

Rights to the Freedoms of Association, Assembly and Expression in Zimbabwe

A position paper on the rights to freedoms in Zimbabwe



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About women and law in Southern Africa.

“Making the law work for women and girls”

Women and Law in Southern African Research and Education Trust (WLSA) Zimbabwe started as a local Chapter of a sub-regional network in 1989. WLSA is now registered and operates as Private Voluntary Organisation (PVO) in Zimbabwe.

The network member countries include Botswana, Lesotho, Malawi, Mozambique, Swaziland, and Zambia. The purpose of the network is to contribute to sustained well-being of women and girl children through action-oriented research in the socio-legal field and advocating for women’s rights.

WLSA work incorporates action into research by questioning and challenging the law, instigating campaigns for changes in laws, policies and plans of action, educating women and girls about their rights, providing legal advice and gender sensitizing communities and leadership.

The right to freedoms of association, assembly and expression in Zimbabwe

Human beings are social. As long as they live, they must associate with others. They must speak and they must complain. The three rights of association, assembly and expression are means to this. These three rights entail the freedom to interact with others and act or speak in common purpose, to gather or congregate, and to freely express one's mind and conscience in and outside the context of assembly. As with all rights, these three are interrelated, interdependent and indivisible. These rights are among the most basic of civil and political rights accorded to all without distinction under both international law and the Constitution of Zimbabwe (2013).

The freedom of association, assembly and expression often come into sharp focus where they pertain to the freedom to petition and demonstrate, as expressing oneself includes by means of petition and protest, which in themselves are standalone rights in terms of section 59 of the Constitution. As civil and political rights, demonstrations and assembly are at times political in nature. In a context of political intolerance, the energy towards suppressing these rights becomes heightened.

The Constitutional Court in *Democratic Assembly for Restoration and Empowerment & 3 Ors v Saunyama N.O & 3 Ors CCZ-9-2018*, per Makarau JCC held:

“

Protests and mass demonstrations remain one of the most vivid ways of the public coming together to express an opinion in support of or in opposition to a position. [...] Long after the demonstrations, and long after the faces of the demonstrators are forgotten, the messages and the purposes of the demonstrations remain as a reminder of public outrage at, or condemnation or support of an issue or policy. [...] Demonstration have thus become an acceptable platform of public engagement and a medium of communication on issues of a public nature in open societies based on justice and freedom”.

For a demonstration to be protected at law, it must be peaceful. The UN High Commissioner for Human Rights stated in a statement on Zimbabwe on 24 July 2020 that “Merely calling for a peaceful protest or participating in a peaceful protest is an exercise of recognized human rights”.

See Press briefing on Zimbabwe, Spokesperson for the UN High Commissioner for Human Rights, 24 July 2020 at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26121&LangID=E>



Peaceful protest means the protest must be done without destruction of property, violence and provocation. Acts of violence, arson and malicious damage to property in the course of a demonstration, violate the law, and perpetrators may be liable to criminal prosecution and to civil action for damages. In Zimbabwe, the Maintenance of Peace and Order Act [Chapter 11:23] requires the police to authorize for gatherings and demonstrations to ensue. This requirement however is restrictive and is not in line with regional and international human rights standards, under both the African Charter on Human and Peoples' Rights, and the International Covenant on Civil and Political Rights.

The restrictive nature of the recently enacted Maintenance of Peace and Order Act was flagged out by the Special Rapporteur on the rights to freedom of peaceful assembly and of association as follows

“

The Special Rapporteur finds that the newly established legal framework does not address long-underlying concerns and is not conducive to free and unhindered exercise of the right to freedom of peaceful assembly, negatively affecting the exercise of the rights to freedom of association and expression. The Special Rapporteur firmly believes that the exercise of this right should not be subjected to prior authorization by the regulating authority, including when it amounts to a de facto authorization as stipulated by section 7. At most, a prior notification requirement is sufficient to facilitate peaceful assemblies and demonstrations and to take measures to protect public safety and order and the rights and freedoms of others. Such a notification should be subject to a proportionality assessment, not unduly bureaucratic and be required a maximum of, for example, 48 hours prior to the day the assembly is planned to take place. The Special Rapporteur is of the opinion that notification should be required only for large assemblies or for assemblies where a certain degree of disruption is anticipated”.

Visit to Zimbabwe Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council Forty-fourth Session 15 June–3 July 2020, Agenda item 3, at https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_44_50_Add.2_E.pdf paras 30-31. The Special Rapporteur also notes as follows at para 32: “The Special Rapporteur notes that the Maintenance of Peace and Order Act does not protect spontaneous assemblies. Such a lack of protection is not considered to be a best practice in legislation on the right to freedom of assembly. Spontaneous assemblies should be recognized in law and exempted from prior notification, and simultaneous assemblies should be allowed, protected and facilitated, whenever possible”.

See Visit to Zimbabwe Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Human Rights Council Forty-fourth Session 15 June–3 July 2020, Agenda item 3, at https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_44_50_Add.2_E.pdf.



Within the civil and political rights realm, the freedoms of association, assembly and expression are currently the most violated in Zimbabwe. Primarily, security forces have been used to physically crush assemblies and free speech, accompanied by arrests and detention which are oftentimes unlawful and calculated to discourage and thwart assembly and free speech.

While security forces may be used in the maintenance of peace and order where the exercise of the freedoms of association, assembly and expression are concerned, this must comply with section 208 of the Constitution, and international human rights standards and guidelines such as the African Commission on Human and Peoples' Rights Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa; the United Nations Basic Principles on the Use of Force and firearms by law enforcement officials and the 10 Principles for the Proper Management of Assemblies developed in September 2016 by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association. The use of excessive and lethal force by security forces; the unwarranted use of military forces in managing protest; and the subsistence of repressive laws that curtail the enjoyment of the rights to freedom of assembly and association violate both the Constitution and international and regional standards.

The individual's freedom and ability to participate in the civil and political space without discrimination or repression, are both indispensable elements in the development and consolidation of a democratic society based on accountability and transparency. But arrests, threats and prosecutions have had a frightening effect on the exercise of the freedoms of association, assembly and expression. This includes the arrest and continued denial of free trial rights of journalist Hopewell Chin'ono's, widely seen as a way for authorities to silence critical reporting by journalists. Hopewell was arrested for incitement to commit public violence because of his tweets encouraging people to protest corruption on 31 July 2020.

Among the prominent political prisoners are the following: Investigative journalists Hopewell Chin'ono (held in detention for 45 days); opposition political party leader Jacob Ngarivhume (held on detention for 45 days); opposition political party leader Jacob Sikhala (held in detention for 30 days); and opposition Councillor in Masvingo Godfrey Kurauone who was acquitted on 10 September 2020 after 42 days in detention.

However, many believe the arrests were because he had exposed grand corruption in COVID-19 supplies procurement, involving the Minister of Health and Child Care. The Minister of Health and Child Care was in fact relieved of his duties by the President on account of the scandal, and is currently facing criminal charges. At times government has admittedly carried out what it terms "pre-emptive arrests", as is the case with the arrests related to the planned anti-corruption demonstrations on 31 July 2020. Many political prisoners were held, with bail denied, on charges of conspiring to incite public violence

Section 208 of the Constitution on conduct of members of security services provides that:

1. Members of the security services must act in accordance with this Constitution and the law.
2. Neither the security services nor any of their members may, in the exercise of their functions--
 - a. act in a partisan manner;
 - b. further the interests of any political party or cause;
 - c. prejudice the lawful interests of any political party or cause; or
 - d. violate the fundamental rights or freedoms of any person"..



COVID-19 and rights under lockdown



COVID-19 provides a peculiar situation in which public health interests can legitimately be used to limit rights. Done properly, the limitation is justifiable. However, at the hands of people intent to thwart dissent and silence citizens, COVID-19 is a good excuse and cover for tyranny. The latter is truer for Zimbabwe. Through gazetted regulations, security forces deployed to enforce lockdown regulations, and the criminal justice system, have been used to target those who exercise their rights while dissenting. Protests have been crushed.

With the recent actions by government agents and institutions towards journalists, opposition members and activists exercising their constitutional rights and lawfully so, it is difficult to conclude that Government's interest in invoking the COVID-19 regulations is not without any ulterior motive.

Limitation of Rights

As with many rights, the rights to freedom of assembly, association and expression are subject to limitation. Under section 86(2) of the Constitution, rights "may be limited only in terms of a law of general application and to the extent that the limitation is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom". This must take into account all relevant factors, including, the nature of the right or freedom; the purpose of the limitation; the nature and extent of the limitation; the need to ensure that the enjoyment of rights and freedoms by any person does not prejudice the rights and freedoms of others; the relationship between the limitation and its purpose, in particular whether it imposes greater restrictions on the right or freedom concerned than are necessary to achieve its purpose; and whether there are any less restrictive means of achieving the purpose of the limitation.

According to the UN Human Rights Committee's 2020 General Comment No. 37 on Article 21 (Right of Peaceful Assembly) of the International Covenant on Civil and Political Rights, "The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations to it. Restrictions should not be aimed at discouraging participation in assemblies, potentially causing a chilling effect". Pre-emptive arrests of organisers, propaganda about "violent" protests being planned and intimidation in any manner or form are illegal and unconstitutional methods of limiting the right to demonstrate.

The UN High Commissioner for Human Rights has advised that “While recognizing the Government’s efforts to contain the pandemic, it is important to remind the authorities that any lockdown measures and restrictions should be necessary, proportionate and time-limited, and enforced humanely without resorting to unnecessary or excessive force”. The right to demonstrate is not automatically suspended on account of the COVID-19 lockdown. In many countries, there are ongoing protests during various versions of lockdowns. For instance, workers’ and COVID-19 management related protests have been witnessed in South Africa. Far afield in the United States, nationwide Black Lives Matter protests erupted following the killing of George Floyd by State police. These protests spread across various parts of the world, including South Africa, Australia, the United Kingdom and various European capitals. In Europe, the people of Belarus have been staging a series of political demonstrations and protests against the Belarusian government and President Alexander Lukashenko. In the United States, others have in fact protested either against or in support of lockdown regulations.

While in the case of Belarus, excessive force has been deployed in some instances, there is widespread recognition world over that while countries may be in lockdown, the right for people to protest remains protected, and policing to mitigate the spread of COVID-19 during protests should be conducted within lawful limits. Measures adopted by States in using COVID-19 to limit rights must meet the Emergency Measures and COVID-19: Guidance issued by the High Commissioner for Human Rights on 27 April 2020, which require that restrictions “must meet the requirements of legality, necessity and proportionality, and be non-discriminatory”.

General Comment No. 37 on the Right of Peaceful Assembly states that “The ‘protection of public health’ ground may exceptionally permit restrictions to be imposed, for example where there is an outbreak of an infectious disease and gatherings are dangerous. This may in extreme cases also be applicable where the sanitary situation during the assembly presents a substantial health risk to the general public or to the participants themselves”.

When policing demonstrations under COVID-19 regulations, the right to dignity and freedom from torture, cruel, inhuman and degrading treatment or punishment are non-derogable rights. Under section 86(3) of the Constitution, no law may limit, and no person may violate these rights





Rights under attack - Civil society shrinking space

Civil society often provides a cushion for citizens from government's excessive use of force with impunity, unaccountable conduct and neglect of provision of service delivery. This, they often do by exercising the freedoms of association, assembly and expression, mobilizing, speaking out, exposing and demanding accountability and abidance with the law. Consequently, this places civil society leaders and practitioners as prime targets of those intent on silencing the rights and crushing dissent. Thus there have been accusations by State and political functionaries of civil society as being anti-government, and as aiding instability in the country. Civil society leaders have been arrested and charged, mostly with incitement to commit public violence.

This is also part of the broader democratic limitations imposed through the law. Policies, social practices, and even laws that unduly limit freedoms are in place. Oppressive laws like the now defunct Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) had ironically been justified in terms of social and economic imperatives. Although these are now repealed, the Maintenance of Peace and Order Act of 2020 which replaced POSA is equally constraining in the exercise of association and assembly rights. Government has introduced Constitution of Zimbabwe Amendment (No. 2) of 2019 Bill in order to cut back on democratic practices that include checks and balances and oversight, as well as transparency, accountability and openness. The government has also successfully taken advantage of the COVID-19 lockdown to conduct rushed public consultations across the country in respect of the Bill.

In an ominous warning, the President warned that government would deal ruthlessly with opposition parties, civil society organizations and foreign missions that were allegedly bent on destabilizing the nation. What is, therefore, currently at stake goes well beyond civil society and human rights activists. This closing civic space threatens peaceful and prosperous socio-economic development.

See 'South Africa's de-centralised lockdown protests', 10 August 2020,
<https://www.theleftberlin.com/post/south-africa-s-de-centralised-lockdown-protests>

Women at the frontlines

It is a fact of recognition that most of the social activists who have been demanding human rights and good governance in recent times are women. Correlatively, most of those arrested and treated in extralegal ways are women. Women human rights defenders have thus far been targeted because they are women who are defending human rights. These have been targeted by virtue of being women and the misconception that they are weak and can easily be intimidated into submission. Additionally, socio-economic human rights violations particularly have a disproportionate impact on women. Research has characterized issues such as challenges in access to water and poverty in general, as gendered.

Recent cases of women who have faced the State machinery in being silenced for exercising their rights to association, assembly and expression include the groups of mostly female nurses who have been arrested ahead of planned protests, or during protests, in Mutare and at Parirenyatwa and Harare Central Hospitals in Harare. These demonstrations were over increments of earning to a living wage in light of the eroded local currency.

A number of others were arrested in protests against proposed amendments to the Constitution of Zimbabwe 2013, and for demonstrating in various parts of the country against corruption on 31 July 2020.

The prevailing impunity surrounding these human rights abuses has contributed to the normalization and escalation of violence against women. Some of the cases illustrate how sexual violence has been used to punish women who dare to question the status quo.

'We Will Deal With You: ED to Critic, as Zim Braces for July 31 Mass Demos', Daily News, 11 July 2020.

See the Devina Perumal 'Women's socio-economic [in]equality and gender [in]justice: Feminist reflections on the right of access to water in Mazibuko and Others v City of Johannesburg and Others 2009 ZACC 28' Agenda 2011 No 85.



Making rights work

The rights to association, assembly and expression on paper are not self-executing. They depend on people: people who man and operate institutions; people who are entitled to the rights and who demand their rights, and people who are informed of their rights and the avenues available to make rights work.

- **Self-censorship**

Rights holders should not self-censor and should demand full respect and recognition of their rights by authorities.

- **Citizen agency**

Ordinarily, citizens should be able to influence and shape governance and the government's treatment of citizens. To do this, citizens must be aware of their rights and must be empowered to demand their rights. Citizens must be knowledgeable of the constitutional norms and standards.

- **Accountability and ending impunity**

There is need for every citizen to ensure that the government is held accountable to secure the respect and protection of the rights to association, assembly and expression. This includes making use of institutions of accountability and legal and social mechanisms available to ensure accountability.

- **Institutional strengthening**

Accountability institutions that include the independent constitutional commissions and the courts must exercise their constitutional mandates to extricate the society from the degenerated human rights situation Zimbabwe finds itself in.

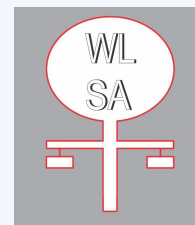
Conclusion

The rights of freedom of association, assembly and expression are facing perhaps their worst attack since independence in Zimbabwe. COVID-19 has been manipulated to justify and intensify the crackdown on these rights. This appears to be part of a broader campaign to shrink the democratic space, including to limit civic space. Women continue to bear the brunt of this, given that they suffer disproportionately from the underlining socio-economic conditions fomenting agitation and discontentment, and suffer violations when they assemble and speak, including sexual assault. The case is made for advancing freedoms of association, assembly and expression as a way of advancing women's rights and protection.

See 'Police arrest nurses for protesting over poor salaries in Zimbabwe', 20 June 2020, <https://www.myzimbabwe.co.zw/news/66166-police-arrest-nurses-for-protesting-over-poor-salaries-in-zimbabwe.html> and 'Zimbabwe nurses arrested ahead of planned rallies', 7 July 2020, <https://www.aa.com.tr/en/africa/zimbabwe-nurses-arrested-ahead-of-planned-rallies/1901819>

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