

March 2016



**Action for Southern Africa (ACTSA) Individual Submission
to the Universal Periodic Review of the Republic of Zimbabwe
26th Session of the UPR Working Group**

Action for Southern Africa (ACTSA) was established in 1994 as the successor organisation to the Anti-Apartheid Movement. We aim to support the people of Southern Africa to achieve poverty eradication, sustainable development and human rights for all. For more information, see: www.actsa.org.

ACTSA acknowledges the contributions of Sunit Bagree, Robina Balal, Tony Dykes, Suresh Kamath and Hugo Knoppert to this submission.

1. Human Rights Defenders

ACTSA is concerned about human rights defenders (HRDs) being subjected to arbitrary arrest and detention. In 2015 alone, one organisation, Zimbabwe Lawyers for Human Rights, provided legal assistance in at least 122 emergency and follow-up cases, which benefitted 463 HRDs.¹ In the vast majority of these cases, arrests made by the Zimbabwe Republic Police (ZRP) were clearly unjustified.

ACTSA has particularly focused on the enforced disappearance of Itai Dzamara, which occurred on 9 March 2015. Dzamara was a well-respected journalist and leader of the pro-democracy movement Occupy Africa Unity Square. On 13 March 2015, four days after Dzamara was abducted, the High Court ordered the authorities to do everything in their power to determine Dzamara's whereabouts and provide regular updates to the High Court on their efforts.

However, the law enforcement agencies have failed to abide by the High Court ruling. In addition, the ZRP has disrupted prayer rallies to raise awareness of Dzamara's enforced disappearance and cracked down against peaceful demonstrators calling on the Government of Zimbabwe (GoZ) to find Dzamara and hold those who abducted him to account. The enforced disappearance of Dzamara, a critic of the ruling ZANU-PF, has generated a climate of fear amongst HRDs in Zimbabwe. It should be noted that Zimbabwe was one of only 14 states to vote against the December 2015 UN General Assembly resolution on the protection of human rights defenders.²

2. Freedoms of Expression and Assembly

The freedoms of expression and assembly are repressed by the GoZ. The misuse of the Public Order and Security Act (POSA) has been a key tool for this repression. Under POSA, citizens are required to obtain permission from the ZRP for public meetings and demonstrations, the ZRP can impose arbitrary curfews and criticism of the President is forbidden. For example, ten members of the Masvingo Residents' Trust (MRT) were arrested by the ZRP on 25 August 2015 following a peaceful demonstration to demand greater transparency, effectiveness and accountability on the part of the Masvingo City Council.³ Three MRT members were formally charged with malicious damage of property and public gathering intended to promote violence.

Other pieces of legalisation, such as the Access to Information and Protection of Privacy Act (AIPPA), the Official Secrets Act and the Criminal Law (Codification and Reform) Act restrict freedom of expression. For example, as a result of these laws, journalists must register with the state and are severely restricted in what they may publish. Those who violate these rules face harsh penalties.

During the 2013 constitutional referendum, radios with the ability to receive all frequencies were banned and confiscated. More broadly, recent research by Amnesty International⁴ has found that the GoZ consistently refuses to issue licenses to community radio stations, with only commercial entities who are close to the ruling ZANU-PF being granted licenses to operate. Furthermore, those campaigning for the licensing of community radio stations have faced harassment and arrest by the ZRP, as well as surveillance and intimidation by state security agents.

The Zimbabwe Human Rights NGO Forum⁵ has compiled some recent cases of trade union rights coming under attack in the country. For example, on 27 December 2015, in Kuwadzana 2 in Harare, police officers arrested members of some workers unions and civil society organisations (CSOs) who were planning collective labour action in response to the non-payment of salaries by the government. Those arrested were beaten with batons and subjected to cruel, inhuman and degrading treatment while in police custody. Similarly, on 4 January 2016, over 150 union and CSO activists demonstrating in Harare over non-payment of salaries by the government were beaten up by police with batons, booted feet and fists.

3. Elections

The last general election in Zimbabwe, held on 31 July 2013, was controversial. The Southern African Development Community called the elections ‘free and peaceful’⁶ and the African Union said that the elections were ‘professionally and successfully conducted’.⁷ However, the Zimbabwe Election Support Network (ZESN) found that ‘over 750,000 urban voters were missing on the voters’ roll... In contravention of the law, the final voters’ roll was not made available in electronic format prior to Election Day... At 82% of urban polling stations many potential voters were turned away and not permitted to vote’.⁸ ZESN went on to argue that the disenfranchisement of urban voters was ‘compounded by the massive bias in the state media, the campaign of intimidation in rural areas, the lack of meaningful voter education, the rushed electoral process and the harassment of civil society’.⁹

More recently, civil society groups have welcomed reports that the Zimbabwe Electoral Commission (ZEC) is attempting to find ways of implementing a biometric voters’ system in Zimbabwe. ZESN and other CSOs have called on ZEC to begin consultations with local stakeholders in order to ensure the process of implementing a biometric voters’ system is appropriate and taken forward in the most efficient manner.

4. Access to Justice and Rule of Law

The 2013 constitution and the declaration of rights contained therein is considered to be an improvement insofar as it guarantees equal treatment of citizens under the law. Further, Zimbabwe agreed to take all appropriate legal and administrative measures to bring justice to the people and to enhance the competence of the courts. Some progress has been made with the establishment of the constitutional court and further courthouses being erected. However, progress in the actual reform of the human rights environment is limited due to a number of factors including: the large number of statutes that still do not conform with Zimbabwe’s international human rights commitments; the capacity of the courts; and the government’s repeated refusal to enforce court orders thus undermining the rule of law. The World Justice Project ranks Zimbabwe 100 out of 102 nations in its rule of law index.¹⁰

As noted above, there exist various laws that are applied by the state to clamp down on civil liberties, and these laws are selectively applied to HRDs and those perceived to be supporters of opposition parties. Security forces regularly abuse citizens and violate

their rights during detention but the government has taken no clear action to address reported incidents of mistreatment. The capacity of the courts to implement the law is undermined as there remain scores of vacant magistrate posts leading to a backlog of around 15,000 claims in the three highest courts.¹¹

5. Torture

Despite assurances by the Zimbabwean Minister for Justice that Zimbabwe would ratify the United Nations (UN) Convention against Torture (CAT), Zimbabwe has failed to do so. The GoZ's response has been to explain that the reason for not ratifying the CAT is that the constitution already provides that protection. However, there is no specific crime of torture defined in Zimbabwean law to protect victims of torture or to criminalise it, and thus no mechanism whereby the courts can investigate issues of torture. The state's failure to act on this issue permits the ZRP and other security agencies to continue to engage in such practices with impunity.

In 2011, a British Broadcasting Corporation (BBC) investigation¹² uncovered a torture camp run by Zimbabwe's security forces near Zengezi in the Marange diamond fields. The main torture camp was known as 'Diamond Base', and took the form of a collection of military tents, with a razor wire enclosure to hold prisoners. The BBC heard from victims who told of severe beatings and sexual assault.

Earlier this year, the Zimbabwean press reported that Elliot Shelton, a political activist was allegedly abducted and tortured by members of the Central Intelligence Organisation (CIO) in Gwanda. Bekezela Fuzwayo, chairperson of the Restoration of Human Rights Matabeleland South Chapter, said that Shelton was picked up in during the day by a group of about 12 men who took him to the local CIO offices. There it is alleged that the political activist was assaulted all over the body while handcuffed and forced to drink an unknown chemical.

6. Economic Social and Cultural Rights

Since 2011, the GoZ's performance in relation to economic, social and cultural (ESC) rights has been mixed. In regard to the right to education, primary school dropout rates fell from 7.9% to 4.8% in just one year (2011-2012), and by 2014 early childhood development classes existed in virtually all of Zimbabwe's primary schools.¹³ There has also been some progress in relation to the right to health. For example, the number of HIV-positive people on antiretroviral therapy rose from 363,261 in 2010 to 849,515 in 2015,¹⁴ and under-five mortality declined from 94 per 1,000 in 2009 to 75 per 1,000 in 2014.¹⁵ Moreover, the GoZ took an active role in coordinating the participation of the Africa Group in the intergovernmental negotiations (in 2011-12) on the voluntary guidelines on the responsible governance of tenure of land, fisheries and forests.

Yet the lack of inclusive political institutions and disregard for the rule of law are key constraints to equitable growth and sustainable development. Poverty continues to be far more prevalent in rural areas compared to urban areas. In addition, many of those employed in the formal sector (let alone the informal sector) experience low wages and weak job security.

Recent trends in relation to the right to food are deeply worrying. The most recent official estimates (March 2016) suggest that an astonishing four million people in Zimbabwe require food aid.¹⁶ The GoZ has failed to: properly plan for extreme weather conditions (such as the drought that the country is currently experiencing); provide adequate protection and support for the most vulnerable farmers; and ensure that the distribution of food aid is not politicised (the Zimbabwe Peace Project identified 62 instances¹⁷ of food aid being denied to individuals linked to opposition parties, as well as to ZANU-PF members perceived to be inactive, in December 2015 alone).

The right to adequate housing remains a critical issue in Zimbabwe, with a shortage of housing in urban areas leading to poor security of tenure and exploitation of low income and other marginalised groups. Section 74 of the constitution protects people from arbitrary eviction or demolition of their homes without a valid court order. However there have been numerous instances of this provision being ignored. For example, in September 2014, houses in Chitungwiza were demolished despite a court order preventing the demolition of some of those houses. It is estimated that thousands of people were affected.¹⁸ More recently, and again in spite of a court order, Harare City Council demolished 250 homes in Budiro and Aspindale in December 2015.¹⁹

Public sector corruption severely impacts ESC rights insofar as the lack of transparency and accountability in revenue collection affects the state's ability to invest in essential services such as education, health and sanitation. Zimbabwe ranks 150th out of 168 countries according to Transparency International's global corruption index.²⁰ The Zimbabwe Anti-Corruption Commission (ACC) has itself courted controversy after it was exposed in August 2015 for failing to submit its accounts for audit by the Auditor General since 2011. The ACC has been accused of bad corporate governance by the Auditor General.

7. Other Human Rights Issues

Whilst recognising Zimbabwe's progress in establishing the Zimbabwe Human Rights Commission (ZHRC), the structural impediments that affect its performance have been highlighted by Human Rights Watch.²¹ The ZHRC is considered not to be fully operational due to a lack of funding and human resources, and the institution's position is further weakened by a limited mandate that prevents it from investigating human rights abuses prior to February 2009. Nevertheless, the ZHRC ought to be commended for publishing a human rights baseline study in December 2015.

In 2013, Zimbabwe's signalled its commitment to the rights of persons with disabilities (PWDs) when it ratified the Convention on the Rights of Persons with Disabilities. However, the GoZ has thus far failed to align domestic legislation relating to PwDs with its own constitution and with its international human rights obligations. Existing disability laws in Zimbabwe adopt a medicalised model of disability and demonstrate stigmatising language in relation to PWDs. Further, the Ministry of Public Service, Labour and Social Welfare has virtually no budget to address PwDs' rights, and so little progress has been made.

Zimbabwe ratified the Convention on the Rights of the Child (CRC) in 1990, under which violence against children, including corporal punishment, is prohibited. In 2014, a survey conducted by the Zimbabwe National Statistics Agency found that 63% of children age 1-14 had experienced 'violent punishment'.²² Again, Zimbabwe's failure to align its domestic laws with its international obligations is of concern. Due to a constitutional court ruling in June 2015, the corporal punishment of juvenile offenders remains permissible.

8. Recommendations

The member states of the Human Rights Council should urge the GoZ to:

- Develop a policy on the protection of all HRDs (as defined by the UN), promote this policy and ensure that those that threaten or attack HRDs or their family members are held legally accountable.
- Establish an independent commission of inquiry into the enforced disappearance of Itai Dzamara.
- Work alongside civil society to ensure the alignment of existing laws with Zimbabwe's constitution and international human rights obligations.
- Ensure that all members of the ZRP and other security agencies, including the CIO, undertake rigorous human rights training, and hold these organisations accountable for violations of the law.
- Allow fair and consistent access for broadcasting licenses at all levels and respect the editorial independence of all media entities.
- Address the concerns of the ZESN in full, and allow election observer missions from all foreign governments and all intergovernmental institutions.
- Fill all vacant magistrate posts and increase investment in the judiciary to improve its effectiveness.
- Enforce the rule of law and demonstrate this by ensuring that the government complies with all court orders issued against it.
- Ratify and implement the CAT and its Optional Protocols, and properly investigate all allegations of torture and hold any perpetrator accountable in line with the law.
- Improve planning for extreme weather conditions to minimise food insecurity, and invest in the resilience of the agricultural sector, particularly in regard to smallholder farmers.
- Immediately stop all forced evictions, end impunity for those responsible for forced evictions, provide shelter for victims, and ensure that victims receive adequate compensation and alternative shelter that conforms to the standards set by the UN Committee on Economic, Social and Cultural Rights.
- Reform the ACC so that its governance is in line with international good practice, and ensure that the ACC regularly submits its accounts for audit by the Auditor General.
- Invest in the ZHRC so that it has adequate human and financial resources, and broaden its mandate to cover all historical cases of alleged human rights abuses.
- Take measures to ensure the inclusion of PwDs in social, economic and political spheres.
- Make corporal punishment of children illegal.
- Take concrete steps to fulfil international human rights obligations by improving responsiveness and cooperation with international bodies in support of this.

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- ¹ Zimbabwe Lawyers For Human Rights (2016) *ZLHR submissions to the thematic committee on human rights on the state of human rights in Zimbabwe*, http://www.zlhr.org.zw/index.php?option=com_content&view=article&id=55:zimbabwe-lawyers-for-human-rights-submissions-to-the-thematic-committee-on-human-rights-on-the-state-of-human-rights-in-zimbabwe-&catid=10:latest-news&Itemid=52
- ² FIDH (2015) *United Nations General Assembly adopts resolution on the protection of human rights defenders by increased majority*, <https://www.fidh.org/en/issues/human-rights-defenders/united-nations-general-assembly-adopts-resolution-on-the-protection>
- ³ Front Line Defenders (2016) *Case history: Prosper Tiringindi*, <https://www.frontlinedefenders.org/en/case/case-history-prosper-tiringindi>.
- ⁴ Amnesty International (2015) *Zimbabwe: Radio stranglehold gagging freedom of expression*, <https://www.amnesty.org/en/latest/news/2015/05/zimbabwe-radio-stranglehold-gagging-freedom-of-expression/>.
- ⁵ Zimbabwe Human Rights NGO Forum (2016) *Quarterly political and human rights violations report: October - December 2015*, <http://www.hrforumzim.org/wp-content/uploads/2016/02/4th-QPVR-2015.pdf>
- ⁶ SADC Election Observer Mission (2013) *Preliminary statement*, http://www.sadc.int/files/4313/7545/6616/FINAL_Preliminary_Statement_of_the_SA_DC_Election_Observer_Mission_to_the_July_31_2013_Zimbabwe_Harmonised_Elections_as_at1148_on_August_02_2013.pdf.
- ⁷ African Union Commission (2013) *Report of African Union Election Observation Mission to the 31 July 2013 harmonised elections in the Republic Of Zimbabwe*, <https://eisa.org.za/pdf/zim2013au2.pdf>.
- ⁸ ZESN (2013) *2013 Harmonised elections preliminary statement*, <https://www.ndi.org/files/ZESN-Preliminary-Statement-080113.pdf>.
- ⁹ Ibid.
- ¹⁰ World Justice Project (2015) *WJP Rule of Law Index 2015*, <http://worldjusticeproject.org/rule-of-law-index>.
- ¹¹ Freedom House (2015) *Zimbabwe*, <https://freedomhouse.org/report/freedom-world/2015/zimbabwe>.
- ¹² BBC (2011) *Marange diamond field: Zimbabwe torture camp discovered*, <http://www.bbc.co.uk/news/world-africa-14377215>.
- ¹³ GoZ & UNDP (2015) *2012-2015 Zimbabwe National MDG Report Executive Summary*, <http://www.zw.undp.org/content/zimbabwe/en/home/library/mdg/zimbabwe-2000---2015-mdg-report-executive-summary>.
- ¹⁴ UNDP (2015) *Supporting a Sustainable Future in Zimbabwe*, http://www.zw.undp.org/content/dam/zimbabwe/docs/key%20documents/UNDP_ZW_2012-2015_CP_Report.pdf?download.
- ¹⁵ World Bank (2015) *Zimbabwe: overview*, <http://www.worldbank.org/en/country/zimbabwe/overview>.
- ¹⁶ Reuters (2016) *Zimbabwe says up to 4 million need food aid after drought*, <http://uk.reuters.com/article/uk-africa-drought-zimbabwe-idUKKCN0WH0K9>
- ¹⁷ Zimbabwe Peace Project (2016) *Human rights violations monthly monitoring report: December 2015*, http://www.zimpeaceproject.com/wp-content/uploads/2016/01/ZPP_MMR_Dec2015_FINAL-1.pdf.

¹⁸ Amnesty International (2015) *Hundreds to be left homeless as Zimbabwe bulldozes “illegal settlements” with impunity*, <https://www.amnesty.org/en/press-releases/2014/10/hundreds-be-left-homeless-zimbabwe-bulldozes-illegal-settlements-impunity/>.

¹⁹ Zimbabwe Human Rights NGO Forum (2016) *Statement of human rights violations: 01.12.15-05.01.16*, <http://www.hrforumzim.org/press-releases/statement-on-human-rights-violations-1-december-2015-5-january-2016/>.

²⁰ Transparency International (2016) *Zimbabwe*, <https://www.transparency.org/country/#ZWE>.

²¹ Human Rights Watch (2015) *World report 2015: Zimbabwe*, <https://www.hrw.org/world-report/2015/country-chapters/zimbabwe>.

²² Global Initiative to End All Corporal Punishment of Children (2016) *Country report for Zimbabwe*, <http://www.endcorporalpunishment.org/progress/country-reports/zimbabwe.html>.