



**RESEARCH REPORT**  
SUPPORTING ASSEMBLY  
RIGHTS IN AFRICA

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## **Acknowledgments**

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## EXECUTIVE SUMMARY

**This report provides an overview of the assembly terrain in Southern and East Africa by analysing the situation in Zimbabwe, Zambia, Malawi, Kenya and Uganda. The five country case studies reveal different attitudes by both State to regulating assemblies and by civil society in defending the right to protest.**

We studied available literature and conducted interviews with key civil society players in these countries, in order to understand a) their assembly laws; b) extent of repression of the right to protest; c) advocacy efforts by civil society organisations; and d) opportunities for a project supporting assembly rights in Africa.

### **The key findings are:**

- ▶ Public orders laws regulating assemblies are mostly acceptable and pass constitutional muster;
- ▶ The application and enforcement of these laws is, on the other hand, generally deplorable;
- ▶ Throughout the region activists are willing to take risks in confronting the State, but are not prepared to be abandoned in the face of arrest and violence;
- ▶ A system to support protesters therefore becomes essential to sustaining the overall struggle itself;
- ▶ Uganda has the most sophisticated civil society tools to counter repression of the right to protest, including a rapid response system providing emergency legal, medical and related support throughout the country;
- ▶ Although Kenya is currently in political turmoil, there is a dearth of resources available to protesters who inevitably experience police repression;
- ▶ Zimbabwe has a rapid-response service with a dedicated coordinator;
- ▶ In Zambia and Malawi there is little practical support for protesters;
- ▶ More lawyers are desperately needed, especially those willing to act pro bono and at short notice; and
- ▶ A sustainable support service requires dedicated staff, an effective clearinghouse for requests for assistance and public awareness of the laws, their rights and tactics to counter repression.

Ultimately, this project supporting assembly rights in Africa aims to: a) create and sustain a cohesive network of organisations across the region collaborating and coordinating their efforts to support assembly rights; b) ensure a repository of assembly laws and compliance analysis tracking trends in State repression and responses by civil society; and c) make new tools available to activists to combat State repression of the right to protest.



# INTRODUCTION

**Although democratic and governance structures in Southern and East Africa unquestionably have transformed since the advent of multi-party democracy, true political inclusion remains an aspiration and not an achievement. This is evident from the increasing suppression by the State of civil and political rights such as the right to freedom of assembly and related rights to freedom of information and expression.**

Moreover, more than ever we see in the region the importance of understanding the intersectional nature of rights violations, where those whose socio-economic rights are violated, also experience the violation of their civil and political rights. People who have no or limited access to socio-economic rights are usually denied their civil and political rights. People living in poverty, for example, are usually arrested for protesting against the lack of water and sanitation; mineworkers, protesting economic ‘unfreedom’, are killed by police for ‘unlawful’ gatherings; students living in poverty are tear-gassed for demanding the right to education.

In our original proposal to OSF, we undertook to select five African countries that are most appropriate for targeted intervention and support. It was not feasible to study all 25 countries technically belonging to Southern and East Africa. We sought instead to review the assembly laws of five select countries, assess the extent of repression of their right to protest, detail advocacy efforts by civil society organisations and flag opportunities to support these efforts.

We made our country selection on the basis of certain criteria. We chose three countries from Southern Africa and two from East Africa, because of their geographical proximity to South Africa (host of the project and planned workshop) and because they are all Anglophone. This ensures a certain commonality in law and practice; it also eliminates the need for costly interpreters and more expensive flights for participants in the workshop.

The countries selected are Zimbabwe, Zambia, Malawi, Kenya and Uganda. They are all constitutional, multi-party democracies. Protesters all suffer repression in the exercise of their constitutional rights to assembly. There is potential for a successful intervention to improve the right to protest across all five countries.

A brief desktop review of the assembly laws of these countries reveals that their respective laws on assembly are relatively similar. However, their implementation and enforcement are surprisingly varied, as are the responses of civil society to repression of the right to protest. Nevertheless, there are encouraging advocacy efforts by civil society organisations actively supporting the right to protest. These need to be developed and supported.



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## UGANDA

### Introduction

**In what will be Ugandan President Yoweri Museveni’s 32nd year in power, police routinely disrupt peaceful opposition gatherings using excessive force, arbitrarily arrested opposition politicians, and torture individuals aligned with the opposition. Restrictions on freedom of assembly hinder the ability of Ugandans to receive information and engage with politicians.**

### Assembly laws

The Constitution of Uganda guarantees the freedom to “assemble and to demonstrate together with others peacefully and unarmed and to petition”.<sup>1</sup> The Public Order Management Act (POMA) provides for the regulation of public meetings, which the Act defines as a “gathering, assembly, procession or demonstration in a public place or premises held for the purposes of discussing, acting upon, petitioning or expressing views on a matter of public interest”.<sup>2</sup>

Section 6 of POMA requires organisers of public meetings or demonstrations to inform the inspector of Police in writing of any public meeting they are planning to organise. The purpose is for the Police and the organisers to plan and ensure a peaceful public meeting where the Police play a protective role. However in practice the Police have turned the requirement to inform them into a request for permission to hold such event.

Section 8 of POMA grants the police wide ranging powers to stop or prevent a public meeting from taking place. The chief concern with POMA is the fact that it grants power

1. Constitution of the Republic of Uganda, 1995, s 29(1)(d)

2. Public Order Management Act, 2013, s 4(1)

to the Police to stop a public meeting from happening; implicitly granting the Police the authority to stop persons from exercising their right to assemble. This is a restatement of an outlawed provision of the Police Act, which is used to frustrate peaceful public gatherings, particularly by the Opposition in Uganda.<sup>3</sup>

## Extent of repression of the right to protest

Ahead of the 2016 national elections, a number of rights groups released reports exposing the violations of expression and assembly freedoms.<sup>4</sup> As noted above, POMA does not give the police powers to ban public assemblies, but in practice the police often act like it has the authority to not only ban public assemblies and decide or give permission to anyone organising such a meeting.<sup>5</sup>

During election year in 2016 the police used unnecessary and disproportionate force to disperse peaceful assemblies and demonstrations, sometimes resulting in the death of protesters and bystanders.<sup>6</sup>

Police selectively enforced laws, including POMA, and unjustifiably arrested, detained, and interfered with the movement of opposition politicians. While blocking and dispersing opposition supporters in Kampala, police fired live bullets, killing one person, and injuring many others. Police also shot and killed 13-year-old Kule Muzamiru in Kasese town while dispersing crowds gathered to hear election results.

Police prevented Dr. Kizza Besigye of the opposition party Forum for Democratic Change (FDC) from accessing campaign venues in Kampala, in the run up to the February elections on allegations that he was going to “disrupt business.” Police arrested and briefly detained him several times during campaigns before returning him to his home without charge.

Between February and May, police raided and sealed off the FDC headquarters, arrested party officials, and beat supporters on several occasions. The day after the general elections, police closed the party offices and arrested Besigye, as well as other party officials. Police confiscated results declaration forms and computers. FDC party offices remained under police guard as other opposition officials and supporters were arrested countrywide. Some were held incommunicado for weeks and released without charge.

Besigye declared a “defiance campaign” against the government after the election and held a ceremony swearing himself in as president. Police then prevented Besigye from leaving his home for 44 days, under a “preventive arrest” law. Access to Besigye’s home was restricted, and visitors had to seek permission from police leadership.

3. Amnesty International “We Come in and Disperse Them”: Violations of the Right to Freedom of Assembly by the Ugandan Police (2015) pg 222. Public Order Management Act, 2013, s 4(1)

4. Amnesty International, “We Come in and Disperse Them”: Violations of the Right to Freedom of Assembly by the Ugandan Police (2015), Human Rights Watch “Keep the People Uninformed”: Preelection Threats to Free Expression and Association in Uganda (2015), Chapter 4, Uganda: “When I Was Tortured, No-one Came Out”: Free Expression and Assembly Ahead of the 2016 Polls (2015)

5. Interviews with David Meffe, Research and Advocacy Fellow, East and Horn of Africa Human Rights Defenders Project and interview with Adrian Jjuko, Executive Director, Human Rights Awareness and Promotion Forum Uganda

6. Human Rights Watch, Uganda: Events of 2016 (2017) <https://www.hrw.org/world-report/2017/countrychapters/uganda#cea95>

Eventually in May, Besigye was charged with treason and sent to prison. In July, after the High Court granted bail, police brutally beat Besigye's supporters and other bystanders with sticks and batons. Opposition activists brought a private prosecution for torture against police leadership, but the case eventually failed.

In June, a newly elected member of parliament for FDC, Michael Kabaziguruka, and 34 others, including soldiers, were charged with treason. The charges were pending at time of writing.

## Efforts by civil society

### Solidarity Uganda

Solidarity Uganda is a non-profit organisation that does capacity-building work with community-based organisations in Uganda.<sup>7</sup> Solidarity is a non-violent organisation that subscribes to the philosophy of 'political jujitsu'<sup>8</sup>, ie that activists must go on the offence; merely defending against repression is not enough.

In 2016 Solidarity developed a rapid response system to assist protesters and other victims of State-sponsored violence and repression.<sup>9</sup> The system is run by a full-time coordinator, Scovia Arinaitwe. It has a hotline with an emergency contact number and also operates as a clearinghouse for requests for urgent assistance. The coordinator facilitates the provision of vital services from a network of providers. If an activist is arrested, the coordinator makes a call for a pro bono lawyer to assist in bailing the detainee out of jail. Lawyers run the defence at trial and sue the State for compensation if appropriate. The coordinator also facilitates access to a range of other services: media, medical care and psycho-social support. She also activates solidarity and crowd-funding campaigns, as well as facilitating small yet practical actions such as providing meals to political detainees.

Solidarity's system recognises that activists are willing to take risks in confronting the State, but are not prepared to be abandoned in the face of arrest and violence. The system is powerful and far more advanced than any other system encountered in the region. It nevertheless remains unfunded. The system also desperately needs more lawyers. Although there is a mandatory pro bono system in Uganda, most lawyers do not fulfil their obligations, especially not in the niche area of criminal defence work.

The system largely relies on lawyers from legal NGOs, who often need some persuasion from the coordinator to take on new clients or attend to urgent cases. Ideally, the system would have dedicated staff to perform legal, medical and other services in-house. There is potential for the system to work across national boundaries, to harness solidarity and collective action. For example, in 2016 Solidarity coordinated a vigil in Uganda when human rights lawyer Willie Kimani was killed by police in Kenya. A potential next step for the system is the drafting and dissemination of a checklist or manual for activists, for example: step 1: call lawyer, step 2: call family etc.

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7. <http://solidarityuganda.org>

8. Public Order Management Act, 2013, s 4(1)

9. Interview with Phil Wilmot, Co-Founder and Director of Solidarity Uganda





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## Chapter Four Uganda

Chapter Four Uganda is a non-profit organisation that mobilises domestic, regional and international legal expertise to provide public interest litigation, strategic litigation, legal representation and lawyering as a means to access justice, obtain redress for the abuse of civil liberties and protect human rights.<sup>10</sup>

**Chapter Four Uganda is involved in providing general pro bono legal support in defence of civil rights in Uganda. They make a number of interventions in support of peaceful protesters<sup>11</sup>:**

- ▶ **Public awareness of peaceful protest rights and laws:** This is done through a number of public education programs by Chapter Four - on the radio, online and through social media. This enables protesters to understand the legal framework that governs protests and their rights and responsibilities in exercising the rights to peaceful protest. Chapter Four has produced an excellent handbook giving practical advice to protesters for the enforcement of their assembly rights.<sup>12</sup>
- ▶ **In the case of the LGBTI community,** Chapter Four has worked with the community to ensure compliance with the law. This is because they are particularly targeted by both the authorities and the public. To ensure their safety, Chapter Four works with the groups in providing notification to the police, arranging meetings with the police and securing venues for peaceful protests. There have been mixed results in this programme, with many challenges and few successes.

10. <http://www.chapterfouruganda.com>

11. Email from Nicholas Opiyo, Executive Director, Chapter Four Uganda

12. Chapter 4 Uganda, "A simplified guide to freedom of expression and assembly in Uganda: what you need to know about your expression and assembly freedoms" (2016)

- ▶ When protesters are arrested, Chapter Four provides lawyers and legal advisers to ensure due process. In cases of violations by the authorities, Chapter Four also holds them to account through litigation via private prosecutions and civil claims for compensation.
- ▶ Chapter Four also challenges laws that limit protest rights. They have challenged the Public Order Management Act, a law that is applied by the police to deny protesters the right to protest. The case is yet to be heard in court.
- ▶ Chapter Four is also involved in advocacy work in Uganda and the region to put pressure on the authorities to apply best practices on the regulation of protests and cross-border human rights.



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## Human Rights Awareness and Promotion Forum - Uganda

The Human Rights Awareness and Promotion Forum Uganda (HRAPF) is a nongovernmental organisation whose mission is to promote respect and observance of human rights of marginalised groups through legal and legislative advocacy, research and documentation, legal and human rights awareness, capacity building and partnerships.<sup>13</sup>

HRAPF's work on assembly rights is mainly centered on providing legal aid and supporting advocacy efforts. HRAPF has eight in-house lawyers, who do the work pro bono. They work with marginalised groups, e.g. LGBTI groups and sex workers.

HRAPF has supported efforts to try to organise a Gay Pride Parade for the last few years. HRAPF successfully organised a Gay Pride Film Festival in December 2017. They also appealed in court against the banning of an LGBTI workshop.<sup>14</sup> HRAPF believes that there are not enough resources or lawyers to support protesters in Uganda.

13. <http://hrapf.org>

14. Interview with Adrian Jjuko, HRAPF



**KENYA**

## Introduction

**The Kenyan police force has a history of repressive response to peaceful protests, with interventions by police characterised by death, indiscriminate use of force, serious injury, abuse of firearms, unlawful arrests and detention under the pretext of maintaining law and order.<sup>15</sup>**

These repressive responses came under sharp focus following the violence that ensued after the announcement of the presidential election results in 2007; a commission of inquiry<sup>16</sup> established to investigate the violence found that police management of the demonstrations was ‘inconsistent in its basic legal provisions, jeopardised the lives of citizens and was in many cases characterised by grossly unjustified use of deadly force.’ In 2007 total of 405 people died of gunshot wounds, while 557 suffered gunshot injuries.<sup>17</sup>

Ten years on, the Kenyan police seem to have learnt nothing, as is evident from their response to peaceful demonstrations organised by citizens, civil society and political parties in 2016 and 2017. Several reports illustrate how the Kenyan police continue to undermine fundamental human rights and freedoms while failing to investigate a range of abuses that have been a direct result of repressive policing of public protests.<sup>18</sup>

15. M Marvenjina, Protest in Kenya: repressive and brutal policing has become normalised (Open Democracy, 3 December 2017) <https://www.opendemocracy.net/protest/repressive-policing-kenya>

16. [https://reliefweb.int/sites/reliefweb.int/files/resources/15A00F569813F4D549257607001F459D-Full\\_Report.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/15A00F569813F4D549257607001F459D-Full_Report.pdf)

17. Ibid

18. Human Rights Watch, “Kill Those Criminals” Security Forces Violations in Kenya’s August 2017 Elections (2018) <https://www.hrw.org/report/2017/10/15/kill-those-criminals/security-forces-violations-kenyas-august-2017-elections>



In August 2017, Kenya’s electoral commission declared incumbent President Uhuru Kenyatta winner for a second term, amid opposition and civil society claims of fraud. The elections were marred by excessive use of force against residents, especially in opposition strongholds in Nairobi, the coast and western Kenya.<sup>19</sup>

In September 2017, the Supreme Court ruled that the election results should be annulled because they were “invalid, null and void”, and ordered a new presidential election to take place.

In the election re-run in October 2017, President Kenyatta won with 98% of the vote from a turnout of under 40% – less than half the turnout recorded in August. On 31 October, Raila Odinga called for a “national resistance movement” and the formation of a “people’s assembly” to bring civil society groups together to “restore democracy”.

## Assembly laws

The Constitution of Kenya provides for freedom of peaceful assembly and states that “every person has the right, peaceably and unarmed, to assemble, to demonstrate, to picket, and to present petitions to public authorities”.<sup>20</sup>

This right can only be “limited by law, and then only to the extent that the limitation is reasonable, justifiable in an open and democratic society”.<sup>21</sup>

Public gatherings are regulated by the Public Order Act.<sup>22</sup>

Law enforcement officers are required to effectively facilitate an assembly through offering protection throughout the route to be used by assemblers and protecting protestors from violent and criminal elements.<sup>23</sup>

Freedom of peaceful assembly is a right and as such organising an assembly is not subject to prior authorisation by the authorities. A regulating officer has to be notified of an intended public assembly at least 3 and at most 14 days before it is due to take place.<sup>24</sup> A regulating officer can deny the assembly only if notice of another assembly at the same venue, time and date has already been received.<sup>25</sup> The notification of denial shall be in writing and shall be delivered to the organizer at the physical address specified.<sup>26</sup> The regulating officer may also prohibit the holding of where there is clear, present or imminent danger of a breach of the peace or public order.<sup>27</sup>

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19. Human Rights Watch, World Report 2018 Kenya (2018) <https://www.hrw.org/world-report/2018>

20. Article 37 of the Constitution of Kenya, 2010

21. Art 24 (1)

22. Chapter 56 of the Laws of Kenya, Section 5. Summarised in Kenyan National Commission on Human Rights, Article 19 Eastern Africa & The Independent Policing Oversight Authority, The Right To Freedom of Peaceful Assembly, A checklist for the Kenyan police and the public (2016) pgs 4 – 7

23. Chapter 51 (11) of the Police Service Standing Orders

24. Section 2 of the Public Order Act. The regulating officer is the officer in charge of the police station in the area where the assembly is to take place or where it is to end.

25. Section 5 (6) of the Public Order Act.

26. Section 5 (5)

27. Section 5 (8)





## Extent of repression of the right to protest

In the period following the August 2017 election and the Supreme Court's decision to annul it, supporters of both parties took to the streets in protest. Amnesty International recorded several instances of police abuse of the right to protest.<sup>28</sup>

The police used excessive force to disperse protesters who supported the opposition party and demonstrated against the electoral process, including with live ammunition and tear gas. Dozens died in the violence, including at least 33 people who were shot by police and of whom two were children. Meanwhile, pro-government protesters were permitted to demonstrate without interference.

On 19 September, Jubilee Party supporters protested outside the Supreme Court in Nairobi against its decision to annul the election; they accused the Court of “stealing” their victory.

They blocked a main highway and burned tyres. There were similar demonstrations in the towns of Nakuru, Kikuyu, Nyeri and Eldoret. The demonstrators, mostly young people,

On 28 September, University of Nairobi students clashed with General Service Unit police during a protest outside the university premises against the arrest of MP and former student leader Paul Ongili. Paul Ongili was arrested the same day for abusive remarks he allegedly made about President Kenyatta in connection with the election. Following the protest, the police raided the university buildings and beat students with batons, injuring 27 of them. The Inspector General of Police said the university administration had invited the police to enter after the protesting students stoned motorists. The University Senate then closed the university on 3 October; it had not reopened by the end of the year.

28. Amnesty International Kenya Report 2017/2018 (2018) <https://www.amnesty.org/en/countries/africa/kenya/report-kenya>

Following the October re-election, there were further killings when police fired live ammunition at protesters. The real number of deaths during this period was unknown; relatives of victims did not report the killings for fear of reprisals from the police.

## Efforts by civil society

Kenya has neither the quantity nor quality of Uganda's assembly-support services. There is a dearth of pro bono lawyers, especially in the smaller towns. There is only limited pro bono legal capacity in Nairobi and Mombasa. Ideally there should be a public interest law centre, dedicated to training and supporting protesters.<sup>29</sup>

The National Coalition of Human Rights Defenders – Kenya (NCHRD-K) is a national organisation incorporated in Kenya as a Trust.<sup>30</sup> Its mission is to strengthen the capacity of human rights defenders (HRDs) to work effectively in the country and to reduce their vulnerability to the risk of persecution, including by advocating for a favourable legal and policy environment in Kenya. Established in 2007, NCHRD-K is the only national organisation that works primarily for the protection of HRDs.

### **NCHRD-K provides the following support services for protesters<sup>31</sup>:**

- ▶ Legal support and bail, medical attention, trauma counselling, psycho-social support and safe houses
- ▶ Monitoring and profiling
- ▶ Advocacy

### **NCHRD-K is a member of a coalition of human rights defenders and civil society organisations who actively support the right to protest in the following ways:**

- ▶ Court cases to challenge the legality of specific police action
- ▶ Court cases to challenge constitutionality of laws affecting laws
- ▶ Legal representation across the country. The coalition can mobilise members nationwide, so they can operate in different counties
- ▶ Mobilisation to carry out peaceful demonstrations, for example after the execution of Willie Kimani
- ▶ Participation in the Police Reform Working Group, which investigates and punishes misconduct by the police
- ▶ Ad hoc support from different organisations.

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29. Interview with Maina Kiai, ex-UN Special Rapporteur on Freedom of Peaceful Assembly and Association, 13 February 2018

30. <http://nchrk.org>

31. Interview with Yvonne Owino-Wamari, Advocacy Officer, National Coalition of Human Rights Defenders – Kenya, 22 November 2017



## Introduction

**Malawi holds regular elections and has undergone multiple transfers of power between political parties, though the changes were frequently a result of rifts among ruling elites rather than competition between distinct parties. Political rights and civil liberties are for the most part respected by the state. However, corruption is endemic, police brutality and arbitrary arrests are common.<sup>32</sup>**

The opposition Malawi Congress Party (MCP) won three out of five parliament seats at stake in November 2016 by-elections, with the ruling Democratic Progressive Party (DPP) securing the other two. The Malawi Electoral Commission (MEC) had attempted to improve its performance ahead of the voting, relieving several officials of their duties in August in response to an audit that found alleged malfeasance, and implementing procedural reforms in October. Nevertheless, opposition candidates accused the DPP of disrupting their rallies, offering food gifts to voters, and using state funds for campaigning.<sup>33</sup>

## Assembly law

The Constitution of Malawi provides that:

*Every person shall have the right to assemble and demonstrate with others peacefully and unarmed.<sup>34</sup>*

32. Freedom House, Freedom in the World 2017 Malawi Profile (2018) <https://freedomhouse.org/report/freedom-world/2017/malawi>

33. Ibid

34. Section 38 of the Constitution of Malawi, 1994

According to the Police Act<sup>35</sup>, an “assembly” means any assembly, meeting, rally, gathering, concourse, or procession of more than fifteen persons in or on any public place or premises or on any public road (a) at which the views, principles, policies, actions, or failure to act of the Government or any other government, or of a political party or political organisation, whether or not that party or organisation, whether or not that party or organisation is registered under any applicable law, are publicly discussed, attacked, criticised, promoted or propagated; or (b) held to publicly hand over petitions to any person or to mobilise or demonstrate support for or opposition to the views, principles, policies, actions or failure to act of any person or of any body of persons or any institution, including the Government or any other government or any governmental institution.

On the other hand, the Police Act, defines “demonstration” as any demonstration, whether by way of a procession, march or otherwise, in or on any public place or premises or on any public road, whether by one or more persons, for or against any person, organisation, cause, action or failure to take action, which is organised to be publicly held for the same purpose as in the case of an assembly.<sup>36</sup>

Any organisation which intends to hold an assembly or a demonstration must appoint a convenor and a deputy convenor. The District Commissioner must immediately be notified of the appointment who shall in turn notify the officer in charge of the police station concerned.<sup>37</sup>

The functions of the Convenor are to be responsible for the arrangements of any intended assembly or demonstration and to act on behalf of the organisation at any consultations or negotiations. He or she must make sure that he or she is present at the assembly or demonstration.

Where it is intended to hold an assembly or demonstration, the convenor must give notice in writing, of not less than forty eight hours and not more than 14 days to the District Commissioner with a copy to the officer in charge of the police station concerned. The District Commissioner shall stamp every notice received with an official stamp and shall indicate the date and the time the notice was received by him.<sup>38</sup> The Notice must stipulate the name of the Convenor, his addresses and phone numbers, the name of the organisation on behalf of which the assembly or demonstration is convened, the purpose of the assembly, the place where the assembly or demonstration is to be held, the anticipated number of participants, the exact route it will take, the time when and the place where the participants are to assemble , the time when they are supposed to disperse and the place where and the person to whom the petition will be handed.

The Police Act requires only notice of the intended demonstration or assembly and not application for permission to hold the demonstration or assembly. Where the District Commissioner has received notice in accordance with section 96 or other information regarding a proposed assembly or demonstration comes to his attention, he shall forthwith

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35. Chapter 13:01 of the Laws of Malawi, 2010 section 92

36. W Kita, Insights on the right to demonstrate in Malawi (Nyasa Times, 16 August 2011)  
<https://www.nyasatimes.com/insights-on-the-right-to-demonstrate-in-malawi/>

37. Section 93 of the Police Act

38. Section 96(1) of the Police Act.





consult with the officer in charge of police concerned regarding the necessity for negotiations or any aspect of the conduct of, or any condition with regard to, the proposed assembly or demonstration.<sup>39</sup>

The law gives the District Commissioner and the Officer in charge powers to negotiate how a demonstration or assembly should be conducted to ensure that there (a) vehicle traffic or movement of pedestrians on public roads, especially during traffic rush hours, is least impeded, (b) an appropriate distance is maintained between participants in the assembly and a rival or other assembly or demonstration, (c) access to property and workplaces is least impeded and (d) injury to persons or damage to property is prevented. A District Commissioner who refuses a request of conducting a demonstration in a particular way or imposes any condition shall give the Convenor reasons in writing for his decision.<sup>40</sup>

If an assembly or demonstration is postponed or delayed, the Convenor shall forthwith notify the District Commissioner and the District Commissioner may call for a meeting of all the parties to map the way forward.<sup>41</sup>

The Police Act does not give either the District Commissioner or the Police or indeed any private citizen the right to obtain an injunction stopping a demonstration or an assembly. Instead a Convenor or any other person whose rights may be affected by the holding of an assembly or any term in the Notice of the assembly or demonstration may apply to the High Court for the striking out or amendment of any such term or condition or for the imposition of any other condition or for permission to hold, or for an assembly or demonstration and the High Court may strike out, amend or impose any such term as it considers just in the circumstances.<sup>42</sup>

39. Section 98

40. Section 99

41. Section 100

42. 102 (5)

Where the District Commissioner receives two or more Notices for assemblies or demonstrations on or at the same place and time, the convenor or organisation whose notice was first received by the District Commissioner shall be the one entitled to hold the assembly or demonstration at such place and time.<sup>43</sup>

## Extent of repression of the right to protest

In 2016 security forces repeatedly arrested protesters. In March 2016, more than a dozen youths were detained for an anti-government demonstration in which they draped a coffin in the colours of the opposition DPP. More than 30 students were arrested during student protests against tuition fee hikes in July and August; the protests eventually compelled the government to scale down the fee increases. In October, three activists were arrested for staging a protest over electricity blackouts. Separately, strikes remained common among public-sector workers, who often experience delays in their already low pay.<sup>44</sup>

2011 was a particularly bloody year for the right to protest in Malawi. On 20 July 2011, civil society organisations, including the Malawi Confederation of Trade Unions (MCTU), took to the streets to advance legitimate calls for the government to address deteriorating economic conditions and international relations as well as repressive laws limiting civil liberties.

Nationwide demonstrations in Malawi turned into two days of riots after government security forces brutally put down the demonstrations, leaving 19 people dead and many more injured. A set of recent legislative changes as well as the violent repression of legitimate and peaceful protest actions constitute unacceptable violations of international rights and standards.

Despite the brutal police crackdown, protestors took their demands to the government, calling on President Mutharika to address these demands.

## Efforts by civil society

### Centre for Human Rights & Rehabilitation

The Centre for Human Rights & Rehabilitation<sup>45</sup> (CHRR) is a human rights non-governmental organisation in Malawi. CHRR's mission is to contribute towards the protection, promotion and consolidation of good governance by empowering rural and urban communities in Malawi to increase awareness of and exercise their rights through research, education, advocacy and networking in order to realize human development. CHRR seeks to contribute towards the realization of this mission through a number of programmes carried out through two core programmes namely: community mobilisation and empowerment and human rights monitoring and training.<sup>46</sup>

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43. Section 96(4)

44. Freedom House *ibid*. See also Human Rights Watch, Malawi: Use Restraint in Upcoming Protests (2011) <https://www.hrw.org/news/2011/08/17/malawi-use-restraint-upcoming-protests>

45. <http://www.chrrmw.org>

46. Interview with Michael Kaiyatsa, Senior Advocacy Coordinator, CHRR, 6 November 2017

According to CHHR, the law on assembly in Malawi is acceptable; the problem is practice. CHRR has tried to change police practice by issuing statements, organising press conferences and writing letters to police.

CHHR operates a Paralegal clinic that is aimed at providing small scale legal advice and remedy to members of the community that it operates in. These cases usually involve people who feel that their human rights have been violated in one way or the other. The services are offered for free.<sup>47</sup>

**Among the services the clinic offers include:**

- ▶ Counselling
- ▶ Litigation
- ▶ Referring of cases to relevant authorities and institutions

Notable cases that are usually handled at this clinic range from Gender Based Violence, labour, immigration issues, political violence, and land disputes.

Among the notable cases that were completed in 2009 which however started soon after the 2004 General Elections was a case which CHRR through its paralegal clinic helped relatives of people who died during the aftermath of the 2004 General elections. Through the courts CHRR hired lawyers that represented the relatives of the deceased. The government through the courts compensated them accordingly.

As indicated above this clinic offers free legal services and has so far benefited a lot of poor people who cannot afford a lawyer to represent them in the court of law.

There is a need for more support, in particular legal support. The police often confuse notification with permission. There is no coordinated, dedicated support for protesters or a coordinated campaign to change policy or practice.

## **Human Rights Consultative Committee**

The Human Rights Consultative Committee<sup>48</sup> (HRCC) is a network of over 90 civil society and non-governmental organizations that are working jointly to promote and protect human and people's rights in Malawi. The network also works to promote governance by ensuring that public institutions are responsive to the needs of the people. HRCC operates on the understanding that government and its development partners have an important role in protecting people's social, economic, civil and political rights and that people's interests should be promoted with a sense of responsibility and accountability.

At a recent workshop for Human Rights Defenders in Malawi, the participants noted that there was need to put in place an emergency fund for human rights defenders who get arrested while protecting citizens' rights based on past experiences.<sup>49</sup>

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47. <http://www.chrrmw.org/index.php/our-programmes/paralegal-clinic>

48. <http://www.hrcc.mw/index.php>

49. [http://www.hrcc.mw/defenders\\_workshop.php](http://www.hrcc.mw/defenders_workshop.php)



## ZAMBIA

### Introduction

After the disputed election results in 2016 there was heightened tension between supporters of President Lungu and of Hakainde Hichilema, leader of the opposition United Party for National Development (UPND), following Hichilema’s refusal to recognize Lungu as President.<sup>50</sup>

In the last few years the authorities have cracked down on critics, including human rights defenders, journalists and opposition political party members. The Public Order Act has been used to repress rights to freedom of expression, association and assembly. The police often use unnecessary and excessive force against peaceful protesters and fails to address violence by groups close to the government.<sup>51</sup>

### Assembly laws

Article 21 (1) of the Zambian Constitution guarantees the right to freedom of assembly:

*Except with his own consent a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to any political party, trade union or other association for the protection of his interests.*

50. Amnesty International Report: Zambia 2017/2018 (2018) <https://www.amnesty.org/en/countries/africa/zambia/report-zambia/>

51. *Ibid*



However, the right is limited in Article 21 (2) and (3) by considerations that are necessary in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights of other persons or in the registration of political parties or trade unions.

The Public Order Act<sup>52</sup> (POA) gives effect to the right to freedom of assembly. Sections 4 and 5 of the POA states that every person who intends to assemble or convene a public meeting, procession, or demonstration shall give police at least seven days' notice of that person's intention to assemble. Conditions may be imposed regarding the date upon which and the place and time at which the assembly, public meeting or procession is authorised to take place.

Any assembly, meeting or procession for which a permit is required and which takes place without the issue of such permit or in which three or more persons taking part neglect or refuse to obey any direction or order given shall be deemed to be an unauthorised assembly, and all persons taking part in such assembly, meeting or procession and, in the case of an assembly, meeting or procession for which no permit has been issued, all persons taking part in convening, calling or directing such assembly, meeting or procession may be arrested without a warrant and shall on conviction be liable to a fine or imprisonment for a period not exceeding six months.<sup>53</sup>

A separate piece of legislation, the Penal Code<sup>54</sup>, criminalises unlawful assemblies, riots and other offences against public tranquility. Section 74 defines unlawful assembly as when three or more persons assemble with intent to commit an offence, or being assembled with intent to carry out some common purpose, conduct themselves in such a manner as to cause persons in the neighbourhood reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such assembly needlessly and without any reasonable occasion provoke other persons to commit a breach of the peace, they are an unlawful assembly. It is immaterial that the original assembling was lawful if, being assembled; they conduct themselves with a common purpose in such a manner as aforesaid. When an unlawful assembly has begun to execute a common purpose by a breach of the peace and to the terror of the public, the assembly is called a riot, and the persons assembled are said to be riotously assembled. Section 75 states that any person who takes part in an unlawful assembly is guilty of a misdemeanour and is liable to imprisonment for five years.<sup>55</sup>

## Extent of repression of the right to protest

The Public Order Act has always been a contentious piece of legislation. The Supreme Court of Zambia has found the law unconstitutional on several occasions.<sup>56</sup> The problems however appear to be found more in the application of the law than in the law itself. For example,

52. Chapter 113 of the Laws of Zambia

53. Ibid

54. Chapter 87 of the Laws of Zambia

55. Summarised in E Nkandu, Study Report on Media Laws and Policies in Zambia, MISA Zambia (2012) at pg 46

56. *Christine Mulundika and 7 Others vs The People*, SCZ Judgment No 25 of 1995; *Law Association of Zambia and Others vs The Attorney General*, 2001/HP/0382 (unreported); *Resident Doctors Association of Zambia and 51 Others vs The Attorney General*, Appeal No 39/2002, SCZ Judgment No 12 of 2003.

although no protest permit is now required, in practice, the police frequently and willfully misinterpret the notification procedure stipulated by the Public Order Act by requiring explicit approval to hold a demonstration or assembly. Often the police, for their own convenience, choose where and when rallies are held, as well as who can address them.<sup>57</sup>

In the election year of 2016 there were several examples of repression of the right to protest. In August 2016 the Electoral Commission of Zambia, using the Electoral Act, banned political rallies, protests, door-to-door campaigns, meetings and processions in the capital, Lusaka for 10 days after some violent disputes broke out between political supporters of the ruling party and the opposition. Moreover, during this period, CSOs were not permitted to assemble by the police who spuriously claimed that they lacked the requisite human resources to effectively monitor the planned public assemblies. Such blanket bans are excessive and contravene best practices set out by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association that “individuals do not cease to enjoy the right to peaceful assembly as a result of sporadic violence.”<sup>58</sup>

Opposition political parties frequently complained about the selective application of the law, noting that police allowed ruling party gatherings without notification or permits.<sup>59</sup> Police often prevented opposition groups from gathering on the grounds that police received notifications too late, had insufficient staff to provide security, or the gathering would coincide with presidential events in the same province. Although police claimed inadequate staff to provide security for gatherings, police responded in force to disrupt opposition gatherings and often allowed ruling party supporters to disrupt them. In April 2016 a UPND supporter died as a result of police disruption of a party gathering.<sup>60</sup>

In July 2016, police cancelled two UPND rallies in Lusaka’s Chawama and Kanyama townships, and a UPND supporter was shot dead by police as they dispersed supporters protesting after the cancellations. In October 2016, police in Luanshya arrested the UPND’s Hichilema and his deputy, Geoffrey Bwalya Mwamba, for obstructing traffic, sedition, and holding a meeting in Mpongwe without a permit.<sup>61</sup>

Police and pro-government groups disrupted meetings, rallies, and other activities of opposition political parties and civil society organizations. In April 2016, police disrupted a Judicial and Allied Workers Union of Zambia quadrennial conference two days after its opening. Police later claimed the group had failed to notify them of the meeting. In October 2016, police arrested UPND President Hakainde Hichilema and Vice President Mwamba on charges of sedition and unlawful assembly. The men were accused of holding an unauthorized political rally and encouraging the crowd to reject the legitimacy of President Lungu’s re-election.<sup>62</sup> Hichilema and Mwamba were released after posting bail and are currently being prosecuted for treason.

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57. Freedom House, *Freedom in the World 2017, Zambia Profile* (2018) <https://freedomhouse.org/report/freedom-world/2017/zambia>

58. Civicus and Zambia Council for Social Development, *Zambia: Joint Submission to the UN Universal Periodic Review* (30 March 2017) pgs. 8 – 9 <http://www.civicus.org/images/Zambia.JointUPRSubmission.pdf>

59. States Department of State, *Country Reports on Human Rights Practices for 2016* (2017) pg 14

60. Ibid

61. Ibid

62. States Department of State, *Zambia 2016 Human Rights Report* (2017) pg 13 <https://www.state.gov/documents/organization/265528.pdf>

The authorities have further sought to delegitimise public protests organised by independent groups by issuing critical statements in advance of public protests. For example, in 2013, Zambia police spokesperson, Charity Chanda, in the media, threatened the Zambia Congress of Trade Unions over its plans to hold a country-wide demonstration without agreeing to a date with the police which she falsely claimed would contravene the Public Order Act. In addition, Charity Chanda made partisan and inflammatory claims about the planned protests including stating that across the country, police were ready to meet the labour movement on the “battlefield”.<sup>63</sup>

The Zambian Human Rights Commission and Southern African Centre for the Constructive Resolution of Disputes (SACCORD) have identified several broad themes in the abuse of assembly law by the authorities:<sup>64</sup>

### **Non-compliance with court orders**

Besides misapplying the Public Order Act itself, the police have failed to comply with court orders. For example in 2012 the Lusaka High Court gave an order to the police restraining them from interfering with a planned UPND political rally. However the police did not comply with the order and stopped the UPND holding the rally. The failure of the police to comply with the court order undermines the rule of law and also puts into question the authority and effectiveness of the judiciary as the ultimate protector of human rights in a democratic society.

### **Decision-making by the police on notification**

According to the Public Order Act, decisions on policing an assembly are supposed to be made by a regulating officer who is gazetted to perform this function. However the trend has been that the final decision on policing an assembly has been taken by the police high command.

### **Selective policing of assemblies**

The police are expected to be impartial, non-partisan and professional in the application of the POA. The Act also makes it mandatory to provide reasons for the failure to police an assembly and requires the police to provide an alternative date for the event. However the police have failed to provide convincing grounds for their decision to police or not police certain assemblies, especially those of a political nature.

### **Human Resources for policing assemblies**

According to the POA, the police are obliged to police any assembly for which they have received notification and for which there are no reasonable grounds not to police the event. However in most cases where the police have been unable to police an event they use the excuse that they have inadequate resources to do so.

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63. E Nkandu, *ibid*

64. Zambian Human Rights Commission and Southern African Centre for the Constructive Resolution of Disputes (SACCORD), *Guidelines on Freedom of Peaceful Assembly and Application of the Public Order Act in Zambia* (2014) pgs 20-26

## Notification and feedback

The POA requires that the regulating officer should provide feedback on a notification received from the organiser of an assembly no later than five days before the event is due to take place. However there are instances where the regulating officer takes longer than the stipulated time to respond without explanation.

## Managing illegal assemblies

In the past the police have deployed large numbers of police to disrupt gatherings which were deemed illegal and at times have used excessive or unreasonable force to disperse participants.<sup>65</sup>

## Efforts by civil society

There is a robust civil society in Zambia, engaged in advocacy and litigation to change the Public Order Act. However there appears to be very little practical support for protesters.

The Human Rights Commission of Zambia<sup>66</sup> (HRC-Z) is mandated to amongst others investigate and remedy human rights violations and conduct human rights education.

HRC-Z provides materials and training on the correct POA procedure to follow. HRC-Z also facilitates dialogue between civil society and Government.<sup>67</sup>

According to HRC-Z, emergency legal, medical or other assistance for protesters is non-existent in Zambia. The Law Association of Zambia facilitates some pro bono assistance, but not usually on an urgent basis. No organisation in Zambia provides a ‘rapid-response’ service for victims of police repression at a protest.<sup>68</sup>

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65. Ibid

66. A national human rights institution established under Article 125 of the Constitution of Zambia and mandated by the Human Rights Commission Act No. 39 of 1996 <http://www.osisa.org/zambian-human-rights-commission>

67. Interview with Mr Mulewa, Chief Commissioner of Education, Human Rights Commission of Zambia, 28 February 2018

68. Ibid





# ZIMBABWE

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## Introduction

**In November 2017, President Robert Mugabe was ousted in a military coup and was replaced by his former deputy, Emmerson Mnangagwa. The new regime provides some hope that there will be a commitment to upholding assembly rights in Zimbabwe.**

Prior to his ouster, Mugabe had presided over intensified repression of peaceful protests against human rights violations. For many years opposition and civil society activists were wrongly arrested, detained and prosecuted under POSA. Police frequently misused provisions of POSA to ban lawful public meetings and marches.

## Assembly laws

Freedom of assembly and association is guaranteed in Section 21 of the Constitution of Zimbabwe: “[the] right to assemble freely and associate with other persons and in particular to form or belong to political parties or trade unions or other associations for the protection of his interests.”<sup>69</sup>

Section 21 (1) limits the rights to the extent that “except with his own consent or by way of parental discipline no person shall be hindered in his freedom of assembly and association.”

Section 21 (3) allows further limitations where this is in the interests of (a) preserving public safety, public order, public morality or public health; or (b) for the purpose of protecting

69. The Right to Freedom of Expression, Assembly and Association in Zimbabwe Number 59 (2011).  
The Human Rights Bulletin (Zimbabwe Human Rights NGO Forum) <http://www.hrforumzim.org/wp-content/uploads/2012/03/Right-to-freedom-expressions-07-2011.pdf>

the rights or freedoms of other persons; or (c) where exercising ones fundamental rights imposes restrictions upon public officers in the execution of their constitutional duties.<sup>70</sup>

The Public Order and Security Act [Chapter 11:17] (POSA) was passed in 2002. POSA has severely restricted the right to freedom of assembly in Zimbabwe. POSA violates section 21 of the Constitution, as well as the rights to freedom of movement, association and expression. POSA also conflicts with the freedom of assembly clauses in the African Charter on Human and Peoples Rights and the International Covenant on Civil and Political Rights.

While the Constitution allows for limitations on the right to assembly, this must only be done in exceptional circumstances which are reasonably justifiable in a democratic society. Any limitation must therefore be done transparently, and in a manner which respects the principle of separation of powers.<sup>71</sup>

POSA, which replaced the colonial-era Law and Order (Maintenance) Act, has been used since 2002 to suppress legitimate political and social dissent and criticism, as well as to unconstitutionally and arbitrarily restrict the exercise by human rights defenders, political activists, and the general public, of their fundamental rights to move, gather, receive information and speak out critical aspects of exercising their right to participate in the governance of their country.

Section 2 defines a gathering as a meeting in public of 15 or more people. In the past this provision has been selectively applied. Court cases reveal instances in which even two people who are walking in the street during a peaceful gathering (to which they were not attached) have been arrested and accused of a participating in an unsanctioned public demonstration.<sup>72</sup>

In terms of Section 25, the convenor of a gathering must give seven days' notice of a procession, public demonstration or public meetings to either the regulating authority for the area, or a police officer in charge of a police station near where the proposed meeting is to take place.

The convenor is obliged to supply a substantial amount of information in his or her written notice, including the purpose of the gathering, when and where it will be held, the anticipated number of participants, the names and address of the convenors, and the proposed number of marshals and, if possible, their names.

This provision has, in the past, been misinterpreted by the police, who have consistently interpreted the requirement to give notice as an application for permission to conduct the public gathering.

The powers have been wrongly, arbitrarily and selectively used against human rights defenders, civil society organisations and legitimate political activists to restrict or ban their activities.<sup>73</sup>

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70. Ibid

71. POSA and the right to freedom of assembly, Submissions by Zimbabwe Lawyers for Human Rights to the Parliamentary Portfolio Committee on Home Affairs and Defence (22 November 2010) [http://archive.kubatana.net/html/archive/hr/100222z1hr.asp?sector=cact&year=2010&range\\_start=301](http://archive.kubatana.net/html/archive/hr/100222z1hr.asp?sector=cact&year=2010&range_start=301)

72. *State vs Tawanda Zhuwarara and 9 Others*

73. POSA and the right to freedom of assembly, *ibid*

Section 26 of POSA provides that the regulating authority (the police) can unilaterally decide to ban a meeting or demonstration on the grounds that they believe that such gathering will result in public disorder. They must first receive credible information on oath that a proposed gathering will result in serious disruption or traffic, injury to participants or others, extensive damage to property or other public disorder.

This provision has, however, been ignored completely as if it does not even exist. The regulating authority, upon receipt of a notice, takes it as an application, unilaterally and without providing reasons bans it, and sends communication to the convenor. Sometimes the decision is not even transmitted to the convenors. This is so even where the police have not received credible information on oath. The police often simply proceeded to ban or ruthlessly disrupt and disband gatherings without just cause and with impunity.

The police have also arbitrarily issued bans of political rallies for periods varying from one to three months, although legal challenges against such bans and decisions have always succeeded albeit after the disruption. This phenomenon is particularly common during election periods.<sup>74</sup>

## **Extent of repression of the right to protest**

In 2015 and 2016 for example, hundreds of protesters, including student activists, human rights activists, and opposition supporters were arrested, detained, and later released on bail without charge.<sup>75</sup>

In February 2015 when hundreds of Women of Zimbabwe (WOZA) members marched to petition parliament over the national economic situation, police violently broke up the march and dispersed the demonstrators.

In January 2015, police arrested five activists from four NGOs for participating in a demonstration in Chitungwiza. They were later released without charge. Also in January, police arrested 12 leaders of the Zimbabwe National Students Union. The students, who were beaten in police custody, were arrested during a demonstration against poor education standards at Harare Polytechnic College.

On June 2015, police in Victoria Falls arrested and detained four members of the Bulawayo Agenda organization on charges of contravening POSA by allegedly failing to notify police of their public meeting. A court subsequently acquitted the four.

In July 2015, authorities in Nyanga and Gweru separately charged Jacob Ngarivhume, the leader of the opposition political party Transform Zimbabwe, with violating POSA for allegedly holding political meetings without police clearance. Ngarivhume was later acquitted in court.

In 2016, many Zimbabweans rose up against government repression under the #Tajamuka/Sesjikile campaign led by Promise Mkwanzani and the #ThisFlag campaign led by Pastor

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74. Ibid

75. Incidents drawn from Human Rights Watch World Report Zimbabwe: Events of 2015 and 2016 (2016) and (2017) respectively <https://www.hrw.org/world-report/2017/country-chapters/zimbabwe>



Evan Mawarire. In July 2016 police assaulted and arbitrarily arrested, and charged with public violence, hundreds of protesters across the country, including 86 people in Bulawayo, 105 people in Harare, and 16 people in Victoria Falls.

In August 2016, police arbitrarily arrested over 140 people in Harare on false public violence charges. According to their lawyers, most of those arrested, including security guards, vendors, college students taken from class, did not participate in the protests. Those arrested were later freed on bail after several days in detention.

In September 2016, police in Mutare arrested and detained 17 members of the Zimbabwe National Students Union (ZINASU) on charges of allegedly gathering in POSA. After three nights in detention, a court freed all 17 and declared their arrest unlawful.<sup>76</sup>

The experiences of the opposition party MDC in 2008, the year of the general election, provide an insight into the routine abuse of the right to assembly by authorities.

In January 2008 the police unilaterally banned marches after conducting meetings with conveners where they attempted to defeat the cause of the march by altering the route.<sup>77</sup>

In the past the banning of rallies was done without following the provisions of POSA that require publication of a ban in a newspaper in the area where the convener is likely to conduct the gathering. The MDC complained that the police had banned all rallies in Masvingo and that armed riot police broke up one of their rallies in Kadoma. The courts held that such bans were unlawful.

In June 2008, in order to prevent the police from illegally disrupting rallies, the High Court was approached on a number of occasions. A court order was issued by the High Court compelling the police not to disrupt a rally at an open space in Harare.<sup>78</sup>

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76. Ibid

77. See *MDC v The Minister of Home Affairs and Others* (Ref: HH 142/2008)

78. See *MDC v Commissioner General and others* (Ref: HH 3262/08)

On 21 June, despite this court order, armed Zanu (PF) youths and militias sealed off the ground in violation of the provisions of POSA and the court order. The police failed to enforce provisions of POSA in this matter.

In August 2008 The Crisis Coalition Annual General Meeting which was taking place at the Cresta Oasis Hotel in Harare was unceremoniously disbanded by the police.

The MDC wrote a letter to the police to notify them of their run-off campaign rallies to be conducted on 8 June 2008 in Glen Norah, Mufakose, Kambuzuma and Chitungwiza. The police arbitrarily prohibited the rallies. The main reason for the prohibition was the pending investigations to threats of assassinating the MDC leadership and as experts in security the police further advised the MDC that rallies would increase the risk of the assassination. The court allowed the rallies as scheduled and dismissed the arguments of the police. Cognisant of the conduct of the police of disrupting rallies, High Court judge, Justice Chitakunye further held that the police were prohibited from disrupting the rally.<sup>79</sup>

When notice has been given police have prohibited rallies or gatherings on spurious grounds such as lack of manpower.<sup>80</sup> Notification about pending gatherings was duly sent to the police. In response the police indicated that they did not have enough manpower. The court indicated that the applicants could proceed and provide their own security in the form of marshals.

These examples are clear evidence of the police over-reaching their powers under POSA to unnecessarily restrict and prevent public gatherings, and thus violate constitutionally protected rights.<sup>81</sup>

The practice also usurps the powers of the judiciary, which is and should always be the moderator in such matters. The judiciary, as an impartial moderator, has the responsibility to ensure that any action is taken in accordance with the law, transparently, and without arbitrariness.

Section 27A of POSA bars demonstrations 20 metres from the vicinity of Parliament, 100 metres of the vicinity of the Supreme Court or the High Court, and 100 metres of the vicinity of any protected area in terms of the Protected Areas and Places Act.

These provisions are unduly restrictive and vague. It is difficult to understand what is meant by a specified distance of the vicinity of the place concerned as this radius can be expanded at the discretion of the regulating authority.

It is also unclear how authority for such gatherings is to be obtained from the Speaker or the Chief Justice who are, in any event, unlikely to readily agree to such gatherings where the purpose will be presentation of petitions relating to the separation of powers, breakdown of the rule of law, and criticism of the legislature and/or judiciary for failure to take action to protect fundamental rights and freedoms. It has always been extremely difficult to obtain such permission to approach areas which essentially exist for the people, especially

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79. In *MDC v Minister of Home Affairs and others* (Ref: HH 2950/08)

80. This was the case in *MDC v Ministers of Home Affairs and Others* (Ref: HH 2828/08); *MDC v Minister of Home Affairs and Others* (Ref: 3125/08); and *ZCTU v Minister of Home Affairs and Others* (Ref: HH 2477/08).

81. POSA and the right to freedom of assembly, *Ibid*



Parliament (where individuals elected by the people work) and the courts (which exist to uphold and protect the rights of all people).<sup>82</sup>

## Efforts by civil society

Zimbabwe Lawyers for Human Rights<sup>83</sup> (ZLHR) is a not for profit human rights organisation whose core objective is to foster a culture of human rights in Zimbabwe as well as encourage the growth and strengthening of human rights at all levels of Zimbabwean society through observance of the rule of law.

ZLHR has a Human Rights Defenders (HRDs) Unit. Lizwe Jamela, Senior Manager, leads the Unit.

The HRDs Unit was established to provide protection to human rights defenders who face human rights violations related to their work as individuals and also as institutions, groupings or associations. Located within the theory of change as an intervention towards “provision of legal support to HRDs to safeguard their rights, enhance their operating environment and strengthen the effectiveness of their work”.

The Unit plays a big role in the democratisation agenda of the country and ensures that HRDs are not only able to continue with their work, but to do so in a safe environment. Through a holistic integrated approach, ZLHR provision of legal services as a safety net ensures that HRDs working on their own or in their communities advocating for their rights, are capacitated to effectively carry out their work in a safe environment.

The Unit’s goal is to protect the rights and enhance the safety of human rights defenders through litigation, education and advocacy.

The Unit dispenses emergency legal services, consisting of rapid reaction wherein it provides legal support to respond to distress calls from human rights defenders (or through their families, associates or members of the public) facing arbitrary arrests in violation of their rights, detained or where there is a threatening harm of their rights from State and non-State actors. The Unit operates a 24-hour hotline available to such HRDs in need of emergency legal support. Their response protocol provides that it should respond within ten minutes of receiving a distress call and this entails deploying a lawyer to provide legal services to victims of rights violations. The emergency legal services ensures police accountability in handling human rights cases and seeks to minimise incidences of torture at the hands of police or other state agencies. The HRDs Unit handles an average of 200 cases annually.<sup>84</sup>

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82. Ibid

83. <https://www.zlhr.org.zw>

84. [https://www.zlhr.org.zw/?page\\_id=67](https://www.zlhr.org.zw/?page_id=67)

## CONCLUSIONS AND RECOMMENDATIONS

The right to freedom of assembly is recognised in the constitutions of the countries under review. Public order laws give effect to the right and are used to regulate the holding of assemblies.

However despite the protection ostensibly proffered by these laws, implementation and enforcement often falls short. Evidence suggests that governments routinely censor protests unlawfully or without due process. Communities seeking to protest face obstruction from local government and police services, as well as a very real risk of arrest and criminal charges. This notwithstanding the fact that protest is often a means of last resort, used when frustrated communities can no longer justify continued fruitless attempts at engagement.

Yet in spite of the fact that protests are so central to the politics of these African countries, there are insufficient structures in place, with inadequate resources, to support protesters. There are few civil society organisations available to assist their community partners and even fewer pro bono lawyers willing to defend their right to protest. There are no stand-alone organisations dedicated solely to protest-related issues.

NGOs and community-based advice offices often do not provide expert advice on these issues, and are in any event not sufficiently widespread and accessible to provide comprehensive service and advice. NGOs and pro bono lawyers are frequently requested to assist with bail applications for arrested protestors and subsequent criminal trials. None of these organisations have the capacity to respond to the scale of these requests.

While this project does not purport to provide a complete solution, we cannot afford to ignore the calls for help from activists and community leaders any longer. There is a pressing need for this project to increase support for beleaguered protesters and push back against the trend of using the criminal justice system to intimidate and punish protesters. This project supporting assembly rights in Africa will accordingly not duplicate existing resources, of which there are very little. The project will provide dedicated, specialised services in support of the right to protest.

The next phases of the project comprise country visits, a concept note, planning and executing a workshop, reporting and developing a strategic plan. In 2018 we will visit Zimbabwe, Zambia, Malawi, Kenya and Uganda for bilateral meetings with NGOs, activists and lawyers working on assembly issues. The purpose of these meetings is to meet potential participants in the workshop and assess the state of protest – and support services – on the ground in these countries. We will also present the project to other workshops and conferences on related topics to build awareness of the project. We will continue to build collaborative relationships with strategic partners such as the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.

The data collected during these visits will complement this research report, which will be used to draft a concept note for the workshop, covering: a) the state of protest in the five selected African countries: an assessment of the extent to which the governments of those five countries have complied with international law as well as their own laws; b) mapping



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the nature of and reasons for current and recent public protests in each of the countries; c) an assessment of civil society's response to repression of the right to protest; d) potential policy shifts and legislative amendments; and e) workshop structure, content and potential outcomes.

After completion of the country visits in early-mid 2018 the draft concept note and draft research report will be sent to civil society organisations identified in the report. They will be invited to apply to participate in the workshop, as well as complete a survey and suggest input for the workshop structure, content and outcomes. Organisations and participants will be selected on the basis of responses to the survey. The reply must include a motivation for why that organisation and nominated people should attend. We will then have a pool of potential candidates. We will choose partners that can already integrate the project into their existing assembly-support work. Organisations that are coalitions or networks already working to support the right to protest will be given priority. Draft potential outcomes will be suggested in a final, detailed concept note, incorporating the research report and survey responses, by the time workshop starts.

In the latter half of 2018 the workshop will take place. Participants from civil society organisations in the five countries will attend a three-day meeting to discuss the state of protest and jointly agree on an advocacy, lobbying & legal strategy. A strategic plan for the future, including electing a secretariat and detailing activities, tasks and task-owners will be included in the workshop resolutions. We will make a detailed strategic plan a key deliverable for the facilitator, who will have a strong hand in guiding discussions and crafting realistic outcomes. The rapporteur will take minutes, capture the essence of discussions and assist the consultant in drafting the report.

The maximum number of workshop participants will be 20 people (excluding support staff) in order to obtain maximum participation and outcomes. Two people from two

organisations per country will be invited to attend: a senior person, the decision-maker and driver of change, will accompany his/her junior colleague, who will roll-out the campaign and activities on the ground.

The location for the workshop will be Johannesburg. This is for reasons of cost and convenience. It is easier and cheaper to book flights to Johannesburg. It is also more efficient to make logistical arrangements from the project's hub at WoMin's office in Johannesburg. There are also excellent and affordable conference venues close by.

Our initial research confirms the need for the interventions originally envisaged. We seek to continue with activities such as country visits, drafting a compliance report and workshop plan, hosting a workshop, developing a campaign strategy and drafting a workshop report. Further activities will be developed by participants in the workshop. As a group, we may decide to launch a regional campaign aimed at offering support to protesters themselves or support organisations. This could manifest in the drafting of a campaign toolkit, a protest manual or a model law for the management of assemblies.

Where there is a need to make strategic interventions at the level of policy- or law-making, advocate for compliance with the law, lobby high-level government authorities, or engage in strategic litigation, the project will facilitate those interventions, which will be executed by individuals, organisations or institutions who are mandated to perform those functions, for example NGOs or universities.

Where there is an opportunity to do advocacy, publicity and journalistic work, the project will facilitate other organisations to write for the media, work with journalists on specific reports on cases, as well as report on assembly trends, hold workshops with journalists on reporting on protests, hold civil society meetings to discuss strategic options for improving laws, meet with government, police and lawmakers about research findings, and where necessary advocate for changes to how assemblies are regulated.

A comprehensive report will follow from the workshop with a strategic plan for the future evolution of the project, including a set of concrete activities for the following years. The report will include evaluations by participants in the workshop.

Ultimately, the project aims to a) create and sustain a cohesive network of organisations across the region collaborating and coordinating their efforts to support assembly rights; b) ensure a repository of assembly laws and compliance analysis tracking trends in State repression and responses by civil society; and c) make new tools available to activists to combat State repression of the right to protest.

## METHODOLOGY

Data was collected from two main sources, literature and interviews. A wide range of civil society activists, lawyers and academics were interviewed, mostly from the five selected countries. Experts were also consulted from donor agencies, international NGOs and inter-governmental agencies. An in-depth literature review sourced material from various online sources as well as statutes, articles and the like provided by those interviewed. A full list of sources consulted is provided below.

## INTERVIEWS

1. Alan Wallis, Programme Manager, OSF-SA
2. Maina Kiai, ex-UN special rapporteur on freedom of peaceful assembly and association
3. Christof Heyns, ex-United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions
4. David Kode, Policy and Research Officer, CIVICUS
5. Dewa Mavhinga, Senior Researcher, Human Rights Watch Johannesburg
6. Franck Kamunga, Team Leader: Rule of Law, Access to Justice and Human Rights, OSISA
7. Irene Petras, Legal Adviser Africa, International Centre for Non-Profit Law
8. Kaajal Ramjathan-Keogh, Executive Director of the Southern Africa Litigation Centre
9. Kathleen Hardy, ex-Operations Director, Human Rights Commission of South Africa
10. Nani Jansen Reventlow, Director of the Digital Freedom Fund
11. Phil Wilmot, Director, Solidarity Uganda
12. Sarah Hager, Chair of the Southern Africa Co-Group, Amnesty International USA
13. Thomas Probert, Centre of Governance and Human Rights, University of Cambridge
14. David Meffe, Research and Advocacy Fellow, East and Horn of Africa Human Rights Defenders Project
15. Adrian Jjuko, Executive Director, Human Rights Awareness and Promotion Forum Uganda
16. Nicholas Opiyo, Executive Director, Chapter Four Uganda
17. Yvonne Owino-Wamari, Advocacy Officer, National Coalition of Human Rights Defenders, Kenya
18. Henry Maina, Director, Article 19 East Africa
19. Otsieno Namwaya, Researcher, Human Rights Watch Kenya
20. Mandala Mambulasa, Attorney and Chairman, Malawi Chapter of the Media Institute of Southern Africa
21. Aubrey Chikungwa, National Director, Malawi Chapter of the Media Institute of Southern Africa
22. Michael Kaiyatsa, Senior Advocacy Coordinator, Centre for Human Rights & Rehabilitation, Malawi
23. Mr Mulewa, Chief Commissioner of Education, Human Rights Commission of Zambia



24. Denise Kabina, Executive Director, Electoral Institute Southern Africa
25. Bheki Moyo, Director, Southern Africa Trust
26. Arnold Tsunga, Director of the Africa Regional Programme of the International Commission of Jurists
27. Ndifuna Mohamed, Organiser, Uganda Human Rights Network
28. Lizwe Jamela, Senior Manager, Zimbabwe Lawyers for Human Rights

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