given to measures that monitor violations to artistic freedom by both state and non-state actors, with follow-ups made on complaints and police reports that are filed to assure conclusive investigations.