



# **RULING BY “FEAR AND REPRESSION”**

**THE RESTRICTION OF FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY IN ZAMBIA**

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**Cover photo:** A police officer gestures towards supporters of opposition United Party for National Development (UPND) leader Hakainde Hichilema as he was being questioned at the Lusaka Police Force headquarters in Lusaka, Zambia, on December 23, 2020. - Two demonstrators were killed on December 23, 2020 in a protest outside the police headquarters in the Zambian capital Lusaka, where opposition leader Hakainde Hichilema was being questioned. © SALIM DAWOOD/AFP via Getty Images Nichole Sobecki/AFP/Getty Images

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# GLOSSARY

WORD	DESCRIPTION
AFRICAN CHARTER	African Charter on Human and Peoples' Rights
CBU	Copperbelt University
CCMG	Christian Churches Monitoring Group
CSO	Civil Society Organization
DP	Democratic Party
ECZ	Electoral Commission of Zambia
FM	Frequency Modulation
HRC	Human Rights Commission
IBA	Independent Broadcasting Authority
ICCPR	International Covenant on Civil and Political Rights
IFRI	Institut français des relations internationales
KFM	Kasempa FM
LAZ	Law Association of Zambia
MISA	Media Institute of Southern Africa
MMD	Movement for Multiparty Democracy
NDC	National Democratic Congress
NGO	Non-governmental Organization
PEP	Patriots for Economic Progress
PF	Patriotic Front
POA	Public Order Act
PSPF	Public Service Pension Fund
SACCORD	Southern African Centre for the Constructive Resolution of Disputes

<b>SANAC</b>	Southern African Network Against Corruption
<b>UN</b>	United Nations
<b>UNZA</b>	University of Zambia
<b>UNZALARU</b>	University of Zambia Lecturers and Researchers Union
<b>UNZASU</b>	University of Zambia Students Union
<b>UPND</b>	United Party for National Development
<b>US\$</b>	United States Dollar
<b>WGAD</b>	Working Group on Arbitrary Detentions
<b>ZAFFICO</b>	Zambia Forests and Forestry Industries Corporation
<b>ZK</b>	Zambian Kwacha
<b>ZNBC</b>	Zambia National Broadcasting Corporation
<b>ZRA</b>	Zambia Revenue Authority
<b>ZSIS</b>	Zambia Security Intelligence Service

# 1. EXECUTIVE SUMMARY



On 23 September 2011, the then main opposition Patriotic Front (PF) was declared the winner of Zambia's general election. This followed the defeat of the governing Movement for Multiparty Democracy (MMD) which had been in power since 1991 when it triumphed against the nationalist United National Independence Party (UNIP) led by Zambia's founding president, Kenneth Kaunda. Throughout its decade in opposition politics, the PF had committed itself to upholding human rights. However, throughout the PF's rule in the last decade, particularly during the last five years, Zambia's human rights situation has deteriorated markedly. People have increasingly been unable to assemble publicly, engage in public demonstrations or protest against government actions they see as illegitimate for fear, among other things, of police violence, arbitrary arrest, detention and repression. Criticism of senior government leaders or government policies and decisions is frowned upon by authorities and often results in threats of arrest – or even threats to the critics' lives. Fearful of reprisals, many people and the media have resorted to silence and self-censorship. Public meetings by political opposition and civil society are largely restricted on the grounds of public security or health. A number of critical media outlets have been shut down by the government over the last five years. This persistent disregard for human rights by the authorities has led to the creation of a general climate of fear and repression.

## **METHODOLOGY**

This report is based on several sources, including interviews with a cross section of individuals representing victims of human rights violations, government officials and representatives of political parties, civil society organisations, and media outlets. Before and after conducting interviews, Amnesty International undertook desk research and examined newspaper accounts and official documents, where these were available, as well as secondary publications including journal articles and books. The report highlights four key rights that have been consistently undermined over the last ten years. These include the rights to freedom of expression, association, peaceful assembly, and life.

## **SUPPRESSION OF FREEDOM OF EXPRESSION**

In the past five years, there has been a systematic erosion of the freedom of expression. The State has mainly used the law to criminalise peaceful dissent and a wide range of offences, including criminal defamation, incitement of public disorder and sedition, have been brought against government critics. This is illustrated by the arrest of opposition leaders, activists, and ordinary people in separate incidences for questioning certain government decisions. In July 2017, President of the United Progressive Party (UPP) Saviour Chishimba was arrested on a charge of criminal libel after he criticised President Edgar Lungu's decision to invoke a state of emergency to deal with acts of arson in the capital, Lusaka. He was kept in custody for several days before police discontinued the matter. In 2018, a lecturer at the University of Zambia, Austin Mbozi, was arrested for 'insulting President Lungu' after he wrote an article criticising the President and his government's inertia in dealing with the police's killing of Vesper Shimuzhila, a final-year female student at the institution. A year later, opposition Patriots for Economic Progress (PEP) leader Sean Tembo was arrested on a charge of defamation for questioning the mental state of the President over the decision to purchase a US\$400 million Gulfstream jet for presidential use at a time when the country faced serious fiscal challenges. On 9 March 2020, police arrested a 15-year-old boy in Kapiri Mposhi, and

charged him with three counts of criminal libel after he criticised President Lungu on Facebook.<sup>1</sup> At the time of writing, the cases of Mbozi, Tembo and the teenager were yet to be heard in court.

### **CRACKDOWN ON MEDIA FREEDOM**

The past decade has also seen the closure of leading private media outlets by the government. In June 2016, The Post newspaper, Zambia's leading private daily since 1991, was forcibly shut down and placed in liquidation over a disputed tax debt. More recently, in April 2020, the government revoked the broadcasting license of Prime Television, Zambia's leading private station since 2013, using a state institution, the Independent Broadcasting Authority (IBA). No specific reasons were given for the move, but the IBA stated that the action had been taken in the public interest, pursuant to the IBA (Amendment) Act of 2010 which empowers the body to 'cancel a broadcasting licence in the interest of public safety, security, peace, welfare, or good order.' Both The Post newspaper and Prime Television served as critical alternative sources of news for Zambians and leading platforms for civil society, the political opposition, and the promotion of human rights.

### **VIOLATION OF THE RIGHT TO PEACEFUL ASSEMBLY**

Despite the fact that the right to peaceful assembly is guaranteed by Article 21 of the Constitution of Zambia, over the last few years, the authorities have consistently undermined the right to peaceful assembly through the use of the Public Order Act (POA). Since 2016 in particular, Zambian authorities have invoked the POA and used tactics of intimidation and harassment to restrict people's right to peaceful protests and assemblies.

### **VIOLATION OF THE RIGHT TO LIFE**

The right to life is guaranteed by Article 12 of Zambia's Constitution, however, this provision has been violated as a number of people have been unlawfully and arbitrarily killed mainly by State officials and supporters of the PF. While Zambia's Human Rights Commission has investigated and found police culpability in respect of some cases of death at the hands of the police, the authorities have hardly prosecuted those responsible and not made information regarding police accountability in such cases publicly available. The failure by the State to promptly, thoroughly, impartially, independently, and transparently investigate cases of unlawful or arbitrary killing, and to bring to justice suspected perpetrators, constitutes a violation of the right to life.

### **CURTAILING FREEDOM OF ASSOCIATION**

Guaranteed by Zambia's Constitution, the right to freedom of association continues to be eroded. Since the 2011 election, the authorities have employed a series of legal instruments to undermine the right to freedom of association, resulting in the cancellation of organisations' registrations, especially for political parties and trade unions. In March 2012, the Registrar of Societies deregistered the then main opposition party, the MMD arguing that it had not paid its registration fees amounting to US\$75,000 since 1993. The decision was only overturned months later by the High Court. In 2018 and 2019, the government attempted to deregister another two opposition parties, the Democratic Party (DP) and National Democratic Congress (NDC) whose respective leaders were both former cabinet ministers in the PF government. More recently, in February 2020, the government cancelled the recognition agreement between the University of Zambia management and the University of Zambia Lecturers and Researchers Union (UNZALARU). Although the decision did not cancel the registration of the trade union, the decision in effect meant that UNZALARU which had been sharply critical of the government's lack of adequate support towards the country's leading public university, could no longer formally represent its over 800 members.

### **CONCLUSION**

The erosion of human rights in Zambia has worsened over the last 10 years. In the words of Laura Miti, one of Zambia's foremost rights activists, "What we are seeing in the country right now is an environment in which there is a complete denigration of the enjoyment of rights that Zambians were able to enjoy some years back. The human rights environment is going backwards. Rights we took for granted like holding public meetings and free speech are restricted. We also have a government that is of the view that rights should be granted or enjoyed at the government's pleasure."

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<sup>1</sup> Police Spokesperson, Esther Katongo confirmed the arrest in a media statement on 10 March, 2020

## **RECOMMENDATIONS**

The government of Zambia must

- Immediately end the crackdown on freedom of expression, association and peaceful assembly, by removing all undue restrictions on the right of people to publicly assemble, associate with organisations of their choice, and freely receive and disseminate independent information and express peaceful dissent.
- Cooperate with the special procedures of the United Nations Human Rights Council including by issuing a standing invitation to the Council to ascertain the state of human rights in Zambia and the situation of human rights defenders.
- Take urgent steps to repeal Section 69 of the Penal Code and amend the Public Order Act to ensure that draconian requirements are removed, and it is compatible with international human rights standards.



# 2. BACKGROUND



The then opposition Patriotic Front (PF) was declared the winner of the September 2011 Zambian election, defeating the governing Movement for Multiparty Democracy (MMD). Zambia achieved formal independence from Britain in 1964 under the leadership of founding president Kenneth Kaunda and his governing United National Independence Party (UNIP). After eight years of competitive multiparty democracy, Kaunda declared a one-party state in 1972, effectively guaranteeing himself and UNIP a perpetual, if tenuous, stay in power that was to last for the next 18 years. From 1991, when the country returned to multiparty democracy, Zambia was led by the MMD, which remained in office until its 2011 defeat by the PF in the country's second peaceful transfer of power. During its decade in opposition, the PF led by Michael Sata, had committed itself to uphold human rights.

Over the course of the last decade, particularly during the last five years under the leadership of Sata's successor, President Edgar Lungu, Zambia's human rights situation has seen a marked deterioration. People have increasingly been unable to engage in public demonstrations or protest against government's policies and human rights record for fear of police violence, arbitrary arrest, detention and repression, among other things. Criticism of senior government leaders or government policies and decisions is frowned upon by authorities and often followed by threats of arrest – or even threats to the critics' lives. Fearful of reprisals, many people and the media have resorted to silence and self-censorship. Public meetings by political opposition and civil society are largely restricted on the grounds of public security or health. A number of critical media outlets such as The Post, Zambia's leading independent newspaper between 1991 and 2016, and Prime Television, the popular private television channel established in 2013, have been shut down by the government over the last five years. This period has also witnessed renewed violations of human rights, including the rights to equality and non-discrimination, freedom of expression, peaceful assembly and association, as well as life. Many people have lost their lives at the hands of state security agents without those suspected to be responsible facing justice, as will be discussed in this report.

This persistent disregard for human rights by the authorities has resulted in the creation of a general climate of fear and repression. Alarmed by the deterioration in the observance of human rights, the influential Zambia Conference of Catholic Bishops (ZCCB) declared in April 2017 that “our country is now all except in designation a dictatorship and if it is not yet, then we are not far from it... There is fear and trembling among the people, shown in the way they are afraid to speak out against injustices. Anyone who criticises the government for wrongdoing is sure to have the police unleashed on him or her.”<sup>2</sup> The church leaders also decried the police's “unprofessional and brutal conduct,” such as arbitrary arrests and “torture of suspects,” and called on the government to “put in place concrete measures to reverse this worrying and dangerous trend.”<sup>3</sup>

Foreign diplomats and civil servants perceived to be supporters of opposition parties have also been targeted. When Cuba's Ambassador to Zambia, Nelson Pages Vilas, attended the launch of the recently formed opposition Socialist Party, the government promptly expelled him for “conduct unbecoming of a diplomat”. Vilas was given a 48-hour ultimatum to leave the country, only days after he had presented his credentials to President Edgar Lungu.<sup>4</sup> In December 2019, the United States was forced to recall its Ambassador to Zambia, Daniel Foote, after the government declared his position “no longer tenable.”<sup>5</sup> Foote

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<sup>2</sup> Statement by Archbishop Telesphore Mpundu, then president of the Bishops' Conference. Reported in: ‘Catholic Bishops condemn HH's arrest, say Zambia is now a dictatorship’, Lusaka Times, April 2, 2017.

<sup>3</sup> Ibid.

<sup>4</sup> ‘Zambia expels Cuban Ambassador for attending and addressing an Opposition party Meeting’, Lusaka Times, April 1, 2018.

<sup>5</sup> Ruth MacLean, ‘Speaking Out on Gay Rights and Corruption Costs Ambassador His Job’, New York Times, December 24, 2019.

had openly criticised the harsh jail sentence given to a gay couple and criticised the government for not doing enough to tackle allegations of corruption and promote accountability. “The current government of Zambia”, he said, “wants diplomats to be compliant, with open pockets and closed mouths.”<sup>6</sup>

The last few years have also seen a practice where hundreds of workers in the public sector have been dismissed under the guise of ‘retirement in the national interest’ allegedly for suspected links to the country’s main political opposition, the United Party for National Development (UPND). Afraid of losing their jobs, this situation appears to have left many public servants not willing to share their views publicly. The police have had a disproportionate share of public service workers who have been sent on forced retirement apparently on account of their perceived political allegiance based on their region of origin. Many of those affected are far below the mandatory retirement age of 60, illustrating what one victim called “the creepy practice of retiring very young officers on partisan considerations”.<sup>7</sup>

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<sup>6</sup> For a full statement see, ‘US Ambassador Put Zambia on Notice’, Foreign Policy Insider, December 6, 2019.

<sup>7</sup> Interview with a retired police officer aged 36, Lusaka, 29 July 2020.

# 3. METHODOLOGY



In preparing the report, several sources were consulted and interviewed. These include interviews with a cross section of individuals representing victims of human rights violations and representatives of political parties, civil society organisations, government officials, and media organisations. A questionnaire with open-ended questions was designed to address a cluster of specific themes and a list of interviewees was drawn, with deliberate attention paid to gender representation. To supplement the interviews, Amnesty International undertook desk research and examined newspaper accounts and official documents, where these were available, and secondary publications including journal articles and books. The research was conducted between June 2020 and January 2021.

# 4. THE INTERNATIONAL AND NATIONAL HUMAN RIGHTS FRAMEWORK

## 4.1 INTERNATIONAL HUMAN RIGHTS TREATIES ON THE RIGHTS TO FREEDOM OF EXPRESSION, ASSOCIATION, AND PEACEFUL ASSEMBLY

Zambia is a State party to the International Covenant on Civil and Political Rights (ICCPR),<sup>8</sup> and the African Charter on Human and Peoples' Rights (African Charter).<sup>9</sup> It is therefore obliged to respect, protect, promote, and fulfil the rights contained therein, which it voluntarily committed to so doing when it acceded to or ratified the instruments.<sup>10</sup>

The right to freedom of expression refers to the right of everyone to have an opinion, express their opinion, as well as to receive and impart information.<sup>11</sup> This includes, "information and ideas of all kinds orally, in writing or in print, in the form of art, or through any other media of [] choice."<sup>12</sup> The right to freedom of expression therefore extends to freedom of the media and the press. In turn, the right to freedom of association encompasses the right of everyone to associate with others. It extends to the right to form or belong to a trade union or other association for the protection of one's interests.<sup>13</sup> The right to freedom of peaceful assembly, on the other hand, refers to the right of everyone to peacefully gather or meet with others in private or public, "for an expressive purpose and for an extended period of time."<sup>14</sup> It extends to the right to hold peaceful protests, processions, political rallies, funerals or other meetings.<sup>15</sup> While these rights may be restricted by law, where necessary, for the protection of the rights and reputations of others, and for the

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<sup>8</sup> The Covenant was adopted by the United Nations General Assembly Resolution 2200A (XXI) of 16 December 1966. It entered into force on 23 March 1976, in accordance with article 49, for all provisions except those of article 41; 28 March 1979 for the provisions of article 41 (Human Rights Committee), in accordance with paragraph 2 of the said article 41.

<sup>9</sup> Entry into force: 21 October 1986.

<sup>10</sup> Zambia acceded to the ICCPR in 1984, and ratified the African Charter on 10 January 1984.

<sup>11</sup> Articles 19 and 9 of the ICCPR and the African Charter respectively.

<sup>12</sup> Article 19(2) of the ICCPR

<sup>13</sup> Article 21(1) of Zambia's Constitution and Article 22(1) of the ICCPR. See Declaration on Human Rights Defenders, 2(a); Human Rights Council resolution 24/5, para.2; and Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paras. 118 for the stipulation that the right to freedom of association "comprises the right to form and join associations freely."

<sup>14</sup> The Guidelines on Freedom of Association and Assembly in Africa, Adopted by the African Commission on 21 September 2017, 3.

<sup>15</sup> The Guidelines on Freedom of Association and Assembly in Africa, *Ibid.*

maintenance of public order and public health;<sup>16</sup> such limitations must be legitimate, necessary, and proportionate to protect the specific interest.<sup>17</sup>

The violations of the rights to freedom of expression, peaceful assembly and association in Zambia have often been accompanied by unlawful arrests and detention, police violence, including excessive use of force, unfair trials and, at times, unlawful killings. Such actions constitute a violation of the right to liberty, security of person, not to be arbitrarily arrested or detained, fair trial rights and the right to life. Failure to bring suspected perpetrators of such violations to justice constitutes a violation of the right of access to justice and an effective remedy.

## 4.2 NATIONAL FRAMEWORK

The rights to freedom of expression, association and peaceful assembly are enshrined in Articles 20 and 21 respectively of the Constitution of the Republic of Zambia.<sup>18</sup>

The Constitution recognises the following human rights:

- the right to life – Article 12,
- the right to liberty and not to be arbitrarily detained – Article 13,
- the right to be free from torture, cruel, inhuman, and degrading treatment – Article 15,
- fair trial rights – Articles 18 and 26, as well as
- the right to equality and non-discrimination – Articles 11 and 23.

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<sup>16</sup> Article 48(6) of the CRM, Article 19(3) of the ICCPR; as well as Articles 9 and 27(2) of the African Charter

<sup>17</sup> See *Umuhoza v Rwanda (merits)* (2017) 2 AfCLR 165, para. 132. See also *Konaté v Burkina Faso (merits)* (2014) 1 AfCLR 314, paras 145- 166.

<sup>18</sup> The Constitution of the Republic of Zambia of 1991, as amended in 2016

# 5. THE DYING CULTURE OF RESPECT FOR HUMAN RIGHTS



*Police officers patrol the streets as supporters of the opposition United Party for National Development (UPND) leader Hakainde Hichilema march in the streets as he was being questioned at the Lusaka Police Force headquarters in Lusaka, Zambia, on December 23, 2020. - Two demonstrators were killed on December 23, 2020 in a protest outside the police headquarters in the Zambian capital Lusaka, where opposition leader Hakainde Hichilema was being questioned. © SALIM DAWOOD / AFP via Getty Images*

Until around 2010, a vibrant civil society existed in Zambia, alongside a thriving independent media and a relatively impartial judiciary that protected civil liberties and checked the excesses of the executive.<sup>19</sup> People were relatively free to criticise public officials, opposition parties were generally allowed to conduct public meetings. In recent years, many people have been arrested for exercising their right to freedom of expression, opposition parties and civil society organisations have been prevented from holding peaceful public assemblies, critical media outlets have been shut down, several associations such as trade unions and political parties have had their certificates of registration cancelled, and a number of people have lost their lives, often at the hands of the police, with few consequences for those suspected to be responsible.

<sup>19</sup> Sishuwa Sishuwa, 'Surviving on Borrowed Power: Rethinking the Role of Civil Society in Zambia's Third-term Debate', *Journal of Southern African Studies*, 46, no. 3, (2020), 471-490.

Meanwhile, hundreds of employees in the civil service have been ‘retired in the national interest’ on suspicion they were associating with the political opposition.<sup>20</sup> The police, which has an important role to play in safeguarding human rights, has seen its independence and professionalism eroded. The net result has been the rise of a society where many people and institutions are increasingly afraid to express themselves freely and consequently resort to silence or self-censorship in order to avoid the risk of arrest or death.

## 5.1 THE SUPPRESSION OF FREEDOM OF EXPRESSION

The suppression of the right to freedom of expression is the most visible manifestation of the erosion of human rights in Zambia. In the past five years, there has been a systematic erosion of the rights to freedom of expression, association, peaceful assembly, and media freedom. The State has mainly used the law to criminalise peaceful dissent. In particular, the government has employed colonial-era legislation on libel and defamation of the President. These laws have also been used selectively, mainly targeting government critics, many of whom have been arrested for allegedly insulting the President. Once arrested, suspects have usually been subjected to police violence, held in substandard detention facilities, often for several days, before being brought to court. A key objective of the use of libel and defamation laws is to instil fear in people and discourage them from criticising the authorities or calling the government to account. This has adversely affected the vibrancy of civil society and opposition parties. Few leaders are now courageous enough to criticise the government, let alone the President.

A wide range of offences have been brought against government critics. These include criminal defamation of the President, incitement of public disorder, and sedition. Although the motivation has been to restrict human rights, the authorities have used the law, particularly the legislation on defamation of the president, as a weapon to effectively criminalise peaceful dissent. Section 69 of Zambia’s Penal Code, provides that

**“any person who, with intent to bring the President into hatred, ridicule or contempt, publishes any defamatory or insulting matter, whether by writing, print, word of mouth or in any other manner, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding three years.”**

Over the past five years, the government has used the charge of defamation of the president and elaborate legal arguments to arrest a number of critical opposition leaders, human rights defenders, activists, journalists, and other people simply for peacefully exercising their human rights.

On 23 March 2019, police arrested Sean Tembo, leader of the opposition Patriots for Economic Progress (PEP) party, for the alleged defamation of President Edgar Lungu. Tembo’s arrest followed questions he had raised in the local media on the mental health of the President. In particular, the opposition leader questioned the rationality of the decision to purchase a Gulfstream jet for presidential use at a reported cost of US\$400<sup>21</sup> million using public funds. The procurement of the aircraft happened at a time when the government was failing to meet its fiscal obligations, such as paying employees in the civil service, local government and parastatal bodies.<sup>22</sup> As part of holding the government to account, Tembo demanded that a medical board be constituted in line with Article 107 (1) of the Constitution to ascertain the health condition of President Lungu. The cited provision states that

**‘A Member of Parliament, supported by at least one-third of the Members of Parliament, may move a motion for the investigation of the physical or mental capacity of the President to perform executive functions.’**

In response, the police arrested the PEP leader and held him without charge for five days. This action contravened the law that requires suspects to be taken to court within 24 hours of their arrest.

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<sup>20</sup> Chris Phiri, ‘Northwestern Province tops list of civil servants retired in national interest’, Zambia Reports, 4 September 2019; Mirriam Chabala, ‘President retires civil servants in national interest as punishment – Sinkamba’, News Diggers, 13 February 2018.

<sup>21</sup> ‘Flight of Fancy’, African Confidential, 8 March 2019.

<sup>22</sup> ‘Treasury in the Red’, Africa Confidential, 3 May 2019.

**“They [the police] arrested me on Saturday and detained me until Thursday. They refused to release me on bond, so they insisted on taking me to court. The right to question the mental capacity of the President is not defamation. You are just exercising the rights as contained in the Constitution. Any citizen can challenge the mental capacity of the President and file a motion that a medical board be constituted to examine the President.”<sup>23</sup>**

Sean Tembo.

Nearly two years later, Tembo is yet to appear in court over the matter, showing the escalating crackdown on human rights, including the rights to freedom of expression, peaceful assembly, and association. This is indicative of efforts by the authorities to intimidate the opposition and activists into submission and stop others from raising similar concerns.

Tembo’s case is not an isolated incident. Earlier, in July 2017, another opposition leader, Saviour Chishimba of the United Progressive Party (UPP), was arrested on a charge of criminal defamation after he had criticised President Lungu’s decision to invoke emergency powers in order to deal with suspicious acts of arson that had seen the torching of market stalls in a few towns.<sup>24</sup> Lungu had reportedly stated that he would have to take ‘unprecedented measures [and] some people will have to lose their rights. So, if I become a dictator for once, bear with me’[sic].<sup>25</sup> The president, offering no evidence, accused the opposition of sabotage before he declared a state of emergency.<sup>26</sup> The UPP leader criticised the move as heavy-handed and asked the President to “respect human rights” and “revoke the proclamation”, stating that no one “in their right frame of mind” would support it.<sup>27</sup> I think that [the] time has come to begin to examine these men, to go to a psychiatric hospital to be examined for mental tests,’ Chishimba said. Police responded by arresting the opposition leader for uttering those words and detaining him for a week before he was released without charge or taken to court.

In the cases of both Tembo and Chishimba, the government deployed the same mechanism – the law on criminal defamation – to undermine public accountability and the right to freedom of expression. Critics were arrested and kept in custody for several days, but their cases were not taken to court.

Zambia has two sets of laws on defamation: one for the president, cited above, and another for other people. While the Constitution provides that the president can neither sue nor be sued, the offence of defamation of the president empowers the state to bring charges against critics of the president. The use of criminal defamation has thus been preferred by the authorities because it enables the government to suppress the right to freedom of expression under the guise of protecting state officials. By arresting critics, the government, in effect, sends a chilling message to other people that any criticism deemed inappropriate by the authorities would attract arrest and other reprisals.

In the instances where people are arrested and taken to court, the legal process tends to be protracted and expensive so as to caution others that they could, at any time have their lives upended and spend weeks or months in police custody. This is what happened in April 2018 when another opposition leader, Fresher Siwale of the New Labour Party, was arrested for alleged defamation after he questioned the identity and origins of President Lungu. Siwale had claimed that Lungu’s real identity was Jonathan Mutaware, not Edgar Chagwa Lungu, born in 1956 to Malawian parents working on the Zambian Copperbelt mines. The opposition leader also stated that the President had inherited the identity and profile of the real Edgar Chagwa Lungu, whom he alleged is deceased. The implication of Siwale’s accusation, if established, was that Lungu was not eligible to contest the 2015 presidential election since the Constitution at the time stated that ‘A person shall be qualified to be a candidate for election as President if both his parents are Zambian by birth or descent’.<sup>28</sup> Prior to his arrest, Siwale had appeared on different media platforms, challenging President Lungu to respond to his assertion. Following his arrest, it took more than three days before he was formally charged and over a week before he was presented in court.

<sup>23</sup> Interview with Sean Tembo, Lusaka, July 8, 2020.

<sup>24</sup> Among the markets that were gutted included Kamwala market (April 2017), City Market (July 2017), and Misisi Township market (July 2017), all in Lusaka, and Masala market in Ndola (August 2017).

<sup>25</sup> ‘Bear with me if I become a dictator – president Lungu’, Lusaka Times, 4 July 2017.

<sup>26</sup> ‘Zambia parliament approves enhanced security measures’, Aljazeera 14 July 2017. Available at <https://www.aljazeera.com/news/2017/7/14/zambia-parliament-approves-enhanced-security-measures>(accessed on 10 December 2020).

<sup>27</sup> ‘Chishimba breathes fire on President Lungu’, available at [https://www.youtube.com/watch?v=gywZWhJyIf8&feature=emb\\_title](https://www.youtube.com/watch?v=gywZWhJyIf8&feature=emb_title) (accessed on 3 August 2020).

<sup>28</sup> This provision was removed from the Constitution in an amendment that the government took to Parliament less than a year after Lungu’s election. Siwale made the remarks that led to his arrest before the amendment.



Siwale remained in police custody for nearly a month after the presiding magistrate imposed stringent bail conditions, such as the requirement that he supply a government official at the level of director to provide surety – an unconscionable requirement as no senior government official would provide this sort of assurance for fear of losing their job. While in detention, the opposition leader was subjected to torture and other ill-treatment, such as being denied food and stripped naked. Siwale’s case remains before the courts, nearly two years later.<sup>29</sup> Like in the earlier cases, the use of the law on criminal defamation was deployed primarily to deter people from criticising the President. As long as the matter remains before the courts, the actual prosecution prevents others from making similar claims for fear of risking arrest and other reprisals. As one interviewee put it,

**.....freedom of expression exists only on paper in Zambia. I saw what happened to Mr Siwale and how they treated him for merely questioning the nationality of the President. Nearly every previous president we have had before has been accused of having foreign ancestry, but none of them arrested their accusers. They simply dismissed the claims or challenged them to go to court. After what I witnessed against Mr Siwale, I am afraid to talk...to criticise the government. It should not be like that because Zambia is a democracy. Elected officials should be willing to face criticism.<sup>30</sup>**

The crackdown on the right to freedom of expression has also been extended to comments made in the print media or posts shared on social media platforms. In May 2017, Kwalela Kafunya, a medical doctor at a mission hospital in Western Province, was arrested and detained for ‘insulting President Edgar Lungu’ on Facebook. Kafunya was alleged to have brought the name of President Lungu into ridicule by posting disparaging remarks, insults and digitally altering images of the President with intent to bring his name into disrepute. In January 2018, Kafunya was sentenced to three years in prison after a trial that was described by Amnesty International as ‘grossly unfair.’<sup>31</sup>

Earlier, in April 2017, police arrested 28-year-old Edward Makayi, a student at a private university in Lusaka, for ‘insulting President Lungu’. Makayi had posted a series of messages on Facebook in which he criticised President Lungu for allegedly stoking divisions and tension in the country. ‘Edgar Lungu is dragging Zambia into hatred and tension’, read one of his posts. In another post, Makayi asked President Lungu to release Hakainde Hichilema, leader of the main opposition United Party for National Development (UPND), who at the time had been detained on charges of treason because, Makayi wrote, Hichilema’s wife missed her husband. In a third post, Makayi criticised the lacklustre response by the government to sporadic violent attacks by unknown people on mourners at graveyards. Makayi was subsequently charged with three counts of defamation of the president and his case remains in court.

In October 2018, police arrested Austin Mbozi, a lecturer at the University of Zambia, for ‘insulting President Lungu’ after he wrote an article criticising the President over the killing of Vesper Shimuzhila, a final-year female student, at the institution. The victim suffocated to death after police threw tear gas canisters into her room during student protests over the delayed payment of living allowances. Mbozi recorded a video of himself reading the article before posting it on YouTube. In it, he addressed President Lungu, saying:

**You say you have no money to feed them [the university students], but you yourself have eaten and you have money to buy bullets to kill hungry children. You may be right in saying that it is police and not you who killed the girl, but even police did not intend to kill. Presidents ‘kill’, intentionally or not, by sending police to stop problems which they themselves cause. Even apartheid presidents and Adolf Hitler never personally killed any person. Vespers, the girl who was killed, was not making any public trouble on the roadside at the time she was killed because she was killed from her room.<sup>32</sup>**

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<sup>29</sup> One of the key witnesses in the case, Mike Mulongoti, a close ally of Siwale and leader of another opposition party, died during this time in unclear circumstances.

<sup>30</sup> Interview with a former government employee who preferred anonymity, Lusaka, 28 April 2020.

<sup>31</sup> See “Zambia: Release medical doctor jailed for insulting the president’ immediately and unconditionally”, Amnesty International. Available at <https://www.amnesty.org/en/latest/news/2018/05/zambia-release-medical-doctor-jailed-for-insulting-the-president-immediately-and-unconditionally/> (accessed on 9 November 2020).

<sup>32</sup> Mukosha Funga, ‘Arrested UNZA lecturer out on bond after three days in detention for “insulting Lungu”’, News Diggers, 18 October 2018.

Police arrested the academic for insulting the President.<sup>33</sup> The matter is yet to be taken to court, over two years later.

More recently, on 9 March 2020, a 15-year-old boy in Kapiri Mposhi District was arrested for alleged defamation of President Lungu on Facebook. According to police spokesperson Esther Katongo, the juvenile had “created a Facebook page using the name ‘ZOOM’ and published defamatory matters against the Republican President”. In one of his posts, the teenager had written ‘which other name can you name a dog apart from Edgar Lungu’, while another said, ‘We are better off as a country without Edgar Lungu’. Police interpreted these posts as defamatory and charged the suspect with three counts of libel.<sup>34</sup> Like many others before him, he was kept in custody for a few days, and was never taken to court. Here, again, the motivation appears to have been to intimidate both the suspect and other users of social media such as Facebook, an increasingly popular platform among many Zambians and one to which many have turned in recent years to criticise the government.

The net result of these arrests has been the creation of fear that any criticism of government officials would be met with arrest.

As mentioned above, the right to freedom of expression is guaranteed by the Constitution of Zambia. As with international human rights law, Article 20 (1) of the Constitution recognises that this extends to

**“freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to impart and communicate ideas and information without interference” and such expression can be communicated “to the public generally or to any person or class of persons...”<sup>35</sup>**

The Constitution allows for the limitation to the right to freedom of expression that is provided for by law and that is reasonably required for, among other things, the protection of reputations of others.<sup>36</sup> While international human rights law makes similar provisions, human rights bodies have clarified that such limitations must be:

- a) provided for by law – and such law must be constructed in a manner that is precise and clear enough to enable people to regulate their behaviour accordingly;<sup>37</sup>
- b) necessary – to achieve the objective or purpose specified i.e. there should be a pressing and substantial need to restrict the expression, and no other way of achieving the purpose that does not infringe on the right to freedom of expression;<sup>38</sup> and
- c) Proportionate – to the interest to be achieved i.e. the benefit to protecting the interest must outweigh the harm to freedom of expression and must be the least restrictive means of protecting the interest.<sup>39</sup>

<sup>33</sup> After keeping Mbozi in custody for three days, police subsequently changed the charge from insulting the president to ‘showing hatred, ridicule and contempt’ towards other ethnic groups. A police officer involved in the case revealed that ‘We were under pressure from State House to find a charge for Dr Mbozi, so we were made to arrest him for defamation of the president. But our superiors told the government officials that there was nothing criminal out of what he had said. Instead of releasing him without charge, we were pressured to create the charge of inciting ethnic hatred for him.’ Interview with a police officer, Lusaka, 29 June 2020.

<sup>34</sup> Ulande Nkomesha, ‘Police nab Kapiri juvenile for insulting Lungu on Facebook’, News Diggers, 11 March 2020.

<sup>35</sup> Constitution of Zambia Act no. 18 of 1996. Despite the passing of the Constitution of Zambia (Amendment Act no.2 of 2016, Part III of the 1996 Constitution (Articles 11 – 26) remains unchanged, as any amendment requires the holding of a national referendum in line with Article 79 (3) of the Constitution of Zambia.

<sup>36</sup> Article 20(3) of the Constitution.

<sup>37</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 25; and Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 2a.

<sup>38</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 33; and Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 4.

<sup>39</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 34; and Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 4.

In this regard, the Zambian government's use of criminal sanctions for defamation cannot be justified as necessary or proportionate.<sup>40</sup> The African Commission on Human and Peoples' Rights (African Commission) and the UN human rights special procedures have in fact called for the repeal of all criminal defamation laws and any laws criminalising defamation under another guise, in favour of civil suits.<sup>41</sup> Such civil sanctions should further not be so harsh as to inhibit the right to freedom of expression and must also be necessary and proportionate.<sup>42</sup> In addition, the Human Rights Committee, in its concluding observations on Zambia's report, expressed concern regarding the provisions of the Penal Code on defamation against the President. The Committee called on Zambia to repeal this provision.<sup>43</sup>

Government officials and public authorities should not be able to bring defamation suits to prevent criticism.<sup>44</sup> "The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties."<sup>45</sup> Public officials should be subject to greater public scrutiny and criticism than ordinary citizens.<sup>46</sup> Restrictions of freedom of expression should further not put the right itself in jeopardy.<sup>47</sup> Zambia's laws criminalising defamation of the president, therefore do not meet the requirements of legitimacy, necessity and proportionality and any arrests carried out in terms of these laws constitute a violation of the rights to freedom of expression and liberty.

In addition, the Working Group on Arbitrary Detention (WGAD) has stated that arrests and detention carried out as a result of the exercise of freedom of expression, as well as those which constitute a violation of the right to non-discrimination on the basis of political or other opinion, amount to arbitrary arrests and detention.<sup>48</sup> These laws and their implementation, therefore, constitute a violation of the right to liberty and not to be arbitrarily arrested. Furthermore, in terms of national law and international human rights law, arrested and detained persons should be taken before a judge, or other competent authority, to have the legality of their detention determined and to enable them to challenge the lawfulness of their detention.<sup>49</sup> In general, they should not be held for longer than 48 hours before being taken before the authority.<sup>50</sup> In fact, the Human Rights Committee has stated that delays in bringing a detainee before a competent authority more than 48 hours following arrest are excessive, and increase the risk of ill-treatment.<sup>51</sup>

Accused persons also have the right to be released pending trial, except in exceptional circumstances,<sup>52</sup> as well as to be tried within a reasonable period.<sup>53</sup> What constitutes a reasonable time will be determined on a case by case basis.<sup>54</sup> However, the Human Rights Committee has stated,

**"It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously," adding that "such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others."**<sup>55</sup>

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<sup>40</sup> Rafael Marques de Morais v. Angola, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005), para 6.8.

<sup>41</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/7/14, 28 February 2008, para. 79. See also the Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 22.2; and Joint Declaration on Freedom of Expression and "Fake News", Disinformation and Propaganda, FOM.GAL/3/17 of 3 March 2017, para. 2.b.3

<sup>42</sup> Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 21 and 22.3.

<sup>43</sup> UN Human Rights Committee (HRC), Concluding Observations of the Human Rights Committee: Zambia, 9 August 2007, CCPR/C/ZMB/CO/3, para. 25. See also the recommendation by Finland during the Universal Periodic Review of Zambia. Report of the Working Group on the Universal Periodic Review\* Zambia, A/HRC/37/14, 9 January 2018, para 131.81

<sup>44</sup> The public's right to know: Principles on Freedom of Information Legislation. Annex II Report E/CN.4/2000/63, para 52.

<sup>45</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 38

<sup>46</sup> Rafael Marques de Morais v. Angola, para 6.8. See also General comment no. 34, Article 19, Freedoms of opinion and expression, para. 38; Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 21.b.

<sup>47</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, Para 21

<sup>48</sup> The Working Group on Arbitrary Detention, Revised Fact Sheet No. 26, IV B, category II and V.

<sup>49</sup> Article 9(3) of the ICCPR and Article 13(3)(b) of the Constitution

<sup>50</sup> Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 7(b)(ii).

<sup>51</sup> UN General Comment No. 35 on liberty and security of the person, Part IV

<sup>52</sup> Article 9(3) of the ICCPR and Article 13(3)(b) of the Constitution. See also the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle M(1)(e); the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 7; UN General Comment No. 35 on liberty and security of the person; African Commission on Human and Peoples' Rights Communication 275/03: Article 19 / Eritrea, para. 92; and Paulo v Tanzania (merits) (2018) 2 AfCLR 446, para.6.

<sup>53</sup> Article 9(3) of the ICCPR; Article 7(4) of the African Charter; and Article 13(3)(b) of the Constitution.

<sup>54</sup> African Commission on Human and Peoples' Rights Communication 275/03: Article 19 / Eritrea, para. 97 – 99.

<sup>55</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 47.

## 5.2 CRACKDOWN ON MEDIA FREEDOM

The suppression of media freedom has been another notable feature of the deteriorating human rights situation in Zambia over the last few years. In the last five years, Zambian authorities have continued to undermine the operations of the media in two main ways. The first has seen the deployment of state institutions to shut down independent critical media outlets, especially those deemed to be platforms for opposition parties and civil society. It is worth noting that state ownership over independent media ownership survived the end of the one-party state in 1990. The country's main newspapers, the Times of Zambia and Zambia Daily Mail, are state-owned and run, as is national television, the Zambia National Broadcasting Corporation (ZNBC). Opposition parties, critical civil society organisations and ordinary people are denied coverage in these public media outlets that typically serve as mouthpieces for the party in power. Private newspapers have often struggled to survive due to a lack of advertising revenue and high taxes that undermine operations.<sup>56</sup> Until recently, the main exception to this was *The Post* newspaper, founded in July 1991.

Over the course of the subsequent two decades of MMD rule, *The Post* became an oppositional newspaper and the leading outlet for criticism of the government. The Post even played a central role in providing a platform for the PF who, when in opposition, were denied coverage in state-run media. In June 2016, three months before the general election, the PF government moved to close *The Post*, which had this time turned to serve as the main outlet for opposition parties. The authorities held that the paper owed the Zambia Revenue Authority (ZRA) K53 million (approximately USD 5.3 million in 2016) in unpaid taxes. The Post disputed this amount and called for reconciliation of the figures, but the state institution demanded immediate payment of the debt.<sup>57</sup> When this was not done, the revenue authority, relying on powers granted to it by the Income Tax Act, raided the newspaper on 21 June 2016 and took over control of its property.<sup>58</sup>

The publication was thereafter forcibly placed in liquidation, bringing to an abrupt end the newspaper's 25-year existence.<sup>59</sup> At the time, the UN Special Rapporteurs on freedom of expression, and on Human Rights Defenders expressed concern "at the suspension of broadcasting licenses, as well as the shutdown of the operations of *The Post* and the lack of recognition of the order of the Revenue Appeals Tribunal to reopen *The Post's* offices."<sup>60</sup>

The closure of *The Post* proved not to be an isolated incident. In April 2020, the government moved to shut down Zambia's leading private television station, Prime TV. Established in 2013, the station rose to prominence after the shutdown of *The Post*. As well as rivalling the state-run ZNBC in providing an alternative source of information, Prime TV became the main outlet for critical voices such as civil society organisations and political parties.

In April 2020, the government forcibly closed the TV station using a state institution, the Independent Broadcasting Authority (IBA).<sup>61</sup> No specific reasons were advanced for the move, but the IBA stated that the action had been taken in the public interest, pursuant to the IBA (Amendment) Act of 2010 that empowers the body to 'cancel a broadcasting licence in the interest of public safety, security, peace, welfare, or good order'.<sup>62</sup> The station, arguing that it had not been accorded the opportunity to be heard, per the law, appealed against the decision to the Minister of Information. Upon realisation of the illegality of the move, the Minister dismissed the appeal on the pretext that the channel's license had, according to the IBA Act, expired at the time of its cancellation 'following Prime Television's failure to apply for renewal at least 6 months before its expiration'.<sup>63</sup> As was the case with the closure of *The Post*, State police sealed off the

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<sup>56</sup> Interview with Fred M'membe, Chinsali, 9 November 2020.

<sup>57</sup> A Tax Revenue Tribunal ruled that *The Post* was to be allowed to pay what was undisputed. The disputed amount was to be subjected to further hearing at the Tribunal, but the authorities disregarded the ruling. Interview with Mutembo Nchito, Lusaka, 9 November 2020.

<sup>58</sup> Stephen Zande, 'ZRA shuts down Post newspapers', *Times of Zambia*, 22 June 2016, p. 2.

<sup>59</sup> This section draws heavily from Sishuwa Sishuwa, Lise Rakner, Marja Hinfelaar and Nicholas van De Wall, 'Legal Autocratization: Zambia's Backsliding, 2011-2020', *African Affairs* (forthcoming).

<sup>60</sup> Communication of the Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders, REFERENCE: AL ZMB 2/2016, 19 October 2016. Originally, in September 2014, the Zambia Revenue Authority (ZRA) presented a K26, 000, 000 invoice to *The Post* for outstanding tax liabilities. When the ZRA demanded immediate as opposed to gradual settlement of this amount spread over several months, the newspaper sought judicial review of the revenue body's decision but both the Lusaka High Court and subsequently the Supreme Court dismissed *The Post's* case. When the Appeals Tribunal, a specialised legal body mandated to deal with tax affairs, ruled that *The Post* should be allowed to remain in operation while discussions on how it would settle its tax liabilities continued, its verdict was ignored by the authorities.

<sup>61</sup> The Independent Broadcasting Authority Act of 2010 provides that the IBA shall be independent of government. However, its board of directors, consisting of nine part-time members, is appointed by the Minister of Information and Broadcasting Services on the recommendation of the appointments committee, itself constituted by the minister.

<sup>62</sup> Natasha Sakala, 'IBA cancels Prime TV license', *News Diggers*, 9 April 2020.

<sup>63</sup> Yande Syampeyo, 'Siliya throws out Prime TV appeal', *Zambia Daily Mail*, 24 April 2020.

company's premises and the government advised the station to apply for a new license. No new license was issued, however, even after Prime TV complied with the government's advice.<sup>64</sup>

The application of the law to close critical media outlets illustrates the increasing deployment of 'lawfare' to undermine human rights. Lawfare, in this case, refers to the strategic use of the law and legal institutions by actors in the executive to achieve political goals, obscure their authoritarian tendencies and strengthen their grip on power. By using the ZRA and IBA to close The Post and Prime TV, the authorities wrong-footed critics by arguing that the closure of the two leading media outlets were legal decisions that had to do with tax affairs and the failure to adhere to the law.<sup>65</sup>

Where private media outlets are not shut down, the authorities have deployed violence and harassment as methods of curtailing their operations. On a number of occasions in recent years, private radio stations that host opposition figures been attacked by supporters of the ruling party.

In April 2019, for instance, PF cadres halted a live programme on Power FM Radio Station in Central Province featuring opposition National Democratic Congress (NDC) leader Chishimba Kambwili. Incensed by Kambwili's criticism of the government, the cadres broke the door to the studio, forcibly halted the programme, threatened to kill Kambwili and destroyed property belonging to the station.<sup>66</sup> Despite reporting the matter to the police, none of the culprits were arrested. In May 2020, ruling party supporters stopped Mpika Radio station in Muchinga Province from hosting opposition leader Hakainde Hichilema, on grounds that the radio station should prioritise the broadcast of Covid-19 messages, as opposed to campaigning. When Hichilema later appeared on another community radio station, Isoka FM, in the same province, the cadres violently disrupted the programme and threw tear-gas canisters into the station. In response to this attack, PF District Chairman Gerald Silwamba stated that "while we respect freedom of speech, that freedom should not be used to provoke situations and insult sympathisers of government's fight against coronavirus [sic]."<sup>67</sup> Although the Minister of Information condemned the actions of the cadres, the police made no arrests.

In other instances, the authorities have used threats and intimidation to undermine media freedom. Although some local private stations broadcast call-in and other talk show programs on which diverse and critical viewpoints are expressed freely, media owners revealed that journalists who convened such programs received threats from senior government officials and politicians.<sup>68</sup> Independent media outlets also regularly received threats from the government for merely covering the political opposition.<sup>69</sup> For instance, in May 2019, a group of PF cadres forcibly entered Radio Maria, a Roman Catholic-run station in Chipata, Eastern Province. They harassed journalists and threatened to burn down the station for featuring a rival candidate for internal party provincial leadership. On this occasion, the police moved to arrest the suspects, but only after President Lungu condemned the attack and ordered police to arrest the perpetrators.<sup>70</sup>

Overall, media institutions and individuals are increasingly reluctant to express themselves, write or publish opinions because of the ever-looming threat of reprisals. The police have also increasingly used a punitive strategy where they arrest suspects on Fridays, with the intention to deny them police bond for the weekend and keep them in custody until the following Monday or Tuesday. Some suspects are held for even longer periods. One victim, a leader of an opposition party, recalled that he had been arrested 12 times within a three-year period, since 2017. "On three occasions", he said, "I have not been charged, but released after being detained for about three to four days."<sup>71</sup>

Media is tied to the right to freedom of expression and is specifically guaranteed by Article 20 (1) of the Constitution of Zambia. The ICCPR states that freedom of expression includes the right to receive and impart information through any form of media.<sup>72</sup> Both the UN human rights special procedures and the African Commission have emphasised the importance of the press and other media. They have called for such

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<sup>64</sup> Sishuwa, et al, 'Weak Parties, Presidentialism and Legal Autocratization: Zambia's Backsliding, 2011-2020'.

<sup>65</sup> Ibid

<sup>66</sup> 'PF cadres attack Kambwili during a live radio interview on Power FM', Lusaka Times, 30 April 2019.

<sup>67</sup> 'PF cadres continue to disrupt Opposition radio appearances, Despite warnings from Government,' Lusaka Times, 19 May 2020.

Available at: <https://www.lusakatimes.com/pf-cadres-continue-to-disrupt-opposition-radio-appearances-despite-warning-from-government/>

<sup>68</sup> Interview with Leah Kasoma, proprietor of Komboni Radio, Lusaka, 16 June 2020.

<sup>69</sup> 'Police in Kasama arrest the entire Radio Mano news crew', Lusaka Times, 16 November 2016. Also see Sishuwa Sishuwa 'In Zambia, Covid-19 has claimed democracy, not human life', Mail & Guardian, 15 June 2020. Interview with Chishimba Kambwili, National Democratic Congress leader, Lusaka, 8 July 2020.

<sup>70</sup> Mukosha Funga, 'Lungu wonders why police don't act against PF. News Diggers, 4 May 20219.

<sup>71</sup> Interview with Chishimba Kambwili, Lusaka, 8 July 2020.

<sup>72</sup> Article 19(2) of the ICCPR. See also Article 6 b) and c) of the Declaration on HRDs which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

media to be free, uncensored, unhindered, diverse, and pluralistic.<sup>73</sup> They have spoken against State monopoly of the media.<sup>74</sup> Media freedom is further essential for the effective exercise of the right to be informed. The UN Special Rapporteur on freedom of expression has stated that it, “supports the construction of more democratic societies peopled by active citizens who hold informed opinions about the situation in their country and have the capacity and opportunity to propose and contribute to public policies and to demand transparency.”<sup>75</sup> The mandate has warned that “Lack of access to information in accordance with the principles of pluralism and diversity results in an ill-informed, non-participatory society in which political decision-making is not democratic.”<sup>76</sup> Effective implementation of this right is therefore essential for the enjoyment of the right to freedom of expression and other human rights.

While States can set up regulatory bodies for the media, such as Zambia’s IBA,<sup>77</sup> such bodies must be independent and protected from undue interference.<sup>78</sup> The determination of any complaints against a media company brought before such a body must be transparent and free of political, commercial and other undue interference.<sup>79</sup> The use of such a regulatory body or other means to penalise a media outlet, publishers or journalists solely for being critical of the government, therefore, is a violation of the right to freedom of expression.<sup>80</sup>

Furthermore, as fair trial principles extend to “any process where rights and obligations are determined in a suit at law,”<sup>81</sup> media outlets must be afforded the right to a fair trial in respect of any complaints brought against them. This includes the right “to a fair and public hearing by a competent, independent and impartial tribunal”,<sup>82</sup> to be informed promptly of the nature and cause of the case against them,<sup>83</sup> to have adequate time and facilities for the preparation of their defence,<sup>84</sup> to be present during the determination of their case,<sup>85</sup> and to examine witnesses and evidence against them.<sup>86</sup> The initial closure of Prime TV did not meet these requirements and therefore constituted, not only a violation of the right to freedom of expression and media freedom, but also fair trial rights.

The Zambian authorities are further required to ensure an enabling environment for the work of journalists, including putting in place and raising awareness of laws and standards for ensuring their safety, adopting measures to prevent attacks against them for the exercise of their functions, and ensuring investigations, prosecutions and accountability for attacks against them.<sup>87</sup> This extends to preventing and ensuring accountability for attacks perpetrated by “law enforcement, security, intelligence, military and other personnel”, such as the police.<sup>88</sup> The UN Special Rapporteur on freedom of expression has warned that “Failure to undertake effective investigations and to prosecute those responsible for attacks against journalists perpetrates further violence and undermines the ability of journalists to report on similar matters in the future.”<sup>89</sup> The authorities are therefore required to ensure accountability for attacks against journalists as a means of fully protecting the right to freedom of expression, access to information, and media freedom.

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<sup>73</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 13, 16 and 40; Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on the protection of journalists and media freedom, A/HRC/20/17, 4 June 2012; and Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 11, 12 and 14.

<sup>74</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 40; and Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 11. See also Principles 13 and 14 calling for the establishment of public and private media respectively.

<sup>75</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Groups in need of attention, limitations to the right to freedom of expression, and protection of journalists, A/HRC/14/23, 20 April 2010, para. 88.

<sup>76</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/14/23, para. 108.

<sup>77</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 39; and Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 17.

<sup>78</sup> General comment no. 34, Article 19, Freedoms of opinion and expression, para. 39; Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 17; and Joint Declaration On Media Independence And Diversity In The Digital Age, The United Nations (UN) Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe (OSCE) Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights (ACHPR) Special Rapporteur on Freedom of Expression and Access to Information, 2 May 2018, 1. b. v.

<sup>79</sup> Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 18.2.

<sup>80</sup> General comment No. 34, Article 19: Freedoms of opinion and expression, para. 42.

<sup>81</sup> UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23 August 2007.)

<sup>82</sup> Article 14(1) of the ICCPR

<sup>83</sup> Article 14(3)(a) of the ICCPR

<sup>84</sup> Article 14(3)(d) of the ICCPR

<sup>85</sup> Article 14(3)(d) of the ICCPR

<sup>86</sup> Article 14(3)(e) of the ICCPR

<sup>87</sup> Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 20.

<sup>88</sup> Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 20.5.

<sup>89</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/20/17, para. 98.

## 5.3 VIOLATIONS OF THE RIGHT TO PEACEFUL ASSEMBLY



*Supporters of the opposition United Party for National Development (UPND) leader Hakainde Hichilema march in the streets as he was being questioned at the Lusaka Police Force headquarters in Lusaka, Zambia, on December 23, 2020. - Two demonstrators were killed on December 23, 2020 in a protest outside the police headquarters in the Zambian capital Lusaka, where opposition leader Hakainde Hichilema was being questioned. © SALIM DAWOOD/AFP via Getty Images*

The right to peaceful assembly is guaranteed by Article 21 of the Constitution of Zambia. The provision states that

**“Except with his own consent, no person shall 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.”**

However, over the last few years, the authorities have consistently undermined the expression of the right to peaceful assembly through the use of the Public Order Act (POA), colonial-era legislation that regulates public gatherings. This law requires any person who intends to convene a public meeting or demonstration to ‘give police at least seven days’ notice’, specifying the date, place and duration for the assembly.<sup>90</sup> If the police indicate that they are unable to supervise the event on the planned date, the POA empowers the police to inform the convenors and propose an alternative date and time. Violations of this law attract a six-year prison sentence.

Particularly since 2016, the authorities have relied on the POA to restrict people’s right to peaceful protests or meetings. More often than not, when opposition parties, civic groups or people attempt to peacefully assemble, police frustrate their efforts by refusing to allow the meeting for one reason or another or by arresting the protesters for breach of the POA if they proceed to meet. In practice, therefore, no demonstrations against the state are allowed. The most common arguments advanced for not allowing public meetings by the opposition and civil society have been that police received notifications too late, had insufficient staff to provide security, or that the gathering would coincide with events organised by government officials in the same area.<sup>91</sup> Although police have usually cited inadequate staff as a justification for failing to manage public meetings, they have almost always responded with large numbers of officers to disrupt the same gatherings whenever the convenors have proceeded to hold them.

<sup>90</sup> The Public Order Act, Chapter 113 of the Laws of Zambia, Section 5. Also available on <http://www.parliament.gov.zm/sites/default/files/documents/acts/Public%20Order%20Act.pdf> (accessed on 8 August 2020).

<sup>91</sup> Sishuwa, et al, ‘Weak Parties, Presidentialism and Legal Autocratization: Zambia’s Backsliding, 2011-2020’



There are a number of examples that demonstrate how the authorities have suppressed the right to peaceful assembly in recent years. On 6 October 2016, police in the Copperbelt<sup>92</sup> Province arrested Hakainde Hichilema, for unlawful assembly. He was accused of holding an unauthorised meeting and encouraging the crowd to reject the legitimacy of President Lungu's re-election. Hichilema was released the following day after posting bail and his trial was ongoing at the time of writing. In October 2018, police on the Copperbelt forcibly dispersed an indoor meeting organised by the Centre for Trade and Policy Development to discuss the national budget. The convenors, who comprised religious and civil society leaders, were arrested for 'failure to comply with the requirements of the POA'.<sup>93</sup> On 27 August 2019, police in Lusaka blocked Hichilema from viewing the dried-up Chongwe River. The main

opposition leader, in the company of his party officials, had gone to Chongwe to gather information on the erratic water supply the town was experiencing and to work out a plan to ensure water supply.

According to Hichilema

**We could not hold back our compassion arising from widespread reports on how our people in Chongwe district of Lusaka Province are suffering due to lack of safe and clean drinking water. Their only source of water, the Chongwe dam has nearly dried up due to drought and other factors related to disturbances of forest reserve recharge areas.**

**Unfortunately, while sympathising with our people, police citing the POA [public order Act] stopped us stating that we needed to obtain a police permit in order for us to see how our people are suffering from hunger and thirst. We, however, advised the officers that we were not fighting them but merely assessing what we could do for the communities which included themselves, to ensure they accessed safe and clean drinking water.<sup>94</sup>**

In December 2019, Chama Fumba, a prominent civil society personality popularly known as Pilato, who was working on a project with the NGO ActionAid Zambia, was arrested in Livingstone for holding a meeting in a church building to raise awareness on governance, accountability and civic responsibility among the youth. Police stormed the meeting, arrested Fumba and charged him for unlawful assembly in violation of the POA. He was only acquitted nearly a year later, after a protracted trial.

Since the outbreak of the COVID-19 pandemic in March 2020, the authorities have prohibited public assemblies by civil society and opposition parties on the pretext of public health concerns. While it may be argued that restrictions on assemblies are necessary to contain the spread of the coronavirus, gatherings organised by PF supporters and civic groups aligned to the party in power have continued unabated, even amidst the pandemic.<sup>95</sup> Often pro-government or pro-ruling party processions did not require prior approval by police.<sup>96</sup> Opposition NDC president Chishimba Kambwili disclosed that since his party was formed in 2017, police have only approved one meeting out of 69 applications that have been submitted by his party between then and July 2020. "Every time we notified the police our requests for a public meeting were turned down [by the police], who cited 'security concerns'."<sup>97</sup>

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<sup>92</sup> The Copperbelt is a province in Zambia

<sup>93</sup> Priscilla Chipulu, 'Police charge Ndola pastors, 3 others', Zambia Daily Mail, 21 October 2018, p.1.

<sup>94</sup> Speedwell Mupuchi, 'Police block Hichilema from touring Chongwe Dam', *The Mast*, 28 August 2019.


<sup>95</sup> See for instance, 'Bowman Lusambo's mammoth mobilisation rally in pictures', Lusaka Times, 20 September 2020. Available at <https://www.lusakatimes.com/2020/09/20/bowman-lusambos-mammoth-mobilisation-mufilira-rally-in-pictures/>

<sup>96</sup> For instance, on 1 October 2010, scores of PF aligned civil society activists marched to State House without police approval, where they were welcomed by President Lungu. The protesters asked the President to set up a commission of inquiry that would investigate the role played by his main rival in Zambia's privatisation process during the 1990s. A week later, alone protester, Kelvin Mukuka, attempted to march to State House to seek audience with President Lungu over governance issues. Police arrested Mukuka and charged him with 'conduct likely to cause breach of peace'. See 'President Lungu to set up commission of inquiry into the privatisation process', Lusaka Times, 1 October 2020.

<sup>97</sup> Interview with Chishimba Kambwili, Lusaka. 8 July 2020.





 ↑ Hip hop artist Chama "Pilato" Fumba takes part in a protest against corruption outside the Zambian parliament in Lusaka on September 28, 2018. - Around 100 protesters mainly from civil society groups gathered a few meters away from the entrance of the parliament as the country's finance minister presented the 2019 national budget statement. © SALIM DAWOOD/AFP via Getty Images

In September 2017, police arrested for number of prominent civic activists led by Laura Miti, who heads the Alliance for Community Action (ACA).<sup>98</sup> The background to the demonstration was that the government had recently procured 42 second-hand fire engines at a cost of US\$1million each.<sup>99</sup> Miti and her colleagues argued that the amount was inflated and alleged corruption in public procurement, as their research suggested that the real cost for each engine was a quarter of the sum. As per the POA, Miti promptly informed the police of her organisation's intention to hold a procession at the precincts of Parliament on the day when the Minister of Finance was scheduled to present the budget. The police, stating that they had other commitments on the day,<sup>100</sup> proposed an alternative date, one that the convenors rejected.

**“We said, ‘you cannot give us another day’” recalled Miti. “We have strategically chosen the budget day because we are talking about public money.’ And then, as we were leaving, the police said, ‘If you go [ahead with your meeting,] we are going to arrest you.’ So, I said, ‘You have the people to arrest but you don’t have the people to secure us?’”<sup>101</sup>**

In the belief that they were exercising their constitutional right to expression, the anti-corruption protesters appeared outside the Parliament building on Friday, 29 September 2017 – the Budget Day. Police arrested Miti and four others for ‘disobeying lawful orders’ and charged them with conduct likely to cause a breach of peace. The case of Miti and her co-accused dragged on until December 2018 when it was dismissed by a Magistrate who admonished the police for their failure to facilitate the expression of constitutional liberties, particularly in instances where people have complied with the law.<sup>102</sup> By that time, the authorities had succeeded not only in undermining civil society activism on the specific day in question, but in incapacitating the civic body financially through costly court procedures, and in intimidating other activists.

As one interviewee put it,

<sup>98</sup> This section draws from Sishuwa, *et al*, ‘Legal Autocratization: Zambia’s Backsliding, 2011-2020’

<sup>99</sup> ‘Government buys 42 modern fire tenders from Spain’, *Lusaka Times*, 4 May 2017. Available at <https://www.lusakatimes.com/2017/05/04/government-buys-42-modern-fire-tenders-spain/> (accessed on 11 November 2020).

<sup>100</sup> Police letter to ACA, 29 September 2017.

<sup>101</sup> Interview with Laura Miti, Lusaka, 17 April 2020.

<sup>102</sup> ‘Laura Miti, Pilato and other protesters acquitted’, *Lusaka Times*, 21 December 2018. Available at <https://www.lusakatimes.com/2018/12/21/laura-miti-pilato-and-other-protestors-acquited/>

## **‘human rights in Zambia are now only to be enjoyed by those who are aligned to the party in power.’<sup>103</sup>**

Those expressing critical opinions are denied their rights and the government has advanced a narrative that those who seek to protest against its actions are bent on creating chaos and disorder. For instance, when 12 young people notified police of their intention to hold a peaceful demonstration in Lusaka in June 2020 to protest against the increasing restrictions on civil and human rights, the government’s deputy chief whip, Tutwa Ngulube, asked the police not to sanction the demonstration because the protesters were ‘lawbreakers’ who wanted to make the country ‘ungovernable’. In a much-publicised video, Ngulube, who is also a lawmaker in the governing party, was seen and reported saying:

**We have heard that there are youths who are masquerading as protesters. The idea is to go into our towns, loot shops so that the country can look like it is ungovernable. But we want to urge the police that they should not take them lightly. The police must deal with all these lawbreakers with the force they can [muster]. They want in the name of protests to start breaking the law with impunity. Zambia is a peace-loving country and the people of Zambia are not interested whatsoever in all these protests that they are trying to put up.... And we want to urge the youths to say anyone who will participate in such kind of activities will be treated as a lawbreaker. And we urge the police that when you detain such people, do not even give them a police bond<sup>104</sup>**

Protests against the government are thus considered as unpatriotic acts that are sponsored by foreign forces or aimed at unseating the party in power.

Recent times have also seen a growing tendency for using ruling party supporters to violently disrupt public meetings organised by the opposition. For example, in February 2020, a Law Association of Zambia (LAZ) discussion held at Lusaka’s Intercontinental Hotel and which was televised live on Prime TV was disrupted by supporters of the governing party. The meeting which was convened to debate the proposed Constitution of Zambia (Amendment) Bill number 10 of 2019, and featured members of parliament, who are also members of LAZ,<sup>105</sup> came to an abrupt end when participants had to scamper to safety after PF cadres stormed the venue and faced little to no resistance from the few armed police officers who were on the premises. No arrests were made by police. More recently, on 22 June 2020, following refusal by police to facilitate a meeting, several activists were forced to meet at an undisclosed location in a bush, on the outskirts of Lusaka, where they live-streamed their demonstration against the erosion of human rights. Tutwa Ngulube, a senior PF figure in government, had earlier urged the police ‘to break their bones’ if the protesters went ahead with the procession.<sup>106</sup> Despite his public statements, no action was taken against him for his statement.

These disruptions by ruling party supporters have left many people vulnerable to physical attacks, making many afraid to attend public rallies or to participate in peaceful protests whenever they are called. This practice has also resulted in the increasing hesitancy by political actors and civil society activists to convene meetings on matters of national interest for fear of attack either from PF cadres or the threat of the police coming to violently suppress the meetings and harm supporters under the guise of maintaining public order.



The use of the POA by the police has meant that political parties and civil society organisations cannot effectively organize. The act of meeting with others to discuss or express ideas and opinions - whether in a meeting indoors, or outdoors, or as part of a peaceful protest - constitutes an exercise of the rights to freedom of expression, association and peaceful assembly.<sup>107</sup> These rights place an obligation on Zambia not only to actively respect peaceful assemblies but to protect, promote and

<sup>103</sup> Interview with Telesphore Mpundu, Lusaka, 16 July 2020.

<sup>104</sup> Julia Malunga, ‘Young should stay away from politics, we have no business with envoys – Tutwa, News Diggers, 14 July 2020, p.1. To watch the video, visit <https://www.youtube.com/watch?v=OAIIG5vZOVk> (accessed on 10 December 2020).

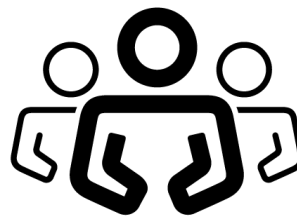
<sup>105</sup> Ulande Nkomesha, Unruly PF cadres disrupt LAZ Bill 10 discussion, News Diggers, 19 February 2020.

<sup>106</sup> Interview with youth activists Chama Fumba (Pilato), Lusaka, 28 June 2020 and Natasha Sakala, Lusaka, 30 June 2020.

<sup>107</sup> The Guidelines on Freedom of Association and Assembly in Africa, 77-82; Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 1.1. See also Amnesty International and Others v. Sudan, Comm. Nos. 48/90, 50/91, 52/91 and 89/93 (1999), paras. 81-82 (the Commission here observes moreover that the right to freedom of assembly derives in practice from the right to association; the opposite is clearly the case as well).

facilitate the exercise of the right.<sup>108</sup> Such facilitation includes the provision of public security and order management to protect peaceful protestors and others, and ensure that protests do not turn violent. For this reason, the requirement to give prior notice of an assembly is not necessarily incompatible with the permissible limitations on the exercise of the right under international human rights law.<sup>109</sup> However, such a requirement must not be applied in such a manner as to amount in practice to a requirement to obtain authorisation. The Human Rights Committee has expressed that such a requirement would constitute a violation of the right to freedom of association and peaceful assembly.<sup>110</sup> The African Commission has further provided that the presumption is always in favour of holding assemblies, where notification is required. In case an assembly is not allowed or restricted, a detailed and timely written explanation should be provided and there should be an opportunity to appeal the decision before an impartial and independent court.<sup>111</sup> Even where organisers have failed to notify authorities about a protest or other form of assembly, such gatherings should not be considered illegal, or automatically dispersed.<sup>112</sup> The dispersal of a peaceful assembly by State agents, even when that assembly does not appear to have met national requirements, may constitute a violation of the right to freedom of peaceful assembly.<sup>113</sup>

As public assemblies are held to convey a message to a particular individual, group or organization, they should, as a general rule, be facilitated within “sight and sound” of their target audience.<sup>114</sup> While authorities may propose alternative arrangements for assemblies, they should seek to facilitate assemblies at the time, date and location preferred by the organisers.<sup>115</sup> Where this is not possible, proposed alternatives should be suitable to enable the message of the protest to be effectively communicated to the target in an appropriate context.<sup>116</sup> Preventing demonstrations occurring on a particular day, or in a manner that would enable the target to receive the message, therefore places an undue restriction on the right to freedom of peaceful assembly. Such was the case with regard to the demonstration on 29 September 2017 outside the Parliament building, organised to coincide with the Budget Day.



The authorities further have an obligation to respect, protect and ensure the rights to freedom of association and peaceful assembly.<sup>117</sup> Law enforcement officials must ensure others, for example, ruling party supporters, are prevented from disrupting gatherings. Failure to hold such groups accountable for such disruptions constitutes a violation of the right to freedom of expression, association, and peaceful assembly, and deny victims justice and effective remedies.

As the UN Human Rights Council has stated, public protests should not be viewed as a threat.<sup>118</sup> Individuals should not be arrested simply for organising or taking part in a peaceful protest. Such arrests and any resultant detention are arbitrary<sup>119</sup> and violate human rights. In policing assemblies, law enforcement officials should avoid the use of force. Such force should be used only as an exceptional measure where unavoidable, and if other means remain ineffective or without any promise of achieving the intended result. It should further be proportionate to the seriousness of the offence, carried out in a manner that minimises

<sup>108</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, reports to the Human Rights Council, A/HRC/20/27, para. 27, and A/HRC/23/29, para. 49.

<sup>109</sup> See for example the Guidelines on Freedom of Association and Assembly in Africa, 71, which provides, “A system of prior notification may be put in place to allow states to facilitate the exercise of this right and to take the necessary measures to protect public safety and rights of other citizens.”

<sup>110</sup> In the Human Rights Committee’s Concluding Comments on Morocco [1999] UN Doc. CCPR/79/add. 113, para 24, the Committee states that it is concerned at the breadth of the requirement of notification for assemblies and that the requirement of receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in Article 21 of the ICCPR.

<sup>111</sup> Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 90.

<sup>112</sup> The Guidelines on Freedom of Association and Assembly in Africa, 71; and Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 2.1.1.

<sup>113</sup> See Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 62, where the Rapporteurs stated, “International law allows for dispersal of a peaceful assembly only in rare cases.”

<sup>114</sup> The Guidelines on Freedom of Association and Assembly in Africa, 90; and Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 24.

<sup>115</sup> The Guidelines on Freedom of Association and Assembly in Africa and Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions, *Ibid.*

<sup>116</sup> The Guidelines on Freedom of Association and Assembly in Africa, 90.a.

<sup>117</sup> The Guidelines on Freedom of Association and Assembly in Africa, 94; and Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 14.

<sup>118</sup> UN Human Rights Council, resolution 22/10, the promotion and protection of human rights in the context of peaceful protests, adopted without a vote, 21 March 2013.

<sup>119</sup> The Working Group on Arbitrary Detention, Revised Fact Sheet No. 26, IV B, category II and V.

damage and injury, and must serve a legitimate objective.<sup>120</sup> Suppressing dissent or preventing conduct that upsets those in power does not qualify as a legitimate objective.<sup>121</sup> Zambia is further required to ensure that law enforcement officers are held criminally accountable for the use of arbitrary or excessive use of force in the context of assemblies.<sup>122</sup>

With regard to the exercise of freedom of association and peaceful assembly in the context of the COVID-19 pandemic, the UN Special Rapporteur on freedom of assembly and association has cautioned against the use of the crisis as “a pretext to suppress rights in general, or the rights to freedom of peaceful assembly and of association in particular.”<sup>123</sup> UN experts have further emphasised that “The crisis is no justification for excessive force to be used when dispersing assemblies..., nor for disproportionate penalties to be imposed.”<sup>124</sup>

## 5.4 CURTAILING FREEDOM OF ASSOCIATION

Guaranteed by Zambia’s Constitution, the right to freedom of association continues to be eroded. The victims have been political parties and civic institutions. Since the 2011 election, Zambian authorities have employed a series of legal instruments to undermine the right to freedom of association. The commonly used legal instrument for this purpose is the Societies Act, which regulates the registration and cancellation of associations, including political parties.<sup>125</sup> This legislation empowers the Registrar of Societies, a government officer under the Ministry of Home Affairs, to cancel the registration of any association for failure to submit accounts and returns when called upon.

In March 2012, the Registrar of Societies deregistered the main opposition party, the MMD, arguing that it had not paid its registration fees amounting to US\$75,000 since 1993, which put it in breach of the Societies Act. At the time, the MMD held over a third of the seats in the 158-member Parliament, while the PF had 68. Other opposition parties and independents held the remaining 33, with two vacancies.<sup>126</sup> While the government defended its actions as falling within the law, critics pointed to the composition of parliament and argued that the PF was seeking to force by-elections in the 55 constituencies held by MMD, which people believed the ruling party, given its new-found access to state resources, would be more likely to win. The High Court suspended the deregistration and eventually overturned the ban, stating that the punishment was excessive and that the former ruling party should have been fined instead.<sup>127</sup> The judgement, however, came only after costly litigation and increased instability in the MMD, one that saw ex-president Rupiah Banda relinquishing his leadership of the party and several of its Members of Parliament accepting ministerial appointments in the PF government instead.<sup>128</sup>

In June 2018, the Registrar of Societies, Thandiwe Mhende, cancelled the registration certificate of the opposition Democratic Party (DP). In a letter dated 6 June 2018, Mhende stated that she had reason to

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<sup>120</sup> Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 21.1.1 – 21.1.4; and the Basic principles on the use of force, principles 4, 5 and 12 – 14.

<sup>121</sup> See for example the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 21.1.2, and Guidelines on Freedom of Association and Assembly in Africa, 70.a. which both recognize that peaceful protests include “conduct that annoys or gives offence as well as conduct that temporarily hinders, impedes or obstructs the activities of third parties.”

<sup>122</sup> See the Basic principles on the use of force, principle 7; and Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 4.3

<sup>123</sup> “States responses to COVID-19 threat should not halt freedoms of assembly and association” – UN expert on the rights to freedoms of peaceful assembly and of association, Mr. Clément Voule. See also Press Release of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa on Reports of Excessive use of Force by the Police during the COVID-19 Pandemic.

<sup>124</sup> Ibid and Mandate of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Killings, #COVID19 Human Rights Dispatch – Number 1 Police and Military Use of Force in A State of Emergency

<sup>125</sup> Section 13 (2), Societies Act, Chapter 119 of the Laws of Zambia.

<sup>126</sup> Sishuwa, et al, ‘Weak Parties, Presidentialism and Legal Autocratization: Zambia’s Backsliding, 2011-2020’

<sup>127</sup> ‘High Court overturns decision to de-register MMD’, *Lusaka Times*, 26 July 2012.

<sup>128</sup> Ibid.

believe that the party had ceased to exist.<sup>129</sup> The DP was registered in 1991 and its deregistration followed reports that Harry Kalaba, a former Minister of Foreign Affairs who had earlier resigned from President Lungu's Cabinet in protest against what he called government corruption, had been invited to assume its leadership. Efforts by Kalaba – a prominent politician from Luapula Province, a key stronghold for the PF – to register a political party had been rejected by the Registrar of Societies for unspecified reasons.<sup>130</sup> After a costly and protracted legal process, the High Court overturned the deregistration of the DP, declaring the move as unreasonable, months before Kalaba accepted the party's presidency in January 2019.<sup>131</sup>

In August 2019, the authorities deregistered the National Democratic Congress (NDC), a breakaway opposition party formed by a former outspoken PF Minister Chishimba Kambwili. Kambwili had served as Minister of Information before he was expelled from the ruling party on 22 July 2017. In the same month, he founded the NDC, which, in April 2019, defeated the ruling party in a parliamentary by-election in the Copperbelt mining town of Luanshya. Four months later, the Registrar of Societies announced the deregistration of the NDC for alleged undemocratic tendencies and having an 'inoperative constitution'. Kambwili's party filed a legal challenge in September 2019 against the deregistration and the High Court overturned the cancellation of its certificate in August 2020.<sup>132</sup>

As of the end of 2020, the Registrar of Societies had de-registered a total of 14 political parties, with only two de-registrations being at the respective parties' own requests.<sup>133</sup> The other political parties de-registered by the Registrar of Societies between 2011 and 2020 include the People's Redemption Party, National Alliance Party, National Democratic Focus, United Nationalist Party, Party for Unity Democracy and Development, Movement for Democratic Progress, Zambia Conservative Party, Zambia United Development Party and Zambia Development Conference and Democratic Assembly. The reasons for the deregistrations ranged from requests by the affected parties to be deregistered to the Registrar's own consideration that the parties had ceased to exist, the latter being permissible under the Societies Act, subject to strict proof.

Another legal instrument that has been used to subvert the right to freedom of association is the Non-Governmental Organisation (NGO) Act of 2009. This legislation was created by the NGO Board, whose function is to consider and approve applications for registration from NGOs. The Act requires all NGOs formed after the passing of the Act to register with the Board, and those in existence prior to the enactment of the Act to apply for a certificate of registration. It also gives the government broad powers to deny registration to NGOs or to dictate their thematic and geographical areas of work, and imposes mandatory re-registration every five years. This is at variance with international human rights standards which stipulate that registration processes should not be burdensome or discriminatory, and further, require that reasons should be given in writing for refusal to register an association and the reasons should be based in law. The effect of the NGO Act has been adverse as: "Prior to the introduction of this law, some 10,000 NGOs were estimated to be operational in Zambia. Only 550 are registered under the Act as of September 2019."<sup>134</sup> Most NGOs protested against the law by not registering and subsequently forced the government to shelve it for further consultations. At the time of writing, a revised NGO Bill was under consideration.

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<sup>129</sup> In cancelling the certificate of registration for the Democratic Party, the Registrar of Societies acted within the law as Section (2) (d) of the Societies Act provides that 'The Registrar may, in his discretion, cancel at any time the registration of any society effected under the provisions of section seven if he is satisfied that it is expedient so to do on the ground that he has reason to believe that any such society has ceased to exist as a society'. Natalie Ngosa, 'Government finally scraps DP', *The Mast*, 16 June 2018. Available at <https://www.themastonline.com/2018/06/16/govt-finally-scraps-dp/> (accessed on 11 November 2020).

<sup>130</sup> In early 2018, Kalaba had applied to register a political party named *Zambian Democrats* but the Registrar of Societies refused to register it for, according to the official letter, 'security reasons'. Refusal to register a party on security concerns is not supported by law, but when Kalaba appealed against the decision of the Registrar to the Minister of Home Affairs, the latter upheld the move, months before he was courted by the already registered Democratic Party (DP). The Registrar then moved quickly to cancel the DP's certificate of registration on the ground that when officials from the Ministry of Home Affairs had made an impromptu visit to the party secretariat in Ndola, they had found no party officials, a development which, in the eyes of the Registrar, suggested that the party had ceased to exist. Interview with Harry Kalaba, Lusaka, 10 December 2020.

<sup>131</sup> Interview with Harry Kalaba, Lusaka, 10 November 2020. Also see Zondiwe Mbewe, 'Kalaba's party wins deregistration case', *News Diggers*, 6 September 2018, p.1.

<sup>132</sup> Interview with Christopher Munda, NDC lawyer, Lusaka, 23 June 2020.

<sup>133</sup> Heritage Party formerly led by Godfrey Miyanda and ABZ formerly led by Frank Bwalya, who is now Zambia's Ambassador to Australia were de-registered at their own request.

<sup>134</sup> Marja Hinfelaar, Danielle Resnick, and Sishuwa Sishuwa, 'Cities and dominance: Urban strategies for political settlement maintenance and change – Zambia case study' ESID Working Paper No. 136. Manchester, 2020.

Other erosions of the right to freedom of association have been witnessed in relation to trade unions. In February 2020, the Ministry of Labour approved an application from the University of Zambia management to terminate the recognition agreement between themselves and the University of Zambia Lecturers' and Researchers' Union (UNZALARU). Although this move did not effectively terminate the union, the impact on the status of the union was that UNZALARU, which had been sharply critical of the government's lack of adequate support towards the country's leading public university, could no longer formally represent its 800 members in any relations with the employer. The Labour Commissioner also asked the Union to show cause as to why its certificate of registration should not be cancelled over the same matter. This was after the Secretary General of the Union was quoted by local media, while issuing a statement, as saying only "idiots or those benefiting" would vote for the ruling party if elections were called.<sup>135</sup> The statement was made on 6 January 2020 when the union official was addressing union members in the presence of the press during a protest by lecturers at the University of Zambia for unpaid December 2019 salaries. The union took the case to court in February 2020 and the Lusaka High Court quashed the termination of the Recognition Agreement in August 2020 for procedural impropriety.<sup>136</sup>

**The right to freedom of association contained in Zambia's Constitution and international human rights treaties to which Zambia is a state party extends to the right to form or belong to any political party, trade union or other association for the protection of one's interests.<sup>137</sup>**

International human rights standards provide that there is a presumption in favour of the creation of associations.<sup>138</sup> These can be formal or informal, registered or unregistered.<sup>139</sup> International human rights standards call for the legal status of associations to be presumed once authorities receive notification, rather than the need for authorisation from the authorities.<sup>140</sup>

While legal frameworks and oversight bodies can be created for the effective regulation of associations, the primary purpose of these should be to enable the exercise of freedom of association.<sup>141</sup> Such frameworks and bodies should further be impartial,<sup>142</sup> and comply with international human rights obligations. This includes the requirement that restrictions on the right to freedom of association should only be applied, **"in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."**<sup>143</sup> Such restrictions should further be proportionate to the gravity of the harm in question and applied only as a matter of last resort and to the least extent necessary.<sup>144</sup>

Processes for the regulation of associations – be they political parties, NGOs or trade unions – including registration and deregistration of such associations, should be clear, simple and transparent.<sup>145</sup> They should not be onerous or burdensome.<sup>146</sup>

The UN Special Rapporteur on freedom of association has stated that

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<sup>135</sup> Sipilisiwe Ncube, 'Only idiots will vote for PF – UNZALARU', News Diggers, 7 January 2020. Also available at <https://diggers.news/local/2020/01/07/only-idiots-can-vote-for-pf-unzalaru/>

<sup>136</sup> Mwaka Ndawa, 'High Court quashes govt's decision to allow UNZA terminate recognition agreement with UNZALARU', *The Mast*, 20 August 2020, p7. Also available at <https://www.themastonline.com/2020/08/20/high-court-quashes-govt-s-decision-to-allow-unza-terminate-recognition-agreement-with-unzalaru/> (accessed on 10 December 2020).

<sup>137</sup> Article 21(1) of Zambia's Constitution and Article 22(1) of the ICCPR. See also General Comment 25 (participation in public affairs and the right to vote), para 26; Declaration on Human Rights Defenders, 2(a); Human Rights Council resolution 24/5, para.2; and Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paras. 118 for the stipulation that the right to freedom of association "comprises the right to form and join associations freely."

<sup>138</sup> Guidelines on Freedom of Association and Assembly in Africa, 7. See also: Freedom of Association, International Labour Office Geneva, Compilation of decisions of the Committee on Freedom of Association, Sixth edition (2018), (ILO Compilation of decisions 2018), 419 – 422 in respect of trade unions.

<sup>139</sup> Guidelines on Freedom of Association and Assembly in Africa, 11. See also the Report of the Special Rapporteur on freedom of assembly and association, Best practices that promote and protect the rights to freedom of peaceful assembly and of association, A/HRC/20/27, para. 56, where the Special Rapporteur underlined that the right to freedom of association equally protects associations that are not registered, as well as para. 84(b).

<sup>140</sup> Guidelines on Freedom of Association and Assembly in Africa, 13; and Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 95.

<sup>141</sup> See African Charter on Democracy, Elections and Governance, Article 12(3) which calls on States to, "Create conducive conditions for civil society organizations to exist and operate within the law."

<sup>142</sup> Guidelines on Freedom of Association and Assembly in Africa, 21.

<sup>143</sup> Article 22(2) of the ICCPR.

<sup>144</sup> Article 21(2) of Zambia's Constitution, Article 22(2) of the ICCPR, Guidelines on Freedom of Association and Assembly in Africa, 56, 58

<sup>145</sup> Guidelines on Freedom of Association and Assembly in Africa, 13 and 22.

<sup>146</sup> Guidelines on Freedom of Association and Assembly in Africa, 13; and Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 57.

**“significant delays in the registration procedure, if attributable to the [authorities], amounts to an interference with the exercise of the right of the association.”<sup>147</sup>**

The International Labour Organisation (ILO) has held the same in respect of trade unions.<sup>148</sup> In addition, any decisions relating to associations should be clearly and transparently laid out. Reasons for any adverse decisions should be clearly based on law and provided in writing. They should also be the right to challenge the decision in a court of law.<sup>149</sup>

Laws governing associations and oversight bodies are required to adhere to the principle of minimum interference in internal governance of associations.<sup>150</sup> Associations must be free to determine their purpose and activities freely.<sup>151</sup> Any limitations on activities or purpose of an organisation must meet the requirements of legality, necessity and proportionality.<sup>152</sup>

With regard to sanctions against associations, the African Commission has stated that they should be, “strictly proportionate to the gravity of the misconduct in question, and shall only be applied by an impartial, independent and regularly constituted court, following a full trial and appeal process.”<sup>153</sup> An association cannot be suspended or deregistered without a court order.<sup>154</sup> Furthermore, this should only be done in relation to a serious crime, as a last resort and, in the case of deregistration, after exhaustion of all appeal mechanisms.<sup>155</sup> Any sanctions imposed by a court should be suspended once an appeal process is initiated, and remain so suspended till the appeal has run its course.<sup>156</sup> International human rights standards further provide that, in the event of failure to comply with a regulation, the remedy should be compliance with the regulation and monetary penalties should be avoided.<sup>157</sup>

The deregistration of political parties and refusal to register NGOs in Zambia appears to have been carried out contrary to these international human rights standards. They run contrary to the presumption in favour of associations,<sup>158</sup> are burdensome, and do not appear to have been justified in terms of any of the reasons provided for by international human rights law.<sup>159</sup> Reasons for the decisions not to register most societies have not been provided in writing or justified on the basis of law, as previously shown in the example of the Zambian Democrats.<sup>160</sup> Further, the authorities have appeared to impose sanctions contrary to international human rights standards. For example:

- in relation to the deregistration of MMD, allegedly on the basis on non-payment of registration fees, the action was contrary to the requirement that sanctions for non-compliance should be a requirement to comply<sup>161</sup>
- with regard to the deregistration of the NDC for alleged undemocratic tendencies and having an ‘inoperative constitution’ the sanction was applied in a manner that appears to amount to undue interference in the internal management of an association;<sup>162</sup>

<sup>147</sup> Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 60.

<sup>148</sup> ILO Compilation of decisions 2018, 427.

<sup>149</sup> Guidelines on Freedom of Association and Assembly in Africa, 22 and fundamental principle vii of the guidelines; Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 95; and ILO Compilation of decisions 2018, 422.

<sup>150</sup> Guidelines on Freedom of Association and Assembly in Africa, 31; Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 64, 96 and 97; and ILO Compilation of decisions 2018, 563.

<sup>151</sup> Guidelines on Freedom of Association and Assembly in Africa, 23; Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 64, 96 and 97; and ILO Compilation of decisions 2018, 561, and 716 - 720.

<sup>152</sup> See Monim Elgak, Osman Hummeida & Amir Suliman (represented by International Federation for Human Rights & World Organisation Against Torture) v. Sudan, Comm. No. 379/09 (2014), paras. 116-9; and Guidelines on Freedom of Association and Assembly in Africa, 24.

<sup>153</sup> Guidelines on Freedom of Association and Assembly in Africa, 56; Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 76; and ILO Compilation of decisions 2018, 979.

<sup>154</sup> Guidelines on Freedom of Association and Assembly in Africa, 56 and 58; Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 100; and ILO Compilation of decisions 2018, 1002.

<sup>155</sup> Guidelines on Freedom of Association and Assembly in Africa, 58; Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 75; and ILO Compilation of decisions 2018, 981.

<sup>156</sup> Guidelines on Freedom of Association and Assembly in Africa, 60.

<sup>157</sup> Guidelines on Freedom of Association and Assembly in Africa, 59.

<sup>158</sup> Guidelines on Freedom of Association and Assembly in Africa, 7.

<sup>159</sup> See Article 21(2) of Zambia’s Constitution, Article 22(2) of the ICCPR, Guidelines on Freedom of Association and Assembly in Africa, 56, 58

<sup>160</sup> Guidelines on Freedom of Association and Assembly in Africa, 22 and fundamental principle vii of the guidelines; as well as Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 95.

<sup>161</sup> Guidelines on Freedom of Association and Assembly in Africa, 59.

<sup>162</sup> Guidelines on Freedom of Association and Assembly in Africa, 31 and 36; and Report of the Special Rapporteur on freedom of assembly and association, A/HRC/20/27, para. 64 and 96.

- in the deregistration for apparent discontinued existence, the imposition of sanctions was not proportionate to the gravity of any alleged misconduct.<sup>163</sup>

Regarding trade unions, the approval by the Labour Ministry to terminate the recognition agreement between the University of Zambia and the University of Zambia Lecturers' and Researchers' Union, appears to amount to the administrative dissolution of a trade union. This is an act which, according to ILO standards, "constitute(s) serious infringements of the principles of freedom of association."<sup>164</sup>

## 5.5 THE VIOLATION OF THE RIGHT TO LIFE

The right to life is guaranteed by Article 12 of Zambia's Constitution, which states that:

**'No person shall be deprived of his life intentionally, except in the execution of a sentence in respect of a criminal offence.'**

Despite this provision, a number of people have been unlawfully killed mainly by State officials or supporters of the party in power.

For instance, in July 2016, Mapenzi Chibulu was shot dead in Lusaka's Chawama township after police used live ammunition to disperse supporters of the main opposition UPND, whose public meeting had been cancelled by the police at the last minute. No officers were arrested for her killing and no compensation was provided to her family. Mapenzi left behind a five-year-old son.



In February 2020, police shot and killed 14-year-old Frank Mugala in Lusaka. Frank was shot on his way from school by what appeared to be a stray bullet as police tried to disperse a group of urban residents protesting against the police's failure to end a spate of highly suspicious incidents in which unknown people sprayed unidentified chemical substances on unsuspecting people, leaving the victims gasping for breath or briefly unconscious. The 'gassing attacks', as the incidents became known, were mainly recorded in urban centres throughout the first few months of 2020.

Also in February 2020, 27-year-old Evans Simusa, was struck by a stray bullet outside his home when police tried to disperse anti-gassing protesters in Lusaka's John Howard township. Simusa was admitted at the University Teaching Hospital's Intensive Care Unit, where he succumbed to his gunshot wounds a week later. At the time of writing, no arrests had been made over the deaths of Mugala and Simusa, and no investigation into the deaths had been carried out.

More recently, on 22 December 2020, police shot dead two unarmed people when supporters of the main opposition UPND undertook to accompany party leader, Hakainde Hichilema, to the police headquarters in Lusaka where he had been summoned for questioning the following day.<sup>165</sup> The shooting took place after a number of government officials led by the Minister of Home Affairs, Stephen Kampyongo, and Lusaka Provincial Minister, Bowman Lusambo, had a day earlier, urged the police to use "any means necessary to maintain law and order" when dealing with members of the opposition. On the day, police shot dead the two people – Nsama Nsama, a state prosecutor who was buying a meal at a restaurant across his office, and Joseph Kaunda, a UPND supporter – while dispersing the peaceful crowd that had gathered in solidarity with Hichilema. An investigation by Zambia's Human Rights Commission established that the order to shoot the

<sup>163</sup> Guidelines on Freedom of Association and Assembly in Africa, 56.

<sup>164</sup> ILO Compilation of decisions 2018, 986.

<sup>165</sup> Tenson Mkhala, 'Police shoot 2 dead as HH appears for questioning', *News Diggers*, 23 December 2020, p.1.



duo came from then Lusaka Province Police Commissioner Nelson Phiri. At the time of writing, no charges had been brought against Phiri, who was only let go from his job.

The police violence against citizens and the failure to bring officers suspected to be responsible to justice has remained a major concern for human rights defenders in Zambia. One human rights defender noted that

**“There has been such a rise in the levels of impunity that it now seems like a bottomless pit. There does not seem to be any bound in terms of impunity and legal violations.”<sup>166</sup>**

For example, in the case discussed earlier, in October 2018, Vespers Shimuzhila, a final-year female University of Zambia student, suffocated to death after police, while quelling student protests against the government’s delayed payment of their living allowances, threw tear gas canisters inside her room. Shimuzhila was pronounced dead on arrival at the hospital, but the officer who was responsible for discharging the canisters, while known, has not been brought to justice. Shimuzhila’s father, Davison Shimuzhila laments that “while we have been granted ZK500,000 (equivalent to US\$25,000) compensation by the State for our daughter’s death, it is not enough and cannot replace the life of our daughter. What we want is justice. That is, the prosecution of the officer who was responsible for our daughter’s death.”<sup>167</sup>

As mentioned above, public protests should not be viewed as a threat, but as an exercise of rights.<sup>168</sup> The police have an obligation to ensure public safety and order during public assemblies. The police have an obligation to ensure public safety and order during public assemblies. However, to ensure appropriate policing of assemblies, States should adopt and implement rules and regulations, including on the use of force and firearms, that are in line with international human rights standards.<sup>169</sup> These regulations should further emphasise the primary role of law enforcement officials in policing assemblies, which is, “to ensure the safety of the public and to safeguard human rights of all persons.”<sup>170</sup>

International human rights standards require States to take steps to adequately plan, prepare for and conduct an assembly in a manner that avoids the use of force.<sup>171</sup> States should develop a broad range of means and equip law enforcement officials with various types of weapons and ammunition, which will allow for a gradual escalation of the means used, as appropriate, without causing unnecessary, disproportionate and unlawful death or injury to persons.<sup>172</sup> Firearms should not be used except to defend people against imminent threat of death or serious injury, or to prevent a grave threat to life. They should only be used when less extreme means are insufficient. Lethal force should not be used except when strictly unavoidable in order to protect life.<sup>173</sup> Both the UN human rights special procedures and African Commission have stated that the use of firearms to disperse an assembly – as has been done during assemblies in Zambia – should never be done and that indiscriminate firing into a crowd is unlawful.<sup>174</sup>

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<sup>166</sup> Interview with Linda Kasonde, Lusaka, 2 July 2020.

<sup>167</sup> Interview with Davison Shimuzhila, Lusaka, 29 June 2020.

<sup>168</sup> UN Human Rights Council, resolution 22/10, the promotion and protection of human rights in the context of peaceful protests, adopted without a vote, 21 March 2013.

<sup>169</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 1; the Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 21.1.1; Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, 4 February 2016, para. 51 and 67(g); and Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (2015), p. 46.

<sup>170</sup> Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 3.3; Code of Conduct for Law Enforcement Officials, Article 2.


<sup>171</sup> Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 10.1 and Part 3; and Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 52.

<sup>172</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 2; and Joint report of the Special Rapporteur on freedom of assembly and association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 53 and 55.

<sup>173</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 9; and Joint report of the Special Rapporteur on freedom of assembly and association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 59.

<sup>174</sup> Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 21.2.4; and Joint report of the Special Rapporteur on freedom of assembly and association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 60; and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (Protection of the right to life during law enforcement - the need for domestic law reform; Remotely piloted aircraft or armed drones and emerging autonomous weapons systems), 1 April 2014, A/HRC/26/36, para. 75.



 Activist Laura Miti holds a placard during a protest against corruption outside the Zambian parliament in Lusaka on September 28, 2018. - Around 100 protesters mainly from civil society groups gathered a few meters away from the entrance of the parliament as the country's finance minister presented the 2019 national budget statement. © SALIM DAWOOD/AFP via Getty Images

The use of weapons, for example, tear-gas, should also meet the requirements of legality, necessity and proportionality.<sup>175</sup> In addition, particular caution must be exercised when using crowd control devices or other less lethal weapons which are indiscriminate in their effects. The use of such weapons should be controlled and evaluated to minimise harmful effects on assembly participants, observers and bystanders.<sup>176</sup> Cases such as that of Vespers Shimuzhila, who died after being tear-gassed in her dorm room, raise questions as to whether the police in Zambia are abiding by these standards on the use of non-lethal force.

The statement by the Chief Government spokesperson in February 2020, raises questions as to whether police are being instructed to shoot to kill. The statement itself could amount to incitement to violence.<sup>177</sup>

Zambian authorities are further required to carry out prompt, impartial, independent and thorough investigations into all cases of death or serious injury of persons at the hands of law enforcement officers. This includes for cases in places of detention and in the context of assemblies.<sup>178</sup> Considering that such investigations relate to the conduct of the police, they should not be investigated by the police themselves. Instead, independent oversight and monitoring mechanisms should be used to investigate cases of deaths at the hands of the police.<sup>179</sup> Such investigations should seek to determine the cause, manner and time of death, the persons responsible, and any pattern or practice that may have brought about that death.<sup>180</sup> Authorities should ensure that appropriate action is taken with respect to any identified pattern or practice to

<sup>175</sup> Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 21.2.6

<sup>176</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principle 3; and Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 21.2.6

<sup>177</sup> Article 20 of the ICCPR

<sup>178</sup> General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), 2, 7, 15, 17, and 37; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 34; Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 24.5 – 24.7; the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 21.a. and 43; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 74; and Joint report of the Special Rapporteur on freedom of assembly and association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 90.

<sup>179</sup> Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 43; and Report of the Special Rapporteur on torture, Question of torture and detention, E/CN.4/2001/66, para 1310.

<sup>180</sup> Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 24.6; the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 21.a; and Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 78 (a).

ensure the non-reoccurrence of deaths in similar circumstances. Investigations should further facilitate prosecutions and disciplinary sanctions as appropriate.<sup>181</sup> Victims of human rights violations or abuse of power by the police – which include family members of the deceased – are entitled to receive information on the progress of investigations. Information regarding the results of any investigations or inquiry should also be made publicly available.<sup>182</sup> The African Commission has stated that public bodies must proactively publish information of public interest even without a specific request.<sup>183</sup> Information regarding the findings of investigations into deaths at the hands of the police is of public interest. Providing such information would also help to ensure that justice is not only done, but is seen to be done.

While Zambia's Human Rights Commission has investigated and found police culpability in respect of some of the cases of deaths at the hands of the police, the authorities have not made information regarding police accountability in such cases publicly available. In some cases, even the family members have not received any information and it does not appear that those suspected to be responsible for such killings have been brought to justice. As evidenced above, international human rights standards require criminal accountability for such deaths. Civil cases, while important, are not sufficient to ensure States meet their international obligations to hold individuals accountable for such killings. The failure of the State to promptly, thoroughly, impartially, independently and transparently investigate cases of unlawful or arbitrary killing, and to bring to justice suspected perpetrators as well as ensure access to justice and effective remedies for victims constitute a violation of the right to life.<sup>184</sup>

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<sup>181</sup> General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), 17; Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Principle 1(a) and 78(b) and (c).

<sup>182</sup> General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), 7 and 21; Guidelines for the Policing of Assemblies by Law Enforcement Officials in Africa, 24.7; the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, 21. b; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985, Principle 6(a); and General Comment No. 4: The Right to Redress For Victims Of Torture And Other Cruel, Inhuman Or Degrading Punishment Or Treatment, 68

<sup>183</sup> Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019), Principle 29.1.

<sup>184</sup> Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions, para. 90.

# 6 CONCLUSION



This report has highlighted worrying and widespread human rights violations that have occurred in Zambia between 2012 and 2020. Evidence of the decline in human rights observance began to surface following late president Michael Sata's victory in the 2011 general election. Following the election, Zambia witnessed acts of impunity by ruling party cadres especially in relation to the rights to peaceful assembly and freedom of expression, through such actions as forcibly entering private property, heightened violence against opposition party supporters and flagrant disregard of the rule of law. The erosion of human rights intensified under the leadership of Sata's successor, President Lungu, as evidenced by the severe restrictions on the rights to freedom of expression, association, peaceful assembly, and media freedom, as well as the violations to the right to life, documented in this report.

In the words of Laura Miti, one of Zambia's foremost rights activists,

**“What we are seeing in the country right now is an environment in which there is complete denigration of the enjoyment of rights that Zambians were able to enjoy some years back. The human rights environment is going backwards. Rights we took for granted like holding public meetings and free speech are restricted. We also have a government that is of the view that rights should be granted or enjoyed at the government's pleasure.”<sup>185</sup>**

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<sup>185</sup> Interview with Laura Miti, Lusaka, 30 June 2020.

# 7 RECOMMENDATIONS



Countering the deteriorating state of human rights and emerging climate of fear in Zambia would require the implementation of a series of measures that include the following:

## TO THE ZAMBIAN GOVERNMENT

- Immediately end the crackdown on freedom of expression, association and peaceful assembly. Remove all undue restrictions on the right of people in Zambia to freely receive and disseminate independent information and express peaceful dissent;
- End harassment and intimidation and the use of trumped-up charges against anyone simply for peacefully exercising their human rights; This must include the police dropping all charges against individuals who have been unjustifiably prosecuted under repressive laws;
- Ensure that independent nongovernmental groups can operate freely and without undue interference;
- Amend Section 5 of the Public Order Act which grants unfettered discretion to the police to determine whether or not an assembly, meeting or procession should take place and bring it in line with international human rights standards;
- Direct all security forces to end intimidation, harassment, arrest, assault or punishment of journalists and others for peacefully exercising their human rights;
- Cooperate fully with the special procedures of the United Nations Human Rights Council and the African Commission on Human and Peoples' Rights, including by issuing a standing invitation for country visits by the UN special rapporteurs and African Commission special rapporteurs on the situation of human rights defenders, on the rights to freedom of association and of assembly, and on the promotion and protection of the right to freedom of expression;
- Undertake prompt, thorough, impartial, independent and transparent investigations into all allegations of human rights violations and abuses, including by security forces, particularly the police, and by political party supporters. Anyone suspected to be responsible should be brought to justice in fair trials;
- Repeal Section 69 of Zambia's Penal Code which provides for criminal defamation of the President, as it effectively criminalises dissent and criticism of elected public leaders, and bring it in line with international human rights standards;
- Amend the relevant provisions of the Societies Act to remove the sections that empower the Registrar of Societies to deny the registration of new associations or deregister existing associations without objective criteria;
- Amend the IBA Act of 2010 to remove the provisions that provide for arbitrary closure of media outlets.

## **TO THE OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS**

- Undertake a country visit by sending the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression to Zambia for an on-the-spot assessment of the state of human rights and specific human rights violations;
- In addition, utilise all other special procedures to ensure that other rights including the right to life, and the freedoms of association and assembly are respected.

## **TO THE INTERNATIONAL COMMUNITY**

- Raise concerns about the human rights violations documented in this report in all relevant multilateral forums and in bilateral dialogues with the Zambian government;
- Persistently urge Zambian authorities to promptly implement the recommendations addressed to them;
- Support human rights education programmes including through non-state actors to raise awareness, promote and protect the rights that are especially at risk of further erosion.

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# RULING BY “FEAR AND REPRESSION”

## THE RESTRICTION OF FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY IN ZAMBIA

In the past few years, Zambia’s human rights situation has deteriorated markedly. People have increasingly been unable to freely assemble publicly, engage in public demonstrations or protest against government actions without being subjected to intimidation and harassment by the police. Fearful of reprisals, many people and the media have resorted to silence and self-censorship.

The violations of the rights to freedom of expression, peaceful assembly and association in Zambia have often been accompanied by unlawful arrests and detention, police violence, including excessive use of force, unfair trials and, at times, unlawful killings. Such actions constitute a violation of the right to liberty, security of person, not to be arbitrarily arrested or detained, fair trial rights and the right to life.

This report highlights the deteriorating state of human rights and emerging climate of fear in Zambia between 2012 and January 2021.