



## Digital Rights in Zimbabwe, UPR Submission, Session 40

**Submitted by:** Media Institute of Southern Africa (MISA) Zimbabwe Chapter, Small Media, Collaboration on International ICT Policy for East and Southern Africa (CIPESA)

**Supported by:** Access Now, Paradigm Initiative, Zimbabwe Human Rights Association, Association for Progressive Communication (APC), Zimbabwe Lawyers for Human Rights, Zimbabwe Centre for Media and Information Literacy (ZCMIL), Media Alliance of Zimbabwe.

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## Introduction

1. Digital rights and freedoms should be accorded the same protection as offline rights and freedoms.<sup>1</sup> Protection of freedom of expression, access to information, data protection and privacy have been guaranteed in international and regional instruments to which Zimbabwe is a party. Consequently, they must be considered in the recommendations made to Zimbabwe during the third cycle of the UPR.
2. During the second cycle of the UPR, Zimbabwe received 260 recommendations from 86 countries. Out of these recommendations, 16 referred to the right to freedom of expression, three were focused on the right of access to information and two referenced the right to privacy.<sup>2</sup>
3. According to the Postal and Telecommunications Regulatory Authority (POTRAZ), Internet penetration in Zimbabwe was 61.1% as at the end of the first quarter of 2021.<sup>3</sup> This shows that as the online community in Zimbabwe grows, so does the obligation to protect and to fulfil human rights online. This is in line with Zimbabwe's obligations under applicable provisions of the Constitution of Zimbabwe<sup>4</sup> and Articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup> on the rights to privacy and freedom of opinion and expression respectively. This is also in addition to Zimbabwe's responsibility to protect these rights online under the various provisions of the African Charter on Human and Peoples' Rights (ACHPR).<sup>6</sup>

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<sup>1</sup> Human Rights Council, 'Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: The promotion, protection and enjoyment of human rights on the Internet' <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/89/PDF/G1613189.pdf?OpenElement>, Last Accessed 15 June 2021.

<sup>2</sup> United Nations Human Rights Council, 'Universal Periodic Review: Zimbabwe (2016)' <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ZWindex.aspx>, Last Accessed 1 July 2021.

<sup>3</sup> Postal and Telecommunications Regulatory Authority (POTRAZ), 'Sector Performance Report: First Quarter 2021' <https://www.techzim.co.zw/wp-content/uploads/2021/06/Q1-Sector-Performance-copy.pdf>, Last Accessed 1 July 2021.

<sup>4</sup> Constitution of Zimbabwe, <https://zimlil.org/zw/legislation/num-act/2013/Amendment%20No.%2020%20of%20The%20Constitution%20of%20Zimbabwe/Constitution%20of%20Zimbabwe%20-%2020th%20Amendment%2022%20May%202013.pdf>, Last Accessed 12 July 2021.

<sup>5</sup> International Covenant on Civil and Political Rights <https://www.ohchr.org/documents/professionalinterest/ccpr.pdf>, Last Accessed 12 July 2021.

<sup>6</sup> African Charter on Human and Peoples' Rights, <https://www.achpr.org/legalinstruments/detail?id=49>, Last Accessed 12 July 2021.

## Updates since the last review

4. According to POTRAZ, mobile penetration rates decreased in Zimbabwe from 94.8% in 2016 to 90.5% in the last quarter of 2020, which was attributed to the impacts of the COVID-19 pandemic.<sup>7</sup> However, Internet penetration increased from 50% in 2016 to 61.1% in the first quarter of 2021, marking a 20.1% uptake from the previous UPR cycle in 2016.
5. According to the World Press Freedom Index which measures pluralism, media independence, legislative framework and media violations among others, between 2016 and 2020, Zimbabwe has slipped from position 126 to 130 out of the 180 countries assessed.
6. In February 2019, the cabinet repealed the Access to Information and Protection of Privacy Act (AIPPA) whose section 64 criminalised the publication of information that would threaten public morality which was not defined in the Act. Prior to the repeal, AIPPA was relied on by law enforcement officers to infringe on legitimate exercise of rights. The repeal of AIPPA resulted in the unbundling of the Act and enactment of the Freedom of Information Act in July 2020.
7. In August 2019, the Zimbabwean Parliament drafted the Zimbabwe Media Commission (ZMC) Bill towards ensuring an enabling environment for freedom of expression and the freedom of the media as guaranteed under section 61 of the Constitution.<sup>8</sup> In April of 2021, the Zimbabwe Media Commission Act No.9 of 2020 was gazetted as law. The Act lays out the powers of the ZMC as the regulatory body of the media sector with powers to investigate and hear complaints against the media<sup>9</sup>.
8. In March 2020, Zimbabwe Army Commander, Edzayi Chimonyo, stated that government plans were underway to monitor citizens' communications and social media for purposes of safeguarding national security.<sup>10</sup> The Minister of Information, Publicity and Broadcasting Services, Monica Mutsvangwa also stated that there will be criminal sanctions for circulation of fake news on social media in relation to COVID-19.<sup>11</sup>

## Freedom of expression and opinion

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<sup>7</sup> Postal and Telecommunications Regulatory Authority (POTRAZ), 'Abridged Postal & Telecommunications Sector Performance Report: Fourth Quarter 2020' <https://t3n9sm.c2.acecdn.net/wp-content/uploads/2021/03/Abridged-Sector-Performance-report-4th-Q-2020.pdf>, Last Accessed 1 July 2021.

<sup>8</sup> Id. Section 61

<sup>9</sup> Zimbabwe Media Commission Act 9 of 2020, <http://www.veritaszim.net/node/4905>, Last Accessed 25 June 2021.

<sup>10</sup> NewsDay, 'Army to monitor social media' <https://www.newsday.co.zw/2020/03/army-to-monitor-social-media/>, Last Accessed 15 June 2021.

<sup>11</sup> The Herald, 'Minister Slams 'fake news' peddlers' <https://www.herald.co.zw/minister-slams-fake-news-peddlers/>, Last Accessed 15 June 2021.

9. Sections 61 of the Constitution of Zimbabwe provides for freedom of opinion and expression, including the right to seek, receive and communicate ideas and information. Despite the Constitutional provisions, Zimbabwe has several other pieces of legislature that limit the exercise of free speech.
10. Sections 31 and 33 of the Criminal Law Codification and Reform Act, (Criminal Law Code) 2007 place restrictions on speech by criminalising communication or publication of falsehoods and insulting or undermining the authority of the President respectively.<sup>12</sup> The penalties under the two sections are a fine not exceeding level six which is Zimbabwe Dollar (ZWL) 60,000 (Appx. US\$705) or imprisonment for a period not exceeding 12 months, or both; and a fine not exceeding level 14 ZWL 1,600,000 (Appx. US\$19,000) or imprisonment for a period not exceeding 20 years, or both.
11. Section 14 of the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order of 2020 criminalises the publication or communication of false news ‘about any public officer, official or enforcement officer involved with enforcing or implementing the national lockdown’ or ‘about any private individual that has the effect of prejudicing the State’s enforcement of the national lockdown.’ The offense is punishable under Section 31 of the Criminal Law Code.<sup>13</sup> Similarly, Clause 164 of the proposed Cybersecurity and Data Protection Bill provides for offences including criminalisation of the transmission of messages that are false, incite violence, threaten or cause harm and spam.<sup>14</sup>
12. Law enforcement authorities have often used the inhibiting provisions of the various laws above to infringe on the right to freedom of opinion and expression. Further, there is also increased self-censorship among journalists, commentators and ordinary Zimbabweans, especially online due to threats and intimidation by government officials.<sup>15</sup>
13. On July 6, 2016, amidst online campaigns under the hashtag *#ThisFlagMovement* which challenged the rampant abuse of state resources and corruption in Zimbabwe, the Zimbabwean government shutdown access to the instant messaging application WhatsApp.<sup>16</sup> Internet Service providers like *TelOne*, *ZOL*

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<sup>12</sup> Criminal Law (Codification and Reform) Act (Chapter 9:23), <https://www.veritaszim.net/node/225>, Last Accessed 15 June 2021.

<sup>13</sup> Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020 <http://zimlil.org/zw/zw/subleg-consol/S.I.%2083%20of%202020%20Public%20Health%20%28COVID-19%20Prevention%2C%20Containment.pdf>, Last Accessed 15 June 2021.

<sup>14</sup> Cybersecurity and Data Protection Bill, 2019 [http://www.veritaszim.net/sites/veritas\\_d/files/Cyber%20Security%20and%20Data%20Protection%20Bill.pdf](http://www.veritaszim.net/sites/veritas_d/files/Cyber%20Security%20and%20Data%20Protection%20Bill.pdf), Last Accessed 15 June 2021.

<sup>15</sup> Freedom House, ‘Freedom on the net: Zimbabwe’ <https://freedomhouse.org/country/zimbabwe/freedom-net/2020>, Last Accessed 12 July 2021.

<sup>16</sup> Collaboration on International ICT Policy for East and Southern Africa (CIPESA), ‘Zimbabwe Becomes the Latest Country to Shut Down Social Media’

Zimbabwe, *Liquid Telecom* reported being pressured into restricting access to Whatsapp. A notice issued by POTRAZ stated that those who engaged in ‘irresponsible use of social media and telecommunications services’ would be “arrested and dealt with accordingly in the national interest.”<sup>17</sup>

14. In January 2019, Zimbabwe experienced a second restriction to access to social media platforms and major websites following public protests against a 150% increase in fuel prices.<sup>18</sup> The Zimbabwe High Court later ruled that the state-initiated internet shutdown was illegal<sup>19</sup> following a case filing by the Media Institute of Southern Africa (MISA) and Zimbabwe Lawyers for Human Rights (ZLHR).<sup>20</sup>
15. According to the State of Media Report in Zimbabwe 2020, there were 52 reports of assault, harassment, arrest, and detention of journalists — up from 28 in 2019.<sup>21</sup> The surge in violations was reportedly linked to restrictions and response measures put in place as a result of the outbreak of COVID-19.<sup>22</sup>
16. In November 2018, journalist Martha O’Donovan was arrested and charged with insulting then President Robert Mugabe by calling him a ‘goblin whose wife and step-son bought a Rolls Royce’, on Twitter. The High Court dismissed the charges against her for lack of merit.<sup>23</sup>
17. Between 2020 and 2021, journalist and critic Hopewell Chin’ono was arrested on numerous occasions on allegations of communicating false information, inciting public violence and obstruction of justice through online posts.<sup>24</sup>

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<https://cipesa.org/2016/07/zimbabwe-becomes-the-latest-country-to-shut-down-social-media/>, Last Accessed 5 July 2021.

<sup>17</sup>ibid.

<sup>18</sup> NetBlocks, ‘Zimbabwe Internet shutdowns amid fuel price protest’ <https://netblocks.org/reports/zimbabwe-internet-shutdowns-amid-fuel-price-protests-OxAGDdBz>, Last Accessed 25 June 2021.

<sup>19</sup> MISA Zimbabwe, ‘High Court sets aside internet shutdown directives’ <https://zimbabwe.misa.org/2019/01/21/high-court-sets-aside-internet-shut-down-directives/>, Last Accessed 25 June 2021.

<sup>20</sup> Kubatana, ‘The Internet shutdown: The High Court’s ruling of 21st January – Court Watch 1 / 2019’ <https://kubatana.net/2019/01/31/internet-shutdown-high-courts-ruling-21st-january-court-watch-1-2019/>, Last Accessed 5 July 2021.

<sup>21</sup> Media Institute of Southern Africa (MISA), ‘State of the media report: 2020’ <https://data.misa.org/en/entity/dgfc1wgc8f>, Last Accessed 15 June 2021.

<sup>22</sup> International Press Institute (IPI), ‘In Zimbabwe, one year of COVID-19 saw surge in harassment of free press’ <https://ipi.media/in-zimbabwe-one-year-of-covid-19-saw-surge-in-harassment-of-free-press/>, Last Accessed 15 June 2021.

<sup>23</sup> Africa News, ‘Zimbabwe court frees American accused of ‘insulting’ Mugabe’ <https://www.africanews.com/2018/01/04/zimbabwe-court-frees-american-accused-of-insulting-mugabe/>, Last Accessed 23 June 2021.

<sup>24</sup> NEWS24, ‘Hopewell Chin’ono arrested for third time in six months’ <https://www.news24.com/news24/africa/news/hopewell-chinono-arrested-for-third-time-in-six-months-20210108>, Last Accessed 5 July 2021.

18. In June 2020, freelance journalist Godfrey Mtimba was arrested on allegations of undermining the authority of the President pursuant to Section 33 of the Criminal Law Code. The charges against him related to photographs and videos taken during an opposition rally against the state owned public transport company, Zimbabwe United Passenger Company (ZUPCO).<sup>25</sup>
19. In April 2020, the High Court of Zimbabwe ordered the police and other law enforcement officers to desist from unnecessarily interfering with the work of journalists during the COVID-19 pandemic.<sup>26</sup>
20. In July 2020, there were calls for protests against corruption in Zimbabwe, which led to stricter enforcement of COVID-19 restrictions. On the day of the planned protests — July 31, 2021— several activists and opposition party members were arrested including renowned author Tsitsi Dangarembga and the Movement for Democratic Change (MDC) Alliance National Spokesperson and Advocate, Fadzayi Mahere.<sup>27</sup>
21. Following reports of government’s heavy-handed response to the protests, including the alleged abduction and torture of journalism student Tawanda Muchehiwa,<sup>28</sup> Internet users in Zimbabwe spearheaded an online campaign which was supported globally under the hashtag *#ZimbabweanLivesMatter*.<sup>29</sup> In response to the online campaign the government through Cabinet in August 2020 proposed the Patriotic Bill which would be aimed at criminalising ‘Zimbabweans campaigning against one’s country.’ This proposal was recently supported in March 2021 through a motion in Parliament.<sup>30</sup>

## Freedom of information

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<sup>25</sup> MISA Zimbabwe. ‘Masvingo journalist charged with undermining authority of President’ <https://zimbabwe.misa.org/2020/06/29/masvingo-journalist-charged-with-undermining-authority-of-president/>, Last Accessed 4 July 2021.

<sup>26</sup> AFEX, ‘AFEX Welcomes Zimbabwean High Court Ruling Barring Police from Arresting Journalists’ <https://www.africafex.org/access-to-information/afex-welcomes-zimbabwean-high-court-ruling-barring-police-from-arresting-journalists>, Last Accessed 4 July 2021.

<sup>27</sup> France 24, ‘Scores of anti-government protesters arrested in Zimbabwe’ <https://www.france24.com/en/20200731-scores-of-anti-government-protesters-arrested-in-zimbabwe>, Last Accessed 5 July 2021.

<sup>28</sup> Sky News, ‘Zimbabwe: Student thought he was going to die after ‘abduction by state security services’ <https://news.sky.com/story/zimbabwe-student-thought-he-was-going-to-die-after-abduction-by-state-security-services-12099212>, Last Accessed 5 July 2021.

<sup>29</sup> Business Day, ‘Zimbabwean Lives Matter movement grows with support from big names’ <https://www.businesslive.co.za/bd/world/africa/2020-08-04-zimbabwean-lives-matter-movement-grows-with-support-from-big-names/>, Last Accessed 5 July 2021.

<sup>30</sup> Veritas, ‘Debate on the Need for a “Patriotic Bill’ <http://www.veritaszim.net/node/4827>, Last Accessed 5 July 2021.

- 22.** Section 62 of the Constitution of Zimbabwe provides for citizens’ right to information ‘held by the State or by any institution or agency of government at every level’ in the interests of public accountability, exercise or protection of a right. The legislative framework pertaining to freedom of information in Zimbabwe recorded a positive shift with the unbundling and subsequent repeal of the AIPPA, and enactment of the Freedom of Information Act, 2020 in July 2020.
- 23.** Some of the key and progressive provisions in the Freedom of Information Act, 2020 include the designation of the office of an information officer who is responsible for receiving and processing information requests. It also places an obligation on government entities to have a written information disclosure policy and ensure that the disclosure of information should also be in the language requested by the applicant. Nonetheless, the law limits access to information held only by public bodies and not private entities.
- 24.** Despite the welcome enactment of the Freedom of Information Act, the requisite regulations for enforcement of the law including the procedure for making information requests and appeals, among others, are yet to be gazetted.
- 25.** In a bid to operationalise availability of information in the public domain, in April 2020, in separate suits, the High Court ruled that both the Ministry of Information and the Ministry of Health should provide timely, accurate and substantive information on COVID-19, accessible to all citizens in all the 16 official languages.<sup>31</sup> Earlier in January 2021, the Court ordered the same Ministries to communicate COVID-19 information in relation to immigration and cross-border travel, as well as public and private listing of testing and treatment centres, their capacity and occupancy rates.
- 26.** In a recent public address, the Secretary for Transport, July Moyo, expressed the ruling party’s intention to deploy ‘activists’ to counter online narratives not favourable to the party.<sup>32</sup> Moyo’s remarks highlight how the government and political parties are increasingly relying on social media as a propaganda tool to undermine the free flow of information online and open debates.
- 27.** Sections 13 and 14 of the Censorship and Entertainment Controls Act enacted in 1967 criminalises the publication of ‘undesirable pictures, or material that is indecent or obscene, offensive, or harmful to public morals.’<sup>33</sup> These provisions grant the censorship board appointed under the law in 2017 broad

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<sup>31</sup> MISA Zimbabwe, ‘High Court orders information access on COVID-19’ <https://zimbabwe.misa.org/2020/04/24/high-court-orders-information-access-on-covid-19/>, Last Accessed 5 July 2021.

<sup>32</sup> Bulawayo 24, ‘Mnangagwa's Zanu-PF deploys social media warrior’ <https://bulawayo24.com/index-id-news-national-byo-191584.html>, Last Accessed 5 July 2021.

<sup>33</sup> Refworld, ‘Censorship and Entertainments Control Act’ <https://www.refworld.org/docid/4c46e6ec2.html>, Last Accessed 5 July 2021.

and sweeping powers to undermine free expression and access to information.<sup>34</sup>

## Internet access and digital equality

- 28.** Internet affordability remains a challenge in Zimbabwe. In February 2020, there was a 25% increase in mobile data tariffs and a further 48% increase in May 2020.<sup>35</sup> By September 2020, despite increased reliance on technology as a result of the COVID-19 pandemic, mobile data charges further went up by up to 190% — an increase which was attributed to high costs of operations for mobile network operators.<sup>36</sup> Since the September 2020 tariff revision, the Media Alliance of Zimbabwe’s partners spearheaded a *#DataMustFallCampaign* calling on the regulator POTRAZ, to intervene in the reduction of the cost of data.<sup>37</sup>
- 29.** The gender digital divide is another barrier to increased access. According to POTRAZ, as at the first quarter of 2021, women made up only 41.3% of mobile subscriptions.<sup>38</sup> Meanwhile, online gender-based violence including cyberbullying and harassment is on the rise, further limiting women’s use of the internet. The bullying and harassment online has mostly been targeted at prominent female media personalities<sup>39</sup> and politicians.<sup>40</sup>
- 30.** The introduction of e-learning in the wake of COVID-19 in Zimbabwe has further widened the rural-urban digital divide as currently, only 30% of schools in the country have internet access.<sup>41</sup> Impediments to increased digitalisation of the education sector include poor network services and infrastructure, as well as limited availability of smart devices like smartphones and laptops for purposes

<sup>34</sup> IFEX, ‘New censorship board in Zimbabwe to ‘regulate and control’ media’ <https://ifex.org/new-censorship-board-in-zimbabwe-to-regulate-and-control-media/>, Last Accessed 5 July 2021.

<sup>35</sup> Freedom House, ‘Freedom on the net: Zimbabwe’ [https://freedomhouse.org/country/zimbabwe/freedom-net/2020#footnote4\\_t6hpy8i](https://freedomhouse.org/country/zimbabwe/freedom-net/2020#footnote4_t6hpy8i), Last Accessed 5 July 2021.

<sup>36</sup> Business Insider Africa, ‘Internet, mobile call cost in Zimbabwe has gone up by almost 200% since September 1st 2020’ <https://africa.businessinsider.com/local/markets/internet-mobile-call-cost-in-zimbabwe-has-gone-up-by-almost-200-since-september-1st/5694mwq>, Last Accessed 5 July 2021.

<sup>37</sup> Kubatana, ‘Government should prioritise Internet affordability as a human right’ <https://kubatana.net/2020/05/11/government-should-prioritise-internet-affordability-as-a-human-right/>, Last Accessed 5 July 2021.

<sup>38</sup> Techzim, ‘Women only make up 41.3% of mobile phone subscriptions in Zimbabwe’ <https://www.techzim.co.zw/2021/06/women-only-make-up-41-3-of-mobile-phone-subscriptions-in-zimbabwe/>, Last Accessed 15 June 2021.

<sup>39</sup> The Standard, ‘Cyber-bullying surges in Zim Lockdown’ <https://www.thestandard.co.zw/2020/04/19/cyber-bullying-surges-zim-lockdown/>, Last Accessed 5 July 2021.

<sup>40</sup> Zim Metro, ‘Linda becomes victim of cyber bullying, abuse’ <https://www.zimetro.co.zw/linda-becomes-victim-of-cyber-bullying-abuse/>, Last Accessed 5 July 2021; Spiked, ‘Women in politics must challenge cyberbullying’ <https://spiked.co.zw/women-in-politics-must-challenge-cyberbullying/>, Last Accessed 5 July 2021.

<sup>41</sup> NewsDay, ‘Lack of internet connectivity affecting govt e-learning programmes’ <https://www.newsday.co.zw/2021/06/lack-of-internet-connectivity-affecting-govt-e-learning-programmes/> Last Accessed 12 July 2021.

of e-learning.<sup>42 43</sup>

- 31.** Part 10 of the Postal and Telecommunications Act of 2001 provides for the Universal Access Fund, which is aimed at ensuring that underserved communities have access to telecommunications services. The Fund is financed through an annual levy of 2% on operators turnover. Between 2009 and 2018, POTRAZ disclosed that it has collected more than US\$130 million for the Fund,<sup>44</sup> which supported projects including community access centres, infrastructure roll out as well as elearning and telemedicine programmes.<sup>45</sup>

### **Data protection and privacy on the internet**

- 32.** Section 57 of the Constitution of Zimbabwe provides for the right to privacy which includes the privacy of communication and the requirement that health data should not be disclosed. Unfortunately, Zimbabwe is yet to enact a comprehensive data protection and privacy framework that paves way for the enforcement of this right.
- 33.** In May 2020, the Cybersecurity and Data Protection Bill was gazetted, paving the way for a substantive law towards data protection and privacy. The proposed law is aimed at regulating the collection, processing, storage, transmission and use of data and provides for the role of data protection officers and other mechanisms like notifications in the event of security breaches. However, the bill also provides for privacy intrusion, including through the use of digital forensic tools for criminal investigations.<sup>46</sup>
- 34.** The Interception of Communications Act, 2007 provides for lawful surveillance and interception of communications. The law does not provide for judicial oversight in issuance of warrants, instead granting the powers to the Minister responsible.

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<sup>42</sup> University World News, ‘Students say online learning is not accessible to everyone’ <https://www.universityworldnews.com/post.php?story=20200630140711422>, Last Accessed 5 July 2021.

<sup>43</sup> The Patriot, ‘Is Zimbabwe ready for education system digitisation? A glimpse into the future’ [https://www.thepatriot.co.zw/old\\_posts/is-zimbabwe-ready-for-education-system-digitisation-a-glimpse-into-the-future/](https://www.thepatriot.co.zw/old_posts/is-zimbabwe-ready-for-education-system-digitisation-a-glimpse-into-the-future/), Last Accessed 5 July 2021.

<sup>44</sup> Techzim, ‘Since 2009 POTRAZ has collected over \$120 Million for the Universal Service Fund’ <https://www.techzim.co.zw/2018/06/potraz-rakes-in-120-million-from-universal-service-fund/>, Last Accessed 4 July 2021.

<sup>45</sup> Postal and Telecommunications Regulatory Authority (POTRAZ) ‘Phases of passive telecommunication infrastructure project’ [http://www.potraz.gov.zw/?page\\_id=411](http://www.potraz.gov.zw/?page_id=411), Last Accessed 25 June 2021.

<sup>46</sup> MISA Zimbabwe, ‘Cybersecurity and Data Protection Bill entrenches surveillance’ <https://zimbabwe.misa.org/2020/05/19/cybersecurity-and-data-protection-bill-entrenches-surveillance-an-analysis/>, Last Accessed 29 June 2021.

- 35.** There are reports of unlawful surveillance in Zimbabwe,<sup>47</sup> more so because of the lack of transparency with regards to the acquisition, deployment and use of surveillance tools.
- 36.** In 2020, at a post-cabinet briefing, the Minister of Finance, Mthuli Ncube, revealed that the government had used ‘a sophisticated algorithm’ to determine the beneficiaries of the COVID-19 relief fund. The alleged algorithm was said to have used personal data such as bank account details, mobile wallet balances as well as locations of prospective beneficiaries. The case highlights the extent of privacy threats in Zimbabwe as the data subjects were neither advised nor required to give their consent to the sharing of personal data for the relief programme.<sup>48</sup>
- 37.** During the campaign period of the 2018 elections, the ruling party sent text messages to millions of Zimbabwean citizens encouraging them to vote for now president Emmerson Mnangagwa. The text messages were addressed to recipients by their full name, voter registration number and constituency, which raised concerns about unrestricted access to the Zimbabwe Electoral Commission’s database of registered voters while others accused the mobile network operators of having shared this data.<sup>49</sup> Of note is that this example practicalised the issues relating to data privacy and protection and the urgent need for a data protection law in Zimbabwe.<sup>50</sup>
- 38.** On July 24, 2020, the High Court in Harare granted a court order in favour of MISA Zimbabwe to stop ECONET Wireless Zimbabwe (a telecoms service provider), Minister of Home Affairs, Police Commissioner-General, Detective Inspector Mkhululi Nyoni, POTRAZ and the Reserve Bank of Zimbabwe from seeking information on mobile phone operators’ transactions.<sup>51</sup>
- 39.** In 2018, Zimbabwe made a commitment to send vast amounts of biometric and personal data to *CloudWalk* Technology, a China based entity that was providing the country with facial recognition

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<sup>47</sup> All Africa, ‘Zimbabwe: Shutting Down the Citizens - Forget Your Privacy You Are Under Surveillance’ <https://allafrica.com/stories/202001270868.html>, Last Accessed 5 July 2021.

<sup>48</sup> The Financial Gazette, ‘Mthuli Ncube & his “Sophisticated Algorithms” for corona relief funds – another privacy disaster looming?’ <https://www.financialgazette.co.zw/mthuli-ncube-his-sophisticated-algorithms-for-corona-relief-funds-another-privacy-disaster-looming/>, Last Accessed 5 July 2021.

<sup>49</sup> NewsDay, ‘Zanu PF breaks into Zec database’ <https://www.newsday.co.zw/2018/07/zanu-pf-breaks-into-zec-database/>, Last Accessed 5 July 2021.

<sup>50</sup> Quartz Africa, ‘Zimbabwe’s first election without Robert Mugabe has turned into a data privacy minefield’ <https://qz.com/africa/1325485/zimbabwe-elections-whatsapp-sms-spam-data-privacy-concerns-for-mnangagwa-chimasa/>, Last Accessed 5 July 2021.

<sup>51</sup> MISA Zimbabwe, ‘Court grants order in favour of MISA against ECONET search warrant’ <https://zimbabwe.misa.org/2020/07/24/court-grants-order-in-favour-of-misa-against-econet-search-warrant/>, Last Accessed 12 July 2021.

technology.<sup>52</sup> The following year in 2019, it was reported that donations of facial recognition equipment had been received from China as confirmed by Chris Mutsvanga the then Zimbabwean Ambassador to China.<sup>53</sup> The country is also reported to be in the process of adopting facial recognition systems to surveil high traffic areas such as airports and malls. For its renowned poor human rights record, such surveillance capabilities pose a threat of privacy.<sup>54</sup>

- 40.** In a report released by Citizen Lab — an organisation that fights against the use of technologies to violate human rights — in December 2020, Zimbabwe was listed as one of the customers of *Circles*, a surveillance firm that reportedly exploits weaknesses in the global mobile phone system to snoop on calls, texts, and the location of phones around the globe. *Circles* is also reported to be affiliated with NSO Group, which develops the invasive *Pegasus* spyware. *Circles*, whose products work without hacking the phone itself, says they sell only to nation-states.<sup>55</sup> This report also mentioned Zimbabwe as one of the seven African countries using Israeli cyberespionage tools.

## Proposed recommendations

- 41.** Given this background on Zimbabwe’s record on freedom of opinion and expression, freedom of information and censorship of content, and the right to data protection and privacy on the Internet, the submitting organisations propose the following recommendations:

- a.** Amend regressive provisions of existing laws to bring them in line with international standards on the right to freedom of opinion and expression. Specifically:
  - i. Sections 31 and 33 of the Criminal Law Code, 2007
  - ii. Section 14 of the Public Health (COVID-19 Prevention, Containment and Treatment) (National Lockdown) Order, 2020
  - iii. Section 13 and 14 of Censorship and Entertainment Controls Act, 1967
- b.** Uphold the right to privacy by:
  - i. enacting a data protection and privacy law in consultation with stakeholders.

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<sup>52</sup> Biometric Update, ‘Implementation of CloudWalk facial recognition technology in Zimbabwe progressing in stages’

<https://www.biometricupdate.com/201805/implementation-of-cloudwalk-facial-recognition-technology-in-zimbabwe-progressing-in-stages>, Last Accessed 5 July 2021.

<sup>53</sup> The Herald, ‘Chinese tech revolution comes to Zim’ <https://www.herald.co.zw/chinese-tech-revolution-comes-to-zim/>, Last Accessed 12 July 2021.

<sup>54</sup> Foreign Policy, ‘Beijing’s Big Brother Tech Needs African Faces: Zimbabwe is signing up for China’s surveillance state, but its citizens will pay the price’ <https://foreignpolicy.com/2018/07/24/beijings-big-brother-tech-needs-african-faces/>, Last Accessed 29 June 2021.

<sup>55</sup> Citizen Lab, ‘Running in Circles: Uncovering the clients of cyberespionage firm Circles’ <https://citizenlab.ca/2020/12/running-in-circles-uncovering-the-clients-of-cyberespionage-firm-circles/>, Last Accessed 5 July 2021.

- ii. Amend provisions of the Interception of Communications Law, 2007 to provide for judicial oversight over lawful surveillance.
  
- c. End the practice of internet shutdowns and ensure that restrictions on internet access, online expression, assembly and association are consistent with international and regional human rights standards.
  
- d. Put measures in place to reduce costs of Internet access including the deployment of the Universal Access Fund for increased affordability and digital inclusion of marginalised groups including women, rural communities and persons with disability.
  
- e. Desist from harassing, arresting, torturing journalists, human rights defenders and activists and put measures in place to seek redress and hold to account persons and authorities that violate their human rights.