

# Analysing the conduct of the police and traditional leaders and its impact on freedom of association and assembly during election periods in Zimbabwe

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**Key Words:** Police; Traditional leaders; Freedom of Association; Freedom of Assembly; Elections

## Abstract

The full enjoyment of freedom of assembly and freedom of association by all is a critical component of a free and fair election. This paper examines the extent to which the Zimbabwean legal framework and the conduct of traditional leaders and police affect the exercise of these freedoms during election periods. The paper demonstrates that the Zimbabwean legal framework does not support a conducive electoral environment where individuals can freely assemble and associate in pursuit of their electoral goals. The paper highlights some of the unlawful practices by the police and traditional leaders that hinder free assembly and association such as malicious arrests, police brutality and impunity, intimidation and coercion of rural voters by traditional leaders. In the conclusion, this paper suggests reforms that are needed in order to ensure that the rights to freedom of assembly and association are enjoyed by all so as to ensure that the 2023 general election is held in a free and fair environment.

## 1 Introduction

For a long time, elections have been a hotly contested process marred by violence, allegations of electoral malpractices, police brutality and a general lack of respect for human rights, particularly the freedom of assembly and association. The freedom of association and assembly is an enabler for democratic electoral activities, such as the holding of demonstrations and rallies. The UN Human Rights Committee has noted that, 'Together with other rights it [freedom of association and assembly] constitutes the very foundation of a system of participatory governance based on democracy, human rights, the rule of law and pluralism'.<sup>1</sup> Internationally, the Universal Declaration on Human Rights,<sup>2</sup> the International Covenant on Civil and Political Rights<sup>3</sup> (ICCPR), the African Charter on Human and People's Rights<sup>4</sup> (African Charter) guarantee the freedom of association and assembly. Section 58 of the Constitution of Zimbabwe<sup>5</sup> enshrines the right to freedom of association and assembly. Zimbabwe has signed and ratified both the ICCPR and the African Charter. Therefore, the State is bound by both domestic and international law to respect, protect and promote freedom of association and assembly including during election periods.

Laws such as the Maintenance of Peace and Order Act [Chapter 11:23] (MOPA) and unconstitutional conduct by the police and traditional leaders contribute to a repressive environment that militates against free association and assembly particularly in the context of elections. The questions to be answered in this paper are; (1) Does the legal

1 Human Rights Committee, General comment No. 37 (2020) on the right of peaceful assembly (article 21), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/232/15/PDF/G2023215.pdf?OpenElement> (Accessed on 14 July 2022)

2 Article 20, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (Accessed on 4 August 2022)

3 Article 22, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (Accessed on 4 August 2022)

4 Article 10 and 11, <https://www.achpr.org/legalinstruments/detail?id=49#:~:text=The%20African%20Charter%20on%20Human, freedoms%20in%20the%20African%20continent> (Accessed on 4 August 2022)

5 Amendment (No. 20) Act, 2013

framework facilitate the freedom of association and assembly in electoral processes? (2) How are the police and traditional leaders hindering freedom of association and assembly in electoral processes?

## 2 Definition of the freedom of association and assembly

The UN Special Rapporteur on the rights to peaceful assembly and association defined peaceful Assembly as constituting of ‘... an intentional and temporary gathering in a private or public space for a specific purpose. It therefore includes demonstrations, inside meetings, strikes, processions, rallies or even sits-in.’<sup>6</sup> The Guidelines on freedom of association and assembly in Africa adopt a similar definition and add that the gathering would be, ‘for an expressive purpose and for an extended duration’ as well as recognising use of online platforms to exercise freedom of association and assembly.<sup>7</sup> Freedom of Association is exercised when, ‘... any groups of individuals or any legal entities [come] together in order to collectively act, express, promote, pursue or defend a field of common interests.’<sup>8</sup>

During electoral periods, people need to campaign, express their views on political parties or candidates and even to monitor and observe electoral activities. In so doing, they get to exercise their freedom of association and assembly hence its significance to free and fair elections. Underscoring the importance of freedom of association and assembly as well as other rights and freedoms in elections, the UN Human Rights Committee stated that, ‘Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected.’<sup>9</sup>

Like all other human rights, the state has the obligation to respect and protect freedom of association and assembly. International human rights law and domestic law underscores these state obligations. The obligation to respect these rights implies the duty of the State to refrain from arbitrarily interfering with or curtailing the enjoyment of human rights.<sup>10</sup> For example, to uphold the freedom of association and assembly, the state has a duty to refrain from arbitrarily prohibiting peaceful gatherings. The State is also required to implement measures aimed at protecting individuals and groups against human rights abuses<sup>11</sup> for instance investigating and remedying police brutality during gatherings.

## 3 Analysis of the legal framework of the right to free association and assembly in the context of elections

The legal framework governing the rights to the freedom of association and assembly includes laws such as, MOPA, Criminal law (Codification and Reform Act) [Chapter 9:23], the Electoral Act [Chapter 2:13] and the Private Voluntary Organisations (PVO) Act [Chapter 17:05]. This paper shall not analyse the impact of all these laws to freedom of association and assembly. It will only focus on the MOPA and the PVO Act. The analysis of these two laws is also not exhaustive. The MOPA is the primary law that limits the exercise of the freedom of assembly and association in the interests of public order, peace and security. Selected provisions of the PVO Act and its amendment Bill shall also be analysed because of its possible effect on hundreds of organisations serving millions of the electorate in the not for profit sector. The Traditional Leaders Act does not directly affect the freedom of association and assembly but its analysis serves to show how it limits traditional leaders’ independence lending them to easy manipulation and political interference.

6 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and association Miana Kia (21 May 2012) Page 7 paragraph 24, [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf) (Accessed on 27 July 2022)

7 Guidelines on Freedom of Association and Assembly in Africa, page 9 paragraph 3, [https://www.achpr.org/public/Document/file/English/guidelines\\_on\\_freedom\\_of\\_association\\_and\\_assembly\\_in\\_africa\\_eng.pdf](https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf) (Accessed on 27 July 2022)

8 See Note 6, paragraph 51

9 UN Committee on Human Rights, General Comment 25, ‘The Right to Participate in Public Affairs, Voting Rights and the Right to Equal Access to Public Service (12 July 1996), paragraph 12, <https://www.osce.org/files/f/documents/4/a/19154.pdf> (Accessed on 20 August 2022)

10 The Inter-Parliamentary Union and the United Nations Office of the High Commissioner for Human Rights, Human Rights Handbook for Parliamentarians, page 32, <https://www.ohchr.org/sites/default/files/Documents/Publications/HandbookParliamentarians.pdf> (Accessed on 12 September 2022)

11 Ibid

Section 58 of the Constitution protects the, 'right to freedom of assembly and association and the right not to assemble and associate with others'. It also proscribes compelling someone to belong to an association or attend a gathering or meeting. The Constitution provides for a solid protection of rights by prescribing how they should be limited,<sup>12</sup> interpreted<sup>13</sup> and enforced,<sup>14</sup> mandating the government at all levels and every person and government at every level to respect, protect, promote and fulfil human rights.<sup>15</sup> The Constitution also provides for political rights<sup>16</sup> recognising that all individuals and groups have the right to participate in political activities and have a right to free, fair and regular elections. These provisions read together signify a clear intent by the Constitution to ensure the fullest protection of human rights.

The Constitution regulates the conduct of members of the security services by providing in Section 208 that they should abide by the Constitution and the law, that they shall not be partisan, further or prejudice the interest of any political party or cause, and that they must not be active members or office bearers of any political party or organisation.<sup>17</sup> Section 281 also prescribes the same for traditional leaders including that they should not be members of any political party and must treat all persons equally and fairly. Section 287 provides for the creation of an Integrity and Ethics Committee to enforce integrity and ethical conduct by traditional leaders, resolve disputes and receive complaints against them. For members of security services, Section 210 provides for the establishment of an effective independent mechanism for receiving and investigating complaints and remedying harm caused by misconduct of security services.

The Constitution encompasses a rich human rights framework to which laws, attitudes and practices must fully align. Unfortunately, nine years after the adoption of the Constitution, this rich constitutional framework remains largely on paper and unimplemented. The government has not yet established the Integrity and Ethics Committee for traditional leaders and the Independent Complaints Mechanism for members of security services. The Independent Complaints Commission Bill is still going through Parliamentary law making processes. Alignment of the Traditional leaders Act with the Constitution has not been done whilst the Public Order and Security Act (POSA) was repealed and replaced with the Maintenance of Peace and Order Act (MOPA) in 2019, which contains draconian provisions that undermine freedom of association and assembly. The gap between the Constitution and practice is a major drawback on the prospects for free, fair and credible elections, in particular the freedom of assembly and association in electoral processes.

### 3.1 Maintenance of Peace and Order Act

The Public Order and Security Act [Chapter 11:17] (POSA) was the main legislation regulating the exercise of freedom of association and assembly and was often used to undermine these freedoms during the Robert Mugabe administration. Emmerson Mnangagwa's administration, introduced MOPA to replace POSA. MOPA contains some progressive provisions such as Section 8 (1), which compels the Police to give a written response within three days of receipt of the Convenor's notice for a procession or public demonstration. This only applies where the regulating authority is of the opinion that the demonstration or procession can go ahead without negotiations. POSA did not impose any time limits for police to respond to a Convenor's notification.

Section 18 of the MOPA repealed Section 37 of POSA, which allowed the Minister of Defence to deploy defence forces to assist police. Only the President is mandated under MOPA to deploy members of the defence forces to assist the police in line with Section 110(1)(g) and 213(1)(a) of the Constitution to maintain law and order. MOPA incorporates Section 214(1) of the Constitution, which provides for political accountability for deployment of Defence Forces by obligating the President to inform Parliament in appropriate detail of the reasons of and place of their deployment within 7 days of its first sitting after deployment.

<sup>12</sup> Section 86

<sup>13</sup> Section 46

<sup>14</sup> Section 85

<sup>15</sup> Section 44

<sup>16</sup> Section 67

<sup>17</sup> Section 208(2)(a)–(d)

MOPA however retained most of the retrogressive provisions of POSA. Notably, Section 7(1) (a) and (b) of MOPA requires convenors of gatherings to give a minimum of 7-days and 5-days' notice of their intention to conduct demonstrations and public meetings respectively. The Guidelines on Freedom of Association and Assembly in Africa recommend that, 'any notice period shall be as short as possible' and that it should be, '48 hours and not more than 5 days'.<sup>18</sup> Zimbabwe's notice period is therefore longer than recommended under international law. The notification period can even extend to 14 days. This is because the regulating authority can schedule a negotiation meeting with the Convener within seven days of receipt of the notification.<sup>19</sup> This provision fails to recognise the different ways of exercising the freedom of association and assembly, for example with spontaneous demonstrations. The policing of such demonstrations has never been human rights compliant and thus earning the Zimbabwe Republic Police notoriety for its heavy handedness when thwarting gatherings. MOPA's failure to provide exceptions has the effect of restricting freedom of assembly and association more so during elections, where the likelihood for spontaneous peaceful gatherings and or demonstrations is high. The UN Special Rapporteur on the rights to peaceful assembly and association pointed out that, 'The right to freedom of peaceful assembly protects the ability of individuals to protest election results to which they object, including on the grounds that those results appear to be fraudulent, and including when such protests occur spontaneously'.<sup>20</sup>

Section 7(5) and Section 8(11) of MOPA criminalise non-compliance with its provisions. Failure to notify attracts a level twelve fine and or 6 months imprisonment whilst non-compliance with a prohibition notice carries a level 14 fine and or imprisonment for a period not exceeding a year. Criminal liability for breach of procedural requirements in exercising a right is not a necessary and reasonable limitation as required by Section 86(2) of the Constitution as well as international human rights law. The possibility of arrest and imprisonment is excessive and has the effect of deterring people from organizing or participating in peaceful gatherings.

MOPA does not provide for accountability where the police fail to comply with its provisions, for example not complying with Section 13 when controlling gatherings resulting in injuries and deaths. The Act should have compelled the Police to prepare a detailed written report and to provide the convenor of the gathering with a copy of the report in cases where they use force. MOPA remains a repressive law that does not enable freedom of association and assembly. The Zimbabwe Human Rights Commission in its Report to the Human Rights Council voiced concern that the MOPA remains restrictive and needs further review.<sup>21</sup> Referring to MOPA, the UN Special Rapporteur on Freedom of association and assembly who visited Zimbabwe in 2019 noted that, '...the newly established legal framework does not address long-underlying concerns and is not conducive to free and unhindered exercise of the right to freedom of peaceful assembly, negatively affecting the exercise of the rights to freedom of association and expression'.<sup>22</sup>

### 3.2 Private Voluntary Organisations (PVO) Act

The purpose of the Private Voluntary Organisations (PVO) Act is to register and regulate PVOs. A Bill to amend this Act is currently before Parliament. The Bill's objectives are to comply with the Financial Action Taskforce on Anti money laundering and countering Terrorism Financing (FATF) recommendations and streamline administrative procedures as well as prohibit PVOs from undertaking political lobbying. The Bill, if enacted into law will further shrink civil society space and exert more governmental control beyond the proportionate and risk based approach required by the FATF. The United Nations Security Council Resolution 2462 of 2019 recognises the state's primary responsibility to prevent and suppress financing of terrorism acts and mandates governments to ensure that any measures taken to counter terrorism must comply with all its obligations under international law.<sup>23</sup> Several civil society

18 See Note 7, paragraph 72a

19 Section 8(3) MOPA

20 Guidelines on the rights to freedom of association and assembly in the context of elections and of the Covid-19 crisis, Page 10, paragraph (e) <https://freeassemblyandassociation.net/wp-content/uploads/2021/05/Guidelines-on-the-Rights-to-Freedom-of-Peaceful-Assembly-and-of-Association-in-the-context-of-Elections-and-the-Covid-19-crisis.pdf> (Accessed on 2 August 2022)

21 Zimbabwe Human Rights Commission "Submission to the United Nations Human Rights Council NHRI Report on Zimbabwe's Universal Periodic Review 3rd Cycle" (2021)

22 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, on visit to Zimbabwe, paragraph 30, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/121/31/PDF/G2012131.pdf> (Accessed on 14 July 2022)

23 United Nations Security Council Resolution 2462 of 2019, <https://www.ohchr.org/en/documents/country-reports/ahrc4450add2-visit-zimbabwe-report-special-rapporteur-rights-freedom> (Accessed 13 December 2022)

organisations locally and internationally have raised deep concern over the Bill's non-compliance with international best practices and the Zimbabwean Constitution.<sup>24</sup> It will be a major threat to the freedom of association and assembly, as it will impede on the easy formation of NPOs, introduce excessive governmental control of registered PVOs, limit participation in political activities, introduce stiff civil and criminal penalties.<sup>25</sup> Below are some of the provisions that will restrict freedom of association and assembly.

Clause 3C which compels registration as PVOs by all organisations that receive financial donations for their charitable activities, failing which anyone associated with the unregistered organisation may face criminal sanctions. Trusts and other organisations not registered as PVOs will immediately become unlawful organisations upon the Bill's enactment. This provision may also empower some traditional leaders to demand proof of PVO registration before allowing organisations to conduct their activities.

Clause 5 which prohibits PVOs from supporting or opposing political parties or candidates and creates an offence attracting a level 12 fine and or imprisonment not exceeding one year. This provision is also prone to abuse by the police because the definition of the offence is vague and overly broad thus it may be used to restrict PVOs from undertaking legitimate electoral activities. For example, through this provision PVOs can be restricted from investigating and exposing corrupt political party candidates or from expressing their support to a political party's policy of fielding women candidates.

## 4 Analysis of police conduct in relation to freedom of association and assembly in the context of elections

Through use of repressive laws and adding their own unlawful actions such as arbitrary use of force and dragnet arrests, police have made it difficult and dangerous for people to freely assemble and associate especially during electoral periods. In March 2007, at a 'Save Zimbabwe campaign' prayer meeting, police violently disrupted the meeting, injuring many, arresting opposition MDC leaders and other civil society leaders.<sup>26</sup> In the 2013 harmonised elections observation report, Zimbabwe Election Support Network (ZESN) reported twelve cases of harassment of CSOs by the police ranging from arbitrary arrests, office raids, detention without charge, and confiscation of voter education material inter alia.<sup>27</sup> 75 out of the 274 cases documented by the Zimbabwe Human Rights NGO Forum in August 2018 were committed or suspected to have been committed by police including arbitrary arrests, assaults, disruption of meetings and abductions.<sup>28</sup> Below are some of the common violations of the freedom of assembly and association committed by the police.

### 4.1 Non-compliance with the law

In as much as the MOPA is restrictive, the police have continuously contravened its provisions. For example, when dispersing an unlawful gathering Police must follow the steps in Section 13 (sub-sections 2, 3 and 4) which require them to:

- ▶ Obtain the attention of the people gathered;
- ▶ Order them to disperse within a reasonable time in English and in any officially recognised language; and
- ▶ If they do not start preparing to leave or start leaving within the specified time, the police can then use proportionate force excluding weapons likely to cause bodily injury and death (for example, button sticks).

24 International Federation for Human Rights, 'Zimbabwe: Private Voluntary Organisations Amendment Bill poses serious threats to freedom of association' (22 March 2022), <https://www.fidh.org/en/region/Africa/zimbabwe/zimbabwe-private-voluntary-organisations-amendment-bill-poses-serious> (Accessed on 21 September 2022)

25 Veritas, Bill Watch 74-2021 [Analysis of the PVO Amendment Bill], <https://www.veritaszim.net/node/5352> (Accessed on 21 September 2022)

26 Human Rights Watch 'Bashing dissent; Escalating violence and state repression in Zimbabwe' (2 May 2007), <https://www.hrw.org/report/2007/05/02/bashing-dissent/escalating-violence-and-state-repression-zimbabwe> (Accessed on 21 September 2022)

27 Zimbabwe Election Support Network "Report on the 31 July 2013 Harmonised Elections", [http://www.veritaszim.net/sites/veritas\\_d/files/ZESN-2013-Advance-Harmonised-Election-Report.pdf](http://www.veritaszim.net/sites/veritas_d/files/ZESN-2013-Advance-Harmonised-Election-Report.pdf) (Accessed on 21 September 2022)

28 <https://www.hrforumzim.org/2018-post-election-violence-monitoring-report-01-09-august-2018> (Accessed 13 December 2022)



The practice by the police once they arrive on the scene has been to start beating people, throwing tear gas, using water cannons and arresting them without following the elaborate instructions provided for in Section 13, subsections 2 and 3. If the police were to follow the instructions, injuries, arrests and deaths during crowd dispersal would most likely not occur. In the run up to the March 2022 by-elections, a video surfaced of a police officer beating Citizens Coalition for Change (CCC) supporters for holding car rallies.<sup>29</sup> Protestors now fear the police so much that they start running away the moment they see them approaching but in most cases police give chase and beat people using button sticks. Giving chase and beating protestors is an unnecessary use of force since the people would have already dispersed themselves.

Section 13(4) clearly states that the degree of force used shall not be greater than is necessary to disperse the gathering. The force used must be reasonable and proportionate to the circumstances of the case. This is yet another provision that the police have been contravening. After the January 2019 protests, the Zimbabwe Human Rights Commission noted unlawful acts by police and military such as, indiscriminate use of force resulting in eight deaths and many others injured. Their unlawful actions included forced entry into homes, dragnet arrests and torture targeting opposition and trade union leaders.<sup>30</sup>

## 4.2 Impunity for their transgressions

Police impunity is a major challenge on the exercise of the freedom of association and assembly. The police have injured people during dispersal of gatherings but there is no evidence of internal disciplinary action or prosecution to hold them to account. The creation of the Independent Complaints Mechanism in the Constitution was in direct response to the police's lack of accountability for their transgressions. The mandate of the Zimbabwe Independent Complaints Bill is to receive and investigate complaints from the public on misconduct by members of security services. The Commission of Inquiry set up to investigate the August 2018 violence found that 6 people were killed and 35 injured as a result of police and military actions<sup>31</sup> and that the perpetrators must be held accountable.<sup>32</sup> Four years later, none of the members of the police service have been brought to book. Impunity encourages police unlawful conduct and deters citizens from freely exercising their rights.

## 4.3 Poor investigations into alleged abductions, violence, killing

Police have been lethargic and unresponsive when it comes to investigating abductions, disappearances, torture and other criminal acts against opposition members and trade union or other civil society members.<sup>33</sup> The cases of abduction and torture of Samantha Kureya, Dr Peter Magombeyi, Cecilia Chimhiri, Johanna Mamombe, Netsai Marova and disappearance of Itai Dzamara are some examples of police failure to fully investigate and bring the perpetrators to book.<sup>34</sup> The reported deaths of 17 people and sexual violence against women by the police and military after the January 2019 protests<sup>35</sup> are also examples of police failure to fully investigate and hold perpetrators to account. Failure to investigate crimes around electoral processes creates an intimidating environment dominated by fear of state sanctioned violence. As a result, most people will not freely associate with their political parties or participate in gatherings out of fear and this creates an unfair electoral environment. According to the UN, 'In 2019 alone, 49

29 'Police brutality, political violence and flawed voters roll ahead of Zimbabwe by-elections' The Zimbabwe Situation, 20 February 2022, <https://www.zimbabwesituation.com/news/police-brutality-political-violence-and-flawed-voters-roll-ahead-of-zimbabwe-by-elections/> (Accessed on 21 September 2022)

30 Human Rights Commission Monitoring Report in the aftermath of the 14 January to 16 January 2019 "stay away" and subsequent disturbances, <https://www.veritaszim.net/node/4781> (Accessed on 14 July 2022)

31 Report of the Commission of Inquiry into the 1st of August 2018 post-election violence, page 48 paragraph C, <http://www.veritaszim.net/node/3364> (Accessed on 14 July 2022)

32 Ibid page 54 paragraph 76b

33 'Political Abductions and Forced Disappearances in Zimbabwe', [https://www.pindula.co.zw/Political\\_Abductions\\_and\\_Forced\\_Disappearances\\_in\\_Zimbabwe](https://www.pindula.co.zw/Political_Abductions_and_Forced_Disappearances_in_Zimbabwe). The report documents 20 cases of abductions in 2008 most of them being opposition members, 4 political activists in 2016 and 15 in 2019 (Accessed on 14 July 2022)

34 Human Rights Watch Country Report 'Abuses, ill-treatment and Torture', <https://www.hrw.org/world-report/2021/country-chapters/zimbabwe> (Accessed on 14 July 2022)

35 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', <https://www.veritaszim.net/node/3514> (Accessed 13 December 2022)

cases of abductions and torture were reported in Zimbabwe, without investigations leading to perpetrators being held to account.<sup>36</sup> Government has stated that they have noticed a trend of staged abductions that happen close to international events aimed at tarnishing the government's human rights record. Nevertheless, government has not managed to prove the staging of the abductions.

#### 4.4 Selective application of the law

The credibility of the police service in Zimbabwe has long been lost due to their selective application of the law. Police have used Section 8 (Subsections 6 and 9) of MOPA to impose conditions regarding the gathering or prohibit it. In most if not all cases, opposition parties and civil society organisations working on governance and human rights have faced obstacles upon notifying police, for instance, being issued with a prohibition notice or being compelled to stick to a defined route.

It is very rare to hear reports of the police prohibiting ZANU PF rallies.<sup>37</sup> During the campaign period for the by-elections held in March 2022, the police prohibited or disrupted some of the CCC rallies.<sup>38</sup> The CCC party also raised concern that their rallies were banned on unjustified reasons such as the police not having the capacity to manage the event or that the venue they intend to use has been booked.<sup>39</sup> The selective application of the law also existed during the POSA. In the 2008 elections, the Pan African Parliament in its preliminary statement observed that, there were restrictions of the right to free assembly noting that the Opposition candidate was not afforded the same opportunity to hold star rallies as the ruling party candidate.<sup>40</sup>

### 5 Analysis of traditional leaders conduct in relation to the freedom of association and assembly in the context of elections

Traditional leaders occupy a special place in rural areas. They are the pillars of the local customary governance system that has a perfectly devolved structure. They have multiple roles including dispute resolution, taking care of the vulnerable, and preservation of the environment. The emergence of a strong opposition political party in the early 2000s saw the ruling party manipulating the traditional leaders' influential role in rural communities. Willingly or unwillingly, traditional leaders have practised various electoral malpractices throughout the electoral cycle. Some traditional leaders campaigned for ZANU PF, participated in partisan distribution of food aid, occupied leadership positions in party structures or coerced villagers to vote for the ruling party.<sup>41</sup> In the run up to the 2018 elections, the Masvingo High Court barred traditional leaders from participating in partisan politics as this violated the right to free and fair elections.<sup>42</sup> A 2021 survey conducted by the Afro-barometer found that about two-thirds of Zimbabweans believe traditional leaders wield "some influence", 47% believe traditional leaders have significant influence on how people in their jurisdictions vote whilst 72% want traditional leaders to stay out of politics and allow the free exercise of the right to vote.<sup>43</sup>

36 'Zimbabwe: UN experts demand an immediate end to abductions and torture', 10 June 2020, <https://www.ohchr.org/en/news/2020/06/zimbabwe-un-experts-demand-immediate-end-abductions-and-torture?LangID=E&NewsID=25944> (Accessed on 14 July 2022)

37 Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, on visit to Zimbabwe, paragraph 38, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/121/31/PDF/G2012131.pdf> (Accessed on 21 September 2022)

38 'ZRP, the law, and your right to gather – what the law says' 15 March 2022, <https://zimfact.org/fact-sheet-zrp-the-law-and-your-right-to-gather-what-the-law-says/> (Accessed on 21 September 2022) 1 July 2008

39 'Police Give Reasons For Banning CCC Rallies' 5 August 2022, <https://news.pindula.co.zw/2022/08/05/police-give-reasons-for-banning-ccc-rallies/> (Accessed on 21 September 2022)

40 'The Pan-African Parliament election observer mission to the presidential run-off and parliamentary by-elections in Zimbabwe' 1 July 2008 Relief Web, <https://reliefweb.int/report/zimbabwe/pan-african-parliament-election-observer-mission-presidential-run-and-parliamentary> (Accessed on 21 September 2022)

41 R. Fayayo, 'Zimbabwe's 2018 Elections: The Changing Footprints of Traditional Leaders', <https://www.boell.de/en/2018/07/26/zimbabwes-2018-elections-changing-footprints-traditional-leaders> (Accessed on 14 July 2022)

42 Zimbabwe Lawyers for Human Rights Alert, 'High Court bans all traditional leaders from politics' (17 May 2018), <https://kubatana.net/2018/05/17/high-court-bans-traditional-leaders-politics/> (Accessed on 14 July 2022)

43 Afrobarometer, 'Zimbabweans see traditional leaders as influential but want them to stay out of politics', <https://www.afrobarometer.org/publication/ad469-zimbabweans-see-traditional-leaders-influential-want-them-stay-out-politics/> (Accessed on 14 July 2022)

The Traditional Leaders Act [Chapter 29:17] provides for the duties and responsibilities of traditional leaders. It also provides for appointment and removal in line with their prevailing customs. The Act is outdated and inconsistent with the Constitution. The Act gives the President the power to appoint Chiefs whilst giving due consideration to the prevailing customs of that Community.<sup>44</sup> In the case of *Zvarikura & ors v Minister of Local Government, Public Works and National Housing & anor*,<sup>45</sup> the court held that, 'Clearly, ss 3 and 4 of the Traditional Leaders Act which gives the President wider powers in dispute resolution are unconstitutional in that the procedure outlined in those sections as they pertain to the appointment of Chiefs is not consistent with s 283(c)(i) and (ii) of the Constitution.' The Constitution provides for appointment, removal or suspension of a Chief by the President acting on the recommendation of the Provincial Assembly of Chiefs through the National Council of Chiefs and the Minister.<sup>46</sup>

The Act empowers the Minister to suspend a traditional leader pending disciplinary or criminal proceedings.<sup>47</sup> The Minister can also impose any of the punishments outlined in the Act including their removal from office save for the Chief where the recommendation is forwarded to the President. These provisions are inconsistent with the Constitution, which provides that the President resolve disputes on appointment, suspension and removal of traditional leaders acting on the recommendation of the Provincial Assembly of Chiefs.<sup>48</sup> Section 49 of the Act is also prone to abuse by the responsible Minister. It gives the Minister power to give policy directives that traditional leaders must observe in the exercise of their functions. Traditional leaders must comply with the Minister's directives.

The above highlights some of the provisions in the Act that make traditional leaders vulnerable to manipulation and coercion by the government. The Executive does not respect their constitutionally guaranteed independence<sup>49</sup> as evidenced by the non-alignment of their Act to the Constitution. Public statements or directives issued to traditional leaders in relation to elections, also demonstrate the blatant disregard of traditional leaders' independence. In June 2022, President Mnangagwa summoned traditional leaders at a government event where he publicly urged them to support ZANU PF. The Vice President also did the same whilst at an official government visit in Gwanda.<sup>50</sup>

Traditional leaders' practices that undermine the freedom of association and assembly include the following:

## 5.1 Intimidation and coercion of people

There have been reports of traditional leaders warning villagers to vote for the ruling party if they still want to stay in the area or benefit from government programmes. The SADC Observer Mission for the 2018 elections noted concerns by stakeholders that traditional leaders were using their influence to coerce or intimidate people to vote for ZANU PF.<sup>51</sup> The Zimbabwe Human Rights Commission received 46 complaints of intimidation and coercion against traditional leaders in the run up to the 2018 elections.<sup>52</sup> Traditional leaders have also become the gatekeepers of the ruling party with some of them stopping villagers from attending rallies by other parties, denying opposition parties and CSOs access to their communities and forcing them to attend ruling party rallies.<sup>53</sup>

## 5.2 Partisan distribution of aid

Government departments and donors often use the traditional leaders' devolved structures to roll out various programmes. There have been reports of partisan distribution of food aid facilitated by traditional leaders who remove

44 Sections 3 and 4 of the Traditional Leaders Act

45 <http://www.veritaszim.net/node/2618> (Accessed on 14 July 2022)

46 Section 283(c)(i) of the Constitution of Zimbabwe

47 Section 7, 10 and 13

48 Section 283(c)(ii) of the Constitution of Zimbabwe

49 Section 282(3)

50 Zimbabwe Peace Project monthly monitoring report June 2022, <https://reliefweb.int/report/zimbabwe/zpp-monthly-monitoring-report-june-2022> (Accessed on 14 July 2022)

51 'SADC Electoral Observer Mission to the Republic of Zimbabwe, Preliminary statement' 1 August 2018, [https://www.sadc.int/sites/default/files/2021-06/Zimbabwe\\_elections\\_Preliminary\\_Statement\\_August\\_2018\\_.pdf](https://www.sadc.int/sites/default/files/2021-06/Zimbabwe_elections_Preliminary_Statement_August_2018_.pdf) (Accessed on 15 September 2022)

52 ZHRC Reports on Politically Partisan Distribution of State Aid During Elections, <http://www.veritaszim.net/node/3330> (Accessed on 14 July 2022)

53 European Union Electoral Observer Mission Report for 2018 elections, page 21, [https://www.veritaszim.net/sites/veritas\\_d/files/EU%20Election%20Observers%20Final%20Report%20Zimbabwe%202018-.pdf](https://www.veritaszim.net/sites/veritas_d/files/EU%20Election%20Observers%20Final%20Report%20Zimbabwe%202018-.pdf) (Accessed on 14 July 2022)



names of opposition party supporters or mislead people that the donor or government aid is from the ruling party.<sup>54</sup> This discriminates against those who do not support the ruling party. The UN Special Rapporteur on the right to food, flagged partisan distribution of food aid as one of the structural obstacles to the realisation of the right to food. The Special Rapporteur urged the Government to, ‘... permit all people to have access to food aid without any reference to their regional origin or residence, or political affiliation.’<sup>55</sup>

### 5.3 Openly campaigning for the ruling party

Some traditional leaders have attended rallies, urged, or forced people to go for ZANU PF rallies, colluded with war veterans and ZANU PF youth to campaign for the party.<sup>56</sup> In 2017, at the Chief’s Council annual meeting, the President of the Chiefs Council called on Chiefs to support the ruling party candidate in the 2018 harmonised elections.<sup>57</sup>

## 6 Recommendations

Implementation of the recommendations provided herein before the 2023 elections is highly unlikely. Nonetheless for free, fair and credible elections in 2023 and beyond, the following recommendations are necessary:

### 6.1 Legal Reforms

6.1.1 **MOPA** must be amended to ensure that it fully complies with the Constitution and international human rights obligations. Some of the provisions to be amended include:

- (a) Section 7(1)(a) which should be amended to permit spontaneous demonstrations during elections, without prior notification.
- (b) Section 7(1)(a) and (b) which should be amended to reduce the notification period to 5 days, and 3 days respectively.
- (c) Section 8(3) which should be amended to compel the members of the police service to schedule a meeting with the Convener within 24 hours of receipt of notification.
- (d) A new provision must be added to compel the police to provide a detailed written report to Conveners where police resort to use of force.

6.1.2 The **Traditional Leaders Act** must be amended to ensure that it fully complies with the Constitution and international human rights obligations. Some of the provisions to be amended include:

- (a) Section 3 and 4 which should be amended to remove the President’s power to appoint chiefs and acting chiefs as well as to remove Chiefs from Office.
- (b) Section 49 which gives the Minister wide powers to issue compulsory policy directives to traditional leaders must be repealed.
- (c) The amendment should also introduce new provisions for the establishment of an Ethics and Integrity Committee and development of a Code of Conduct for Traditional leaders.

6.1.3 Government should withdraw the **Private Voluntary Amendment Bill** and initiate a participatory process of aligning the PVO Act to the Constitution that genuinely involves NGOs.

54 R Fayayo, ‘Zimbabwe’s 2018 Elections: The Changing Footprints of Traditional Leaders’, <https://www.boell.de/en/2018/07/26/zimbabwes-2018-elections-changing-footprints-traditional-leaders> (Accessed on 14 July 2022)

55 Report of the Special Rapporteur on the right to food on visit to Zimbabwe in November 2019, Paragraph 108 page 16, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/074/84/PDF/G2007484.pdf?OpenElement> (Accessed on 14 July 2022)

56 ZESN Report on 2013 harmonised elections, page 53, [http://www.veritaszim.net/sites/veritas\\_d/files/ZESN-2013-Advance-Harmonised-Election-Report.pdf](http://www.veritaszim.net/sites/veritas_d/files/ZESN-2013-Advance-Harmonised-Election-Report.pdf) (Accessed on 14 July 2022)

57 ‘Traditional leaders in Zimbabwe must toe the ruling party line — or else’ *Mail & Guardian Online* (25 July 2018), <https://mg.co.za/article/2018-07-25-00-traditional-leaders-in-zimbabwe-must-toe-the-ruling-party-line-or-else> (Accessed on 14 July 2022)

## 6.2 Conduct, institutional and policy reforms.

- (a) The Police should provide simplified information in all official languages explaining the notification procedures, police and convener's responsibilities and recourse mechanisms available to the public where they are not happy with police conduct.
- (b) Government must provide training to members of the police service at all levels and ranks to sensitise them on their constitutional mandate, in particular human rights-oriented enforcement of laws regulating the exercise of the freedom of assembly and association.
- (c) The police must ensure that it exercises political neutrality in the discharge of their functions during electoral process. The police command structure should regularly declare their political neutrality publicly.
- (d) Government must expedite the establishment and operationalisation of the 'Independent Complaints Mechanism', as required by Section 210 of the Constitution.
- (e) The National Chief's Council must publicly declare their non-partisanship and the principles that they must observe during elections. They should also conduct an outreach to all levels of traditional leadership reaffirming the need to respect the people's freedom of association and assembly in electoral processes.