

# Submission for the 40<sup>th</sup> Session

## Universal Periodic Review of

### Zimbabwe

(Third Cycle January 2022)



#### Organisations submitting the report

1. The Justice Desk<sup>1</sup> (TJD), in conjunction with Edmund Rice International<sup>2</sup> (ERI), presents this submission concerning the human rights situation in the Republic of Zimbabwe for consideration by the Universal Periodic Review (UPR) Working Group at its 40th session (January/February 2022).

2. **Edmund Rice International (ERI)** is an international non-governmental organization, founded in 2005 and with Special Consultative Status with ECOSOC since 2012. ERI is supported by two Catholic Religious Congregations, the Christian Brothers and the Presentation Brothers. It works with networks of like-minded organizations and in the countries where the two Congregations are present. ERI has a special interest in the rights of the child, the right to education and in eco-justice.

3. **The Justice Desk** is a Human Rights non-profit organisation based in South Africa, Zambia and Zimbabwe established in 2013, with the main goal of Promoting the Power of Everyday Activism. In order to do this, we empower ordinary people to understand and defend their Human Rights -so that they can transform society and create a more just and equal world! We also work alongside civil society, NGOs, businesses, and governments across the globe to challenge and eliminate the root causes of injustice.

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<sup>1</sup> For more information on The Justice Desk and our work, please visit our website at <https://www.justicedesk.org/>

<sup>2</sup> For more information on Edmund Rice International, please visit their website at <http://www.edmundriceinternational.org/>

## **Introduction:**

4. Cognisance is taken of the tremendous strides taken by Zimbabwe to reform its legislative framework in parallel with its new constitutional milieu. The 2013 Constitution<sup>3</sup> signifies a reinvigorated effort to facilitate the realisation of Zimbabwe's human rights obligations in terms of international and regional agreements. As women's and children's rights are obdurately interlaced throughout our core areas of impact, the inclusion of provisions for gender balance<sup>4</sup>, a minimum legal age for marriage<sup>5</sup> and equal rights in marriage<sup>6</sup> is celebrated. Further, we extol Zimbabwe's endeavours to enhance its institutional and policy frameworks, aimed at eliminating human rights abuses against women and children.<sup>7</sup>

5. The first section of this submission accentuates the critical role of legislative power in ensuring the full realisation of human rights. In this regard, it is noted that The Marriages Bill<sup>8</sup>, which is essential to the advancement of both the rights of women and the child, is positioned on the legislative agenda. However, concerns remain relating to protracted delays in amending legislation subsidiary to the Constitution and by lingering discriminatory provisions, which implicate marriage and property rights, and the minimum age of marriage. These legislative deficits comprise but a single strand in a web of factors, which conspire to ensnare the progressive realisation of the rights of women and children in Zimbabwe. Nevertheless, it is recognised that legislative reform constitutes the first, necessary, step in profoundly transforming human rights thinking and practice in Zimbabwe.

6. While the first section of this submission constitutes a selective doctrinal review of Zimbabwe's legal framework, the second segment paints a richer motif of the real-world repercussions of oppressive State practices on the lived experience of Zimbabweans. This component of the submission narrates the human rights implications of politically-motivated arrests and the suppression of freedom of expression in Zimbabwe, the ubiquity of which has escalated throughout the COVID-19 lockdown. Composed by a Zimbabwean national, the submissions in this section echo the cries of millions of Zimbabweans, to which the global community is implored to listen.

## **Part I: Marriage Legislative Reform**

### **1.1 Rights of women in marriage**

7. It is acknowledged, with satisfaction, Zimbabwe's commitment to bolstering the national machinery for the progression of women's rights, through the establishment of a host of

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<sup>3</sup> Constitution of Zimbabwe, Act 20, 2013, available at [http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment\\_No\\_20\\_-\\_14-05-2013.pdf](http://www.parlzim.gov.zw/images/documents/Constitution-of-Zimbabwe-Amendment_No_20_-_14-05-2013.pdf).

<sup>4</sup> See s 3(g), s 17 & s 56(2) of the Constitution.

<sup>5</sup> See s 28 of the Constitution

<sup>6</sup> See s 26 of the Constitution

<sup>7</sup> These include the Trafficking in Persons National Plan of Action during the period of 2019 – 2021, The National Programme on Gender-based Violence Prevention and Response, The Extended National HIV/AIDS Strategic Plan, The National Adolescent and Youth Sexual and Reproductive Health Strategy, The Revised National Gender Policy, The Zimbabwe Gender Commission in 2016, and the Interministerial Committee to combat trafficking in persons in 2016.

<sup>8</sup> Marriages Bill. 2019.

institutional arrangements.<sup>9</sup> Additionally, Zimbabwe is to be commended on embarking on a process of legislative reform to domesticate international standards of gender equality within the context of marriages. While the new Marriages Bill presents an opportunity to reconcile ambiguities and gaps persisting in the current Marriage Act<sup>10</sup> and Customary Marriages Act<sup>11</sup>, it contains inconsistencies which may encumber the realisation of women's rights. Considering the repercussions of the institutional arrangement of marriage on gender parity<sup>12</sup>, the following recommendations are made to Zimbabwe.

## **8. Recommendations**

*(i) Amend The Marriages Bill to subject unregistered customary law unions (UCLUs) to the general law of Zimbabwe. Specifically: the application of the principles in the Matrimonial Causes Act relating to distribution of property on divorce should be explicitly provided to apply to UCLUs.*

*(ii) Extend the protections enshrined in section 6 of The Marriages Bill to UCLUs in order to ensure the equal status of spouses in UCLUs.*

*(iii) Amend the Marriages Bill to include standards for the verification of UCLUs.*

*(iv) Fully incorporate the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) into all its relevant laws.*

*(v) Amend or repeal, without delay, all remaining sex-discriminatory provisions, including those on marriage and property rights and on the legal minimum age of marriage, with a view to bringing them into compliance with the Constitution and the international conventions to which Zimbabwe is signatory.*

## **1.2 Gender Equality**

9. Although the Constitution encompasses express standards of non-discrimination and gender equality, there is an absence of exclusive gender equality legislation in Zimbabwe. Such legislation is instrumental in enshrining the tenet of equality between women and men, outlining the definitional parameters of discrimination, prohibiting both direct and indirect discrimination against women in public and private domains, and barring transecting varieties of discrimination. Accordingly, the Government of Zimbabwe is urged to accept and implement the following recommendation:

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<sup>9</sup> The Zimbabwe Gender Commission, the revision of The National Gender Policy, the development of a National Action Plan to facilitate the implementation of CEDAW

<sup>10</sup> Marriage Act [Chapter 5:11].

<sup>11</sup> Customary Marriages Act [Chapter 5:07].

<sup>12</sup> See, for example, U. Ewulukwa 'Post-Colonialism, Gender, Customary Injustice: Widows in African Societies' (2002) 24 *Human Rights Quarterly* 2, 424-486; R. Muftau 'An Appraisal of the Legal Rights of Women in Africa' (2016) 52 *Journal of Law, Policy and Globalization*, 69-86

## 10. Recommendation

***(i) Adopt, without delay, a law on gender equality, encompassing all prohibited grounds of discrimination and covering direct and indirect discrimination, in both the public and private domains, as well as intersecting forms of discrimination against women or discrimination based on gender identity.***

### 1.3 Girl or bride? The legality of child marriage in Zimbabwe

11. In the previous UPR cycle, 12 recommendations were made to abolish the practice of child marriage in Zimbabwe.<sup>13</sup> The overwhelming majority of which enjoy the support of Zimbabwe. Zimbabwe's enduring efforts to discontinue the pernicious practice of child marriage is applauded. Zimbabwe has duly ratified a variety of international and regional agreements, endeavouring to protect children against sexual exploitation and abuse.<sup>14</sup> Mirroring the ethos of these treaties, the Constitution of Zimbabwe expressly criminalises child and forced marriages. Whilst the provisions contained in The Marriages Bill, which prohibit child marriage and define a 'child' as a person under 18 years, in harmony with international human rights law are to be lauded, there remains substantial scope to augment the composition of The Marriages Bill to afford children incontrovertible legislative protection.

12. While The Marriages Bill awaits promulgation, Zimbabwe lacks a specific statute that prohibits child marriage. However there are several legislative instruments, which shield children from betrothal, pledging, domestic violence, early and coerced sexual intercourse, and forced marriage.<sup>15</sup> Despite these legislative texts propounding tacit protection against child marriage, they exist within a maelstrom of laws, which endorse contradictions regarding the required age for marriage and the definition of the child. This legislative cacophony exemplifies a digression from the Constitution and the international conventions Zimbabwe is a signatory to. The ever-swelling scholarly discourse surrounding child marriage indicates a surplus of sweeping social, health, economic and political repercussions for the girl child and her community.<sup>16</sup> It shortens her childhood, generates acute physical and psychological health risks and strips her of internationally recognised human rights.<sup>17</sup> Alive to this reality, the Zimbabwean Constitutional Court, in the case of *Mudzuru & Another v The Minister of*

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<sup>13</sup> See recommendations at [https://www.upr-info.org/sites/default/files/document/zimbabwe/session\\_26\\_-\\_november\\_2016/recommendations\\_and\\_pledges\\_zimbabwe\\_2016.pdf](https://www.upr-info.org/sites/default/files/document/zimbabwe/session_26_-_november_2016/recommendations_and_pledges_zimbabwe_2016.pdf)

<sup>14</sup> These include the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination against Women; the African Charter on the Rights and Welfare of the Child; and the African Charter on Human and Peoples' Rights.

<sup>15</sup> These laws include the Domestic Violence Act [Chapter 5:16], the Criminal Law (Codification and Reform) Act [Chapter 9:23], the Sexual Offences Act [Chapter 9:21] and the Children's Act [Chapter 5:06].

<sup>16</sup> See, for example, E. Budu, B.O. Ahinkorah, A Seidu et al 'Child Marriage and Sexual Autonomy among Women in Sub-Saharan Africa: Evidence from 31 Demographic and Health Surveys' (2021) 18 *Int. J. Environ. Res. Public Health*, 3754; E Sarfo, J. Salifu Yendork & A. Naidoo 'Understanding Child Marriage in Ghana: The Constructions of Gender and Sexuality and Implications for Married Girls' (2020) *Child. Care Pract.*, 1–14; M. Delprato, K. Akyeampong, R. Sabates et al 'On the Impact of Early Marriage on Schooling Outcomes in Sub-Saharan Africa and South West Asia' (2015) 44 *Int. J. Educ. Dev.*, 42–55.

<sup>17</sup> *id*

Justice, Legal and Parliamentary Affairs & Others<sup>18</sup>, has explicitly declared certain provisions of the Marriage Act, which permitted child marriage, unconstitutional. While child marriage has unambiguously been declared unconstitutional by Zimbabwe's apex court, statutes which permit child marriage remain unamended nearly eight years since the enactment of the 2013 Constitution. Accordingly, the Government of Zimbabwe is urged to accept and implement the following recommendations:

### **13 Recommendations**

*(i) Harmonise laws in accordance with the United Nations Convention on the Rights of the Child.*

*(ii) Amend all ancillary laws that may have a direct external relationship with the provisions prohibiting child marriage. This will ensure consistency and harmony in the legal framework.*

*(iii) Expand section 3 of The Marriages Bill to include characteristics of a child marriage or alternatively, amend The Marriages Bill to provide for a section on 'Meaning of Child Marriage and its scope'.*

*(iv) Include express mechanisms for prevention, detection, investigation and prosecution of child marriages in The Marriages Bill.*

*(v) Amend The Marriages Bill to include a provision which enables complainants' representatives, as recognised in the context of the Domestic Violence Act<sup>19</sup> with a reasonable interest, to advocate on behalf of minors whose rights have been violated or are being threatened to be violated.*

*(vi) Establish, within The Marriages Bill, support structures and safety nets for children in need of care following the annulment of the child marriages, in line with Part V of the Southern African Development Community (SADC) Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage.<sup>20</sup>*

*(vii) Amend The Marriages Bill to specifically cross reference the Children's Act<sup>21</sup> on issues on children in need of care.*

### **1.4 Institutional Enforcement**

13. On a continent infamous for adopting state sovereignty and the principle of non-interference, even in the face of sobering human rights violations, we wish to accentuate the importance of the institutional enforcement of human rights. The African Court on Human

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<sup>18</sup> *Mudzuru & Another v The Minister of Justice, Legal and Parliamentary Affairs & 2 Others* [2016] ZWCC 12 [2016]

<sup>19</sup> Domestic Violence Act [Chapter 5:16] (24 of 2006).

<sup>20</sup> Available at

[http://www.veritaszim.net/sites/veritas\\_d/files/Model%20Law%20on%20Eradicating%20Child%20Marriage%20and%20Protecting%20Children%20Already%20In%20Marriage.pdf](http://www.veritaszim.net/sites/veritas_d/files/Model%20Law%20on%20Eradicating%20Child%20Marriage%20and%20Protecting%20Children%20Already%20In%20Marriage.pdf)

<sup>21</sup> Children's Act [Chapter 5:06]

and Peoples' Rights (the Court) embodies the first pan-continental court of the African Union for the judicial protection of human rights. The African Court has also repeatedly shown its commitment and dedication towards seizing its mandate. The court has identified a range of human rights violations in the cases placed before it and its docket is rapidly expanding. Despite these triumphs, it is noted that Zimbabwe is yet to ratify the Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights African or accept the competence of the Court in terms of Article 34 (6), which empowers individuals and Non-Governmental Organisations to directly file cases to the Court. Accordingly, The Government of Zimbabwe is urged to accept and implement the following recommendations:

#### **14. Recommendations**

*(i) Ratify the African Court Protocol.*

*(ii) Accept the competence of the Court in terms of Article 34 (6), which empowers individuals and NGOs to directly file cases to the Court.*

#### **Part II: The imprisonment of body and mind – politically-motivated arrests and suppression of freedom of expression**

15. Once again, Zimbabwe's human rights situation is a subject of global debate and it appears to be worsening. In July 2018, six people in the capital city were shot following the presidential elections<sup>22</sup>, and soldiers and the Zimbabwe Republic Police (ZRP) fired live ammunition, teargas and water cannons at hundreds of citizens who were protesting.<sup>23</sup> State security agencies also conducted a crackdown on opposition activists with human rights groups reporting several harassments, abductions, beatings and rapes.<sup>24</sup>

16. In 2019, there were reports of arrests, abductions and torture of Zimbabweans who openly criticised the government, including student union leaders and comedians.<sup>25</sup> The ZRP also fired live ammunition at people who were calling for a shutdown of the country. The shutdown was a protest against the escalating costs of living. Up to ten people were also killed during a crackdown on dissent. In addition, reports state that only marches that are pro-government are allowed, while strong police action can be expected if the opposition, labour

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<sup>22</sup> Jason Burke 'Zimbabwe activists go into hiding as security crackdown intensifies' *The Guardian* 2018, available at <https://www.theguardian.com/world/2018/aug/08/zimbabwe-activists-go-into-hiding-security-crackdown-intensifies>

<sup>23</sup> Jason Burke 'Zimbabwe election unrest turns deadly as army opens fire on protesters' *The Guardian* 2018, available at <https://www.theguardian.com/world/2018/aug/01/zanu-pf-wins-majority-of-seats-in-zimbabwe-parliament-elections>

<sup>24</sup> Jason Burke 'Zimbabwe opposition face wave of detentions, beatings after election loss' *The Guardian* 2018, available at <https://www.theguardian.com/world/2018/aug/05/zimbabwean-opposition-reports-human-rights-abuses>

<sup>25</sup> Jason Burke 'Zimbabwe opposition face wave of detentions, beatings after election loss' *The Guardian* 2018, available at <https://www.theguardian.com/world/2018/aug/05/zimbabwean-opposition-reports-human-rights-abuses>

and/or human rights groups attempt similar moves.<sup>26</sup> This has resulted in several human rights commentators calling out the ruling party for unlawfully targeting the opposition. Moreover, we note with concern the shutdown of the Internet by the security minister, a move which many have viewed as a cover up of the massive repression in the country.<sup>27</sup> During this period, many people were abducted from their homes and some wound up in prison without charges, representation, food or water.<sup>28</sup>

17. Unfortunately, human rights violations continued into 2020 and we read with deep concern reports of torture, arrests, humiliation, abduction and sexual assault by alleged state security forces against Zimbabwean opposition activists, members of Parliament, journalists, comedians, student leaders and a renowned book author.<sup>29</sup> Zimbabwe's courts are also being used to push political agendas; for instance, bail hearings of some of these individuals were repeatedly delayed with a new COVID-19 lockdown being cited as the reason for the delay<sup>30</sup>, and when journalist Hopewell Chin'ono was arrested, Beatrice Mtetwa was disqualified from representing him by Magistrate Ngoni Nduna.<sup>31</sup> Not only was this a violation of his constitutional right to a free trial and to choose his legal counsel, but it also breached the African Charter to which Zimbabwe is signatory.<sup>32</sup> Additionally, protests, which have been labelled by government officials as a "planned insurrection",<sup>33</sup> were banned as part of the COVID-19 pandemic restrictions on social gathering. It would appear that the state has been using the pandemic as a pretext for clamping down on human rights. Accordingly, the Government of Zimbabwe is urged to accept and implement the following recommendations:

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<sup>26</sup> Associated Press 'Zimbabwe riot police fire teargas at opposition supporters' *The Guardian* 2019, available at <https://www.theguardian.com/world/2019/nov/20/zimbabwe-riot-police-fire-teargas-at-opposition-supporters>

<sup>27</sup> Jason Burke 'Civilians beaten and abducted in major Zimbabwe crackdown' *The Guardian* 2019, available at <https://www.theguardian.com/world/2019/jan/16/authorities-launch-major-crackdown-amid-protests-zimbabwe>

<sup>28</sup> id

<sup>29</sup> Jason Burke & Nyasha Chingono 'Zimbabwean MDC activists "abducted and sexually assaulted"' *The Guardian* 2020, available at <https://www.theguardian.com/world/2020/may/17/zimbabwean-mdc-activists-abducted-and-sexually-assaulted> ; Jason Burke 'Prominent Zimbabwe journalist detained in latest abduction of government critics' *The Guardian* 2020, available at <https://www.theguardian.com/world/2020/jul/20/prominent-zimbabwe-journalist-detained-in-latest-abduction-of-government-critics>

<sup>30</sup> Jason Burke & Nyasha Chingono 'Lawyers protest as Zimbabwean journalist's bail decision postponed' *The Guardian* 2020, available at <https://www.theguardian.com/world/2020/jul/22/lawyers-protest-as-zimbabwean-journalists-bail-decision-postponed> ; Jason Burke & Nyasha Chingono "'Journalism has been criminalised": Zimbabwean reporter denied bail' *The Guardian* 2020, available at <https://www.theguardian.com/world/2020/jul/24/zimbabwean-journalist-calls-for-fight-against-corruption-to-continue>

<sup>31</sup> Committee to Protect Journalists 'Zimbabwean court bars lawyer Beatrice Mtetwa from representing Hopewell Chin'ono' 2020, available at <https://cpj.org/2020/08/zimbabwean-court-bars-lawyer-beatrice-mtetwa-from-representing-hopewell-chinono/>

<sup>32</sup> id

<sup>33</sup> Richard Lea 'Charges against Tsitsi Dangarembga must be dropped, argue writers' *The Guardian* 2020, available at <https://www.theguardian.com/books/2020/oct/06/charges-against-tsitsi-dangarembga-must-be-dropped-argue-writers>

## **18. Recommendations**

*(i) End the violent repression of peaceful protesters and the use of live ammunition against civilians by state security forces.*

*(ii) Ratify the Convention for the Protection of All Persons from Enforced Disappearance (CED) in order to end arbitrary arrests, detention and the enforced disappearance of civil society activists, citizens and opposition leaders.*

*(iii) Ratify the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), and the Optional Protocol of the Convention against Torture (CAT-OP).*

*(iv) Follow the rule of law and uphold media freedoms as well as freedom of speech.*

*(v) Ensure that the Zimbabwean courts are impartial, allowing those appearing before them to have their constitutional rights to a free trial and legal counsel of their choosing respected.*

## **A Final Word**

19. Amidst the onslaught of grave human rights violations, the potential of Zimbabwe and her people continues to glimmer like the golden hills of Mapungubwe and surge, tenaciously, like the waters of the Sabi. Therefore, it is imperative that in the best interest of human rights that Zimbabwe accepts and implements the aforementioned recommendations. Compounded by the COVID-19 pandemic, legislative deficits and repressive State practices renders the dreams of Zimbabweans and the constitutional promises of a better life for the Zimbabwean child, unachievable. Accordingly, the Government of Zimbabwe is implored to guarantee the human rights of its citizens. Indeed, this is the first step towards realising Zimbabwe's boundless potential.