

**Studies and Articles**



**Selected Challenges Associated with Civil  
and Political Rights Violations in  
Zimbabwe  
(Part 1)**

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**Abstract:** Various challenges have been associated with the violation of civil and political rights in Zimbabwe before and after its political independence from the white minority rule in 1980 to date. Thus, despite the fact that these civil and political rights were somewhat protected in the Lancaster House Constitution of Zimbabwe 1979 (SI 1979/1600) as amended by Act 1 of 2009 which introduced amendment 19 of 2009 (Lancaster House Constitution) and subsequently, under the Zimbabwe Constitution Amendment Act 20 of 2013 (Zimbabwe Constitution, 2013), various violations of these rights could still be perpetrated by the offenders against the members of the public, especially, during elections in Zimbabwe. Given this background, such civil and political rights violations are discussed in two parts: firstly Part I of this article analyses historical aspects of civil and political rights abuses, constitutional obligations arising from civil and political rights and legislative-related challenges associated with the protection of such rights in Zimbabwe. Thereafter, Part II of the next article discusses politically-related challenges, economic-related challenges, constitutional-related challenges as well as regional and international law challenges pertaining to the protection of such rights in Zimbabwe.

**Keywords:** Civil and political rights; protection; challenges; Zimbabwe; violations

## **1. Introduction**

Civil and political rights are those rights that enable individuals to freely exercise and enjoy their lives in their respective countries without discrimination,

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infringement or oppression by governments, independent organisations and/or other individuals. Thus, civil and political rights empower an individual to participate freely in the civil and political activities that pertains to his or her society without discrimination, victimisation or prejudice from any other persons (Avocats Sans Frontières, 2017, page number unknown; the International Bar Association, 2007, pp. 2, 15-59, for related examples of civil and political rights violations in Zimbabwe). Civil and political rights are usually enforced as a vehicle for the enjoyment of various freedoms and liberties for individuals in many democratic countries.<sup>1</sup> Accordingly, for the purposes of this article, civil and political rights include the right to life; freedom from torture or cruel, inhuman or degrading treatment or punishment; freedom from slavery or servitude; freedom from forced or compulsory labour; the right to personal liberty; the right to personal security; rights of arrested and detained persons; right to equality and non-discrimination; right to privacy; freedom of assembly and association; freedom to demonstrate and petition; freedom of conscience; freedom of expression and freedom of the media; right to human dignity; freedom of movement and residence; political rights; right to administrative justice; right to a fair hearing and rights of accused persons (ss 48 to 70 of the *Zimbabwe Constitution Amendment Act 20 of 2013 (Zimbabwe Constitution 2013)*; related rights were also protected under the *Lancaster House Constitution of Zimbabwe 1979 (SI 1979/1600)* as amended by Act 1 of 2009 which introduced amendment 19 of 2009 (*Lancaster House Constitution*), see ss 12 to 23A). Nonetheless, despite the fact that civil and political rights were somewhat protected in the *Lancaster House Constitution* (ss 12 to 23A) and subsequently, under the *Zimbabwe Constitution 2013* (ss 48 to 70), various violations of these rights have continued to be perpetrated against the members of the public by the offenders, especially, towards and/or during elections in Zimbabwe (Robertson, 2014, pp. 4-5; Dziva, Dube and Manatsa, 2013, pp. 85-91; Asylum Research Consultancy, 2015, pp. 1, 72-224; the International Bar Association, 2007, pp. 7-9, for further related comments). This clearly shows that the mere fact that civil and political rights are protected under the *Zimbabwe Constitution 2013* does not in itself guarantee the enjoyment of, and/or respect for

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<sup>1</sup> See articles 1-51 of the International Covenant on Civil and Political Rights (ICCPR), adopted on 16 December 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) 52, U.N. Doc. A/6316, 999 U.N.T.S. 171 (1966). The ICCPR came into force on 23 March 1976 and was eventually signed and acceded to by Zimbabwe on 13 August 1991; see further articles 1 to 21 of the Universal Declaration of Human Rights (UDHR), adopted on 10 December 1948, G.A. Res. 217A (III), U.N. Doc. A/180 (1948); articles 1 to 13 of the the African Charter on Human and People's Rights (ACHPR). The ACHPR was adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 in Banjul (1982) and came into force on 21 October 1986.

these rights in Zimbabwe (Gubbay, 1997, pp. 227, 229-254). For instance, although the *Zimbabwe Constitution 2013* stipulates that the state (as well as its organs) and every person, including juristic persons must respect, protect, promote and fulfil the fundamental rights and freedoms enshrined its Declaration of Rights (s 44 read with ss 45-47 & 85 of the *Zimbabwe Constitution 2013*), the civil and political rights of human rights defenders and members of the opposition political parties are sometimes violated by the members of the Zimbabwe Republic Police (ZRP) and other government law enforcement agencies, especially, during peaceful demonstrations and general elections in Zimbabwe (Dziva, Dube and Manatsa, 2013, pp. 85-91; the International Crisis Group, 29 September 2014, pp. 1, 2-19; Robertson, 2014, pp. 3, 4-5; Amnesty International, (2013). pp. 5, 6-22; Amnesty International, (8 September 2006). pp. 1, 2-31; Gubbay, 1997, pp. 229-254 & de Bourbon, 2003, pp. 195, 199-221, for related comments). Given this background, the article, *inter alia*, unpacks legislative and other selected challenges that are associated with the civil and political rights violations in Zimbabwe. Thereafter, possible recommendations that could enhance the protection of civil and political rights in Zimbabwe are provided.

## **2. Overview Historical Background of Civil and Political Rights Abuses in Zimbabwe**

Civil and political rights abuses are not a new phenomenon in Zimbabwe. For instance, in the early 1960s, various civil and political rights of the black majority citizens of Zimbabwe (then Rhodesia) were grossly restricted, violated and sometimes unrecognised by Ian Smith's white minority government (Davidson and Purohit, 2004, pp. 108, 109-111). Majority of the black people were denied their rights to vote, demonstrate and express themselves freely. Moreover, black people were not allowed to buy, attend same schools, be admitted in same hospitals, associate or move into and/or stay in areas that were resided or occupied by white people. The Ian Smith government denied most black people their right to enjoy government-related services such as free clean water, electricity, subsidised food and to participate in parliamentary activities of the government. Repressive laws, brutal force and curfews were constantly employed by the Ian Smith government to crush any dissenting voices, especially, those of the oppressed black people (Davidson and Purohit, 2004, pp.109-111, for a related discussion). Thus, most black people's rights to freedom of assembly and association; freedom to demonstrate and petition; freedom of conscience; freedom of expression and

freedom of the media; right to human dignity; freedom of movement and residence and political rights were consistently violated by the Ian Smith government between the early 1960s and 1980. Put differently, the European white settlers oppressed and violated the civil and political rights of the native black people of Zimbabwe as early as the late nineteenth century. For instance, after Rhodesia obtained its independence from Britain through the so-called Unilateral Declaration of Independence of 1965, the Rhodesian government employed more severe violations and abuses of black people's civil and political rights. Such violations and abuses include the use of torture, army and police brutality, political intimidation and racial segregation measures against all the native black people (Davidson and Purohit, 2004, p.110). Moreover, the Rhodesian government deprived the black majority people of their fertile land and unfairly subjugated them through its oppressive rule.

Consequently, the black majority revolted against Ian Smith's government and a political war ensued in the early 1970s. Precisely, the liberation war between the black (guerrilla) soldiers and Rhodesian army intensified in 1972 (Davidson and Purohit, 2004, p.110). Nonetheless, it was not a level playing field since the Rhodesian army was more resourced and extensively supported through its government's draconian and repressive laws such as the *Emergency Powers Act* 83 of 1974 (see s 3), *Indemnity and Compensation Act* 45 of 1975 (*Indemnity and Compensation Act*) and it was retroactively enforced to 1 December 1972) which provided immunities, indemnities, amnesties, clemencies and pardons to the perpetrators of civil and political rights abuses from criminal and civil liability (s 4(1) of the *Indemnity and Compensation Act*. Similar amnesties were also provided under the *Amnesty Act* [Chapter 9:02] and the *Amnesty (General Pardon) Act* [Chapter 9:03] respectively). These abuses were usually Rhodesian soldiers, security forces and other state agencies. Likewise, the *Law and Order (Maintenance) Act* [Chapter 11: 07] 53 of 1960 (*Law and Order Act*) was used to violate the black people's civil and political rights as punishment for supporting the guerrilla soldiers. The *Law and Order Act* was amended several times to give broader powers to the Ian Smith regime and to restrict the access to the courts on the part of the affected persons. Moreover, the aforesaid laws, *inter alia*, prohibited black people to form political parties, demonstrate, petition, exercise their right to freedom of expression, right to freedom of assembly and association, right to freedom of movement and residence and enjoy other political rights such as voting or conducting parliamentary duties. As a result, over 80 000 people (mostly civilians and black soldiers) were massacred (Davidson and Purohit, 2004, p.110).

Various activities of torture, political violence, brutality by armed forces and other civil and political rights abuses against the majority black people intensified across the country (Davidson and Purohit, 2004, p.110), especially, in the rural areas where any person suspected of harbouring or supporting the guerrilla soldiers was tortured and/or killed by the Rhodesian army.

Despite this, the guerrilla soldiers became more determined to fight against the aforesaid civil and political rights abuses and other human rights violations that were perpetrated by the Rhodesian government. Eventually, Zimbabwe got its independence from the Rhodesian oppressive government in 1980 and a new government led by Robert Mugabe's Zimbabwe African National Union Patriotic Front (ZANU PF) was formed (Davidson and Purohit, 2004, pp.110-111). The civil and political rights violations were relatively minimised and both the white and black people lived reconciliatory and peacefully together (Davidson and Purohit, 2004, p. 110). Nevertheless, other injustices, inequalities and discriminatory activities remained unresolved. For example, most of the fertile land in Zimbabwe was still owned by the minority white commercial farmers while majority of the black people remained segregated into small portions of unfertile land. Moreover, Mugabe's government retained most of the Rhodesian government's repressive laws without or with very insignificant amendments as well as the state security organs and their repressive ways of conducting their duties. Such repressive laws that were inherited and/or copied from the Rhodesian government include the *Presidential Powers (Temporary Measures) Act 1 of 1986* ('Presidential Powers Act', see s 2 and other relevant provisions of this Act). Consequently, the president, members of the army, ZRP and the Central Intelligence Organisation (CIO) retained their relatively wide draconian powers which they were empowered to use, especially, when enforcing law and order and during a state of emergency (Weitzer, 1984, pp. 529, 532-533; Davidson and Purohit, 2004, p.110). This essentially created a new culture of impunity and various government-related human rights abuses and the violation of ordinary people's civil and political rights under the ZANU PF led government just as it was under the Rhodesian government. The culture of impunity on the part of the law enforcement agencies, security agencies and other related offenders was enabled by the enforcement of repressive, emergency and amnesty laws such as the *General Notice 424A of 1990*, *Clemency Order 1 of 1995*, *Clemency Order 1 of 2000* (published on 6 October 2000 (General Notice 457A of 2000)), *Emergency Powers (Security Forces Indemnity) Regulations 1982* ((SI 487/1982), as amended by SI 159/1983, see s 4(1)), and the *Ombudsman Act* [Chapter 10:18] of 1982 (see s 8, as amended by the

*Ombudsman Amendment Act* 4 of 1997) which, *inter alia*, precluded any investigations relating to human rights violations or other illicit conduct of the police, army and the prison officers (Davidson and Purohit, 2004, p.110).

Thus, although independence from the Rhodesian government abolished racial segregation and relatively improved the protection of civil and political rights in Zimbabwe in the initial years of the democratic government, the ZANU PF led government gradually started to abuse the people's civil and political rights just like its predecessor, the Rhodesian government (Davidson and Purohit, 2004, pp.110-111). For example, between 1982 and 1987, the ZANU PF government commenced a brutal ethnic dissident war (Gukurahundi) against Joshua Nkomo's Patriotic Front Zimbabwe African People's Union (PF ZAPU) supporters. This resulted into various state-induced arbitrary detention and destruction of property, gross torture, rape and killings of the Ndebele people who were believed to be dissident supporters of the PF ZAPU in Matabeleland and Midlands provinces of Zimbabwe (Davidson and Purohit, 2004, pp. 110-111; the Redress Trust, 2005, pp. 5-6). It is stated that the North Korean-trained Five Brigade government soldiers assaulted, tortured and killed about 20 000 people who were suspected to be supporters of the PF ZAPU (the Redress Trust, 2005, p. 5). This could have been worsened by the fact that the Emergency Powers (Maintenance of Law and Order) Regulations gave sweeping powers of arrest and detention without trial and the right to control meetings to law enforcement agencies. Consequently, several people were massacred and the government soldiers grossly violated their civil and political rights (Kagoro, 2003, pp. 1, 7-25; Davidson and Purohit, 2004, p. 111). Furthermore, gross civil and political rights violations were perpetrated against human rights activists, human rights defenders and members of the opposition political parties by the CIOs, soldiers and the ZRP during the period between 1982 and 1987 (Zimbabwe Human Rights NGO Forum, 2009, pp. 1-4). Regrettably, the *Genocide Act* [Chapter 9: 20] (*Genocide Act*), the *State Liabilities Act* [Chapter 8:14] (*State Liabilities Act*, see s 6), and the *War Victims Compensation Act* [Chapter 11:16] 22 of 1980 were not applicable to those who were affected by Gukurahundi, hence they could not claim their damages from the offenders or the government. This status *quo* continued in the early 1990s and most human rights activists, human rights defenders and members of the opposition political parties were arbitrarily and violently beaten, tortured and abused by the law enforcement agents.

Additionally, from 1997 to date, repressive legislation such as the *Access to Information and Protection of Privacy Act* [Chapter 10:27] 5 of 2002 (*Access to Information and Protection of Privacy Act*) as amended, the *Public Order and Security Act* [Chapter 11:17] 1 of 2002 (*Public Order and Security Act*) as amended by the *Public Order and Security Amendment Act* 18 of 2007, the *Criminal Law (Codification and Reform) Act* [Chapter 9:23] 23 of 2004 (*Criminal Law Act*) and the *Criminal Procedure and Evidence Act* [Chapter 9:07] (*Criminal Procedure and Evidence Act*, see s 337) have been arbitrarily employed by the government law enforcement agencies to violate civil and political rights of many *bona fide* human rights activists, peaceful protesters and members of the opposition political parties such as Morgan Tsvangirai, Jestina Mukoko, Itai Dzamara, Patson Dzamara, Beatrice Mtetwa, Abel Chikomo, Okay Machisa, Women of Zimbabwe Arise (WOZA) members, Zimbabwe Peace Project (ZPP) officials, Alec Muchadehama, Constance Gambara, Andriison Manyere, Linda Masarira and others (Zimbabwe Human Rights NGO Forum, 2014 pp. 2, 3-21; Zimbabwe Human Rights NGO Forum, 2013, pp. 1, 2-10; Asylum Research Consultancy, 2015, pp. 71-78). In light of these current challenges, the constitutional responsibilities on the part of the government and other persons to ensure the protection and fulfilment of civil and political rights for all people in Zimbabwe are briefly discussed below.

### **3. The Constitutional Obligations Arising from Civil and Political Rights**

The state as well as both natural and juristic persons has a positive duty to respect, protect, promote and fulfil the rights and freedoms that are enshrined in the Declaration of Rights (s 44 of the *Zimbabwe Constitution 2013*). This clearly shows that the government and all persons are constitutionally obliged to respect, protect, promote and fulfil civil and political rights just like any other fundamental rights that are enumerated in the Declaration of Rights of the *Zimbabwe Constitution 2013* (s 44 read with ss 45 to 70 & 85). Thus, although it appears that the responsibility for the protection, promotion and realisation of civil and political rights and other fundamental human rights mainly lies with the government (Fomerand, 2014, p. 625), every other person has an equally important constitutional role to play in this regard. Put differently, section 44 of the *Zimbabwe Constitution 2013* stipulates that the government and all its organs are constitutionally obliged to respect, protect, promote and fulfil the civil and political

rights of all persons in Zimbabwe irrespective of their social, religious or political orientation. Accordingly, the government and its organs at all levels, be it administrative organs, parastatals, law enforcement agencies (CIOs, army, prison and police officers), urban and local authorities, independent commissions, the executive, judiciary and the parliament are constitutionally mandated to respect, protect, promote and fulfil the civil and political rights of all persons in Zimbabwe (Mavedzenge & Coltart, 2014, pp. 5, 14-15). Likewise, both individuals and juristic persons (companies, private and public organisations) are required to ensure that civil and political rights are respected, protected, promoted and realised by everyone in Zimbabwe (s 44 of the *Zimbabwe Constitution 2013*; see further Mavedzenge & Coltart, 2014, p. 15). The extent of this obligation depends on nature of each individual civil and political right and the applicability of the Declaration of Rights to such right in respect of the affected persons (s 45(2) & (3) read with s 44 of the *Zimbabwe Constitution 2013*; see further Mavedzenge & Coltart, 2014, p. 15). Notably, the Declaration of Rights binds both the government and the individuals. This is the so-called vertical application of the Declaration of Rights to regulate the relationship between the government and individuals (s 45 read with s 44 of the *Zimbabwe Constitution 2013*; see further Mavedzenge & Coltart, 2014, p. 13). It enables the state to enforce and protect the civil and political rights of affected persons against the offenders. In the same way, individuals may sue the government or the state for any violation of their civil and political rights by its organs and institutions.

The Declaration of Rights also has a horizontal application between individuals to regulate the protection and fulfilment of civil and political rights between them (s 45(2) & (3) read with s 44 of the *Zimbabwe Constitution 2013*; see further Mavedzenge & Coltart, p.13). This empowers affected individuals to enforce their civil and political rights against other individuals who violated such rights in the relevant courts.

In light of the above, it is crucial to note that the constitutional duty to “respect” the civil and political rights entails that individuals, juristic persons, the state and all its organs are equally obliged to stop conduct or activities that negatively interferes with the realisation and enjoyment of such rights by all the people in Zimbabwe (s 44 of the *Zimbabwe Constitution 2013*; see further Mavedzenge & Coltart, 2014, pp. 14-16). Similarly, the duty to “protect” obliges individuals, juristic persons, the state and all its organs to implement mechanisms and other reasonable activities that preserve all the people’s civil and political rights in Zimbabwe (s 44 of the



*Zimbabwe Constitution 2013*; see further Mavedzenge & Coltart, 2014, pp.15-16). Thus, the duty to “protect” also entails that individuals, juristic persons, the state and all its organs must prevent or eradicate any possible threats that could jeopardise the existence of, and/or enjoyment of civil and political rights by all people in Zimbabwe. This duty also empowers the state to punish those who violate other people’s civil and political rights. Moreover, the duty to “promote” requires individuals, juristic persons, the state and all its organs to adopt and implement adequate practical mechanisms to ensure that all people will continue to freely exercise and enjoy their civil and political rights in Zimbabwe. Such measures could include public awareness programmes and giving incentives or bounty rewards to those who promote civil and political rights in their communities and the country at large (s 44 of the *Zimbabwe Constitution 2013*). Additionally, the duty to “fulfil” which is stipulated in section 44 of the *Zimbabwe Constitution 2013* obliges individuals, juristic persons, the state and all its organs to embark on programmes and/or other relevant measures to ensure that all people realise and enjoy their civil and political rights without discrimination.

The government of Zimbabwe is also obliged to respect, promote, fulfill and protect civil and political rights in accordance with any foreign law, international law and domesticated treaties or conventions to which Zimbabwe is a party (s 46(1)(c) & (e) read with ss 34 & 85 of the *Zimbabwe Constitution 2013*). Thus, the government of Zimbabwe must comply with the civil and political rights obligations of international human rights treaties, instruments and conventions that it ratified (such treaties and/or conventions include the ICCPR, the UDHR and the ACHPR. See further Shelton, 2002, pp. 273, 275-322).

#### **4. Legislative-related Challenges Associated with the Civil and Political Rights Violations in Zimbabwe**

The authors submit that various factors have given rise to several challenges affecting the respect, protection, promotion and fulfilment of civil and political rights in Zimbabwe. Such challenges include legislative challenges that are briefly discussed below.

##### **4.1. The Public Order and Security Act**

The *Public Order and Security Act* came into force on 10 January 2002. However, it was later amended by the *Public Order and Security Amendment Act 18 of 2007* (Chiumbu, Minnie and Hendrik, 2009, p. 29). The *Public Order and Security Act*

repealed the *Law and Order Act*, which initially outlined the powers of the police and provided various state-related security measures that, *inter alia*, restricted the personal freedom of the native black people in Zimbabwe (Mapuva and Muyengwa, 2012, pp. 125, 135). In other words, the *Law and Order Act* empowered the Ian Smith government to, *inter alia*, prohibit any affected persons whose civil and political rights were violated from accessing the courts for their redress. (Mapuva and Muyengwa, 2012, p. 135). Thus, the *Law and Order Act* was a vehicle of the colonial government to repress, torture, restrict and violate the civil and political rights of any persons, especially, those who were perceived to be terrorists and/or enemies of the state (Mapuva and Muyengwa, 2012, p. 135). Accordingly, this repressive law enabled the Ian Smith regime to violate the civil and political rights of the black people with impunity. The *Law and Order Act* was arbitrarily enforced against the black people (Jafari, 2003, pp. 6-10; Mapuva and Muyengwa, 2012, p. 135). This Act infringed various civil and political rights of the people, especially, the right to freedom of association and assembly, the right to freedom of movement and the right to freedom of expression by banning demonstrations and the movement of black people. In this regard, the *Law and Order Act* gave wide discretionary powers to the police to arrest demonstrators and restrict the free movement of the people (Jafari, 2003, p. 7; Mapuva and Muyengwa, 2012, pp.135-138).

Ironically, after independence, the ZANU PF government continued to enforce the provisions of the *Law and Order Act* although such provisions were inconsistent with *Lancaster House Constitution* (s 3). For instance, as indicated above, the *Law and Order Act* imposed draconian restrictions on the civil and political rights of several human rights defenders and members of the opposition political parties in Zimbabwe. This status *quo* attracted severe criticisms from the civil society organisations (CSOs), independent organisations, opposition political parties and human rights defenders (Jafari, 2003, p. 7; Mapuva and Muyengwa, 2012, pp.135-138). Eventually, as indicated above, the *Public Order and Security Act* was enacted in an attempt to remedy the flaws that were imbedded in its predecessor. Nonetheless, the *Public Order and Security Act* retained most of the colonial and repressive attributes of the *Law and Order Act* that were earlier highlighted above (Mapuva and Muyengwa, 2012, pp. 135-138).

For instance, before the repeal of sections 5 to 13; 15 and 16 of the *Public Order and Security Act* (these provisions were repealed by s 282 of the *Criminal Law Act* and inserted in Chapter III of this Act which is entitled the “Crimes against the

State”), the ZANU PF government used to arbitrarily arrest and detain any persons who allegedly published or communicated false statements that are prejudicial to the state in order to undermine the authority of, or insult the president (see the repealed s 12 of the *Public Order and Security Act*). This provision was easily abused by the government to arbitrarily arrest, detain, torture and silence those who lawfully exercised their constitutional right to freedom of expression to criticise any negative conduct of the president and/or flaws of the government. Consequently, this conduct on the part of the government and its law enforcement organs, particularly the ZRP and the CIO, violated the affected persons’ right to freedom of expression that is enshrined in the *Zimbabwe Constitution 2013* (Mapuva and Muyengwa, 2012, p. 136). Put differently, the *Public Order and Security Act* enumerated various offences that could be committed against the constitutional government and public security (see the repealed ss 5 to 13; 15 and 16 of the *Public Order and Security Act*). Moreover, Part 4 of the *Public Order and Security Act*, entitled "Public Gatherings" imposes various restrictions on public gatherings and public demonstrations which turn violates most civil and political rights of the people, particularly, the right to freedom of association and assembly, the right to freedom of movement and the right to freedom of expression. For example, Part 4 of the *Public Order and Security Act* is usually enforced by the ZRP to block or disband opposition political parties’ campaign meetings, demonstrations, public gatherings and activities of CSOs (s 29 read with ss 23 to 28 of the *Public Order and Security Act*; Mapuva and Muyengwa, 2012, pp. 136-138). Moreover, the *Public Order and Security Act* requires anyone who wishes to organise a public gathering to notify the ZRP before such gathering takes place. Precisely, anyone who want to organise a procession or public demonstration must notify the regulatory authority or the ZRP in writing seven days before the actual date of such procession and/or demonstration (s 25(1)(a) of the *Public Order and Security Act*). Likewise, anyone who want to organise a public meeting must notify the regulatory authority or the ZRP in writing five days before it is convened (s 25(1)(b) read with s 24; ss 26 to 29 of the *Public Order and Security Act*). However, the ZRP is only authorised to restrict, disband or prohibit any public gathering, meeting or demonstration if it has reasonable grounds to believe that such activities will result in public disorder, breach of the peace or obstruction of any thoroughfare in the relevant area (s 29(1) of the *Public Order and Security Act*). The ZRP has often misunderstood or deliberately violated these provisions to the detriment of *bona fide* people’s civil and political rights. For instance, although the aforesaid provisions merely require the convener or organiser of the

demonstration, public meeting or public gathering to give prior notification to the regulatory authority or the ZRP in writing, they do not expressly state that the regulatory authority or the ZRP must give prior permission in respect of such public activities (ss 25(1)(a) & (b) & 29 read with s 24; ss 26 to 28 of the *Public Order and Security Act*; also see Sokwanele, 2004, p. 3). In other words, the regulatory authority or the ZRP only has the power to prohibit public gatherings in accordance with the grounds specified in the *Public Order and Security Act* (s 29 read with s 25(1)(a) & (b) of the *Public Order and Security Act*; also see Mapuva and Muyengwa, 2012, pp. 136-138). These broad powers are often arbitrarily enforced by the ZRP to disband and/or prohibit public meetings and gatherings of the opposition political parties and other human rights activists (s 29 read with s 25(1)(a) & (b) of the *Public Order and Security Act*; see related comments in Sokwanele, 2004, p. 3; Mapuva and Muyengwa, 2012, pp.136-138). For instance, provisions of the *Public Order and Security Act* are usually employed to decline or disturb public meetings of the members of the opposition political parties, especially, those of the Movement for Democratic Change (MDC) (ss 23 to 29 of the *Public Order and Security Act*; see further Mapuva and Muyengwa, 2012, pp.135-138). Accordingly, it is submitted that the ZRP has sometimes deliberately violated various civil and political rights of the members of the opposition political parties and other human rights defenders, especially, their rights to freedom of assembly and association, freedom to demonstrate and petition and freedom of expression (ss 58; 59 & 61 of the *Constitution of Zimbabwe 2013*; see further Mapuva and Muyengwa, 2012, pp. 135-138).

Owing to the *Public Order and Security Act*'s draconian provisions, many CSOs, opposition political parties and human rights defenders have found it very difficult to convene and conduct their public meetings in Zimbabwe (Mapuva, 2007, p. 48). These provisions have to date been arbitrarily enforced by the ZRP to unconstitutionally restrict and violate many people's civil and political rights in Zimbabwe. Accordingly, many members of the opposition political parties, human rights activists and human rights defenders have to date been charged with various frivolous offences related to the violation of the provisions of the *Public Order and Security Act*. In relation to this, several members of the opposition political parties, human rights activists and human rights defenders who were found guilty of such frivolous offences were sentenced either to a fine not exceeding level twelve or to imprisonment for a period not exceeding one year or to both such fine and imprisonment (s 25(5) read with ss 14(4); 26(11); 27(5) & 28 of the *Public Order and Security Act*; see further Mapuva and Muyengwa, 2012, pp. 136-138). In light

of these flaws, it is submitted that the provisions of the *Public Order and Security Act* should be carefully amended to prevent further violations of CSOs, opposition political parties and human rights defenders' civil and political rights in Zimbabwe.

#### **4.2. The Access to Information and Protection of Privacy Act**

The journalists and other members of the media play a pivotal role in exposing civil, political and other human rights violations by the governments and other persons in many countries, including Zimbabwe (Mmegionline, 2015, p. 1). As a result, some undemocratic countries have enacted repressive laws to restrict the work of journalists and other members of the media in their respective countries. This usually occurs where the governments restrict the operations of members of the media to discourage them from reporting and/or exposing civil, political and other human rights violations in their respective countries. Accordingly, the *Access to Information and Protection of Privacy Act* was passed by the Zimbabwean parliament on 31 January 2002 and signed into law by the president on 15 March 2002 to, *inter alia*, regulate and oversee the operations of members of the media. Thereafter, the *Access to Information and Protection of Privacy Act* was amended on 13 October 2003 and 18 December 2007 in order to bring more restrictions on the conduct and operations of journalists and other media practitioners in Zimbabwe (article 19 and MISA-Zimbabwe, 2004, pp. 3-6). For instance, the provisions of the *Access to Information and Protection of Privacy Act* are arbitrarily enforced by the government to control the flow of information across all the provinces of Zimbabwe (ss 14 to 37 of the *Access to Information and Protection of Privacy Act*; see further Mapuva and Muyengwa, 2012, p. 139). Thus, although the government could justify its actions on the basis that the provisions of the *Access to Information and Protection of Privacy Act* are aimed at preventing the publication of false and detrimental information about its organs, the arbitrary and selective application of such provisions has often caused serious civil and political rights violations on the part of media practitioners in Zimbabwe (ss 14 to 37 of the *Access to Information and Protection of Privacy Act*; see further Mapuva and Muyengwa, 2012, p. 139). In other words, the *Access to Information and Protection of Privacy Act* has to date been selectively and unconstitutionally enforced by the government to punish those who publish certain information that is deemed to be false, misleading or a national security threat. This often violates the civil and political rights of *bona fide* media practitioners and journalists who publish sensitive information that could be regarded as false, misleading or a national security threat by the government under the *Access to Information and*

*Protection of Privacy Act* (ss 34; 64 & 80; see further Mapuva and Muyengwa, 2012, pp. 138-140; Chiumbu, Minnie and Bussiek, 2009, p. 26).

Moreover, despite the *Access to Information and Protection of Privacy Act's* amendments in 2007, its provisions for compulsory accreditation of journalists with the state-controlled Media and Information Commission (MIC) that was later changed to Zimbabwe Media Commission (ZMC) were not repealed (s 79 read with s 39 of the *Access to Information and Protection of Privacy Act*; see further Chiumbu, Minnie and Bussiek, 2009, p. 26). To date, the ZMC has denied accreditation to several journalists and media practitioners, especially those from the western and American countries. The *Access to Information and Protection of Privacy Act* prohibits journalists and mass media outlets from conducting their duties in Zimbabwe without being accredited by the ZMC (ss 79 and 83 of the *Access to Information and Protection of Privacy Act*). This accreditation is normally valid for twelve months but it may be renewed if the holder of the initial licence reapplies to the ZMC (s 84 read with s 79 of the *Access to Information and Protection of Privacy Act*). Nonetheless, it is argued that the ZMC has to date unfairly denied accrediting several foreign journalists and new radio stations to operate in Zimbabwe (Mapuva and Muyengwa, 2012, p. 140). It appears the government employs the provisions of the *Access to Information and Protection of Privacy Act* to frustrate and ban independent journalists, newspapers and radio stations, particularly those from other countries. This violates such persons' rights to freedom of expression and freedom of the media (s 61 of the *Zimbabwe Constitution 2013*) and access to information (s 62 of the *Zimbabwe Constitution 2013*), which are entrenched in the constitution. Accordingly, journalists, radio stations and other media practitioners that operate without licenses are liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and imprisonment (s 90B(1) read with ss 65; 75 to 77 & 89; see further Mapuva and Muyengwa, 2012, p. 140). The offenders could also be liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and imprisonment (s 90B(2) read with ss 65; 75 to 77 & 89; see further Mapuva and Muyengwa, 2012, p. 140). The ZMC is further empowered to terminate or suspend accreditation of offenders and/or refer them for prosecution (s 39 read with s 85 of the *Access to Information and Protection of Privacy Act*).

The requirement for journalists to register is not a breach of the right of freedom to expression *per se*. (Mapuva and Muyengwa, 2012, p. 140; Article 19, 2003, p. 2).

Nonetheless, the government must not interfere in the ZMC's accreditation process as that could lead to biased registration of journalists who will only report things that the government wants and not the truth (Mapuva and Muyengwa, 2012, pp. 139-140; Voluntary Media Council of Zimbabwe, 2013, pp. 3, 4-42). In this regard, it must be noted that many journalists and media practitioners have been arrested, detained and tortured while most independent newspapers were forced to shut down in Zimbabwe for allegedly violating the provisions of the *Access to Information and Protection of Privacy Act*. For instance, the former Daily News newspaper editors, Ray Choto and Mark Chavhunduka were allegedly tortured by the state security and military agents for reporting about a possible coup plot against the Zimbabwean government in 1999 (Mapuva and Muyengwa, 2012, pp. 139-140; the International Crisis Group, 29 September 2014, pp. 2-19; Amnesty International, 2013, pp. 6-22; Zimbabwe Human Rights Forum, 2013, pp. 2-67). The Daily News newspaper, an independent newspaper that was critical of the government's human rights abuses, was bombed on 22 April 2000 and in January 2001 and later forced to close by the government on 12 September 2003 and in 2004 (Mapuva and Muyengwa, 2012, pp. 138-140; Article 19 and MISA-Zimbabwe, 2004, p. 18; Zinyama, 2012, pp. 136, 137-153). Consequently, several independent journalists and media practitioners struggle to freely and effectively conduct their professional duties in Zimbabwe due fear of reprisals, violence and torture from the government (Mapuva, 2007, p. 83; Zimbabwe Independent, 2015, p. 2; Ndawana, 2008, pp. 3 & 57).

**4.3. The Private Voluntary Organisations Act (Voluntary Organisations Act) [Chapter 17:05] 22 of 2001**

The government enacted the *Voluntary Organisations Act* to regulate the functions of private voluntary organisations (PVOs) and non-government organisations (NGOs) in Zimbabwe (ss 3 to 20 of the *Voluntary Organisations Act*). Nonetheless, the *Voluntary Organisations Act* is sometimes inconsistently employed by the government to restrict, impede or prohibit the work of human rights defenders, PVOs, NGOs and other members of the civil society. Put differently, the *Voluntary Organisations Act* is employed by the government to threaten, harass and intimidate human rights defenders and members of civil society in Zimbabwe (Maseng, 2010, p. 2). Moreover, the operations of the NGOs and the PVOs have been severely restricted by the *Voluntary Organisations Act* which obliges all the NGOs, the PVOs and related welfare services organisations (WSOs) to register with the Registrar of Private Voluntary Organisations Board (PVOB) (s 6 read with

ss 3 to 5 & 9 to 12 of the *Voluntary Organisations Act*; also see Mapuva and Muyengwa, 2012, pp. 130-131). This has often granted the government an opportunity to unfairly reject *bona fide* registration applications of certain NGOs, PVOs and/or WSOs, particularly, those that are deemed to be agents of regime change (Mapuva and Muyengwa, 2012, pp.130-131; *Voluntary Organisations Act* General Notice 99 of 2007 – Code of Procedure for the Registration and Operations of Non-Governmental Organisations in Zimbabwe, pp. 1-2). Moreover, the *Voluntary Organisations Act* enables the government to restrict the funding to all NGOs, PVOs, WSOs and other CSOs by foreign organisations in a bid to control and/or frustrate their activities in Zimbabwe (*Voluntary Organisations Act* General Notice 99 of 2007 – Code of Procedure for the Registration and Operations of Non-Governmental Organisations in Zimbabwe 1-2; see further Chiduzza, 2013, pp. 305-310). This indirect interference by the government violates various civil and political rights of human rights activists and employees of NGOs, PVOs and WSOs who are sometimes intimidated and arrested while conducting their duties in Zimbabwe (Chiduzza, 2013, pp. 308-310; Chamboko, 2012, p. 1).

#### **4.4. The Criminal Procedure and Evidence Act and the Criminal Law Act**

As indicated earlier (see paragraph 2 above), the *Criminal Law Act* and the *Criminal Procedure and Evidence Act* are sometimes selectively enforced by law enforcement agencies against human rights defenders and members of the opposition political parties, especially, during *bona fide* public meetings, petitions and/or demonstrations (International Crisis Group, 6 May 2013, pp. 1-35; Amnesty International, 2013, pp. 6-22; Amnesty International, 22 May 2014, p. page number unknown; Amnesty International, 27 November 2013, p. page number unknown; Anonymous, 30 July 2014, p. page number unknown). In this regard, unlawful arrests and frivolous charges are usually brought against human rights activists and/or members of the opposition political parties under the *Criminal Law Act* and the *Criminal Procedure and Evidence Act*. This has to date given rise to gross civil and political rights violations on the part of many *bona fide* human rights activists such as Linda Masarira, Beatrice Mtetwa, Itai Dzamara, Patson Dzamara, Jestina Mukoko and several others. (Makwerere, Chinzete and Musorowegomo, 2012, pp. 129, 135; Zimbabwe Human Rights NGO Forum, September 2014, pp. 3-21; Asylum Research Consultancy, 2015, pp. 71-78).



## 5. Concluding Remarks

Zimbabwe must be commended for adopting the *Zimbabwe Constitution 2013* which is relatively adequate in that it protects civil and political rights and other fundamental rights. The *Zimbabwe Constitution 2013* also recognises the importance of foreign law, international law and domesticated treaties or conventions to which Zimbabwe is a party (s 46(1)(c) & (e) read with ss 34 & 85 of the *Zimbabwe Constitution 2013*), in the protection and enforcement of fundamental human rights such as civil and political rights in Zimbabwe. Despite this, various legislative-related challenges have negatively impeded the promotion and protection of human rights for all persons in Zimbabwe since the late 1980s to date. In this regard, the persistent human rights abuses that are perpetrated against human rights activists, journalists, human rights defenders, ordinary persons and members of opposition parties by the ZANU PF government and its organs is a case in point. Accordingly, it is submitted that the relevant authorities in Zimbabwe should consistently abide by the constitution.

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