



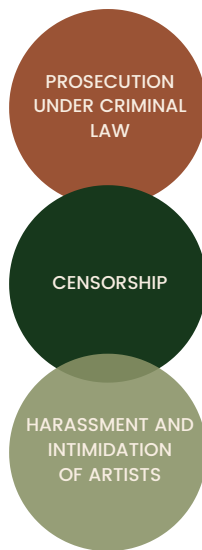
ZIMBABWE

FREEDOM OF ARTISTIC EXPRESSION

UPR SESSION 40: JANUARY 2022

SUBMITTED BY FREEMUSE AND NHIMBE TRUST

MAIN VIOLATIONS OF ARTISTIC FREEDOM DOCUMENTED IN ZIMBABWE



FREEMUSE DOCUMENTATION [2016-2020]

LEGISLATIVE RE-ALIGNMENT

Since the adoption of the 2013 Constitution of Zimbabwe (Amendment no. 20), the government has undertaken a legislative reform programme aimed at aligning legislation to the new Constitution.

An Inter-Ministerial Taskforce chaired by the Attorney General was established in 2015 to lead the process, and in March 2021, the task force reported that as of January 2021, it had completed 20 bills, with 43 still outstanding.

Freemuse documentation demonstrates violations relating to the exploitation of pre-existing legislation and regulations to suppress artistic voices and to harass, intimidate and prevent artists from exercising their cultural rights.

CENSORSHIP

The Censorship and Entertainment Control Act [Chapter 10:4] of 1967 is invoked to censor artistic expression in Zimbabwe. Section 10(2) allows for the censorship of films or film advertisement content across a range of grounds. The Act contains various provisions that provide excessive powers to the Minister of Home Affairs and Cultural Heritage, with the absence of mechanisms for transparency and accountability.

On 12 May 2018, Zimbabwe dancehall musician Seh Calaz (given name Tawanda Mumanyi) was arrested for publicly distributing a song that had not been cleared by the Board of Censors under the Act and was considered to have contained lyrics that are indecent, unethical and undesirable to the public. The musician was fined 85 euros by a Harare magistrate.

The Broadcasting Services Act [Chapter 12:06] of 2001 empowers the Broadcasting Authority of Zimbabwe to restrict freedom of artistic expression. The Broadcasting Services (Licensing and Content) Regulations [Statutory Instrument 185 of 2004] provides that programmes must observe 'good taste and decency, uphold public morality and protect children from negative influences.'

On 29 December 2019, the Broadcasting Authority of Zimbabwe banned Ngoro, a song by musicians Enzo Ishall and Rachel J, from being broadcast on radio and television platforms, on the grounds that the lyrics could be considered sexually suggestive, offensive and a negative influence on children.

CRIMINAL LAW of 2004

The Criminal Law (Codification and Reform) Act [Chapter 9:23] of 2004 is invoked against artists in Zimbabwe. This includes:

- Section 31 - which criminalises the publication or communication of false statements prejudicial to the state.
- Section 33 - which criminalises expression that undermines the authority or insults the President.
- Section 37 - which criminalises the participation in gatherings with an intent to promote public violence.
- Section 37 - which criminalises breaching peace or bigotry.

On 16 June 2020, Victor Majoni was arrested for sharing a cartoon video portraying a character criticising the President of Zimbabwe and his response to the COVID-19 pandemic. He was charged under Section 33 of the Act for expression undermining the authority of, or insulting the President.

On 26 February 2019, comedians Gonyeti (given name Samantha Kureya) and Maggie (Sharon Chideu) were arrested for performing a comedy skit depicting police brutality that was broadcasted on the Internet. They were charged with 'criminal nuisance' under Section 46 of the Act on the grounds of illegally impersonating police officers.

HARASSMENT AND INTIMIDATION

Civil society organisations in Zimbabwe have documented several cases of abductions and torture of activists and human rights defenders. Freemuse too has documented cases of government intimidation and harassment, as well as inaction on the part of governmental bodies to investigate and prosecute non-state actors who use violence.

On 21 August 2019, Gonyeti (mentioned above) was abducted from her home in Harare by unidentified men who claimed that they were police officers. She was beaten, stripped of her clothing, made to drink sewage water and left in a bushy area in an urban setting at Crowborough North in Harare. The comedian later reported that her registered complaint with the police did not lead to any subsequent investigation.

SUGGESTED QUESTIONS

- What measures is the Zimbabwean government taking to reform or repeal legislation that censors and criminalises artistic expression contrary to international human rights standards?
- How is the Zimbabwean government going to uphold its responsibility of protecting artists and cultural actors from violence, intimidation and harassment from non-state actors?

RECOMMENDATIONS

1. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), which establishes the complaint and inquiry mechanisms of the covenant.
2. Re-align all existing legislation with the Constitution of 2013 and Zimbabwe's obligations under international human rights law. This includes reforming or repealing in part or its entirety, the Broadcasting Services Act, the Censorship and Entertainments Control Act and the Criminal Law (Codification and Reform) Act, insofar as they contravene international human rights law, standards and principles.
3. Ensure the application of existing legislative and criminal law frameworks to prosecute state authorities for misuse of powers to harass or intimidate artists and cultural actors. This extends to actively establishing measures on the sensitisation and training of law enforcement personnel.
4. Develop a national strategy and action plan to uphold the safety of artists and cultural workers.