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CIVIL SOCIETY SUBMISSION TO THE APRM IN ZIMBABWE 2020/2021



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Executive Summary

The Zimbabwean APRM Civil Society Working Group has identified and discussed 11 broad issues in this submission, making substantive recommendations to address each of them.



Zimbabwe exhibits the form rather than substance of constitutionalism. The current Constitution, adopted in 2013, affirms a broad spectrum of rights, as well as the separation of powers and associated checks and balances. In reality, Zimbabwean governance is dominated by the Executive, and neither of the other branches have proven to be significant checks on its actions. Recent amendments to the Constitution, among other things, grant the president greater powers in appointing judges, diluting judicial independence and expanding the power of the Executive. Zimbabwe is also lagging behind in aligning laws to the new Constitution, including making necessary changes to the Electoral Act.

A number of commissions mandated by the Constitution have been established, but questions remain about their independence and competence. These include the Zimbabwe Electoral Commission (ZEC), which appears to have accepted instructions from the Executive. It has failed to establish an independent complaints mechanism to deal with complaints of abuse against the security forces.

Among other things, civil society seeks the respect of the Constitution, the alignment of laws with it and the full independence of the Electoral Commission.



Zimbabwe's record on human rights and open governance has historically been poor, with abuses continuing into the present. The Constitution guarantees a full list of rights, as well as an institution – the Zimbabwe Human Rights Commission – to assist in realising them. It has shown considerable fortitude in criticising state abuses, although with limited receptiveness from the government. Governance has been shrouded in secrecy, with civil society excluded from policymaking and government inveterately suspicious of civil society organisations (CSOs). Access to information and media freedom are constrained.

New and pending legislation, notably the Maintenance of Peace and Order Act, the Freedom of Information Act and the Patriotic Act, have been criticised for continuing the same abusive mindset.

Civil society calls for a spectrum of reforms, including opening governance processes to public scrutiny and participation, fostering productive relationships between the government and civil society, and ending impunity for abusers.



Rule of Law, Militarisation of Politics and Organised Violence

Formally committed to the rule of law, Zimbabwe's adherence to the idea is notional rather than real. With its overweening dominance, the Executive has subordinated the other branches of government and weaponised the Judiciary against its opponents. Constitutional amendments and the use of wide-ranging presidential powers further reinforce this.

Concurrently, dissent is little tolerated. Rights defenders are harassed, while outright violence and torture is used against opponents of the government. Perpetrators enjoy impunity. Zimbabwe has come heavily under the sway of the military – it has long exercised a role in the country's politics and a number of senior officers now hold high political office. All of this has undermined democratic control and created a climate of fear.

Civil society demands that the government should expeditiously act against the use of violence and torture by its agents, institute transitional justice mechanisms to address the historical injustices and insists on professional, disciplined conduct by the security forces. An independent complaints mechanism should be established. Regional and continental organisations should publicly condemn all acts and perpetrators of politically motivated violence.

4 Democracy and Elections

Elections in Zimbabwe have been highly contentious with allegations of intimidation and rigging, and consequent suspicions about the legitimacy of their outcomes. The country's electoral system is well conceived, but subject to significant failings. These include the institutional design of the ZEC – its chairperson is appointed by the president and it is not financially independent – and its conduct, as it has been widely criticised for acting in a manner which appeared to defer to the Executive.

In addition, a raft of concerns exist about the conduct of Zimbabwean politics and the adherence of the state and some other actors to the demands of the Constitution. These include the pledging of party-political allegiance by traditional leaders, the use of violence and intimidation, the disenfranchisement of Zimbabweans living abroad and the favouritism shown by state media to the ruling party. In addition, the courts seem to have taken on a partisan role, particularly with regard to excluding opposition party members from participation in legislative bodies.

Civil society therefore recommends that the Constitution and the law be adhered to, the independence of the ZEC be respected in fact and outstanding electoral reforms be completed before the 2023 elections. Parties should desist from abusing state resources for their own purposes, and regional and continental bodies should hold Zimbabwe to account to maintain necessary democratic standards.



Corruption is pervasive in Zimbabwe and has severely damaged the country and its economy. Research indicates a substantial rise in perceptions of corruption over past decades. Its developmental impact is dire, with the Zimbabwe National Chamber of Commerce estimating that almost 20% of the national budget is lost through corruption. It is a barrier to business and investment.

Zimbabwe has a respectable legislative and institutional framework for dealing with corruption. A dedicated body to fight the vice exists – the Zimbabwe Anti-Corruption Commission (ZACC) – and a National Anti-Corruption Strategy was recently adopted. While there have been some high-profile arrests, follow up has been disappointing – described as the 'catch and release' syndrome. Political interference, insufficient resources and a culture of impunity are among other factors that bedevil the fight.

Civil society recommends strengthening the bodies charged with combating corruption, working to eliminate impunity and protecting whistle-blowers. A large awareness campaign should be undertaken across the country to re-energise anti-corruption work.



Responsive Governance: Transparency and Accountability

Zimbabwe's Constitution requires governance to be structured around transparency and accountability. This is supported by legislation, which makes similar stipulations. These mechanisms are supplemented by such tools as community scorecards and leadership performance scorecards, through which citizens can demand appropriate state action. Opinion polling shows a yearning for transparency and accountability.

In practice, however, the state is opaque in its operations. Those seeking accountability – such as the media or civil society activists – are targeted for harassment. There have been numerous scandals which demonstrate governance deficiencies in Zimbabwe. These include the misuse of Community Development Funds, questions about how COVID-19 relief was apportioned, as well as attempts to conceal the country's foreign debt obligations. In addition, ministers have refused to answer questions posed by parliamentarians.

Civil society suggests that all government policies and actions be submitted to scrutiny and debate, that citizens be capacitated to engage in doing so and that the media be free to report on these matters. The government should punish transgressors and Parliament should be firm on its role in holding the government to account.



Zimbabwean politics is characterised by tensions between the government and civil society. The government has dismissed CSOs as being driven by the machinations of Western powers, with self-serving agendas. Critics of the government have been arrested on very questionable legal grounds.

Legislation has been proposed to further regulate CSOs and to criminalise particular forms of criticism. This looks set to restrict Zimbabwe's civic space even further.

Civil society suggests continued advocacy and lobbying to promote engagement in national processes, that perpetrators of violence be held to account and that policy reforms be introduced to involve citizens in governance. Regional and international actors should encourage this.



Gender Equality and Social Inclusion

Gender mainstreaming has a long history in Zimbabwe and although much progress has been made, occasional backsliding has taken place and the full equality of women in the country has yet to be realised. Zimbabwe introduced a National Gender Policy in 2004, followed by various other measures, such as the introduction of the National Gender Policy Implementation Strategy and Workplan and a Ministry of Women, Gender and Community Development. The 2013 Constitution proposed mechanisms to enhance the role of women in national politics through, for example, a section on the rights of women and the Zimbabwe Gender Commission.

There has been an increase in the number of women participating in elections for public office over time. However, there have been some concerning trends with the direct election of women declining, owing, it has been argued, to the existence of the quota system, which has enabled women to enter Parliament without going through elections. In this sense, the quota system may have worked to undermine women's participation in politics.

Civil society suggests putting gender-sensitive legislation – such as the Marriage Bill – into effect, and stimulating debate and activism around gender equality. Civil society and business should be included in these efforts.

Public Goods, Service Delivery and Citizen Welfare

The performance of Zimbabwe's institutions has been disappointing in recent years, particularly among those tasked with providing services to the population. Local government in Zimbabwe for example, is listed as a specific area of government in the Constitution, but it suffers from widespread dysfunction. This arises from inadequate human and financial resources, insufficient technical skills, corruption and mismanagement, political interference, poor participatory local governance structures, rapid population growth and poor economic performance. Their operations are also politicised, in part because opposition groups have managed to win elections at this level, bringing party political friction into intergovernmental relations.

Besides the failings of government institutions, millions of Zimbabweans lack resources to pay for necessities and services. With most of the population locked out of formal sector work, there is widespread dependence on the precarious informal sector. The COVID-19 pandemic did great damage to livelihoods earned in this way, and state welfare provision has been woefully insufficient to make up for this.

Civil society suggests that transparency and accountability frameworks be strictly adhered to in order to stop resource leakages, social welfare programmes be revamped and development strategies be depoliticised.

10 Economic Governance and the Economic Crisis in Zimbabwe

Zimbabwe has been afflicted by economic crises. These have produced widespread economic retardation, which has had severe repercussions for its people. Various development plans have been adopted with mixed results. The Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIMASSET) ran from 2013 to 2018 and was built around four clusters – 1) food security and nutrition, 2) social services and poverty eradication, 3) infrastructure and utilities, and 4) value addition and beneficiation. ZIMASSET failed to achieve its objectives as it was a party manifesto rather than a proper development framework. It was also compromised by the fractious politics in the country and the ruling party. The subsequent Transitional Stabilisation Programme (2018-2020) was also hamstrung by political factors.

Gross domestic product (GDP) growth remains depressed and inflation a major problem. Inflation stood at 89.7 sextillion % in November 2008. It was brought down thereafter but rose again in 2016, reaching over 800% by July 2020. Attempts at monetary reform have been undertaken, although inconsistently and with indifferent outcomes.

All of this is felt by businesses in the poor investment environment and the difficulties of doing business. The country's land reform programme negatively affected prospects for foreign direction investment. The government in 2019 announced its intention to compensate the owners of large-scale commercial farms who lost their farms during the Fast Track Land Reform Program. In 2021 government made available \$ 10 million to kick start the process of compensation. On the other hand agricultural production has improved in some value chains such as maize, tobacco and wheat. However these recent positive changes have not yet led to the creation of jobs. Ordinary people experience the economic situation in the lack of formal employment, which is at its lowest since independence, hovering at around 5.73%.

Civil society suggests that the government desists from acting unilaterally but rather in consultation with other stakeholders, and that all actions be submitted to Parliamentary and public scrutiny. It further believes that Zimbabwe should establish consistency in policy regarding currency, strengthen institutions such as banks that promote credibility and stability in the financial sector and adopt a credible strategy to control inflation.

11

Corporate Governance in Zimbabwe: The Case of Parastatals

Frequent failings of corporate governance in Zimbabwe's business and parastatal world must be addressed if these institutions are to play a constructive role in building Zimbabwe's economy. Zimbabwe has a total of 107 state entities and parastatals (SEPs), which contribute less than 2% of GDP. In the mid-1990s, SEPs accounted for more than 40% of the country's GDP and employed thousands of employees. Political interference in their operations has contributed to their declining performance and escalation of debts.

While the country acknowledges the importance of corporate governance, implementation often fails, and it tends to be seen as a 'tick box exercise'. Internal controls are frequently ineffective and have resulted in major losses.

Contracts appear to be awarded to politically connected suppliers – there have been many reports of corruption, wasteful spending on executive perks, insider loans, a lack of adherence to audit reporting guidelines and insolent disregard for tender procedures. Board appointment procedures are opaque and their independence is often undermined by political interference. Zimbabwe also currently offers little legal protection for whistleblowers.

Civil society suggests that all stakeholders comply with corporate governance legislation, prohibit chairpersons of boards from holding executive positions, implement effective whistleblowing protections, and respect the separation of ownership and control of ministries and the function of boards.

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Acronyms and Abbreviations

AIPPA	Access to Information and Protection of Privacy Act
AFC	Agricultural Finance Company
APR Panel	African Peer Review Panel of Eminent Persons
APRM	African Peer Review Mechanism
AU	African Union
CAAZ	Civil Aviation Authority of Zimbabwe
CCL	Cabinet Committee on Legislation
CDF	Community Development Funds
CGU	Corporate Governance Unit
CIO	Central Intelligence Organisation
CPI	Corruption Perceptions Index
CRR	Country Review Report
CSAR	Country Self-Assessment Report
CSO	Civil Society Organisation
EMB	Electoral Management Body
ESAP	Economic Structural Adjustment Programme
FCA	Foreign Currency Accounts
FDI	Foreign Direct Investment
FTLRP	Fast Track Land Reform Programme
GBV	Gender-Based Violence
GDP	Gross Domestic Product
GNU	Government of National Unity
GMB	Grain Marketing Board
GPA	Global Political Agreement
HR	Human Resources
IEEA	Indigenisation and Economic Empowerment Act
ICT	Information and Communications Technology
IMT	Inter-Ministerial Task Force on the Alignment of Legislation to the Constitution
INTERPOL	International Police
JSC	Judicial Service Commission
MDC	Movement for Democratic Change

MDC-A	Movement for Democratic Change Alliance
MDC-T	Movement for Democratic Change Tsvangirai
MDG	Millennium Development Goals
MISA	Media Institute of Southern Africa
MOPA	Maintenance of Peace and Order Act
MOU	Memorandum of Understanding
MoWGCD	Ministry of Women, Gender and Community Development
MP	Member of Parliament
MPLC	Multi-Party Liaison Committees
NACS	National Anti-corruption Strategy
NDS	National Development Strategy
NGC	National Governing Council
NGO	Non-Governmental Organisation
NPA	National Prosecuting Authority
NPoA	National Programme of Action
NPRC	National Peace and Reconciliation Commission
NSSA	National Social Security Authority
OPC	Office of the President and Cabinet
OVT	Organised Violence and Torture
PCA	Prevention of Corruption Act
PF-ZAPU	Patriotic Front - Zimbabwe African People's Union
PG	Prosecutor-General
POSA	Public Order and Security Act
PSMAS	Premier Service Medical Aid Society
PVO	Private Voluntary Organisation
RBZ	Reserve Bank of Zimbabwe
SACU	Special Anti-Corruption Unit
SADC	Southern African Development Community
SDG	Sustainable Development Goals

SEP	State Entities and Parastatals
SI	Statutory Instrument
SME	Small and Medium Enterprises
SOE	State-Owned Enterprise
TI	Transparency International
TRI	Technical Research Institutes
TSP	Transitional Stabilisation Programme
UN	United Nations
UNCAC	UN Convention against Corruption
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
ZACC	Zimbabwe Anti-Corruption Commission
ZANU-PF	Zimbabwe African National Union-Patriotic Front
ZBC	Zimbabwe Broadcasting Corporation
ZEC	Zimbabwe Electoral Commission
ZESN	Zimbabwe Electoral Support Network
ZGC	Zimbabwe Gender Commission
ZHRC	Zimbabwe Human Rights Commission
ZIMASSET	Zimbabwe Agenda for Sustainable Socio-Economic Transformation
ZIMCODE	National Code on Corporate Governance
ZIMPREST	Zimbabwe Programme for Economic and Social Transformation
ZIMRA	Zimbabwe Revenue Authority
ZINARA	Zimbabwe National Road Administration
ZMC	Zimbabwe Media Commission
ZNA	Zimbabwe National Army
ZIMSTAT	Zimbabwe National Statistics Agency
ZRP	Zimbabwe Republic Police
ZTV	Zimbabwe Television
ZUPCO	Zimbabwe United Passenger Company

What is the APRM?

The APRM is Africa's premier governance self-assessment and promotion tool. Established in 2003, it aims to improve governance on the continent by fostering the adoption of policies, standards and practices that lead to political stability, economic growth, sustainable development and accelerated sub-regional and continental economic integration, through the reinforcement of best practices.¹

The tool emerged out of a growing acknowledgement that the continent's developmental deficits owed a great deal to failures of governance, something that only African countries, in partnership with civil society and the private sector, could remedy. Thus, the APRM was created and driven by Africans for Africans and is an autonomous agency within the AU system.

Through a series of voluntary governance 'peer reviews', member states diagnose deficiencies, propose solutions, share best practices and follow recommendations. As of October 2021, 41 countries on the continent had acceded voluntarily to the APRM.²

To begin participating in the APRM, a country's government signs a Memorandum of Understanding (MOU) with the continental APRM authorities. This indicates its willingness to undergo a review and its commitment to the process. The next step involves collecting information and documentation on the performance of government and other stakeholders in key areas. To manage this process, the country typically forms a multi-stakeholder APRM National Governing Council (NGC) and appoints Technical Research Institutes (TRIs) to carry out the technical aspects of the review.³

All sectors of society – including civil society groups, religious institutions, labour unions, business groups and the government – should contribute to answering questions on a wide range of issues. The APRM questionnaire guides the process by highlighting the country's performance in four broad areas: Democracy and Political Governance, Economic Governance and Management, Corporate Governance and Broad-Based Socio-Economic Development. Issues include human rights, health care provision, the state of the economy, the role of the Judiciary and the behaviour of corporations.⁴

New Partnership for Africa's Development (NEPAD), African Peer Review Mechanism (APRM): Base Document, AHG/235 (XXXVIII), Annex II (Durban: AU, 2002), 1.

² South African Institute of International Affairs (SAIIA), 'APRM Toolkit', https://www.aprmtoolkit.saiia.org.za/.

³ SAIIA and Centre for Policy Studies, Implementing the APRM: Views from Civil Society (Johannesburg: SAIIA, 2011), 11.

⁴ SAIIA and Centre for Policy Studies, "Implementing the APRM", 11.

The results of the review are incorporated into a Country Self-Assessment Report (CSAR), drafted by the NGC and TRIs. The CSAR includes a National Programme of Action (NPoA) that outlines plans to address the problems identified in the review. Once the CSAR is completed, a Country Review Mission visits the country. A delegation of respected African experts conduct an independent study of the country and produces its own report. The delegation is led by a member of the African Peer Review Panel of Eminent Persons (APR Panel), a small body of highly respected Africans responsible for managing the APRM process across the continent. The APR Panel and its secretariat submit a draft Country Review Report (CRR) to the participating government for comments. Recommendations are made and the country is expected to amend its NPoA accordingly. A final CRR is then produced and presented to the Forum of the Heads of State for discussion and peer review. This body consists of the participating countries' leaders and typically convenes on the margins of AU summits. Following the forum's review, the country must agree to address the various problems identified. Other states undertake to assist the country in its efforts, and to take action should the country fall short of its obligations. Finally, the country must report annually on its progress in implementing the NPoA and prepare itself for subsequent reviews.⁵

There is little doubt that the APRM process is potentially a crucial tool for building good governance. But it is not without its critics and sceptics. The scepticism that many harbour in and outside Africa about the APRM is deepened when it comes to Zimbabwe. This is primarily because one of the fundamental problems that has defined Zimbabwe's political governance style is the often wide disconnect between policy as enunciated or documented on the one hand, and policy as implemented on the other. This chronic implementation gap permeates most policy fields at both domestic and foreign policy levels. Given this systemic disjuncture, which appears to have outlived the Mugabe era, will Zimbabwe take the APRM more sincerely and follow its precepts or will Mnangagwa's signature appended to the MOU merely be a symbolic publicity stunt? While the verdict on this lies in the future, this submission sets out analyses that document trends and provides some insight into what the future might look like.

Zimbabwe's Accession to the APRM

President Mnangagwa signed on to the APRM on 9 February 2020, becoming the 39th member state. His predecessor, President Robert Mugabe, staunchly and consistently resisted joining the APRM even when he ascended to the AU's rotating chairmanship in 2015 – this was, incidentally, at a time when he was described as a 'despotic pariah responsible for human rights abuses, rigged elections and turning one of Africa's most promising nations into a basket case.'⁶

After Zimbabwe acceded to the APRM, a foreign watcher of Zimbabwe politics commented that Mugabe would have been horrified by the move: 'Robert Mugabe must have been turning in his grave when his successor Emmerson Mnangagwa joined Zimbabwe to the African Peer Review Mechanism.'⁷ It amounted to a repudiation of Mugabe and his principles. Zimbabwe's action followed a courtesy visit by the APRM Chief Executive Officer, Professor Eddy Maloka, to the Zimbabwean president on 22 May 2019, when the president confirmed his intention to join the club.

The APRM Continental Secretariat soon conducted a sensitisation meeting with representatives from the Ministry of Foreign Affairs and International Trade, Office of the President and Cabinet, Parliament of Zimbabwe, Ministry of Information, Publicity and Broadcasting and different media houses. The objective of the meeting was to enlighten government officials on the APRM process and the procedure for accession.⁸

Mnangagwa was effusive on the occasion, describing it as 'historic and momentous' while praising the mechanism as a tool 'which promotes democracy and responsive governance.'⁹ He was flowery in his rhetoric and grandiose in his promises. For instance, Mnangagwa assured his audience that his government had made operational those institutions specified in Chapter 12 of the Constitution – the Independent Commissions Supporting Democracy – to align extant laws with the Constitution, and to tackle security sector reform. Time will tell if all this transpires.

⁶ Edmund Blair, 'Zimbabwe's Mugabe, 90, becomes African Union chairman,' *Reuters*, January 30, 2015, <u>https://www.reuters</u>. <u>com/article/us-africa-mugabe-idUSKBN0L319F20150130</u>.

⁷ Peter Fabricius, 'Zimbabwe signs on to African Peer Review Mechanism,' *Daily Maverick*, February 10, 2020, <u>https://www.daily</u> maverick.co.za/article/2020-02-10-zimbabwe-signs-on-to-african-peer-review-mechanism/.

⁸ APRM, 'Zimbabwe joins the APRM family,' media release, May 22, 2019, <u>https://www.aprm-au.org/publications/zimbabwe-joins-</u> the-aprm-family/.

⁹ Fabricius, 'Zimbabwe signs on to African Peer Review Mechanism.'

A Humanitarian Crisis

Inevitably, all social, economic and political phenomena manifest themselves in their impact on people, and the APRM ultimately exists to improve the quality of life for Africa's people. With this in mind, it is necessary briefly to understand the daily experience of Zimbabwe's people, to contextualise the discussions of governance issues presented in this document.

In the last three decades, and especially in the past two, poverty in Zimbabwe has been chronic and rampant. It has intruded into urban areas, which had previously been enclaves of relative prosperity and welfare. Unemployment, the failure of services and widespread immiseration have been the sad condition of millions of Zimbabweans.

The accession of Mnangagwa raised people's hopes that this despair might end. His ascendancy was associated with the prospect of a socio-politico-economic turnaround that would ultimately see opportunities created and living standards raised. However, since this time, Zimbabwe has been hit by environmental, political, social and economic misfortunes that include a poor 2018/19 agricultural season which in turn resulted in food insecurity, Cyclone Idai in early 2019, hyperinflation and the subsequent fall in consumer purchasing power in the post-2018 period and, most importantly, the COVID-19 pandemic. Cumulatively, these have contributed to soaring poverty.

Research by the World Bank Group indicates in 2020, the pandemic and its impacts disrupted livelihoods, especially in urban areas, and added 1.3 million Zimbabweans to the extreme poor. Estimates suggest the number of extreme poor reached 7.9 million – almost 49% of the population. Surveys conducted in 2020 indicate that nearly 500,000 Zimbabwean households have at least one member who lost her or his job, causing many households to fall into poverty and worsening the plight of the existing poor.

In 2019, the World Food Programme revealed that Zimbabwe was experiencing its worst hunger crisis in a decade with an estimated 7.7 million people – half of the country's population – food insecure.¹⁰ Of these, 5.5 million people were in rural Zimbabwe and 2.2 million in urban areas.¹¹ At the beginning of 2019, the economy continued to weaken and inflation accelerated, compounded by chronic fuel and cash shortages. This led to

¹⁰ World Food Programme, 'World Food Programme expands emergency operation in Zimbabwe as drought and economic hardship plunge millions into hunger,' media release, December 3, 2019, <u>https://www.wfp.org/news/world-food-programme-</u> expands-emergency-operation-zimbabwe-drought-and-economic-hardship-plunge.

Hilal Elver, 'Preliminary observations of the United Nations Special Rapporteur on the right to food,' media release, November 28, 2019, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25348&LangID=E.

widespread demonstrations and riots beginning in mid-January 2019. According to the UN Human Rights Council:¹²

Demonstrations erupted in the country and the situation quickly deteriorated, becoming riotous, particularly in the high-density neighbourhoods of Harare and other main cities, where people gathered to enforce the stay-away by barricading roads using boulders, rocks and vehicles. Around the country, people burned tyres and went on a violent and chaotic rampage through the streets of some cities, where businesses, service stations and police posts were attacked and burned. The Government deployed police and military units in cities and residential areas around the country. According to multiple accounts relayed to the Special Rapporteur, the security forces used excessive force, which included indiscriminate beatings, arrests, torture and other forms of ill-treatment.

Hilal Elver, a UN Special Rapporteur on the Right to Food, who visited Zimbabwe in December 2019 before the pandemic struck, issued a damning report in which she lamented that Zimbabwe was 'now on brink of a man-made starvation.'¹³ She observed that: 'More than 60% of the population of a country once seen as the breadbasket of Africa is now considered food-insecure, with most households unable to obtain enough food to meet basic needs due to hyperinflation.'¹⁴ She further urged collective action by all political parties and the international community to work together to 'to put an end to this spiralling crisis before it morphs into a full-blown conflict.'¹⁵

The COVID-19 pandemic has been a major contributing factor to Zimbabwe's predicament in the post-2020 period. As a response to the wave of infections and global efforts to curtail the spread of COVID-19, the government introduced restrictive measures through Statutory Instrument (SI) 83 of 2020, compelling the first 21-day lockdown that began on 30 March 2020. As most working Zimbabweans depend on the informal economy for their livelihood, these measures placed a large part of the population in extreme distress and penury.

¹² UN Human Rights Council, Visit to Zimbabwe - Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/44/50/Add.2 (May 22, 2020), 8-9, https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_44_50_Add.2 (May 22, 2020), 8-9, <a href="https://reliefweb.int/sites/reliefweb.i

^{13 &#}x27;Zimbabwe "on brink of man-made starvation", UN warns', BBC, November 28, 2091, <u>https://www.bbc.com/news/world-</u> africa-50586514.

¹⁴ United Nations Human Rights, Office of the High Commissioner, 'Once the breadbasket of Africa, Zimbabwe now on brink of man-made starvation, UN rights expert warns', media release, November 28, 2019, <u>https://www.ohchr.org/EN/NewsEvents/</u> Pages/DisplayNews.aspx?NewsID=25363.

¹⁵ Elver, 'Preliminary observations'.

Over 1.5 million urban dwellers in Harare were plunged into destitution with their livelihoods disrupted.¹⁶ Since those in the informal economy engage in hand-to-mouth subsistence, the occurrence of pandemics and/or disasters placed them in a dilemma of 'either dying from hunger or from the pandemic (virus).'¹⁷

In addition to the informal sector, the pandemic also affected otherwise relatively vibrant sectors of the economy, such as tourism, placing those making a living in these areas under severe stress.¹⁸ Overall, the effects of the pandemic were felt across all sectors of the economy despite the various, and rather feeble, efforts to provide cushioning allowances and hampers to vulnerable groups like the elderly and people in the informal sector.

The pandemic aggravated the already expanding poverty crisis. Estimates suggest that approximately 7.9 million (about 49% of the population) reached the status of being 'extremely poor' due to the pandemic.¹⁹ These alarming poverty levels were compounded by the pandemic's effect on employment. Surveys by the World Bank Group observed that 'approximately 500 000 households have at least one member who lost their jobs in 2020 and thus causing many to fall into poverty and worsening the plight of impoverished families.'²⁰

This was further worsened by the government's inability to provide meaningful and sustained social security to vulnerable citizens. For instance, on 1 May 2020, the government unveiled a ZWL²¹ 18 billion (\$720 million) Economic Recovery and Stimulus Package aimed at revitalising the economy and providing relief to individuals, families, and small businesses and industries impacted by the economic slowdown caused by the COVID-19 pandemic.²² However, many targeted beneficiaries claim they did not receive the funds.²³ The imposition of the lockdown without proper measures to cushion the huge proportion of the population that survives on informal jobs has

¹⁶ Mpofu, "Zim poverty reaches alarming levels".

¹⁷ International Labour Organisation, 'Contagion or starvation, the dilemma facing informal workers during the COVID-19 pandemic', media release, May 7, 2020, <u>https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_744005/lang--en/index.htm</u>.

¹⁸ Mpofu, "Zim poverty reaches alarming levels".

¹⁹ Mpofu, "Zim poverty reaches alarming levels".

²⁰ Mpofu, "Zim poverty reaches alarming levels".

²¹ Zimbabwean Dollar.

²² Government of Zimbabwe, *Details on the COVID-19 Economic Recovery and Stimulus Package* (Harare: Government of Zimbabwe, 2020), 2, <u>https://www.veritaszim.net/sites/veritas_d/files/Details%20on%20the%20COVID-19%20Economic%20</u> <u>Recovery%20and%20Stimulus%20Package.pdf</u>.

²³ Farai Shawn Matiashe, 'Zimbabwe: Lockdown amid Covid surge has no support for people,' The Africa Report, January 11, 2021, https://www.theafricareport.com/57779/zimbabwe-lockdown-amid-covid-surge-has-no-support-for-people/.

been condemned, with accusations of a lack of transparency, accountability and trustworthiness on the part of the government. The government proposed a cash transfer of about ZWL 200 (equivalent to about \$5 at the time), which was woefully inadequate to feed the vulnerable in a hyper-inflationary environment.²⁴ This led to running battles in most urban areas between vendors and law enforcement agents policing the lockdown.

The country's continuing economic deterioration aggravated humanitarian crises in 2020 with overall year-on-year inflation peaking at 980% in April 2020, before declining to 571% by October 2020. Though inflation steadily diminished over time – thanks to the introduction of the foreign currency auction system in June 2020 – prices of basic goods and services still remained unaffordable for the majority of low-income and other vulnerable Zimbabweans.²⁵ In addition, the announcement of the lockdown also triggered panic food buying, pushing up the prices of basic commodities such as maize meal, bread and cooking oil still further.

Further, the pandemic disrupted food distribution and supply chains, leaving a majority of both the rural and urban poor exposed to serious food and nutrition insecurity. However, the urgency of the crisis did not stop the government from arbitrarily shutting down urban spaces, or from politicising the distribution of food aid to punish citizens who support the opposition.²⁶ For example, Mutasa South Constituency Member of Parliament (MP), Regai Tsunga of MDC-A, was arrested in Mutare while addressing residents who had been side-lined by the partisan distribution of government subsidised mealie meal and donating maize meal to vulnerable members in his constituency.²⁷

However, according to the same World Bank Report, Zimbabwe's economy is heading towards a recovery amid high uncertainty on the likely strength of recovery and the extent of downside risks on both the global and local level after two difficult years. Growth of GDP is projected to reach 3.9% in 2021, a significant improvement compared to 2020, led by a recovery in agriculture, as well as improved electricity generation from replenished hydroelectric reservoirs, and slower than expected inflation.

²⁴ ZimFact, 'Factsheet: Zimbabwe food aid and Covid-19', https://zimfact.org/factsheet-zimbabwe-food-aid-and-covid-19/.

²⁵ UNICEF, Zimbabwe Humanitarian Situation Report, Multihazard Annual Situation Report # 6 January – December 2020, 2, https://www.unicef.org/media/94956/file/UNICEF-Zimbabwe-Humanitarian-Situation-Report-January-December-2020.pdf.

²⁶ Michelle Gavin, 'The Authoritarian Politics of Covid-19 in Zimbabwe,' *Council on Foreign Relations* (blog), June 18, 2020, https://www.cfr.org/blog/authoritarian-politics-covid-19-zimbabwe.

²⁷ Kenneth Nyangani, 'My arrest was unreasonable: MDC MP,' *Nehanda Radio*, April 25, 2020, <u>https://nehandaradio.com/2020/04</u> /25/my-arrest-was-unreasonable-mdc-mp/.

Understanding the Foundations of Zimbabwean Governance: The Party-Military (and Business) Coalition

To understand Zimbabwean governance, it is important to recognise the nature of the regime that presides over it. One of the most significant political facts about Zimbabwe's four post-independence decades is not only the conflation of the state and the ruling ZANU-PF, but the intimate links between the ruling party and the military and broader security sector. This can be described as the party-military symbiosis, whose origin dates back to the 1970s liberation struggle. The two institutions constitute conjoined twins that form the ruling coalition in Zimbabwe. One analysis in 2008 postulated that the longevity of the ZANU-PF regime 'hinges upon a destructive mix of ideology, patronage, and violence' and that the resultant regime – a militarised form of electoral authoritarianism – 'has come to rest on the interpenetration of two key organs of authority: the ruling party and the security forces.'²⁸

Though there are occasional and simmering tensions that can erupt in search of a new equilibrium (as they did in November 2017), the relationship between the party and the military can be described as fundamentally non-antagonistic. Contradictions, when they arise, do not produce an overhaul of the system, but a reconfiguration of the leadership. The leadership will thus continue to be drawn from the party-military alliance. In other words, the common denominator or unifying element is ensuring that power remains in the hands of the coalition, which should control the state into and beyond the foreseeable future.

While it is fashionable to talk about civil-military relations, in Zimbabwe it is more appropriate to refer to party-military relations. In light of this perspective, it becomes clear that what happened in November 2017 was an internal matter about succession within the coalition – it was an intra-coalition affair. During the armed struggle, Masipula Sithole famously referred to 'struggles within the struggle'²⁹ that were a defining feature of the liberation movement. Post-independence, there have emerged what have colloquially been called 'struggles *after* the struggle' and these manifest themselves as intra-coalition factionalism. Thus, the military chiefs view their fate (and that of the country) as inextricably tied, like an umbilical cord, to that of ZANU-PF.

Writing on the durability of what they termed 'revolutionary regimes', of which the ZANU-PF regime is one, political scientists comment that in the period after the capture of power 'revolutionary commanders view themselves as "partner(s) in the revolutionary

²⁸ Michael Bratton and Eldred Masunungure, 'Zimbabwe's Long Agony,' Journal of Democracy 19, no. 4 (2008): 48

²⁹ Masipula Sithole, Zimbabwe: Struggles within the Struggle (Salisbury: Rujeko Publishers, 1979).

movement" and tend to be "unswervingly loyal to the revolution and its dogmas".'³⁰ Any review of Zimbabwe's governance, especially the political side, must of necessity take this hard reality into account. This is likely to be the case for as long as the political generation that fought the war, or witnessed it, is still politically relevant.

It may also be noted that while in the first two decades, the military (and the securocracy as a whole) tended to play a covert role, in the post-millennium period it has played a more overt role, which was at its most visible in November 2017. Today, the military is at the centre of government with one of the vice-presidents being a retired military general, instrumental in the military-assisted transition.

Also noteworthy is that the party-military coalition has been expanded to incorporate the business class – mostly beneficiaries of the indigenisation and economic empowerment policies that started with the liberalisation of the economy under the Economic Structural Adjustment Programme (ESAP) in the 1990s. The resultant arrangement is a party-military-business coalition or a governance consortium where there is an interpenetration of the three sectors that, by and large, share the same interests and the same strategic goal of keeping power safe (and perpetually) in the hands of ZANU-PF. It has also been asserted that the business cartels have captured the state.³¹ Some of the dynamics and intricacies of this triad of power and other actors are captured in *The Report on Cartel Power Dynamics in Zimbabwe*.³²

³⁰ Steven Levistky and Lucan A Way, "Durable Authoritarianism," in *The Oxford Handbook of Historical Institutionalism*, ed. Orfeo Fioretos, Tulia Falleti and Adam Sheingate (Oxford: Oxford University Press, 2016), 208–223.

³¹ Although there are cartels in virtually all sectors and even subsectors of the economy, Sakunda Holdings has emerged to be the 'mother' of all cartels. Its tentacles are omnipresent from agriculture to fuel to, recently, elite health care for the big guns in politics, the military and business who succumb to the coronavirus. See: 'COVID-19: 'Open for all': Outrage as Sakunda steps in to revive two idle hospitals for coronavirus,' *The Zimbabwe Mail*, March 25, 2020, COVID-19: '<u>Open for all': Outrage as Sakunda</u> steps in to revive two idle hospitals for coronavirus – *The Zimbabwe Mail*.

³² Maverick Citizen, Report on Cartel Power Dynamics in Zimbabwe (Maverick Citizen, 2021), <u>https://www.pindula.co.zw/images</u>/c/ce/Cartel-Power-Dynamics-02-FEB-2021-Optimized.pdf.

CHAPTER 1

Introduction

Subdued by the COVID-19 pandemic, Zimbabwe celebrated 41 years of independence on 18 April 2021. For two decades, the southern African country of 16 million people has been locked in chronic fragility under the long-ruling ZANU-PF (Zimbabwe African National Union-Patriotic Front). For most of this period, the country was led by President Robert Gabriel Mugabe. His imperial presidency came to an abrupt end in mid-November 2017 through a military-engineered, military-executed and mass-supported 'soft coup' that ushered in Mugabe's erstwhile and long-time confidante, President Emmerson Dambudzo Mnangagwa. The public was jubilant, apparently 'in the belief that the long national nightmare of poor governance, corruption and economic mismanagement was finally ending.'³³

Mnangagwa finished his predecessor's remaining nine months in office before being elected in a highly competitive July 2018 presidential election. The election outcome was hotly disputed, but the country's Electoral Management Body (EMB) – the Zimbabwe Electoral Commission (ZEC) – declared Mnangagwa the winner by a wafer-thin margin. The dispute went to the Constitutional Court, which controversially confirmed the ZEC's declaration, a verdict that was rejected by the main contender and leader of the Movement for Democratic Change Alliance (MDC-A), Nelson Chamisa. To this day, Chamisa and his party regard Mnangagwa as an illegitimate president.

Mnangagwa abandoned his predecessor's hard-line stance against the APRM by joining it in February 2020. Mnangagwa's decision to accede to the APRM can be said to have marked a sea change in the posture of the regime – or perhaps it may not.

This submission captures the voices of a spread of Zimbabwe's civil society and seeks to review the country's governance performance. In particular, it interrogates whether the country is governed in accordance with the principles of the mechanism. Has the quality of governance improved, stayed the same or regressed over time? Was the accession a publicity stunt directed at the international community as part of the government's

³³ Linda Thomas-Greenfield and Bruce Wharton, 'Zimbabwe's coup – net gain or no gain,' Military Review (March-April 2019), https://www.armyupress.army.mil/journals/military-review/english-edition-archives/mar-apr-2019/6-zimbabwe/.

re-engagement strategy? Could it be that the 'Second Republic'³⁴ president is different from his predecessor only in rhetoric but not in action? Using documentary research and drawing on the considerable expertise of the contributors, what follows serves as their submission and is meant to assist in the APRM review of Zimbabwe.

Background and Context

Feted as the breadbasket of southern Africa and the 'jewel of Africa'³⁵ in its first decade of independence (1980–1990), by the early years of the 21st century Zimbabwe had come to be regarded as a pariah and failed state. The country has had a tortuous 130-year history from its founding as a modern state in 1890. It began its journey as a quasiconstitutional democracy when it became a self-governing British colony in 1923³⁶ under the Southern Rhodesia Letters Patent, the country's first proper constitution.

Zimbabwe was born in war, firstly as Rhodesia in 1890 following the conquest of the two major indigenous ethnic groups – the Shona and Ndebele – and secondly as Zimbabwe in 1980, following 90 years of harsh, white settler-colonial rule and an armed struggle, all of which have had an indelible (and largely deleterious) imprint in the governance of the country. The country was founded by force, maintained largely by force and was ultimately liberated by force. This warrior tradition has loomed large in its post-liberation governance. It reached its apogee in mid-November 2017 when the military mounted a coup. The militarisation of politics – sometimes covertly and other times overtly – has been a perennial feature of Zimbabwe's governance and has been accompanied by its twin process of politicisation of the military. Post-November 2017, it is fair to describe the regime as a party-military alliance, which has incorporated business cartels to form a party-military-business ruling triad.

This martial influence has seen the security sector being most implacably opposed among all the various stakeholders to democratic reform, and the most visible and consistent culprit in the progressive shrinking of the democratic space. The rolling back of the frontiers of democratic governance were particularly evident during the COVID-19 lockdown restrictions. Incidentally, the weaponisation of the lockdown measures began

This is a term used by President Mnangagwa to describe Zimbabwe in the post-Mugabe era. It implies a thoroughgoing change to the operations of the state.

This phrase is a colloquialism that reflects the pride that Zimbabweans had and have in their country, as well as the hope and promise that the years after independence held for its people.

³⁶ Many constitutional scholars would hesitate to call Rhodesia a constitutional democracy given that most of the population were excluded from the voting process. But certainly, a form of constitutionalism began at this point, albeit a flawed and deficient one.

a few weeks after Mnangagwa had signed on to the APRM. Thus, compliance with the APRM started on a repressive note.

Zimbabwe today is in a deeply fragile condition economically, politically and socially. Partly due to its troubled political history and unresolved legacy issues, Zimbabwe is a polarised society. The country also faces high levels of poverty and systemic corruption in both the public and private sectors, all of which is compounded by endemic impunity, weak accountability, feeble and poorly capacitated institutions of countervailing power, weak rule of law, a battery of repressive legislation targeting opposition political parties and civil society, gross abuses of human rights and civil liberties, elections characterised by violence and intimidation, and a sanctions regime. Zimbabwe is also marked by a pervasive culture of fear and distrust of public institutions. Zimbabwe is a textbook case of a shrinking democratic arena.

All of this makes the APRM process both timely and challenging.

CHAPTER 2



This issue relates to the Democracy and Good Political Governance thematic area, specifically:

>> OBJECTIVE 1

Entrenching Constitutional Democracy and the Rule of Law

- Question 1 What weight do provisions establishing the rule of law and the supremacy of the constitution carry in practice?
- Question 2 To what extent does the Executive respect the rule of law?

Upholding the Separation, Checks and Balance of Powers

- Question 1 Does the Constitution provide for the separation of powers between the Executive, the Legislative and the Judicial branches of government?
- Question 2 To what extent is the Judiciary independent?

A constitution is a social contract between the state and the governed. It provides a roadmap and rulebook for political governance. However, having a constitution does not necessarily translate into constitutionalism. The ultimate goal of constitutionalism is to limit governmental power so as to keep its exercise with a defined set of rules. These are for the constitution to specify. There is consensus that the latter is based on the idea that power is derived from the people. Thus, the exercise of power must be limited by a constitution that clearly expresses what those entrusted with power may and may not do. According to legal academic Hilaire Barnett: 'Constitutionalism can be defined as the doctrine that governs the legitimacy of government action, and it implies something far more important than the idea of legality that requires official conduct to be in accordance with pre-fixed legal rules.'³⁷

Constitutionalism makes the constitution the supreme law of the land and any other law or conduct inconsistent with that constitution is deemed null and void. Some essential features of constitutionalism include limited government, separation of powers, an independent Judiciary and respect for individual rights.³⁸ Constitutionalism also requires that these fundamental values be protected at all costs. At the root of this doctrine is the central idea that the state is not free to do whatever it wants but is bound by laws limiting its authority – these laws are usually drawn up and arranged according to principles in a constitution. Most constitutions represent a 'negotiated' political order with the 'compromise' phenomena significantly important, where different political shades, parties and movements are in action.³⁹

The founding Constitution of independent Zimbabwe was negotiated at the Lancaster House Conference in 1979, in ceasefire talks that led to the attainment of independence in 1980. Historically, this provides the starting point on debates about constitutionalism in post-independent Zimbabwe. This Constitution was widely regarded as being unrepresentative of the Zimbabwean population as it was largely conceived by the British. It did not embody democratic values and this caused Zimbabwe to have 'empty' constitutionalism rather than 'substantive constitutionalism'.⁴⁰

³⁷ Hilaire Barnett, Constitutional and Administrative Law 5 (London: Cavendish Publishing Limited, 3rd ed, 1995), 5.

³⁸ Michel Rosenfeld, Constitutionalism, Identity, Difference, and Legitimacy Theoretical Perspectives (Durham: Duke University Press, 1994), 37.

³⁹ Kadmiel Wekwete, The Constitution of Zimbabwe 2013 as a basis for local government transformation: A Reflective Analysis (Pretoria: Commonwealth Local Government Forum, 2016), 8, <u>http://www.clgf.org.uk/default/assets/file/publications/reports/</u> local_government_constitutionalisation_in_zimbabwe_clgf_2016.pdf.

⁴⁰ Justice Mavedzenge, *Thematic Analysis of Zimbabwe's Proposed Draft Constitution* (Freedom House, 2012), 5, <u>https://www.free</u> domhouse.org/sites/default/files/Thematic%20Analysis%200f%20Zimbabwe's%20Proposed%20Draft%20Constitution.pdf.

Extensive amendments, a total of 19, were made to the Lancaster House Constitution. This included abolishing the office of the prime minister in 1987, which turned Zimbabwe from a parliamentary executive to an executive presidential system.

By the end of the 1990s, the Constitution bore little resemblance to the original document.⁴¹ The pressure to design a new constitution could not be resisted any further and several drafts were crafted. The best known was the 2000 government-initiated draft that was rejected 54% to 46% in a referendum in February 2000. Seven years later came the Kariba Draft, secretly negotiated by the three largest parties represented in Parliament. Although the draft was never adopted or put to a referendum, its existence was acknowledged in the 2008 Global Political Agreement (GPA).

The 2013 Constitution

The Constitution of Zimbabwe Amendment (No. 20) Act 2013, was a result of the 2008 GPA that gave birth to the tripartite Government of National Unity (GNU) of 2009–2013 after controversial elections that eventually saw power being shared between ZANU-PF and the MDC.⁴² It was acclaimed as a major triumph in terms of asserting democratic values, but was also seen by the major opposition parties as a means to an end because it was a prerequisite for holding credible elections in July 2013. A referendum for the draft Constitution was held on 16 March 2013, with 94% of votes cast in favour and 6% against the draft. Thus, the Constitution was duly declared the new Constitution of Zimbabwe and signed into law by Mugabe on 22 May 2013.

Under constitutionalism, power is not concentrated in a single organ of the state, but diffused among the Legislature, Executive and Judiciary. If power is monopolised by any one of these organs of the state, abuse of power is a possibility.⁴³ Section 3 (2e) of the 2013 Constitution states: 'The principles of good governance, which bind the State and all institutions and agencies of government at every level, include the observance of the principle of separation of powers.' Section 164 (1) also states: 'The courts are independent

⁴¹ Molly Manyonganise, Francis Machingura and Godfrey Museka, 'Zimbabwe's New Constitution: Reactions and Reflections from the Ecumenical Movement in Zimbabwe,' *Journal of Interdisciplinary Academic Research* (2018): 3, <u>https://www.acad</u> emia.edu/47644236/Zimbabwe_s_New_Constitution_Reactions_and_Reflections_from_the_Ecumenical_Movement_in_ Zimbabwe.

⁴² A GNU was formed in February after the inconclusive elections of March 2008. The GNU consisted of ZANU-PF, led by Robert Mugabe who was the president, Morgan Tsvangirai of the main MDC formation, who was the prime minister, and Arthur Mutambara of the smaller MDC formation who was deputy prime minister. The life of the GNU spanned from 2009 to 2013.

⁴³ Maru Bazezew, 'Constitutionalism,' Mizan Law Review 3, no. 2 (2009): 316.

and are subject only to this Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice.^{'44}

The doctrine represents an ideal. It emphasises the need to provide adequate checks and balances within the governmental system so that one branch does not have excessive and overarching powers over the other branches.

It is worth pausing to consider the separation of powers in Zimbabwe. Despite the constitutional guarantee, in reality this doctrine is conspicuous by the absence of its impact. In continuing with the culture of the Mugabe regime, Mnangagwa's administration had maintained the same overweening Executive as well as blurred lines between the Executive and the Judiciary on one hand, and the Executive and the Legislature on the other. With respect to the Legislature, what one pair of analysts said in 2009 is still valid:⁴⁵

As currently configured, the Parliament does not have the authority or capacity to check and balance the Executive. It has no authority to confirm or veto presidential appointments. While in theory the Parliament is empowered to adjust the national budget, in practice it has acted as a rubber stamp, as evidenced by the passage of the last five budgets (2002–2006) without amendments. MPs have very little public funding for offices, research staff, or constituency relations. It is not uncommon for MPs to work at a regular job and run their official duties using private resources. In addition, the weakness of the Parliament's standing, portfolio, *ad hoc* and housekeeping committees makes it difficult for the Legislature to effectively oversee the Executive branch.

Constitutional Amendments

Soon after the GNU was disbanded (ZANU-PF secured a supermajority in the 2013 election, won 75% of Parliamentary seats and Mugabe retained the presidency with 61% of the vote) the ruling party began the process of amending the newly minted Constitution.⁴⁶

This process kicked off with Constitutional Amendment No. 1. This altered the procedure for appointing the chief justice, the deputy chief justice and the judge president of the High Court, conferring this power on the president in consultation with the Judicial

⁴⁴ Zimbabwe Constitution, ch. 8, pt. 1, s. 164, cl. 1.

⁴⁵ Bratton and Masunungure, 'Zimbabwe's Long Agony', 48.

⁴⁶ Kubatana, 'Results - Harmonised elections 31 July 2013', http://archive.kubatana.net/html/archive/elec/130801kubres.asp.

Service Commission. The amendment was controversially passed into law in 2017, but has been challenged and is not yet operational.⁴⁷

A more controversial and more highly contested issue has been Constitutional Amendment No. 2 signed into law on 7 May 2021 by the president.

Before looking at the content of the changes it is necessary to draw attention to the fact that the proper procedure for amending the Constitution was not followed. Section 328 (3) of the Constitution stipulates that a Constitutional Amendment Bill may not be presented in either the Senate or the House of Assembly '…unless the Speaker has given at least ninety days notice in the Gazette of the *precise* terms of the Bill' (emphasis added).⁴⁸

The point of the 90-day requirement is to give members of the public an opportunity to discuss and debate the bill before its passage through Parliament. Amending the Constitution – the supreme law of the land – is a serious matter. After the expiry of the 90-day period, the bill was introduced into the National Assembly. However, the Minister of Justice, Legal and Parliamentary Affairs – the minister in charge of the bill – then gave notice that he wished to introduce amendments to the bill at the committee stage, which took place that very day, on 15 April 2021.

The National Assembly passed the minister's amendments and others proposed by MPs on the same day. It is questionable whether this was this constitutionally valid. Veritas Zimbabwe has drawn a distinction between legitimate and illegitimate amendments of constitutional amendment bills. Veritas argues that the distinction lies in the effect of a particular amendment. Thus if 'amendments make material or substantial changes to the original Bill, they are illegitimate; if they make minor changes or corrections, or if they remove clauses from the Bill, then they are legitimate and permissible'.⁴⁹

A number of the amendments proposed and passed on the day of the committee stage did make material or substantial changes to the bill. The changes to the bill undermined the 90-day notice requirement because the public were deprived of their right to have time to discuss and debate the proposed amendments. Among the amendments were provisions dealing with the way in which judges are appointed and promoted, as well as their tenure. Other changes related to the appointment of vice presidents and the

Constitution of Zimbabwe Amendment, art. 6, s.1 Amendment No. 1, s.6, cl. 1-4, https://www.veritaszim.net/sites/veritas_d/files/constitution%200f%20Zimbabwe%20Amendment%20%28No.%201%29%20Act%2C%202017%20%28Act%2010-2017%29.pdf.

⁴⁸ Zimbabwe Constitution, ch, 18, pt. 2, s. 328, cl. 3.

⁴⁹ Veritas Zimbabwe, 'Constitution Watch 1/2021 – Constitution Amendment No. 2 Fast-tracked with Unconstitutional Amendments', http://www.veritaszim.net/node/4929.

composition of Parliament. These changes are clearly inconsistent with Section 328 (3) and are therefore unconstitutional.

The failure by the government to respect and follow the correct procedure for amending the Constitution is disturbing. This certainly creates the impression that the government was confused about what it wanted to change and left everything to the last minute. The rule of law provides that governments and legislative bodies must act in the way stipulated by the Constitution and other relevant laws.

As to its substance, Amendment No. 2 is an omnibus act that amends some 27 clauses of the extant Constitution, including some clauses that were never implemented and therefore have never been tested in reality.

Regarding the substantive content of the changes, the most serious concern the Judiciary. Since 2013, Section 180 of the Constitution has provided that judges must undergo a selection process involving an interview conducted by the Judicial Service Commission (JSC). At the end of the process the JSC had to prepare a list of three candidates and submit the list to the president. The president's discretion was limited to choosing a candidate from the list.⁵⁰

However, a new subsection (4a) now gives the president the power, acting on the recommendation of the JSC, to '…appoint a sitting judge of the Supreme Court, High Court, Labour Court or Administrative Court to be a judge of the next higher court.'⁵¹ This is disturbing because it dilutes the independence of the Judiciary and expands the power of the Executive. A selection process involving advertising judicial vacancies and subjecting candidates to public interviews is far more likely to enhance the quality and independence of the Judiciary. The only inference to draw from all of this is that the Executive is obsessed with controlling other state organs.

The tenure of office of judges was also affected by the recent constitutional amendment. Section 186 of the Constitution stipulated that judges must retire on reaching the age of 70. But the new Section 186 authorises the president to enable Constitutional Court and Supreme Court judges (including the chief justice and deputy chief justice) to remain in office until the age of 75.⁵² The main purpose of this change was to ensure that Chief Justice Luke Malaba remains in office. However, Section 328 (7) stipulates that provisions

⁵⁰ Zimbabwe Constitution, ch, 8, pt. 2, s. 180, cl. 2.

⁵¹ Constitution of Zimbabwe Amendment No. 2, s. 12, cl. b. <u>https://www.veritaszim.net/sites/veritas_d/files/Constitution%20of%20</u> Zimbabwe%20Amendment%20%28No.%202%29.pdf.

⁵² Constitution of Zimbabwe Amendment No. 2, s. 13, cl. 1. <u>https://www.veritaszim.net/sites/veritas_d/files/Constitution%200f%20</u> Zimbabwe%20Amendment%20%28No.%202%29.pdf.

relating to extensions of term limits cannot apply to incumbents unless the extension has been approved in a referendum.⁵³ Section 328 (7) is itself entrenched in this way. The new Section 186 (4) tries to get around the problem of Section 328 (7) by stating that the extension of judicial term limits shall apply *notwithstanding* Section 328 (7).⁵⁴ But it is quite obvious that a 'notwithstanding' provision cannot eliminate the referendum requirement. This must therefore mean that Chief Justice Malaba, who recently turned 70, is no longer chief justice. The correctness of this interpretation was confirmed by the High Court in a judgement handed down on 15 May, *Musa Kiki v Minister of Justice, Legal and Parliamentary Affairs* HH 264-21. The decision has now gone on appeal.

The amendment also gives the president the power to directly appoint the two vice presidents. The previous Section 92 of the 2013 Constitution stated that every candidate for election as president must nominate two persons to stand for election jointly as running mates and designated as first and second vice president.⁵⁵ However, negotiations between the GPA principals saw this clause suspended for 10 years with the president given the power to pick his deputies at will.⁵⁶ This suspension was due to expire, and the election in 2023 would have seen the president nominating two vice presidential candidates to stand together with him for election. If elected, the vice presidents would have the same security of tenure as the president, ie, the president would not be able to dismiss them, and succession in the event of the president's ceasing to hold office would be fixed before the election.⁵⁷ However, the enactment of Constitutional Amendment Bill No. 2 means the running mate clause has been replaced with a clause that gives the president the power to appoint the two deputies unilaterally. This move would allow the president to handpick his deputies - as is the case now. This would give the president power over his deputies, who would effectively serve at his or her pleasure.⁵⁸ An appointed vice president may be dismissed at any time, unlike an elected one

The amendment also allows the president to appoint up to seven ministers from outside Parliament. At present, the president has the power to appoint a maximum of

⁵³ Zimbabwe Constitution, ch, 18, pt. 2, s. 328, cl. 7.

⁵⁴ Constitution of Zimbabwe Amendment No. 2, s. 13, cl. 4. <u>https://www.veritaszim.net/sites/veritas_d/files/Constitution%200f%20</u> Zimbabwe%20Amendment%20%28No.%202%29.pdf.

⁵⁵ Zimbabwe Constitution, ch, 5, pt. 2, s. 92.

⁵⁶ Wurayayi Zembe and Octavious Chido Masunda, "The Clobal Political Agreement (GPA) Constitution in Zimbabwe: A New People-Driven Constitution or a Misnomer?" in *Constitution-Building in Africa*, eds. Jaap de Visser, Nico Steytler, Derek Powell and Ebenezer Durojaye (Baden-Baden: Nomos Verlagsgesellschaft, 2015), 42.

⁵⁷ Veritas Zimbabwe, "Constitution Watch 1/2021".

⁵⁸ Mnangagwa himself was installed as vice president in 2014 and fired in November 2017. He fled the country to South Africa before the military intervened in his favour.

five. According to Veritas: 'Increasing the number of non-Parliamentary Ministers will extend the President's power to control his Cabinet as well as extending his powers of patronage. Non-Parliamentary Ministers, moreover, may not be amenable to attending Parliament and answering questions from Parliamentarians.⁵⁹ This would give the president more power over the Legislative arm of the government, thereby further undermining the separation of powers.

The bill was put to the vote before Parliament, despite being rejected by the public in consultations. According to a report by the Justice, Legal and Parliamentary Affairs Portfolio Committee, 'public consultations on the Bill which took place in June 2020 revealed Zimbabweans felt alignment of laws to the Constitution should be the priority as opposed to attempts to amend it'.⁶⁰ This was disregarded and after the elimination of dozens of opposition MPs from Parliament, the ruling party is now operating almost without restraint. The Constitutional Amendment No. 2 Bill was passed on 20 April 2021, with 191 votes in favour and 22 opposing.⁶¹

Constitutional Amendment Bill No. 2 was signed into law by the president on 7 May 2021 and is now part of the supreme law of the land. This gives the president more control over the Judiciary and the Legislature and has consequently disturbed the balance of powers. This is significant as the country gears up for the 2023 polls. A constitution is the bedrock of constitutionalism and democracy, and making such significant changes shows a lack of respect for it. The adoption of the bill also sets precedents for future amendments, which stand to undermine the democratic and civic space in Zimbabwe further.

Alignment of Key Legislation with the Constitution

While in theory Zimbabwe is a constitutional democracy, evidence demonstrates that this is not really the case. An especially serious shortcoming is illustrated with regard to Section 2 (1) of the 2013 Constitution that states that the Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency, and is thus void and without legal effect.⁶²

⁵⁹ Veritas Zimbabwe, "Constitution Watch 1/2021".

⁶⁰ Anna Chibamu, 'Zimbabweans reject Constitutional Amendment Bill - MPs,' *New Zimbabwe*, July 12, 2020, <u>https://www.new</u> zimbabwe.com/zimbabweans-reject-constitutional-amendment-bill-mps/.

⁶¹ Veritas Zimbabwe, 'BILL WATCH 25/2021 - Constitution Amendment (2) Bill in the Senate This Week', <u>http://www.veritaszim.net/</u> node/4938.

⁶² Zimbabwe Constitution, ch, 1, s. 2, cl. 1.

Existing laws prior to the promulgation of the Constitution in 2013 must therefore be interpreted so as to conform to the Constitution. Although the Constitution has been in effect since 2013, many pieces of key legislation regarding freedoms of the press, assembly and electoral processes remain inconsistent with it. The biggest challenge to aligning this legislation with the Constitution is the lack of political will to enact the necessary changes. According to Constitution Net: 'The enactment of the Constitution in 2013 meant more than 400 laws which were out of sync with some of the refreshed provisions of the supreme law had to be aligned, while 63 needed to either be repealed, extensively amended or redrafted. Out of the 63 laws, 10 have been passed by Parliament and assented to by the President.'⁶³

To expedite the alignment process, an Inter-Ministerial Task Force on the Alignment of Legislation to the Constitution (IMT) was established by cabinet in February 2015 and consists of legal advisors, senior state counsels and representatives from all government ministries.⁶⁴ At the time of writing, the alignment of laws with the Constitution remains unfinished.

In March 2020, the Minister of Information, Publicity and Broadcasting Services, Monica Mutsvangwa, revealed that at least 144 laws out of 183 that need to be aligned to the Constitution have been amended and efforts are underway to work on the remainder. The laws being aligned were categorised into 10 clusters: media and information; security; citizenship and movement of people; local government; social services; environmental and natural resources; justice delivery; economic services; political and civil rights; and cross-cutting.⁶⁵ According to IMT, of the 63 laws that were waiting for alignment with the Constitution, 20 bills had been completed and 43 were outstanding as of March 2021.

Table 1 shows some of the laws that have been aligned and those still in the process of being aligned.

⁶³ Constitution Net, 'Government of Zimbabwe aims to align all laws to the constitution by June', <u>https://constitutionnet.org/</u> news/government-zimbabwe-aims-align-all-laws-constitution-june.

⁶⁴ Inter-Ministerial Task Force on the Alignment of Legislation to the Constitution, 'About the IMT', https://imt.gov.zw/about-the-imt/.

Tendai Mugabe, '144 laws amended for alignment to Constitution,' *The Herald*, March 11, 2020, <u>https://www.herald.co.zw/144-</u>laws-amended-for-alignment-to-constitution/.

TABLE 1 STATUS OF THE ALIGNMENT OF LAWS WITHIN FIVE MINISTRIES AND AGENCIES					
CLUSTER	MINISTRY	LAWS TO BE ALICNED WITH THE CONSTITUTION	CONSTITUTIONAL PROVISION	BRIEF COMMENTS	STATUS
Security	Office of the President	Zimbabwe Independent Complaints Commission Bill	Section 210	The bill establishes an independent commission responsible for investigating complaints from citizens against misconduct by members of the security services	The bill was approved by cabinet on 18 November 2020, and gazetted by Parliament on 23 November 2020. The bill is currently before Parliament
Justice Delivery	Ministry of Justice, Legal and Parliamen- tary Affairs	Criminal Law (Codification and Reform) Amendment Bill Principles	Chapter 4 on Declaration of Rights	Section 31 of the act criminalises making false statements prejudicial to the state and Section 33 makes it a crime to insult the president. This limits freedom of expression	Principles for the Criminal Law (Codification and Reform) Amendment Bill were submitted to cabinet but have not yet been approved
Media and Informa- tion Laws	Ministry of Information, Publicity and Broad- casting Services	The Zimbabwe Media Commission Bill	Chapter 12	Laws such as the Access to Information and Protection of Privacy Act (AIPPA), which was a source of contention for nearly two decades and inhibited freedom of assembly and information, was finally repealed in 2020	The Access to Information and Protection of Privacy Act (Chapter 10:27): will be repealed and replaced by the: (a) Zimbabwe Media Commission Bill, (b) Freedom of Information Bill, and (c) Protection of Personal Information Bill. Principles for the Zimbabwe Media Commission Bill were approved on 12 February 2019. The bill was gazetted on 9 August 2019 and was passed by Parliament on 8 December 2020

Security	Office of the President	National Peace and Reconcilia- tion Commission Act	Chapter 12	The Constitution established the National Peace and Reconciliation Commission to ensure post-conflict justice, healing and reconciliation	The National Peace and Reconciliation Commission Bill was signed into law on 5 January 2018. It is now an act of Parliament
Cross cutting	Ministry of Women Affairs, Community, Small and Medium Enterprises Develop- ment	Gender Commission Bill	Chapter 12	The Zimbabwe Gender Commission (ZGC) monitors issues concerning gender equality to ensure compliance with the gender equality provisions in the Constitution, to create gender equality based on 50/50 representation.	The Gender Commission Bill was signed into law on 12 Feb 2016. It is now an act of Parliament

Source: The Inter-Ministerial Task Force on the Alignment of Legislation to the Constitution (IMT), *The IMT Quarterly Brief* (Harare: IMT, 2021)

Legislation enacting all five of the independent commissions in Chapter 12 of the Constitution – the Zimbabwe Electoral Commission, the Zimbabwe Human Rights Commission, the Zimbabwe Gender Commission (ZGC), the Zimbabwe Media Commission and the National Peace and Reconciliation Commission – have been enacted. A summary of the Constitution prepared by the Southern African Parliamentary Trust described the commissions as follows:⁶⁶

The independent commissions were set up under the new Constitution (section 232) to support and firmly establish human rights and democracy, whilst protecting the interests of the people of Zimbabwe and promoting transparency and accountability as well as ensuring that justice is served. These commissions are made up of people with experience and knowledge and diverse backgrounds, so the commissions are expected to be free from interference or control from anyone and have to exercise their functions without fear, favour or discrimination.

⁶⁶ Southern African Parliamentary Trust (SAPST), *The Constitution of Zimbabwe: A Simplified Guide to your Constitutional Rights and Freedoms* (Harare: SAPST, 2018), 24, http://www.sapst.org/download/simplified-constitution-of-zimbabwe/.
The primary purpose of the constitutional commissions (and other independent commissions, such as the Zimbabwe Anti-Corruption Commission (ZACC) and National Prosecuting Authority) is to enforce restraint, intended to hold the Executive branch of government to account. Also assumed in their creation and functioning is a separation of powers.

In 2020, a repressive duo of laws was repealed. These were the Access to Information and Protection of Privacy Act (AIPPA) and the Public Order and Security Act (POSA), which were for almost two decades the cause of major public and international outcry. They were repealed and replaced by the Freedom of Information Act and the Maintenance of Peace and Order Act (MOPA) respectively. However, there are concerns that the replacement laws are almost identical to their predecessors and a mere rebranding.⁶⁷

Meanwhile, the Presidential Powers (Temporary Measures Act), passed by Parliament in 1984, remains on the statute books. This gives the president the power to unilaterally create primary legislation. In other words, legislation equivalent in status to an act of Parliament. Regulations made by the president under the act are not permanent and expire after 180 days. They cannot thereafter be re-enacted until the expiry of a further 180-day period.⁶⁸ The act flouts the separation of powers doctrine. The power to make primary legislation should vest exclusively in Parliament. Section 3 of the Constitution says that the principle of separation of powers is a founding value. In addition, Section 134 of the Constitution stipulates that Parliament may not delegate its primary lawmaking powers. Clearly, therefore, the Presidential Powers Temporary Measures Act is unconstitutional.⁶⁹

Thus, while there has been some form of commitment to align laws with the Constitution, it has been distinctly uneven. There appears to be a lack of political will to undertake particular reforms. Laws that have a direct bearing on elections, such as the Electoral Act, have been neglected and if any alignment has been done at all – as was the case just before the 2018 election – it has been inadequate. If not aligned soon, this will have a negative bearing on the 2023 elections.

⁶⁷ Veritas Zimbabwe, "Constitution Watch 1/2021". Veritas is a legal and parliamentary think-tank and makes extensive coverage and commentary on parliamentary proceedings and legislations. On MOPA, it complained that its provisions were slavishly copied from POSA, adding that all undemocratic features had been retained, stating: 'The draft Bill is not new wine in an old bottle: it is the same old wine in the same old bottle with a new label stuck on it.' (See: Veneranda Langa, 'POSA bounces back as MOPA,' *Newsday*, April 26, 2019, https://www.newsday.co.zw/2019/04/posa-bounces-back-as-mopa/.

⁶⁸ Presidential Powers (Temporary Measures) Act No. 1 of 1986, s. 6.

For a detailed discussion of the act see: Greg Linington, *Constitutional Law of Zimbabwe* (Harare: Legal Resources Foundation, 2001), 79–84.

One of the major outstanding issues since 2013 has been the establishment of the independent complaints body mentioned in Section 210 of the Constitution: 'An Act of Parliament must provide an effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services, and for remedying any harm caused by such misconduct.'⁷⁰

When Zimbabwe formally joined the APRM in February 2020, Mnangagwa assured the gathering that 'the Independent Complaints Mechanism Bill, which creates an independent and effective complaints mechanism for receiving and investigating complaints from members of the public over the misconduct on the security services, would be enacted before the end of the year.'⁷¹ However, more than a year later the process of creating the commission has stalled, with the bill currently in Parliament. The pace at which the bill is moving is worrying and shows a lack of political will and commitment to establish the commission, eight years after the requirement for its enactment was introduced.

The commission's establishment is much needed given the continued abuse of power by state security forces, which has been worsened by the COVID-19 pandemic. The commission will be expected to counter the culture of impunity that characterises the operation of Zimbabwe's security forces.

Under the COVID-19 pandemic, concerns have been raised over some of the measures enacted to contain its spread. For instance, in March 2020, the ZEC announced the suspension of by-elections citing health and safety concerns. The suspension is not consistent with the Constitution. Section 158 (3) provides that ZEC should conduct polling in by-elections to fill vacancies in Parliament and local authorities, and fix the polling dates for local authority by-elections within 90 days after the vacancies occur.⁷² According to the Zimbabwe Electoral Support Network (ZESN): 'Section 132 allows ZEC to change dates but does not mandate ZEC to change without giving notice of its decision in the Gazette and in the media and beyond 90 days.'⁷³ ZESN, among others, is of the view that ZEC could proceed with by-elections and other electoral activities, ensuring COVID-19 preventive measures are in place. Many countries, some with much higher infection and death rates – such as the US, Japan, South Korea

⁷⁰ Zimbabwe Constitution, ch, 11, pt. 1, s. 210.

⁷¹ Lawson Mabhena, 'Zimbabwe joins Africa peer review club,' *The Sunday Mail*, February 9, 2020, <u>https://www.sundaymail.co.zw/</u> zimbabwe-joins-africa-peer-review-club.

⁷² Zimbabwe Constitution, ch, 7, pt. 2, s. 158, cl. 3.

⁷³ Zimbabwe Electoral Support Network (ZESN), 'ZESN Statement on International Women's Day Commemorations,' press statement, March 15, 2020, https://www.zesn.org.zw/category/press-conference/2021/.

and Tanzania – have managed to conduct elections in the midst of the pandemic.⁷⁴ The suspension of elections indefinitely is questionable since COVID-19 appears to have become part of everyday social life. There is no certainty if or when things might normalise again. Many speak of the 'new normal', which ZEC should actively consider and adapt to so as to maintain democratic processes.

The indefinite suspension leaves citizens in affected areas without representation and infringes upon the political rights provided for in Section 67 of the Constitution. The suspension triggered a court challenge by several civic organisations who questioned the state's failure to hold by-elections for the nearly 40 vacant Parliamentary and over 80 local government seats long after lockdown restrictions were eased.⁷⁵ Government lawyers argued that by-elections were suspended to save lives as the country was under threat of a new COVID-19 wave, but the judge queried why schools and universities had been allowed to open under such circumstances. The lawyer for the litigants argued that strict measures could be put in place to safeguard voters' health. The plaintiffs also accused the government of selective application of the law, in that it allowed ZANU-PF to carry on with its activities while the opposition remained locked down.

As the IMT continues with its alignment task, several outstanding issues – especially those with direct consequences for free and fair elections – seem to have been sidelined. One of the major outstanding issues with regards to the alignment agenda is the independence of ZEC. Democracy hinges on the conduct of credible polls and the commission is the most important player in this regard. ZEC is tasked with the management of elections and its independence from political interference is crucial for the conduct of free and fair elections.

Section 235 (1) of the Constitution states that the independent commissions:⁷⁶

- a are independent and are not subject to the direction or control of anyone;
- b must act in accordance with this Constitution; and
- c must exercise their functions without fear, favour or prejudice; although they are accountable to Parliament for the efficient performance of their functions.

⁷⁴ International Institute for Democracy and Electoral Assistance (IDEA), "Managing Elections during the COVID-19 Pandemic, Considerations for Decision-makers" (Policy Brief, IDEA, Stockholm, 2020), <u>https://www.idea.int/sites/default/files/publications/</u> managing-elections-during-covid-19-pandemic.pdf.

⁷⁵ The Election Resource Centre, the Women's Academy for Leadership and Political Excellence and six other applicants, had brought the matter to court, accusing government and the ZEC of illegally suspending by-elections. See: Moses Matenga, 'By-elections: Judge grills govt lawyers,' *Newsday*, May 25, 2021, <u>https://www.newsday.co.zw/2021/05/by-elections-judge-grills-govt-lawyers/</u>).

⁷⁶ Zimbabwe Constitution, ch, 12, pt. 1, s. 235, cl. 1.

However, the impartiality of ZEC has long been questioned and is one of the major standout grievances raised in election observer reports from previous elections. Of note, the commission's integrity is impacted by the nature of the relationship with its parent ministry, the Ministry of Justice, Legal and Parliamentary Affairs, and funding arrangements. The Minister of Justice has the power to veto any regulations made by ZEC, which seriously compromises its independence.⁷⁷ Section 9 (5) of the Electoral Act states that ZEC does not have a general power to dismiss its chief elections officer without the approval of the Minister of Justice, Legal and Parliamentary Affairs, and Section 192 (4) adds that ZEC cannot make regulations regarding electoral procedures or anything else - without the approval of the Minister of Justice.⁷⁸ ZEC's lack of independence was recently evidenced by the government's directive to overturn ZEC's decision to lift the suspension of by-elections in October 2020.⁷⁹ ZEC had announced the resumption of all electoral activities, a move which was quickly vetoed by the Minister of Health and Child Care and Vice-President, Constantino Chiwenga, citing the continuing threat of COVID-19. In a press statement, ZEC Chief Elections Officer, Utoile Silaigwana, retracted the lifting of the suspension, stating that it was important for the commission to follow the advice given by the authorities and to guard against the spread of the virus.⁸⁰ This behaviour undermines the commission's independence – the body must not be under any external influence, especially from members of the Executive.

In terms of the voters' roll, the Electoral Act must be aligned with Section 62 of the Constitution, which deals with access to information held by the state. The voters' roll must be an accessible document in line with international practices.⁸¹ These outstanding issues are central to the conduct of free and fair elections. Addressing them will go a long way towards enhancing the quality and credibility of the polls and breaking the cycle of disputed elections in Zimbabwe.⁸²

There is also a need to fully implement Sections 17, 56 and 80 of the Constitution. These sections provide for 50/50 gender representation, which would be a huge step towards the attainment of gender equality in line with Sustainable Development Goal

⁷⁷ ZESN, Report on the 30 July 2018 Harmonised Elections, (Harare: ZESN, 2018), <u>https://www.zesn.org.zw/wp-content/uploads</u> /2015/10/Final-ZESN-2018-Harmonised-Election-Report.pdf.

⁷⁸ Veritas Zimbabwe, 'Election Watch 18-2018 - Is the Electoral Act as amended Now Constitutional?', <u>https://www.veritaszim.net/</u> node/2431.

⁷⁹ Nqobile Tshili, 'ZEC lifts suspension on all electoral activities,' *The Chronicle*, September 15, 2020, <u>https://www.chronicle.co.zw/</u> zec-lifts-suspension-on-all-electoral-activities/.

^{80 &#}x27;Zimbabwe's electoral body confirms suspension of by-elections', Xinhua, October 8, 2020, <u>http://www.xinhuanet.com/english</u> /2020-10/08/c_139425344.htm.

⁸¹ Tshili, "ZEC lifts suspension".

⁸² Electoral issues are further discussed in the section on Democracy and Elections.

(SDG) 5 (gender equality and women's empowerment).⁸³ Section 17 calls on the state to promote full gender balance in Zimbabwe and, in particular, promoting the full participation of women in all spheres of Zimbabwean society, on the basis of equality.⁸⁴ It also calls for legislative and other measures to ensure that both genders are equally represented in all institutions and agencies of government at every level, and that women should constitute at least half of the members of all commissions and other elective and appointed governmental bodies established under the Constitution or any act of Parliament.⁸⁵ Despite these provisions being in place, women, who make up 52% of the Zimbabwe population, are underrepresented and constitute only 31% of the National Assembly, 43% of the Senate and 13,3% of local government.⁸⁶

These numbers are inclusive of the quota system provided for in Section 124, (1) (b) of the Constitution which states:⁸⁷

For the life of the first two Parliaments after the effective date, an additional sixty women members, six from each of the provinces into which Zimbabwe is divided, elected through a system of proportional representation based on the votes cast for candidates representing political parties in a general election for constituency members in the provinces.

This quota system came into effect in 2013 and was set to expire in 2023. However, Constitutional Amendment No. 2 has extended the women's quota in Parliament by another 10 years and will guarantee their representation in Parliament. This is especially significant considering that in the 2018 election, out of the available 210 contested seats, women candidates won just 25.⁸⁸ Without the political will to make sure that constitutional provisions are met, women's representation will likely remain limited. It is therefore crucial that pressure is ramped up on the government and political parties to meet the 50/50 representation provisions made in the Constitution.

While Mnangagwa undertook to finish the alignment process by the end of 2020, there are major outstanding issues yet to be dealt with. The IMT revealed that while it had intended to complete the alignment of laws with the Constitution by the end of April

 <sup>83
 &#</sup>x27;Time to align laws to constitution, not to make amendments', The Standard, July 12, 2020, https://www.thestandard.co.zw/2020/07/12/time-to-align-laws-to-constitution-not-to-make-amendments/.

⁸⁴ Zimbabwe Constitution, ch, 2, s. 17.

⁸⁵ ZESN, "ZESN Statement on International Women's Day".

^{86 &#}x27;50.50 Representation in political spaces', *The Herald*, 29 August 29, 2019, <u>https://www.herald.co.zw/50-50-representation-in-political-spaces-sponsored-article/.</u>

⁸⁷ Zimbabwe Constitution, ch, 6, pt. 4, s. 124, cl. 1 (b).

⁸⁸ Veritas, 'Party strengths in the new Parliament', Election Watch 41, 2018, http://www.veritaszim.net/node/3103.

2021, the COVID-19 pandemic disrupted its plans. The targets have since been revised and developed into a new workplan.⁸⁹

Table 2 presents a balance sheet in terms of the progress made and outstanding areas to be addressed in respect of constitutional governance.

TABLE 2 A BALANCE SHEET ON CONSTITUTIONALISM IN ZIMBABWE

TABLE Z A BALANCE SHEET ON CONSTITUTIONALISM IN ZIMBABWE					
POSITIVES	NEGATIVES				
The Section 210 Commission (Zimbabwe Independent Complaints Commission) was established to deal with the abuse of power by security forces	Lack of political will to align outstanding laws to the Constitution				
Extension of the women's quota provision under Constitutional Amendment No. 2 Bill	The slow pace at which the independent complaints mechanism commission is shaping up is worrisome and shows lack of political will				
Alignment of over 144 laws to the Constitution, including the repealing of repressive laws	Disregard for the separation of powers provision in the Constitution				
	Constitutional Amendment No.2 Bill gives the president more power, undermining Legislative and Judiciary independence				
	ZEC independence is undermined by its parent ministry				
	Continued disregard of 50/50 gender representation				
	The right to vote is not accorded to every Zimbabwean				

RECOMMENDATIONS

To entrench constitutionalism, it is necessary that the government:

- respect the people's will expressed in the popular referendum by fully and urgently implementing the Constitution, respecting it and guarding it as the supreme law of the land;
- desist from vitiating the will of the people and the foundations of the country's constitutional democracy by making partisan amendments to the Constitution without due regard for the public interest, and refrain from breaching any provisions of the Constitution;
- urgently amend the Electoral Act to align it with the Constitution before the 2023 harmonised^a elections;
- guard and enhance ZEC's autonomy as a fully independent constitutional commission so as to build public confidence and trust in the EMB and its work, which should be done well before the next elections; and
- implement the constitutional requirement designed to achieve gender parity in government institutions.

a 'Harmonised' elections refer to the combined presidential, parliamentary and municipal elections held in Zimbabwe

CHAPTER 3



This issue relates to the Democracy and Good Political Governance thematic area, specifically:

Entrenching Constitutional Democracy and the Rule of Law

- Question 1 Does the political system as practiced in your country allow for free and fair competition for power and the promotion of democratic governance?
- Question 2 What weight do provisions establishing the rule of law and the supremacy of the Constitution carry in practice?
- Question 3 To what extent does the Executive respect the rule of law?

>> OBJECTIVE 2

Upholding the Separation, Checks and Balance of Powers

Question 3 How would you rate the independence and effectiveness of the legislative body?

>> OBJECTIVE 4

Promotion and Protection of Civil and Political Rights as Enshrined in African and International Human Rights Instruments

Question 1 What measures have been put in place to promote and enforce civil rights?Question 2 What steps have been taken to facilitate due process and equal access to justice for all?



Question 4: To what extent does the state respect and protect the Access to Information rights of citizens?

Constitutions set the parameters for a political system. However, it is in the respect accorded to a number of other concepts, such as human rights, civil liberties and open, democratic governance that the constitution is lived out. It is at this level that constitutional promises are kept or abrogated.

A number of political scientists have made the case that even as the form of democracy expands, with exercises such as elections becoming near universal, their substance remains questionable.⁹⁰ Societies may elect governments that turn out to be repressive, secretive or contemptuous of human rights and civil liberties. The APRM interrogates these matters and the degree to which participating countries operate as open, rights-based societies.

The previous section and its discussion of constitutionalism raised concerns about the sometimes hollow constitutionalism extant in Zimbabwe. The intention of the following section is to examine how this impacts on the country's governance and political culture.

Human Rights

Zimbabwe's Constitution enumerates a comprehensive list of human rights. Chapter 4 is entitled 'Declaration of Rights', and enjoins that 'the State and every person, including juristic persons, and every institution and agency of the government at every level must respect, protect, promote and fulfil the rights and freedoms set out in this Chapter.'⁹¹ It proceeds, in Section 46 (1) (b), to require that in interpreting the section, all bodies 'must promote the values and principles that underlie a democratic society based on openness, justice, human dignity, equality and freedom.'⁹² The list is quite comprehensive, protecting life, personal liberty, the rights of accused and detained

⁹⁰ See, for example: Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York and London: WW Norton and Company, 2003).

⁹¹ Zimbabwe Constitution, ch, 4, s. 44.

⁹² Zimbabwe Constitution, ch, 4, s. 46, cl. 1 (b).

people, dignity, conscience and a great deal more. It also notes that the list does not preclude other rights.

However, Zimbabwe has historically had an unsavoury record on human rights that stretches back into its colonial history. Post-independence, it experienced a number of violent ructions. These included the infamous Gukurahundi chapter in the early 1980s,⁹³ the violence that characterised the land reform programme that began in 2000, and the egregious violation of human rights that accompanied various elections. In part, this was why Zimbabwe was hit with sanctions by the EU and US and found itself excluded from full participation in much of the international community.⁹⁴

As a means of dealing with human rights issues, Section 242 of the 2013 Constitution created the Zimbabwe Human Rights Commission (ZHRC). Its main functions include:⁹⁵

- a to promote awareness of and respect for human rights and freedoms at all levels of society;
- b to promote the protection, development and attainment of human rights and freedoms;
- c to monitor, assess and ensure observance of human rights and freedoms;
- d to receive and consider complaints from the public and to take such action in regard to the complaints as it considers appropriate;
- e to protect the public against abuse of power and maladministration by State and public institutions and by officers of those institutions.

Potentially, this is a strong shield against abuse by the state (and by other bodies). Indeed, of all the independent commissions created by the 2013 Constitution, the ZHRC seems to be the most independent and has, on several occasions, openly criticised the government for human rights abuses.⁹⁶

⁹³ This refers to violence and killings carried out by the Zimbabwean military between 1983 and 1987. The victims were largely Ndebele civilians who had been targeted as dissidents.

⁹⁴ For an account of the gravity of the violence, see: Eldred Masunungure, 'A Militarized Election: The 27 June Presidential Runoff,' in *Defying the Winds of Change: Zimbabwe's 2008 Elections*, ed. Eldred Masunungure, (Harare: Weaver Press, 2008), 79–97.

⁹⁵ Zimbabwe Constitution, ch, 12, pt. 3, s. 243, cl. 1 (a) - (e).

⁹⁶ The audacity of the ZHRC may be due to a variety of factors, one of which is the calibre of the pioneers of the commission - a significant number were independent minded academics and civil society. The commission also attracted considerable donor funding, to a greater extent than was the case with the other constitutional agencies.

For example, three days before planned demonstrations against corruption on 31 July 2020, the ZHRC released a statement urging the government to respect the Constitution and to refrain from 'use of various State machinery to instil fear and despondency. The State through its apparatus should desist from inflicting constitutionally proscribed measures such as torture or cruel, inhuman or degrading treatment or punishment on dissenting political voices.⁹⁷ The commission also called for an end to the abductions and torture of human rights defenders that were on the increase in 2020.

A statement released by the commission on 19 August 2020 acknowledged the 'recent cases of violation of rights of human rights defenders including the attacks on civil society as well as political and religious groups which are highlighting the diverse human rights abuses taking place in Zimbabwe.'98 The statement called on the government to respect, protect, promote and fulfil all the rights enshrined in the Declaration of Rights as provided for by Section 44 of the Constitution.

However, a body of this nature is only likely to be as effective as its ability to prompt action. It has not always found the government receptive. In the aftermath of protests in January 2019, it released a report that detailed abuses by the state, including 'detention of those arrested, indiscriminate targeting of people for arrests and assault by the security forces, violation of right to privacy when police and soldiers allegedly intruded people's homes at night looking for suspects and denial of bail to suspects by the courts.'⁹⁹

The government dismissed the report as 'biased' and 'not properly investigated.'100

However, in as much as the ZHRC has been hailed for speaking truth to power, some critics in civil society and the general citizenry feel that the ZHRC is not carrying out its mandate to its full potential. This is especially so given that one of the main functions of the ZHRC is to receive and consider complaints from the public and to take action where appropriate. While the ZHRC has acknowledged that there is a human rights abuse problem in Zimbabwe, no significant arrests have been made from the cases investigated by the commission, as mandated by the Constitution. This has seen the continuance of the culture of impunity, established well before the advent of the Second Republic, which is a constant in almost all of government's affairs. The police are often

⁹⁷ Veritas Zimbabwe, 'COMMISSIONS WATCH 13-2020 - ZHRC Statement on Freedom to Demonstrate', <u>http://www.veritaszim.</u> net/node/4364.

⁹⁸ Zimbabwe Human Rights Commission, 'Statement on Protection of the Rights of Human Rights Defenders in Zimbabwe,' Kubatana, August 19, 2020, <u>https://kubatana.net/2020/08/19/statement-on-protection-of-the-rights-of-human-rights-defend</u> ers-in-zimbabwe/.

^{99 &#}x27;Be impartial, government tells rights body,' *The Herald*, January 26, 2019, <u>https://www.herald.co.zw/be-impartial-govt-tells-</u>rights-body/.

^{100 &#}x27;Be impartial, government tells rights body,' The Herald.

culpable or complicit in these instances and they are reluctant and/or unwilling to investigate politically sensitive cases.

The COVID-19 pandemic has recently presented the government with an avenue to restrict more of its citizens' fundamental rights and freedoms, including freedom of speech, association and assembly. At the same time – with potential opposition restricted under the guise of health regulations – the government has expedited several pieces of proposed legislation that seek to stop Zimbabweans from exercising their rights. These include the Patriotic Bill and the Cyber Security and Data Protection Bill.¹⁰¹ COVID-19 restrictions also affected the right to health accorded in Section 76 (1) of the Constitution which states: 'Every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services.'¹⁰²

According to Amnesty International, among the most affected by the pandemic and the state's response to it were expectant mothers who found it difficult to be admitted to hospitals due to the absence of personal protective equipment in government hospitals.¹⁰³ Between March and June 2020, a total of 106 maternal deaths were recorded.¹⁰⁴

In 2021, human rights abuses and restrictions of fundamental freedoms by the state through the security forces continue, and the ZHRC's role remains rather reactive than proactive.¹⁰⁵

Open Governance

The Organisation for Economic Cooperation and Development defines open government as 'a culture of governance based on innovative and sustainable public policies and practices inspired by the principles of transparency, accountability, and

 ¹⁰¹ Fazila Mahomed, 'Creeping clampdown on dissent: Beware Zimbabwe's cybersecurity bill,' Daily Maverick, September 24, 2020, https://www.dailymaverick.co.za/article/2020-09-24-creeping-clampdown-on-dissent-beware-zimbabwes-cyber

 security-bill/.

¹⁰² Zimbabwe Constitution, ch, 14, pt. 2, s. 76, cl. 1.

^{103 &#}x27;Zimbabwe: Pregnant women and girls face barriers accessing public health facilities and risk life changing injuries,' Amnesty International, May 20, 2021, <u>https://www.amnesty.org/en/latest/news/2021/05/zimbabwe-pregnant-women-and-girls-face-barriers-accessing-public-health-facilities-and-risk-life-changing-injuries/.</u>

¹⁰⁴ Amnesty International, Amnesty International Report 2020/21: The State of the World's Human Rights (London: Amnesty International Ltd, 2021), 406, https://www.amnesty.org/en/wp-content/uploads/2021/06/POL1032022021ENGLISH.pdf.

¹⁰⁵ See also Section 3 Rule of Law, Militarisation of Politics, and Organised Violence.

participation that fosters democracy and inclusive growth.^{'106} An open government respects the rule of law and facilitates the involvement of its citizens in governance.

In Zimbabwe, little is done to foster this. Section 7 of the Constitution states that it is the duty of the state to promote public awareness of the Constitution,¹⁰⁷ but most Zimbabweans remain ignorant of their rights and obligations under it. Most people are not aware of their role in policymaking and more should be done by the government to make them so aware. The government has also failed to utilise technological developments as most of their websites are poorly run, with outdated information.

Government processes are usually shrouded in secrecy. The public, instead of contributing to policy, is relegated to being the recipient, if not the victim, of it. The government is deeply sceptical of private entities, which has resulted in poor relations between the government and civil society. The relationship between the state and civil society (for example, the private media, trade unions and non-governmental organisations (NGOs)) is highly oppositional, and these entities are frequently accused of being political and pursuing a 'regime change' agenda, especially if they have Western donor funding.¹⁰⁸ But due to the lack of accountability on the government's part, most Zimbabweans do not trust government and are suspicious of it. During the Mugabe era, there was a crackdown on civil society that started around 2000, due to its real or perceived links to the opposition party, the MDC.

After Mugabe's ouster, there were hopes that the leadership would steer a new path but, in many respects, little has changed. The Mnangagwa regime has maintained the frosty relationship with civil society and continues to ignore calls for reform. Human Rights Watch adds that engagement between the Zimbabwe government and non-state actors, such as opposition political parties and NGOs, are very limited and these entities have been reduced to addressing the government through press statements that are usually ignored.¹⁰⁹

Although there was a slight opening of civic space soon after Mnangagwa took over from Mugabe in 2017, the space has been shrinking steadily since the 2018 elections. According to a US Institute of Peace Special Report:¹¹⁰

¹⁰⁶ Organisation for Economic Cooperation and Development (OECD) Library, 'Open government strategies and objectives', https://www.oecd-ilibrary.org/sites/gov_glance-2017-64-en/index.html?itemId=/content/component/gov_glance-2017-64-en.

¹⁰⁷ Zimbabwe Constitution, ch, 1, s. 7.

^{108 &#}x27;Stern Warning for Errant NGOs', The Herald, June 25, 2021, https://www.herald.co.zw/stern-warning-for-errant-ngos/.

¹⁰⁹ Human Rights Watch, 'Zimbabwe - Events of 2020', undated, https://www.hrw.org/world-report/2021/country-chapters/zimbabwe.

¹¹⁰ Gladys Kudzaishe Hlatywayo and Charles Mangongera, "The Challenges for Social Movements in Post-Mugabe Zimbabwe" (Special Report 460, US Institute of Peace, Washington DC, 2020), 12.

The government has begun to reimpose reporting and registration requirements on nongovernmental organizations (NGOs) operating in Zimbabwe and even curtailing the kinds of work they can undertake. The government is again requiring NGOs to sign memoranda of understanding (MoUs) before being allowed to operate.

Additionally, a study entitled Zimbabwe Transparency Assessment 2018: The Citizens Analysis of Government Openness by the Media Institute of Southern Africa (MISA) Zimbabwe, revealed that although there were slight improvements from the Mugabe era, the Zimbabwe government 'still places barriers to citizens trying to access information.'¹¹¹

The Legislative Process and Pending Legislation

The Legislature is responsible for making laws in Zimbabwe, after consultations with the citizenry. Section 141 (a) of the Constitution specifies that 'Parliament must facilitate public involvement in its legislative and other processes and in the processes of its committees.'¹¹² Section 141 (c) also mandates Parliament to 'conduct its business in a transparent manner and hold its sittings, and those of its committees, in public...'¹¹³ While this an important opportunity for the public to participate in governance, public consultations are underutilised by the masses and largely under-attended, with most Zimbabweans not even aware of their potential contribution to law-making.

What has followed has been the promulgation of laws that are contrary to the spirit of the Constitution, and which undermine the rule of law.

Zimbabwe has a history of controversial laws enacted to curtail freedoms. Parliament, save for the houses after the 2000 and 2008 elections, has largely been made up of ZANU-PF representatives. The party has used its numerical advantage to formulate laws, often with elections in mind.

The AIPPA and POSA have been repealed and replaced, while the Broadcasting Services Act has been amended. According to MISA Zimbabwe: 'Some of the provisions of the new Freedom of Information Act (AIPPA's replacement) will go a long way in giving

113 Zimbabwe Constitution, ch, 6, pt. 7, s. 141, cl. c.

¹¹¹ Media Institute of Southern Africa (MISA) Zimbabwe, Zimbabwe Transparency Assessment 2018: The Citizens Analysis of Covernment Openness (Harare: MISA, 2018), 102, <u>https://kubatana.net/wp-content/uploads/2018/10/Zimbabwe-Transparency-Assessment-2018.pdf</u>. Also see Section 7: Shrinking Civic Space for more discussion of this theme.

¹¹² Zimbabwe Constitution, ch, 6, pt. 7, s. 141, cl. a.

effect to Sections 61 and 62 of the Constitution which provide for freedom of expression, media freedom and access to information.¹¹⁴

However, MOPA (POSA's replacement) and the Freedom of Information Act have raised eyebrows as some aspects are almost identical to their repealed predecessors.¹¹⁵ The Legislature, led by the majority-wielding ruling party, continues to push for laws that benefit the latter and its hold on power.

One such proposed law is the Patriotic Bill. This is an attempt to curtail the exercise of free speech, a fundamental right protected by the Constitution. The bill seeks to 'prohibit any Zimbabwean citizen from wilfully communicating messages intended to harm the image and reputation of the country on international platforms or engaging with foreign countries with the intention of communicating messages intended to harm the country's positive image and/or to undermine its integrity and reputation.'¹¹⁶ In pushing for the bill, ZANU-PF Chief Whip and Gutu MP, Pupurai Togarepi, revealed that it was his wish for the Patriotic Bill to be passed so that MDC-A leaders Tendai Biti and Nelson Chamisa would be barred from running for public office in the future, due to their call for the imposition of restrictive measures against senior government officials.¹¹⁷ The bill is part of a long line of proposed laws meant to weaponise the law against its citizens in order to control, intimidate and stifle dissent. The proposed Patriotic Act comes with a heavy jail term for those found guilty.

Another proposed law, the Cyber Security and Data Protection Bill, seeks to curtail online freedom of speech. In August 2020, the Zimbabwean Lives Matter campaign caught the attention of the world and shone a light on human rights abuses perpetrated by the government, with Mnangagwa threatening to 'flush out the dark forces' involved in the campaign.¹¹⁸ The government is aware of the growing appeal of social media as a tool for accountability and to raise the alarm on its questionable activities that have resulted in the expediting of the bill. According to one analysis: 'In a desperate bid to control the digital space and increase its surveillance of citizens, the Zimbabwe government

¹¹⁴ MISA Zimbabwe, 'New information law should set pace for repeal of other draconian laws', <u>https://zimbabwe.misa.org/2020/</u> 07/02/new-information-law-should-set-pace-for-repeal-of-other-draconian-laws/.

 ¹¹⁵ Zimbabwe Human Rights NGO Forum, "An Analysis of the Maintenance of Peace and Order Bill, 2019" (Position Paper,

 Zimbabwe Human Rights NGO Forum, Harare, 2019), https://www.hrforumzim.org/publications/an-analysis-of-the-mainten-ance-of-peace-and-order-bill-2019/.

Parliament of Zimbabwe, National Assembly Hansard 2 March 2021 (Harare: Parliament of Zimbabwe, 2021), 16, https://www.parlzim.gov.zw/national-assembly-hansard/download/3271_2b56e32f4f355f3b0717d44be15c8876.

¹¹⁷ Costa Nkomo, 'Zimbabwe: Zanu-PF MPs Want Chamisa, Biti Barred From Running for Public Office,' AllAfrica, March 8, 2021, https://allafrica.com/stories/202103080127.html.

¹¹⁸ Kudzai Mashininga, 'As opposition mounts, Zimbabwe's president lashes out,' *Mail and Guardian*, August 7, 2020, https://mg.co.za/africa/2020-08-07-as-opposition-mounts-zimbabwes-president-lashes-out/.

has been attempting to push through the Cyber Security and Data Protection Bill during the Covid-19 lockdown with limited citizen input.'¹¹⁹ Although not yet passed, several people, including activist Hopewell Chin'ono and opposition politicians Fadzayi Mahere and Job Sikhala, have been arrested over social media posts. The proposed bill undermines freedom of expression and freedom of the media, as guaranteed by Section 61 of the Constitution. There are also fears that the bill will set back the contribution that social media has made in exposing graft in the government, as Clause 164 (c) of the bill criminalises the spread of what the government describes as false information, punishable by a jail term of up to five years.¹²⁰

¹¹⁹ Stephen Buchanan-Clarke and Sikhululekile Mashingaidze, 'Zimbabwe uses lockdown to undermine rule of law,' *Businesslive*, July 24, 2020, https://www.businesslive.co.za/bd/opinion/2020-07-24-zimbabwe-uses-lockdown-to-undermine-rule-of-law/.

RECOMMENDATIONS

To properly set Zimbabwe on the path towards political freedom, open governance and a respect for human rights and civil liberties, the government must:

- ensure that the processes by which laws are enacted, administered and enforced are accessible, fair and efficient;
- modernise and update websites to provide the public with useful and useable information presently, they are poorly managed and contain outdated information;
- endeavour to have viable and productive working relationships with citizens, the private sector and civil society actors to enhance transparency, accountability and mutual exchange of knowledge and lessons (presently, government and civil society act in silos and the relationship is characterised by distrust and tension);
- ensure that the impunity the security forces seemingly enjoy is decisively and urgently ended, especially with the police, the constitutional custodians and enforcers of the law, which would also help to enhance low public confidence and trust in the law enforcement agencies; and
- ensure and guarantee the impartiality of the police as per the national Constitution the establishment of the ZICC would go a long way in monitoring police conduct in this regard.

Parliament must:

- introduce strategies to publicise its work, with particular focus on its highly valuable country-wide public hearings, and engage in more educational outreach programmes to raise awareness to the public on its role in policymaking (presently, this pivotal legislative function is not widely known and as a result, public hearings are not well attended and some controversial laws sail through Parliament without the scrutiny they demand); and
- ensure the Government Gazette announces proposed laws and public hearings, which should be easy to access, including online, and distributed freely.

Civil society must:

• strengthen its capacities to lobby the government and other stakeholders for reforms and respect for the Constitution and rule of law.

CHAPTER 4



Rule of Law, Militarisation of Politics and Organised Violence

This issue relates to the Democracy and Good Political Governance thematic area, specifically:

>> OBJECTIVE 1

Entrenching Constitutional Democracy and the Rule of Law

- Question 1 What weight do provisions establishing the rule of law and the supremacy of the constitution carry in practice?
- Question 2 To what extent does the Executive respect the rule of law?

Prevention and Management of Intra and Inter-State Conflicts

Question 1 What conditions generate conflict in your country?

The rule of law is the bedrock of any democracy as it ensures the principle of equality for all citizens, regardless of race, gender or social class. The laws of a constitutional state are codified in line with the precepts set out in its constitution. The broad principle is that the state is run according to laws which represent particular values, then applied to the governed and to those in authority – the state and its agents cannot act as they wish. In addition, it is generally agreed that the rule of law as a concept has to do with the principle of equality before the law and separation of powers. The law should treat all people equally and consistently, respecting their rights and holding them accountable for their misdeeds irrespective of their position in society, and within the state, conduct of the various arms should be held accountable by the others.

In Zimbabwe, such a system is formally enshrined in the 2013 Constitution. The supremacy of the Constitution is laid out in Chapter 1 Section 2 (1): 'This Constitution is the supreme law of Zimbabwe and any law, practice, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.'¹²¹ Chapter 1, Section (3) (b) adds that, along with the supremacy of the Constitution, Zimbabwe is founded on respect for the rule of law.¹²²

In addition, Chapter 1, Section 3 (2) (e) of the Constitution codifies the principle of separation of powers: 'The principles of good governance, which bind the State and all institutions and agencies of government at every level, include the observance of the principle of separation of powers'.¹²³ Chapter 5 Section 90(2) (c) of the Constitution furthermore lists as one of the duties of the president that the head of state must ensure protection of the fundamental human rights and freedoms and the rule of law.¹²⁴ Therefore, the president has a constitutional mandate and duty to be at the forefront of championing the principle of the rule of law.

For effective rule of law, the Judiciary is of paramount importance. Chapter 8, Section 164 (1) provides for the independence of the Judiciary and states: 'The courts are independent and are subject only to this Constitution and the law, which they must apply impartially, expeditiously and without fear, favour or prejudice.'¹²⁵ The Judiciary is responsible for interpreting the Constitution and should be independent from both the Legislature and the Executive. The Judiciary is made up of the Constitutional Court,

¹²¹ Zimbabwe Constitution, ch, 1, s. 2, cl. 1.

¹²² Zimbabwe Constitution, ch, 1, s. 3, cl. b.

¹²³ Zimbabwe Constitution, ch, 1, s. 3, cl. 2 (e).

¹²⁴ Zimbabwe Constitution, ch, 5, pt. 2, s. 90, cl. 2 (c).

¹²⁵ Zimbabwe Constitution, ch, 8, pt. 1, s. 164, cl. 1.

Supreme Court, High Court, Labour Court, Administrative Court, magistrate courts, customary law courts and other courts established under acts of Parliament.

During his speech when formally joining the APRM in 2020, Mnangagwa committed to these principles:¹²⁶

To date, we have already undertaken deliberate and extensive cross-cutting political, economic, legislative and media reforms towards achieving a just, open, accountable and economically prosperous nation. These reforms are meant to further enhance and consolidate the democratic principles enshrined in our Constitution. We subscribe to the sacrosanct principle of separation of powers and rule of law.

While the spirit of the Constitution calls for the separation of powers, there is, as has been noted previously, a blurred distinction among the three branches, with the Executive accused of meddling in the affairs of both the Judiciary and the Legislature. This makes the concept of the rule of law essentially theoretical in Zimbabwe as the Constitution has been ignored and distorted to further the agendas of the holders of power. While Mnangagwa states that his administration is based on the rule of law and separation of powers, the situation on the ground suggests otherwise.

This is demonstrated in several areas.

Weaponisation of the Judiciary

The Judiciary has become used as a tool of political repression, giving a veneer of procedural respectability to state abuse. The weaponisation of the Judiciary manifested in the excessive and irrational use of pre-trial detention to punish dissenting voices. The Judiciary was weaponised to the extent of charging Hopewell Chin'ono with a defunct law, which saw him incarcerated for more than 14 days.¹²⁷ On numerous occasions, the Harare Magistrate Court and the High Courts denied bail to human rights defenders and dissenting voices, without reason. In turn, perpetrators of looting and bigotry, such as Henrietta Rushwaya who was caught smuggling gold, walked off scot-free. In the

 ¹²⁶ Peter Fabricius, 'Zimbabwe signs on to African Peer Review Mechanism,' Daily Maverick, February 10, 2020, https://www.dailymaverick.co.za/article/2020-02-10-zimbabwe-signs-on-to-african-peer-review-mechanism/.

^{127 &#}x27;Zimbabwe court quashes charges against journalist Hopewell Chin'ono,' *The Guardian*, April 28, 2021, <u>https://www.theguardian.com/world/2021/apr/28/zimbabwe-court-quashes-charges-against-journalist-hopewell-chinono</u>. Also see 'Cracking Down on Dissent', under Section 7 - Shrikning Civic Space.

case of Jacob Mafume, by contrast, he was arrested on 25 November 2020 and was only granted bail on 16 January 2021.¹²⁸

Unwarranted Amendments to the Constitution

The government has begun a process of undermining human freedoms through arbitrary amendments to the Constitution. These are meant to eliminate certain checks and balances on state power and to concentrate power in the Executive and the president. The Constitutional Amendment No. 2 (discussed earlier) stands to weaken the foundational tenets of constitutional democracy and the rule of law by granting the president extended powers to hire and fire constitutional officers and make farreaching decisions with limited oversight. The nature of the amendments cumulatively violates established international norms built into Zimbabwe's constitutional order. The changes effected through the amendment take Zimbabwe back to the Lancaster House Constitution, whose extensive Executive powers and attenuated oversight mechanisms were overwhelmingly rejected by Zimbabweans on 16 March 2013.

Excessive Use of Presidential Powers

The president has powers to make regulations in a matter of urgency and/or necessity through the Presidential Powers (Temporary Measures) Act.¹²⁹ Such sweeping powers can only be used in exceptional circumstances, given that they usurp the law-making function ordinarily vested in Parliament. The president invoked this act to counter the COVID-19 crisis, which gave him the power to implement unilateral regulations without Parliamentary oversight.¹³⁰ The Presidential Powers (Temporary Measures) (Deferral of Rent and Mortgage Payments During National Lockdown) Regulations, 2020 is a typical example of the unilateral implementation of regulations by the president. For the better part of 2020 and 2021, the country was operating at various degrees of the national lockdown implemented through presidential powers without Parliamentary approval. While it is understandable that both the country and the world were tackling the COVID-19 pandemic and that extraordinary measures needed to be taken, the overuse of presidential powers to implement over 25 regulations impacted citizens' rights to representation. Allowing the president sweeping powers to enact regulations on issues

¹²⁸ Zimbabwe Human Rights NGO Forum, 'Time line of Jacob Mafume's incarceration,' Facebook, January 14, 2020, https://www.facebook.com/ZimHRNGOForum/photos/3463756513721490.

¹²⁹ Presidential Powers (Temporary Measures) Act No. 1 of 1986.

¹³⁰ Miriam Manyangwa, 'ED Abusing Presidential Powers Act', Newsday October 30, 2020 - <u>https://www.newsday.co.zw/2020/10/</u>ed-abusing-presidential-powers-act/.

that only an act of Parliament can ordinarily legislate, represents an affront to the principle of the separation of powers.

Shrinking Civic Space and Silencing Dissenting Voices

The state has also attacked CSOs by threatening them with deregistration and auditing of their finances. Mnangagwa, on 22 October 2020, vowed to push for the enactment of the Private Voluntary Organisations Amendment Bill to deal with NGOs and Private Voluntary Organisations (PVOs) that operate outside mandates the government considers suitable.¹³¹ On 27 October 2020, the Minister of Information, Publicity and Broadcasting Services, Monica Mutsvangwa, announced cabinet's approval of the proposed amendments to the Criminal Law (Codification Reform) Act that criminalised 'unauthorised engagements with foreign governments and their agents', making 'unsubstantiated' allegations of torture and 'inviting sanctions'.¹³² Similarly, the proposed introduction of a Patriotic Bill, which intends to criminalise the work of CSOs and opposition party supporters,¹³³ is another worrisome development. When viewed in unison, these developments point to a systematic attack against CSOs and democratic spaces, by threatening civic activity and limiting freedom of speech.

Alignment of Laws to the Constitution

Even though the Constitution has been in effect for seven years, pertinent issues relating to constitutional alignment are still outstanding. This includes important electoral laws as well as the operationalisation of Section 210, which provides for an independent mechanism for receiving and investigating complaints of misconduct against members of the security services from members of the public.¹³⁴ The provision is of paramount importance as it is geared towards providing effective remedies to cases of impropriety and abuse of power by members of the security services. According to the IMT, 84 laws

¹³¹ Veneranda Langa, 'Mnangagwa threatens to crack whip on NGOs', *The Zimbabwe Independent*, October 23, 2020, https://www.theindependent.co.zw/2020/10/23/mnangagwa-threatens-to-crack-whip-on-ngos/.

^{132 &#}x27;New Law to Criminalise Unpatriotic Acts', *The Sunday Mail*, October 4, 2020, <u>https://www.sundaymail.co.zw/new-law-to-</u> criminalise-unpatriotic-acts.

¹³³ See Centre for Innovation and Technology, 'Patriotic Bill to further shrink Zim's democratic space', kubatana.net, April 12, 2021, https://kubatana.net/2021/04/12/patriotic-bill-to-further-shrink-zims-democratic-space/.

¹³⁴ Lovejoy Mutongwiza, 'Lawyers Castigate Independent Complains Commission Bill Clauses', *263 Chat*, June 8, 2021, https://www.263chat.com/lawyers-castigate-independent-complains-commission-bill-clauses/.

still need to be aligned.¹³⁵ This means that Zimbabwe is still being governed by archaic laws that operate in contradiction to the supreme law of the land.¹³⁶

Harassment and Abuse of Lawyers Taking up Political Cases

The arrest, intimidation and reprisals against lawyers is also commonplace in Zimbabwe. On 18 August 2020, human rights lawyer Beatrice Mtetwa was barred from representing Hopewell Chin'ono at the Harare Magistrate Court. In an unprecedented move, Magistrate Ngoni Nduna ordered that Mtetwa be charged with contempt of court in relation to comments about the case that were posted on a Facebook page. State prosecutors argued that these comments scandalised the state. Although the Facebook page is run by an independent filmmaker who produced a documentary about the human rights lawyer's work, and who stated in several posts that Mtetwa does not operate and has never posted on the page, the magistrate still declared that he would refer his ruling to the Law Society of Zimbabwe for possible further sanctions against Mtetwa.¹³⁷

Organised Torture and Violence

Zimbabwe has a long history of violence dating back to the struggle for liberation – and before. After independence, this mentality and warrior political culture proved hard to dismantle, as the leadership of the country believed that violence was a legitimate tool for solving political problems and dealing with perceived enemies. Founded as a democratic republic, Zimbabwe's political culture was shaped by Marxist-Leninist ideology, emphasising state security¹³⁸ over human security.¹³⁹

Regrettably, violence and intimidation has been a feature of post-liberation Zimbabwean politics. The situation is compounded by the lack of strong structures and political will to deal with perpetrators in a context where the economy is strongly entangled in politics. The state has always responded to dissent in a heavy-handed

¹³⁵ IMT, 'Bill Tracker', undated, https://imt.gov.zw/resources/bill-tracker/.

¹³⁶ See Section 1 - Constitutionalism.

¹³⁷ See 'Just in: Mtetwa abdicated her role as officer of the court', *The Herald*, August 18, 2020, <u>https://www.herald.co.zw/just-in-</u> mtetwa-abdicated-her-role-as-officer-of-the-courts/.

¹³⁸ The protection of the state and its borders as opposed to the protection of individuals in a country.

¹³⁹ The UN General Assembly defines human security as freedom from fear, freedom from want, and the freedom to live in dignity. See Oscar A Gomez and Des Gaspar, Human Security: a thematic guidance note for regional and national human development report teams, UNDP, undated, http://hdr.undp.org/sites/default/files/human_security_guidance_note_r-nhdrs.pdf.

manner through the use of the police, the Central Intelligence Organisation (CIO) and the military. This is the antithesis to the rule of law. Known perpetrators have usually been accorded impunity. Post-Mugabe, the security forces have retained their reputation for being heavy-handed and for the excessive use of force.

The Militarisation of Zimbabwe

While it was common to describe Zimbabwe as a 'police state' under Mugabe, there has been an evolution towards a 'military state' or a 'securocratic state'.¹⁴⁰ The military executed what amounted to a coup d'etat in November 2017. Under Mugabe, police and war veterans were deployed to deal with dissent, but military involvement in civilian affairs has dramatically increased since 2017.

The military's involvement in civilian politics has deep roots. An early step towards militarising the ruling ZANU-PF and the country took place with the establishment the National Youth Service (Border Gezi Training Centre) in 2000.¹⁴¹ This saw the training of youth in 'nationalism and patriotism'¹⁴² that amounted to ZANU-PF propaganda and the use of small arms – and was a prerequisite for getting into tertiary institutions or public service. Its trainees were the so-called 'Green Bombers', who became particularly notorious during the 2008 presidential runoff elections. According to the Zimbabwe Human Rights NGO Forum, 30% of the perpetrators of heinous violations, such as abductions, extrajudicial killings, rape and torture, were the Green Bombers.¹⁴³ The programme was suspended in 2018, but ZANU-PF recently announced its resumption in April 2021.

Having restored Mugabe's fortunes through campaigning and violence in 2008, the military had the capacity to be a kingmaker and potentially, to become king itself in the future. The military was not a neutral and professional actor, as would be stipulated by the 2013 Constitution. Rather, it viewed itself as the key foundation stone of the party-state and a player in any political succession. The drift towards a military state was finally confirmed by the 2017 coup that toppled Mugabe and installed Mnangagwa as

¹⁴⁰ A state in which the military and security apparatus dominates the power complex.

¹⁴¹ Solidarity Peace Trust, National youth service training - "shaping youths in a truly Zimbabwean manner". An overview of youth militia training and activities in Zimbabwe (Port Shepstone: Solidarity Peace Trust 2003), <u>https://reliefweb.int/sites/</u> reliefweb.int/files/resources/9F2AD499B637D01749256D9C001C8758-spt-zim-5sep.pdf.

¹⁴² Solidarity Peace Trust, National youth service training - "shaping youths in a truly Zimbabwean manner". An overview of youth militia training and activities in Zimbabwe (Port Shepstone: Solidarity Peace Trust 2003), 14, <u>https://reliefweb.int/sites/</u> reliefweb.int/files/resources/9F2AD499B637D01749256D9C001C8758-spt-zim-5sep.pdf.

¹⁴³ Sokwanele, The Anatomy of Terror (Harare: Kubatana 2011), <u>http://archive.kubatana.net/docs/demgg/sokwanele_anatomy_of_</u> terror_110612.pdf.

president. Despite official denials that it was a coup, there was little doubt that senior military officers executed it. Some officers went on to become leading members of the post-coup cabinet and presidium. Most accounts of the coup elaborate on how the military neutralised potential resistance from other state security organs such as the police and CIO.

The military has infiltrated four zones of power contestations for its long-term capturing of both party and state: the media, Judiciary, electoral processes and the Legislature. Although the military has had a presence in civilian affairs throughout the history of the country, this has become more pronounced in recent years.

The following are concrete examples of the militarisation of Zimbabwe since 2017.

Installation of Military Leaders in Strategic Political Positions

Generals and high-ranking military officers were appointed to political positions after the coup. General Constantino Chiwenga was made vice president. Similarly, Perrance Shiri, retired air chief marshal of the Zimbabwe Air Force, was appointed Minister of Lands, Agriculture and Rural Resettlement. This trend has been seen elsewhere too, for example, in reports of the appointment of military personnel to manage the Zimbabwe Consolidated Mining Company in Marange. The installation of military personnel in political positions is a true indicator of the departure from a police state to a military state – and of the militarisation of politics to the detriment of civilian control.

Involvement of the Military in Civilian Affairs

To win the favour of the military, the incumbent government has unilaterally appointed former military cadres to critical positions for which they were inexperienced. This was the case with the appointment of Vice-President Chiwenga as Health Minister and Child Care – he had zero experience in public health, but held a ministerial position of critical importance during a health crisis. The result of this has been corruption in the health sector, particularly surrounding the procurement of COVID-19 test kits and sundries, and the general dilapidation of the health care system. Recently, Chiwenga threatened to fire all civilian doctors and replace them with military doctors. He decreed that junior doctors should be recruited as military doctors, or they would not be permitted to work in government hospitals.¹⁴⁴ This has led to the further deterioration of the health

¹⁴⁴ Tony Karombo, 'Zimbabwe to make doctors army employees to stop wage strikes,' ZimLive, October 1, 2020, <u>https://www.zimlive.com/2020/10/01/zimbabwe-to-make-doctors-army-employees-to-stop-wage-strikes/</u>; Abdur Rahman Alfa Shaban, 'Zimbabwe deploys army to hospitals as doctors strike takes its toll,' Africa News, February 22, 2017, <u>https://www.africanews.com/2017/02/22/zimbabwe-deploys-army-to-hospitals-as-doctors-strike-takes-its-toll//</u>.

care system, particularly where relations between health professionals and the state is concerned. Another example is the appointment of retired Air Marshal Perrance Shiri as the Minister of Lands, Agriculture, Fisheries, Water and Rural Resettlement, again without professional merit or experience.

Reliance on the Military to Deal with Dissent

The government has recently started depending on the military to deal with dissenting voices. Previously, the infamous Zimbabwe Republic Police Support Unit¹⁴⁵ was used to quell protests and to respond to civil unrest. However, after 2017, the military has been called in to do this without due process being followed – another violation of the rule of law and intrusion into the civilian realm. For instance, the Motlanthe Commission of Inquiry into post-election violence in 2018 recognised that the president should not deploy the military in his capacity as the commander in chief in the wake of the 1 August 2018 protests.¹⁴⁶ The military was deployed by Chiwenga, using his influence as a retired general of the army, and seven innocent civilians were gunned down by soldiers.¹⁴⁷ Similarly, the army was deployed in January 2019 to respond to civil unrest. In the same fashion, over 17 people were killed and 16 confirmed rapes were documented.¹⁴⁸ It is also worrisome to note that the government deployed soldiers to enforce COVID-19 regulations. The result was similar, with widespread reports of torture against protestors and the general public, as well as demands for bribes.¹⁴⁹

Infiltration of the Military in Critical Democratic Areas

The military has also infiltrated key positions in government departments, independent commissions, the media and the Judiciary. In 2018, the ZEC admitted to employing serving members of the army, the police and the CIO,¹⁵⁰ raising questions about the independence of ZEC and the credibility of elections. Similarly, it took a Constitutional Court ruling for serving soldiers and police officers to be excluded from the Prosecutor-General's (PG)

¹⁴⁵ This is a special weapons and tactics division of the national police which is infamous for unconventional torture methods such administering falanga and waterboarding.

^{146 &#}x27;Zimbabwe Army Boss Is Said to Demand: Who Ordered Crackdown?' Bloomberg, August 7, 2018,

¹⁴⁷ Zimbabwe Human Rights NGO Forum, *Post-election violence monitoring report*, 1 August-31 August (Harare: Zimbabwe Human Rights NGO Forum, 2018), <u>http://www.hrforumzim.org/wp-content/uploads/2018/09/Post-Election-Violence-Report-for-August-III.pdf</u>.

 ¹⁴⁸ Zimbabwe Human Rights NGO Forum, On the Days of Darkness in Zimbabwe. An Updated Report on the Human Rights:

 Violations Committed between 14 January, 2019 to 5 February, 2019 (Harare: Zimbabwe Human Rights NGO Forum, 2019),

 https://www.hrforumzim.org/wp-content/uploads/2019/02/Shutdown-Atrocities-Report-6-February-2019.pdf.

 ¹⁴⁹ Zimbabwe Human Rights NGO Forum, 180 Days of What? A summary review of the first 180 days of the COVID-19 lockdown in Zimbabwe, special report (Harare: Zimbabwe Human Rights NGO Forum, 2020), https://kubatana.net/wp-content/uploads/2020/10/180-Days-of-What-Ir.pdf.

¹⁵⁰ Blessed Mhlanga and Richard Chidza 'ZEC in soldiers' storm,' *Newsday*, March 2, 2018, <u>https://www.newsday.co.zw/2018/03/</u> zec-soldiers-storm/.

Office. It is difficult to establish what they were doing, leaving one to speculate that they were involved in the prosecution and mass incarceration of human rights defenders and opposition party supporters. The Constitutional Court ruled that their appointment to the PG's office was in contravention of Section 208 (4) of the Constitution.¹⁵¹

Adapting the Military for Intelligence Gathering

In a move that was supposed to limit the abuse of the military uniform, soldiers were stripped of their right to wear uniforms in public. The effects were the formation of an intricate web of military spies, who took the functions of the now-defunct CIO.¹⁵² In form and function, the soldiers have become spies in public spaces such as public transport systems. The new motto adopted by soldiers, *chinhu chedu*¹⁵³, points to their ownership of the country, having taken it back from the Zimbabwe Republic Police (ZRP) and CIO who used to control the status quo.

The heavy-handedness of the state against dissenting voices is now increasingly nasty and more brutish. They demonstrate a departure from a police state, in which arrests and assaults were the order of the day, to a militarised state, which is characterised by abductions, gunshots, extrajudicial killings and rape.

Organised Violence and Torture

Section 53 of the Constitution states that: 'No person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.'¹⁵⁴ Sadly, political violence and torture persist. Zimbabwe has not yet ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) nor the International Convention on Protection of all Persons from Enforced Disappearances, which adds to the difficulty of stopping incidents of torture and violence and demanding accountability.

The human rights crisis and organised violence and torture (OVT) that developed in 2000 has continued into the present. Still, the history of OVT prior to independence

¹⁵¹ Justice Guvava, 'Court issues ultimatum for serving soldiers and police officers in PC's office,' Zimeye, February 20, 2019, https://www.zimeye.net/2019/02/20/court-issues-ultimatum-for-serving-soldiers-and-police-officers-in-pgs-office/; 'Ultimatum for prosecutors from security sector to vacate the courts,' Zimeye, February 2, 2021, <u>https://www.zimeye.net/2021/02/02/ultima</u> tum-for-prosecutors-from-security-sector-to-vacate-the-courts/.

^{152 &#}x27;Zimbabwe soldiers banned from wearing uniform outside barracks unless when deployed - report,' *Pindula*, February 9, 2019, <u>https://news.pindula.co.zw/2019/02/09/zimbabwe-soldiers-banned-from-wearing-uniform-outside-barracks-unless-when-</u> <u>deployed-report/</u>.

¹⁵³ Chinhu chedu loosely translates to 'this country is ours' or 'it's our thing.'

¹⁵⁴ Zimbabwe Constitution, ch, 4, pt. 1, s. 53.

cannot be excluded from any understanding of the phenomenon: the continuities in the kind of violations between pre-and post-independence are far too great to ignore. For example, the basic repressive apparatus of the Rhodesian state retained by the Zimbabwe state is still operational.

The greatest attacks on human dignity in Zimbabwe manifest in the brutality of state security machinery. Journalists have been attacked for doing their work. Abductions, assault and torture have been on the rise. For example, between April and September 2020, the Human Rights NGO Forum documented 35¹⁵⁵ abductions, including the abduction and torture of Tawanda Muchehiwa, caught on CCTV. (Muchehiwa was suspected – erroneously, it seems – of organising demonstrations against the government.)¹⁵⁶ Similarly, on 8 August 2020, four men abducted Noxolo Maphosa, tortured and sexually abused her. During her ordeal, they asked about the whereabouts of her activist uncle Josphat Ngulube.¹⁵⁷ Historically, cases of abductions have been unsatisfactorily investigated. The government has claimed that the abductions are stage-managed or perpetrated by unnamed 'third forces.'¹⁵⁸

Apart from abductions, illegal raids have also been recorded at the homes of individuals critical of the government, including journalists, opposition leaders and labour movement leaders. Key perpetrators are officials of the state security forces, unknown assailants and ruling party political activists. On 10 June 2020, UN human rights experts called on Zimbabwe 'to immediately end a reported pattern of disappearances and torture that appear aimed at suppressing protests and dissent'.¹⁵⁹

For a flavour of this, the remarks of the international NGO Human Rights Watch in 2020 are instructive:¹⁶⁰

Zimbabwe's human rights situation continued to decline in 2020 under Emmerson Mnangagwa's presidency. Unidentified assailants, suspected to be

 ¹⁵⁵ Zimbabwe Human Rights NGO Forum, Political and Human Rights Violations Report April to September 2020,

 (Harare: Zimbabwe Human Rights NGO Forum, 2020), 7, https://kubatana.net/wp-content/uploads/2020/11/PVR-April-to-September-2020.pdf.

 ¹⁵⁶ See Kudzai Mashininga, 'The brutal abduction caught on camera in Zimbabwe', Mail and Guardian, September 13, 2020, https://mg.co.za/africa/2020-09-13-the-brutal-abduction-caught-on-camera-in-zimbabwe/.

 ¹⁵⁷ Sipho Mabuza, 'Woman, 23, abducted and sexually abused in Mnangagwa reign of terror,' ZimLive, August 8, 2020,

 https://www.zimlive.com/2020/08/08/woman-23-abducted-and-sexually-abused-in-mnangagwa-reign-of-terror/.

¹⁵⁸ See, for example, Gibbs Dube, 'Zimbabwe govt says third force behind abduction of local doctor', VOA, September 19, 2019, https://www.voazimbabwe.com/a/zimbabwe-government-abduction-doctor-magombeyi/5086878.html.

¹⁵⁹ Office of the UN High Commissioner for Human Rights, 'Zimbabwe: UN experts demand an immediate end to abductions and torture,' June 10, 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25944&LangID=E.

¹⁶⁰ Human Rights Watch, "Zimbabwe - Events of 2020".

state security agents, abducted and tortured more than 70 critics of the government during 2020. Security forces also continued to commit arbitrary arrests, violent assaults, abductions, torture and other abuses against opposition politicians, dissidents and activists. In July 2020, police arrested prominent journalist Hopewell Chin'ono and Transform Zimbabwe Party leader Jacob Ngarivhume after they called for nationwide anti-corruption protests. The police violently dispersed protests in July, wherein 16 protesters were injured and a further 60 were arrested.

TABLE 3 INCIDENTS OF OVT* BY YEAR AND GENDER OF VICTIM - 1998 TO MAY 2021							
YEAR OF INCIDENT	FEMALE	MALE	TOTAL				
1998	10	21 31					
1999	1	8 9					
2000	124	391 515					
2001	99	339 438					
2002	310	1108 1418					
2003	161	487 648					
2004	175	448 623					
2005	233	364 597					
2006	294	344	638				
2007	446	820 1266					
2008	5879	9557	15436				
2009	151	328 479					
2010	155	336 491					
2011	184	526 710					
2012	100	327 427					
2013	211	371 582					
2014	121	259 380					
2015	160	362 522					
2016	246	561 807					
2017	138	386 524					
2018	132	342 474					
2019	322	574 896					
2020	242	681 923					
2021	2021 263		676				
Grand Total	10 157	19 353	29 510				

* organised violence and torture

Source: Zimbabwe Human Rights NGO Forum, Ruled by violence: An analysis of the nature, patterns and execution of violence in Zimbabwe since 1998 (Harare: Zimbabwe Human Rights NGO Forum, 2020), https://drive.google.com/file/d/liEiGxSSB3XE0F iEHsGIYTEBfx40oGTB/view?fbclid=IwAR0zYV9tsRjZBkoe954Z6vQ7-eoKUKABqJuEzdn74_vm51gZm8GuuxRRNSQ Abductions and torture remain the 'go to tactics' for the government in dealing with its political enemies, even years after Mugabe's departure and the supposed turn to a new path for the country. Despite promising to put an end to violence and torture, it has continued under the Mnangagwa administration. A Human Rights NGO Forum report documented and verified hundreds of organised violent abductions and torture cases since Mnangagwa came into power in November 2017.¹⁶¹ His ascendency has marked an increase in such activities compared to previous years.

The evidence gathered on OVT over the period 1998 to 2019 shows higher incidences in 2002, 2008, 2016 and 2019. Notably, these were election years (2002 and 2008) and years of strikes and protests (2016 and 2019). The peak year of violence was 2008, with over 15,000 incidents. Of concern, violations documented between 2017 to 2021 have been considerably higher than in previous years.

Torture against political opponents has been routinely used, particularly in election campaigns and post-election retribution and consists of beatings, electric shocks, harm to private parts and the use of falanga torture (to inflict pain to soles of feet), among others. Perhaps the most symbolic torture session was the brutal beating of Save Zimbabwe campaigners, including, among others, MDC President Morgan Tsvangirai and National Constitutional Assembly Leader Lovemore Madhuku in March 2007 in Harare.¹⁶² Furthermore, the public display of the effects of torture was aimed at sending a message to all, a warning to others and a lesson that authorities can humiliate anybody.

Torture as a mode of punishment was not confined to political opponents. It was widely used against civil society activists such as students, trade unionists and women campaigners who stood up against authoritarianism. A report in 2007, focused on 24 victims, observed that torture had devastating physical, psychological and social health consequences. The victims had continued to suffer from substantial and often debilitating physical and psychological symptoms as a direct result of abuse.¹⁶³

¹⁶¹ Zimbabwe Human Rights NGO Forum, Ruled by violence: An analysis of the nature, patterns and execution of violence in Zimbabwe since 1998 (Harare: Zimbabwe Human Rights NGO Forum, 2020), <u>https://drive.google.com/file/d/liEiGxSSB3XEOF_</u> iEHsGIYTEBfx40oGTB/view?fbclid=IwAR0zYV9tsRjZBkoe954Z6vQ7-eoKUKABqJuEzdn74_vm51gZm8GuuxRRNSQ.

^{162 &#}x27;Zimbabwe's Tsvangirai beaten and hurt in custody', *Reuters*, March 12, 2007, <u>https://www.reuters.com/article/uk-zimbabwe-</u>opposition-torture-idUKL1235701620070312.

¹⁶³ Zimbabwe Human Rights NGO Forum, Ruled by Violence: An Analysis of the Nature, Patterns and Execution of Violence in Zimbabwe since 1998 (Harare: Zimbabwe Human Rights NGO Forum, 2020), 20, <u>https://drive.google.com/file/d/liEiGxSSB3X_E0F_iEHsGIYTEBfx40oGTB/view?fbclid=lwAR0zYV9tsRjZBkoe954Z6vQ7-eoKUKABqJuEzdn74_vm51gZm8GuuxRRNSQv.</u>

TABLE 4VIOLATIONS RECORDED BY THE HUMAN RIGHTS NGO FORUM(JANUARY TO MARCH 2021)							
	JANUARY	FEBRUARY	MARCH	TOTAL			
Killing	1	2	2	5			
Abduction	0	1	0	1			
Assault & torture	44	38	19	101			
Discrimination	23	45	31	99			
Malicious Damage to Property	9	11	8	28			
Unlawful arrest	19	21	6	46			
Intimidation	101	83	79	263			
Displacement	0	0	2	2			
Partisan distribution of food/agricultural aid	7	14	27	48			
COVID-19 related violations	48	19	9	76			
Attacks against journalists	0	4	3	7			
Total	252	238	186	676			

Source: Zimbabwe Human Rights NGO Forum, *Quarterly Political Violence Report, Jan to March 2021* (Harare: Zimbabwe Human Rights NGO Forum, May 2021), 9, https://drive.google.com/file/d/1QkD4vZZOTamYzjoEZ8H2Z9EB5H-NnhMZ/view?usp=sharing

The Human Rights NGO Forum secretariat and forum members recorded at least 676 politically motivated human rights violations from 1 January to 31 March 2021. The consolidated statistics relate to assault, torture, unlawful arrests, intimidation, discrimination and killings. In addition, seven attacks on journalists were recorded (Mutare, Gweru, Harare, Masvingo, and Bulawayo).¹⁶⁴

It can be seen from Figure 1 that state security agents were at the forefront of politically motivated violence. The ZRP, Zimbabwe National Army (ZNA) and various state agents account for 62% of all identified perpetrators. The ZNA, called in to help the ZRP in enforcing the national lockdown, remained a prominent player in state-sponsored violence. Of great concern during this period is the number of unknown perpetrators who were responsible for the assault and torture of civilians. The faceless perpetrators raised public concern in 2020 when they were involved in the abduction of Tawanda

¹⁶⁴ Zimbabwe Human Rights NGO Forum, Quarterly Political Violence Report, Jan to March 2021 (Harare: Zimbabwe Human Rights NGO Forum, May 2021), 10, https://drive.google.com/file/d/lQkD4vZZ0TamYzjoEZ8H2Z9EB5H-NnhMZ/view?usp=sharing.



FIGURE 1 PERPETRATORS IDENTIFIED BY THE HUMAN RIGHTS NGO FORUM (JANUARY TO MARCH 2021)

Source: Zimbabwe Human Rights NGO Forum, *Quarterly Political Violence Report, Jan to March 2021* (Harare: Zimbabwe Human Rights NGO Forum, May 2021), 10, https://drive.google.com/file/d/lQkD4vZZOTamYzjoEZ8H2Z9EB5H-NnhMZ/view?usp=sharing

Muchehiwa¹⁶⁵ and the temporary abduction and assault of Zimbabwe National Students Union President Takudzwa Ngadziore.¹⁶⁶ The use of faceless perpetrators by the state is key in propagating impunity by protecting perpetrators' identities. Worryingly, members of the ruling ZANU-PF party have also been cited as perpetrators, particularly in cases relating to the partisan distribution of food and agricultural aid and harassment of opposition party supporters. As the 2023 harmonised elections approach, the Human Rights NGO Forum forecasts an increase in violence led by the ruling party, as in previous elections.

A Climate of Fear

The use of violence and intimidation has had a profound impact on Zimbabwe's psychology. Violence has typically heightened around elections, especially after 2000.

 ¹⁶⁵ John Sparks, 'Zimbabwe: Student thought he was going to die after "abduction by state security services",' Sky News, October
 8, 2020, https://news.sky.com/story/zimbabwe-student-thought-he-was-going-to-die-after-abduction-by-state-security-services-12099212.

¹⁶⁶ Team Pachedu (@PacheduZW), 'Watch ZINASU President Takudzwa Ngadziore being taken away by suspected state security agents while holding a press conference near Impala Car Rental offices,' *Twitter* video, September 18, 2020, <u>https://twitter.com/</u> pacheduzw/status/1306901180371533824?lang=en.

The fear of being a victim is a persistent finding in Afrobarometer's research.¹⁶⁷ In both its 2008 and 2012 surveys, Afrobarometer has found that up to 8 in 10 Zimbabweans expressed personal fear of being 'a victim of political intimidation or violence',¹⁶⁸ although this was significantly down in 2017 (52%) and in May 2018 (51%), less than three months before the 2018 elections.¹⁶⁹ The latter are nevertheless troubling proportions. It should be noted that an international outcry and heightened scrutiny contributed to more peaceful general elections in 2013 and 2018, which recorded significantly fewer cases of violence and represented a major improvement from previous elections.¹⁷⁰

Afrobarometer survey findings also show that fear of the past lives on in the current political culture. In three rounds of the survey (2009, 2012 and 2014), more than 90% of Zimbabweans believed that 'you must be very careful what you say about politics', the highest level in Africa.¹⁷¹ This declined substantially in 2014 to 76%, probably because the 2013 elections were over and the next election in 2018 was still four years away. But, as the 2018 elections approached, fear again climbed to 82%.¹⁷² It appears the government actually encouraged this kind of belief and its attendant demobilisation of the citizenry.

Impunity

Impunity for perpetrators of gross human rights violations is a concerning factor in Zimbabwe and has serious implications for the proper administration of justice. Impunity is not just a failure to remedy violations but a unique cause of human rights violations. Several episodes of gross violations of human rights have been recorded, with many victims documented, yet the perpetrators of these violations have not been held accountable. The disconcerting enigma is that these perpetrators are not punished but are rewarded, which encourages them to continue violating human rights.

A long-standing grievance and failure is bringing closure to and accountability for the so-called Gukurahundi disturbances in Matabeleland and parts of Midlands that led to thousands of deaths and widespread human rights violations at the hands of the

¹⁶⁷ Afrobarometer is a non-partisan, pan-African research institution conducting public attitude surveys on democracy, governance, the economy and society in 30+ countries repeated on a regular cycle.

¹⁶⁸ Nyede-Moyo, Simangele, Fear and trust: Explaining professed popular trust in Zimbabwe's presidents (Harare: Afrobarometer, 2020) 5, https://afrobarometer.org/sites/default/files/publications/Dispatches/ad399-fear_and_professed_trust_in_zimbabwes_presidents-afrobarometer_dispatch-18oct20.pdf.

¹⁶⁹ Simangele, Fear and trust.

¹⁷⁰ Zimbabwe Human Rights NGO Forum, Ruled by violence: An analysis of the nature, patterns and execution of violence in Zimbabwe since 1998 (Harare: Zimbabwe Human Rights NGO Forum, 2020), 16, <u>https://drive.google.com/file/d/liEiGxSS</u> <u>B3XE0F_iEHsGIYTEBfx40oGTB/view?fbclid=IwAR0zYV9tsRjZBkoe954Z6vQ7-eoKUKABqJuEzdn74_vm51gZm8GuuxRRNSQ</u>.

¹⁷¹ Simangele, Fear and trust.

¹⁷² Simangele, Fear and trust.

security forces in the early to mid-1980s. These have not been satisfactorily addressed and almost four decades later there has been no formal apology to the survivors and the victims' families by the government. The Unity Accord, signed by Mugabe and Joshua Nkomo¹⁷³ to end the ethnic violence, made no recognition whatsoever of the victims of the violence, and there was no public admission of guilt or measures proffered for reparations.¹⁷⁴ When Mnangagwa attained power, he promised to treat the Gukurahundi issue with the seriousness it deserved. However, to this day it remains an unresolved and controversial issue, the large elephant in the room.

The new administration has further consolidated the pervasive culture of impunity. This is evidenced by two major episodes of violence: the 1 August 2018 post-election shootings and the 14 January 2019 #Shutdown crackdown. In both episodes, the Human Rights NGO Forum documented gross human rights violations of thousands of victims who are still yearning for justice. These include at least 17 cases of extrajudicial killings and 17 cases of rape and sexual violence.¹⁷⁵ The setting up of the Motlanthe Commission of Inquiry into the 1 August 2018 shootings, whose findings were released in December 2018, did not adequately deal with the question of accountability. In fact, there is no traction towards the implementation of the commission's recommendations. The 1 August 2018 post-election killings then appeared to be a precursor to the 14 January 2019 crackdown, leaving at least 17 civilians dead.¹⁷⁶ To date, no one has been held to account. Instead, the government has blamed its political opponents for the violence.¹⁷⁷

In addition, the National Peace and Reconciliation Commission (NPRC), a body established by the Constitution to 'ensure post-conflict justice, healing and reconciliation'¹⁷⁸ (whose commissioners are ultimately appointed by the president) has not been very effective. On 7 May 2021, Obert Gutu, a former high-ranking opposition leader who had recently defected to ZANU-PF, was appointed as an NPRC commissioner.¹⁷⁹ The appointment sparked controversy over its constitutionality because

¹⁷³ Joshua Nkomo was the leader of the Zimbabwe African People's Union (ZAPU); the Unity Accord merged ZANU-PF and ZAPU.

Hazel Cameron, 'The Matabeleland Massacres: Britain's wilful blindness,' International History Review 40, no. 1 (2017): 1–19.

Zimbabwe Human Rights NGO Forum, On the Days of Darkness in Zimbabwe: An Updated Report on the Human Rights Violations Committed between 14 January, 2019 to 5 February, 2019 (Harare: Zimbabwe Human Rights NGO Forum, 2019), 3, https://www.hrforumzim.org/wp-content/uploads/2019/02/Shutdown-Atrocities-Report-6-February-2019.pdf.

¹⁷⁶ Zimbabwe Human Rights NGO Forum, On the Days of Darkness in Zimbabwe, 3. e

^{177 &#}x27;Zimbabwe protests: Crackdown is just a "taste of things to come", BBC, January 20, 2019, <u>https://www.bbc.com/news/world-africa-46938679</u>.

¹⁷⁸ Zimbabwe Constitution, ch, 12, pt. 6, s. 252, cl. a.

^{179 &#}x27;Gutu appointed NPRC Commissioner,' New Zimbabwe, May 8, 2021, <u>https://www.newzimbabwe.com/gutu-appointed-nprc-commissioner/</u>. Another defector from the MDC-A [MDC-A - see note about the various MDCs - author to confirm style - leave as MDC-A] to ZANU-PF, Lilian Timveous, was appointed to the board of Petrotrade, a state-owned enterprise (see: Talent Bope, 'Government appoints Petrotrade board,' *The Herald*, June 3, 2021, <u>https://www.herald.co.zw/gvt-appoints-petrotrade-board/</u>).

members of the independent commissions must not be affiliated to any political party and Section 236 (2) of the Constitution provides that 'persons who are members of a political party or organisation on their appointment to an independent Commission must relinquish that membership without delay and in any event within thirty days of their appointment.'¹⁸⁰ Section 236 3 (b) also states that 'a Commissioner, having been a member of a political party or organisation on his or her appointment to the commission, fails to relinquish that membership within thirty days of the appointment; he or she ceases immediately to be a member of the Commission concerned.'¹⁸¹ It remains to be seen if this will be respected in accordance with the Constitution. Whatever the outcome, this appointment has diminished the credibility of the NPRC as an independent body. To promote the rule of law, and combat the militarisation of politics, it is necessary that the government:

- take expeditious and urgent steps to fulfil its obligations arising out of the Constitution to respect, promote and protect fundamental human rights and show this commitment to fulfil these obligations by: ratifying UNCAT; ratifying the International Convention for the Protection of All Persons from Enforced Disappearance; speaking out and condemning all acts of violence in the country; and launching immediate investigations into the allegations of human rights violations perpetrated by members of the police and military, and to take appropriate action where it is necessary;
- put in place transitional justice mechanisms to address the historical injustices perpetrated over time since independence – an impartial truth commission is one such mechanism that can be drawn from lessons in South Africa and its equivalent in Rwanda;
- create a professional, impartial and accountable police force by ensuring that: the ZRP and its affiliated institutions immediately stop perpetrating human rights violations, including but not limited to beatings, excessive use of force, torture and abductions, and the intimidation of civilians; and the ZRP develops a code of conduct for the police that aligns with the minimum standards of conduct in the Luanda Guidelines, is based on the Southern African Regional Police Chiefs Cooperation Organisation Code of Conduct and addresses issues of implementation of the law through a review and revision of current training, and a strengthening of internal disciplinary systems;
- urgently enact an independent complaints law and establish an independent complaints mechanism as envisaged in Section 210 of the Constitution to ensure that perpetrators of violence are investigated and prosecuted fully, and that victims and survivors of violence receive adequate compensation and rehabilitation;
- remove the ZNA as an ancillary law enforcement entity to the police and return the army to its barracks – the country is in a COVID-19-induced state of disaster, not a state of emergency;
- put in place concrete, transparent and targeted measures to facilitate national peacebuilding, eradicate hate speech and other actions that fuel inter-party and intraparty violence, and require civilian policing alone; and
- align laws to the Constitution, uphold the rule of law and create an impartial and independent Judiciary.

It is necessary that regional and continental organisations, such as SADC and the AU:

• strongly and publicly condemn all acts and perpetrators of politically motivated violence during and in-between elections.

CHAPTER 5



This issue relates to the Democracy and Good Political Governance thematic area, specifically:

>> OBJECTIVE 1

Entrenching Constitutional Democracy and the Rule of Law

Question 1 Does the political system as practiced in your country allow for free and fair competition for power and the promotion of democratic governance? Democracy and elections are conjoined concepts. While there is no consensus on the definition of democracy, the term usually presumes 'fully contested elections with full suffrage and the absence of massive fraud, combined with effective guarantees of civil liberties, including freedom of speech, assembly, and association.'¹⁸² For democracy to thrive, a state must conduct regular, free and fair elections. For the elections to be credible, democratic principles need to be followed. Elections are therefore central to any democracy and should be held in a timely, free and fair manner. The strengths and weaknesses of any democracy usually become apparent during the election period as democratic principles come into sharp focus.

The quality of democracy is usually first measured through its electoral processes. Widely seen as autocratic under Mugabe's regime, hopes for a truly democratic state were given a new lease on life when Mnangagwa took over. Although the means by which Mnangagwa took power were less than democratic, most Zimbabweans and many in the international community saw this as an opportunity for Zimbabwe to rebuild and begin its trajectory towards democracy.

A key element of electoral democracy is the ability of citizens to enjoy full participation in the political process. As one study put it: 'No regime can be a democracy unless it grants all of its adult citizens the formal rights of political participation, including the franchise.'¹⁸³ Participation is not only a right but a duty, since a functioning democracy requires an informed and active public that understands how to voice its interests, act collectively and hold government officials accountable.¹⁸⁴ This is also recognised by international human rights instruments. The Universal Declaration of Human Rights states that 'everyone has the right to take part in the government of his country, directly or through freely chosen representatives'.¹⁸⁵

It is likewise acknowledged in Section 67 of the Constitution, which affirms that:¹⁸⁶

- 1 Every Zimbabwean citizen has the right
 - a) to free, fair and regular elections for any elective public office established in terms of this Constitution or any other law; and
 - b) to make political choices freely.

¹⁸² David Collier and Steven Levitsky, 'Democracy with Adjectives: Conceptual Innovation in Comparative Research,' *World Politics* 49, no. 3 (1997): 430–451.

Larry Diamond and Leonardo Morlino, 'The Quality of Democracy,' Journal of Democracy 15, no. 4 (2004): 20-31.

¹⁸⁴ National Democratic Institute, 'Citizen Participation', https://www.ndi.org/what-we-do/citizen-participation.

¹⁸⁵ United Nations, Universal Declaration of Human Rights, 1948, art. 21.

¹⁸⁶ Zimbabwe Constitution, ch, 4, pt. 2, s. 67.

- 2 Subject to this Constitution, every Zimbabwean citizen has the right
 - a) to form, to join and to participate in the activities of a political party or organisation of their choice;
 - b) to campaign freely and peacefully for a political party or cause;
 - c) to participate in peaceful political activity; and
 - d) to participate, individually or collectively, in gatherings or groups or in any other manner, in peaceful activities to influence, challenge or support the policies of the Government or any political or whatever cause.
- 3 Subject to this Constitution, every Zimbabwean citizen who is of or over eighteen years of age has the right
 - a) to vote in all elections and referendums to which this Constitution or any other law applies, and to do so in secret; and
 - b) to stand for election for public office and, if elected, to hold such office.
- 4 For the purpose of promoting multi-party democracy, an Act of Parliament must provide for the funding of political parties.

Zimbabwe's Electoral Processes

For electoral democracy to be meaningful, 'voters must be able to vote in secret, free of intimidation and violence.'¹⁸⁷ SADC, of which Zimbabwe is a founding member, crafted democratic principles for guiding member states' elections – the SADC Principles and Guidelines Governing Democratic Elections.¹⁸⁸ As a starting point, SADC member states should conduct regular, free and fair elections as provided for by their respective constitutions. Another SADC guideline for the conduct of democratic elections is that there should be equal opportunity to exercise the right to vote and be voted for.

Formally, elections in Zimbabwe are conceived to meet these standards. They are guided by provisions set in Chapter 7, Section 156 of the Constitution, which states that elections must be held regularly, in a peaceful, free and fair manner, conducted by secret ballot and based on universal adult suffrage and equality of votes.¹⁸⁹ In Zimbabwe, presidential

¹⁸⁷ Diamond and Morlino, 'The Quality of Democracy', 21.

¹⁸⁸ Southern African Development Community, SADC Principles and Guidelines governing Democratic Elections, 2004.

¹⁸⁹ Zimbabwe Constitution, ch, 7, pt. 1, s. 156.

elections, alongside Parliamentary and local polls, are conducted every five years as specified in Section 158 of the Constitution, which states that 'general elections to local authorities must take place concurrently with presidential and parliamentary general elections.'¹⁹⁰ Under the Constitution, the president is directly elected and limited to two five-year terms.

According to Sachikonye, 'for all its imperfections, the Zimbabwe electoral system has handled regular elections since 1980 under a nominally multi-party system.'¹⁹¹ This is as true now as it was 20 years ago when Sachikonye was writing. The last harmonised elections were held in 2018 and the next polls are scheduled for 2023.

Weaknesses in the Electoral System

While Section 67 (3) confers the right to vote to all adult Zimbabweans, there is a significant failing in respect of the country's vast diaspora. Zimbabweans not resident in the country have not been allowed to vote, which is a violation of the Constitution. There are also allegations that in some instances, citizens do not have the freedom to vote in secret or choose a candidate of their own choice. This usually happens in rural areas where villagers depend on government aid for survival. Traditional chiefs have been accused of intimidating people under their jurisdiction to vote for certain candidates. The institution of traditional leaders (which includes chiefs, headmen and village heads) is recognised under the Constitution, with the leaders appointed by the president. However, they are required to be impartial according to Section 281 (2a) which states that 'traditional leaders must not be members of any political party or in any way participate in partisan politics.¹⁹² Nevertheless, traditional leaders have over the years become highly politicised and have been used by political parties to enforce party political support from the people they lead. For example, Chiefs Council President Fortune Charumbira publicly pledged ZANU-PF support on behalf of his colleagues during the 2018 harmonised election campaigns.¹⁹³ Further, Chief Charumbira rejected, without consequences, a High Court order to retract his statement. Traditional leaders

¹⁹⁰ Zimbabwe Constitution, ch, 7, pt. 2, s. 158.

¹⁹¹ Lloyd Sachikonye, 'Whither Zimbabwe? crisis & democratisation,' Review of African Political Economy 29, no. 91 (2002): 13-20.

¹⁹² Zimbabwe Constitution, ch, 15, s. 281, cl. 2 (a).

^{193 &#}x27;High Court judges call chiefs president to order; Charumbira ordered to stop political statements, retract pro-Zanu PF utterances,' New Zimbabwe, May 17, 2018, <u>https://www.newzimbabwe.com/high-court-judges-call-chiefs-president-to-order-</u> charumbira-ordered-to-stop-political-statements-retract-pro-zanu-pf-utterances/.

were also observed intimidating people by demanding serial numbers of their voter registration slips.¹⁹⁴

Such violations of the Constitution have a bearing on election results and seriously undermine the credibility of elections. Thus, it is important that chiefs respect the rule of law and refrain from being used by or associated with political parties.

Election Administration

For elections to be free and fair, they have to be administered by a neutral, fair and professional body that treats all political parties and candidates equally.¹⁹⁵ This is in line with the SADC Principles and Guidelines on Democratic Elections. Prior to 2004, Zimbabwe's elections were run by the Electoral Supervisory Commission which was widely regarded as a 'weak institution, lacking autonomy and its roles deliberately ambiguous'.¹⁹⁶ To fix these weaknesses, the ZEC was established.

The ZEC predates the 2013 Constitution. In 2005, through Constitutional Amendment No. 17, various agencies responsible for administering elections were consolidated into the ZEC. Section 239 of the Constitution describes the ZEC as an independent institution to prepare for, supervise and conduct Zimbabwean elections and 'to ensure that those elections and referendums are conducted efficiently, freely, fairly, transparently and in accordance with the law.'¹⁹⁷ The ZEC is thus responsible for election management and oversight.

The ZEC consists of a chairperson who is a former or current judge, appointed by the president in consultation with the Judicial Service Commission and the Committee on Standing Rules and Orders, which is a Parliamentary committee. The ZEC has a mandate to conduct presidential, parliamentary and local authority elections and referendums efficiently and transparently. It directs and controls voter registration, compiles voters' rolls, conducts voter education, and secures ballot papers and all other election materials. Since the ZEC plays a monitoring role, it gives mandates to the registrar-general and keeps the public informed about the delimitation of constituencies. It is important to note that the Registrar-General's Office was 'revamped' to become the Registrar-General of Voters, to be in line with the SADC electoral

¹⁹⁴ Clayton Masekesa, 'Traditional leaders defy Zec order on voter registration slips,' *Newsday*, February 6, 2018, <u>https://www.news</u> day.co.zw/2018/02/traditional-leaders-defy-zec-order-voter-registration-slips/.

¹⁹⁵ Diamond and Morlino, 'The Quality of Democracy', 22.

¹⁹⁶ Sachikonye, 'Whither Zimbabwe? crisis & democratisation,' 123.

¹⁹⁷ Zimbabwe Constitution, ch, 12, pt. 2, s. 239, cl. a.

guidelines. Although its duties and personnel remained the same, the government pledged to adhere to the guidelines. The Registrar-General's Office has been managing elections for over 20 years. The ZEC is also responsible for the nomination procedure of political parties and candidates. Clear procedures for the designation of party agents are established by the Electoral Act.

However, the ZEC has not been entirely immune from the blemishes that characterised its predecessor and suffers from credibility, integrity and public trust deficits. In 2008, the body delayed the announcement of the election results by over a month, a move which saw the credibility of the ZEC take a severe knock. A 2018 pre-election survey by Afrobarometer revealed that about one-third of Zimbabweans believe the ZEC is biased.¹⁹⁸ In 2013, the ZEC was accused of not independently auditing the voters' roll and of preventing urban voters from registering to vote. The ZEC also failed to avail the electronic copy of the voters' roll, a move which led many to believe the roll was in a shambolic state.¹⁹⁹ For the 2018 elections, the 2020 Freedom House Report states that:²⁰⁰

International election monitors criticized aspects of ZEC's management of the 2018 polls, noting vote-count stewardship, opaque procurement processes, and the irregular arrangement of the ballots themselves, which appeared to favor certain candidates. Political parties and civil society had difficulty accessing voter rolls, affecting audit and verification processes envisioned by the Electoral Act.

The ZEC's credibility is further undermined by a provision in Section 238 (1) of the Constitution, which states that the chairperson of the commission and the other eight commissioners are appointed by the president.²⁰¹ This undermines the credibility of the ZEC, especially when the president is also a candidate in elections managed by the ZEC.

In addition to credibility issues, the ZEC has other serious shortcomings, not least of which is a lack of financial and political independence. In the past, the ZEC has admitted to disenfranchising some communities by not conducting voter registration

Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: April/May 2018 (Cape Town: Afrobarometer, 2018),
 30, https://afrobarometer.org/sites/default/files/zim_r7_presentation_07062018.pdf.

¹⁹⁹ Takudzwa Munyaka, 'Zim voters' roll 'in shambles', thousands fail to cast ballots,' *Mail and Guardian*, July 31, 2013, https://mg.co.za/article/2013-07-31-many-fail-to-vote-in-zim-elections-after-voters-roll-shambles/.

²⁰⁰ Freedom House, Zimbabwe Freedom in the World 2020 Country Report, freedomhouse.org, undated, <u>https://freedomhouse.org</u>, undated, <u>https://freedomhouse.org</u>/country/zimbabwe/freedom-world/2020.

²⁰¹ Zimbabwe Constitution, ch, 12, pt. 2, s. 238, cl. 1.

programmes due to lack of personnel and resources.²⁰² On 30 September 2020, the government issued SI 225A of 2020, entitled Public Health (Covid-19 Prevention, Containment, and Treatment) (Amendment) Regulations, 2020 (No. 4), which suspended the holding of by-elections due to the COVID-19 pandemic. Despite the easing of lockdown measures in February 2021, the suspension remains in place. In a press statement released on 16 April 2021, the ZEC announced the indefinite suspension of by-elections noting that 'some lockdown measures of Statutory Instrument 10 of 2021 are still in force.'²⁰³ This move is, however, inconsistent with the Constitution. According to the Election Resource Centre: 'Section 158(3) of the Constitution provides that by-elections must take place within ninety days after the vacancies occurred and is mandatory. Regulations cannot legally amend the Constitution.'²⁰⁴

The indefinite suspension of by-elections shows the ZEC's lack of substantive independence from the government. There is every need for the ZEC to be as credible and independent as possible. With the next harmonised elections two years away, the ZEC has a lot of work to do if these elections are to be conducted in a credible manner, producing an indisputable outcome.

The voters' roll has been problematic since independence. Critics have charged that it is where election rigging begins. Names of deceased people, double entries, omitted voters and names that appear in incorrect constituencies are common in the Zimbabwe voters' roll. The refusal by the government to make public an electronic voters' roll has heightened suspicion of vote rigging through this instrument.

Electoral management in Zimbabwe has thus been riddled with constitutional, legal and institutional problems, which have led to disagreements on electoral outcomes.

Political Parties

Political parties are generally recognised as an important component of a democratic system, allowing citizens to band together to pursue common political objectives. Section 67 (2) (a) of the Constitution recognises the right to form, to join and to

²⁰² Ntungamili Nkomo, 'Opposition Parties Slam Zimbabwe Electoral Commission For Voter Registration Dereliction,' VOA Zimbabwe, June 23, 2016, <u>https://www.voazimbabwe.com/a/opposition-parties-slam-zec-for-failing-to-register-voters/3389547.</u> <u>html.</u>

^{203 &#}x27;Clarification on Further Suspension of By-Elections', *Bulawayo24*, April 4, 2021, <u>https://bulawayo24.com/index-id-opinion-sc-</u> columnist-byo-201811.html.

²⁰⁴ Election Resource Centre, Legal Opinion: Why the Suspension of By-Elections is Unconstitutional and Illegal (Harare: Election Resource Centre, 2020), 2, ps://kubatana.net/wp-content/uploads/2020/10/ERC-Suspension-of-By-Elections-2.pdf.

participate in the activities of a political party or organisation of their choice,²⁰⁵ while Section (67) (1) (b) espouses the right not to be compelled to belong to a political party as citizens have the right to 'make political choices freely.'²⁰⁶ ZANU-PF is the ruling party and has maintained its hold on power since the country's independence on 18 April 1980. Prior to independence, the party played a leading role in the war of national liberation. Until 1987, the main opposition party was the Patriotic Front-Zimbabwe African People's Union (PF-ZAPU). At independence, PF-ZAPU was viewed as posing a real threat to the ruling party after it won 20 of the 100 seats in Parliament. In 1987, ZANU-PF and PF-ZAPU signed a Unity Accord signalling the end of the dissident war. This Unity Accord has been variously interpreted, but the general consensus is that PF-ZAPU had surrendered at best, and had been swallowed up at worst.

In 1989, the ZANU-PF embarked on an ambitious project to map out an official oneparty state policy. The 1990 elections were held after ZANU-PF and PF-ZAPU had signed the Unity Accord, hence the election was held in relative peace. Although a new political party participated in the election, the Zimbabwe Unity Movement, ZANU-PF captured 117 of the 120 seats in Parliament, creating a clear hegemony.²⁰⁷ This paved the way for the establishment of an effective one-party state. The policy was rejected by Zimbabweans after a leading nationalist from the ruling party and CSOs campaigned against the idea.²⁰⁸

Towards the end of the 1990s, a fresh wave of opposition to ZANU-PF saw the formation of the MDC. The MDC managed to derail ZANU-PF's absolute hegemony firstly in the 2000 Parliamentary polls when it won 57 seats compared to 62 for the ruling party.²⁰⁹ In 2008, MDC leader Morgan Tsvangirai beat Mugabe in the first round of the presidential election when he amassed 47.9% of the vote compared to Mugabe's 43.2%.²¹⁰ The 2018 elections made history when 23 candidates contested the presidential polls. This marked a significant increase from the five candidates who had contested in the previous 2013 election. A total of 55 political parties also contested the 2018 elections.²¹¹ Of late,

²⁰⁵ Zimbabwe Constitution, ch, 4, pt. 2, s. 67, cl. 2 (a)

²⁰⁶ Zimbabwe Constitution, ch, 4, pt. 2, s. 67, cl. 1 (b).

²⁰⁷ Electoral Institute for Sustainable Democracy in Africa, 'Zimbabwe: 1990 House of Assembly results', <u>https://www.eisa.org/wep/</u> zimresults1990.htm.

²⁰⁸ Lloyd Sachikonye, et. al., <u>Consolidating Democratic Governance In Southern Africa: Zimbabwe</u>, EISA Research Report 3, (Johannesburg, Electoral Institute for Sustainable Democracy in Africa, 2007), 45.

^{209 &#}x27;Zimbabwe: 2000 General Elections', African Democracy Encyclopaedia Project, Electoral institute of Southern Africa, undated, https://www.eisa.org/wep/zim2000election.htm.

^{210 &#}x27;Zimbabwe: 2008 Presidential election results - first round', African Democracy Encyclopaedia Project, Electoral institute of Southern Africa, May, 2009, <u>https://www.eisa.org/wep/zim2008results5.htm</u>.

^{211 &#}x27;Zimbabwe: 2018 Presidential Election Results', African Democracy Encyclopaedia Project, Electoral institute of Southern Africa, August 2018, https://www.eisa.org/wep/zim2018results.htm+.

however, there has been some regression in terms of political tolerance which has resulted in the targeting of the main opposition MDC-A by the state.²¹²

Media Access

For an election to be fair, there should also be equal opportunities for all political parties to access the state media. All must have the right to campaign freely, to present their proposals to the voters both directly and through the mass media.²¹³ Section 61 (4) of the Constitution requires state media to:²¹⁴

- a) be free to determine independently the editorial content of their broadcasts or other communications;
- b) be impartial; and
- c) afford fair opportunity for the presentation of divergent views and dissenting opinions.

Section 248 of the Constitution establishes the Zimbabwe Media Commission (ZMC). This is the regulator of the media industry in Zimbabwe, whose functions include the duty to uphold, promote and develop freedom of the media, to promote and enforce good practices and ethics in the media, and to promote fair competition and diversity in the media. It must also ensure that the people of Zimbabwe have fair and wide access to information. According to media watchdog MISA, the ZMC Act has some favourable attributes. For example, it provides for a wide definition of media which includes dissemination of information through the internet and any other electronic means.²¹⁵ In a communication to one of the authors of this report, MISA Executive Director commented that:²¹⁶

This is progressive as it acknowledges the transformation of the media as an industry and the development of what is now termed "media convergence". Likewise, the definition of media practitioner was also not restricted to journalists but includes a broader group of people who work together towards the seeking, receiving and sharing of information.

²¹² See Political intolerance under Section 4 - Democracy and Elections.

²¹³ Diamond and Morlino, 'The Quality of Democracy', 22.

²¹⁴ Zimbabwe Constitution, ch, 4, pt. 2, s. 61, cl. 4.

²¹⁵ Media Institute of Southern Africa (MISA), 'Analysis of the newly enacted Zimbabwe Media Commission Act', <u>https://misa.org/</u> blog/analysis-of-the-newly-enacted-zimbabwe-media-commission-act/.

²¹⁶ MISA, 'Analysis of the newly enacted'.

However, he noted some shortcomings, including that 'no provision is however made with regards to the length of the term of office for the Commissioners or how many terms a commissioner can serve for. Clarity and transparency on such aspects was crucial to the functioning of the Commission.'²¹⁷

However, since independence in 1980, accessing state media has been a huge task for opposition candidates, because the government exercises complete control of the key public media, inclusive of radio and television.

Presently, the state-run Zimbabwe Broadcasting Corporation (ZBC) has a monopoly over television and radio broadcasting, with ZTV (Zimbabwe Television) being the country's only television channel. A Media Monitors Report reveals that:²¹⁸

The government of Zimbabwe has a very strong presence in Zimbabwe's media landscape as it has the controlling stake in the largest media institutions in the country. The state run Zimpapers owns the largest number of newspapers in Zimbabwe, currently publishing 13 titles and ZBC runs 4 radio stations and the only functional television station, ZTV.

As a result, the opposition rarely gets any coverage, unless it's in a negative light. The ruling party has already started its campaign for the 2023 elections using state media, with the ZTV main news bulletin at 8pm and ZBC's other platforms regularly running stories of mass defections from other political parties to ZANU-PF.²¹⁹ Commendably, however, in November 2020 the Broadcasting Authority of Zimbabwe granted six television licences, following public interviews held in October 2020. This is the first time that the country has licensed commercial television stations, effectively ending ZBC's 40-year monopoly as the only television station in Zimbabwe.²²⁰ This has the potential to go a long way towards promoting diversity in the media, although its impact will depend on how it is implemented. Further, there are allegations that the six licensees are connected to ZANU-PF, or to government institutions and leaders.²²¹

²¹⁷ MISA, 'Analysis of the newly enacted'.

²¹⁸ Patience Zirima, <u>Unpacking Ownership in Zimbabwe's Creation and Delivery of News Content: A Research Report</u>, (Harare: Friedrich-Ebert-Stiftung & Media Monitoring Project Zimbabwe, 2020), 7.

²¹⁹ Bruce Chahwanda, 'Defections spell doom for opposition politics: Analysts,' ZBC News, April 13, 2021, <u>https://www.zbcnews.</u> co.zw/defections-spell-doom-for-opposition-politics-analysts/.

²²⁰ MISA, "Analysis of the newly enacted Zimbabwe", 2.

²²¹ See for example: Nhlanhla Ngwenya and Tabani Moyo, 'Media Policy in Zimbabwe: A Mirror of Politics of the Day' in Zimbabwe's Trajectory: Stepping Forward or Sliding Back?, ed. Eldred V. Masunungure (Harare: Weaver Press, 2020): 210-235.

Judicial Safeguards

An independent Judiciary is an important element supporting the electoral process, according to the SADC elections guidelines.²²² This is especially so where cases of electoral fraud are identified and brought before the courts. This is directly linked to another requirement, that anyone can challenge the election results as provided for in the law of the land. According to Section 167 (2) of the Constitution, the Constitutional Court, the highest court on all constitutional matters, is the only court that can hear and determine disputes relating to elections for the office of president.²²³

However, the impartiality of the courts has been questioned. For example, when a losing Parliamentary candidate was declared the winner of the Chegutu West constituency by the High Court, the ZEC admitted it had erroneously declared the ZANU-PF candidate to have won the election. The ZEC reversed the declaration. However:²²⁴

ZANU-PF challenged ZEC's decision to reverse the result, arguing that only the courts could change the outcome. As a result, the ZANU-PF candidate was declared the winner despite ZEC, MDC Alliance, and ZANU-PF all agreeing that it was the MDC Alliance candidate who had garnered the most votes. The MDC Alliance filed a petition challenging this result, but it was thrown out by the courts on technical grounds and the petition was not heard.

In March 2020, a Supreme Court judgement ruled that Nelson Chamisa's rise to the helm of the MDC-A was unlawful and recognised Thokozani Khupe as the legitimate successor to the late Morgan Tsvangirai and as the interim leader of the party.²²⁵ The MDC-A led by Chamisa was deemed illegitimate because it had been led by an

²²² Southern African Development Community, SADC Principles and Guidelines governing Democratic Elections, 200, s. 2, cl. 1 (7).

²²³ Zimbabwe Constitution, ch, 8, pt. 1, s. 167, cl. 2.

²²⁴ Zimbabwe International Electoral Observation Mission, *IRI/NDI Zimbabwe International Election Observation Mission Final Report* (Washington: International Republican institute and National Democratic Institute, 2018), 51, <u>https://www.ndi.org/sites/</u> default/files/Zimbabwe%20ZIEOM%20FINAL%20REPORT%20Printer_updated.pdf.

The Supreme Court affirmed an earlier 2019 High Court judgement that found that Khupe and not Chamisa was the legitimate successor to the MDC-T. Chamisa appealed to the Supreme Court, which heard the case in October 2019 but only delivered its verdict in March 2020, just when the country went into a hard COVID-19 lockdown. Allegations of Judiciary capture started gaining salience in opposition and civil society circles. (See for example: Leopold Munhende, 'Chamisa demands independent inquiry into judiciary capture,' *New Zimbabwe*, September 28, 2020, <u>https://www.newzimbabwe.com/</u> chamisa-demands-independent-inquiry-into-judiciary-capture/. The Supreme Court verdict was a high-stakes decision which, in a highly polarised society, split public opinion with pro-Chamisa supporters and sympathisers seeing the insidious hand of the ruling ZANU-PF government. It must also be acknowledged that even if the ruling party and the government exerted influence on the Judiciary, they were doing so in the context of a highly fragmented opposition as well as a fractionalised MDC. In other words, the ruling party was fishing in troubled waters - the 23 presidential candidates and over 50 political parties that competed in the 2018 elections is testimony to a divided opposition.

unlawfully elected Chamisa. To date 39 MDC-A MPs and 81 local council elected officials have been recalled. The party has also lost its historical headquarters, the Morgan Tsvangirai House. As per the court's ruling, the 2020 financial year under the Political Parties [Finances] Act, saw the funds initially earmarked for the MDC-A handed to MDC-T (MDC-Tsvangirai), led at the time by Khupe.²²⁶ As the country gears for the 2023 elections, there are fears that the ruling party is using the Judiciary to destabilise the Chamisa-led MDC-A, the biggest threat to the ruling party's continued hegemony.

Political Intolerance

Among its principles for democratic elections, SADC also lists political tolerance as one of the democratic principles that promotes free and fair elections.²²⁷ This means that while a political majority rules in a democracy, the rights of the minority must be protected. A multi-party system is a key signifier of political tolerance. It provides voters with a choice of candidates, parties and policies, while a lack of choices usually signifies a political dictatorship.

Unfortunately, Zimbabwe has a long tradition of political intolerance, stretching back to the colonial era and continuing after independence. This has often manifested itself around election times. Electoral violence has been witnessed in cases where the ruling party has faced real challenges from opposition parties. This can be traced back to the 1985 election in which the ruling party reacted to the threat of PF-ZAPU after discovering large caches of arms by arresting its leaders, imposing a state of emergency and insisting that opposition parties obtain prior permission in order to hold campaign rallies.²²⁸

Thus, over the last decades the government has created institutions and mechanisms to hold off challenges from opposition political parties through draconian and unconstitutional legislation. This has been put in place to gag the media and civil society. The AIPPA, for instance, was used against those who criticised the president. Meetings of the opposition were banned for trivial reasons, violence was unleashed by security forces, while the media was heavily biased against the opposition.²²⁹ Electoral periods from 2000 onwards have been marked by politically motivated violence.

^{226 &#}x27;Zimbabwe: Top opposition officials held in dispute over party HQ,' *Al Jazeera*, June 5, 2020, <u>https://www.aljazeera.com/news/</u> 2020/6/5/zimbabwe-top-opposition-officials-held-in-dispute-over-party-hq.

²²⁷ Southern African Development Community, SADC Principles and Guidelines governing Democratic Elections, 200, s. 2, cl. 1 (3).

²²⁸ Sachikonye et. al., Consolidating Democratic Governance, 47.

²²⁹ Sachikonye et. al., Consolidating Democratic Governance.

It is important to note that the 2018 elections were held in relative peace, in the pre-

election and on election day periods. According to the ZEC, the pre-election period was relatively violence-free, with few cases of voter intimidation and intra-party violence from both the opposition and the ruling party recorded.²³⁰ However, following the delay in the announcement of the results of the presidential election, supporters of the MDC-A held a demonstration against the ZEC. Six innocent lives were lost and hundreds injured from the joint retaliation by the police and military.²³¹

²³⁰ Zimbabwe Election Commission, 2018 Harmonised Elections Report (Harare: Election Commission, 39), <u>https://www.zec.org.</u> zw/pages/reports#.

²³¹ Human Rights Watch, 'Zimbabwe: At Least 6 Dead in Post-Election Violence', August 3, 2018, <u>https://www.hrw.org/news/2018/</u>08/03/zimbabwe-least-6-dead-post-election-violence.

RECOMMENDATIONS

In order to provide for credible elections, it is necessary that the government:

- respect, in regard to all agencies and institutions and all their decisions and actions, the Constitution and be guided by the rule of law rather than rule by law;
- must respect and guard the independence of both the Constitutional commissions and the commissioners by ensuring that the latter continue to be selected through a competitive, transparent and public process, while avoiding the temptation to amend the Constitution along the lines of the controversial Constitutional Amendments No. 1 and 2;
- ensure that independent commissions are fully funded from the national fiscus so they can carry out their mandated duties effectively and efficiently – they should also have the leeway to raise funding from partner organisations and institutions to fill any funding gaps that might arise;
- desist from intrusive interference in the decisions and operations of the ZEC and respect its autonomy, which will generate the necessary public trust and confidence; and
- collectively endeavour, with civil society, to complete the electoral reform processes that have been in abeyance in the recent past this is both necessary and urgent as the 2023 harmonised elections beckon and most of the reforms are outlined in the many reports of both local and foreign election observers.

It is necessary that regional and continental organisations, such as SADC and the AU:

• take more robust actions to bring into line member states and governments that disregard the SADC and AU principles and guidelines for conducting of democratic and credible elections.

It is necessary that political parties:

• desist from abusing state resources as well using traditional leaders, state employees and security forces for partisan purposes.

It is necessary that CSOs:

- better coordinate their activities. This will enable them to approach the ZEC and policymakers with one strong position rather than having different CSOs approaching government officials with diverse positions, which are sometimes contradictory to one another.
- improve coordination on the placement of electoral observers. It is imperative that observer missions do not field many observers at easily accessible polling stations – such as those in urban centres – and fail to do so at inaccessible ones. Coordination will help to ensure that all parts of the country are evenly covered by observers.
- be involved in the whole electoral process instead of only during the election period. Most CSOs are active during elections with few being active in the pre-electoral period. There is a need for CSOs to balance their participation throughout the electoral cycle.

In addition, all stakeholders should cooperate to bring about comprehensive electoral reform, along the following recommendations.

Electoral Framework

- Electoral Framework: There is need for a comprehensive review of Zimbabwe's electoral framework that addresses existing flaws, gaps and inadequacies in the administration of elections. The government should establish an all-inclusive electoral reform committee to deliberate on political, administrative and legal reforms that are needed to enhance credibility of Zimbabwe's electoral processes.
- The Legal Framework: The Electoral Act and other legislation that relates to the electoral process should be aligned with the Constitution in particular to: prevent disenfranchisement of homebound persons, hospitalised persons and detained persons who have not been sentenced for a serious crime; and protect the constitutional right to vote and reinforce the independence of the ZEC in relation to responsibility for its own regulations, voter registration and accreditation of observers, as well as the required approval of regulations.

Election Administration

- **Consultation and Engagement:** The ZEC should strengthen its engagement (consultations and dialogue) with stakeholders throughout the electoral process, in particular political parties and CSOs, including on election boundary delimitation, the design of the ballot and the size of the nomination fees. For instance, setting nomination fees without prior consultation with women, youth and persons with disabilities disenfranchises them with regards to participation in active roles such as standing for public office.
- Multi-Party Liaison Committees (MPLCs) Meetings at National and Local Levels: MPLC meetings should take place frequently throughout the entire electoral process, so they become an effective conflict resolution tool for political parties and provide an effective forum for reporting on non-compliance with the code of conduct for political parties and candidates and for exchanges of views and information with the ZEC. In addition, issues of violence against women in elections should be discussed at MPLCs.

Voter Registration

• Timeframe to Avail the Voters' Roll: The electoral legislation should be amended to provide for a specific timeframe for the preliminary (provisional) voters roll to be availed to political parties and other designated stakeholders, for example, during the inspection period. The final voters' roll should be availed to the political parties and other designated stakeholders as soon as it is concluded. Candidates should be given a copy of the voters' roll for the constituency they are contesting, upon the confirmation of their nomination.

Cleaning of the Voters' Roll

- Amendment of ZEC Regulations: During the inter-election period, the ZEC should focus on continuous voter registration and cleaning the voters' roll data (to remove entries with repeated addresses, similar identity numbers and similar data for different voters). The ZEC regulations should be amended accordingly.
- Independent Audit: In order to build public confidence, the ZEC should commission independent external audits to assess the quality of the voters' roll.

Constituency Boundary Delimitation

- Legal Framework for Boundary Delimitation: The Electoral Act should be amended to include provisions for developing and elaborating the electoral framework for boundary delimitation. It could include provisions requiring consultations with political parties, civil society and other stakeholders on ensuring equal voting strength, representativeness, and establishing a complaint and appeal mechanism before the Parliamentary approval process.
- Mandate for Boundary Delimitation: An independent (ad hoc or permanent) commission should be established to take charge of drawing the electoral constituency boundaries. It will ensure inclusive consultation to increase public confidence in the boundary and delimitation process.
- Equality of the Vote: The government must uphold Section 161 of the Constitution, which notes that no constituency should have more than a 20% variation in registered voters. The election boundaries should be rationalised in order to comply with the Constitution and international standards, ie, that the boundaries of those constituencies whose electorates are too big or too small are revised to ensure broadly equal voting strength and thus broadly equal representation.

Civic Awareness and Voter Education

- Civic Voter Education Objectives: The government needs to review the Electoral Act to expand the ZEC's mandate to require it to deliver programmes covering both civic awareness and voter education with the following objectives (outcomes): a) improving voter literacy; b) countering misinformation and eliminating negative perceptions about elections; c) strengthening public confidence in the electoral process; d) increasing participation in elections for special needs or interest groups; and e) deepening the awareness of rights and responsibilities in a participatory democracy.
- **Partnership with CSOs:** The ZEC should within the framework of a coordinated partnership agreement deepen its cooperation with CSOs and institutions of learning (secondary and higher), and government ministries in the design and delivery of civic and voter education. Political parties should also be involved in election-related awareness-raising activities.

Political Party Functioning

- **Political Party Act:** The government should consider the adoption of a political party act to regulate the activities of political parties.
- Political Party and Campaign Financing: There is an urgent need to amend the Political Parties (Finance) Act to promote transparency and accountability in political party financing, in line with regional and international conventions. Amendments to the act must include requiring the declaration of assets by political parties, candidates and MPs, and putting ceilings on electoral expenditure by parties and candidates, among other provisions.
- **Primary Elections:** Political parties should improve internal democratic structures and rules governing the selection of leaders and candidates, including the conduct of party primaries. This can be achieved through the proposed political party act.

CHAPTER 6



This issue is identified as a cross-cutting one, with reference to many aspects of the review. In more focused terms, it relates to the Democracy and Good Political Governance thematic area, specifically:

>> OBJECTIVE 5

Ensuring Accountable, Efficient and Effective Public Service Delivery at the National and Decentralised levels

Question 1 What is the state of corruption in the public sector?

It also relates to the Economic Governance and Management Thematic Area, specifically:

Fight Corruption and Money Laundering

Question 1 What measures have been taken by your country to fight corruption in public procurement and with what results?

Corruption is defined by Transparency International (TI) as the abuse of entrusted power for private gain.²³² According to TI, corruption erodes trust, weakens democracy, hampers economic development and further exacerbates inequality, poverty, social division and the environmental crisis. TI notes that corruption can involve anyone – politicians, government officials, public servants, business people or members of the public. The vice manifests in multiple forms including bribery, fraud, embezzlement, extortion, abuse of power and nepotism/favouritism.²³³

Corruption is a complex problem that skews economic growth and development. It is inevitable in any society, but the nature and extent of corruption can have devastating consequences when it reaches substantial proportions. Corruption hampers investment and stalls economic growth through increasing the cost of doing business. To compound matters, the cost is then transferred to consumers via higher prices or lower quality of goods and services. Furthermore, corruption empowers bureaucrats to use their arbitrary power to create delays and barriers in granting licenses and permits in order to solicit more bribes.²³⁴ Earnings from the proceeds of corruption are often committed to nonproductive activities, for example, the purchase of vehicles and luxury goods that do not benefit the broader economy. Companies sometimes migrate from the formal sector to the informal sector in order to evade bureaucratic corruption, primarily because they seek to avoid the corruption-related transaction costs. This undermines the revenue base of the country. Corruption thus encourages leakages of resources from the national fiscus. Illicit private expenditures funded by corruption also have much lower multiplier or trickle-down effects than expenditures on agriculture, manufacturing, transport, energy, education, health and public infrastructure required for the growth of Zimbabwe's economy.²³⁵

It has been further observed that corruption can culminate in the adoption of awkward fiscal and monetary policies that in turn transfer costs to a large and poorly organised population, while at the same time effecting a significant transfer of wealth from the economy to a few well organised groups.²³⁶ Many entrepreneurs devote a significant proportion of their resources in finding ways to influence distributional outcomes and consequently, a small proportion are devoted to the actual production of goods and services.²³⁷

²³² Transparency International, 'What is corruption', https://www.transparency.org/en/what-is-corruption.

²³³ Transparency International, "What is corruption".

 ²³⁴ Thabani Nyoni, 'The Curse of Corruption in Zimbabwe,' International Journal of Advanced Research and Publications 1, no. 5

 (2017): 285-291, http://www.ijarp.org/published-research-papers/nov2017/The-Curse-Of-Corruption-In-Zimbabwe.pdf.

²³⁵ Joe Muzurura, 'Corruption and Economic Growth in Zimbabwe: Unravelling the Linkages', International Journal of Development Research 7, no. 1 (2017): 11197–11204, <u>https://www.journalijdr.com/sites/default/files/issue-pdf/7681.pdf</u>.

²³⁶ Muzurura, 'Corruption and Economic Growth'.

²³⁷ Muzurura, 'Corruption and Economic Growth'.

The Nature and Extent of Corruption in Zimbabwe

Both the private and public sectors have been tainted by corruption. Because of its illicit nature, it is impossible to know exactly how widespread or severe the problem is, but numerous studies and estimates – sometimes from official sources – provide some indication.

TABLE 5CORRUPTION PERCEPTION INDICES AND RANKING FOR ZIMBABWE,1998-2020		
YEAR	CORRUPTION PERCEPTION INDEX	
	CPI SCORE/100	RANK/180
1998	42	43
1999	41	45
2000	30	65
2001	29	65
2002	27	71
2003	23	106
2004	23	114
2005	26	107
2006	24	130
2007	21	150
2008	18	166
2009	22	146
2010	24	134
2011	22	154
2012	20	163
2013	21	157
2014	21	156
2015	21	150
2016	22	154
2017	22	157
2018	22	160
2019	24	158
2020	24	157

Source: Adapted from Rumbidza Tizora, 'Bureaucratic Corruption in Zimbabwe' (Masters diss., University of Oslo, 2009), 8-9

According to TI's 2020 Corruption Perceptions Index, Zimbabwe ranks 157 out of 180 countries surveyed.²³⁸ It has, as Table 5 shows, been in overall decline in the rankings for the past two decades. The Corruption Perceptions Index's (CPI) scores – a measure of the how corrupt a country is perceived to be – rates countries on a scale from 0 (highly corrupt) to 100 (very clean). In the last two years (2019–2020), Zimbabwe has been stuck at a CPI score of 24 out of 100, and a low ranking of 157 out of 180 in 2020.

Corruption emerged as an issue early on in post-independence Zimbabwe. One of the most well-known scandals to shake the country during the first decade of independence was the 1986 Willowgate Scandal. Here, senior government ministers abused their authority to buy scarce motor vehicles cheaply from the Willowvale Mazda Motor Industry and re-sold the vehicles to third parties at a profit. Mugabe set up a commission of inquiry to investigate these allegations. He went on to pardon all those implicated in this scam.²³⁹

Other scandals to rock the nation during the second decade of independence included the 1994 War Victims Compensation Scandal²⁴⁰ and the 1995 Grain Marketing Board (GMB) Grain Scandal.²⁴¹ These cases are demonstrative of the extent to which corruption is ravaging the country's socio-economic gains and corroding citizens' confidence in the country's socio-economic and political development processes.

In April 2020, the official anti-graft body ZACC, said it was investigating 77 high profile cases of corruption amounting to \$500 million.²⁴² In 2020, the Zimbabwe National Chamber of Commerce estimated that almost 20% of the national budget is lost through corruption.²⁴³

Zimbabwe's Auditor-General Mildred Chiri's reports on public spending in 2018 exposed a litany of gross mismanagement and accounting malpractices by government departments, parastatals and local authorities, involving millions of dollars and resulting

²³⁸ Transparency International, Corruption Perceptions Index 2020, transparency.org, undated, <u>https://www.transparency.org/en/cpi/2020/index/zwe</u>.

²³⁹ Alex Magaisa, 'BSR: The Willowgate Scandal', Big Saturday Read, February 13, 2021.

²⁴⁰ The War Victims Compensation Fund was intended to support people who had been seriously injured in the Liberation Struggle. Politically-connected but able bodied people were lodging fraudulent claims and pocketing funds to which they were not entitled.

^{241 &#}x27;The Birth of Corruption in Zimbabwe', *Newsday*, February 8, 2018, <u>https://www.newsday.co.zw/2014/02/birth-corruption-</u> zimbabwe/.

^{242 &#}x27;Stop meddling in graft probes, ZACC warns politicians,' *The Herald*, April 29, 2020, <u>https://www.herald.co.zw/stop-meddling-in-graft-probes-zacc-warns-politicians/</u>.

^{243 &#}x27;Business demands a stronger ZACC,' *The Zimbabwe Independent*, October 9, 2020, <u>https://www.pressreader.com/zimbabwe/</u> the-zimbabwe-independent-9fa3/20201009/281874415871303.

in massive waste.²⁴⁴ There are also reports that the government is losing more than \$1 billion each year because of corruption.²⁴⁵

As for the public service, corruption stands out as a principal barrier for business, especially with regards to the acquisition of public licences, permits or utilities. According to the 2020 Global Corruption Barometer, 25% of people using public services in Zimbabwe had been required to pay a bribe in the 12 months prior and 60% of people felt corruption had increased at the same time.²⁴⁶

The corruption problem is a governance issue that predates the COVID-19 era. More importantly, this is a problem that the Second Republic is grappling with and is likely to have to continue to wrestle with for the foreseeable future. Uncontrolled, it could compromise Zimbabwe's future.

On a positive note, Mnangagwa has prioritised the fight against corruption and declared zero tolerance towards it. This was a pledge made in his inaugural speech as head of state on 24 November 2017, with a similar one being made during his first State of the Nation address in December 2018. He remarked that 'corruption remains the major source of some of the problems we face as a country and its retarding impact on national development cannot be over-emphasized... every case must be investigated and punished in accordance with the dictates of our laws. There should be no sacred cows. My government will have zero tolerance towards corruption and this has already begun.'²⁴⁷

Ahead of the July 2018 harmonised elections, Mnangagwa campaigned on a pledge to deal with corruption. Mnangagwa swore in ZACC Chair Loice Matanda-Moyo at the end of May 2019 and swore in other commissioners during July 2019. The new ZACC was constituted after Mnangagwa's dissolution of the old ZACC in February 2019, due to allegations of incompetence.²⁴⁸

²⁴⁴ Dumisani Muleya, 'Govt must act on corruption,' *The Zimbabwe Independent*, July 5, 2019, <u>https://www.theindependent.co.zw</u> /2019/07/05/govt-must-act-on-corruption-2/.

^{245 &#}x27;Zimbabwe losing \$1 billion a year to corruption: report,' *Reuters*, October 4, 2016, <u>https://www.reuters.com/article/us-zimbab</u> we-corruption-idUSKCN1241R9.

²⁴⁶ Coralie Pring and Jon Vrushi, *Clobal Corruption Barometer Africa 2019: Citizens' Views and Experiences of Corruption* (Berlin: Transparency International, 2019), https://www.transparency.org/files/content/pages/2019_GCB_Africa.pdf.

²⁴⁷ Emelia Sithole-Matarise, 'Zimbabwe's Mnangagwa promises zero tolerance in corruption fight,' *Reuters*, December 20, 2017, https://www.reuters.com/article/us-zimbabwe-politics-idUSKBNIEE25P.

²⁴⁸ Shi Yinglun, 'Zimbabwe's Mnangagwa swears in eight anti-corruption commissioners,' *Xinhua*, July 15, 2019, http://www.xinhuanet.com/english/2019-07/15/c_138229018.htm.

Despite the government's promisess to fight corruption, reports of allegations of corruption by high profile figures within Mnangagwa's administration are clear testimony that corruption is difficult to remove from the social fabric. A case in point is that of Cabinet Minister Obadiah Moyo (then Minister of Health) who was arrested on 19 June 2020 over allegations of being involved in a COVID-19 supplies scandal. Moyo, who was charged with criminal abuse of duty as a public officer, was accused of illegally awarding a multi-million-dollar contract for COVID-19 medical supplies to a shadowy company that sold the government face masks and other materials at inflated prices.²⁴⁹ Moyo became the second minister to be arrested for alleged corruption in Mnangagwa's government, after the arrest of the then Tourism Minister Prisca Mupfumira in July 2019.²⁵⁰ Moyo was later dismissed from cabinet.

Mupfumira was arrested on 25 July 2019 on corruption charges related to her time as Minister of Public Service, Labour and Social Welfare – including criminal abuse of office allegedly resulting in the loss of \$95 million at the National Social Security Authority (NSSA).²⁵¹ Mupfumira was thereafter dismissed from her ministerial position.

Other high-profile figures arrested on allegations of corruption and abuse of office included former ministers Ignatius Chombo, Saviour Kasukuwere, Supa Mandiwanzira, Walter Mzembi, former Midlands governor Jason Machaya, Walter Chidhakwa, Francis Gudyanga (former Mines Permanent Secretary) and Samuel Undenge. Except for Machaya and Undenge – who was found guilty and convicted of a lesser offence involving \$12,000 and later released on bail – none of the ministers have been convicted yet. Mzebi was acquitted in May 2021.²⁵²

Staff from the country's national revenue collection authority – the Zimbabwe Revenue Authority (ZIMRA) have not been spared from allegations of corruption. In 2018, former ZIMRA Commissioner General Gershom Pasi was arrested over criminal abuse of office after his suspension in April 2016 on allegations of corruption involving vehicle imports.²⁵³ In October 2019, police arrested a number of other ZIMRA officials.²⁵⁴

²⁴⁹ Farai Mutsaka, 'Zimbabwe's health minister charged in COVID-19 graft case,' AP News.com, June 20, 2020, <u>https://apnews.</u> com/article/health-zimbabwe-financial-markets-virus-outbreak-international-news-fde2679be079b94950b2048e2e5cabc1.

^{250 &#}x27;ZACC Snaps Minister Mupfumira', The Herald, July 26, 2019, https://www.herald.co.zw/zacc-snaps-minister-mupfumira/.

²⁵¹ Nyasha Chingono, 'Minister held over US\$95m scandal,' *The Independent*, July 26, 2019, <u>https://www.theindependent.co.zw/</u> 2019/07/26/minister-held-over-us95m-scandal/.

²⁵² See 'Corruption: Ex-minister Machaya jailed', *The Herald*, September 23, 2020, <u>https://www.herald.co.zw/corruption-ex-minist</u> <u>er-machaya-jailed/;</u> 'Ex-tourism Minister Walter Mzembi Acquitted Of Corruption Charges', *Pindula*, June 1, 2021, https://news.pindula.co.zw/2021/06/01/ex-tourism-minister-walter-mzembi-acquitted-of-corruption-charges/.

^{253 &#}x27;LATE FLASH ... Former Zimra chief Pasi arrested,' *Newsday*, November 8, 2018, <u>https://www.newsday.co.zw/2018/11/late-flash-</u>former-zimra-chief-pasi-arrested/.

Lucky Mabiza, 'ZIMRA official arrested the other one still on the run,' Mbare Times, October 10, 2019.

On the educational front, in February 2018, former University of Zimbabwe Vice-Chancellor Professor Levi Nyagura was picked up for questioning by ZACC investigators. Allegations against Nyagura were that he unlawfully recommended the conferment of a Doctor of Philosophy degree to former First Lady Grace Mugabe without the approval of the University Council and the Senate Committee.²⁵⁵

Some observers have seen the arrest of high-profile figures such as cabinet ministers as evidence of a genuine crackdown on corruption, whilst others have been dismissive of this, preferring to describe it as selective, politically convenient and in worst case scenario, a 'catch and release' game. Other observers also view the anti-corruption crusade as targeting the small fish, while the big fish are let go with minimal consequences.

Anti-Corruption Measures in Zimbabwe

The government has adopted various measures to combat corruption through laws and regulations. These are set out and discussed below.

Legislative Framework on Corruption

Zimbabwe has a fairly robust legal framework aimed at combating corruption. Chapter 13 of the Constitution provides for institutions mandated to fight it, namely the ZACC and the National Prosecuting Authority (NPA). The ZACC is charged with investigating and exposing cases of corruption in both the public and private sectors, combating corruption, theft, misappropriation, abuse of power and other improper conduct.²⁵⁶ The NPA is mandated with instituting and undertaking criminal prosecutions on behalf of the state.²⁵⁷

Other pieces of legislation aimed at combating corruption include the Money Laundering and Proceeds of Crime Act, Prevention of Corruption Act (PCA), Public Entities and Corporate Governance Act and Criminal Procedure and Evidence Act. The PCA criminalises active and passive bribery, extortion and money laundering in both the public and private sectors. Gifts and facilitation payments are illegal, as is the bribery of foreign officials.²⁵⁸

257 Zimbabwe Constitution, ch, 13, pt. 2, s. 258-263.

²⁵⁵ Lloyd Sibindi, 'Breaking: UZ Vice Chancellor Professor Levi Nyagura arrested over Grace Mugabe's fake PhD,' *My Zimbabwe News*, February 16, 2018, <u>https://www.myzimbabwe.co.zw/news/17064-breaking-uz-vice-chancellor-professor-levi-nyagura-</u> arrested-over-grace-mugabes-fake-phd.html.

²⁵⁶ Zimbabwe Constitution, ch, 13, pt. 1, s. 254–257.

²⁵⁸ Prevention of Corruption Act No. 34 of 1985.

The Public Entities Corporate Governance Act (passed in May 2018) provides for the governance of public entities, setting out a uniform mechanism for regulating the conditions of service of members of public entities and their senior employees.²⁵⁹

In addition, Zimbabwe is a signatory to the UN Convention against Corruption (UNCAC), having signed the convention on 20 February 2004 and undertaken subsequent ratification on 8 March 2007. On the continental level, Zimbabwe is a signatory to the AU Convention on Preventing and Combating Corruption, adopted in July 2003. It entered into force for Zimbabwe on 5 August 2006. On the regional front, Zimbabwe signed the SADC Protocol on Corruption (2004)²⁶⁰ in response to a regional call for leaders to pledge their commitment in the fight against corruption.

Legislation on Unexplained Wealth Orders

In February 2020, Zimbabwe passed legislation on unexplained wealth or illicit enrichment. This was made possible through the insertion of Chapter 111 A into the Money Laundering and Proceeds Act.²⁶¹ Under this order, specified authorities, including the ZACC, ZIMRA and ZRP, can, without prior notice to the person concerned, approach the High Court seeking an order that the person explains how they acquired the assets in question. People who fail to explain, or hide useful information pertaining to the source of their wealth, will be jailed for up to two years while the tainted property will be forfeited to the state.²⁶² The primary objective of unexplained wealth orders is to prevent criminals from acquiring wealth or benefiting from unlawful activities.²⁶³

Establishment of a Special Anti-Corruption Unit

Mnangagwa's administration established a Special Anti-Corruption Unit (SACU) in 2018. Some observers see the establishment of the SACU as duplicative and an overlap to the role performed by the ZACC.²⁶⁴ There is little to distinguish the two in their mandate, but a notable differentiating feature is that SACU is housed in the Office of the President and cabinet. SACU's core mandate is to improve efficiency in the fight against all forms

²⁵⁹ Public Entities Corporate Governance Act No. 4 of 2018.

²⁶⁰ Southern African Development Community, 'Table 10.1 Status on Protocols and Declarations in SADC as at August 2012', https://www.sadc.int/index.php/download_file/view/1836/681/.

²⁶¹ John Makamure, 'Unexplained wealth orders boost anti-graft drive,' *The Sunday Mail*, March 29, 2020, <u>https://www.sundaymail.</u> <u>co.zw/unexplained-wealth-orders-boost-anti-graft-drive</u>.

²⁶² Elita Chikwati, 'Explain your riches...new Bill to question unexplained wealth gazetted,' *The Chronicle*, July 6, 2019, <u>https://www.</u>chronicle.co.zw/explain-your-riches-new-bill-to-question-unexplained-wealth-gazetted/.

²⁶³ Makamure, "Unexplained wealth orders".

^{264 &#}x27;Ziyambi defends SACU Operations', Newsday, October 30, 2020, <u>https://www.newsday.co.zw/2020/10/ziyambi-defends-sacu-operations/</u>.

of graft and to strengthen the effectiveness of national mechanisms for the prevention of corruption.²⁶⁵ In addition, SACU's terms of reference include: collaborating with ZACC, the police and other such institutions in the fight against corruption; assisting ZACC and other investigative agencies of the state in the perusal and consideration of corruption dockets; and to prosecute corruption cases referred to the NPA by investigative agencies, subject to the issuance of an authority to prosecute by the PG.²⁶⁶

Establishment of Anti-Corruption Courts

The JSC established anti-corruption courts in all the country's 10 administrative provinces in a bid to expeditiously deal with graft cases.²⁶⁷ The specialised courts were buttressed by the enactment of the amended Money Laundering and Proceeds of Crime Act, whose provisions place reliance on a combination of civil and criminal procedures to combat financial crimes though targeting the seizure and forfeiture of all tainted and illicit proceeds of crime.²⁶⁸

Repatriation of Externalised Funds in 2017

Upon assumption of office, Mnangagwa's administration made an amnesty call for the repatriation of funds externalised by Zimbabwean citizens and local and foreign companies operating in the country. The three-month moratorium, within which individuals and corporates could bring money back into the country, stretched from 1 December 2017 to 28 February 2018. During this period, the government would neither ask questions nor prefer charges against those repatriating the money or assets. However, non-compliant individuals and companies would be arrested and prosecuted in terms of the country's laws.²⁶⁹ Mnangagwa also 'named and shamed' individuals and companies that failed to repatriate externalised funds and assets under the amnesty. He said out of a total of \$1.4 billion externalised in both funds and assets, \$591 million had been returned while \$826.5 million remained outstanding.²⁷⁰

²⁶⁵ Takunda Maodza, 'ED sets up special anti-corruption unit,' *The Herald*, May 22, 2018, <u>https://www.herald.co.zw/ed-sets-up-</u>special-anti-corruption-unit/.

^{266 &#}x27;Special anti-corruption unit begins work,' *The Sunday Mail*, July 8, 2018, <u>https://www.sundaymail.co.zw/special-anti-corrup</u> tion-unit-begins-work.

²⁶⁷ Auxilia Katongomara, 'JSC sets up anti-corruption courts,' *The Chronicle*, January 16, 2018, <u>https://www.chronicle.co.zw/jsc-sets-up-anti-corruption-courts/</u>.

²⁶⁸ Desmond Chingarande, 'Anti-corruption courts officially open,' *Newsday*, March 30, 2018, <u>https://www.newsday.co.zw/2018/03/</u> anti-corruption-courts-officially-open/.

²⁶⁹ Darlington Musarurwa, 'Updated: 3-month amnesty to return looted \$,' *The Herald*, November 29, 2017, <u>https://www.herald.</u> co.zw/breaking-news-forex-externalisation-president-gives-three-month-moratorium/.

^{270 &#}x27;Zimbabwe's Mnangagwa names externalizers as 591 million USD is returned,' Xinhua, March 19, 2018, <u>http://www.xinhuanet.</u> com/english/2018-03/19/c_137050648.htm.

Launch of Anti-Corruption Awareness Campaign

In August 2019, the International Commission of Jurists (ICJ) launched an anti-corruption awareness campaign in collaboration with the ZACC and NPA, that was expected to run for 15 months. The campaign was expected to harness different forms of media to spread awareness on the negative impact corruption has on the rule of law, human rights and development.²⁷¹

Institution of Forensic Audits

Mnangagwa ordered a forensic audit on Harare City Council to investigate allegations of deep-rooted corruption which saw two mayors, councillors and senior officials being arrested. In his 2020 end of year address, Mnangagwa said his government would not relent in the fight against corruption and hence had 'directed the Auditor General to carry out a thorough forensic audit to establish the alleged intricate web of corruption within the local authority.'²⁷²

Tracking, Seizure and Repatriation of Movable and Immovable Assets

In February 2021, the ZACC started the process of tracking down, seizing and repatriating movable and immovable assets worth more than \$13 million, allegedly acquired by Zimbabweans in five foreign jurisdictions using proceeds of corruption.²⁷³ This was disclosed by ZACC Commissioner Jessie Majome who said Zimbabwe had, through the NPA and the Ministry of Foreign Affairs, sent requests to the United Arab Emirates, China, South Africa, UK and the Isle of Man for assistance in tracing and seizing assets owned by convicts and suspects in corruption cases. Majome also said that locally, the anti-graft body had managed to seize 24 vehicles, valued at \$1.5 million, as part of the commission's thrust to recover ill-gotten wealth.²⁷⁴ ZACC reportedly seized 10 mansions and 22 luxury vehicles worth \$8 million. The assets belonged to, among others, former Foreign Affairs Minister Walter Mzembi, Gender Commission Chair Margaret Sangarwe, Russel Mweye, a former staffer at Parirenyatwa Group of Hospitals, and ex-Zimbabwe National Road Administration (ZINARA) Chief Executive Officer Frank Chitukutuku.²⁷⁵

²⁷¹ International Commission of Jurists, 'Zimbabwe: ICJ launches anti-corruption awareness campaign', <u>https://www.icj.org/zim</u>babwe-icj-launches-anti-corruption-awareness-campaign/.

²⁷² Lucky Mabhiza, 'President Mnangagwa orders Harare City Council audit,' Mbore Times, January 2, 2021.

²⁷³ Daniel Nemukuyu, 'ZACC goes after US\$13m external assets,' *The Herald*, February 22, 2021, <u>https://www.herald.co.zw/zacc-goes-after-us13m-external-assets/</u>.

²⁷⁴ Nemukuyu, 'ZACC goes after US\$13m.'

²⁷⁵ Brian Chitemba, 'Fresh audit targets 36 officials,' *The Sunday Mail*, October 4, 2020, <u>https://www.sundaymail.co.zw/fresh-audit-targets-36-officials</u>.

Launch of a National Anti-Corruption Strategy

On 11 July 2020, Zimbabwe adopted its first ever National Anti-Corruption Strategy (NACS) whose main aim is to address the coordination of anti-corruption efforts by different stakeholders. The strategy is in line with regional and international anti-corruption frameworks, such as Article 5 of the UNCAC, to which Zimbabwe is a signatory.²⁷⁶ The NACS mandates the ZACC to establish a National Anti-Corruption Strategy Steering Committee. It also defines the country's priorities and objectives to prevent and combat corruption for the next five years. It includes actions plans and a monitoring and evaluation plan to track progress of the implementation thereof. The objectives of the strategy include:²⁷⁷

- supporting citizen empowerment and awareness of their rights and responsibilities relevant to the fight against corruption;
- enhancing the structures for deterrence, detection, adherence and enforcement through improved compliance with anti-corruption and integrity management obligations and mechanisms across sectors;
- increasing public demand for transparency and accountability and rejection of corruption in government offices, ministries, agencies and state-owned enterprises (SOEs)/parastatals, public institutions, media houses and the private sector;
- ensuring the protection of whistle-blowers and victims of corruption, thereby encouraging active participation in anti-corruption efforts by members of the public;
- recovering assets and proceeds from corruption crimes, and compensating damages inflicted on the state and corruption victims; and
- increasing the level of political parties' transparency, political will and accountability.

Anti-Graft Memorandums of Understanding

The ZACC has signed several MOUs with organisations in a bid to tackle corruption. The ZACC signed MOUs with the NPA, Auditor-General, University of Zimbabwe, Reserve Bank of Zimbabwe's Financial Intelligence Unit, Immigration Department, Procurement Regulatory Authority of Zimbabwe, ZIMRA and Ezekiel Guti University. The ZACC

²⁷⁶ Transparency International Zimbabwe, 'The Success of The National Anti-Corruption Strategy Requires A Coordinated Approach in The Fight Against Corruption', <u>https://www.tizim.org/2020/12/the-success-of-the-national-anti-corruption-strategy-</u> requires-a-coordinated-approach-in-the-fight-against-corruption/.

²⁷⁷ Transparency International Zimbabwe, 'The Success of The National Anti-Corruption Strategy Requires A Coordinated Approach in The Fight Against Corruption', <u>https://www.tizim.org/2020/12/the-success-of-the-national-anti-corruption-strategy-</u> requires-a-coordinated-approach-in-the-fight-against-corruption/.

chairperson underlined that the MOUs were necessary 'to ensure that our different roles are clearly defined and that we join forces for a common good, which is to achieve a corrupt-free Zimbabwe, this will ensure that we present a unified front which is effectively co-ordinated.'²⁷⁸

In 2020, the ZACC and the Institute of Directors Zimbabwe signed an MOU to advocate for the fight against corruption through corporate governance platforms. In her keynote address at the signing, ZACC Chairperson Justice Loice Matanda-Moyo said the agreement would ensure that they join forces to fight corruption in the private sector.²⁷⁹

The Anti-Corruption Drive: Progress and Challenges

Despite the existence of several laws, policies and institutions aimed at dealing with the endemic corruption in Zimbabwe, it is a battle far from being won. This is because of the ever-increasing number of corruption cases. A key issue that stands out is that the country has a fairly robust legislative framework that can yield positive results for the country if fully utilised. But the anti-corruption drive faces a number of challenges. The problems enumerated below constitute a significant drawback in fostering effective corruption prevention and an effective stolen asset recovery regime.

Political Interference

Political interference emerges as a huge challenge to the fight against corruption. A well-documented case occurred in 2016 when former Vice-President Phelekezela Mphoko allegedly used his power to order the release of the then acting Chief Executive Officer of ZINARA, Engineer Moses Juma, and non-executive director Davison Norupiri, who had been arrested by the ZACC on allegations of defrauding the parastatal of \$1,3 million.²⁸⁰ In April 2020, ZACC Chairperson Matanda-Moyo lamented that the war against corruption was being politicised, alleging that 'every time you want to go after a certain person, then you are accused of representing a particular political organisation as if they are immune to prosecution.'²⁸¹ She also decried the fact that investigators are interfered with as they are called to stop investigations.

²⁷⁸ Zvamaida Murwira and Victor Maphosa, 'ZACC forges anti-graft alliances,' *The Herald*, October 4, 2019, <u>https://www.herald.</u> co.zw/zacc-forges-anti-graft-alliances/.

²⁷⁹ Jotham Gutsa, 'IODZ signs an MOU with ZACC,' *Institute of Directors of Zimbabwe*, December 17, 2020, <u>http://iodz.co.zw/2020</u> /12/17/iodz-zacc-ink-corporate-governance-deal/.

²⁸⁰ Wongai Zhangazha, Elias Mambo and Herbert Moyo, 'Mphoko releases arrested officials,' *The Independent*, July 15, 2016, https://www.theindependent.co.zw/2016/07/15/mphoko-releases-arrested-officials/.

^{281 &#}x27;Stop meddling in graft probes, ZACC warns politicians,' *The Herald*, April 29, 2020, <u>https://www.herald.co.zw/stop-meddling-</u> in-graft-probes-zacc-warns-politicians/.

The lack of adequate financial and human resources emerges as an impediment to the fight against corruption in Zimbabwe. This applies to institutions like the ZACC, the police as well as the Judiciary, whose role in fighting corruption cannot be overemphasised. Presenting the report of the Parliamentary Portfolio Committee on Defence, Home Affairs and Security Services Committee Chairperson, retired colonel Tshinga Dube, recommended the capacitation of the ZACC. He said the organisation needs to be allocated adequate funds in order to fill all its 141 vacancies. This would in turn result in effective structures and systems being set up and operationalised, including offices in the Midlands, Bulawayo, Masvingo and Manicaland.²⁸² Speaking before a meeting of the Parliamentary Portfolio Committee on Justice in October 2019, ZACC Commissioner Gabriel Chaibva disclosed that Treasury had only awarded the ZACC \$23 million for 2020, which was not enough considering its massive programmes that included regional decentralisation, legal reforms, education programmes and staff retention.²⁸³ For example, giving a brief of his ministry's pre-budget paper, Finance Minister Mthuli Ncube promised enough funding for anti-graft bodies, such as the ZACC and the SACU, whose poor funding had even resulted in accusations that some of the institutions' investigating officers were being bribed to turn a blind eye in cases concerning the running of councils and senior public offices.²⁸⁴

Corruption Cases Taking Too Long to be Concluded

A number of high-profile corruption cases have taken longer than anticipated to be concluded. One high profile case that comes to mind is that of Ignatius Chombo, a former cabinet minister who served in various portfolios under Mugabe's administration. Chombo first appeared in court in November 2017 on corruption and abuse of power charges related to his earlier tenure as minister of local government, public works and urban development but the case is yet to be finalised more than three years after the arrest.²⁸⁵

²⁸² Auxilia Katongomara, 'ZACC operations under threat,' *The Chronicle*, January 18, 2018, <u>https://www.chronicle.co.zw/zacc-operations-under-threat/</u>.

²⁸³ Veneranda Langa, 'ZACC tables \$100m budget for 2020,' *Newsday*, October 11, 2019, <u>https://www.newsday.co.zw/2019/10/zacc-tables-100m-budget-for-2020/.</u>

²⁸⁴ Leopold Munhende, 'Mthuli promises funding for anti-corruption bodies in 2021 budget,' *New Zimbabwe*, October 15, 2020, https://www.newzimbabwe.com/mthuli-promises-funding-for-anti-corruption-bodies-in-2021-budget/.

²⁸⁵ Tendai Marima, 'Corruption charges for ex-minister Ignatius Chombo,' *AI jazeera*, November 25, 2017, <u>https://www.aljazeera</u>. com/news/2017/11/25/corruption-charges-for-ex-minister-ignatius-chombo.

Impunity Against Corruption

There seems to be ample evidence that politically exposed persons enjoy impunity when they are involved in cases of corruption. The 'catch and release' pattern confirms this. There is normally hype surrounding arrests of high-profile figures, but similar energies are not invested in the post-arrest phases. This leads to a situation where observers can only conclude that the process is simply a façade. It seems that low profile cases can be dealt with quickly, yet those involving 'the big fish' in society take a long time to be concluded – if they ever are.

Centralisation of Anti-Corruption Campaigns

As is the case with many socio-economic and political activities, anti-corruption activities are usually centralised in the capital, Harare. Little is done to have anti-corruption activities in the remoter parts of the country. Awareness campaigns on corruption are centralised in major cities, leaving the populace in small towns and rural areas less aware of the dangers and costs of corruption and what can be done about them. Effective anti-corruption efforts should target all and sundry. Distance should not be a barrier. The 2016 Auditor-General's report noted that without regional offices where people can make reports or complaints, the ZACC may fail to effectively deliver on its mandate.²⁸⁶

Gaps in Legislation

Zimbabwe has yet to enact legislation in line with the provisions of Article 32 of the UNCAC, which provides for protection for witnesses, experts and victims of corruption. It has been observed that the absence of such legislation hampers the investigation and prosecution of corruption cases. The identity of witnesses is typically known and they fear to testify in court because there is a risk of intimidation, loss of employment and harassment afterwards.²⁸⁷

Delays in Cross-Border Investigations

Although information-sharing platforms have been established through organisations like the Asset Recovery Inter-Agency of Southern Africa and INTERPOL (International

²⁸⁶ Darlington Muyambwa, "Corruption as a violation of Human and People's Rights: Implications for youth in Zimbabwe" (Policy Brief, International Development Research Centre, Ottawa 2018), <u>https://idl-bnc-idrc.dspacedirect.org/bitstream/handle/10625/</u> m59188/IDL-59188.pdf.

²⁸⁷ Charity Matumbi, 'Combating Corruption through Effective Criminal Justice Practices, International Cooperation and Engagement of Civil Society: The Zimbabwean Perspective', Resource Material Series 107 (undated): 216, <u>https://www.unafei.</u> or.jp/publications/pdf/RS_N0107/N0107_32_IP_Zimbabwe.pdf.

Police), challenges occur in other jurisdictions where there are delays or no responses to enquiries on criminal offenders in extradition matters or enquiries on financial investigations. This problem is not specific to Zimbabwe, but is an issue in the world at large.²⁸⁸

Public Assessments on Government's Fight Against Corruption

The Institute for Justice and Reconciliation, Afrobarometer's core partner for Southern Africa, commissioned two pre-election surveys in April/May and June/July 2018. Led by the Mass Public Opinion Institute, each survey interviewed 2,400 adult citizens, yielding country-level results with a margin of error of +/-2 percentage points at a 95% confidence level.²⁸⁹

The surveys were held six months after Mugabe was ousted in November 2017. Both surveys showed that citizens were generally dissatisfied with the government's fight against corruption. Asked to evaluate government performance in the fight against corruption, a majority of adult Zimbabweans (58%) said the government was performing 'fairly/very badly', while 37% of the adult population had a positive assessment, saying that the government was doing 'fairly well' or 'very well' in that regard²⁹⁰ (see Figure 2).

More urban residents (67%) than rural residents (51%), and more men (60%) than women (55%), as well as majorities across all age groups, were of the opinion that the government was performing badly to tackle corruption. Negative evaluations of government's fight against corruption were most widespread amongst those with post-secondary education (74%), but least shared among those without formal education (43%). By partisan affiliation,²⁹¹ more than 83% of MDC-A supporters, compared to 34% of ZANU-PF adherents, were of the opinion that the government was performing badly in terms of fighting graft (see Figure 3).

The feeling that the government's performance was below par in the fight against corruption was most common among Bulawayo residents, as evinced by the 76% of adults who rated the government poorly, describing it as 'fairly badly' or 'very badly' on

²⁸⁸ Matumbi, 'Combating Corruption through Effective Criminal Justice Practices', 213-217.

²⁸⁹ Afrobarometer, Summary of results: pre-election baseline survey in Zimbabwe: April/May 2018 (Cape Town: Afrobarometer, 2018), 2, <u>https://afrobarometer.org/sites/default/files/publications/Summary%20of%20results/zim_r7.5_pre_elections_survey_1_summary_of_results_072018.pdf</u>. Note: these surveys were undertaken prior to Zimbabwe's accession to the APRM.

²⁹⁰ Afrobarometer, Summary of results: pre-election baseline, 52.

²⁹¹ Political party affiliation is determined based on responses to the questions: 'Do you feel close to any particular political party?' and, if yes, 'Which party is that?'

FIGURE 2 PERSPECTIVES ON GOVERNMENT'S HANDLING OF THE FIGHT AGAINST CORRUPTION, MAY 2018



Source: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: April/May 2018 (Cape Town: Afrobarometer, 2018)

that aspect. Nonetheless, in two provinces (Midlands with 46% and Masvingo with 35%) fewer than half of the adult population thought the government's performance was unsatisfactory. In fact, 63% of residents in Masvingo province claimed that the government was doing 'fairly well' or 'very well' in terms of fighting corruption (see Figure 3).

Negative evaluations of government performance in the fight against corruption in the May 2018 survey were also evident in the follow up survey in July 2018. There was a 12 percentage point jump from the May 2018 results (57% to 69%) of adult Zimbabweans who were of the view that the government's fight against corruption did not meet expectations. The proportion of those who had a positive assessment of government's fight against corruption also went down by 10 percentage points (from 37% to 27%), while 4% expressed ignorance over the subject (see Figure 4).

As was the case in the preceding survey, more urbanites (73%) than rural residents (67%) shared the view that the government was performing badly in combating corruption. There was however no difference of opinion among men (69%) and women (69%) on this aspect. The negative assessment was most widespread among middle-aged citizens (73%) and equally spread among the youth and the elderly. People with post-secondary education were very critical of government's performance, with 80% describing government's performance as poor. However, 48% of citizens without formal education approved of government's efforts.²⁹²

²⁹² Author analysis based on: Afrobarometer, *Summary of Results Pre-Election Final Survey June/July 2018* (Cape Town: Afrobarometer, 2018).

FIGURE 3 PERSPECTIVES ON GOVERNMENT'S HANDLING OF THE FIGHT AGAINST CORRUPTION BY SOCIO-DEMOGRAPHIC GROUP, MAY 2018



Source: Data based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: April/May 2018 (Cape Town: Afrobarometer, 2018)
FIGURE 4 PERSPECTIVES ON GOVERNMENT'S HANDLING OF THE FIGHT AGAINST CORRUPTION, JULY 2018



Source: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: April/May 2018 (Cape Town: Afrobarometer, 2018)

By political party affiliation, supporters of the MDC-T party were the most critical of government's fight against corruption with 90%, compared to 48% of ZANU-PF affiliates, saying that the government was performing badly in the battle against corruption in government. For the July 2018 survey, Matabeleland North was the provice with the highest dissatisfaction, with 82% feeling that government performance in fighting corruption left a lot to be desired. Although a majority view, Mashonaland East province had the smallest proportion of adult citizens (57%) who felt the government was performing badly in the fight against corruption (see Figure 5).

Perceptions Trends of Government's Fight Against Corruption

When an analysis of the Afrobarometer survey data is done over time, one observation is that significant positive evaluations of government's handling of the fight against corruption were recorded in 2004 and 2009. In 2004, half of the adult population positively assessed the government on this aspect. However negative evaluations were the norm in the other six rounds of the survey (see Figure 6), with this view being most widespread in 2012 (81%), a time when the GNUwas in charge of the country's affairs. There was a marginal drop to 80% in 2014 before a nine percentage point drop to 71% in 2017 when Mugabe was still at the helm of government (see Figure 6).

With the coming in of a new dispensation under Mnangagwa in November 2017, preelection surveys conducted in May 2018 showed a 14 percentage point drop to 57% before a further rise by 12 percentage points to 69% in the July 2018 survey. One can

FIGURE 5 PERSPECTIVES ON GOVERNMENT'S HANDLING OF THE FIGHT AGAINST CORRUPTION BY SOCIO-DEMOGRAPHIC GROUP, JULY 2018



Source: Data based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: April/May 2018 (Cape Town: Afrobarometer, 2018)

FIGURE 6 PERCEPTION TRENDS IN GOVERNMENT'S HANDLING OF THE FIGHTING AGAINST CORRUPTION, 2004–2017



Source: Data based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: June/July 2018 (Cape Town: Afrobarometer, 2018).

speculate that the drop may be attributable to the Second Republic's mantra against endemic corruption, but the rise in the July 2018 survey is a reflection of citizens' dissatisfaction with the way things were unfolding after false optimism in the wake of Mugabe's exit This could also have been a sign of subsiding post-military intervention celebrations that had brought a sense of hope for Zimbabweans.

Question Marks Linger over Government's Anti-Corruption Fight

The May 2018 survey asked adult Zimbabweans if they thought Mnangagwa's fight against corruption was a genuine effort towards achieving good governance or if it was a move meant to punish rival factions within the ZANU-PF. Nearly half the survey respondents (48%) felt that Mnangagwa's fight was a genuine effort to achieve good governance, whereas 39% felt it was aimed at punishing rival factions within the ruling party, and 3% agreed with neither, while 9% professed ignorance over the subject matter (see Figure 7).



FIGURE 7 PUBLIC PERCEPTIONS OF THE SINCERITY OF THE ANTI-CORRUPTION FIGHT, MAY 2018

Source: Data based on: Afrobarometer, *Summary of results: pre-election baseline survey in Zimbabwe: April/May 2018* (Cape Town: Afrobarometer, 2018)

More rural residents (53%) than urbanites (40%), and more women (50%) than men (47%), felt the current battle against corruption was a sincere effort towards good governance. Conversely, more urbanites (48%) than rural dwellers (33%), and more men (42%) than women (36%), felt the move was retributive, with an aim to punish rival factions within ZANU-PF.

Analysis by generation shows that the elderly population (51+ years) were the most likely to think that the fight against corruption was a genuine effort towards good governance (at 53%). This view was also most pronounced among Zimbabweans with primary education (56%). On the other hand, post-secondary education graduates constituted the bulk of respondents (62%) who doubted the authenticity of the fight, saying it was just a retributive process aimed at punishing rival camps within the ZANU-PF. Nearly three fourths (73%) of ZANU-PF supporters compared to 19% of MDC-T supporters, said the current fight is part of good governance initiatives. Unsurprisingly, 75% of MDC-T supporters saw the fight as a punitive move against factional rivals within the ruling party (see Figure 8).

Geographically, the sentiment that the current anti-corruption drive was a genuine governance effort was most prevalent in Masvingo province where 61% of adult residents shared this view, and it was least prevalent in the metropolitan province of Bulawayo,

FIGURE 8 PUBLIC PERCEPTIONS OF THE SINCERITY OF THE ANTI-CORRUPTION FIGHT BY SOCIO-DEMOGRAPHIC GROUP, MAY 2018



Source: Data based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: April/May 2018 (Cape Town: Afrobarometer, 2018)

where this view found traction among only 22% of the residents. It is thus not surprising that Bulawayo metropolitan province housed the highest proportion of residents (54%) who opined that the fight against corruption was meant to punish political foes within ZANU-PF. Mashonaland West province had the smallest proportion of adult citizens who thought likewise (see Figure 8).

RECOMMENDATIONS

In order to provide for credible elections, it is necessary that the government:

- strengthen anti-corruption institutions through boosting the financial human capacities of the anti-corruption institutions so they discharge their mandates in an effective and efficient manner;
- ensure that cases of impunity against politically exposed persons are minimised and eradicated so that the fight against corruption gets the necessary buy-in and support – the law should be allowed to take its course regardless of the seniority of a person being investigated and prosecuted;
- create an enabling whistleblowing environment since the country does not have a policy and legal framework on this - such a framework would give corruption witnesses confidence to testify against corrupt persons;
- protect whistleblowers in order to gain the confidence of stakeholders in the fight against corruption (the arrest of Chin'ono and Transform Zimbabwe Party Leader Jacob Ngarivhume in July 2020 after calling for nationwide anti-corruption protests does not send a good message to citizens against corruption);
- cast the anti-corruption net wider to include both opposition and ruling party members to avoid a scenario in which government is accused of political persecution of the opposition, especially in opposition led city councils; and
- expedite the conclusion of some of the already known high profile corruption cases in order to regain public confidence expediting the conclusions of such cases would also serve to show government's political commitment to fighting corruption.

In addition, it is necessary that all stakeholders should cooperate in awareness campaigns:

• Awareness campaigns against corruption should be decentralised: The campaigns should focus on the effects of corruption on community and national development. It also appears that the anti-corruption campaign has lost momentum and hence there is need to reboot and re-energise the process.

CHAPTER 7



Responsive Governance: Transparency & Accountability

This issue addresses governance as a whole, with reference to many aspects of the review. To the extent that it finds specific expression in the Self-Assessment Questionnaire, it relates to the Democracy and Good Political Governance thematic area, specifically:

>> OBJECTIVE 1

Entrenching Constitutional Democracy and the Rule of Law

Question 1 Does the political system as practiced in your country allow for free and fair competition for power and the promotion of democratic governance?

>> OBJECTIVE 4

Promotion and Protection of Civil and Political Rights as enshrined in African and International Human Rights Instruments

	What measures have been put in place to promote and enforce civil rights?
Question 2	What steps have been taken to facilitate due process and equal access to justice for all?
Question 3	How vibrant, independent and influential are civil society organisations in your country?
Question 4	To what extent does the state respect and protect the Access to Information rights of citizens?

Ensuring Accountable, Efficient and Effective Public Service Delivery at the National and Decentralised levels

Question 1 What measures have been taken in the country to strengthen institutions for an efficient and an effective public service?

Question 2 What is the state of corruption in the public sector?

It also relates to the Economic Governance and Management thematic area, specifically:

Promote Sound Public Finance Management

Question 1 What has your country done to promote sound public finance management?

Fight Corruption and Money Laundering

Question 1 What measures have been taken by your country to fight corruption in public procurement and with what results?

Transparency and accountability are the twin pillars of good governance. When diligently applied, they contribute meaningfully not only to a responsive and responsible government, but to the rational deployment and employment of public resources. They are, in other words, intimately linked to a society's developmental aspirations. Their absence to a greater or lesser extent from the governance systems of many African states helps explain their problematic political cultures and stalled socio-economic progress. The APRM seeks to remedy this.

Transparency in institutions and organisations, is based on upholding trust-based relationships with stakeholders through the open exchange of knowledge and information. To achieve transparency, a government must provide information that is accurate, complete and timely about its activities and governance to citizens. Transparency promotes accountability.

Accountability, in turn, refers to mechanisms to report on the use of public resources and consequences for failing to meet stated performance objectives.²⁹³ It is a situation in which officials and those who seek to influence them follow established rules defining acceptable processes and outcomes, and are required to demonstrate that they have followed those procedures. Political accountability occurs when a politician makes choices on behalf of the people and when those people have the ability to reward or sanction that politician.

Accountability also focuses on participation in terms of which citizens' voices are increased through strengthened CSOs and improved advocacy methods. Accountability entails the right of citizens to obtain justifications and explanations for the use of public resources from those entrusted with their management in order to progressively realise human rights.²⁹⁴

Both transparency and accountability are aimed at effective management of public resources and the prevention of corruption and misuse or abuse of office. What follows maps out how these ideals exist - or are absent - in Zimbabwe.

Policies, Laws and Tools on Accountability

Formally, Zimbabwe has a constitution with accountability and transparency mechanisms built into it. Set procedures are laid down as to how government business is to be conducted. It also forms the basis for the rights of citizens to seek justifications and explanations from government for its actions, and to take corrective action where required.²⁹⁵

Chapter 2 of the Constitution specifically focuses on good governance. It provides that the state is required to 'adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of Government at every level.'²⁹⁶

²⁹³ Gibson Chigumira, Erinah Chipumho and Gamuchirai Chiwuze, "Fiscal Transparency and Accountability within the Context of Devolution in Zimbabwe" (Discussion Paper, Zimbabwe Economic Policy Analysis and Research Unit, Harare, 2020), http://www.zeparu.co.zw/sites/default/files/2020-06/Fiscal%20Transparency%20and%20Accountability%20within%20 the%20Context%20of%20Devolution%20im%20Zimbabwe%20%28WEB%29-1.pdf.

²⁹⁴ Thembile Phute, Social Accountability and citizen engagement – understanding poor service delivery in the Zimbabwean context , 2019, <u>http://copsam.com/wp-content/uploads/2016/03/Zimbabwe-context_SAM.pdf.</u>

²⁹⁵ Phute, "Social Accountability and citizen engagement", 5.

²⁹⁶ Zimbabwe Constitution, ch. 2, s. 9, cl. 1.

Section 298 of the Constitution clearly outlines how government funds are supposed to be handled. It is worth examining at length:²⁹⁷

- 1 The following principles must guide all aspects of public finance in Zimbabwe
 - a) there must be transparency and accountability in financial matters;
 - b) the public finance system must be directed towards national development, and in particular
 - i) the burden of taxation must be shared fairly;
 - ii) revenue raised nationally must be shared equitably between the central government and provincial and local tiers of government; and
 - iii) expenditure must be directed towards the development of Zimbabwe, and special provision must be made for marginalised groups and areas;
 - d) the burdens and benefits of the use of resources must be shared equitably between present and future generations;
 - e) public funds must be expended transparently, prudently, economically and effectively;
 - f) financial management must be responsible, and fiscal reporting must be clear; and
 - g) public borrowing and all transactions involving the national debt must be carried out transparently and in the best interests of Zimbabwe.

Section 299 gives Parliament oversight of state revenues and expenditure to ensure that all government agencies and entities, including statutory bodies, provincial and metropolitan councils as well as local authorities, properly incur and account for revenue and expenditure.²⁹⁸ Reports to the office of the Auditor-General are thus mandatory, with those recommendations used to improve the quality of governance.

The Public Finance Management Act lays out the procedure of accounting for the Constituency Development Fund. The fund is a government initiative with the intent of allocating money to constituencies for purposes of constituency development and poverty eradication. Funds allocated should only be used for community development and not for the personal gain of elected representatives. Both the Constitution and the

²⁹⁷ Zimbabwe Constitution, ch. 17, pt. 1, s. 298.

²⁹⁸ Zimbabwe Constitution, ch. 17, pt. 1, s. 299.

Public Finance Management Act provide a legal framework for Parliament to monitor the use of public funds expended from the national budget.

These mechanisms are supplemented by such tools as community scorecards and leadership performance scorecards, whose various aims include informing citizens and communities about their rights, the standards of service delivery they should expect and the actual performance of their providers, while others seek to facilitate access to formal redress mechanisms to address service delivery failures.²⁹⁹

Conceptually, these are the solid foundations of an accountable governance system. However, the implementation of these provisions all too often falls short. The case studies that follow point to the options open to Zimbabwe's people to demand accountability, as well as the challenges they face in so doing.

Case Studies

Elections

Elections (provided they are free and fair) provide the most obvious tool for accountability, although they offer only the broadest citizen control over government. Voters can retain or reject their elected leaders (MPs/local councillors), a decision that can potentially have salutary effects on governance. And when local elections do revolve around a given issue, such as water provision, they necessarily leave everything else out of the picture. In Zimbabwe, as is explored elsewhere in this report, elections do not always reflect an unfettered voter choice, or an opportunity to demand accountability or enforce transparency. For these reasons, citizens need other instruments to enforce accountability.

A Free and Active Media

In an ideal situation, the media exposes wrongdoing. It must have broad protection against infringements of its rights and responsibilities and must have the freedom to be able to seek information where the public interest is concerned. It must be able to publish information that helps the public to enforce its rights. The country adopted the Freedom of Information Act of July 2020, which was welcomed as a progressive step taken towards the alignment of the country's laws with the Constitution. The Freedom of Information Act, despite criticisms, repealed the long-criticised AIPPA and has been billed as having created 'a conducive national media environment'.³⁰⁰ Social media platforms can be effectively used to enhance accountability and to promote transparency. These, unlike traditional media organisations whose operations are subject to structural influences, present a relatively free venue for citizens to engage in transparency and accountability interventions.

However, journalists in Zimbabwe do not enjoy the freedom they need. According to MISA, in 2020 Zimbabwe recorded 52 cases of assaults, harassment and attacks on journalists, compared to 27 in 2019.³⁰¹ The government has been accused of using the issueing of licences for starting radio or television channels for commercial purposes, and using community radio stations and campus radio stations to amplify its messages and limit those of others.³⁰²

Abuse of Community Development Funds

One case that demonstrates a lack of government accountability is the use and misuse of Community Development Funds (CDF). MPs are allocated funds to be used for poverty eradication and constituency development. They are also intended for community-level projects such as road repairs, construction of dip tanks, libraries, the refurbishment of schools and clinics, and local income-generating projects. However, these funds are frequently not used for the benefit of citizens. Rather, most of the money is used for the personal benefit of elected representatives. In 2014, 20 legislators were being investigated for pilfering CDF funds for the purchase of personal assets such as vehicles and motorbikes.³⁰³ In 2020, four elected MPs from MDC-T and ZANU-PF were arrested after a ZACC investigation found they had abused the CDF funds.³⁰⁴

The state of many urban areas attests to the failure to use these funds properly: roads are not maintained, there are serious water shortages and libraries have been forced to shut down. The way in which the CDF is being handled demonstrates a lack of accountability and transparency on the part of legislators.

 <sup>300
 &#</sup>x27;AIPPA scrapped...New Freedom of Information Bill signed into law', Office of the President and Cabinet, July 2, 2020, http://www.theopc.gov.zw/index.php/566-aippa-scrapped-new-freedom-of-information-bill-signed-into-law.

^{301 &#}x27;No celebration for Zim journalists', *Newsday*, May 10, 2021, <u>https://www.newsday.co.zw/2021/05/no-celebration-for-zim-journalists/</u>.

³⁰² Amnesty International, 'Zimbabwe: Radio stranglehold gagging freedom of expression', May 20, 2015, <u>https://www.amnesty.org/en/latest/news/2015/05/zimbabwe-radio-stranglehold-gagging-freedom-of-expression/?_cf_chl_jschl_tk_=pmd_5IUesd</u>u9LhvQDtxd.nSIRtUpj2JfNt7SXRQIUJXc8ms-1630413290-0-gqNtZGzNAjujcnBszQII.

³⁰³ Lincoln Towindo, 'MPs snub Constituency Development Fund', The Sunday Mail, October 18, 2020, <u>https://www.sundaymail.</u> co.zw/mps-snub-constituency-development-fund.

³⁰⁴ Towindo, 'MPs snub Constituency Development Fund'.

In a recent case, concerned Harare North legislator Allan Markham and the Community Water Alliance Trust, together took Finance Minister Mthuli Ncube, the Reserve Bank of Zimbabwe (RBZ) and Afreximbank to court in September 2019 over the issue of full disclosure of financial agreements made by government and external lenders. The ruling for the case came on 1 December 2020 at a time when the government was pushing for constitutional amendments that would make the Executive unaccountable to the Legislature regarding all foreign debts. This would have been counter to the Constitution and various accountability statutes and would have constituted a direct evasion of accountability for the government's fiscal actions. It was revealed from the hearing that the government took a loan from Afreximbank without the approval of Parliament and used platinum production as collateral, in violation of Section 300 of the Constitution which states that 'debts and obligations whose payment or repayment is guaranteed by the State; and those limits must not be exceeded without the authority of the National Assembly.'³⁰⁵

Ministerial Defiance and Inadequate Parliamentary Action

Parliament also has an official oversight role, in terms of which different portfolio committees conduct hearings with cabinet ministers if there are any allegations of misconduct in government. These hearings tend to be aired on national television. However, one key weakness is that some cabinet ministers defiantly refuse to answer questions posed to them by the chairpersons of the portfolio committees. One can rightly argue that the defiance stems from the political patronage wielded by, or extended to, the ministers involved. There is little sense of servant leadership – rather the prevailing attitude appears to be that the country's leaders are rulers of the nation, who should not be asked about the use of the resources under their stewardship. This renders the oversight function of Parliament weak. Bills have been presented to Parliament to remove checks and balances on judicial appointments and to centralise power in the president. Of note is Constitutional Amendment Bill No. 2 of 2021, which sailed through Parliament and Senate.³⁰⁶

306 For more on this see Section 1 - Constitutionalism.

³⁰⁵ Kudzai Chimhangwa, 'Zimbabwe citizens demand accountability from government over debt in a landmark high court ruling,' Open Democracy, December 22 2020, <u>https://www.opendemocracy.net/en/oureconomy/zimbabwe-citizens-demand-</u> accountability-government-over-debt-landmark-high-court-ruling/.

The Algorithm for Distributing COVID-19 Aid

Perhaps one of the greatest demonstrations of the lack of transparency on the part of government was the COVID-19 relief fund. Given the public health disaster, it became imperative for the government to be transparent and win the trust and cooperation of society. But the government's response in this instance created suspicions – this was predictable given that the ZANU-PF government has often been accused of distributing public funds or goods along party lines.

The government, through the Minister of Finance and Economic Development, announced that it had set aside \$1.65 million for COVID-19 relief that was going to be given to 'vulnerable households'.³⁰⁷ It was put forward that the Ministry of Social Welfare was to be responsible for compiling lists of beneficiaries and that the platform to be used for the disbursement of the funds was OneMoney, a government mobile money agent. Everyone would be forced to register with OneMoney and thus give it a competitive advantage over other privately owned mobile money companies.³⁰⁸

Furthermore, when the minister was asked about the criteria used to determine the beneficiaries, his response was that a sophisticated algorithm would be used in deciding who would receive funds, thus raising further questions as to who would be excluded. To this day, it is not known who benefited from the aid, who did not and how that was determined. Furthermore, the government also said that Econet and OneMoney were to compile the names of the beneficiaries from their databases.³⁰⁹ This was a violation of the Constitution and also an infringement of people's rights to privacy in that these companies would participate in giving away people's user data. (This brings to mind accusations in 2018 that ZANU PF had sent campaign messages to a significant number of the population without their consent).³¹⁰

³⁰⁷ Clement Chipenda and Tom Tom, 'Zimbabwe's Social Policy Response to Covid-19: Temporary Food Relief and Cash Transfers', (CRC 1342 Covid-19 Social Policy Response Series 23, Global Dynamics of Social Policy, Bremen, 2021) 8, <u>https://www.ssoar.info/</u> <u>ssoar/bitstream/handle/document/72580/ssoar-2021-chipenda_et_al-Zimbabwes_Social_Policy_Response_to.pdf?sequence=1</u> <u>&isAllowed=y&Inkname=ssoar-2021-chipenda_et_al-Zimbabwes_Social_Policy_Response_to.pdf.</u>

³⁰⁸ Farai Mudzingwa, 'Mthuli Ncube & His "Sophisticated Algorithms" For Corona Relief Funds – Another Privacy Disaster Looming?', *TechZim*, April 26, 2020, <u>https://www.techzim.co.zw/2020/04/mthuli-ncube-his-sophisticated-algorithms-for-</u> <u>corona-relief-funds-another-privacy-disaster-looming/</u>.

^{309 &#}x27;800 000 Social Welfare Beneficiaries Picked From Econet Users - Minister', New Zimbabwe, April 24, 2020, https://www.newzimbabwe.com/800-000-social-welfare-beneficiaries-picked-from-econet-users-minister/.

³¹⁰ Tawanda Karombo, 'Zimbabwe's first-ever election without Robert Mugabe has turned into a data privacy minefield', Quartz Africa, July 11, 2018, <u>https://qz.com/africa/1325485/zimbabwe-elections-whatsapp-sms-spam-data-privacy-concerns-for-mnang</u> agwa-chimasa/.

Citizen Perceptions on Transparency and Accountability in Zimbabwe

Afrobarometer data shows what citizens think of accountability and transparency. The data suggests that citizens want an accountable government in which public officials comply with the Constitution and work for the common good of society. In summary, citizens are in favour of elections, monitoring of the Executive by Parliament, respect for laws and the holding of leaders accountable.

In 2014, citizens were asked which statement was closest to their views: 'it is more important to have a government that can get things done, even if we have no influence over what it does'; or 'it is more important for citizens to be able to hold government accountable, even if that means it makes decisions more slowly'.³¹¹ More than half (53%) of adult Zimbabweans showed a preference for accountability by agreeing/strongly agreeing with the second statement. Some 39% chose having a government that gets things done even though the citizens have no influence over what the government does and 8% professed ignorance over the matter (see Figure 9). These findings show that, as an ideal, adult Zimbabwean citizens want transparency and accountability to prevail in government.



FIGURE 9 CITIZEN SUPPORT FOR ACCOUNTABILITY IN GOVERNANCE, 2014

Source: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: June/July 2018 (Cape Town: Afrobarometer, 2018)

311 Afrobarometer, Summary of Results Afrobarometer Round 6 Survey in Zimbabwe, 2014 (Cape Town: Afrobarometer, 2014), 18.

Although citizens want accountability and transparency, less than a majority (although substantial proportions) believe that it is the voter who should ensure that officials do their jobs. Nearly four in ten (39%), believe it is the voters who should make sure the MP does his or her job once elected, while 43% believe that it is the same voters who should ensure that local councillors do their jobs, and 42% believe the voters should make sure the president does his job once elected (see Figure 10).



FIGURE 10 VOTERS RESPONSIBLE FOR HOLDING OFFICIALS ACCOUNTABLE, 2018

Source: Data based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: June/July 2018 (Cape Town: Afrobarometer, 2018)

Most adult Zimbabweans would, on principle, want accountability to prevail in the country, as evidenced by the 57% who agree/strongly agree with the statement that 'Parliament should ensure that the President explains to it on a regular basis how his government spends taxpayers' money', compared to 33% who agree/strongly agree that 'the President should be able to devote his full attention to developing the country rather than wasting time justifying his actions' (see Figure 11). There is no significant difference between women (58%) and men (57%), who share the same sentiment that the president should be monitored by Parliament. This sentiment is also shared across all age levels: 18–30 at 57%, 31–50 at 59%, 51+ years at 53% (see Figure 11).

From the findings, it seems education is an important factor in determining attitudes. The more educated people are, the more they desire accountability on the part of the president. Some 68% of those with post-secondary education agreed/strongly agreed that Parliament should ensure the president explains on a regular basis how government spends taxpayers' money, while 59% with secondary education, 53% with primary education and 32% with no formal education, shared the same sentiment (see Figure 11).

FIGURE 11 PERCEPTIONS ON WHETHER THE PRESIDENT SHOULD BE MONITORED BY PARLIAMENT OR BE FREE TO ACT ON THEIR OWN, 2018



Source: Date based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: June/July 2018 (Cape Town: Afrobarometer, 2018)

Related questions demonstrate that Zimbabweans overwhelmingly demand obedience from the President to the laws of the land – a view held by some 72% of adults overall (see Figure 12).

FIGURE 12 PERCEPTIONS ON WHETHER THE PRESIDENT SHOULD OBEY THE LAWS OF THE COUNTRY, OR BE FREE TO ACT ON THEIR OWN, 2018



Source: Date based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: June/July 2018 (Cape Town: Afrobarometer, 2018)

The sentiment that 'the President must always obey the laws and the courts, even if he thinks they are wrong' was widely held across the board. It was shared by women (71%), men (74%), those aged 18–30 years (73%), those aged 31–50 years (75%), those with post-secondary education (81%), those with secondary education (72%), those with primary education (73%) and those with no formal education (57%) (see Figure 12).

Civic Participation

Civic participation is critical to demanding accountability. Polling evidence suggests it is low in certain aspects and this is attributable to fear, corruption and citizen fatigue. The lack of transparency and accountability has been so low in Zimbabwe that citizens have withdrawn from their efforts to hold responsible parties to account. For instance, demonstrations have been met with a heavy-handed response from the army or police leading to the death of innocent citizens.

Asked if they attended community meetings in the past 12 months prior to the survey, 46% said they did several times or often, while 13% said they would never do this even if they had a chance (see Figure 13). Community meetings present an opportunity for citizens to get information about how the local and central government does things, and they too get to give their input. If, however, less than half of citizens attend these meetings, it shows that most citizens do not take advantage of such platforms to ask for accountability from duty-bearers. More rural dwellers (61%) attend these meetings than urban dwellers (21%), with slightly more attendance from men (48%) than women (44%). Findings also reveal that the older people get, the more they attend meetings (attendance for ages 18–30 were at 34%, 31–50 at 52%, 51 and older at 57%), and the more educated people are, the less likely they are to attend meetings (post-secondary at 25%, primary education at 63%) (see Figure 13).

Slightly more than a tenth (14%) said they have joined others to raise an issue in the past year preceding the survey. The numbers are low whether one is in a rural area (17%) or urban area (9%), and a woman (13%) or a man (15%). This is largely the same regardless of age or education, with slightly more (20%) of those with primary education having done this (see Figure 14). Such low numbers show that Zimbabweans are not a pro-active society and would not go out to raise an issue with their duty-bearers.

It seems that most Zimbabweans view their leaders not as public servants, but as bosses who should not be questioned on how they have done certain things, which then translates to Zimbabweans not being proactive in seeking accountability from duty-bearers.

FIGURE 13 ATTENDANCE AT COMMUNITY MEETINGS, 2018



Source: Date based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: June/July 2018 (Cape Town: Afrobarometer, 2018)

Media Freedom

A free media is an important tool for accountability. The majority of Zimbabweans want a free media, evidenced by the 53% of adult citizens who agreed/strongly agreed with the statement that 'the media should have the right to publish any views and ideas without government control' (see Figure 15). If the media is free, it can report without

FIGURE 14 JOINING OTHERS TO RAISE AN ISSUE, 2018



Source: Date based on: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: June/July 2018 (Cape Town: Afrobarometer, 2018)

fear or prejudice on government performance and there is a decent chance that the government will in turn be forced to explain how it does things, on top of trying to do things as it should. This is a sentiment shared by Zimbabweans from all walks of life, although there are minor divergences in views.

Opinion is nearly equally split among those who are 51+ years, where 47% are of the view that 'the government should have the right to prevent the media from publishing things

FIGURE 15 FREEDOM OF THE MEDIA TO PUBLISH WITHOUT GOVERNMENT CONTROL, 2020



Source: Afrobarometer, Findings from a pre-election baseline survey in Zimbabwe: June/July 2018 (Cape Town: Afrobarometer, 2018)

that it considers harmful to society', and 42% are of the view that 'the media should have the right to publish any views and ideas without government control.' This is the case with rural dwellers, where 45% believe that the media should be prevented from publishing harmful news, while 47% believe in the media's freedom. Divergent views were recorded among those with no formal education, with a large proportion (44%) believing media should be controlled and 32% supporting freedom of the media (see Figure 15).

Transparency and accountability in Zimbabwe are very low. Zimbabweans generally shy away from holding their leaders accountable, while office bearers do not make the effort to account to citizens. Although there are laws and policies that promote accountability, government is still not accountable to its citizens and transparency is not a virtue that characterises the government. This lack of accountability has in part given rise to rampant corruption, mismanagement of citizens' taxes and abuse of office. Additionally, there are laws that restrict citizens' access to information and hinder media independence, which further inhibit accountability. There is thus a need for citizens to demand accountability, and for government to be accountable to its citizens, carry out its duties and use public funds in a transparent manner.

RECOMMENDATIONS

In order to provide for credible elections, it is necessary that all stakeholders:

- submit government policies and actions to scrutiny and debate;
- engage in capacity development for communities and citizens at large: the general public should have access to information on government performance; transparency indicators such as producing public reports, press releases and holding public meetings with citizens should be properly carried out and government should be open and accountable; and information on government performance can be shared through both public and private media, and through local community meetings;
- campaign for the opening up of media spaces so the media can report freely on government spending, accountability and transparency issues;
- engage in a bottom-up approach in its implementation of statutes so as to involve the citizens in all levels of decision making;
- establish commissions and review boards made up of CSOs, NGOs and ministries to monitor, evaluate and give feedback on government performance;
- ensure that civil society, human rights groups and other stakeholders have adequate financial resources and equipment to carry out accountability initiatives and must play an important role in facilitating access to information and redress;
- make increased use of information and communications technology (ICT) and e-service-delivery mechanisms that can reduce corruption by increasing transparency of processes to citizens; and
- engage informal institutions such as indigenous, non-state or traditional leaders, to allow for local or historical accountability mechanisms to work – social accountability initiatives should build in the participation and engagement of such leaders.

It is necessary that the government:

 should not only arrest perpetrators of corruption but also prosecute them properly – the failure to arrest and prosecute these individuals creates an atmosphere where the government is perceived not to be taking corruption seriously and to thus be perpetuating the problem';

RECOMMENDATIONS (CONT'D)

- publicly inform its citizenry on how they manage development funds (for example, CDF and devolution funds) so that citizens understand how money is being used in their communities and have the ability to hold their governments accountable;
- revise its approach to making policies and gazetting statutory instruments government should adopt participatory approaches to decision-making in order to involve all actors for the development of the nation;
- conduct training (for records managers, registry clerks and users, among others) and sensitise top management structures to the importance of sound records management;
- find the political will to take corrective action regarding the abuse of public resources by government officials;
- use social media to inform the public on their workings there is need to enhance the capacity of elected and non-elected representatives and government agencies so they become competent users of social media tools, allowing them to engage with their constituencies across space and time; and
- ensure that information shared on social media by public officials is packaged in non-technical language so that the targeted audience can easily comprehend it.

It is necessary that Parliament:

- expedite the formation of an independent commission of inquiry to investigate reports of corruption and mega salaries in the public sector, in order to weed out these cases and restore order and public confidence; and
- hasten the harmonisation of old statues with the new Constitution, which clearly
 promote good corporate governance, and make available resources to the AntiCorruption Commission since it is the body charged with investigating incidents
 of public corruption.

It is necessary that civil society:

• seek information from government to learn how it is spending funds and running programmes;

RECOMMENDATIONS (CONT'D)

- be capacitated and skilled to undertake and lead credible accountability initiatives, and identify strategic entry points for engagement with government, enabling CSOs to become a voice for the poor and marginalised and to engage with government;
- promote citizen journalism initiatives on their social media platforms, which entails creating comment sections or community blogs where citizens and community members can write and comment about issues;
- encourage all citizens, including marginalised groups and communities, to hold government accountable and to participate in political platforms both at local and national levels – there should be increased democratic participation in governance by all citizens and communities as this will lead to enhanced service delivery and improved quality of life amongst citizens, and promote sustainable and accountable governance in the management of public resources at local government levels for effective service delivery; and
- carry out social audits, complaints mechanisms and public expenditure tracking surveys that have an impact on reducing corruption.

It is necessary that the media:

• be encouraged to foster a culture in which citizens' views influence policy processes by ensuring that citizens have access to information. Improved access to information can be achieved through sound management of records/archives.

CHAPTER 8



This issue relates to the Democracy and Good Political Governance thematic area, specifically:

>> OBJECTIVE 4

Promotion and Protection of Civil and Political Rights as enshrined in African and International Human Rights Instruments

Question 1	What measures have been put in place to promote and enforce civil rights?
Question 3	How vibrant, independent and influential are civil society organisations in your country?
Question 4	To what extent does the state respect and protect the Access to Information rights of citizens?

In a well-functioning democratic society, the relationship between the state and civil society is one of reciprocity, with each feeding off and into the other for the promotion of accountability, transparency and good governance.³¹² Civil society plays a crucial role in organising and articulating citizens' desires and demands, and ensuring the persistence of a democratic political culture. Civil society and CSOs ideally exist as critical sources of information for the government. They monitor government policies, actions and activities, which serves as a valuable tool to ensuring the government is held accountable for what it does. Additionally, they engage in advocacy efforts and, perhaps most importantly, defend citizen rights and protect and promote human rights. While the agendas of the government and civil society may align or diverge, they are (ideally) bound to a common constitutional framework that is the supreme law of the land that binds all within its purview.

The role of civil society has been well described in the following terms:³¹³

Civil society is formed by and forms a part of national culture. Yet most organizations of civil society, regardless of where they exist, are formed and function on a common premise: they are not-for-profit, non-commercial, collective, accountable, committed to transparency, civilian and civilized, private but with a public purpose and oriented towards the public good, have some degree of representativeness and operate in a consensual and non-coercive way.

During the past decade, decided tensions have developed and have continued to grow between the government and the broad spectrum of civil society – the government generally perceives the role of civil society as being opposed to the interests of the state. This narrative has been promulgated over an extended period of time and has been characterised by direct attacks on perceived opposition figures, CSOs, their donors and ultimately members of the citizenry who are perceived to be critical of government.

In the Zimbabwean context, the work of civil society and CSOs are often presented by the government as being driven by the machinations of Western powers, with selfserving agendas.

³¹² Donatella Della Porta, 'Building Bridges: Social Movements and Civil Society in Times of Crisis,' VOLUNTAS - International Journal of Voluntary and Nonprofit Organizations 31 (2020): 938–948, https://link.springer.com/article/10.1007/s11266-020-00199-5.

³¹³ UN, 'Civil Society,' 95, https://www.un.org/esa/socdev/rwss/docs/2001/8%20Civil%20Society.pdf.

As early as 12 December 2018, barely four months after Mnangagwa's inauguration, the acting Labour and Social Welfare Minister, Kazembe Kazembe, briefed cabinet that:³¹⁴

Some non-governmental organisations (NGOs) are dabbling in politics. We are not at liberty to disclose the names, but we are warning them and say they must stick to their mandate. Should these organisations continue with this behaviour, the government will not hesitate to withdraw their registration certificates.

On 13 August 2019, a statement was released in which the government, yet again, threatened to deregister CSOs for failing to comply with the law and advocating a change of government in Zimbabwe.³¹⁵ In the statement, Home Affairs Minister, Cain Mathema, said the following:³¹⁶

Let me state it again, all NGOs must work with the government or they should close their offices and each has to tell us who funds them and how they use their funds. If they do not work with the government, they are spy organisations. My ministry knows that its officers are human rights officers all the time during the performance of their duties.

Consequently, the civic space has been characterised by multiple legislative reforms and policies that effectively curtail the constitutionally enshrined rights of citizens, in addition to undermining the critical role played by civil society and CSOs in national and community affairs. This phenomenon can be understood as the deliberate shrinking of civic space. In the absence of cooperation and mutual respect between the government and civil society, a disturbing climate of fear – driven by targeted arrests, hate speech and incidents of OVT against members of civil society – has grown. This is starkly opposed to the society described in Zimbabwe's Constitution, and envisaged by the APRM.

On 10 July 2020, it was reported that Mnangagwa had threatened to deregister CSOs on the basis that they were interfering in the political arena and deviating from their mandates.³¹⁷ While addressing a ZANU-PF Politburo meeting at the party headquarters, it was further reported that the president had also directed Western embassies in the

 ³¹⁴ Xolisani Ncube, 'ED threatens to de-register NGOs,' NewsDay, December 12, 2018, https://www.newsday.co.zw/2018/12/ed-threatens-to-de-register-ngos/.

 ³¹⁵ Nizbert Moyo, 'Government threatens NGOs, again,' NewsDay, August 19, 2019, https://www.newsday.co.zw/2019/08/government-threatens-ngos-again/.

³¹⁶ Moyo, "Government threatens NGOs, again".

³¹⁷ Idah Mhetu, 'Mnangagwa threatens to deregister meddlesome NGOs, confirms fresh lockdown plans,' New Zimbabwe, July 10, 2020, <u>https://www.newzimbabwe.com/mnangagwa-threatens-to-deregister-meddlesome-ngos-confirms-fresh-lockdownplans/.</u>

country to stop interfering with the nation's internal affairs, thereby directly intimidating and undermining advocacy and lobby efforts between civil society and foreign communities.³¹⁸

Perhaps the most telling and concise summation of the government's perception of CSOs is found in the remarks of ZANU-PF Secretary for Administration, Dr Obert Mpofu, in his opening remarks to the ZANU-PF Policy and Coordination meeting held at the party headquarters on 18 August 2020, in which he stated:³¹⁹

We should all remember that neo-colonial forces are hard at work and our enemies like USA will use everything in their arsenal to destabilize the region as they advocate for regime change of all Former Liberation Movements through the opposition parties, civil society organizations which they sponsor.

From this, it is evident that there exists an official perception of the work of civil society as being premised on advancing a foreign agenda. From a factual perspective, the contrary is true. The work of CSOs is broad and multi-layered but is at all times constrained by the boundaries and tenets established by the Constitution, which is premised on the protection and development of the country.

Cracking Down on Dissent

The case of investigative journalist and activist Hopewell Chin'ono has been mentioned previously – he was arrested for a tweet. It is worth mentioning that the use of Section 31 of the Criminal Law (Codification and Reform) Act, which criminalises 'publishing or communicating false statements prejudicial to the State', was ruled to be unconstitutional and inconsistent with the Constitution in 2014, by then deputy chief justice, Luke Malaba, in the case of *Chimakure & 2 Ors v The Attorney-General of Zimbabwe*.³²⁰ However, it is a charge that has been used numerous times to target perceived voices of dissent. Among other notable figures that have been the target of arrest are opposition party MDC-A Vice Chairperson, Job Sikhala, and MDC-A Spokesperson, Advocate Fadzayi Mahere.

³¹⁸ Mhetu, "Mnangagwa threatens to deregister".

³¹⁹ David Mwanza, 'Obert Mpofu warns regime change agents,' *The Zimbabwe Mail*, August 18, 2020, <u>https://www.thezimbabwe</u> mail.com/headlines/obert-mpofu-warns-regime-change-agents/.

³²⁰ Chimakure & 2 Ors v The Attorney- General of Zimbabwe, SC 14/2013.

Action against dissenting voices is also to be found in two significant legislative reforms whose implications may be critical and far reaching to the work of CSOs and the process of civic engagement in general. In conception, they appear to be based around the view that CSOs are the tools of foreign manipulators, and that the government should have a firm hold on them.

Firstly, a Private Voluntary Organisations Amendment Bill (the Amendment Bill) has been proposed to overhaul the administration of NGOs and PVOs in the country.³²¹ Secondly, on 2 March 2021, the late ZANU-PF legislator for Mberengwa South, Alum Mpofu, moved a motion in the National Assembly for the enactment of a proposed 'Patriotic Bill', which would criminalise private correspondence with foreign governments.³²² Mpofu indicated that he was concerned about the negative portrayal of the country's image and reputation, and motivated that as the reason for moving the motion.³²³

With regard to the proposed Amendment Bill, there is little on record detailing its specificities. From various media reports, it has been suggested that the Amendment Bill is intended to bring about efficiency in the registration and regulation of CSOs, which will include the incorporation of recommendations from the Financial Action Task Force, a global money laundering and terrorist financing watchdog, in order to ensure Zimbabwe's compliance with international anti-money laundering and counter-terrorist financing efforts. In March 2019, Acting Information, Publicity and Broadcasting Services Minister, Dr Sekai Nzenza, gave insight into the Amendment Bill in the following terms:³²⁴

Cabinet received a presentation from the Minister of Public Service, Labour and Social Welfare to amend the Private Voluntary Organisations Act (*Chapter17:05*) in order to render it compliant with the requirements of the Financial Task Force on combating money laundering and financing of terrorism by individuals and organisations. More specifically, the amendment seeks to ensure that PVOs in Zimbabwe are not used as conduits for money laundering and funding of terrorist activities, while seeking to bring about efficiency in the registration and regulation of the same. Key provisions of the principles include that at registration of a Private Voluntary Organisation, all essential information regarding the beneficial ownership and interest in a PVO be disclosed to the

³²¹ Leopold Munhende, 'Mnangagwa Plots Total Control Of NGOs,' *New Zimbabwe*, October 23, 2020, <u>https://www.newzimbabwe</u>.com/mnangagwa-plots-total-control-of-ngos/.

³²² Veritas Zimbabwe, 'Debate on the Need for a "Patriotic Bill", http://www.veritaszim.net/node/4827.

³²³ Veritas Zimbabwe, "Debate on the Need".

^{324 &#}x27;Seventh Meeting Decisions Matrix,' The Herald, March 15, 2019, https://www.herald.co.zw/seventh-meeting-decisions-matrix/.

authorities, that where the beneficial ownership and the interest is not disclosed, registration be declined. That it be a criminal offence to falsify information on the beneficial ownership and interest of the PVO and where such registration had been made earlier without disclosure, it be deemed null and void. Cabinet approved the principles and directed the Minister to issue instructions for the drafting of the actual Bill.

Similarly, the proposed Patriotic Bill has yet to be formulated. However, in *The Sunday Mail* article, the Permanent Secretary in the Ministry of Justice, Legal and Parliamentary Affairs, Mrs Virginia Mabhiza, was quoted:³²⁵

The Bill is premised on the constitutional provision on the foreign policy of our country, which values the promotion and protection of the national interests of Zimbabwe. It is the duty of the State to engage other sovereign nations on issues pertaining to foreign relations, and not self-serving citizens.

Expanding on the implications of the proposed bill, the permanent secretary indicated that acts criminalised under the proposed law would include private correspondence with foreign governments, or any officer or agent thereof, including false statements influencing foreign governments or any other such conduct aimed at undermining the country. It was further stated that conviction in relation to such charges would result in the imposition of stiff punitive measures.³²⁶

Sovereign nations are entitled to protect their domestic integrity from external interference. The danger, as with all things, however, lies in the blatant abuse of the law to meet self-serving goals under the guise of promoting national interest. Given the track record of the government, and the sentiments that have been presented, herein lies the crux of the matter.

The government has consistently expressed a decidedly negative view of the work of civil society and CSOs in general, such that a real fear exists of the promulgation of laws that are designed to crack down on perceived dissent in the country. It is against this backdrop that the proposed Amendment Bill and Patriotic Bill seek to be developed and ultimately enacted.

326 Towindo, 'New law to criminalise'.

³²⁵ Lincoln Towindo, 'New law to criminalise unpatriotic acts,' *The Sunday Mail*, October 4, 2020, <u>https://www.sundaymail.co.zw/</u> new-law-to-criminalise-unpatriotic-acts.

The undercurrent of the bills suggests they are not intended to prevent fraud or treason or subversion. Instead, it appears the law is being formed to directly punish citizens, political adversaries and CSOs for exercising the right to expression, particularly in relation to the state of the nation. Additionally, there are justifiably grave concerns within the civic space that the bills will facilitate the centralisation of power in the government, to effectively gag and control the work of civil society and CSOs.

In the face of such stormy prospects, it is essential that the civic sector and the government seek to genuinely commit to engage each other through direct and alternative means, as provided for by the law and best practice. Such engagements would arguably be more effective with the collaboration and assistance of regional and international actors, to the extent that they are able to facilitate dialogue to culminate in a well-balanced and mutual understanding of the complementary roles played by the government, civil society and CSOs in the development of a well-functioning democratic society. In reality however, the process of engagement between civil society and the government presents a unique challenge in that citizen engagement and participation in national processes has continued to be in a state of notable steady decline that requires urgent intervention. Efforts to shift the misconceptions and misgivings that exist on all ends of the spectrum are necessary to implement and sustain the tenets of the Constitution that call for national progression through the collective and collaborative efforts of every member of the state. This cannot be achieved without the effective implementation of advocacy and lobby efforts between the citizenry and its government. Engagement is critical to problem solving and the prevention of misinformed suspicions that culminate in retrogressive acts that only serve to undermine the Constitution and the relationship between the government and its people.

Unfortunately, the existing conditions and indications from the government forecast a continued path of restrictive measures that effectively hinder the operations of CSOs and the civic space, to the detriment of the national interests that the government itself is seeking to protect.

In order to reverse the closing of civic space, it is necessary that all stakeholders:

• continue extensive advocacy and lobby efforts to activate citizen and government engagement in national processes.

It is necessary that the government:

- hold perpetrators of incidents of OVT to account in order to curb the prevailing culture of impunity; and
- implement genuine policy and legislative reforms that actively involve the citizenry and are motivated by comprehensive democratic principles.

It is necessary that regional and international actors:

• push the government and hold it accountable for its actions.

CHAPTER 9



Gender Equality and Social Inclusion

This issue is identified as a cross-cutting one, with reference to many aspects of the review. In more focused terms, it relates to the Democracy and Good Political Governance thematic area, specifically:

>> OBJECTIVE 6

Promotion and Protection of the Rights of Women

- Question 1 What measures have been taken to promote and protect the rights of women in the country?
- Question 2 What measures have been put in place to enhance the role of women in the democratic process and governance of your country?

It also relates to the Broad-Based Sustainable Socio-Economic Development thematic area, specifically:

Encourage Broad-Based Participation in Development

Question 1 What mechanisms have been put in place to promote, extend and encourage stakeholders' participation in the broad-based sustainable socioeconomic development?

>> OBJECTIVE 3

Poverty, Unemployment and Inequality

Question 1 What policies and strategies has the government put in place to reduce poverty and inequality, particularly in terms of access to resources and basic services?
Question 3 What are the national programmes, policies and strategies put in place to reduce poverty, in particular the feminisation of poverty?

It also relates to the Broad-Based Sustainable Socio-Economic Development thematic area, specifically:

Progress Towards Gender Equality, in Particular Equal Access to Education for Girls at all Levels

Question 1 What measures has the country taken to promote gender equality and with what results?

Gender equality has taken a prominent place in global and national developmental agendas, with emphasis on closing the gender gap in terms of women's representation in public and private decision-making bodies.³²⁷

Gender-based inequality and the exclusion of women has proven to be an intractable issue, especially on the African continent, despite the proliferation of national and international initiatives to address this in past decades.³²⁸ In essence, despite so much having been done in the name of gender-sensitive social inclusion, inadequate benefit has been felt by women on the ground, especially regarding women's representation in influential political and economic positions. Much of the slow progress can be attributed to the inherited structures and systems that discriminated against women during the colonial era.

Gender equality and social inclusion are mainly aimed at ensuring that women and girls, as a previously disadvantaged group, have equal opportunities and resources to participate in the social, political, cultural and economic spheres of life. Below is an appraisal of gender equality and social inclusion dynamics in Zimbabwe. While a brief overview for the entire post-independence period in Zimbabwe is provided, the thrust of this section is to compare and contrast the First Republic (the Mugabe Administration,

³²⁷ Newman Tekwa and Jimi Adesina, 'Gender, Poverty and Inequality in the Aftermath of Zimbabwe's Land Reform,' *Journal of International Women's Studies* 19, no. 5 (2018): 45–62, https://vc.bridgew.edu/jiws/vol19/iss5/4/.

³²⁸ Twasiima Patricia Bigirwa, "The Social Inclusion of Women and Challenges for a Contemporary African Feminist Activism" (Feminist Dialogue Series 6, Friedrich-Ebert-Stiftung, Bonn, 2018), 1, https://library.fes.de/pdf-files/bueros/mosambik/14622.pdf.

especially the post-2000 period) and the Second Republic (the Mnangagwa Administration), with the overall aim of assessing progress made and challenges experienced with regards to attaining gender parity as per the SDGs of Agenda 2030.

Overview of the Development of Gender Mainstreaming in Zimbabwe

Gender mainstreaming in Zimbabwe can be traced back to the liberation struggle, among whose drivers was the need to end the racial and gender inequalities that existed at the time, specifically regarding access to education and employment opportunities.³²⁹ With independence in 1980, some of the repressive laws, especially on wage discrimination, were repealed. However, despite these efforts, minimal impact was felt, particularly in the political arena that continued to be dominated by men.³³⁰ In addition, key sectors like mining, education and agriculture (especially land ownership) also continued to be dominated by men, with women playing peripheral roles. Overall, in the first two decades of independence in Zimbabwe (1980-1999), 'the state's commitment to women issues was at its best ambivalent as indicated by the swinging pendulum of state-led progress followed by a period of backsliding on earlier commitments.'³³¹ This lacklustre performance in gender transformation and reform was illustrated by the 1999 Supreme Court ruling in the case of Magaya v Magaya in which the court unanimously decided that '...under customary law, only men can inherit (their parents' property), that all family members are subordinate to the male head of the family... and that women's status is basically the same as that of a junior male in the family.'³³² This confirmed the influence of deep-rooted patriarchal values and beliefs, despite the gender mainstreaming rhetoric and some limited action.

The Millennium Development Goals (MDGs) in the early 2000s, however, saw an exponential growth in calls and efforts for gender mainstreaming. Countries across the world began to implement policies and programmes to achieve the MDGs, especially MDG 3 on 'promoting gender equality and empowering women'.³³³ Zimbabwe also joined this gender mainstreaming bandwagon, making institutional and legislative

³²⁹ Gay Seidman, 'Women in Zimbabwe: Postindependence Struggles,' *Feminist Studies* 10, no. 3 (1984): 419–440, https://www.jstor.org/stable/3178033.

³³⁰ Rosemary Gordon, 'Education Policy and Gender in Zimbabwe,' *Gender and Education* 6, no. 2 (1994): 131-139, https://www.tandfonline.com/doi/abs/10.1080/0954025940060203.

³³¹ Sita Ranchod-Nilsson, 'Gender Politics and the Pendulum of Political and Social Transformation in Zimbabwe', *Journal of Southern African Studies* 32, no. 1 (2006): 49–67.

³³² Ranchod-Nilsson, 'Gender Politics', 51.

³³³ UN Millennium Development Goals, 'Goal 3: Promote Gender Equality and Empower Women', <u>https://www.un.org/millennium</u> goals/gender.shtml.

commitments to the MDGs. Prior to the MDGs, Zimbabwe was guided by a 1998 donor's conference that adopted a 20% quota for women in decision-making positions, in line with a SADC recommendation that 20% of all resources should go to women.³³⁴ Zimbabwe introduced its first National Gender Policy in 2004, kick-starting a mammoth process towards gender equality and equity.³³⁵ Various strides were made in terms of gender-oriented policy formulation and adoption and these included the following policy measures:

- the introduction of the National Gender Policy (2004);
- the introduction of the National Gender Policy Implementation Strategy and Workplan (2008–2012);
- the introduction of the Reviewed National Gender Policy (2013-2017); and
- the re-introduction of a gender-oriented ministry, the Ministry of Women, Gender and Community Development (MoWGCD) in 2005 (the ministry is the overall coordinating body for implementing gender equality at the national level and also tasked with providing oversight for gender mainstreaming in all sectors).

In addition to the efforts made by the government for gender mainstreaming, CSOs have been playing a supportive role. CSOs have done considerably more in terms of gender mainstreaming activities but the majority of these organisations are based in large towns and cities, leaving women and girls in rural community areas more exposed.³³⁶

Gender and the 2013 Constitution

The 2013 Constitution was in many ways a game-changer and was widely celebrated across the political and social divide in Zimbabwe because it symbolised a break from the past Noticeable in the Constitution were the proposed mechanisms to increase and enhance the visibility of women in national politics³³⁷, which included the following:

³³⁴ Tekwa and Adesina, 'Gender, Poverty and Inequality'.

³³⁵ Lexington Matonhodze and Tobias Guzura, "Are we there yet? An evaluation of the impact of the Zimbabwe National Gender Policy on gender mainstreaming in Zimbabwe" (Global South Sephis E-Magazine, Sephsis, Rio de Janeiro, 2014), 39, <u>http://www.sephis.org/sites/default/files/documents/articles/are-we-there-yet-evaluation-impact-zimbabwe-national-gender-policy-gender.pdf.</u>

³³⁶ Food and Agriculture Organization of the UN (FAO), National gender profile of agriculture and rural livelihoods Zimbabwe (Harare: FAO, 2017), <u>http://www.fao.org/3/i6997e/i6997e.pdf</u>.

³³⁷ Darlington Tshuma, "Looking Beyond 2023 What Next after Zimbabwe's Parliamentary Quota System?" (Conflict Trends 2018/3, ACCORD, Durban, 2018), https://www.accord.org.za/conflict-trends/looking-beyond-2023/.

- quota system (60 seats in Parliament specifically reserved for women);
- establishment of the ZGC as per Section 245;
- elaborated sections on gender equality, for example, Section 17 on gender balance (requiring the state to promote 'full gender balance' in society; Section 56 on equality and non-discrimination (emphasising the equality before the law of all people); and Section 80 on the rights of women (guaranteeing their full and equal role in society).

Gender-Significant Legislation

Alongside its constitutional guarantees, Zimbabwe has passed numerous items of legislation that seek to promote (or at least have a bearing on) gender equality and the empowerment of women. These include:

- The Zimbabwe Gender Commission Act (Chapter 10:31): Enacted in 2015-6, this act establishes the ZGC, as per the provisions of Section 245 of the 2013 Constitution.
- The Electoral Act (1990): The act provides for participation by women in elections as candidates or voters, and makes specific provision against gender discrimination. Section 3 (a) (i) of the act states that every citizen is entitled to 'participate in government directly or through freely chosen representatives, and is entitled, without distinction on the ground of.... gender, education, or economic or social condition, to stand for office and cast a vote freely.'³³⁸
- Administration of Estates Amendment Act (1997): This act changed the customary law positions that prohibited women and girls from inheriting from the estates of deceased husbands or fathers, to allow women and girls to inherit.³³⁹
- Sexual Offences Act [now part of the Criminal Law (Codification and Reform) Act] (2001): The act introduced the 'marital rape' clause criminalising rape within marriage, providing for the criminalisation of deliberate transmission of HIV/AIDS³⁴⁰, addressing human trafficking and introducing harsher penalties for sexual offences.³⁴¹
- The Criminal Law (Codification and Reform) Act (2004): This act incorporates key pieces of legislation, such as the former Sexual Offences Act, which are now all part of the main Criminal Law (Codification and Reform) Act. It amends various sections of existing legislation and consolidates criminal law in Zimbabwe.³⁴²

³³⁸ Electoral Act 25 of 2004, s.3 (a), cl. (i).

³³⁹ Administration of Estates Amendment Act 6 of 1997, Part IIIA, s.68, cl. C.

³⁴⁰ This was later decriminalised after criminalisation was found to have perverse results and was also difficult to prove.

³⁴¹ Sexual Offences Act 8 of 2001, Part III, s.8, cl.1.

³⁴² Criminal Law Act 23 of 2004, 186.

• Domestic Violence Act (2006): The act provides the framework for addressing domestic violence. It gives a very detailed definition of domestic violence and acknowledges non-physical forms of violence as domestic violence. The act criminalises domestic violence and provides for various forms of relief for survivors. A key provision of the act is the provision for third parties to report domestic violence, where the person experiencing domestic violence is unable to report it. The act also establishes a Domestic Violence Council tasked with overseeing the implementation of the act and monitoring domestic violence in general.³⁴³

A longstanding issue of concern has been the dynamics around the institution of marriage, specifically the realignment of the legislative frameworks to the 2013 Constitution. Journalist Moses Mugugunyeki points out that 'the Marriage Bill is yet to be signed into law despite having been promulgated seven years ago',³⁴⁴ which is a clear indication of the lag in the ongoing process of realigning laws to the Constitution.

Gender-Significant Institutional and Administrative Initiatives

To oversee gender-focused policy, Zimbabwe has introduced a number of dedicated bodies. These include:

- Ministry of Women's Affairs, Gender and Community Development: Introduced in 2005, the ministry is the overall coordinating body for implementing gender equality at the national level and is also tasked with providing oversight for gender mainstreaming in all sectors in Zimbabwe. The MoWAGCD has an average of seven provincial officers in each of the 10 administrative provinces, two officers per district in each of the 73 district offices and one officer manning each of the 1,953 wards in the country. The officers are responsible for spearheading gender equality and women empowerment programmes at their respective levels among other duties.³⁴⁵
- Zimbabwe Cender Commission: Established through Section 245 of the Constitution and the Zimbabwe Gender Commission Act, this commission has an overall role of monitoring issues of gender equality, investigating violations of gender equality rights, receiving and considering complaints, conducting research, and recommending affirmative action programmes, among others. Since its inception in 2016, the

³⁴³ Government of Zimbabwe, Domestic Violence Act 14 of 2006, s. 3 and s. 7.

³⁴⁴ Moses Mugugunyeki, 'Zim on right track to gender equality,' The Standard, April 18, 2021, <u>https://www.thestandard.co.zw/2021/</u> 04/18/zim-on-right-track-to-gender-equality/.

³⁴⁵ Smart Mhembwe 'The Impact of Gender Equality and Women Empowerment on Sustainable Community Development: A Case Study of Ward 5 in Shurugwi District in the Midlands Province of Zimbabwe', Zambezia Gender Special Issue (2019): 99, <u>https://</u> www.researchgate.net/publication/351945717_The_Impact_of_Gender_Equality_and_Women_Empowerment_on_Sustainable_ Community_Development_A_Case_Study_of_Ward_5_in_Shurugwi_District_in_the_Midlands_Province_of_Zimbabwe.

commission has managed to participate in various initiatives as part of its mandate, including: gender audits on main political parties; annual gender forums; issuing advisory letters in instances of gender-insensitive appointments; and peer education and awareness programmes.³⁴⁶ The commission is also at the forefront of advocating for the Gender Equality Bill and the Anti-Sexual Harassment Bill, signifying concerted efforts in meeting its mandate. Despite making some progress, the ZGC Chief Executive Officer, Virginia Muwanigwa, pointed to the enormity of the task ahead:³⁴⁷

The Commission noted with dismay the fact that gender equality still remains a pipedream for the traditionally vulnerable women owing to the non-operationalisation of the constitutional values on gender equality. While Section 17(b) (i) is peremptory in directing gender balance in all commissions, elective and appointed governmental bodies established by the Constitution and other Acts of Parliament, a closer look at recent appointments in various boards shows a worrying picture of impunity. The duty bearers have found an escape route from the fact that the right is established outside the Justiciable Bill of Rights. The law is, therefore, expected to provide a bridge through providing for sanctions on actors who wilfully ignore the parity principle at all levels of decision-making.

In addition to official initiatives, there has been a notable increase in the representation of women in positions of authority in the country overall.

TABLE 6TRENDS AND STATISTICS ON THE NUMBER OF WOMEN IN MANAGERIAL
POSITIONS, 2011-2019

	2011	2014	2019
% of women in managerial positions	20.59%	27.55%	33.7%
Proportion of women in senior and middle management positions (%)	22.76%	-	28.07%

Source: Inter-Parliamentary Union, *Women in parliament:1995-2020* (Geneva: Inter-Parliamentary Union, 2020), <u>https://www.iknow_</u>politics.org/sites/default/files/2020-women_in_parliament_en-lr.pdf

³⁴⁶ Mugugunyeki, "Zim on right track".

³⁴⁷ Mugugunyeki, 'Zim on right track'.

Measures for Dealing with Domestic Violence/Gender-Based Violence

One of the central issues that gender equality initiatives have sought to address across the world is gender-based violence (GBV). Zimbabwe has, over the years, seen a proliferation of initiatives meant to address domestic violence. Some notable initiatives have been: the enactment of the Domestic Violence Act in 2006; the development of a National Gender Based Violence Strategy (2010-2015); the National Programme on GBV Prevention and Response (2016-2020); the setting up of an Inter-Ministerial Cabinet Committee on Rape and GBV and the development of a National Action Plan on Rape; protective legislation such as the Sexual Offences Act that criminalises marital rape (now incorporated into the Criminal Law (Codification) Act); establishment of the Victim Friendly Courts; setting up of Victim Friendly Units at police stations; and the launching of the '4 Ps' Campaign by the Ministry of Women Affairs Gender and Community Development in 2011, aimed at raising awareness about the Domestic Violence Act and GBV, focusing on prevention, protection, partnerships and programming.³⁴⁸

As a result of these measures, there has been an increase in the number of cases being reported, which indicates increased awareness by victims of GBV. In addition, there has also been an increase in the number of cases being tried and completed by the NPA, as presented in Table 7.

TABLE 7	TABLE 7 CASES OF GBV AS REPORTED TO THE ZRP AND HANDLED BY THE NPA										
YEAR	CASES LODGED WITH ZRP	CASES HANDLED BY NPA	CASES WITHDRAWN AT ZRP AT THE INSTANCE OF THE SURVIVOR	CASES TRIED & COMPLETED BY NPA	CASES WITHDRAWN AT COURT AT THE INSTANCE OF SURVIVORS (NPA)						
2012	13 173	7 459	5 714	6 250	1209						
2013	13 149	7 389	5 760	6 019	1 370						
2014	15 300	8 342	6 958	7 122	1 220						
2015	20 528	9 116	11 412	8 238	878						
2016	21 755	11 852	9 903	9 908	1 944						

Source: UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), *Sixth periodic report submitted by Zimbabwe under article 18 of the Convention, due in 2016*, CEDAW/C/ZWE/6 (January 24, 2019, <u>http://docstore.ohchr.org/Self</u>Services/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsjRQNw4j9iQmKc34zuC413tTgj74vjjBRVI%2BrGhAS4Xrn6oRgdxi KPX6 Z%2Fx3tufkheN7BI4axDheOIAmEcFsiP99uJ2kfyGRtsR6sOUv9tZ%2B

348 Olivia Muchena, 'Introductory Statement by Head of Delegation,' statement delivered the 51st Session of the Committee on the Elimination of Discrimination Against Women, undated, <u>https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20</u> Documents/ZWE/INT_CEDAW_STA_ZWE_51_11091_E.pdf. The introduction of various gender mainstreaming strategies has brought positive developments to the process of achieving gender equality and the participation of women in different spheres of life. There has been an increase in the number of women participating in elections for public office. For example, the 2018 elections saw a considerably higher number of women running for public office either as independent candidates or as political party representatives.³⁴⁹ Women's representation in the Seventh Parliament (2008) was at 16% and 25% for the National Assembly and Senate respectively, and these figures rose to 35% (for the National Assembly) and 48% (for the Senate) in the Eighth Parliament.³⁵⁰ However, while it might appear that the number of women in political positions, specifically in Parliament, has increased, there are worrying underlying trends.

TABLE 8 TRENDS AND STATISTICS ON POSITIONS OVER THE YEARS		MBER OF	WOMEN	IN POLITI	CAL
	2008	2013	2017	2018	2020
% women in national assembly	15.238%	31.481%	32.576%	31.481%	31.852%
% women in the senate	24.731%	24.731% 47.5% -		43.75%	43.8%
% women in cabinet	-	9% -		-	-
% women in local authorities	18%	16/7% -		13%	-
Proportion of elected seats held by women in deliberative bodies of local government (%)	-	-	-	11.98%	-

Source: World Bank, 'Proportion of seats held by women in national parliaments (%) – Zimbabwe', <u>https://data.worldbank.org/indicator/</u> <u>SG.GEN.PARLZS?locations=ZW</u>; Inter-Parliamentary Union, *Women in Parliament: 1995–2020 – 25 Years in Review* (Geneva: Inter-Parliamentary Union, 2020), <u>https://www.iknowpolitics.org/sites/default/files/2020-women_in_parliament_en-Ir.pdf</u>; Inter-Parliamentary Union, *Women in Politics: 2020* (Geneva: Inter-Parliamentary Union, 2020), <u>https://www.ipu.org/resources/publications/</u> <u>infographics/2020-03/women-in-politics-2020</u>; Darlington Tshuma "Looking Beyond 2023 What Next after Zimbabwe's Parliamentary Quota System?" (Durban: Accord, 2018, <u>https://www.accord.org.za/conflict-trends/looking-beyond-2023/</u>; Institute for Young Women's Development, *Why Young Women Are Rejecting Constitutional Amendment Bill No. 2*, June 23, 2020, <u>https://kubatana.net/2020/</u> 06/23/why-young-women-are-rejecting-constitutional-amendment-bill-no-2/

The number of women directly elected to Parliament has been declining – there were 34 women elected in 2008, 26 in 2013 and 25 in 2018. Analysts have attributed this trend to the existence of the constitutional quota system. Political parties have been accused

³⁴⁹ Tshuma, "Looking Beyond 2023".

³⁵⁰ Tshuma, "Looking Beyond 2023".

of using the quota to block women from directly contesting public office because their seats are guaranteed by the Constitution.³⁵¹ Thus, to some, the quota system provision has actually worked to undermine women's participation in politics.³⁵²

In the post-2018 period, there have been various developments with reference to gender mainstreaming. One of the topical issues has been Clause 11 of the Constitutional Amendment Bill No. 2 of 2019, which seeks to extend the provision for the quota system as provided under Section 124 of the Constitution.³⁵³ While the provision was transitional (expiring in 2023) to ensure that the country created a conducive socio-economic, political and legal environment for the election of women across all spheres of governance, the Constitutional Amendment Bill seeks to extend the quota for another two Parliaments (2023 to 2033).³⁵⁴ This move has, however, faced criticism from various societal groups, specifically those representing women. One of the arguments has been that the current quota system is more about tokenism and is already far below adequate representation, thus extending it will not yield the much-needed results in gender mainstreaming.³⁵⁵

There have been calls to ensure that durable legal frameworks are enacted, for example, the Gender Equality Act, which will make it mandatory for the original 210 Parliamentary seats and 1 958 local government seats to be occupied by at least 50% women, rather than the provisional quota system.³⁵⁶ It is, however, important to note that the Constitutional Amendment Bill controversially sailed through the National Assembly and Senate. It was expeditiously assented to by the president on 7 May 2021 and is now part of the supreme law of the country.

Considerable progress has been made in aligning gender-related legislation with the Constitution. A Gender Commission Bill was signed into law on 12 February 2016, and is now an act of Parliament. The General Laws Amendment Bill No. 1 has been passed and is now a law, while General Laws Amendment Bill No. 2 is now covered by the Public Entities Corporate Governance Bill. The Marriages Act has been approved by the Cabinet Committee on Legislation (CCL), and is currently undergoing Parliamentary processes. Likewise, the Customary Marriages Act is currently undergoing Parliamentary processes. A Gender Equality Bill and an Anti-Sexual Harassment Bill are awaiting processing.

³⁵¹ Tshuma, "Looking Beyond 2023".

³⁵² Tshuma, "Looking Beyond 2023".

³⁵³ Institute for Young Women's Development (IYWD), *Why Young Women Are Rejecting Constitutional Amendment Bill No. 2,* June 23, 2020, https://kubatana.net/2020/06/23/why-young-women-are-rejecting-constitutional-amendment-bill-no-2/.

³⁵⁴ IYWD, Why Young Women.

³⁵⁵ IYWD, Why Young Women.

³⁵⁶ IYWD, Why Young Women.

RECOMMENDATIONS

In order to foster substantive gender equality, it is necessary to:

- sign into law the Marriage Bill as a matter of urgency;
- operationalise and respect constitutional values on gender equality;
- encourage discussion and debate around patriarchal values and other unhelpful beliefs, particularly in rural areas and small community forums;
- address the declining number of women elected directly to Parliament, beyond the current quota system. There should be greater understanding of the gender norms and societal nuances that impede women's political representation; and
- Include business and civil society in government's plans to tackle gender inequality.

CHAPTER 10



Public Goods, Service Delivery and Citizen Welfare

This issue relates to the Democracy and Good Political Governance thematic area, specifically:

>> OBJECTIVE 5

Ensuring Accountable, Efficient and Effective Public Service Delivery at the National and Decentralized levels

Question 1 What measures have been taken in the country to strengthen institutions for an efficient and an effective public service?

The performance of Zimbabwe's institutions has been disappointing in recent years. This is particularly the case in respect to the operation of its state institutions tasked with providing services to the population. Following almost three decades of decline in the quality of services offered by government entities, the general public expected a departure from the status quo. Hopes were raised, especially due to the incoming president's repeated declaration that this was the dawn of 'a new Zimbabwe', a departure from the systematic economic mismanagement that had characterised his predecessor's administration.³⁵⁷

What follows is an assessment of the continuities and changes in Zimbabwe's service delivery dynamics, with special focus on the post-Mugabe period.

Local Governance and Service Delivery in Zimbabwe

Local government is typically at the forefront of service provision, especially for denselyliving urban communities. The health, productivity and general quality of life depends significantly on the provision of key services (such as water and electricity) and the upkeep of infrastructure. Services and infrastructure – so-called public goods and services – are also essential components of socio-economic development. Ensuring that communities have these public goods and services is a challenge throughout the developing world.³⁵⁸ According to one analysis, these shortcomings can be attributed to 'a combination of intertwined factors that include inadequate human and financial resources, lack of the requisite technical skills, corruption and mismanagement, political interference, poor participatory local governance structures, rapid population growth, and poor economic performance.'³⁵⁹ These factors have managed to lock many developing nations into a vicious, 'low-level equilibrium' cycle of poor service delivery.³⁶⁰

The 2013 Constitution marked a sharp departure in the general status of local government in Zimbabwe, as it was granted the constitutional legal standing that it lacked in the previous Constitution.³⁶¹ Chapter 14 comprehensively stipulates the roles and responsibilities of the different tiers of government, with the preamble to

³⁵⁷ Alexander Noyes, A New Zimbabwe: assessing continuity and change after Mugabe (Santa Monica: Rand Corporation, 2020).

³⁵⁸Takawira Mumvuma, 'Enhancing Service Delivery at the Local Level in Zimbabwe: Challenges and Future Prospects" in Local
Covernance, Economic Development and Institutions, eds. Gómez and Knorringa (London: Palgrave Macmillan, 2016).

³⁵⁹ Mumvuma, "Enhancing Service Delivery", 64.

³⁶⁰ Mumvuma, "Enhancing Service Delivery", 64.

³⁶¹ Takudzwa McDonald Madzimure, 'A Case for Decentralization in Zimbabwe's Local Government System: Challenges and Opportunities,' Archives of Business Research 9, no. 2 (2021): 1-21, <u>https://journals.scholarpublishing.org/index.php/ABR/article/</u> view/9580.

the chapter explicitly enunciating the need for devolution of powers to lower tiers of government.³⁶²

In fact, Chapter 14 has the distinction of being the only other part of the Constitution that has its own preamble. With such elevation and constitutional protection, there were hopes and expectations that the nature and quality of service delivery in local governments would improve.³⁶³ However, little progress has been made in ensuring that the devolution provision has been fully implemented (whether by the Mugabe or Mnangagwa administrations), and consequently service delivery is on a downward spiral.³⁶⁴ Local authorities have, in the post-2013 period, continued to be characterised by problems like 'infrequent water provision, burst water and sewer pipes, faecal contamination of major water sources, deterioration in road networks, the non-functioning of traffic lights, non-collection of refuse, uncompleted capital projects and service delivery protests, among other problems.'³⁶⁵

The crisis of decaying service delivery has continued and even worsened under the Mnangagwa administration, despite promises to turn the country around and make it an attractive place to do business. The Auditor-General's report on local authorities for the year ending 31 December 2018 identified enormous deficits in service delivery in local authorities. These included poor and non-existent water provision, erratic refuse collection and dilapidated service delivery infrastructure, among others.³⁶⁶ This can be attributed to two broad factors: first, the actions and policies of the national/ central government; and second, the 'inadequacies and insufficiencies of the processes of local public service delivery.'³⁶⁷ With regards to the actions and policies of the central government, it is important to note that political wrangling has been a major constraint to local government service delivery, in both the Mugabe and Mnangagwa administrations. The toxic and deteriorating centre-local relations have also exacerbated the situation, especially in urban local authorities where 26 of the 32 urban local authorities are controlled by the MDC-A.

³⁶² Constitution of Zimbabwe, Ch. 14, art. 264.

Sylvester Marumahoko et al., 'Governance and Urban Service Delivery in Zimbabwe,' The Strategic Review for Southern Africa
 42, no. 1 (2020): 41–68, https://www.researchgate.net/publication/341900764_Governance_and_Urban_Service_Delivery_in_Zimbabwe.

³⁶⁴ Marumahoko et al., 'Governance and Urban Service Delivery', 65.

³⁶⁵ Marumahoko et al., 'Governance and Urban Service Delivery', 42.

³⁶⁶ Marumahoko et al., 'Governance and Urban Service Delivery', 42.

³⁶⁷ Marumahoko et al., 'Governance and Urban Service Delivery', 51.

TABLE 9MAYORS DISMISSED/SUSPENDED I2003-2020	BY CENTRAL GOVERNMENT,	
NAME OF MAYOR DISMISSED/HARASSED	CITY	YEAR
Elias Mudzuri (D)	Harare	2003
Misheck Kagurabadza (D)	Mutare	2005
Gilbet Shoko (D)	Chitungwiza	2006
Francis Dhlakama (H)	Chegutu	2006
Abel Chaimiti (H)	Masvingo	2006
Japhet-Ndabeni Ncube (H)	Bulawayo	2006
Israel Marange (DC)	Chitungwiza	2010
Claudius Nyamhondoro (H)	Chinhoyi	2011
Ivory Matanhire (D)	Bindura	2011
Brian James (D)	Mutare	2012
Lionel De Necker (D)	Gwanda	2012
Hamutendi Kombayi (H)	Gweru	2015
Bernard Manyenyeni (H)	Harare	2016
Philip Mutoti (DC)	Chitungwiza	2018
Herbert Gomba (D)	Harare	2020
Jacob Mafume	Harare	2020

Note: D: Dismissed; DC: Dismissed and Convicted; H: Harassed

Source: Sylvester Marumahoko et al., 'Governance and Urban Service Delivery in Zimbabwe,' *The Strategic Review for Southern Africa* 42, no. 1 (2020): 54, <u>https://www.researchgate.net/publication/341900764_Governance_and_Urban_Service_Delivery_in_Zimbabwe;</u> 'MDC-T recalls Harare mayor, 5 councillors', *The Herald*, August 21, 2020, <u>https://www.herald.co.zw/mdc-t-recalls-harare-mayor-5-councillors/;</u> Leopold Munhende, 'Jacob Mafume elected new Harare Mayor', September 3, 2020, <u>https://www.newzimbabwe.com/</u> jacob-mafume-elected-new-harare-mayor/

The chronic conflicts between the Ministry of Local Government and Public Works and local governments, as well as between elected councillors (politicians) and the appointed administrators, have all harmed service delivery. Some of the key events indicative of these squabbles include: the unilateral decision in 2001 to transfer the water delivery and revenue collection function to a parastatal (the Zimbabwe National Water Authority); the amendment to the Urban Councils Act in 2008 to abolish the Executive Mayoral System; the pre-2013 elections directive by the Ministry of Local Government for councils to write-off debts; denial of or delay in approving or granting borrowing powers to local authorities; withholding of intergovernmental fiscal support; deliberate delays in the approval of local authority budgets; politically motivated suspensions and dismissal of democratically elected councillors preceded by 'flimsy accusations of corruption, mismanagement and poor service delivery.'³⁶⁸ All of this has undermined service delivery. Table 9 shows the various mayors who have been dismissed or harassed since 2000, a move that has affected local government service delivery over the years.

The central government's intrusive hand has continued to meddle in the affairs of local authorities through suspending and dismissing democratically elected mayors and councillors. In addition, it is also important to note that in the Second Republic such dynamics have taken a new twist, as indicated by the fights between the MDC factions and the resultant recalling of councillors by the court-backed MDC-T.

Finally, a number of important pieces of legislation need to be aligned with the Constitution. These include the Urban Councils Amendment Bill (a draft of which has been prepared), the Metropolitan and Provincial Councils Bill (which has been prepared and is awaiting submission to the CCL for approval), and a Rural District Councils Amendment Bill (a draft of which has also been prepared).

Citizen Welfare

The failure of Zimbabwean governance has produced severe stress in the welfare of the country's people. This is set out below.

Diminished Spending on Public Goods by both the Government and Citizens

Central government struggles to fund public goods at all levels. On the one hand, most local authorities suffer from unfunded mandates from central government due to nondisbursement of the funds guaranteed by Section 301 of the Constitution. This is further exacerbated by the lack of a robust and well-defined fiscal equalisation formula in the distribution of devolution funds. On the other hand, the inflationary environment, exponentially rising cost of basic amenities and goods, and widespread unemployment has affected residents' spending patterns – and their ability to spend at all. In November 2020, the least paid civil servant earned approximately ZWL14 500³⁶⁹ and this was

³⁶⁸ Marumahoko et al., 'Governance and Urban Service Delivery', 52.

³⁶⁹ RTGS = Real Time Gross Settlement dollar; Real Time Gross Settlement refers to a specialist funds transfer systems where the transfer of money or securities takes place from one bank to any other bank on a 'real-time' and on a 'gross' basis. This does not require any physical exchange of money. The RTGS dollar or RTG (Zimdollar or zollar, now abbreviated as ZWL or ZWL\$) was the only official currency in Zimbabwe from June 2019 to March 2020, after which foreign currency was allowed again.

below the poverty datum line of ZWL 20 860 estimated by the Zimbabwe National Statistics Agency (Zimstat).³⁷⁰ In April 2021, government increased civil servant salaries by 25% but this was rejected by among others teacher unions who indicated that the lowest paid teachers would still be earning below the poverty datum line.³⁷¹ Service delivery seems to be on the downward trend, as characterised by uncollected garbage, sewerage bursts, water rationing, water borne diseases and pot-holed road networks.

Liquidity Crisis

The liquidity crisis has undermined government plans, especially in funding the rehabilitation of infrastructure. Most local authorities require their roads to be rehabilitated to kickstart their economies, but few resources exist for this purpose. The liquidity crunch has also affected businesses operations, impacting public and investor confidence, the externalisation of funds, illicit financial flows and has led to a negative net export performance.³⁷²

COVID-19 Disruptions on Formal and Informal Economic Players

The COVID-19 pandemic challenged the world's health systems and presented multiple socio-economic and public health challenges. In Zimbabwe, the government responded by instituting an array of measures, including a national lockdown, to curb transmission of the virus. The welfare of vulnerable groups was compromised by the extended lockdown and this concern led stakeholders to call on the government to address the plight of many Zimbabweans who risked dying of malnutrition and starvation, aside from the dangers of COVID-19. The lockdown deprived many urban dwellers of their sources of livelihood, mostly in the informal sector. To worsen things, the prices of basic commodities increased over the lockdown period, further eroding the buying power of the majority of Zimbabweans. The pandemic forced government and households to revise spending patterns, prioritising survival and safety, leaving few resources for public goods and service delivery.

Poverty and Unemployment

Poverty and unemployment are both endemic in Zimbabwe, driven by the shrinking economy and hyper-inflation. The latter phenomena has arisen from, among other

 ³⁷⁰ Fidelity Mhlanga, 'Cost of living spirals to \$20 680', Newsday, November 20, 2020, https://www.newsday.co.zw/2020/11/cost-of-living-spirals-to-20-680/.

^{371 &#}x27;Zimbabwe Govt Workers Say 50% Salary Increment Insufficient', allAfrica.com, <u>https://allafrica.com/view/group/main/main/id/00078873.html</u>.

³⁷² Banele Dlamini and Leonard Mbira, 'The Current Zimbabwean Liquidity Crisis: A Review of its Precipitates', Journal of Economics and Behavioral Studies 9, no.3 (2017): 212–219, https://ojs.amhinternational.com/index.php/jebs/article/view/1760.

things, the chaotic land reform programme (1999 to date), disregard for human rights (1997 to date), the closure of industries (2000 to date), donor fatigue (2000 to date), diminishing foreign direct investment (2000 to date), freezing of borrowing powers by the Bretton Woods institutions (2000 to date), political instability (2000 to date), along with corruption (1980 to date) and disregard of the rule of law and constitutionalism (1995 to date). Poverty rates and unemployment rates have been among the highest in the world.

The negative economic environment since 2000 has also impacted Zimbabwean entrepreneurs, with a large number going bankrupt. The economic situation prevailing in the economy has turned basic goods into luxuries, degrading people's living standards. In turn, the state of the economy has stifled government spending on public goods, depriving lower tiers of government of the necessary revenue to bankroll council operations and service delivery.

Social Welfare Policy

From 1995 to 2019, the Ministry of Labour and Social Welfare was ceremonial – staffed, but without the resources needed to support a growing number of impoverished Zimbabweans. Rural and urban poverty seems to be on the rise as most Zimbabweans are earning below the poverty datum line, which ranges from ZWL35000 to ZWL40000 (approximately USD420 to USD480 at the current RBZ official exchange rate). Despite the purported robust social safety nets claimed in government rhetoric, the funding on social programmes is inadequate.

Section 30 of the Constitution requires the state to take all practical measures, within the limits of the resources available to it, to provide social security and social care to those who are in need.³⁷³

During the pandemic, the government revamped the policy by extending a cushioning allowance to poor families. The main challenge, however, was the inadequacy of the grant, particularly against galloping inflation and unstable exchange rates. The government's packages tried to cushion 1 million households through a ZWL 600 million (USD24 million at RBZ official exchange rate of USD1:ZWL25 in April 2020) facility, meaning each person received ZWL 200 (approximately USD8 at the RBZ official exchange rate of USD1:ZWL25 in April 2020).

pricing.³⁷⁴ Even though the amount was reviewed upwards to ZWL1,200 in March 2021, the amount still was not enough for households to buy the basic household items required.³⁷⁵ The government should re-establish a robust social welfare framework, while at the same time ensuring the safety and health of its citizens

The Devolution and Decentralisation Policy

This policy³⁷⁶ does not seem to follow a well thought-out or proven model, but the government is already at the implementation stage. The funds disbursed should improve service delivery and promote infrastructural development, but haphazard planning has undermined progress.³⁷⁷ The central government seems to disregard the importance of a having proper formula to allocate the devolution of funds, and together with the lack of monitoring and evaluation mechanisms, this has harmed the policy's efficacy. Devolution funds can be a help to local government's challenges only if there is a robust transparency and accountability framework in place.

³⁷⁴ Sikhululekile Mashingaidze, 'Zimbabwe could learn from South Africa's social grants programme amid its COVID-19 crisis', *Africa Portal*, July 11, 2020, <u>https://www.africaportal.org/features/zimbabwe-could-learn-south-africas-social-grants-</u> programme-amid-its-covid-19-crisis/.

³⁷⁵ Zvamaida Murwira, 'Govt reviews cash transfers', *The Herald*, March 16, 2021, <u>https://www.herald.co.zw/govt-reviews-cash-transfers/</u>.

The Devolution and Decentralisation Policy aims to empower local government and local-level, participatory development. It has been described by President Mnangagwa as an 'anchor' of Zimbabwe's unity; See Chris Musekiwa, 'Devolution and decentralisation policy document launched', Urban Council Association of Zimbabwe, October 1, 2020, <u>https://ucaz.org.</u> zw/2020-10-01-devolution-decentralisation-policy-document-launched/.

³⁷⁷ Gibson Chigumira et al., "Review of Challenges and Capacity Gaps of Different Tiers of Government that can Undermine Implementation of Devolution" (Discussion Paper, Zimbabwe Economic Policy Analysis and Research Unit, Harare, 2020), <u>http://www.zeparu.co.zw/sites/default/files/2020-04/Review%20of%20Challenges%20and%20Capacity%20Gaps%20of%20</u> <u>Different%20Tiers%200f%20Government%20that%20can%20Undermine%20Implementation%20of%20Devolution.pdf</u>.

To aid in Zimbabwe's economic recovery it is necessary that the government:

- strictly enforce its transparency and accountability frameworks to reduce the leakages of resources meant for development at both national and local level;
- revamp and adequately resource social welfare programmes to reduce vulnerability between and among citizens;
- depoliticise development through promoting active citizen participation through devolution, as outlined in the National Development Strategy; and
- ensure policy consistency for better planning.

CHAPTER 11



Economic Governance and the Economic Crisis in Zimbabwe

This issue relates to the Economic Governance and Management thematic area as a whole, although specific reference could be made to:

>> OBJECTIVE 1

Design and Implement Economic Policies for Sustainable Development

- Question 1 Describe the economic vision/policy of the country. What are the key challenges in realising this economic vision?
- Question 2 What sectoral economic policies has your country developed and implemented to promote economic growth and sustainable development in the past 5-10 years and what has been their effectiveness?
- Question 5 To what extent is your country affected by internal and external economic shocks?

>> OBJECTIVE 6

Develop and Implement Trade and Investment Policies that Promote Economic Growth

Question 1 To what extent are your country's investment policies facilitative of economic growth?

Zimbabwe has been afflicted by long-standing economic crises and retardation for decades. This is a phenomenon that has affected all aspects of life, with consequences for the personal financial health of households, the viability of firms and the stability of the country as a whole.³⁷⁸ In particular, post-2000 Zimbabwe has taken a dramatic turn from being regarded as a regional economic leader to being seen as an international pariah.³⁷⁹

An assessment of a country's economic governance should crucially include the macroeconomic dynamics around inflation, unemployment, balance of payment statistics, economic growth and development, as well as the microeconomic dynamics around ease of doing business.

Zimbabwe's Major Development Policies and Strategies since 1980

Post-independent Zimbabwe saw the promulgation of multiple impressive national development strategies, some of which, if pursued and implemented judiciously, might have resulted in notable prosperity for the country and its people.³⁸⁰ Central to these policies was the need to respond to the ever-changing internal and external socio-politico-economic challenges afflicting the country. For background, academic analysts Gideon Zhou and Hardlife Zvoushe grouped the development strategies of the first 30 years of Zimbabwe's independence into three respective decades:³⁸¹

- First decade (1980-90): Policy strategies had a nation-building imperative and thus were highly interventionist and welfarist.³⁸² During this time, the first Five-Year National Development Plan (1986-1990) was published.
- Second decade (1990-2000): There was a departure from the expansionary and interventionist ideology as policies were designed to respond to the impending economic crisis. Strategies like the ESAP and Zimbabwe Programme for Economic and Social Transformation (ZIMPREST) were published.

³⁷⁸ Bassam AlBassam, 'The relationship between governance and economic growth during times of crisis,' *European Journal of Sustainable Development* 2, no. 2 (2013) 1-18.

³⁷⁹ Gretchen Bauer and Scott Taylor, *Politics in Southern Africa: Transition and Transformation* (Boulder: Lynne Rienner Publishers, 2011).

³⁸⁰ Vusumuzi Sibanda and Ranganayi Makwata, Zimbabwe Post Independence Economic Policies: A Critical Review (Germany: Lambert Academic Publishing, 2018), 2.

³⁸¹ Gideon Zhou and Zvoushe Hardlife, 'Public Policy Making in Zimbabwe: A Three Decade Perspective.', International Journal of Humanities and Social Science 2, no. 8 (2012): 212–222, <u>http://www.ijhssnet.com/journals/Vol_2_No_8_Special_Issue_</u> April_2012/26.pdf.

³⁸² For example, the Growth with Equity Policy (1981) and Transitional National Development Plan (1982-1985).

• Third decade (2000-2010): A decade under great uncertainty and turmoil as the economy experienced its worst socio-politico-economic meltdown whose peak year was 2008.³⁸³

TABLE 10 ZIMB	ABWE'S EC	ONOMIC POLICIES SINCE 1980	
	DATE	POLICY	PERIOD COVERED
First decade dynamics	1-Feb-81	Growth with Equity (GWE)	1981
(interventionist,		Transitional National Development Plan (TNDP)	1982-1985
state-centric, welfarist etc.)		First Five-Year National Dev Plan (FFYNDP)	1985-1990
Second decade policies	18-Jan-91	Economic Structural Development Programme (ESAP)	1991-1995
Third decede	20-Feb-98	Zimbabwe Programme for Economic and Social Transformation (ZIMPREST)	1996-2000
Third decade	29-Mar-00	Vision 2020 & Long Term Development Strategy	1997-2020
	1-Aug-01	Millennium Economic Recovery Programme (MERP)	2001-2002
	1-Feb-03	National Economic Revival Programme (NERP)	2003-2004
	1-Nov-04	Macro-Economic Policy Framework (MEPF)	2005-2006
	1-Apr-06	National Economic Development Priority Programme (NEDPP)	2006-2008
	30-Sep-07	Zimbabwe Economic Development Strategy (ZEDS)	2007-2011
Government of National Unity	19-Mar-09	Short Term Emergency Recovery programme (STERP I)	2009
(GNU)	23-Dec-09	Short Term Emergency Recovery programme (STERP II)	2010-2012
	1-Jul-11	Medium Term Plan (MTP)	2011-2015
Post-GNU (Mugabe)	1-Oct-13	Zimbabwe Agenda for Sustainable Socio-Economic Transformation (ZIMASSET)	2013-2018
New Dispensation (Mnangagwa administration)		Transitional Stabilisation Programme (TSP)	2013-2018
(The road towards attaining vision 2030)		National Development Strategy 1	2021-2025

Source: Vusumuzi Sibanda and Ranganayi Makwata, Zimbabwe Post Independence Economic Policies: A Critical Review (Germany: Lambert Academic Publishing, 2018), 3

383 Godfrey Kanyenze and Timothy Kondo, Beyond the Enclave: Towards a Pro-Poor and Inclusive Development Strategy for Zimbabwe (Harare: Weaver Press, 2011).

Following these three phases, and also of importance in Zimbabwe's economic development trajectory, was the GNU era (2009–2013) and the post-GNU era, which can be divided into the Mugabe era (ZIMASSET, 2013–2018) and the Mnangagwa era (Transitional Stabilisation Programme (TSP), 2018–2020, National Development Strategy 1, 2021–2025). Table 10 indicates the various national economic development plans and strategies since 1980.

The Zimbabwe Agenda for Sustainable Socio-Economic Transformation, 2013–2018

ZIMASSET was an economic blueprint launched by the ZANU-PF government following its victory in the 2013 harmonised elections, marking the end of the GNU. It was based on four clusters of priorities:³⁸⁴

- food security and nutrition;
- · social services and poverty eradication;
- infrastructure and utilities; and
- value addition and beneficiation.

Its overall aim was to ensure the attainment of 'sustainable development and social equity anchored on indigenisation, empowerment and employment creation which [would be] ... largely propelled by the judicious exploitation of the country's abundant natural and human resources.'³⁸⁵ These ambitious aspirations were never realised owing to a number of cross-cutting political and economic dynamics. University of Zimbabwe economist, Thabani Nyoni, attributed ZIMASSET's failure mainly to its status as a party manifesto rather than an all-inclusive and consultative development framework.³⁸⁶ However, one of the major contributing factors to the failure of ZIMASSET was the intense factional squabbles in the ruling party around succession issues. These power struggles overshadowed policy implementation and service delivery, leading to the failure to meet policy targets.

Government of Zimbabwe, Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Harare: Veritas, 2013),
 9, <u>http://www.veritaszim.net/sites/veritas_d/files/Zimbabwe%20Agenda%20for%20Sustainable%20Socio-Economic%20</u>
 Transformation%20%28ZIM-ASSET%29%20Oct%202013%20to%20Dec%202018.pdf.

³⁸⁵ Sibanda and Makwata, "Zimbabwe Post Independence Economic Policies".

³⁸⁶ Thabani Nyoni, 'A Critical Diagnosis of the Success/Failure of Economic Policies in Zimbabwe During the Banana (1980-1987) and the Mugabe (1988-2017) Administrations: Learning the Hard Way,' Dynamic Research Journals Journal of Business and Management 1, no. 2 (2018): 27-33, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3133565.

Transitional Stabilisation Programme (2018-2020)

The TSP was introduced as an economic stabilisation tool to set the foundation for the two National Development Strategies (NDS 1 and NDS 2) aimed at attaining Vision 2030, of being an upper-middle income economy by 2030.³⁸⁷ Central to this policy was the need to address the liquidity and currency crisis facing Zimbabwe and thus prevent degenerating into a repeat of the 2000–2008 downward spiral. Overall, the policy was aimed at stabilising the macro-economy and financial sector, introducing necessary reform measures, addressing infrastructure gaps and launching quick wins to stimulate economic growth.³⁸⁸ However, according to one verdict, 'despite a brief government surplus and the introduction of a new currency aimed at curbing inflation, the economy almost got close to collapse, with fuel, food, and electricity shortages reminiscent of Zimbabwe's political and economic crisis in the mid- to late 2000s.'³⁸⁹

The deficiencies in the implementation of the TSP have been attributed to the lack of common ground between the technocratic Finance Minister Mthuli Ncube thinking that 'he is not moving fast enough and wants to fully implement radical reforms', and the more conservative Mnangagwa 'who thinks Mthuli is moving too fast.'³⁹⁰ Thus, with the president having the upper hand, the policy reforms have not been and are not being implemented with the urgency they deserve, with consequent suboptimal results. The TSP missed its targets, in some cases by wide margins, as was the case with inflation and GDP growth rates. In 2019, the inflation target was 5%, but the year ended with 255% inflation. In 2020, the gap was even wider, from a target of 5% to a result of 623%.

It is, however, important to note that despite the existence of all these macroeconomic policies and development strategies, Zimbabwe's economy continued to be in turbulence over the past two years, with sporadic episodes of positive growth and development. This confirms Bassam AlBassam's argument that 'simply developing a government policy or development strategy is not an appropriate means to achieve economic growth, recovery and long-term economic development unless combined with effective implementation and an effective and efficient governing system.'³⁹¹ The dynamics in Zimbabwe's economy can be reflected in the overall statistics of inflation

³⁸⁷ Government of Zimbabwe, Zimbabwe Transitional Stabilisation Programme 2018-2020 (Harare: Government of Zimbabwe, 2018), iii, <u>https://zimbabwe.un.org/sites/default/files/2020-06/Transitional-Stabilisation-Programme-Final.pdf.</u>

³⁸⁸ Government of Zimbabwe, Zimbabwe Transitional Stabilisation Programme, 6.

³⁸⁹ Noyes, "A New Zimbabwe", ix.

³⁹⁰ Noyes, "A New Zimbabwe", 22.

³⁹¹ AlBassam, 'The relationship between governance', 1.

and real GDP growth rates over the course of the development plans as presented in Tables 11 and 12.

TA	TABLE 11 COMPARISON OF INFLATION TARGETS VERSUS ACTUAL, 1980-2020										
	OPMENT EGY	ST NDP 90	995	ST 00			ATP/ ET	TSP			
	DEVELO STRATE(1980-19	ESAP 1990-199	ZIMPRE: 1996-20	MPF	NEDPP	STERP/N ZIMASSI 2018	2018	2019	2020	
Inflation	Target	-	10%	9%	10%	250%	<9%	4%	5.0%	5.0%	
Infla	Actual	15%	22.6%	55.8%	1016%	122 million%	9%	10.61%	255.29%	622.78%	

Source: Gibson Chigumira, Erinah Chipumho and Gamuchirai Chiwunze, An assessment of the macroeconomic policy formulation and implementation processes in Zimbabwe (Harare: Zimbabwe Economic Policy Analysis and Research Unit, 2018)

TABLE 12 REAL GDP GROWTH RATE TARGET VERSUS ACTUAL, 1980-2020										
DEVELOPN	1ENT	/1ST 1990	1995	REST 2000	-2002	o/MTP 2013	SSET 2018)	TSP		
STRATECY		TNDP 900P	000 000 000 000 000 000 000 000 000 00		STERF 2009-	ZIMA: (2013-	2018	2019	2020	
Real GDP	Target	8%	5%	6%	2%	10%	7.3%	6.3%	9.0%	9.7%
growth rate	Actual	2.7%	0.5%	-4.8%	-19.9%	10%<	<7.3%	4 %	-6.5 %	-8%

Source: Gibson Chigumira, Erinah Chipumho and Gamuchirai Chiwunze, *An assessment of the macroeconomic policy formulation and implementation processes in Zimbabwe* (Harare: Zimbabwe Economic Policy Analysis and Research Unit, 2018)

Employment, Unemployment and Underemployment in Zimbabwe

Formal employment is at its lowest since independence, hovering at around 10-12%³⁹², resulting in a large subsistence informal economy driven by desperation, which now absorbs about 90% of the labour force. According to the World Bank, Zimbabwe now has

392 Zimbabwe's unemployment statistics have been a contentious issue over the years. There is usually a huge gap between the official statistics by the ILO and ZIMSTATS and the unofficial rates. the second largest informal economy in the world, second only to Bolivia, at 61% and 62% respectively.³⁹³ Since then, the informalisation has deepened and is near saturation point.

Another study notes that 'such levels of informalisation are profound considering that 5.7 million people were working in MSMEs (Medium, Small, and Micro Enterprises) in 2012; 2.8 million were business owners while 2.9 million were employees.³⁹⁴ The challenge of this shadow economy is described as follows:³⁹⁵

The motive for production is subsistence (survivalist thrust), with so many workers eking out a living under precarious working conditions. The majority of informal economy workers are at the bottom of the economic and social ladder, working under precarious conditions. They typically suffer from a deficit of decent work, with their work being casual, 'unprotected', 'excluded', 'unregistered' or 'unrepresented'.

This was the case in the pre-COVID-19 era. As would be expected, the quality of work in the informal sector is not only degraded, the jobs are highly vulnerable to adverse shocks like the pandemic. For the greater part of 2020, many informal businesses in the country were still shut for lack of start-up finances, worsening the already dire livelihood situations. The informalisation of the economy is a response to the rapid de-industrialisation of the economy since the collapse of the agricultural sector after the chaotic and sometimes violent Fast Track Land Reform Programme (FTLRP), which started some 20 years ago but whose ripple effects are still heavily felt today.

With the proliferation of the informal sector in Zimbabwe, most unemployed people have stopped actively seeking employment opportunities and thus do not fit into the International Labour Organization's definition of unemployment.³⁹⁶ However, pronouncements by various government actors over the years indicate there is a discrepancy between the official unemployment rate (see Tables 13 and 14) and the

³⁹³ Leandro Medina and Friedrich Schneider, "Shadow Economies Around the World: What Did We Learn Over the Last 20 Years?" (Working Paper 1817, International Monetary Fund, Washington, 2018), <u>https://www.imf.org/en/Publications/WP/</u> <u>Issues/2018/01/25/Shadow-Economies-Around-the-World-What-Did-We-Learn-Over-the-Last-20-Years-45583.</u>

 ³⁹⁴ Kanyenze and Kondo, "Beyond the Enclave"; Kanyenze, C; Chitambira, P and Tyson, J (2017), The Outlook For The Zimbabwean

 Economy, page 9, https://set.odi.org/wp-content/uploads/2017/08/SET-Outlook-for-Zimbabwe-Economy_Sep2017.pdf.

³⁹⁵ Kanyenze and Kondo, "Beyond the Enclave", ACTN RQD. Kanyenze, G; Chitambira, P and Tyson, J (2017), *The Outlook For The Zimbabwean Economy*, page 9, <u>https://set.odi.org/wp-content/uploads/2017/08/SET-Outlook-for-Zimbabwe-Economy_Sep2017.pdf.</u>

³⁹⁶ Unemployment is defined by the ILO as being without work, be available for work and actively be seeking work. See Malte Luebker, Employment, unemployment and informality in Zimbabwe: Concepts and data for coherent policy-making, Issues Paper No. 32 and Integration Working Paper No. 90, International Labour Organisation, p. 9, <u>https://www.ilo.org/wcmsp5/</u> groups/public/---dgreports/---integration/documents/publication/wcms_097760.pdf.

unofficial one. For example, in the 2013 ZIMASSET election manifesto, the unemployment rate was pegged at 60%, while the MDC placed it at 85% and the National Association for Non-Governmental Organisations placed it at 95% during the same period.³⁹⁷

TABLE 13 UNEMPLOYMENT RATES IN ZIMBABWE									
2011	2012	2014	2019						
10.7%	11.3%	11.3%	16.4%						

Source: Zimbabwe National Statistics Agency, 'Statistics at a Glance', https://www.zimstat.co.zw/#1548426996692-f4ba746f-9035

TABLE 14 UNEMPLOYMENT RATES IN ZIMBABWE								
2011	2012	2013	2014	2015	2016	2017	2018	2019

org/indicator/SL.UEM.TOTL.ZS?locations=ZW

 5.37%
 5.38%
 5.40%
 5.34%
 5.30%
 5.25%
 5.17%
 5.09%
 4.95%

 Source: World Bank Data, 'Unemployment, total (% of total labor force) (modeled ILO estimate) – Zimbabwe', https://data.worldbank.

TABLE 15 GDP IN ZIMBABWE											
	2011	2012	2013	2014	2015	2016	2017	2018	2019		
GDP (\$ billions)	\$14.10	\$17.11	\$19.09	\$19.50	\$19.96	\$20.55	\$22.04	\$24.31	\$21.44		
Growth rate (%)	14.19%	16.67%	1.99%	2.38%	1.78%	0.76%	4.70%	4.83%	-8.10%		

Source: World Bank Data, 'GDP (current US\$) - Zimbabwe', https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ZW

Other Major Policies that Shaped Zimbabwe's Political Economic Dynamics

The Fast-Track Land Reform Programme and the Indigenisation and Economic Empowerment Policy

The FTLRP and the Indigenisation and Economic Empowerment Act (IEEA) are some of the most controversial policies in post-independence Zimbabwe, drawing international

Sintha Chiumia, 'Is Zimbabwe's unemployment rate 4%, 60% or 95%? Why the data is unreliable,' *Africa Check*, October 1, 2014, https://africacheck.org/fact-checks/reports/zimbabwes-unemployment-rate-4-60-or-95-why-data-unreliable.

2020

attention. In 2008, the Mugabe administration introduced the controversial IEEA that required foreign-owned companies to have at least 51% of shares owned by indigenous black Zimbabweans.³⁹⁸ Ideally, these policies were meant to empower indigenous Zimbabweans and give them ownership and control of their natural resources.³⁹⁹ However, due to the chaotic and politicised manner in which land had been previously allocated (in the FTLRP), the IEEA faced criticism as foreign investors viewed it as a policy designed to enrich the elite from the ruling party and other loyalists, in contrast to the assurances that it aimed to empower indigenous Zimbabweans.⁴⁰⁰ Subsequently, these two policies turned Zimbabwe into one of the least favourable investment destinations in the region (see Table 16).

With an understanding of such dynamics, the Mnangagwa administration promised several swift economic reforms to revive Zimbabwe's battered economy. Amending the IEEA was among the top priorities.⁴⁰¹

In March 2018, Mnangagwa's administration amended the IEEA, removing this restriction on all but platinum and diamonds, which the government said would remain because of their strategic importance.⁴⁰² Together with Mnangagwa's 'Zimbabwe is open for business' mantra, this led to a rise in foreign direct investment (FDI) inflows as the country received a total of above \$700 million in FDI.⁴⁰³ It is, however, important to note that the actual figure is far below the promised investment commitments of more than \$20 billion in 2017 and 2018.⁴⁰⁴

TABLE 16 INVESTMENT INFLOWS (FDI) STATISTICS, 2011–2019												
2011 2012 2013 2014 2015 2016 2017 2018 2019												
GDP (\$ billions)	387.0	399.5	400.0	544.8	421.0	371.8	349.4	744.6	280.0			

Source: World Bank Data, 'Foreign direct investment, net inflows (BoP, current US\$) – Zimbabwe', <u>https://data.worldbank.org/</u>indicator/BX.KLT.DINV.CD.WD?locations=ZW

399 Noyes, "A New Zimbabwe".

400 Showers Mawowa, 'The Political Economy of Artisanal and Small-Scale Gold Mining in Central Zimbabwe,' *Journal of Southern* African Studies 39, no. 4 (2013): 921–936, https://www.tandfonline.com/doi/abs/10.1080/03057070.2013.858540.

401 Noyes, "A New Zimbabwe".

402 Noyes, "A New Zimbabwe".

403 World Bank Data, 'Foreign direct investment, net inflows (BoP, current US\$) - Zimbabwe', <u>https://data.worldbank.org/indicator/</u> <u>BX.KLT.DINV.CD.WD?locations=ZW</u>.

404 Victor Bhoroma, 'Achieving self-sufficiency in Zim power generation,' *Zimbabwe Independent*, May 24, 2019; Kudzanai Gerede, 'Govt Restructures Command Agriculture Financing Model,' *236chat.com*, September 19, 2019.

³⁹⁸ Noyes, "A New Zimbabwe", 20.

The environment in which Zimbabwean businesses operate is not an easy or stable one. This is illustrated by the country's score in international rankings.

TABLE 17 ZIMBABWE'S INTERNATIONAL RANKINGS											
	2012	2013	2014	2015	2016	2017	2018	2019	2020		
Ease of Doing Business (World Bank)	171	173	170	171	155	161	159	155	140		
	183	185	189	189	189	190	190	190	190		
Global Competitiveness Index (World Economic Forum)	132	131	124	125	126	124	128	127			
	144	148	144	144	138	137	140	141			
Corruption Perception Index (Transparency International)	163	157	156	150	154	157	160	158	157		
	176	177	175	168	176	180	180	180	180		

Source: The World Bank, 'Doing Business in Zimbabwe', <u>https://www.doingbusiness.org/en/data/exploreeconomies/zimbabwe</u>; World Economic Forum, 'Zimbabwe', <u>http://www3.weforum.org/docs/GCR2017-2018/03CountryProfiles/Standalone2-pagerprofiles/WEF_</u>

 $\underline{\text{GCL}_{2017}_2018}_Profile_Zimbabwe.pdf; and Transparency International, 'Zimbabwe', \\ \underline{\text{https://www.transparency.org/en/countries/zimbabwe} \\ \underline{\text{GCL}_{2017}_2018}_Profile_Zimbabwe.pdf; and Transparency.org/en/countries/zimbabwe \\ \underline{\text{GCL}_{2017}_2018}_Profile_Zimbabwe.pdf; and Transparency.org/en/countries/zimbabwe \\ \underline{\text{GCL}_{2017}_2018}_Profile_Zimbabwe.pdf; and Transparency.org/en/countries/zimbabwe \\ \underline{\text{Https://www.transparency.org/en/countries/zimbabwe} \\ \underline{\text{GCL}_{2017}_2018}_Profile_Zimbabwe.pdf; and Transparency.org/en/countries/zimbabwe \\ \underline{\text{Https://www.transparency.org/en/countries/zimbabwe} \\ \underline{\text{Https://wwww.tra$

TABLE 18 INSTITUTIONAL AND LEGISLATIVE FRAMEWORKS				
YEARS IN OPERATION	LEGAL FRAMEWORKS	INSTITUTIONAL FRAMEWORKS		
1995 - 2006	Zimbabwe Investment Centre Act (24:16) (1992, 1994) *repealed in 2006	Zimbabwe Investment Centre (ZIC) (1992)		
	Export Processing Zones Act (14:07) (1995, 2001, 2005) *repealed in 2006	Export Processing Zones Authority (EPZA) (1995)		
2007 - 2019	ZIA Act (Chapter 14:30) (2006, 2015) * repealed by ZIDA	ZIA (2006) One Stop Investment Services Centre (OSISC) (2010)		
	Joint Ventures Act (Chapter 22:22) (2016) * repealed by ZIDA	Joint Ventures Unit (2016)		
	SEZ Act (14:34) (2016) * repealed by ZIDA	ZIMSEZA OSISC		
	Statutory Instrument (S.I.) 154 of 2018	ZIMSEZA		
	General Notices 660 and 675 of 2018	ZIMSEZA		
2019- present (proposed bill)	ZIDA Bill ZIDA Act (February 2020)	ZIDA (proposed)		

Source: Compiled by author

Table 18 sets out Zimbabwe's changing economic legislative and institutional environment over the years.

Post-2018 Economic Developments

GDP Growth Rates

Economic growth in the post-2018 period has been significantly below the targeted figures. This can be attributed to various internal, external and environmental dynamics – including poor rainfall during the 2018/19 season, Cyclone Idai (2019), and the COVID-19 pandemic, among others. Table 19 presents the targets and statistics for GDP growth.

TABLE 19 GDP GROWTH RATES				
	2018	2019	2020	2021
Target (TSP)	6.3%	9.0%	9.7%	11.5%
Target (National budget)	4.5%	3%	3.0% (2020 budget) -4.1% (2021 budget)	-
Actual	4 %	-6.5 %	-8%	-

Source: Government of Zimbabwe, Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Harare: Veritas, 2013), xvi

Inflation

Zimbabwe's inflation rate has fluctuated widely in the last two decades. It rose to an astronomical official rate of 120 million% in July 2008, at which point the Zimstat abandoned the calculation of the inflation rate because it served no purpose at all and was computationally a nightmare. Zimbabwe's inflation galloped to 89.7 sextillion% by November 2008 whereby it became the second highest in recorded history, second only to Hungary in the 1940s.⁴⁰⁵ The GNU disciplined the inflationary pressures and inflation actually went into negative territory until 2016 when it started its upward trajectory again, rising to over 800% by July 2020.

405 Steve Hanke, 'R.I.P. Zimbabwe Dollar,' Cato Institute, no date, https://www.cato.org/zimbabwe.

Zimbabwe's post-2017 inflation rate took a dramatic turn from the negative figures of 2014–2016. In essence, owing to sustained currency weaknesses, particularly on the parallel market and a pending liquidity crunch, prices began to rise exponentially in the post-election period.⁴⁰⁶

Tables 20 and 21 present the year-on-year inflation statistics for the years 2011–2020, and Table 22 presents the month-on-month inflation for the period May 2020–April 2021.

TABLE 20 INFLATION RATES, PRE-NOVEMBER 2017 COUP, 2011-2017							
	2011	2012	2013	2014	2015	2016	2017
GDP (\$ billions)	3.48%	3.72%	1.63%	-0.21%	-2.41%	-1.57%	0.91%

Source: World Bank Data, 'Inflation, consumer prices (annual %) - Zimbabwe', <u>https://data.worldbank.org/indicator/FP.CPI.TOTL.</u> ZG?locations=ZW

TABLE 21 INFLATION RATES, POST-NOVEMBER 2017 COUP, 2018-2021				
	2018	2019	2020	2021
Target (TSP)	4.0%	5.0%	5.0%	5.0%
Target (MPS)	-	-	20%	-
Actual	10.61%	255.29 %	622.78 %	-

Source: Government of Zimbabwe, Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Harare: Veritas, 2013), xvi

Monetary Policy Reforms (Currency Reforms and Exchange Rates)

One of the central issues that the Mnangagwa administration targeted after winning the 2018 elections was monetary policy reform. The specific focus was currency reforms and other financial sector stabilising mechanisms, to address the emerging financial sector problems.⁴⁰⁷ Since 2016, there has been a resurgence of problems in the financial sector, specifically serious cash and foreign currency shortages. One of the contributing factors to this was the gradual and significant fall in the supply of the US dollar from

⁴⁰⁶ Nathan Hayes, 'Hyperinflation and distrust in Zimbabwe,' London School of Economics (blog), July 23, 2019, <u>https://blogs.lse.</u> ac.uk/africaatlse/2019/07/23/hyperinflation-zimbabwe/.

⁴⁰⁷ Government of Zimbabwe, Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Harare: Veritas, 2013), 32.



FIGURE 16 MONTHLY INFLATION RATES FROM MAY 2020 TO MAY 2021

Source: Trading Economics, 'Zimbabwe Inflation Rate', https://tradingeconomics.com/zimbabwe/inflation-cpi

2011-2016.⁴⁰⁸ While the Mugabe administration introduced bond notes (a surrogate currency pegged at par with the US dollar) in November 2016, the problems persisted, leading in turn to more radical moves.⁴⁰⁹

True to Gresham's law that 'bad money drives away good money',⁴¹⁰ the introduction of bond notes further worsened the currency crisis as it led to the continued dwindling of foreign currency in the formal system. It also led to multi-tier pricing and parallel pricing of goods in different currencies as there was general consensus on the differences in intrinsic value between the US dollar and the bond notes, despite the purported par value.

⁴⁰⁸ Ephraim Matanda, Hlupeko Dube and Nyasha Madzokere, "Blessing or Curse"? Introduction of Bond Notes as an Antidote to Zimbabwe's Liquidity Crises, *Journal of Modern Accounting and Auditing* 14, no. 5 (2018): 252–264, <u>https://www.researchgate.net/</u> publication/328282255_Blessing_or_Curse_Introduction_of_Bond_Notes_as_an_Antidote_to_Zimbabwe's_Liquidity_Crises.

⁴⁰⁹ Matanda, Dube and Madzokere, 'Blessing or Curse', 253.

^{410 &#}x27;Gresham's Law'. Investopedia, undated, https://www.investopedia.com/terms/g/greshams-law.asp.

In the February 2019 Monetary Policy Statement, the governor of the RBZ – the country's central bank – acknowledged that in the last part of 2018 the economy had taken a negative trajectory, with inflation doubling from 21% in October 2018 to about 43% in December 2018.⁴¹¹ As a result, various measures were introduced, key among which were: the establishment of the inter-bank foreign exchange market to formalise the selling and buying of US dollars by banks and *bureaux de change*; the separation of the RTGS Foreign Currency Accounts (FCAs) and Nostro FCAs; and the banning of the multiple currency system through SI 142 in June 2019.⁴¹² It should be noted that these initiatives had various positive impacts, for example, the narrowing of the current account deficit which had peaked at \$2.7 billion in 2011 to around \$1.7 billion in 2018 and turning it into a surplus of \$311.2 million in 2019, and the containment of money supply growth through mopping up excess liquidity and reduction of central bank financing of government deficits.⁴¹³ However, there were other negative developments in 2019 owing to the various reforms, for example, annual inflation escalated from about 5.39% in September 2018 to 175.5% in June 2019.⁴¹⁴

In a bid to stabilise and liberalise the foreign exchange rate, the government introduced the foreign exchange auction system on 23 June 2020.⁴¹⁵ In addition, the 'exclusion of SMEs [small and medium enterprises] due to a high minimum amount requirement of US\$50,000 led to a second foreign currency auction for SMEs announced on 4 August 2020 with the first auction held on 6 August 2020.'⁴¹⁶ Encouragingly, there has been significant gradual stabilisation of the ZWL/USD exchange rate since the introduction of the auction system. For example, on 22 September 2020 the rate was around 1:81 against the US dollar and as of 11 May 2021, the rate was at 1:84.52.⁴¹⁷ This indicates considerable stability as compared to the skyrocketing rate after the initial currency reforms in 2019. However, 'the continued premiums at the parallel market demonstrate that the price set by the participating firms may not be reflective of the actual supply and demand dynamics.'⁴¹⁸ For example, while the official auction system rate was at 1:84.52 on 11 May

⁴¹¹ Reserve Bank of Zimbabwe, Monetary Policy Statement (Harare: Reserve Bank of Zimbabwe, 2019), 32, <u>https://rbz.co.zw/docu</u>ments/mps/mpsfeb2019.pdf.

⁴¹² Reserve Bank of Zimbabwe, Monetary Policy Statement 2019, 2.

⁴¹³ Reserve Bank of Zimbabwe, *Monetary Policy Statement* (Harare: Reserve Bank of Zimbabwe, 2020), 25, <u>https://www.rbz.co.zw/</u>documents/mps/Monetary-Policy-Statement-17-February-2020.pdf.

⁴¹⁴ Reserve Bank of Zimbabwe, Monetary Policy Statement 2019, 35.

⁴¹⁵ Reserve Bank of Zimbabwe, Monetary Policy Statement (Harare: Reserve Bank of Zimbabwe, 2021), 5, <u>https://rbz.co.zw/docum</u> ents/press/2021/February/Monetary-Policy-Statement-18-February-2021.pdf.

 ⁴¹⁶ Zimbabwe Economic Policy Analysis and Research Unit (ZEPARU), "Economic Barometer" (Volume 22, ZEPARU, Harare, 2020),

 4, http://www.zeparu.co.zw/sites/default/files/2020-10/Barometer%20Volume%2022%20September%202020.WEB_pdf.

⁴¹⁷ ZEPARU, "Economic Barometer", 4.

⁴¹⁸ ZEPARU, "Economic Barometer", 4.

2021, the parallel/black market rate was ranging between 1:100 and 1:125, indicating a discrepancy between the official and the parallel market rates. By and large though, it is important to appreciate the current partial stabilisation of the foreign exchange rate through the auction system since it has managed to ensure considerable stability in the parallel market exchange rate.

Nonetheless, these monetary policy reforms have been characterised by inconsistencies and reversals.⁴¹⁹ This is an indication of the dilemma between radical reforming and political expediency. In 2016, when the bond notes were introduced, the government promised that it would not expropriate people's US dollar deposits and also promised a 1:1 parity for bond notes to the US dollar.⁴²⁰ However, the decision was overturned in February 2019 through the introduction of the Inter-Bank Foreign Exchange market to formalise the selling and buying US dollars by banks and bureaux de change.⁴²¹ In addition, various inconsistencies have also been observed in the de-dollarisation process. Despite earlier promises in February 2019 that the de-dollarisation process would not be hastily implemented, the government went on to make the RTGS dollar its sole legal tender through SI 142 in June 2019. This banned the use of foreign currency for local transactions, except for a few exceptional circumstances.⁴²² Despite the strict stance that was announced through this SI, there have since been amendments and changes governing the use of foreign currency as legal tender, creating inconsistencies and confusion. For example, in July 2019, mining companies and hotels were granted an exemption from the foreign currency ban to pay for energy.⁴²³ In addition, there have been various exemptions and to date, the US dollar is now being accepted as legal tender signifying the return of the multi-currency system. Then, in March 2020, less than a year after Zimbabwe outlawed the use of foreign currencies in local transactions, the country's central bank granted permission to citizens to pay for goods and services in US dollars, ostensibly as part of measures to mitigate against COVID-19.424

⁴¹⁹ See: Owen Gagare, 'Mthuli Ncube's dramatic new currency flip-flops,' *The Independent*, June 30, 2019, <u>https://www.theindependent.gcvw/2019/06/30/mthuli-ncubes-dramatic-new-currency-flip-flops/</u>.

⁴²⁰ Juniours Marire, 'Rethinking currency reforms in Zim,' *The Independent*, April 30, 2020, <u>https://www.theindependent.co.zw/</u> 2020/04/30/rethinking-currency-reforms-in-zim/.

⁴²¹ Marire, "Rethinking currency reforms".

⁴²² ZEPARU, "Economic Barometer", 4.

⁴²³ Hayes, "Hyperinflation and distrust in Zimbabwe".

⁴²⁴ See: Anthony Sguazzin, 'Ban on dollar lifted as Covid-19 plunges Zimbabwe into crisis,' *BusinessLive*, April 20, 2020, https://www.businesslive.co.za/bd/world/africa/2020-04-20-ban-on-dollar-lifted-as-covid-19-plunges-zimbabwe-into-crisis/.

RECOMMENDATIONS

To aid in Zimbabwe's economic recovery it is necessary that the government:

- desist from taking unilateral actions on critical economic policy issues without adequate and sincere consultations with the stakeholders, which could be done within the institutional parameters of the Zimbabwe Economic Consultative Forum, a platform for organisations to interact and facilitate relationships among policy (state), business, labour, academia, scientists and civil society;
- not resort to using SIs in economic and other policies, a practice which is being criticised as a deliberate strategy to bypass Parliamentary scrutiny and instead, all critical policy measures should be discussed and approved in the legislative bod;
- establish policy consistency in respect of currency to help build confidence between formal systems, the transacting public, local and foreign investors; government needs to rebuild confidence in Nostro accounts and increase foreign currency coming through formal channels by maintaining steady conversion rates;
- strengthen institutions such as banks that promote credibility and stability in the financial sector;
- build public confidence in the use of Zimbabwe's own currency government's actions in this respect will be dependent on (i) an increase in revenue collection, (ii) increased productivity (iii) job creation to broaden the tax base;
- establish credibility in monetary and fiscal policy government should research and consult extensively on the implications of new policies prior to their official enactment;
- put forward a credible framework to reduce inflation, which needs to be brought below 10% for de-dollarization;
- ensure exchange rate stability and predictability, which implies:
 - Iiberalisation of the exchange market government should move away from managing the exchange rate;
 - » An auction system that does not act as a platform for primary forex distribution but rather price discovery; and
- End all quasi-fiscal activities by the Central Bank as stipulated in the NDS1, since such activities fuel money supply growth, unsustainable growth in inflation and unintended effects on the exchange rate.

CHAPTER 12



Corporate Governance in Zimbabwe: The Case of Parastatals

This issue relates to the Corporate Governance thematic area, specifically:

>>> OBJECTIVE 1

Promoting an Enabling Environment and Effective Regulatory Framework for Business Organisations and Other Entities

Question 5 What is your country's approach to Corporate Governance?

>> OBJECTIVE 2

Ensuring Effective Leadership and Accountability of Organisations

Question 1	How does the Corporate Governance framework in your country provide for effective leadership of all the types of organisations listed in objective one above?
Question 2	How does the corporate governance framework ensure accountability?
Question 3	How does the corporate governance framework ensure timely, transparent and accurate disclosure of information on all material matters regarding the organisation?
Question 5	How does the corporate governance framework in your country ensure that organisations listed in objective one above have put in place risk management and effective internal controls mechanisms?
Corporate governance is a term applied to the networks of formal and informal relationships with the management of the company and company's stakeholders, including employees, customers, creditors, local communities and society in general.⁴²⁵ It relates to the manner in which businesses are run, and the ethical standards they are required to uphold. Corporate scandals and crises that hit headlines globally have heightened interest in the concept.⁴²⁶ Recognising the importance of business – private and state-owned – in fostering development, the APRM devotes an entire thematic area to corporate governance.

Over the past decade, Zimbabwe has experienced a number of corporate governance breaches: boardroom squabbles, scandals, abuse of office and corruption, particularly in the public sector (SEPs) and the banking sector. This pattern of conduct must be addressed and turned around if these institutions are to play a constructive role in building Zimbabwe's economy.

Currently, corporate malfeasance may be undermining Zimbabwe's ability to attain its national development plans and achieve the SDGs.

Of particular importance is the state of public enterprises. They operate under the overall direction of the state and thus have a particular responsibility to operate with probity. The government, in turn, has a responsibility to demand this of them. This is implied in Chapter 2 of the Constitution: 'The State must adopt and implement policies and legislation to develop efficiency, competence, accountability, transparency, personal integrity and financial probity in all institutions and agencies of Government at every level and in every public institution.'⁴²⁷

Zimbabwe has a total of 107 SEPs that currently contribute less than 2% of the country's GDP. In the mid-1990s, SEPs accounted for more than 40% of the country's GDP and employed thousands of employees.⁴²⁸ Political interference in the running of state entities has contributed to their declining performance and escalation of debts.

⁴²⁵ Abhiman Das and Saibal Ghosh, 'Corporate Governance in banking system: An empirical investigation,' *Economic and Political Weekly*, March 20, 2004.

⁴²⁶ Pritchard Chimbari, 'Public sector corporate governance in Zimbabwe: The nexus between the ZIMCODE and state-owned enterprises,' *International Journal of Economics, Commerce and Management* V, no. 7 (2017): 212-221, <u>http://ijecm.co.uk/wp-</u> content/uploads/2017/07/5716.pdf.

⁴²⁷ Zimbabwe Constitution, ch, 2, s. 90, cl. 1.

⁴²⁸ Victor Bhoroma, 'Missing pieces in Zim's privatisation roadmap,' *The Zimbabwe Independent*, October 23, 2020, https://www.theindependent.co.zw/2020/10/23/missing-pieces-in-zims-privatisation-roadmap/.

As of July 2018, state enterprises and parastatals owed ZIMRA over \$491 million.⁴²⁹ Disturbingly, Zimbabwe's parastatals have been described thus: 'Mounting debts, high levels of corruption and political interference in management operations have reduced most state entities to tax parasites.'⁴³⁰

Enhancing Corporate Governance

The government has responded to this mandate with the promulgation of laws meant to create awareness of and raise corporate governance standards in all sectors of the economy. The Corporate Governance Unit (CGU) in the Office of the President and Cabinet (OPC) has taken some positive steps in strengthening corporate governance in public entities, for example, through the enactment of the Public Entities Corporate Governance Act.

Corporate entities in Zimbabwe, in the public or private sectors, now generally meet minimum formal corporate governance standards, with functional structures such as a board of directors. Some organisations have taken further steps by voluntarily adopting additional best practices enshrined in international corporate governance codes, such as the South African King IV Report on Corporate Governance,⁴³¹ and other sector specific governance codes.

However, there still remain major challenges in achieving good corporate governance particularly with SEPs. Many institutions see corporate governance as a 'tick box'⁴³² exercise without fully embracing its importance and core principles.

Research on board failures and corporate governance in Zimbabwe is scanty. It appears that the main driver of corporate failures and fraud is ineffective internal controls.⁴³³ Academics Farai Ncube and Langtone Maunganidze add that:⁴³⁴

⁴²⁹ Bhoroma, 'Missing pieces'.

⁴³⁰ Bhoroma, 'Missing pieces.'

⁴³¹ Institute of Directors of South Africa, King IV Report on Corporate Governance for South Africa (Johannesburg: Institute of Directors of South Africa, 2016), https://cdn.ymaws.com/www.iodsa.co.za/resource/collection/684B68A7-B768-465C-8214-E3A007F15A5A/IoDSA_King_IV_Report_-WebVersion.pdf.

⁴³² Allen Choruma, 'Corporate governance remains a challenge,' *The Sunday Mail*, August 16, 2020, <u>https://www.sundaymail.co.zw/</u> corporate-governance-remains-a-challenge.

⁴³³ Kosmas Njanike, Margaret Mutengezanwa and Fungai Combarume, 'Internal Controls in Ensuring Good Corporate Governance in Financial Institutions,' *Annals of the University of Petrosani, Economics* 11, no. 1 (2011): 187–196.

⁴³⁴ Farai Ncube and Langtone Maunganidze 'Corporate governance and executive compensation in Zimbabwean state owned enterprises: A case of institutionalized predation,' *Management* 4, no. 6 (2014): 131-140, <u>http://article.sapub.org/10.5923.j.mm.</u> 20140406.01.html.

Government's sustained and systematic militarisation of parastatals and public enterprises as well as local authorities has contributed a great deal in breeding a culture of patronage, corruption and looting as these institutions were staffed mainly by people who neither possessed the requisite qualifications, experience or competence to run them efficiently and profitably.

This is a situation that breeds dysfunction in the parastatal sector.

Over the past decade there have been various responses to address the malaise in corporate governance in Zimbabwe. The most notable of these were the adoption of the first Zimbabwe National Code on Corporate Governance (ZIMCODE) in 2015, the promulgation of the Public Entities Corporate Governance Act in 2018 and the revised Companies Act in 2020. These frameworks are quite comprehensive and in line with international best practices on corporate governance.

Evidence from the Auditor-General's Reports

One of the most effective ways of tracking corporate governance is the Auditor-General's office. It is mandated to release a report periodically on the state of SEPs. Victor Bhoroma notes that the Auditor-General's office has unearthed numerous violations of basic tenets of corporate governance and abuse of public funds in state entities.⁴³⁵ He states: 'The 2018 Audit Report highlighted that Zimbabwe could have been prejudiced of more than US\$100 million in fictitious loan repayments and overstated supply contracts for goods paid for but never supplied.'⁴³⁶

The 2018 Auditor-General's report has identified, among other things, the following: 437

- The national airline, Air Zimbabwe, was unable to account for over \$14 million in expenditure, leading to the airline requiring a bailout from the government.
- The government failed to account for more than \$52 million paid to bail out Air Zimbabwe, the Civil Aviation Authority of Zimbabwe (CAAZ) and the Central Mechanical and Equipment Department.

⁴³⁵ Victor Bhoroma, 'Corporate governance and state entities decay in Zim,' *The Zimbabwe Independent*, August 7, 2020, https://www.theindependent.co.zw/2020/08/07/corporate-governance-and-state-entities-decay-in-zim/.

⁴³⁶ Bhoroma, "Corporate governance and state entities".

⁴³⁷ Office of the Auditor-General of Zimbabwe, Report of the Auditor-General for the Financial Year ended December 31, 2018 on State Enterprises and Parastatals (Harare: Office of the Auditor-General of Zimbabwe, 2019), <u>https://www.auditorgeneral.gov.zw/downloads/category/2-parastatals</u>.

- Allied Timbers, formerly the Forestry Company of Zimbabwe, operated eight bank and mobile money accounts that were not registered in its name.
- The GMB made an advance payment amounting to \$1 million for maize to an unidentified supplier who did not deliver the terms of the payment.
- ZINARA approved over 51 contracts that prejudiced the road administrator of more than \$39 million in what seemed to be a collusion with rural district council officials.
- NSSA conducted a forensic audit report ordered by the Auditor-General to cover the period between 2015 to 2018, which exposed blatant corporate governance flaws, malfeasance and abuse of office. This resulted in NSSA making losses in excess of \$175 million, largely through housing contracts and investment deals awarded without proper tendering processes being followed.

The perception is that most of these contracts were awarded to politically connected suppliers or surrogates of the political elites. Reports in the media have highlighted other cases of corruption, wasteful spending on executive perks, insider loans, lack of adherence to audit reporting guidelines and insolent disregard for tender procedures. Such reports have implicated the ZBC, National Railways of Zimbabwe, ZIMRA, Minerals Marketing Corporation of Zimbabwe, Zimbabwe United Passenger Company (ZUPCO) and Zimbabwe School Examination Council, among others.⁴³⁸

Board Appointments and Board Failures

Board failures are a major corporate governance challenge.⁴³⁹ For instance, the Premier Service Medical Aid Society (PSMAS) corporate governance scandals were centred around poor oversight and lack of proper monitoring of the chief executive officer and the executive directors by the board. While board structures were in place at PSMAS, the board of directors was identified as the key impediment and blamed for the failure to monitor management.⁴⁴⁰

This seems to be a common challenge among Zimbabwean institutions and was also recognised as a major challenge with the ZBC scandal.

⁴³⁸ Office of the Auditor-General of Zimbabwe, Report of the Auditor-General for the Financial Year ended December 31, 2017 on State Enterprises and Parastatals (Harare: Office of the Auditor-General of Zimbabwe, 2018), <u>https://www.parlzim.gov.zw/</u> auditor-general-s-reports/download/2507_a4b18dccfe64146d2788ee34fdb01d9d.

⁴³⁹ Shamsul Nahar Abdullah 'Board Composition, CEO Duality and Performance among Malaysian Listed Companies,' Journal of Corporate Governance 4, no. 4 (2004): 47–61, https://www.emerald.com/insight/content/doi/10.1108/14720700410558871/full/html.

^{440 &#}x27;PSMAS board dissolved', The Herald, August 5, 2021, https://www.herald.co.zw/psmas-board-dissolved/.

Under the Public Entities Corporate Governance Act (under Section 11), no person shall be re-appointed to a board if he or she has already served on that board for one or more periods, whether consecutive or not, amounting an aggregate of eight years.⁴⁴¹ Furthermore, ZIMCODE, which is contained in the same act, is explicit on the 'separation of powers' by stating in no fewer than three sections that the chairperson of the board of directors must not at the same time occupy the role of the state entity's chief executive officer.⁴⁴² It would seem that despite these provisions, the government did not follow these articles. The manner in which the government flouts these rules sets a very disturbing standard for the country as a whole.

Accordingly, engineer Jacob Kudzayi Mtisi, who chairs the ICT Committee of the Zimbabwe Institute of Engineers, points out that the selection and appointment of directors in both the private and public sectors needs urgent review:⁴⁴³

Due to the prevalence of company failures, there is now need to establish how directors of listed, public and parastatal companies are selected to reduce high rate of company and board failures in both the private and public sectors. Zimbabwe needs to establish a central database of potential board members and directors and create independent institutions and organisations whose role is to monitor who selects directors and what the motive is.

Research has shown shareholders and other stakeholders (for example, workers) in Zimbabwe have always been ignored in the board selection process, yet they are the ones mostly affected if the boards fail and the company collapses. We need director independence and completely remove CEOs from board selection, which is prevalent in Zimbabwe.

We need to have a proper board selection process that involves the identification and screening of candidates by a nominating committee of the board consisting of independent directors. Those who are found to be suitable for board appointment are formally nominated and voted by shareholders.

This kind of transparent process will yield competent and independent board members who will act responsibly and give counsel to the executive.

⁴⁴¹ Public Entities Corporate Governance Act No 4 of 2018, s. 11 (2).

⁴⁴² B Mapanda, 'Corporate Governance Framework for State Enterprises and Parastatals in Zimbabwe', Unpublished, University of Johannesburg, 138, https://ujdigispace.uj.ac.za/.

⁴⁴³ Allen Choruma, 'Corruption exposes poor corporate governance,' *The Sunday Mail*, November 29, 2019, <u>https://www.sunday</u> mail.co.zw/corruption-exposes-poor-corporate-governance.

The CGU within the OPC has been working on building a database for directors. The unit has issued public notices calling for members of the public with relevant skills, competencies and experience to submit their curricula vitae for entry into the directors' database,⁴⁴⁴ which is envisaged as being used to attract candidates for SEP boards.

It is not very clear how transparent this process is and whether or not such appointments will still be dominated by political expediency. The aspiration is that the CGU will soon issue guidelines on how board members for public entities are selected and appointed in order to build public confidence in the governance of such entities.

There is a pressing need to guarantee the independence of boards from political interference. Some analysts have noted that the nexus between SEPs and politics is primarily caused by using the power to appoint SEP board members as a means of patronage and cronyism, rather than on merit.⁴⁴⁵ This is worsened in cases where the board members appointed are politically connected, which only enhances the prospects of political interference.⁴⁴⁶

Many boards in the country operate from a point of secrecy, even in public enterprises. The total fees or remuneration paid to each member of the governing body, including the chief executive, including, for example, any house, car, health, education or pension contribution, is not known and needs to be. All stakeholders have a right to know the director remuneration or the director packages because they have a responsibility to balance their remuneration and service delivery.

Research has highlighted that 'shareholders and other stakeholders have been ignored in the board selection process, yet they are the ones mostly affected if boards fail.'⁴⁴⁷

Many of the boards in the country are dominated by a particular demographic and age group and are lagging behind on the quest for diversity, inclusion and belonging. There is a need to establish more diverse and inclusive boards. Furthermore, the extent of director independence is essential as this has a bearing on the conduct of the board.

⁴⁴⁴ Choruma, "Corruption exposes poor corporate governance".

⁴⁴⁵ Promise Zvavahera and Gladys Ruvimbo Ndoda Ndoda, 'Corporate governance and ethical behaviour: The case of the Zimbabwe Broadcasting Corporation,' *Journal of Academic and Business Ethics* 9, no. 1 (2014): 1–8, <u>https://www.aabri.com/</u> manuscripts/141956.pdf.

⁴⁴⁶ Daniel Chigudu, 'Public Sector Corporate Governance: Zimbabwe's Challenges of Strategic Management in the wake of Sustainable Development,' Academy of Strategic Management 19, no. 1 (2000): 1-13, <u>https://www.abacademies.org/</u> articles/Public-sector-corporate-governance-zimbabwes-challenges-of-strategic-management-in-the-wake-of-sustainabledevelopment-1939-6104-19-1-507.pdf.

⁴⁴⁷ Obert Sifile et al., 'Corporate board failure in Zimbabwe: Have Non-Executive Directors gone to sleep?,' *IOSR Journal of Business and Management* 16, no. 7 (2014): 78–86.

The cases of PSMAS and ZBC highlighted failings in another department of both private and public entities – the human resource executive. In both cases, while the board and management colluded to award extremely high salaries to their top executive, there was no push back from a human resource (HR) management perspective. Ncube and Maunganidze have noted that the 'Human Resource Institute (2005) suggests that as strategic partners, human resources professionals help their organizations establish governance, risk mitigation and ethics best practices.'⁴⁴⁸

The HR executive is part of the system of corporate governance and has a strategic responsibility to protect and empower employees who are a firm's key asset. It is not clear whether the employees in the case of PSMAS and ZBC were aware of what was going on in the institutions. Those responsible for running the payroll, taking the pay slips to their owners, issuing out fuel coupons, booking the trips and so on, might have realised that something was amiss. This suggests that there is scope to strengthen the role of the HR executive – he or she must be more proactive in preventing such abuses or, where the HR executive is complicit, must be subject to sanctions for such abuses.

Whistleblower Protection

Zimbabwe currently offers little legal protection for whistleblowers. A clear whistleblowing framework would encourage effective corporate governance initiatives by supporting those who wish to expose corporate malpractice.⁴⁴⁹ The importance of protecting whistleblowers cannot be overstated as being a core part of the public sector's integrity framework.⁴⁵⁰ It is vital for the protection of the public interest and emboldening a culture of public accountability. According to one analyst, the 'state of dilemma is made no better by the various suppressing mechanisms such as the Official Secrets Act (Chapter 11:09) which prevents an employee in SEPs from divulging information concerning what happens in the organization.'⁴⁵¹ This only complicates the position of a whistleblower and makes public disclosure of corporate malpractice in SEPs potentially dangerous.⁴⁵²

⁴⁴⁸ Ncube and Maunganidze, 'Corporate governance and executive compensation', Management, 4, no. 6 (2014).

⁴⁴⁹ Chimbari, 'Public sector corporate governance'.

⁴⁵⁰ Organisation for Economic Co-operation and Development, 'Whistleblower protection', <u>https://www.oecd.org/governance/</u> ethics/whistleblower-protection/.

⁴⁵¹ Chigudu, 'Public Sector Corporate Governance', 8-9.

⁴⁵² See also Section 1 - Corruption.

The HR departments in all private and public sector entities must be empowered to set effective complaints and whistleblowing procedures. Ncube and Maunganidze stress this point by stating that 'complaints procedures should ensure that complaints from users and other external stakeholders are adequately monitored, investigated, resolved and appropriately reported.'⁴⁵³ Instituting such procedures in private and public entities would also deter abuse of office.

Restructuring

In early January 2018, the Mnangagwa administration announced intentions to privatise several of the 107 SOEs, including the national airline and power utility.⁴⁵⁴ The government's target was that in the period of 2018–2020, 11 SOEs, six Industrial Development Corporation subsidiaries, and 17 Zimbabwe Mining Development Corporation subsidiaries would be privatised under government's public enterprise reform, while others were to be merged, liquidated or departmentalised. Treasury planned to dispose of all or part of 35 SOEs by December 2020.⁴⁵⁵

However, little actual progress was realised in meeting these ambitious targets. The lack of traction in the privatisation drive was mainly due to the bankrupt status of some of these state enterprises. For example, in 2016 about 38 public enterprises had losses approximating \$270 million, while in July 2018 public enterprises owed taxes approximating \$491 million.⁴⁵⁶ In addition, the reform process for entities like ZUPCO, TelOne, People's Own Savings Bank, Petrotrade and Netone was stalled by the failure to raise consultancy and advisory fees to the auditors appointed, and the general failure for others was due to lack of investor appetite as investors took a 'wait-and-see' approach on Zimbabwe.⁴⁵⁷ Another central factor in the delay of SOE reforms has been the lack of political commitment, compounded by strong opposition from vested and embedded interests.⁴⁵⁸ However, there are other privatisation and/or restructuring targets stipulated in the TSP that were met, for example Agribank, GMB, the creation of the Zimbabwe Investment Development Agency, and CAAZ's demerging.⁴⁵⁹ In April 2021, the Agricultural Finance Company (AFC) Holdings was launched, signalling great strides in

⁴⁵³ Ncube and Maunganidze, 'Corporate Governance and Executive Compensation'.

⁴⁵⁴ Noyes, "A New Zimbabwe".

^{455 &#}x27;Parastatal Reforms Pick Pace', The Herald, May 14, 2019, https://www.herald.co.zw/parastatal-reforms-pick-pace/.

⁴⁵⁶ Bhoroma, "Corporate governance and state entities"; Noyes, "A New Zimbabwe".

⁴⁵⁷ Bhoroma, "Corporate governance and state entities".

⁴⁵⁸ Newswire 5 October 2020, 'Mthuli's TSP scorecard', <u>https://newzwire.live/mthulis-tsp-scorecard-two-years-ago-he-pledged-to-</u> privatise-parastatals-fail-his-plan-never-left-the-station/.

⁴⁵⁹ Newswire 5 October 2020, 'Mthuli's TSP scorecard.'

the Agribank restructuring process. However, critics have expressed scepticism over this move and argue that 'the Second Republic has been upbeat about a series of name changes without capacitating the institution (AFC) and specifically without transforming the land security issue to the farmers.'

RECOMMENDATIONS

In order to provide for credible elections, it is necessary that all stakeholders:

- observe compliance with ZIMCODE and the Public Entities Corporate Governance Act, which should be compulsory for all private and public entities and should be monitored within each sector, and failure to comply with ZIMCODE should attract penalties or sanctions from the responsible authority;
- make the Public Entities Corporate Governance Act explicit in pointing out that the chairperson of the board of directors cannot under any circumstance hold an executive position;
- respect the principle of separation of ownership and control regarding the parent ministry, board and CEO in order to avoid a system or a perception of nepotism and patronage;
- strive for greater diversity and inclusion in boards to reflect the demographics of the country, as well as to reduce instances of nepotism and patronage;
- amend the Public Entities Corporate Governance Act to cap remuneration overheads for SEPs so they do not exceed 40% of realised annual revenue;
- note and implement the corporate governance reforms and recommendations from the Auditor-General's reports, which include ensuring that all board members of SEPs sign off that they have read and understood reports, particularly if they relate to their entity;
- put in place effective whistleblowing systems and procedures at a national level and empower HR departments to establish effective complaints mechanisms and to incentivise would-be whistleblowers;
- enforce greater transparency or 'full disclosure' to rebuild the faith in corporate governance, particularly for SEPs in areas such as remuneration, perks and performance indicators;
- strengthen the Auditor-General's office so it is able to investigate on its own and provide more regular reports, and refer issues to the Anti-Corruption Commission or for prosecution;

- review the role and composition of the Anti-Corruption Commission to ensure it is not only reactive, but also has measures that can prevent instances of corruption; and
- review the role of HR executives so they can prevent board excesses such as overstated wages and perks, recruitment of staff and executives, communication and transparency in the organisation, etc., recognising that a more active human resource executive can serve a key role in preventing malfeasance.

ZIMBABWE: 2020 IIAG SCORES, RANKS & TRENDS



GOVERNANCE

2019 SCORE/100	2019 RANK/54	TREND 2010-2019	
46.1	33 rd	+7.4	

	SECURITY & RULE OF LAW	SCORE/100 2019	RANK/54 2019	TREND 2010-2019
SECURITY	(& RULE OF LAW	46.4	32	+6.9
SECURITY	& SAFETY	81.5	29	+7.0
Absence o	f Armed Conflict (ACLED/UCDP)	99.1	26	0.0
Absence of	f Violence against Civilians (ACLED/PTS)	70.4	38	+7.2
Absence o	f Forced Migration (IDMC/UNHCR)	98.7	29	+2.2
Absence of	Human Trafficking & Forced Labour (USDS/V-DEM) 64.8	13	+18.6
Absence o	f Criminality (WHO)	74.3	44	+7.0
RULE OF L	AW & JUSTICE	37.5	37	+4.9
Executive	Compliance with the Rule of Law (V-DEM/WJP)	37.0	39	+2.6
Impartialit	y of the Judicial System (GI/V-DEM)	48.3	18	+0.7
Judicial Pro	ocesses (V-DEM/WJP)	47.2	23	+0.6
Equality b	efore the Law (FH/WJP)	28.6	40	+3.4
Law Enford	cement (GI/WEF/WJP)	46.1	18	+15.5
Property R	ights (BS/V-DEM/WJP)	17.9	49	+6.7
ACCOUN	TABILITY & TRANSPARENCY	32.4	32	+5.9
Institution	al Checks & Balances (BS/V-DEM/WJP)	33.2	33	+1.9
Civic Chec	ks & Balances (BS/V-DEM/WJP)	35.6	42	+5.6
Absence o	f Undue Influence on Government (BS/FH)	23.6	31	+5.5
Disclosure	of Financial & Judicial Information (GI/IBP/WJP)	37.4	17	+27.2
Accessibili	ty of Information (GI/WJP)	32.3	21	-10.9
ANTI-COF	RUPTION	34.0	30	+9.6
Anti-Corru	ption Mechanisms (BS/GI)	46.4	20	+21.4
Absence o	f Corruption in State Institutions (V-DEM/WJP)	32.4	39	+6.0
Absence of	Corruption in the Public Sector (V-DEM/WEF/WJP)	25.2	44	+2.7
Public Pro	curement Procedures (GI)	37.5	17	+25.0
Absence o	f Corruption in the Private Sector (WB/WEF)	28.6	36	-7.1

PARTICIPATION, RIGHTS 寙 SCORE/100 RANK/54 TREND 2019 2019 2010-2019 & INCLUSION PARTICIPATION, RIGHTS & INCLUSION 36.0 38 -1.9 -3.0 PARTICIPATION 45 Freedom of Association & Assembly (FH/GI) 12.5 38 0.0 Political Pluralism (GI/V-DEM) 27.4 41 -7.7 Civil Society Space (GI/V-DEM) -12.3 19.0 49 Democratic Elections (CDD/GI/V-DEM) 29.3 35 +8.0 RIGHTS 31.9 40 -3.7 Personal Liberties (FH/V-DEM/WJP) 29.9 38 -2.2 Freedom of Expression & Belief (FH/V-DEM/WJP) 40.3 41 -2.8 Media Freedom (GI/V-DEM/RSF) 36.7 46 -13.5 Digital Rights (DSP & V-DEM/GI) 44.5 36 -8.1 Protection against Discrimination (GI) 8.3 26 +8.3 INCLUSION & EQUALITY 36.2 38 +0.3 Equal Political Power (V-DEM) 30.4 42 +1.4 +0.2 Equal Political Representation (FH/IPU/V-DEM) 34.8 40 +5.5 38.1 45 Equal Civil Liberties (V-DEM) Equal Socioeconomic Opportunity (GI/V-DEM) 47.6 24 -5.5 Equal Access to Public Services (V-DEM) 30.2 38 +0.1 GENDER 54.0 23 Political Power & Representation of Women (GI/IPU/V-DEM) +5.2 58.1 15 Equal Civil Liberties for Women (V-DEM) 65.9 39 -3.8 Socioeconomic Opportunity for Women (GI/V-DEM) 58.8 16 +26.6 37.0 Equal Access to Public Services for Women (V-DEM) 34 0.0 Laws on Violence against Women (OECD) 50.0 3 -33.3

TREND CLASSIFICATION KEY

Increasing Improvement	Slowing Improvement	Bouncing Back
Warning Signs	Slowing Deterioration	Increasing Deterioration
No Change	 Not Classified 	

FOUNDATIONS FOR ECONOMIC OPPORTUNITY

SCORE/100 RANK/54 TREND 2019 2019 2010-2019

FOUNDATIONS FOR ECONOMIC OPPORTUNITY	47.2	29	+19.5
PUBLIC ADMINISTRATION	49.8	29	+8.0
Civil Registration (GI)	62.5	20	0.0
Capacity of the Statistical System (GI/ODW/WB)	42.4	29	+6.1
Tax & Revenue Mobilisation (AfDB/ICTD&UNU-WIDER/WB)	45.9	23	+1.9
Budgetary & Financial Management (AfDB/WB)	47.7	29	+21.6
Professional Administration (AfDB/GI/WB)	50.3	14	+10.1
BUSINESS ENVIRONMENT	42.0	40	+4.2
Regional Integration (AfDB)	37.5	33	+12.5
Trade Environment (WB)	44.7	37	-12.8
Business & Competition Regulation (AfDB/BS/WB/WEF)	45.5	36	+10.5
Access to Financial Services (WB)	47.5	9	+8.6
Labour Relations (GI/WEF)	34.8	41	+2.4
INFRASTRUCTURE	40.0	27	+16.1
Transport Network (WEF/UPU)	30.4	36	-7.9
Access to Energy (WB)	38.5	37	+1.3
Mobile Communications (ITU)	64.2	24	+47.4
Digital Access (ITU/WB)	26.8	17	+23.5
RURAL SECTOR	56.9	19	+49.4
Rural Land & Water Access (IFAD)	78.0	6	+67.0
Rural Market Access (IFAD)	50.0	15	+33.2
Rural Sector Support (IFAD)	50.7	30	+48.5
Rural Businesses & Organisations (IFAD)	48.9	30	+48.9

HUMAN DEVELOPMENT

SCORE/100 RANK/54 TREND 2019 2019 2010-2019

HUMAN DEVELOPMENT	54.9	20	+5.3
HEALTH	66.0	16	+11.7
Access to Healthcare (V-DEM/WHO)	54.5	20	+8.2
Access to Water & Sanitation (WHO & UNICEF)	45.3	26	-2.2
Control of Communicable Diseases (UNAIDS/WHO)	91.7	5	+14.5
Control of Non-Communicable Diseases (IHME)	59.5	37	+6.3
Control of Child & Maternal Mortality (IGCME/MMEIG)	72.7	26	+18.6
Compliance with International Health Regulations (IHR) (WHO)	72.0	14	+24.5
EDUCATION	58.2	15	-4.6
Equality in Education (V-DEM/WB)	50.2	26	-23.3
Education Enrolment (UNESCO)	36.5	20	+1.3
Education Completion (UNDP/WB)	67.6	17	+2.6
Human Resources in Education (UNESCO)	75.1	22	-1.7
Education Quality (BS/WB/WEF)	61.6	11	-2.0
SOCIAL PROTECTION	36.4	34	+7.9
Social Safety Nets (BS/GI)	22.6	37	+3.0
Poverty Reduction Policies (AfDB/BS/WB)	47.0	25	+27.3
Socioeconomic Inequality Mitigation (AfDB/WB/WID.World)	39.4	37	+19.7
Access to Housing (CAHF/UN-Habitat)	36.3	19	-18.5
Absence of Undernourishment (FAO)			-
SUSTAINABLE ENVIRONMENT	59.2	19	+6.4
Promotion of Environmental Sustainability (AfDB/BS/WB)	44.0	36	+17.0
Enforcement of Environmental Policies (WEF/WJP)	53.2	16	+8.5
Air Quality (HEI & IHME)	52.4	41	+18.5
Sustainable Management of Land & Forests (FAO/WB/WRI)	46.5	48	-12.2
Land & Water Biodiversity (WB/Yale & Columbia)	99.7	4	0.0