

FREEDOM OF EXPRESSION

1 Guarantees to Freedom of Expression in Zimbabwe

The importance of the freedom of expression in a democratic society is indubitable. The right to freedom of expression lies at the foundation of a democratic society and is one of the basic conditions for its progress and for the development of every person.

Democracy entails participation by the people in their governance. It also entails limitation of the powers of those who rule. This system of governance emanates from the premise that those men and women who wield power are often flawed. It is therefore necessary to put effective checks on their exercise of power. The right to freedom of speech affords people the opportunity to participate in decision-making by contributing to debate and discussion. It also makes it possible for the people to criticize and reject Government policies that they do not agree with. Decisions are therefore reached through an open and non-coercive process. By so doing, the people are able to check the powers of those fallible men and women who rule.

S20 of the Constitution of Zimbabwe prohibits the hindrance of a person's

'enjoyment of the freedom of expression, that is to say freedom to hold opinions and to receive and impart ideas and information.'

The right is also recognized in Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights and Article 9 of the African Charter on Human and People's Rights among other international and regional human rights instruments.

Origins of Legislation Subverting the Freedom of Expression

Legislation prohibiting publication of false news was first introduced in the United Kingdom through the Statute of Westminster in the 13th Century. The statute came as a response to revolts by English Freemen against their King protesting incidents of unfair dispossession of their property, arbitrary arrests and unfair trials. The Statute of Westminster prevented the publication of 'any news or tales, whereby discord, or occasion of discord or slander may grow between the King and his People ...' The ruling regimes were able to keep dissenting opinions at bay through this piece of legislation.

The Provisions were imported into Rhodesia via the Public Order Act of 1955. Without any material changes, the false news provisions were to find a comfortable place in Section 50 of the Law and Order (Maintenance) Act (Chapter 11:07). This section made it a criminal offence to publish or reproduce 'any false statement, rumor or report which –

is likely to cause fear, alarm or despondency among the public or any section of the public; or is likely to disturb the public peace ...'

Despite the existence of s20 of the Constitution, ruling regimes in Zimbabwe and Rhodesia before it, have successfully managed political domination by severely limiting the protection of the right to hold independent opinions and to receive and impart ideas and information without "undue interference." This has traditionally been done through the introduction of legislation, which makes criminal the publication of falsehoods. In 2002 the Government passed laws that in essence completely took away the right to freedom of expression. The Rhodesian Government used legislation to silence nationalists and to abate and deter the liberation movement. The present day Government is using the same means to silence civil society and political opposition to its policies.

The Offending Legislation

i) **Law and Order Maintenance Act (LOMA)**

The Law and Order (Maintenance) Act was introduced in 1960, a product of the avowed intention of the Government of Sir Edgar Whitehead to suppress rising African nationalism. The nationalists were commonly referred to as terrorists. They had to be silenced and excluded from all forms of political and social participation. Sir Robert Tredgold, who was the Chief Justice then, condemned the Act as being offensive to almost every basic human right. He described the statute as ‘savage, evil, mean and dirty’.

In January 1999, the editor and a reporter of *The Standard* newspaper were arrested and charged for contravening Section 50 of the Law and Order (Maintenance) Act (LOMA). The allegations were that their newspaper had published a story, which alleged that there had been a failed coup attempt by members of the Zimbabwe National Army. The two journalists made an application direct to the Supreme Court for an order declaring section 50 unconstitutional.

In the very valuable and progressive judgment of *Chavhunduka & Another v The Minister of Home Affairs and another*, the Supreme Court ordered that s50 of LOMA was unconstitutional because it contravened section 20 of the Constitution. It was held in that case that those that generate news that may be regarded by many as false are entitled to protection under section 20 of the Constitution. The court expressed the view that falsehoods are the very reason for the existence of the constitutional protection of the freedom of expression. What is regarded by many as the truth is tolerated anyway and therefore, it has no need for a constitutional protection.

ii) **Public Order and Security Act**

The Public Order and Security Act (Chapter 11:17), (POSA), that replaced LOMA, infringes the constitutional guarantee of the right to freedom of expression. The statute reverses all the gains made in the post independence period during which period unconstitutional sections of LOMA were struck down.

In terms of section 15 of the Public Order and Security Act one commits an offence if one publishes a statement, which is wholly or materially false with or without intention or realizing that there is a risk of public disorder or public violence being occasioned. The Act defines a statement as ‘any expression of fact or **opinion**, whether made orally, in writing, electronically or by visual images.’ In the interest of encouraging debate, we leave it to our readers to determine whether it is possible to regard an opinion as false.

iii) **Access to Information and Protection of Privacy Act**

Access to Information and Protection of Privacy Act (Chapter 10:27), (AIPPA), effectually controls rather than regulates mass media. In terms of s79 of the Act all journalists are obliged to be credited as a prerequisite to practicing. This is unconstitutional as essentially one is compelled to register with a certain board to express himself. Furthermore the Act criminalizes the abuse of journalistic privilege. S80(1) states that ‘a journalist shall be deemed to have abused his journalistic privilege and committed an offence if [he] publishes falsehoods.’

A number of journalists particularly from the private media have been arrested for alleged abuse of their journalistic privileges. Pluralism is an end product of democracy. That pluralism should not only embrace many political parties, but also ideas, even those generally regarded as offensive or prejudicial to the state. Both POSA and AIPPA resurrect the false news provisions of LOMA.

A similar requirement was criticized by the African Commission on Human and People Rights when it noted, “Of more concern is the total discretion and finality of the decision of the registration board, which effectively gives the government the power to prohibit publication of any newspaper or magazines which they choose. This invites censorship and seriously endangers the rights of the public to receive information, protected by Article 9.1”.¹

¹ Media Right Agenda and Constitutional Rights Project vs Nigeria. 130/94

2 Human Rights Violations

a Political

Organised violence did not decline throughout the country in August with its focal point appearing to be an effort to stop people from supporting the opposition party MDC and rejoin Zanu PF. Cases of displacement of farm workers were reported as Government began to implement Section 8 (of the Land Acquisition Act) notices served earlier in the year. Commercial farmers were being forced to vacate their farms, at times leaving all their property behind and their workers left internally displaced, the majority of them not accommodated by the land resettlement program.

b Ordinary

8 murders were recorded in August, an increase of 3 murders from the figure for July while figures for political intimidation and victimization doubled.

Table 1. Human rights violations during August 2002 in Zimbabwe, including those resulting from political violence.

<i>Type of Violation</i>	<i>Ordinary:</i>	<i>Political</i>	<i>Total</i>
abduction/ kidnapping	0	0	0
assault	7	23	30
attempted murder	1	0	1
death penalty	0	0	0
death threats	0	1	1
disappearance	0	0	0
displacement	0	0	0
firearms offence	0	0	0
freedom of expression/ assembly association/movement	0	0	0
murder	8	0	8
political intimidation/ discrimination/ victimisation	0	35	35
property-related	1	6	7
rape	3	0	3
school closure	0	0	0
torture	0	7	7
unlawful arrest	0	0	0
unlawful detention	0	0	0

Notes to the table

Torture:

All cases of torture fall under the definition of torture according to the general definition given in the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment and Punishment.

The four elements of torture are:

- 1 Severe **pain** and **suffering**, whether physical or mental
- 2 **Intentionally** inflicted
- 3 With a **purpose**
- 4 By a state official or another individual acting with the **acquiescence** of the State.

Those individuals referred to in point # 4 include the ZRP, ZNA, ZPS and the ZNLWVA (as a reserve force of the ZNA) and by any other grouping when directly sanctioned by the state.

Unlawful arrest and detention:

Arrest by the Zimbabwe Republic Police (ZRP) with no reasonable suspicion that an offence has been committed. Detention thereafter for a period exceeding 48 hours without access to redress through the courts or subsequent release without charge.

Abduction/kidnapping:

A kidnapping by a member(s) of an organised group that is not the ZRP eg. political party, ZNLWVA, ZNA, MDC, Zanu PF etc

Disappearance:

Kidnapped persons whose whereabouts remained unknown at the time of reporting. Their whereabouts have still to be ascertained through follow-up reports or further investigation.

Property-related

These are incidents in which property rights have been violated. This includes arson, property damage and destruction and theft.

3 Zimbabwe Human Rights NGO Forum Member Focus:

The *Human Rights Monthly*, carries a brief narrative on the activities of a member of the Zimbabwe Human Rights NGO Forum in each issue. This is intended to assist our readers to understand the activities of the coalition and furthermore about the services offered by each NGO. This month we feature the Legal Resources Foundation.

Legal Resources Foundation (LRF)

Background Information

The Legal Resources Foundation (LRF) is an autonomous, charitable and educational trust, established by trust deed and registered under the Welfare Organisations Act [93/67] in 1984. It was established to meet an expressed need to improve the accessibility of legal and information services to all sections of the population. The LRF aims to encourage a democratic environment in Zimbabwe, based on the rule of law, by extending legal information and legal assistance to Zimbabweans. This is done through facilitating the advancement and development of the community through legal knowledge. Further to this, LRF strengthens and supports institutions that have been established to promote and protect individual and group rights. It is on this basis that the Legal Resources Foundation saw it fit to become a member organization of the Zimbabwe Human Rights NGO Forum

Programmes undertaken by the LRF are based on the understanding that human rights in Zimbabwe can be advanced by facilitating access to the legal system. The LRF believes that disadvantaged people, particularly women, can be empowered to assert their rights through the legal system.

How does LRF assist members of the community/ society

The LRF carries out programmes targeted at the rural and urban poor, disadvantaged women, scholars and the general public. The three types of programmes offered throughout Zimbabwean communities are as follows:

- **Paralegal Programme**

This programme operates legal advice centers in 5 urban, 4 suburban and 20 rural areas. The centers are staffed by trained paralegals who advise and educate their communities on legal issues. In association with this programme, the test case committee takes up cases of general public interest or those cases which establish new legal precedents and protect the human rights of Zimbabweans.

- **Education Programme**

The education programme has provided human rights training to police recruits, workshops on human rights issues for secondary school teachers, court officials and other judicial officers. Education has also been carried out through pamphlets produced in the country's three major languages on the Declaration of Rights, Birth certificates, Domestic Violence, Making a Will and Maintenance among other topics

- **Publications Programme**

Legal awareness is improved by the provision of advice and publications. The LRF's publications also provide a vital resource for the legal profession. To compliment this programme the LRF has established libraries at each of their Legal Projects Centres with extensive collections of current legal texts, law reports and human rights materials.

The *Human Rights Monitor* is produced by the Zimbabwe Human Rights NGO Forum (known as the "Human Rights Forum") and is distributed **free of charge** through its member NGOs.

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The Human Rights Forum occupies Suite 1, 1 Raleigh Street (corner Rotten Row), Harare.

We can be phoned on (04) 792222; 737509; 731660; or faxed on (04) 772860.

Our postal address is: P O Box 5465, Harare; or email: research@hrforum.co.zw