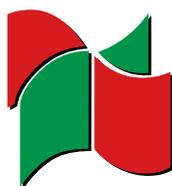




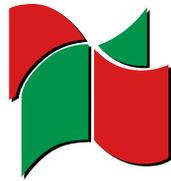
## THE NEW DECEPTION: WHAT HAS CHANGED?

A Baseline Study on the Record of the Zimbabwe's  
'New Dispensation' in Upholding Human Rights



Zimbabwe  
**HUMAN RIGHTS**  
NGO Forum

August 2019



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**HUMAN RIGHTS**  
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## **THE NEW DECEPTION: WHAT HAS CHANGED?**

A Baseline Study on the Record of the Zimbabwe's  
New Dispensation in Upholding Human Rights

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# INTRODUCTION<sup>1</sup>

The Zimbabwe Human Rights NGO Forum, the “Human Rights Forum”, was formed in response to a food riots human rights crisis in 1998, and in the 20 years since, it has been in the forefront of reporting on human rights violations. From documenting the violations that took place in 1998, it has monitored the violations on a monthly basis from July 2001 until June 2009, issuing 96 monthly reports and more than 50 analytical reports. The Human Rights Forum has thus established itself, with all its members, as an authoritative source on the state of human rights in Zimbabwe. It is on this basis that the Human Rights Forum issues this baseline report on the adherence in 2019 to the constitution, the rule of law, good governance and human rights by the Zimbabwe government elected in July 2018.<sup>2</sup>

## Background

Since the food riots in 1998, Zimbabwe has been through many political and socio-economic changes, some of which contributed to the alienation of the country from full participation in international affairs. The past twenty years have seen six disputed elections, violent displacements under the Fast Track Land Reform Programme (since 2000) and Operation Murambatsvina (2005), massive hyperinflation (2006 and 2008), a Government of National Unity – GNU (2009 to 2013), and a military coup (or, as some say, a military assisted transition) in 2017. This report examines whether any material change has occurred in the human rights landscape as a result particularly of the changes that took place following the coup in November 2017. To fully understand the current context, it is necessary to examine the multiple events that have led to the current state of affairs in Zimbabwe.

## Political Change, Political Stasis, or Political Deterioration?<sup>3</sup>

On the back of the festering political and socio-economic crisis, Zimbabwe’s main political leaders signed the Global Political Agreement (GPA) in September 2008, with the mediation support from former South Africa President Thabo Mbeki under the Southern African Development Community (SADC) auspices and ushered in the GNU between 2009 and 2013. Some local commentators were pessimistic about the prospect of any material changes emerging,<sup>4</sup> and the role of SADC. It even was suggested that, contrary to the emerging trends towards ending authoritarian rule and multiple terms for presidents, Zimbabwe would once prove the outlier in southern African politics.<sup>5</sup>

In any event, it has been the case that few credited the ruling ZANU-PF party with any desire to reform. In a region dominated by former liberation movements, ZANU-PF is an outlier when it comes to moving away from the authoritarian approach to politics.<sup>6</sup> Some have even characterized Zimbabwe as a predatory state.<sup>7</sup> These analyses, some nearly a decade old, all suggest that the

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1. This report was produced by the Research and Advocacy Unit (RAU) for the Human Rights Forum.

2. It is worth briefly noting that in the discussions between the EU and the Zimbabwe government, the conditions for Zimbabwe accessing EU support under the Cotonou Agreement are based in Article 9: *Respect for all human rights and fundamental freedoms, including respect for fundamental social rights, democracy, based on the rule of law, and transparent and accountable governance are an integral part of sustainable development.* The question at issue currently is over the extent to which the “new dispensation” is adhering to these principles.

3. This section is based on a recent conflict analysis produced for an international non-governmental organisation.

4. SPT (2010), *What Options for Zimbabwe? 31 March 2010. Johannesburg: Solidarity Peace Trust; RAU (2010), What are the options for Zimbabwe? Dealing with the obvious!* Report produced by the Governance Programme. 4 May 2010. Harare: Research & Advocacy Unit.

5. RAU (2012), *Bucking the Trend: Africa, Zimbabwe, Demand for Democracy, and Elections.* May 2012. Harare: Research & Advocacy Unit.

6. Clapham, C (2012), *From Liberation Movement to Government. Past legacies and the challenge of transition in Africa.* Discussion Paper

8. Johannesburg: The Brenthurst Foundation; Bratton. M (2014), *Power Politics in Zimbabwe.* London: Lynne Rienner; Southall, R (2013), *Liberation Movements in Power: Party and State in Southern Africa.* James Currey: University of Kwa-Zulu Natal Press.

7. Bratton. M., & Masunungure, E (2011), *The Anatomy of Political Predation: Leaders, Elites and Coalitions in Zimbabwe, 1980-2010.* January 2011. Research Paper 09. Development Leadership Program.

nature of Zimbabwean politics is inherently conflictive, and that the resort to violence and repression when power is challenged is highly probable, especially in the context of elections. This is particularly the case when the challenge for the executive is serious, as was the case in 2002 and 2008, both exceptionally violent elections, even by SADC standards (CSVR.2009).<sup>8</sup>

The GPA was introduced nonetheless in an atmosphere of excitement, for the citizens and the international community, but quickly it became clear that the GPA was more a peace treaty than the instrument for a transition. There was virtually no reform of any material consequence, although the economy stabilized quickly and had shown growth by the time of the next election in 2013. Perhaps the singular political achievement was the new constitution signed into law in May 2013, but this too reflected the polarized nature of Zimbabwean politics. The process stuttered along, resulted in highly divisive positions amongst civil society, and in the end the product was more the kind of instrument that many had feared would emerge: more the result of horse-trading between the two major political parties and with the input of the general citizenry minimized.

After considerable difficulty and obstruction, Zimbabwe finally got its new constitution, but very much at the 11th hour, and much too late to have any effect on the playing field for the 2013 elections. Whether by design or default, Zimbabwe went into the 2013 election on largely the same basis as 2008, but with a marked absence of overt violence. Many observers were not satisfied with either the process or the outcome, and everyone was stunned by the magnitude of the ZANU-PF victory, and especially the size of Robert Mugabe's own victory (61%). Even the most thorough analyses of the election failed to explain this magnitude of victory.<sup>9</sup>

For those that thought the ZANU-PF victory would result in the state taking advantage of the gains in the economy and the consolidation of political power, the reality soon showed otherwise. Both main political parties (ZANU-PF and MDC) began fracturing and economic mismanagement returned with vengeance. ZANU-PF began by purging its deputy president for 10 years, Joice Mujuru, and all those close to her. This followed the death of her husband, General Solomon Mujuru who perished in suspicious circumstances in a mysterious fire in a case that many viewed as murder. This purge seemed to have its roots in the 2008 elections, and the so-called "*bhora musango*"<sup>10</sup> initiative to internally de-campaign Robert Mugabe from within his own ZANU-PF party: in the event Mugabe lost the first round presidential poll to Morgan Tsvangirai, and the MDC won a majority in parliament. Mujuru and her supporters had begun to accumulate considerable support within the party, with some sources suggesting that she had the support of majority of the Provinces and could be a very serious contender for leadership of the party in the event of Mugabe's death or incapacity.

The purge was brutal and extensive, driven by the President's wife, Grace, and by the time of the party Congress in December 2014, Joice Mujuru and six senior party members had been expelled, her supporters removed from every single Provincial Executive Committee (PEC), and the process moved to expelling 141 lower-level party MPs and officials. The purging finally ended in early 2015, possibly because it was beginning to look like it might shatter the party. What followed was

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8. CSVR (2009), *Subliminal Terror? Human rights violations and torture in Zimbabwe during 2008*. June 2009. Johannesburg: CSVR.

9. Matyszak, D. M (2013), *Fairly Fair. The 2013 elections*. November 2013. Harare: Research & Advocacy Unit; Matyszak, D. A (2014), *An examination of the Performance of the Zimbabwe Electoral Commission (ZEC) in Managing the 2013 Elections in Zimbabwe*. December 2014. Harare: Research & Advocacy Unit.

10. Euphemism for a recalcitrant footballer who does not want teamwork and instead of scoring for the team, he kicks the ball deliberately over the bar or into the terraces. In this case, the ZANU PF electoral candidates, tired of Mugabe, designed the strategy of soiling his credentials and told their supporters to vote them but choose other candidates for presidency instead of Mugabe. In that election Mugabe lost to MDC's Morgan Tsvangirai.

perhaps unsurprising: another tussle began for control of the party between two factions, Lacoste and G40. The former was alleged to be supportive of Emmerson Mnangagwa and the latter supportive of Jonathan Moyo and Saviour Kasukuwere: the existence of these factions was strenuously denied by both but were plausible because both factions accused the other of being a faction. Whatever the truth, the visible acrimony between members of these “alleged” factions had a deleterious effect on the government, with policy becoming increasingly incoherent, and economy began to slide dramatically. The battle over succession continued unabated until the eve of the party Congress in 2017, the expulsion of Emmerson Mnangagwa, and the coup in November 2017.

For the MDC, the process of deconstruction was equally acrimonious, beginning with an attempt at leadership renewal, and the split. This resulted in the expulsion of several senior officials, including Tendai Biti, with the consequence of the rebels recalled from parliament, weakening the opposition within parliament, and further increasing ZANU-PF’s already two-thirds majority. From this point on, and especially after Morgan Tsvangirai’s illness and death, the various MDC factions seemed bent on political suicide ahead of the 2018 elections.

For the ordinary Zimbabwean, there was no relief from increasing hardship as the economy began to slowly collapse: companies began to close, workers made redundant, and most of the possible workforce consigned to the informal sector. Vending, cross-border trading and migration seemed the only prospects for young Zimbabweans. Given that nearly 70% of the Zimbabwean population was now under the age of 35 years, the potential for civil unrest or worse because of the “youth bulge” seemed very high. This seemed to have some impetus during 2016 with a marked increase in citizen protest, but also with little violent repression by the state.

The dramatic ousting of Robert Mugabe in November 2017, whether by “coup” or “military-assisted transition” looked initially as if the political game in Zimbabwe could change: the acceptance by national and international factors seemed predicated on the need for stability, especially for the economy. The “New Dispensation” of Mnangagwa, and the “open for business” mantra seemed to be highly encouraging at first, but, with elections looming in mid-2018, it proved illusory as the hard economic decisions – cutting government spending, downsizing the government workforce, etc. – were avoided, and international re-engagement was minimal.

It became apparent that *sine qua non* for re-engagement would hinge on the elections and their acceptability: the “cure for the coup” had to be an unqualified grade for the election. Regrettably, this did not happen. Although the elections were largely peaceful, there were significant concerns raised about the processes leading up to the elections, conflict around the announcing of the results, and the violence on 1st August, with the army on the streets for the first time since 1998. The events of August 2018 were investigated by a Commission set up by President Mnangagwa, *the Motlanthe Commission*, whose findings concluded that the demonstration that turned into riots and extensive looting, were planned by the MDC Alliance, and furthermore that the army was legally deployed.<sup>11</sup> Both of these findings are disputed: the MDC Alliance denies any responsibility, civil society expressed severe reservations about the process and the content of the report,<sup>12</sup> and it was not evident that the army had in fact been deployed constitutionally given that parliament had

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11. Government of Zimbabwe, *REPORT OF THE COMMISSION OF INQUIRY INTO THE 1ST OF AUGUST 2018 POST-ELECTION VIOLENCE*. 1st December 2018.

12. ZHRNGOF (2018), *Statement on the Commission of Inquiry on the August 1 Post Election Violence Report*. 23 December 2018. [<https://www.hrforumzim.org/news/statement-on-the-commission-of-inquiry-on-the-august-1-post-election-violence-report/>]

not been informed as required under the constitution.<sup>13</sup> Notably, the Commission established that the Zimbabwe security forces (military and police), were responsible for the deaths of six people killed during the August 2018 protests.

In the end, the MDC Alliance challenged the result of the Presidential and some House of Assembly results without success, but has rejected the result of the Presidential poll, and continued to label the government appointed by Emmerson Mnangagwa “illegitimate”. Zimbabwe in 2019 is more deeply divided now than at any time in its history (Bratton & Masunungure. 2018).<sup>14</sup> Using a Partisan Trust Gap measure, these authors demonstrate that Zimbabwe is not only deeply divided but is the most divided of all 31 countries in which *Afrobarometer* surveys have been conducted. This demonstration of the polarization was mirrored in the election results. No matter that ZANU-PF won a narrow two-thirds majority in the House of Assembly, this is an artifact of the First-Past-The-Post (FPTP) system. There was near parity between Mnangagwa (51%) and Chamisa (44%), and only a 17% difference in favour of ZANU-PF over the MDC Alliance for the House of Assembly. Thus, the refusal of the MDC Alliance to call the government “legitimate” is more serious than after past elections, particularly because the government is struggling to convince the international community that it has the capacity to lead the country out of the crisis, and will operate strictly within the framework of democratic practices.<sup>15</sup>

Thus, Zimbabwe would seem to be in a much more precarious position and possible developments, especially in the aftermath of a coup, more difficult to predict, and with more serious consequences. The current context therefore requires careful analysis.

## Current Context

Understanding the context is critical, and the possibilities for building sustainable peace. In Zimbabwe, there is too frequently a weak understanding of the dynamics, and since 2008 there has been too little awareness of the predatory nature of the state and the crucial role of the military within the state. Earlier we referred to the notion that Zimbabwe is a predatory state, and considerable support given to this notion by the additional characterization of the country as a “*securocracy*”.<sup>16</sup> We would suggest that this typology not only applied to the years of rule by Robert Mugabe from 1987 (when the post of executive president was introduced), but it deepened in the late 1990s, continued apace from 2000 onwards, and remains the defining character of the post-2017 coup state. It is particularly important in trying to predict possible future conflicts to understand the extent to which this typology remains applicable in 2019 and onwards. It might be argued that the only feature that has changed since the removal of Robert Mugabe is “personal rule”, but also that a “predatory coalition: has remained.

The current context is defined by the 2008 elections. It was during these elections that the military began to interfere openly in electoral affairs and to occupy an increasingly public position, but, in retrospect, the pervasive role of the military had begun much earlier. Analyses of the 2008

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13. It is a complex legal point here. Given that parliament was not in session, it was not possible for the president- in-waiting to do this, but, of concern, was the immediate response of the president and the army commander stating that they had no knowledge of the deployment. This created the impression that the army, or a section of the army, had deployed itself, which would have been wholly unconstitutional.

14. Bratton, M., & Masunungure, E (2018), *Heal the beloved country: Zimbabwe's polarized electorate*. Afrobarometer Policy Paper No. 49. September 2018.

15. It is worth noting that the conflict over the election revolves around ZANU-PF asserting “legality” on the strength of the election results and the Constitutional Court ruling and the MDC (A) asserting that the government has no “legitimacy” – has no support from the people and is still challenged by some in the international community.

16. Mandaza, I (2016), Introduction. in I Mandaza, (2016) *The Political Economy of the State in Zimbabwe: The rise and fall of the Securocrat State*. Harare: Southern African Political Economy Series.

elections<sup>17</sup> demonstrated that the military had been deployed in earnest after *Operation Murambatsvina* in 2005 under the guise of a command agriculture programme, *Operation Taguta* (SPT. 2006).<sup>18</sup> These reports demonstrated the existence of a comprehensive system for monitoring local communities, involving the military, the police, the CIO, traditional leaders, party officials and members, and youth militia. This system was responsible for the violence and intimidation in 2008, with over 430 perpetrators identified in the 15 constituencies studied. There has been no subsequent study of any equivalence, and hence it is not possible to determine empirically the extent to which the system remained in place up until the election in 2013 or after the coup in 2017.<sup>19</sup> The relevance of mentioning this system is in ascertaining the extent to which it might still operate and to what extent it has been disrupted by the coup and the huge changes to the security architecture in the aftermath of the coup.

The biggest concern going forward is in understanding the exact role and influence of the military in civilian affairs. Here the general opacity about the nature of power in Zimbabwe is a considerable hindrance. Using the concepts of “visible”, “hidden”, and “invisible” power, it is generally evident that most sources of power in Zimbabwe are either “hidden” or “invisible”.<sup>20</sup> This is no new phenomenon, but has been pervasive during Robert Mugabe’s rule, and currently this still seems the case, but perhaps is even more complex.<sup>21</sup> For example, there has been endless speculation since November 2017 about whether President Mnangagwa or Vice-President Chiwenga actually hold the reins of power, best exemplified over the problem of the 1st August 2018 deployment of the military.

Furthermore, it is difficult to assess the direct control of the state by the military, and the positioning of “retired” senior military personnel into ministerial posts seems ambiguous: have the relinquished military obedience, deployed to maintain military influence, or sidelined from the military in order for a faction within the army to consolidate itself.<sup>22</sup>

The examples of the deployment of the military to quell protests, in August 2018 and January 2019, do not assist in understanding “invisible” power. The avoidance of full compliance with the constitution complicates the issue further. The Constitution requires the President to inform parliament immediately after he deploys the military,<sup>23</sup> but, as with the deployment in August 2018, the 2019 deployment seems again to have been unconstitutional with the failure to inform

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17. *The Anatomy of Terror*, (2010), Heinrich Boell Foundation Archiv e [[https://za.boell.org/sites/default/files/downloads/THE\\_ANATOMY\\_OF\\_TERROR.pdf](https://za.boell.org/sites/default/files/downloads/THE_ANATOMY_OF_TERROR.pdf)]

18. SPT (2006), *Operation Taguta/Sisuthu: Command Agriculture in Zimbabwe: its impact on rural communities in Matabeleland*. April 2006. Solidarity Peace Trust: South Africa & Zimbabwe.

19. This system may well have been implicated in the 2018 elections. For example, “*Zimbabwe’s rural voter: Case of being assisted to steal your own vote*”, Nkosana Dlamini, New Zimbabwe, 15 March 2019, [<https://www.newzimbabwe.com/zimbabwes-rural-voter-case-of-being-assisted-to-steal-your-own-vote/>]

20. “Visible” power is seen as “observable decision making. “Hidden” power is concerned with the nature of decision making and the ways in which certain powerful people or institutions determine this. “Invisible” power is concerned with shaping “psychological and ideological boundaries of participation”. Obviously, the more visible power is within a society the greater the possibilities for citizen agency and influence.

21. However, whether power was termed hidden or invisible, in the sense that it was not apparent how decisions were made, it was clear until November 2017 that Robert Mugabe would always have the final say. It could be argued that Mugabe was visible, hidden and invisible power rolled into one.

22. “*ED purges Chiwenga top allies*”, Obey Manayati & Xolisani Ncube, *Newsday*, 19 February 2019. [<https://www.newsday.co.zw/2019/02/ed-purges-chiwenga-top-allies/>]

23. Zimbabwe Constitution section 214: Political accountability for deployment of Defence Forces:

When the Defence Forces are deployed:

- (a) in Zimbabwe to assist in the maintenance of public order; or
- (b) outside Zimbabwe;

The President must cause Parliament to be informed, promptly and in appropriate detail, of the reasons for their deployment and—

- (i) where they are deployed in Zimbabwe, the place where they are deployed;
- (ii) where they are deployed outside Zimbabwe, the country in which they are deployed.

A photograph of President Emmerson Mnangagwa of Zimbabwe, wearing a dark suit, a red patterned tie, and a gold chain of office with several medals. He is looking slightly to the left with a serious expression. The background is a blurred crowd of people.

**“I deployed  
the army.”**

**President Emmerson Mnangagwa**  
Daily News, 15 March 2019

A photograph of Victor Matemadanda, Zimbabwe's Deputy Minister of Defence, speaking at a public event. He is wearing a dark suit and a green scarf with the text "VOTE CHELEUMI" and "UNITE" visible. He has his hands clasped in front of him and is gesturing with his right hand. The background shows other people, some wearing similar green scarves.

**“Our Constitution that we wrote together  
allows us to send soldiers and they don’t  
use minimum force, they don’t know  
it. They’re trained to kill”**

**Victor Matemadanda**  
Zimbabwe’s Deputy Minister of Defence  
27 July 2019

parliament timeously, and only doing so two months later.<sup>24</sup> The lack of adherence to strict constitutionalism is continuing under the “new dispensation”, and this perpetuates the “invisibility” of political power.

This has begun to take on a more sinister character with the disturbances in January. This has revealed several factors of concern. The first is the obvious return to the use of violence and the active involvement of the military, with the sustained presence of the military around the country. This is reported by multiple sources,<sup>25</sup> leading one Zimbabwean platform to even suggest that the violence reached the threshold of crimes against humanity.<sup>26</sup> Although the violence has diminished since 4th February, reports indicate that this continues at a lower level since then, with the army being implicated in 20% of the reports.<sup>27</sup>

The second factor is the patent emergence of a very angry and frustrated citizenry. Whilst there have been allegations that much of the violence and looting was under the agency of a “third force”, at least one analysis demonstrates that this may just be speculation.<sup>28</sup> This report raises both the anger of ordinary citizens and the emergence of overt ethnicity in Matabeleland with evidence of specific targeting of businesses owned by perceived Shona persons. This comes on the back of increasing, and highly vocal, demands for addressing the violations of the 1980s, the Gukurahundi.

The third factor revolves around the continued assertion by the government that the disturbances were fostered by the MDC Alliance and civil society organisations. This has led to multiple arrests of MDC members of parliament, labour leaders, and leaders of civil society organisations on serious charges; treason, subversion, and fostering public violence all have been alleged. This response by the government is not abating: and the government now threatens action against NGOs,<sup>29</sup> and the even more disturbing is moving to passing of anti-terrorism legislation.<sup>30</sup> The campaign seems unabated, drawing the concern of the international community.

All these factors taken together suggest that the government will maintain its hostile view of NGOs and civil society organization. This is likely to become increasingly problematic as the economy continues to slide, and, even if there are improvements to the macroeconomic environment, the next few years are most probably going to result in increased hardship for ordinary citizens. For example, ZimStats, the government’s statistical agency, calculates that year-on-year inflation rose from 57% in January 2019 to nearly 60% in February, having risen by 50% since October 2018. This will obviously affect the poorer sections of the population, which is virtually the entire population.

The point made here is that the way in which citizens perceive their own economic situation is a probable source of conflict, and this has already occurred in 2019 with persistent industrial action

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24. “President notifies Parly of army role”, The Herald, 15 March 2019. [<https://www.herald.co.zw/president-notifies-parly-of-army-role/>]

25. ZHRNGOF (2019), *On the Days of Darkness. An Updated Report on the Human Rights Violations Committed between 14th January 2019 to 4th February 2019*. Harare: Zimbabwe Human Rights NGO Forum; HRW (2019), *Zimbabwe: Excessive Force Used Against Protesters. Investigate, Prosecute Responsible Security Forces*. 12 March 2019. Human Rights Watch. [<https://www.hrw.org/news/2019/03/12/zimbabwe-excessive-force-used-against-protesters/>]

26. National Transitional Justice Working Group (2019), *Crimes Against Humanity Alert! Zimbabwe on the brink as violations intensify*. February 2019. Harare: National Transitional Justice Working Group.

27. ZPP (2019), *Monthly Monitoring Report*. February 2019. Harare: Zimbabwe Peace Project.

28. SPT (2019), *Resurgent Authoritarianism: The Politics of the January 2019 Violence in Zimbabwe*. 20 February 2019. Solidarity Peace Trust: South Africa & Zimbabwe.

29. “Government tightens screws on NGOs”, NewsDay, 15 March 2019. [<https://www.newsday.co.zw/2019/03/government-tightens-screws-on-ngos/>]

30. “Govt to blacklist, freeze terrorist funds”, The Herald, 16 March 2019. [<https://www.herald.co.zw/govt-to-blacklist-freeze-terrorist-funds/>]

by a variety of government workers. The government response to these legal disputes has been repressive, and there are multiple reports of human rights violations perpetrated against teachers, particularly.<sup>31</sup> It is highly probable that the economy will become a major source of conflict the short to medium term.

Thus, the context suggests that Zimbabwe is in a very complex crisis, which some would describe as “fragile”, and it may be possible that Zimbabwe will slip from “fragile” into “failed” if certain conflicts take place.

### **Political Violence in Zimbabwe**

A major concern for the future, and especially the short-term, is over the prospect that the country will slide back into widespread political violence. Political violence has been a sustained problem in Zimbabwe since 1998, and thus we shortly describe the history of political violence since the food riots in 1998, and the birth of the Zimbabwe Human Rights NGO Forum.

In order to provide an overview of the political violence, we made use of the Armed Conflict Local Event Data (ACLED).<sup>32</sup> This database, which covers Zimbabwe as well as most countries in the world experiencing political violence, contains over 11,000 entries in Zimbabwe since 1997. The events are derived from publicly available data sources, including local and international human rights groups, local and international media reports, and other sources. ACLED has a standard coding system for violent events, categorising the data from public sources in such a way as the allow comparisons across countries, and within countries over time. We used the data on Zimbabwe, entered on a spreadsheet, created expanded (binary) fields, and then examined the data for two main periods.

The first analysis was the global description of all violent events from 1997 to April 2019. We then looked at the period from the end of the Global Political Agreement and the GNU and compared the period from the election in 2013 to the coup in November 2017 with the period of the “new dispensation” from November 2017 to April 2019.



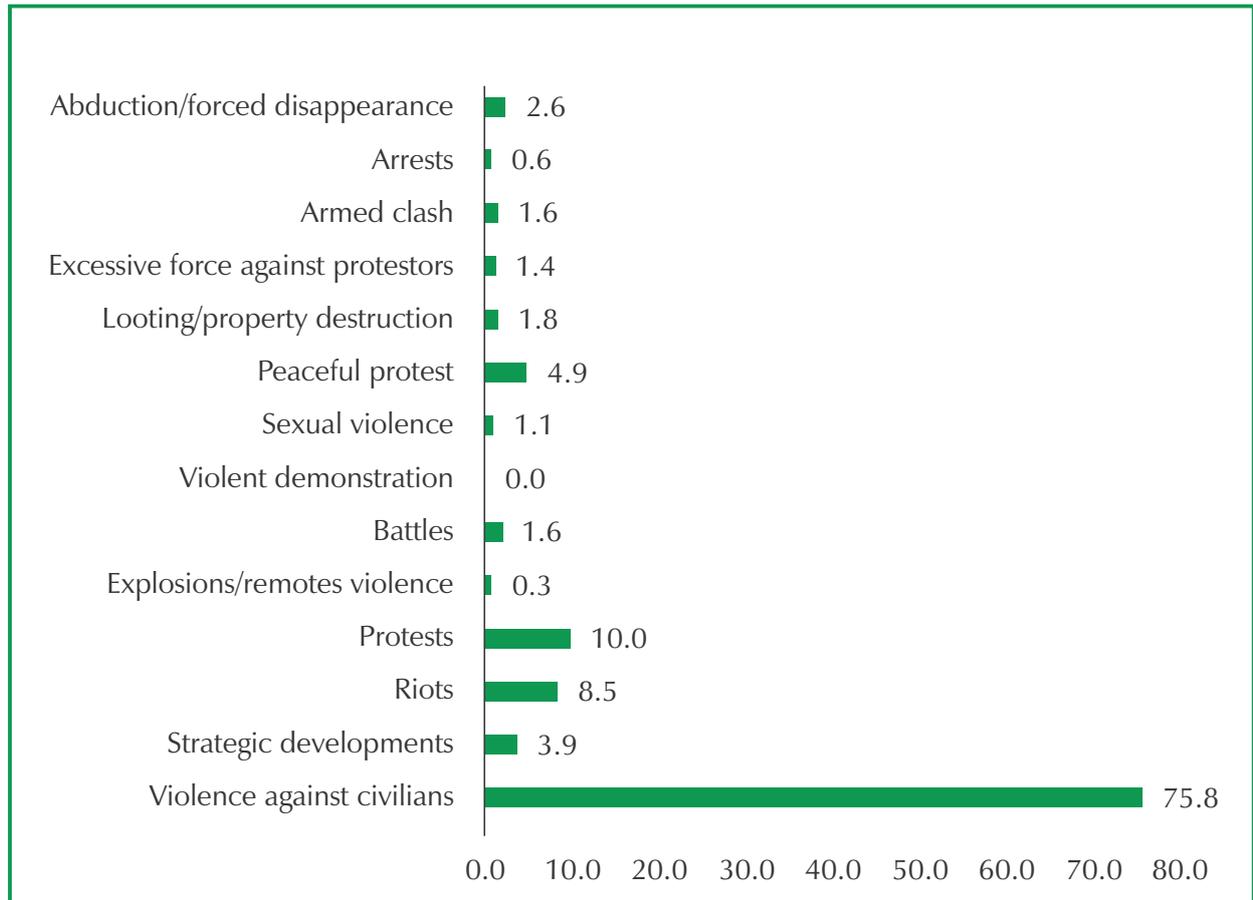
31. RAU (2019), *A Preliminary Report on Violations against Teachers: January & February 2019*. March 2019. (embargoed report).

32. ACLED. (2017). “Armed Conflict Location & Event Data Project (ACLED) Codebook, 2017.” [<https://www.acleddata.com/>]

## Political Violence since 1998

Since 1998, Zimbabwe has vacillated between periods of comparative peace and times of extreme violence, with the violence mostly associated with elections. Using comparative data on five SADC countries – Angola, Mozambique, Namibia, South Africa and Zimbabwe – the ACLED data demonstrates that Zimbabwe is the most violent of these five countries, all led by former Liberation Movements.<sup>33</sup> This is noteworthy because the analysis dealt with countries that all have had violent pasts in the lead up to independence.

**Figure 1. Violent Events (%): 1998 - 2019**  
 [Source: ACLED Database]



**Figure 1** shows the distribution of the violent events recorded since 1998, and violence *against civilians* is by far the most common violent event recorded. The next most common events are riots and protests, but, in general, all the other violent events are at low frequencies. This would be expected in a country that is not at war, but only in sustained civil conflict, and it is not expected that *armed clashes* or *remote explosions* (landmines, for example) would be common in a country not at war. The overall picture is in keeping with what is known about the last 20 years, a country that has serious political conflicts that lead to civil strife, but the picture only becomes clear when the actors are examined. It is worth noting that the ACLED data indicates that 935 fatalities recorded since 1998, which is a significant number.

*Violence against civilians is far and away the most common violent event recorded.*

33. RAU (2016), *Are former liberation movements inherently violent as governments?* February 2016. Harare: Research & Advocacy Unit



**“Anti-riot police officers disperse  
crowds gathering for the MDC’s Free  
Zimbabwe Campaign.”**

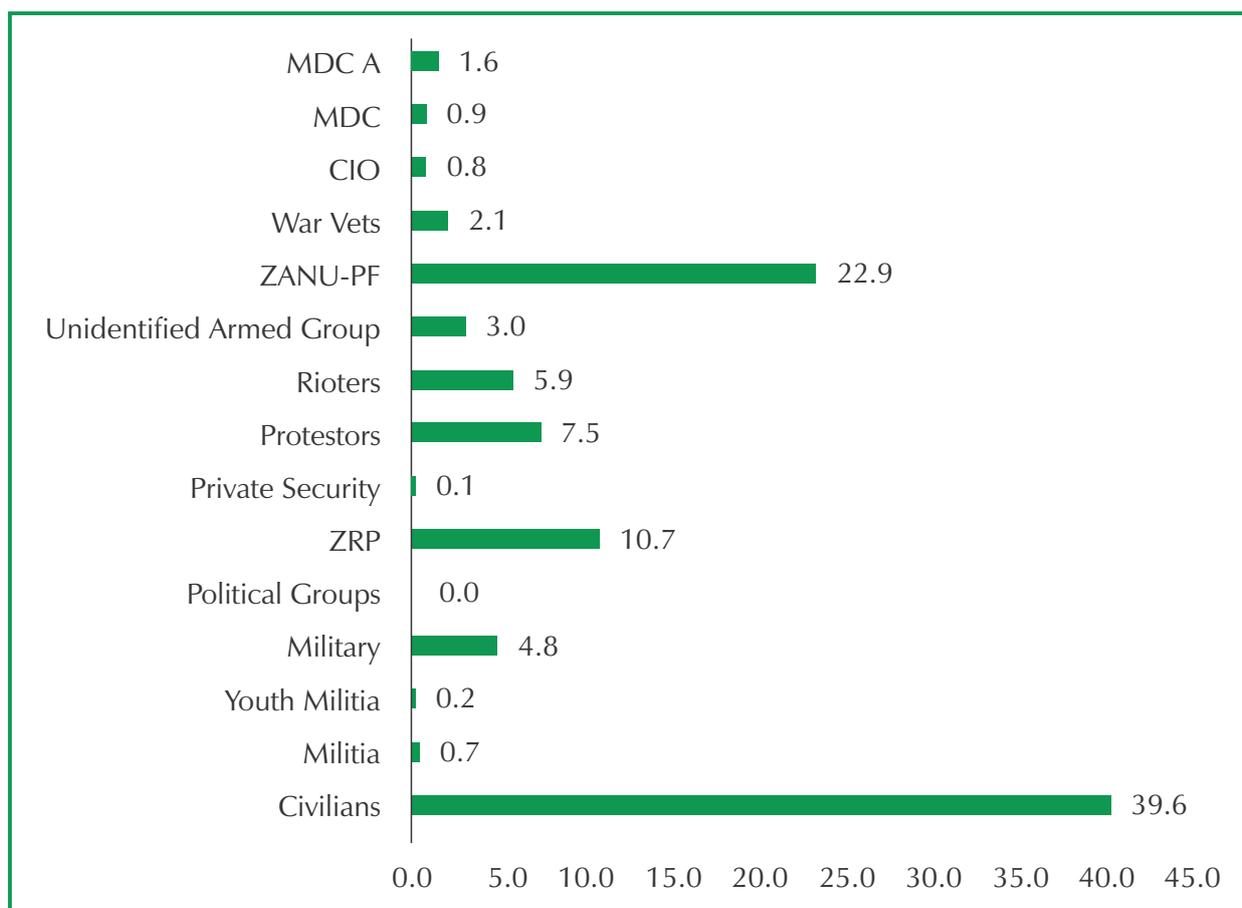
**16 August 2019**



**“Anti-riot police officers beat up  
an apologetic elderly woman at  
the main entrance to the Harare  
Magistrates Court building”**

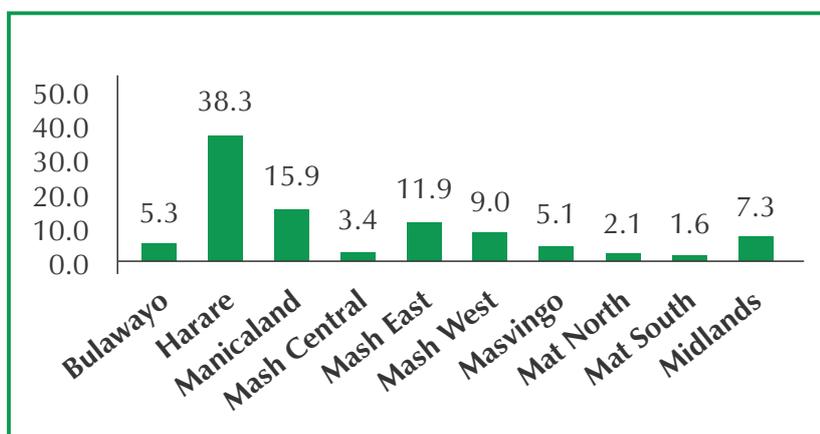
**27 August 2016**

**Figure 2. Actors in Violent Events (%): 1998 - 2019**  
 [Source: ACLED Database]



It is evident from **Figure 2** that the major perpetrators are civilians and members of ZANU-PF, but this requires some clarification. This analysis deals with all reports from 1998 to 2019, over 20 years, and, as seen in the following section, the involvement of civilians in violent acts is a feature of recent history, mostly the period following the coup in November 2017. The police and the military are mentioned over the 21 years, jointly accounting for 33% of the reported violence, but the police are mentioned with greater frequency.

**Figure 3. Distribution of Violent Events by Province (%): 1998 - 2019.** [Source: ACLED Database]

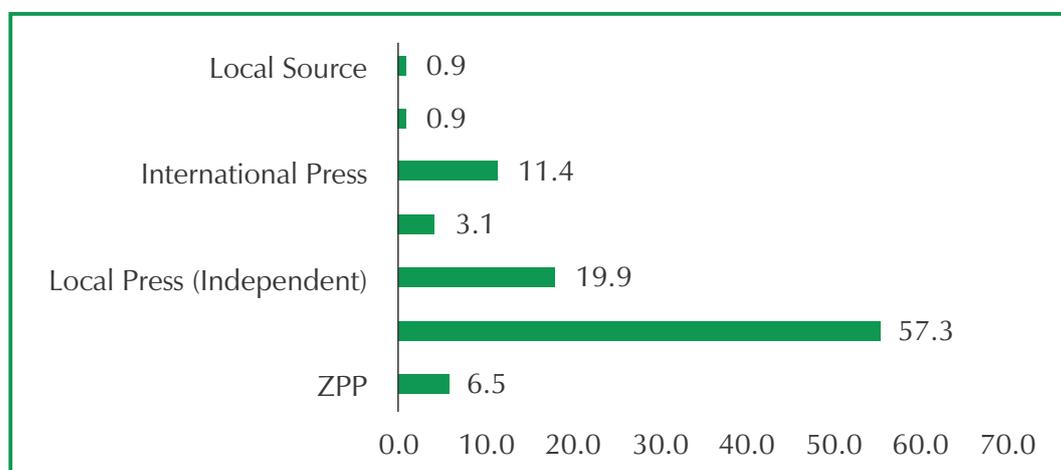


When the distribution of violent events is examined, it is interesting to note the high frequency of events from Harare, especially when it is commonly assumed that the violence is mostly confined to rural areas. Harare, of course, does rank as one of the most violent Provinces in other data sources.<sup>34</sup>

34. Zimbabwe Human Rights NGO Forum (2006), *An Analysis of the Zimbabwe Human Rights NGO Forum Legal Cases, 1998–2006*. Published by the Zimbabwe Human Rights NGO Forum. June 2006, Harare: Zimbabwe Human Rights NGO Forum.

The most startling finding from the ACLED data is over the sources of information. As can be seen in Figure 3, nearly 64% of the reports emanate from the Human Rights Forum or a member of the Forum. This has drawn previous comment.<sup>35</sup>

**Figure 4. Source of Information (%): 1998 - 2019**  
[ACLED Database]



The importance of this finding is that allegations about political violence and gross human rights violations in Zimbabwe come from a very solid empirical base, with affidavits and medical reports supporting much of the data. This data is strengthened using civil litigation, and court judgements, and here it can be claimed without bragging that Zimbabwean civil society is a world leader in the use of court actions to challenge human rights violations.<sup>36</sup>

This is all very useful background and demonstrates the endemic nature of political violence in Zimbabwe, and most of these violations took place when the country was governed by successive governments headed by Robert Mugabe. It is also the case that violent events did decline after 2008, both during the tenure of the Inclusive Government and subsequently under the “new” ZANU-PF government elected in 2013. The question is, however, has decline continued under the “new dispensation” that took over in November 2017 and continued when elected in 2018?

## Violent Events and Elections

Before looking at the past 18 months, and the comparison between the pre- and post-coup violent events, it is worth taking a brief look at the differences in violent events between periods when there are elections and when there are not.

In order to do this, we compared years in which there were elections and when there were not. The rationale here is that elections usually have a considerably longer lead in than the mere three months mandated under the electoral laws. For example, it can be argued that the campaign for the 2002 Presidential election began with the sequence of by-elections that commenced at the end of 2000, and the whole period between this time and the actual election in 2002 was one long election campaign period. Again, 2005 was a year in which there was both an election and the mass displacements under Operation Murambatsvina. Hence, we are comparing years in which there were serious challenges to the ownership of political power.

35. RAU (2016), *Are former liberation movements inherently violent as governments?* February 2016. Harare: Research & Advocacy Unit.

36. ZHRNGOF (2016), *Transitional Justice in Pre-Transitional Times: Are there any lessons for Zimbabwe?* July 2016. Harare: Zimbabwe Human Rights NGO Forum.

**Table 1: Violent events compared between Elections & Non-elections**

[Source: ACLEAD Data]<sup>37</sup>

VIOLENT EVENTS	NON-ELECTION	ELECTIONS
Violence against civilians	NO	YES
Strategic developments (rallies, etc.)		
Riots	YES	NO
Protests	YES	NO
Explosions/ remotes violence		
Violent demonstration	YES	NO
Sexual violence	NO	YES
Remote explosion		
Protest with intervention	YES	NO
Peaceful protest	YES	NO
Mob violence	YES	NO
Looting/ property destruction		
Excessive force against protestors	YES	NO
Attack	NO	YES
Armed clash	NO	YES
Arrests		
Abduction/ forced disappearance	NO	YES

It is evident from Table 1 that violent events have specific relations to political events, and some are no more or less likely to occur at any time. This will come as no surprise to the informed observer of Zimbabwean politics.

The violent events observed during elections form a clear cluster. *Violence against civilians, attacks, sexual violence, and abductions/forced disappearances* all are more common during elections, as has been reported by many difference bodies, both local and international. *Riots, protests, violent demonstrations, protests with interventions, peaceful protests, and the use of excessive force against protestors* are much more likely outside of elections. This is a summary of events over 20 years, and hence the distribution of some violent events changes across the years. For example, *riots and violent demonstrations* were rarely seen prior to 2018 and 2019, as has been the case with *armed clashes*.

We also examined the actors involved in the violent events and compared these between elections and non-elections. As seen in Table 3 (over), there are once again strongly significant differences between the actors, and when these are likely to be operating.

37. For ease of understanding, we have replaced the actual correlations obtained from statistical analysis in SPSS. The terms, YES and NO, reflect the direction of the correlation. For example, *violence against civilians* in Table 1 means that this was positively correlated with elections and negatively correlated with non-elections. This means that *violence against civilians* was more likely to occur during elections than at other times. Where the row is blank it means that there was no statistical difference between the two variables. Those that want the detailed data can contact the Forum.



# “Mnangagwa prepares for demos crackdown”

ZIMBABWE INDEPENDENT, 14 June 2019



# “Activists abducted, tortured”

News Day, 15 August 2019



**Table 2: Actors in violent events compared between Elections and Non-elections**  
*[Source: ACLEAD Data]*

ACTORS IN VIOLENT EVENTS	NON-ELECTION	ELECTIONS
Civilians	NO	YES
Militia	YES	NO
Military	YES	NO
Border Gezi	YES	NO
ZRP	YES	NO
Private Security		
Protestors	YES	NO
Rioters	YES	NO
Unidentified Armed Group		
ZANU-PF	NO	YES
War Vets	NO	YES
CIO		
MDC	NO	YES

There are clear associations between the kinds of actors and when they are operating, but it can also be seen that this correlates with the kinds of violent events seen the Table 1. *Civilians, ZANU-PF supporters, war veterans and MDC supporters* are more likely to be involved in violent events during elections than at other times. The other cluster, *militia, the military, "Border Gezi", the police, protestors and rioters* are more likely at times other than elections. This again will come as no surprise to the informed observer and described in multiple reports.

**Table 3: Distribution of violent events compared between Elections & Non-elections**  
*[Source: ACLEAD Data]*

PROVINCE	NON-ELECTION	ELECTIONS
Bulawayo	YES	NO
Harare	YES	NO
Manicaland	NO	YES
Mashonaland Central	NO	YES
Mashonaland East	NO	YES
Mashonaland West	NO	YES
Masvingo		
Matabeleland North		
Matabeleland South	NO	YES
Midlands	NO	YES

Finally, we examined the distribution of violent events across provinces, mainly because the general observation has been that rural areas are much more violent during elections than at other times. As can be seen from Table 3, this observation holds out using the ACLED data: Harare and Bulawayo are much more likely to experience violent events outside of elections and the other Provinces more likely to experience violent events during elections. However, it worth remembering here the previous finding that the highest frequency of reported violent events comes from Harare Province (see Figure 1).

*The findings in respect of the differences between elections and other times is not anything new, but serves merely to remind that violent events are not confined to elections only, and suggest that there need to be continuous scrutiny of the political environment and the government's performance in mitigating and preventing political violence.*

### **Political Violence pre- and post-November 2017 Coup**

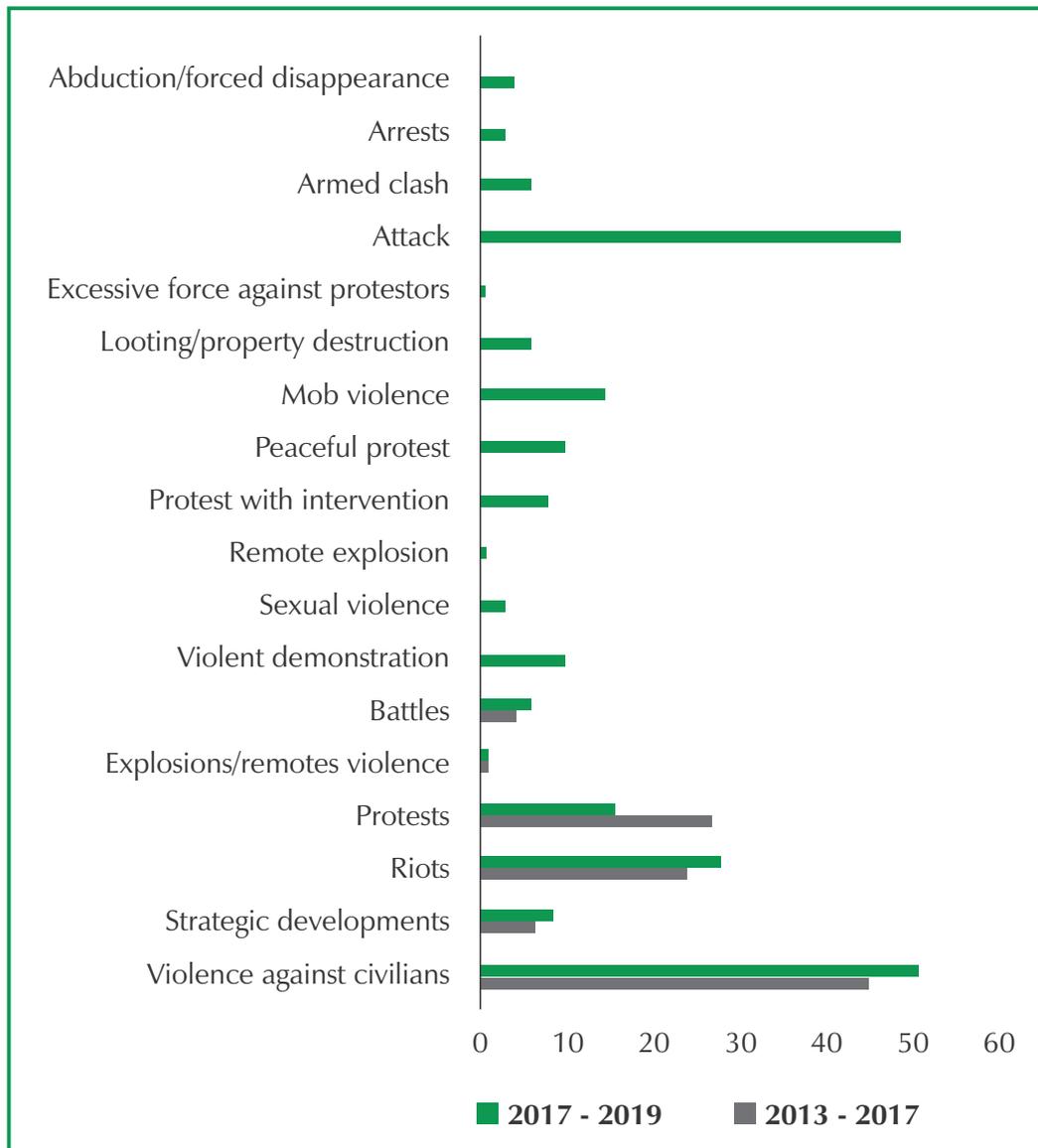
We turn now to the issue about whether the political environment has changed since the November 2017 coup.



In order to answer the question posed above, we chose not to contrast the data from 1998 to November 2017, but rather to make the contrast from the period after the 2013 election, when ZANU-PF returned to power alone without the GNU, with the period following the ouster of Robert Mugabe in November 2017. Thus, we looked at the ACLED data for the period July 2013 to early November 2017 and contrasted this with the ACLED data from the coup up to the latest data in April 2019.

The first comparison was for violent events, shown in Figure 5.

**Figure 5. Comparison of Violent Events:  
2013 - November 2017 & November 2017 - 2019**  
[Source: ACLEAD Database]

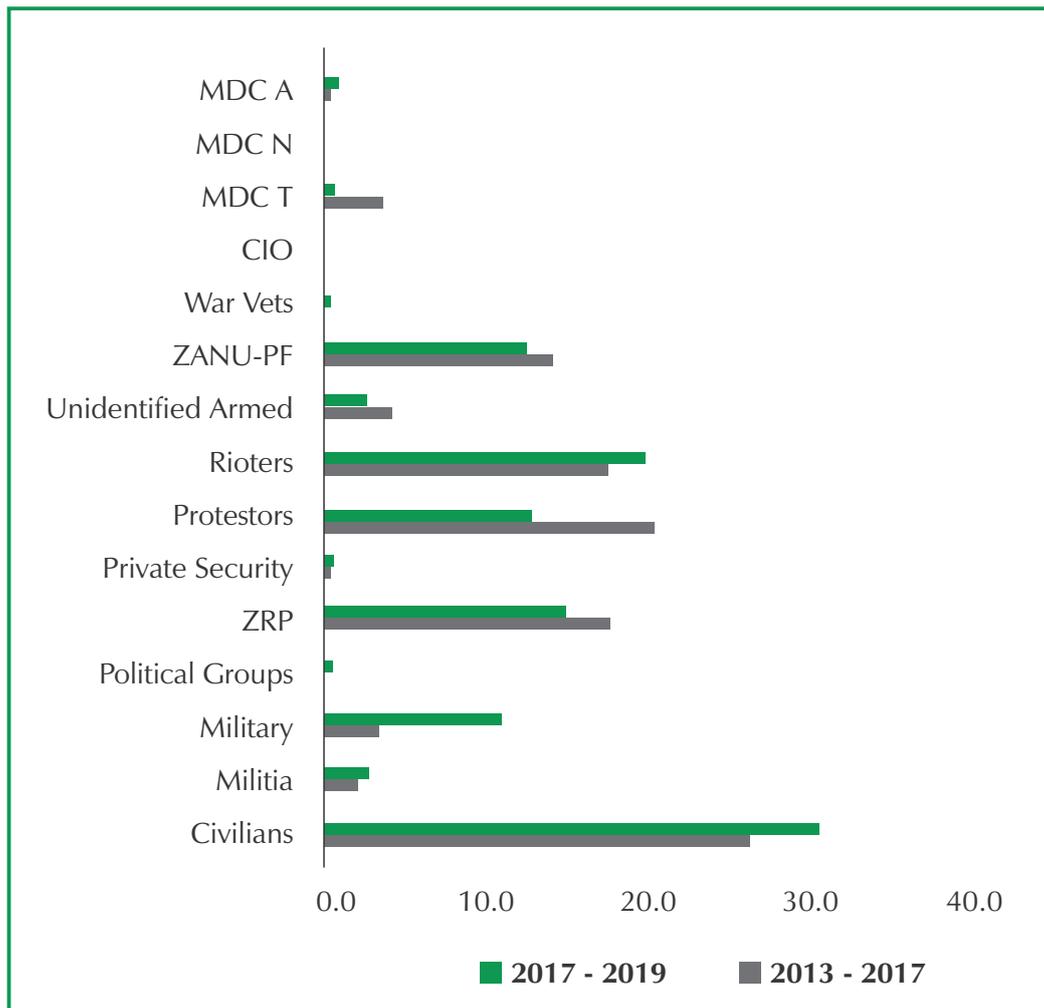


The first thing to note is that most violent events have increased since November 2017. The list is extensive: *abductions, arrests, armed clashes, attacks,*<sup>38</sup> *looting/property destruction, mob violence, sexual violence, violent demonstrations, battles, riots and violence against citizens* have all been more frequent than in the period 2013 to November 2017. It should be noted that whilst some of the differences are very small, they are all statistically significant, and hence the changes seen are real and important. Thus, it is fair to conclude that Zimbabwe is more violent after the coup in 2017.

There are also marked changes in the actors involved in violent acts (Figure 6).

38. There is a strong significant correlation between *violence against civilians* and *attacks* (Pearson's  $r = 0.68$ ;  $p = 0.0001$ ).

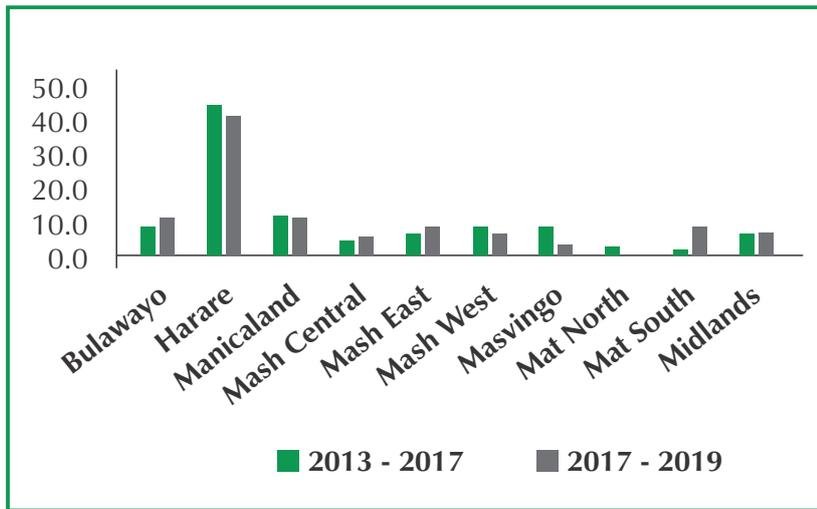
**Figure 6. Comparison of Actors Events:  
2013 - November 2017 & November 2017 - April 2019**  
[Source: ACLEAD Database]



*The involvement of citizens is the very serious development, but so too is the increased involvement of the military.*

As seen in Figure 6, there are significant increases in *civilians, rioters, the military* and *militia* being involved in violent acts since the coup. The involvement of citizens is the very serious development, but so too is the increased involvement of the military. However, and following the point made earlier about the increased hardship being experienced by most citizens (and including rural citizens in the current drought), this is a very worrying development. It suggests that the propensity for civil unrest has grown markedly.

**Figure 7. Comparison of Violent Events by Province:  
2013 - November 2017 & November 2017 - April 2019**  
[Source: ACLED Database]



There is little change in the distribution of violent events across provinces, and this corresponds to the findings about the differences between election and non-election periods. Harare remains the Province where most violent events are recorded, but there is also the increase in Matabeleland South that is different to previous periods.

## Overview of Violence

One thing is clear: Zimbabwe is generally a country that experiences high levels of political violence and, as seen above, these are not confined to elections. It seems also evident that the situation is not improving, rather it is getting worse and there must be considerable concern about the extent to which it might worsen further.

Several factors must be considered in looking forward.

Firstly, the evidence suggests that the military has become much more involved in violent events than at any time since 1998, and this means there must be very careful scrutiny of the conditions and legal mandate under which the army is deployed. We will comment on this in subsequent sections.

Secondly, and it has an important relationship to the first point, the data suggests a greater propensity for civilians to become involved in violent events. This seems driven by economic factors, and here it is merely necessary to point to all the statements emerging from political parties, churches and civil society organisations about the danger of civil unrest.

Thirdly, it is important to add to these two points the risks inherent in Zimbabwe's "youth bulge." With 70% of the population under the age of 35, the risks posed by frustrated and angry young people, most of whom are unemployed (and with little prospect of employment in the near future), should not be trivialised, nor should the concerns of the older population responsible for the care and maintenance of the youth.

All these factors together point to the need for urgent action, and action beyond promises of future betterment: the trends inherent in the data summarised above do not suggest that the population will remain perpetually patient in the face of increasing hardship.



**“Vendors March on the Parliament on 24 June 2015. Riot police blocked the march while lawyers petitioned the High Court. The march was ultimately allowed to proceed.”**

**24 June 2015**



**“Free Zimbabwe Campaign March on  
16 August 2019. Police block the roads  
to Africa Unit Square where protestors  
were supposed to gather for the  
MDC-led march.”**

**16 August 2019**

## THE CONSTITUTION AND THE OBLIGATION TO PROTECT HUMAN RIGHTS

When the new Constitution came into force in 2013, one of the immediate consequences was that all laws that were *ultra vires* or incompatible with the Constitution needed to be repealed or amended as appropriate. The government promised to expedite the process, at the same time claiming that this would, of necessity, be slow as repealing or passing new needed legislation would have to follow the usual procedures. What was important, though, was that the government would stop applying any law that was *prima facie* not in compliance with the Constitution.

An analysis of the government's commitment concluded in 2016 as follows:

*Zimbabwe's Constitution is currently being violated in several ways – the failure to establish constitutionally required institutions, the failure to introduce new legislation to give effect to the Constitution and the failure to amend or formally remove legislation which has become unconstitutional by virtue of the new Charter, referred to by the misnomer of - alignment. The latter process has proved a convenient fig leaf for government. All charges against it of failing to implement the new Constitution are subsumed under the head of alignment with government then claiming that alignment is a lengthy process that cannot be achieved overnight. Government has further claimed that the alignment process is - going well, with the Chief Law Officer asserting that only 116 Acts out of 396 Acts remain to be aligned to the Constitution, and that only 49 of these require extensive changes. The criticism that many of the legislative changes to date are inadequate and omit numerous clauses required (as did the Electoral Act) to bring statutes into full conformity with the Constitution, appears to have been disregarded.<sup>39</sup>*

The question addressed in this section is the extent to which this previous disregard of the principle of constitutionalism has been reversed by the “new dispensation”. The intention is not to provide a comprehensive overview of all the needed “realignments”, but to concentrate on the major issues around constitutionalism, the rule of law and adherence to human rights.

### National Obligations

Following the promulgation of the 2013 Constitution, it was estimated by the government that there were 396 Acts that required “alignment” with the Constitution, and, by 2016, the government claimed that there were only 116 that required alignment, with only 49 requiring any substantial changes. However, at that time, there were other problems to be faced in ensuring compliance with the Constitution, ranging from the legislation empowering the Chapter 12 and Chapter 13 Institutions through to the legislation needed to amend the remaining draconian laws such as AIPPA. In 2019, the Independent Commissions and the *Institutions to Combat Corruption and Crime* have their enabling legislation, but as at April 2019, AIPPA and POSA remained to be dealt with, and the government is only now beginning to deal with the matter of devolution. The bigger issue is over the commitment to constitutionalism, which is where we will focus this discussion, and the issues around the coup, the elections, the deployment of the military, and overall adherence to the rule of law. These are the issues that form the basis of the political conflict over the *legality* and *legitimacy* of the government and demonstrate whether the “new dispensation” has changed the game from the previous Robert Mugabe dispensation.

39. RAU, *Reluctant Reformers: Legislative Misalignment and the New Constitution*. March 2016. Harare: Research & Advocacy Unit.

Firstly, there is the matter of the “transition” that took place in November 2017, a transition variously termed a “military-assisted transition”, or, more bluntly a “coup”. Most parties and international governments were conditionally happy with the former characterisation, but it is noteworthy that this view has changed over time, mainly because the conditionality, a widely acceptable election, did not materialise, as well as leading to serious violence by the state. These two events, the coup and the violence in August 2018, are linked by a common modality, and this is the constitutionality of the deployment of the military in civilian space.

The Constitution is explicit on the deployment of the military. Section 212 (Chapter 11: Part 2) defines function of the Defence Forces of Zimbabwe as follows: *The function of the Defence Forces is to protect Zimbabwe, its people, its national security and interests and its territorial integrity and to **uphold** (emphasis added) this Constitution.* Section 213 specifies that only the President has the power to deploy the Defence Forces, whilst Section 214 points out that the *President must cause Parliament to be **informed, promptly and in appropriate detail** (emphasis added), of the reasons for their deployment.*

There seems little doubt that President Mugabe would not deploy the military in order to depose himself, and hence other reasons were needed in order to overcome the objection that this was a coup. These were provided in two judgements by Justice Chiweshe to the effect that Emmerson Mnangagwa had not been removed from office and that the military could deploy themselves in the interests of *national security*. This was highly dangerous judgment, and unfortunately has not been challenged effectively in the courts. It flies in the face of the intent of the constitution and the provisions that protect the nation against military coups by suggesting that there are times when the

military, in their own judgement, can remove civilian authority. This is obviously not what was intended by Sections 213 and 214.

The situation around the deployment of the military in August 2018 is equally problematic and cured in part by the findings of the *Motlanthe Commission* that received evidence that President Mnangagwa gave order for the deployment of the military. He could not have promptly informed Parliament about the deployment since Parliament had not been inaugurated, but the confusion over the deployment was not helped by statements from the President and the Commander of the Army that they did not know who had deployed the military.

This difficulty, the absence of a Parliament for the President to *promptly and in appropriate detail* was not present in January 2019 when the army was highly visible on the streets, active in the townships and on the roads across the country. Parliament only received the information from the President later, two months later it appears.<sup>40</sup> This tardiness does not suggest a strong commitment to the Constitution.

There can be no more important adherence to the Constitution and constitutionalism than in matters where the army must occupy civilian space, and here the “new dispensation” seems to have little respect for either. Furthermore, it is a matter of further concern that the Supreme Court chose to avoid the outrageous judgement on the coup, rather dismissing an application of narrow legal grounds than seeing the dangers in allowing such a dangerous interpretation of the Constitution to stand.

One other area in relation to the military, and the police, is the failure to constitute a National Security Council as required by Section 204 of the Constitution, and the apparent continuance of the Joint Operations

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40. “I deployed army: ED”, Daily News, 15 March 2019. [<https://www.dailynews.co.zw/articles/2019/03/15/i-deployed-army-ed>]

Command (JOC). The latter is not a statutory body and should have been disbanded when the new Constitution came into force in 2013. Furthermore, there is no progress on the setting up of an independent complaints mechanism as required by Section 210 of the Constitution. Both these failures fly in the face of claims to adhering to constitutionalism.

Thus, we have dealt with the issues of the coup and the deployment of the military together since they are so related. However, the effects of the coup are so poisonous that they follow deeply into the elections. It is the fact of the ambiguous attitude to the coup that made this the most important and probably the most contested election since 1980.

Despite all the rhetoric ahead of the elections that this would conform in every way to everyone's expectations of what a democratic election should be, the 2018 elections fell far short of the expectations. This led to dispute both nationally and internationally about the process and the result, and this left the new government with a mandate based on narrow legality, but falling far short of the legitimacy that it needed. It has left the country more deeply divided than at any time in the past, with government struggling to build consensus around unity, national dialogue and almost everything else.

The question around the 2018 elections is not what could have been done better in all the lead up, and this has been documented in detail by all the observer groups, but how could narrow legality have been turned into strong legitimacy. This hinges on the election challenges, two of which are enough to give grave cause for concern about the independence of the judiciary, and the value of numbers as opposed to laws in elections. The lesser of the two concerns the contest for Kadoma Central, and the more important the contest over the Presidency.

The contest for the Kadoma Central parliamentary seat was a close race between Gift Konjana of the MDC Alliance and Dexter Nduna of ZANU-PF. Nduna was initially declared the winner, giving ZANU-PF a two-thirds majority in the House of Assembly, but ZEC then admitted it had erroneously awarded votes for Konjana to Nduna, meaning Konjana had won. ZEC admitted the error but claimed the result could only be overturned by the Electoral Court. Konjana's application to the High Court was dismissed on a technicality by Justice Mary-Zimba Dube, but this was subsequently dismissed by the Supreme Court.<sup>41</sup> The matter is still pending, but it has meant that a legally elected candidate has been deprived of office for nearly one year, and ZANU-PF has had the luxury of a two-thirds majority.

This case hardly demonstrates the efficiency and effectiveness of the electoral system, since it is imperative that all election matters are concluded with urgency: a majority in representation is critical to political power, and a two-thirds, constitution-amending majority even more so.

The dispute over the 2018 presidential election result, which was a proximal cause of the violence in August 2018, was considerably more serious, especially since the Electoral Act allows a single shot at resolving the dispute. As is common cause, the result was exceedingly narrow, with Mnangagwa winning by a mere 6.4% margin. Unlike the Konjana case, ZEC amended changed the results three times, before declaring Mnangagwa the winner. The Constitutional Court finally confirmed the result, dismissing the MDC Alliance petition largely technical grounds, rejecting the argument that with all the obvious problems over numbers that the rational solution was to examine the ZEC computer server.

There were many comments about the adequacy of the MDC Alliance case, and

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41. "Technicality cannot decide Nduna's legitimacy", Bulawayo 24, 25 May 2019. [<https://bulawayo24.com/index-id-news-sc-national-byo-162980.html>]

particularly the inability to provide evidence based on the collation of all the V11 forms from the election. For many other observers, the failure by the Constitutional Court to ignore the technicalities and address the major problem was unacceptable in the light of the crisis that the country was facing in the aftermath of the coup. The comment by the Chief Justice Luke Malaba, in his summary judgement, that numbers were not the main issue before the court seemed dissimulating given that elections are about numbers. Beyond these are other concerns about the adherence to the Constitution, with, for example, complaints that the Minister of Finance is making regulations that are *ultra vires* the Finance Act, or Vice-President Constantino Chiwenga firing government health workers outside of his constitutional powers.

Overall, the lack of a transparent and open commitment to constitutionalism is a worry for the future, and, in the climate of severe economic hardship, especially the commitment to ensure that military act in accordance with the constitution and the Defence Act. The national and international perception that Zimbabwe is now a military state can only be addressed by full and transparent compliance with the Constitution.

### **International Obligations**

Zimbabwe is signatory to a wide range of international obligations, ranging from the Covenants and Conventions of the United Nations through to treaty obligations under SADC and the African Union. Here we will concern ourselves only with those treaties that bear directly upon human rights, and have implications for actions around political violence. Thus, we will not concern ourselves with issues around elections.

We would comment here that the Zimbabwe government over time has shown a penchant for signing international agreements, picking

and choosing which it will ratify, being tardy in domesticating those it ratifies, and, when confronted by issues of compliance, then either withdrawing from the obligation or ignoring it. Several examples demonstrate this.

Firstly, and very important for human rights in Zimbabwe, is the government's failure to sign and ratify the Convention Against Torture.<sup>42</sup> Zimbabwe is one of only four African countries not to do so, which is unacceptable in a country in which torture is endemic.

Secondly, there is the egregious example of the SADC Tribunal, and the way Zimbabwe lobbied strongly for the dismantling of this court when it founds itself receiving adverse judgements about its human rights record.

Thirdly, Zimbabwe left the Commonwealth following its suspension over its human rights record, which was distressing for a country that had been one of the prime movers in the establishment of the Harare Declaration.

Finally, and topically with the discussions between the Zimbabwe government and the European Union, Zimbabwe, when it found itself the subject of a dispute under Article 9 of the Cotonou Agreement, and the institution of dispute proceedings under Article 96, it merely ignored its treaty obligations rather than try to resolve the dispute. It even chose to try to sue the EU for damages it alleged were caused by the "sanctions"; in reality, these were "restrictive conditions" aimed at individuals, and the fallout from the dispute was the withdrawal of direct development assistance to Zimbabwe. However, the EU has continued to provide very generous humanitarian assistance since 2002. There is much more that can be said about Zimbabwe's commitment to its international obligations, but the point here is that the current government will have to work very hard to overcome the perception that Zimbabwe is an unreliable international partner that takes its obligations seriously.

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42. "Zimbabwe: Zim Govt Reluctant to Sign UN Torture Convention", NewZimbabwe, 30 June 2017. [<https://allafrica.com/stories/201706300497.html>]

**“SABC news crew attacked by water cannons in 2016 during police crackdown on protestors.”**



**“A foreign journalist is attacked by soldiers on August 1, 2018 while covering Zimbabwe's 2018 elections”**

**1 August 2018**



## The role of the Independent Commissions on Human Rights

One of the major achievements of Zimbabwe's 2013 Constitution was the formalising of the Chapter 12 institutions, the *Independent Commissions Supporting Democracy*. Although eight Commissions were created, all very important for democracy, we will deal with the two main Commissions that have specific responsibilities around the issue of political violence, the Zimbabwe Human Rights and the National Peace and Reconciliation Commissions. This is not to suggest that the other Commissions (*the Electoral, Gender, and Media Commissions*) are unimportant, nor that the Chapter 13 bodies, the *Institutions to Combat Corruption and Crime*, are also not important, but that the two above-mentioned Commissions have obligations to deal with all the violent events described earlier.

A previous analysis cast serious aspersions on the willingness of the government to commit to creating fully independent bodies:

*Legislation for the Commissions demonstrates that Government thinks only in terms of the possibility of institutions which are either part of government or regulated by government.<sup>218</sup> Government seems unable to conceptualise independent institutions which fall into neither category. Everything possible, and that which legally is not, is being done to retard the advent of an improved democratic order.<sup>43</sup>*

What follows attempts to assess briefly whether this commitment to full constitutionalism has changed under the “new dispensation”, and the extent to which the two Commissions have been able to address the endemic climate of political violence in Zimbabwe.

## Zimbabwe Human Rights Commission (ZHRC)

There was a long and tortuous process in establishing the ZHRC, with the founding chairperson resigning over the delays, and the legislation enabling the Commission to operate only coming into effect in 2012. Despite poor funding and a restricted mandate, the ZHRC has begun to gain the confidence of the citizenry, but also to incur the disapproval of the government.

Its early investigations into the prison riot in 2015,<sup>44</sup> the Chingwizi displacements,<sup>45</sup> and its monitoring of a few by-elections, all demonstrated the intention of the Commission to deliver credible reports and actionable recommendations. However, events since the coup have shown just how difficult the task of the Commission is in dealing with political violence. Three examples will illustrate this.

The first is the matter of the application made by three teachers' unions to force political parties to desist from involving teachers, pupils and school resources in purely political activities around the election in 2018. Whilst this was primarily aimed at ZANU-PF, the ZHRC undertook non-partisan investigations, and, on the basis of its investigations and the evidence provided by the teachers' unions, Z H R C m a d e c o m p r e h e n s i v e recommendations to government ministries, parliament, political parties and others to ensure compliance with the Constitution, especially around the rights to freedom of association and assembly.<sup>46</sup>

Regrettably, government took no specific action after a High Court granted an interdict against which ZANU-PF appealed. The Supreme Court ruled in favour of ZANU-PF and overturned the High Court decision. The

43. RAU (2016), *Reluctant Reformers*. Ibid (p42).

44. Zimbabwe Human Rights Commission, Report on the Visit to Chikurubi Maximum Prison (Male Section) on the 18th of March 2015 (A Response to the Friday 13th of March 2015 Riot).

45. Zimbabwe Human Rights Commission, *Report on the Mission Visit to Chingwizi conducted from the 19th to the 22nd of August 2014*.

46. Zimbabwe Human Rights Commission, *Teachers Unions of Zimbabwe v Ministry of Primary & Secondary Education and Zimbabwe African National Union – Patriotic Front*, ZHRC/CI/0069/17.

eventual outcome did not suggest that the government took the recommendations of the ZHRC seriously, and this undermined confidence that the government was committed to constitutionalism.

The failure by the government to act on the recommendations of the ZHRC have had further serious effects. The evidence from investigations into the alleged ill-treatment of teachers undergoing industrial action shows that, rather than implement rules and regulations to protect teachers, rural teachers have been subjected to intimidation, humiliation and threats by a variety of state and non-state agents, with the latter including members of School Development Committees, traditional leaders and members of ZANU-PF. None of these has any right to be become involved in an industrial dispute, and it is even more egregious that many of the alleged violations were witnessed by children. This was the clear intent of the ZHRC in its recommendations to the government in 2018, to protect children from abuse stemming from political activity.

The second example came with the violence that broke out in the immediate aftermath of the elections in July 2018. The events clearly spoke to the constitutional mandate of the ZHRC as clearly laid out in Section 243, but the government chose to side-line the ZHRC and appointed an “independent” commission to investigate the protests and related human rights abuses. There was no doubt in the mind of all that the events of August 2018 should have been investigated by Zimbabwe’s own established constitutional body, and the fact that the President and the government chose not to mandate the ZHRC was to seriously damage the authority of the Commission, especially with Zimbabwe’s long history of Presidential Commissions being established and their findings either suppressed or ignored.

Civil society, including the Human Rights Forum and its members, made detailed submissions to the Motlanthe Commission, and had serious reservations about the transparency of the process and the Commissions conclusions.<sup>47</sup> It is also the case that the government has yet to act on the recommendations made by the *Motlanthe Commission*, further undermining any claims that the government has to believing in constitutionalism.

The third, and final example, comes from the report by the Commission on the violent riots that took place in January 2019.<sup>48</sup> This report concluded that there had been serious human rights violations in the torture of civilians by the police and army, violations of the right to privacy, the rights to personal liberty, and the rights of pre-trial detainees violated. The government reacted to the report with hostility and not with the respect for an Independent Commission under the Constitution.

All in all, these four examples are a strong indication of how little the government, despite all the rhetoric about the rule of law, good governance and human rights, obeys its obligations under the Constitution. The Zimbabwe Human Rights Commission is a key body under the Constitution that can advise, guide and keep accountable the government, and, most importantly, protect the citizenry. However, the “new dispensation” seems bent on destroying any confidence that the citizenry might have in the ZHRC, and its excellent work to date.

## **National Peace and Reconciliation Commission (NPRC)**

The National Peace and Reconciliation Commission (NPRC) is perhaps the most contentious of all the Independent Institutions Supporting Democracy as its mandate includes the thorny issue of accountability for human

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47. See, for example, Zimbabwe Human Rights NGO Forum, *The Commission of Inquiry into Post Elections Violence on 1st August 2018*. PRESS STATEMENT: Concern Regarding the Safety of Witnesses and Integrity of Evidence, 28 November 2018.

48. Zimbabwe Human Rights Commission, *Monitoring Report in the Aftermath of the 14 January to 16 January 2019 “Stay Away” and Subsequent Disturbances*.

rights violations. With the lengthy history of gross human rights violations that this country has experienced, both before and after Independence in 1980, many anticipated that the NPRC would struggle to maintain its independence from government; that it would be resourced effectively, and that it would be able to create confidence in it by the citizenry. Confidence in the NPRC was always going to be function of the government's commitment to the mandate envisaged in the Constitution in Section 252, as well as the Commission's own interpretation of the mandate, the emphasis given to the various functions and the timing of its actions in implementing the mandate.

The first point to make in assessing the progress of the NPRC to date is the issue of *justice* as expressed in Section 252 (a), *to ensure post-conflict justice, healing and reconciliation*, and what balance given to each of these. The naming of the Commission did not immediately inspire confidence and was strongly at variance with the position on transitional justice begun by civil society more than ten years earlier, at a symposium in South Africa.<sup>49</sup>

Confidence was further undermined by the lengthy delay in appointing the Commissioners, the death of the chair (only replaced in 2017), the delays in passing the enabling legislation (and the disputes over the Bill and the final Act), and the very poor resourcing of the Commission. This last, similar to the problems faced by the ZHRC, is critical to the success of the NPRC: given the massive problem of political violence since 1980, including the Gukurahundi, and all the violent events detailed from 1998, the scale of the work was always going to be massive. The NPRC was always going to have a job of work that was some much greater than any other of

the Independent Commission, if only because the numbers of citizens affected by gross human rights violations since 1980 is in the hundreds of thousands.

In many ways it is very easy to be overly and unfairly critical of the progress (or lack of it) by the NPRC. It is obviously important to sift out the instances where the Commission can be judged on its own actions from those where the problems have been caused by lack of resources or interference from the government. Given the overall purpose of this report, assessing the record of the government from November 2017, it is important at the outset to see that the current NPRC's mandate is a creature of the pre-coup government. The enabling Act only comes in January 2018, and there were immediately evident four critical weaknesses imposed on the NPRC:<sup>50</sup>

*The Act has four critical weaknesses which threaten the effectiveness of the Commission. These are the lack of victim centredness, interference by the executive in various ways, and the power given to the Commission to recommend granting pardon. Additionally, the Act fails to acknowledge that the Commission is established to deal with Zimbabwe's legacy of violence and assist society to build a more peaceful and just society.*<sup>51</sup>

The progress of the NPRC is very well-summarised in a number of reports and newsletters issued by the National Transitional Justice Working Group (NTJWG), and the overall impression that can be gained is that the NPRC is struggling to come to terms with the enormity of its mandate, not only because of a lack of resources. There is also a lack of clarity about what it means to be an "independent" commission. In the aftermath of the coup, and the disputed election, this lack of clarity can

49. Themba leSizwe (2004), (2004), *Civil Society and Justice in Zimbabwe: Proceedings of a Symposium held in Johannesburg 11-13 August 2003*, Southern African Trauma Coalition (SATC).

50. These weaknesses were evident in the Bill under discussion in 2016. See again RAU (2016), *Reluctant Reformers: Legislative Misalignment and the New Constitution*. March 2016. Harare: Research & Advocacy Unit.

51. NPRC Watch, *What you must know about the NPRC Act*. NPRC Act (Chapter 10:32): Factsheet 1/2018. January 2018. National Transitional Justice Working Group.

dent any confidence that the citizenry might have in the Commission. We will not summarise the many issues that have emerged since the beginning of 2018 but refer to a few key issues.

The first is the way the NPRC attempted to engage with the Gukurahundi problem. This has become more and more contentious in the past 18 months, and the signs were strongly evident at two SAPES events in early 2018. The Harare and the Bulawayo Policy Dialogues were disrupted both by angry citizens. In Harare, these were young men arguing that there was undue attention given to Gukurahundi and too little to the Liberation War, whilst the Bulawayo dialogue went in the other direction with a very angry audience disrupting proceedings in objection to a speaker minimising the seriousness of Gukurahundi. These were clear indications that engaging Matabeleland would require extreme delicacy, and this was not understood by the NPRC, whose first meetings in Bulawayo and Matabeleland were unnecessarily confrontational.<sup>52</sup> Subsequent meetings were less difficult following careful negotiations brokered by members of the NTJWG. The disruptions suggested that the members of the Commission were not understanding of how sensitive any intervention dealing with victims of organised violence and torture must be, and this raised for many in civil society the reservations about the capacity of the Commissioners.

The second, and perhaps more damaging for the NPRC, is the association of the Commission with the government-led national dialogue process. The Chair of the Commission, Justice Nare, was inveigled into chairing the first meeting of political party leaders convened by the President, Emmerson Mnangagwa, a meeting boycotted by the

major opposition political party, and subsequently the initiative was repudiated by several other political leaders. Here it should be pointed out that the Constitution, under Section 252 (h) and (i) gives the Commission the mandate to “independently” act to bring about discussions such as a national dialogue.<sup>53</sup> It seemed ill-advised for the Commission to allow the government, and a government that is engaged in serious dispute with other political parties, to usurp the Commission's own prospects of convening a national dialogue.

These two instances suggest the major difficulty for the NPRC going forward will be to overcome the perception of not being independent of government, as well as the perception that the Commissioners are ill-equipped for the scale of the problem that the NPRC must deal with.

*There is also a lack of clarity about what it means to be an “independent” commission, which, in the aftermath of the coup and the disputed election, can severely dent any confidence that the citizenry might have in the Commission.*

52. “Mthwakazi activists disrupt another NPRC meeting in Lupane over composition of committee”, Stephen Jakes, Bulawayo 24, 26 February 2018, [<https://bulawayo24.com/index-id-news-sc-regional-byo-128895.html>]; “Activists disrupt national peace and healing meeting”, The Herald, 27 February 2018. [<http://www.herald.co.zw/activists-disrupt-national-peace-and-healing-meeting/>]

53. Section 252 states this mandate as follows: (h) to do anything incidental to the prevention of conflict and the promotion of peace; (i) to conciliate and mediate disputes among communities, organisations, groups and individuals

## CONCLUSIONS

This necessarily brief overview of the state of the nation and the current commitment to human rights, rule of law and good governance paints a sombre picture. The hopes by Zimbabweans for a change in the aftermath of the coup and the end of the Robert Mugabe regime seem dashed by both the decline in their economic well-being and the re-emergence of political violence.

The analysis of political violence shows that the situation is worsening under the “new dispensation”, not only because there seems a greater tendency by the government to employ much greater violence, but also because the citizenry is showing a greater proclivity for participating in violent events. This latter may be driven by anger and despair, but it is deeply worrying that the conditions for serious civil strife are present in Zimbabwe today: political polarisation, a declining economy and a frustrated citizenry are not the ingredients to peace. It is this poisonous mixture that is leading many to call for a genuine national dialogue, mediation between the political actors, and some form of transitional arrangement.

One of the major ways that conflict be avoided, apart from obviously being able to halt the economic decline, is to cure the politics, and the best way to do this is through absolute commitment to constitutionalism and the Constitution. This would create the kind of confidence, both nationally and internationally, that the government can be wholly trusted. However, as this brief analysis has shown, this is not happening in Zimbabwe today, and, most seriously, in the relations between the civilian state and the military. Here it is crucial that any deployment of the military into civilian space be wholly transparent and in full accordance with the Constitution under Sections 213 and 214.

Furthermore, the ambiguities over the High Court's interpretation of Section 212 as allowing the military to intervene in civilian affairs outside of any deployment by civilian authority needs urgent clarification. It is

obviously inimical to any normal democratic practice that the army can deploy itself on its own cognisance, not even in time of war: the events leading up to November 2017 were so short of being a time of war, a mere political crisis with no threat to civilian authority. Hence, to leave this judgement unchallenged is to leave open the possibility of future “legal” coups.

Whilst monitoring the government's commitment to rigid constitutionalism will be important going forward, so will it be important to track the government's commitment to be a good international citizen. Here it should be pointed out that Section 34 is prescriptive about the requirement to domesticate “*all (emphasis added) international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law*”.<sup>54</sup> This requirement is another good marker of the government's commitment to constitutionalism, and first step should be the signing, ratification and domestication of the UN Convention Against Torture.

*It is crucial that any deployment of the military into civilian space be wholly transparent and in full accordance with the Constitution under Sections 213 and 214.*

It is also important that the government begin to give the independent commissions the respect, support and freedom to perform their constitutional mandate. For example, the right response of the government to the ZHRC's report on the January disturbances was not to derogate the Commission, but to provide the

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54. Section 34 (Domestication of international instruments). The State must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law.

resources for the Commission to undertake exactly the kind of inquiry that it empowered the Motlanthe Commission to do.<sup>55</sup> The government, in its efforts to “align” legislation with the Constitution should make efforts to ensure that legislation governing *all* the Chapter 12 institutions are completely independent of government interference, and only responsible to parliament.

There is considerably more that can be said, not only about the points raised above, but also about the performance of the government in addressing the economic and social hardships being faced by the ordinary citizens of Zimbabwe. However, this report concerns itself with the mandate of the Zimbabwe Human Rights NGO Forum, which is to deal with organised violence and torture and the observance of human rights generally. The report is to provide a baseline against which the performance of the government elected in 2018 in preventing violence, observing human rights, and following the rule of law. The following are recommendations for the monitoring of this performance.

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55. The cost of the Motlanthe Commission, reputedly close to a million US dollars, was almost one-third of the entire budget of the ZHRC (US\$ 3.7 million) in 2019.

## RECOMMENDATIONS FOR MONITORING

These recommendations are suggested as the basis for monitoring the performance of the Zimbabwe government in fulfilling its obligations under good governance for adhering to the rule of law, the constitution and to the observance of human rights.

### Monitoring of Organised Violence and Torture

It was clear from the analysis on violent events that the current context requires not only monitoring the involvement of state agencies and agencies in violent events, but also the explicit monitoring of the involvement of citizen to in violent events. Here it would seem parsimonious to use the existing framework provided by ACLED and to provide regular updates, deriving the data from the Forum's members and all public sources, including "local sources".

### Monitoring Compliance with the Constitution

It is also clear that there is weak compliance by the government with the principle of constitutionalism and this requires careful monitoring. It is suggested that the following should be tracked:

- The pace of aligning laws with the Constitution;
- Occasions when the government acts outside the Constitution, especially in respect of the deployment of the military.

### Monitoring Adherence to International Standards

Since the Constitution is prescriptive on domesticating conventions, treaties and agreements, its performance in adhering to Section 34 should be monitored as follows:

- Compilation of outstanding commitments to signing and ratifying the above;
- Monitoring of progress in domesticating existing accessions to the above.

### Monitoring the Effectiveness of the Chapter 12 Institutions

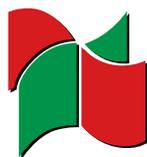
The Human Rights Forum and other organisations have identified the areas in respect of the minimising of the true independence of the Chapter 12 institutions, and there should be careful monitoring of these limitations in order to ensure that government interference is not hampering the performance of the Commissions.

### Monitoring Specific Actors in Violence

There is need to intensify monitoring security sector related perpetrators of violence. Since the Motlanthe Commission condemned the use of the military in dealing with mass protests, there seem to be a strategy by the state to militarise the police by deploying soldiers and youth militia disguised as police.<sup>56</sup> There is need to develop tools that will gather intelligence on the specific acts of the military. The military institution has seriously encroached into the role of the police and are committing acts of violence with impunity. This is an area that warrants an investigation by the Zimbabwe Human Rights Commission.

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56. 'Soldiers, Green Bombers Dressed in Police Uniform', The Newsday, 19 August 2019, [<https://www.newsday.co.zw/2019/08/soldiers-green-bombers-dressed-in-police-uniform/>]



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