



# **A SITUATIONAL ANALYSIS OF HUMAN RIGHTS AND DEMOCRACY IN THE SADC REGION**

**REPORT<sup>1</sup>**

**MAY 2020**



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<sup>1</sup>This project of ACDHRS & partners is funded by the European Union.

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## ACRONYMS AND ABBREVIATIONS

ACC	Anti-Corruption Commission
ACHPR	African Commission on Human and People's Rights
AIPPA	Access to Information and Protection of Privacy Act (AIPPA)
BDP	Botswana Democratic Party
CKGR	Central Kalahari Game Reserve
DCEC	Directorate on Corruption and Economic Crime
GBV	Gender Based Violence
HDI	Human Development Index
HURISA	Human Rights Institute of South Africa
LGBTI	Lesbian, Gay, Bisexual and Transgender
MOPO	Maintenance of Peace and Order (MOPO)
NDMA	National Disaster Management Agency
NGO	Non-Governmental Organisations
POSA	Public Order and Security Act (POSA)
PUDEMO	People's United Democratic Movement
SADC	Southern African Development Community
SALC	Southern African Litigation Centre
SWAPO	South West African People's Organisation
TRC	Transformation Resource Centre
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees
USD	United States Dollar

## **Acknowledgements**

HURISA wishes to thank the European Union for generously supporting this project, as well as its support for other human rights projects undertaken by the organization in the last few years. We also wish to thank the African Centre for Democracy and Human Rights Studies and the International Commission of Jurists for being partners in this interesting journey of promoting and safeguarding human rights and freedoms.

Special thanks go to Kimani Ndungu our research consultant for researching and compiling this report and Mpiwa Mangwiro-Tsanga for editing the report.

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May 2020

## CHAPTER 1: INTRODUCTION

This analysis examines the human rights situation in seven southern African countries: Botswana, Lesotho, Mozambique, Namibia, South Africa, Swaziland and Zimbabwe. It uses published reports on the situation of human rights, democracy and development in each of these countries to provide an overview of the situation in relation to key human rights and freedoms such as the right to life, dignity, privacy, security of the person, property, freedom of expression, political participation, and association and peaceful assembly, amongst others. The key human rights and development organisations whose reports have been used to prepare this synopsis are *Ditshwanelo* (Botswana), Human Rights Watch, Amnesty International, Amnesty USA, Freedom House, Transparency International, the United Nations Development Programme (UNDP), UNAIDS, Survival International, the Mo Ibrahim Foundation, and the statistics bureaus of Lesotho and South Africa, among others.

Generally, the human rights situation in the region is one that varies between a significant measure of respect and enjoyment of fundamental rights and freedoms (South Africa, Botswana and Namibia), challenges (Lesotho and Mozambique) and an outright disregard for individual liberties (Swaziland and Zimbabwe). The democratic and development record of the countries in the region follows the same pattern as their human rights record. While the first three (South Africa, Botswana and Namibia) have been categorised by the UNDP as middle to low income, the latter four (Lesotho, Mozambique, Swaziland and Zimbabwe) have all been ranked by the UNDP as poor or low-income countries. Similarly, the latest Ibrahim Index of African Governance (2019) mentions improvements in some of the key development indicators for some countries (e.g. Botswana and Namibia) and a decline in others including South Africa.

This analysis is not an exhaustive account of the human rights situation in the southern Africa region. It is but an overview and seeks to provide the reader with a quick glance at the situation in the region in terms of enjoyment of basic rights and freedoms, and political and economic governance.

## CHAPTER 2: COUNTRY ANALYSIS

### 2.1. BOTSWANA

Botswana achieved its independence from Britain in 1966 and adopted a constitution containing an extensive Bill of Rights. Chapter II of the country's constitution lists 12 fundamental rights and freedoms, which every person in the country enjoys.<sup>2</sup> These are the right to life and personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection for privacy of home and other property, secure protection of the law (fair trial), freedom of conscience, freedom of expression, freedom of assembly and association, and freedom of movement.<sup>3</sup>

To date, Botswana remains one of the few countries on the African continent consistently praised for its respect for human rights<sup>4</sup>, the observance of democratic practices<sup>5</sup> and positive human development record.<sup>6</sup> Its electoral processes are usually praised as legitimate, credible, and free and fair. Despite concerns about political bias by the national broadcaster (Botswana TV) in favour of government and the ruling Botswana Democratic Party (BDP), as well as the harassment of journalists, media freedom is generally respected in the country.

Corruption is low by comparative continental and international standards and corruption laws are generally enforced. According to Transparency International's Corruption Perceptions Index (2019), Botswana is one of the least corrupt countries globally, ranking at number 34 with a score of 61.<sup>7</sup> It is the second highest ranked country in Africa after Seychelles (ranked 27 with a score of 66), and is ahead of Mauritius (ranked 56 with a score of 52), Senegal (ranked 66 with a score of 45) and South Africa (ranked 70 with a score of 44).<sup>8</sup> In terms of human development, Botswana scores well, being ranked 94<sup>th</sup> globally according to the United Nations Development Programme

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<sup>2</sup> Titled: *Protection of Fundamental Rights and Freedoms of the Individual*, see the Constitution at [http://www.chr.up.ac.za/undp/domestic/docs/c\\_Botswana.pdf](http://www.chr.up.ac.za/undp/domestic/docs/c_Botswana.pdf)

<sup>3</sup> Articles 4 to 14 of the Constitution.

<sup>4</sup> For instance Ditshwanelo, one of Botswana's most renowned human rights organisations with observer status at the African Commission on Human and People's Rights (the Commission) began its address to the 34<sup>th</sup> Session of the Commission in 2003 by acknowledging that "the government of Botswana is known for its good record of democracy and respect for human rights." See Ditshwanelo's statement (Statement by Ditshwanelo - the Botswana Centre for Human Rights) at [www.iwgia.org/.../34thsession](http://www.iwgia.org/.../34thsession)

<sup>5</sup> Amnesty International has lauded Botswana as "*often one of the only regional voices [that] 'frequently speaks out against human rights, justice and democratic abuses across the African continent'*". Statement available at <http://www.amnestyusa.org/our-work/countries/africa/botswana>

<sup>6</sup> For instance the UN Development Programme's Human Development Report 2015 states that "between 1980 and 2014, Botswana's HDI [Human Development Index] value increased from 0.453 to 0.698, an increase of 54.1 percent thus placing the country in the medium human development category. The report compares two countries; Kenya and Sao Tome, and finds that Botswana's human development record far outstrips the development record of these two countries. The report is available at [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/BWA.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/BWA.pdf)

<sup>7</sup> The Report is available at <https://www.transparency.org/cpi2019>

<sup>8</sup> Ibid, at p4.

(UNDP) Human Development Report for 2019.<sup>9</sup> The country is ahead of South Africa (ranked 113) and Namibia (ranked 130).<sup>10</sup>

The same positive trend has been observed in respect of governance, political processes, infrastructure development and welfare. The Mo Ibrahim Foundation is an organization established in 2006 by Sudanese entrepreneur and philanthropist Mo Ibrahim. The Foundation seeks to enhance governance and leadership on the African continent in order to improve the lives of the people on the continent, and publishes an annual report on governance in Africa.<sup>11</sup> According to the Foundation's *African Governance Report* for 2019<sup>12</sup>, Botswana showed improvement, or generally scored well in the areas of infrastructure (+2.6), welfare (+3.3) and the rule of law (89.1).<sup>13</sup> The report however noted that over a ten-year period, the country had experienced deterioration on some of its key indicators including independence of the judiciary and government statistical capacity.<sup>14</sup>

However despite Botswana's impressive human rights record, concerns have been raised by an increasing number of local, regional and international human rights organisations regarding the government's failure to ensure political diversity, abolish the death sentence, and ensure the protection of the rights of the Basarwa (San) people, among others.

Since independence, one party only, the BDP, has held political power. Commenting on the long domination of the BDP in government and the country's politics, international human rights organization Freedom House has cautioned that whereas the right of political parties to form and operate is largely respected, there are allegations by opposition parties that the BDP "*abuses state resources, including the influential state media, to its own benefit.*"<sup>15</sup> Furthermore, there is no public funding for political parties thus seriously disadvantaging them by giving the BDP, with its long record of state power, an unfair advantage.<sup>16</sup>

The death penalty remains one of the most concerning issues about Botswana. Section 4(1) of Botswana's Constitution exempts a person who is to be executed pursuant to "*the sentence of a court in respect of an offence under the law in force in Botswana of which he has been convicted*" from the protection granted in respect of the right to life. The death sentence is applicable in cases of treason<sup>17</sup>, instigating armed invasion<sup>18</sup>, piracy (where assault with intention to murder takes

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<sup>9</sup>UNDP: *Human Development, Report 2019, Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century*. Available at: <http://hdr.undp.org>

<sup>10</sup> Ibid, at pps 315-320.

<sup>11</sup> See information at: <https://mo.ibrahim.foundation>

<sup>12</sup> Titled: "*Agendas 2063 & 2030: Is Africa on Track?*"

<sup>13</sup> African Governance Report: "*Agendas 2063 & 2030: Is Africa on Track?*" at p43.

<sup>14</sup> Ibid, at pps 44 and 71.

<sup>15</sup> Freedom House, Botswana: *Key Developments, 2018*. Report available at <https://freedomhouse.org/country/botswana/freedom-world/2019>

<sup>16</sup> Ibid.

<sup>17</sup> Section 34 of Botswana's Penal Code, (Law No. 2 of 1964) (as amended up to Act No. 14 of 2005).

<sup>18</sup> Section 35 of Botswana's Penal Code.

place)<sup>19</sup> and murder<sup>20</sup>. In 2007, Botswana voted against the Resolution on a Moratorium on the Use of the Death Penalty at the UN General Assembly.<sup>21</sup>

In March 2020, the country executed two people who had been sentenced to death by the court. Another execution was carried out in February 2020 and one in December 2019 bringing to four the number of people executed in a period of four months.<sup>22</sup> Botswana remains “*one of the few democracies to still enforce the death penalty*”<sup>23</sup> and as the organisation Fair Planet has commented, it “*is the only country in southern Africa that still passes and actually enforces the death penalty.*”<sup>24</sup> There are more than 50 people on death row in the country.<sup>25</sup>

Homosexuality is criminalised in Botswana through section 164 of the colonial era Penal Code which forbids “*carnal knowledge of any person against the order of nature*”. At the same time, section 167 of the Penal Code makes it an offence for ‘any person, whether in public or private, to commit any act of gross indecency’. The punishment for homosexuality or same-sex sexual conduct is a maximum term of seven (7) years imprisonment. However in a High Court decision on 11 June 2019 in the case of *Letsweletse Motshidiemang v Attorney General* (Case No. MAHGB-000591 16)<sup>26</sup>, the Botswana High Court declared sections 164(a), 164(c) and 167 of the Penal Code as ‘unconstitutional<sup>27</sup> thus decriminalising homosexuality. In the landmark case, the court ruled that because ‘*the sexual orientation of a person is their right to privacy... societal norms of heteronormativity cannot overrule the right to privacy*’<sup>28</sup> Judge Michael Leburu stated that it is not in the public interest to criminalise same sex sexual conduct. “*What public interest is there necessitating such a law? There is no victim.*”<sup>29</sup> This decision was hailed as a welcome development by the LGBTI community in Botswana and organisations such as Southern African Litigation Centre (SALC) stating that:

*“The Botswana courts have once again shown themselves to be champions of jurisprudence that acknowledges the dignity of LGBT persons, and that they too, have the right to equal protection before the law. Through their sound legal reasoning and constitutional jurisprudence, the Botswana courts continue to set an example for other courts in the region on*

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<sup>19</sup> Section 63 of Botswana’s Penal Code.

<sup>20</sup> Section 202 of Botswana’s Penal Code.

<sup>21</sup> See Amnesty International, available at <http://www.amnestyusa.org/our-work/countries/africa/botswana>

<sup>22</sup> Eye Witness News online. *Botswana executes two convicted murderers*. Available at <https://ewn.co.za/2020/03/28/botswana-executes-two-convicted-murderers>

<sup>23</sup> Ibid.

<sup>24</sup> Fairplanet: *Latest hanging dashes hopes for end to death penalty in Botswana*. Available at <https://www.fairplanet.org/story/latest-hanging-dashes-hopes-for-end-to-death-penalty-in-botswana/>

<sup>25</sup> Ibid.

<sup>26</sup> Available at <https://africanlii.org/article/20190612/botswana-criminalisation-consensual-gay-sex-unconstitutional>

<sup>27</sup> See also Amnesty International: Botswana 2019 Report. Available at <https://www.amnesty.org/en/countries/africa/botswana/report-botswana/>. See also the report by Human Rights Watch titled: *Botswana: High Court Strikes Down Sodomy Laws*. Available at <https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws>

<sup>28</sup> Mail and Guardian, *Botswana decriminalises homosexuality in historic judgement*. Available at <https://mg.co.za/article/2019-06-11-botswana-high-court-ruling-a-victory-for-countrys-queer-communities/>

<sup>29</sup> Ibid

*the important role that the judiciary can and should play in protecting and promoting human rights for all persons.”*

LeGaBiBo also welcomed the decision stating that:

*“It has taken a long time for our community to be where it is. This incredibly life-changing decision, although it does not right all the wrongs done to individual members of the LGBT community, it is a step to restoring our dignity as human beings.”*

In 2014, LeGaBiBo had to approach the courts to challenge the refusal by the Register of Non-Governmental Organisations to register it. The Botswana High Court declared as unconstitutional and unlawful the refusal by the Registrar of Non-Governmental Organisations to register LeGaBiBo, a ruling that was subsequently upheld by the Court of Appeal Court.<sup>30</sup> It was five years later that in the above mentioned case of *Letsweletse Motshidiemang v Attorney General*, the Botswana High Court then declared sections 164(a), 164(c) and 167 of the Penal Code as ‘unconstitutional.’<sup>31</sup> However, a month after the High Court decision, Botswana’s Attorney General filed an appeal citing among other grounds the fact that the High Court had ‘overstepped its boundaries’ by overruling a decision handed down by the Botswana Appeal Court in 2003. In that matter, the Appeal Court had found that *the circumstances and time for decriminalization had not yet arrived.*<sup>32</sup>The appeal is yet to be heard.

Corruption remains low by comparative continental and international standards, but it is increasingly becoming a matter of concern in Botswana. According to international human rights NGO Freedom House, the Directorate on Corruption and Economic Crime (DCEC), the country’s main anticorruption agency, has been accused of being slow to pursue high-level corruption. In addition, it has been alleged that public contracts are awarded through patronage networks involving well-connected business persons and politicians.<sup>33</sup>

Botswana’s failure to protect the rights of the Basarwa (San), an indigenous minority group which has lived in the Kalahari for thousands of years, has drawn the condemnation of many human rights organisations both locally and internationally. In its submission to the African Commission on Human and People’s Rights in 2003, the human rights group Ditshwanelo drew the attention of the Commission to the forceful relocation of the San people from the Central Kalahari Game Reserve (CKGR). The organization appealed to the Commission to send a fact-finding mission to Botswana with a view to engaging with the government to ensure that the rights of the Basarwa are respected and protected.<sup>34</sup>

An organisation called ‘Enough Project’ has pointed out that the Basarwa have been systematically and forcefully removed from their land in the CKGR since 1995 and neither the government of

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<sup>30</sup> See also the report by Human Rights Watch titled: *Botswana: High Court Strikes Down Sodomy Laws*.

<sup>31</sup> See also Amnesty International: Botswana 2019 Report. Available at <https://www.amnesty.org/en/countries/africa/botswana/report-botswana/>. See also the report by Human Rights Watch titled: *Botswana: High Court Strikes Down Sodomy Laws*. Available at <https://www.hrw.org/news/2019/06/11/botswana-high-court-strikes-down-sodomy-laws>

<sup>32</sup> Ibid, n31 above.

<sup>33</sup> Freedom House, ibid n15 above.

<sup>34</sup> Ibid, note 4, above.

Botswana nor the international mining giant De Beers has been held accountable for this.<sup>35</sup> It would appear that the Botswana government did everything in its power to frustrate the ability of the Basarwa to live their lives in the Game Reserve including refusing to provide them with access to water and medical services.<sup>36</sup> Furthermore, Survival International, which also works to protect the rights of minorities, has revealed there have been large-scale fracking concessions on land in the CKGR thus reinforcing fears that the government has been clearing the area for natural resource extraction.<sup>37</sup> At the same time, Amnesty International has pointed out that despite the 2006 court order which declared that the Basarwa had been wrongly evicted, the government continues to frustrate them in their efforts to return to their ancestral lands.<sup>38</sup>

With the onset of the Corona Virus (Covid-19) pandemic in March 2020, the Botswana government moved swiftly to contain the epidemic. President Mokgweetsi Masisi declared a State of Public Emergency on 31 March 2020. Organisations such as Ditshwanelo have expressed concerns about abuses by security agencies during the state of emergency. It has accused the police of assaults and of arresting individuals allegedly for publishing offensive statements against the government.<sup>39</sup> Ditshwanelo further states that police have made use of section 31(3) of the Emergency Powers Act (No 61 of 2020) (the Regulations promulgated by the President to contain Covid-19) to arrest and prosecute individuals. This section makes it an offence for any person to publish “*any statement, through any medium, including social media, with the intention to deceive any other person about... (c) any measure taken by the Government to address COVID-19.*”<sup>40</sup>

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<sup>35</sup> See De Beers in Botswana: A Corporation's Impact on Human Rights, available at

<http://www.enoughproject.org/blogs/de-beers-botswana-corporations-impact-human-rights>

<sup>36</sup> Amnesty International (2015) Report on Botswana. Available at <http://www.amnestyusa.org/our-work/countries/africa/botswana>.

<sup>37</sup> See the report at <http://www.survivalinternational.org/news/9777>

<sup>38</sup> Supra, note 36 above.

<sup>39</sup> Information obtained from Ditshwanelo.

<sup>40</sup> The Regulations can be accessed through the website of the Botswana government at [www.gov.bw](http://www.gov.bw).

## 2.2. LESOTHO

Lesotho is one of the poorest countries in the world. The UNDP's Human Development Report for 2019 placed Lesotho at position 164 out of 189 countries with a low human development index of 0.518.<sup>41</sup> As such, Lesotho falls into the 'low human development' category with life expectancy at birth being 53.7 years.<sup>42</sup> Gross national income per capita is a mere USD 3244<sup>43</sup>, and the inequality-adjusted human development index stands at 0.350.<sup>44</sup> According to the World Bank, unemployment in Lesotho in 2019 stood at 23.4%.<sup>45</sup>

In sum, all of Lesotho's major human development indices point to the fact that the country remains poor by comparative international standards. Thus, it may not be surprising that Lesotho has experienced political upheavals on a frequent basis. A report published by Amnesty International for the period 2015/16 stated that Lesotho:

*"...faces food insecurity exacerbated by weather-related shocks, widespread chronic malnutrition and the second highest rate of HIV and AIDS in the world. The worsening food deficit, as well as the growing retrenchment of Lesotho nationals working in countries such as South Africa, [have] exacerbated household poverty in Lesotho."*<sup>46</sup>

Interestingly, the 2015 Ibrahim Index of African Governance<sup>47</sup> scored Lesotho highly in the areas of rule of law, accountability, and democratic participation and human rights, among others. For instance out of a maximum score of 100, the Index scored the country at 77.8, 67.3 and 64.6 for free & fair elections, freedom of expression and civil liberties, respectively.<sup>48</sup> However, the Foundation's African Governance report for 2019<sup>49</sup> has pointed out that Lesotho has experienced major declines in many of its critical governance areas.

One such area is the rule of law where Lesotho experienced a decline of -25.0, similar to the Democratic Republic of Congo, but worse than countries like Burundi (-16.7)<sup>50</sup> which has been in a state of civil conflict since at least 2015. Lesotho also saw declines in national security indicators (-50.0)<sup>51</sup> and sustainable economic opportunity (-4.1).<sup>52</sup>

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<sup>41</sup>UNDP: *Human Development, Report 2019, Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century*. Available at: <http://hdr.undp.org> (at p302).

<sup>42</sup> Ibid.

<sup>43</sup> UNDP's Human Development Report for 2019, at p302. Available at <http://data.un.org/CountryProfile.aspx?crName=lesotho>

<sup>44</sup> Ibid, at p310.

<sup>45</sup> Available at <https://data.worldbank.org/indicator/SL.UEM.TOTL.ZS>. Unemployment data available from the Lesotho Bureau of Statistics (<http://www.bos.gov.ls/>) dates back to 2008 and is therefore unreliable.

<sup>46</sup> Amnesty International, Lesotho Country Report, <https://www.amnesty.org/en/countries/africa/lesotho/report-lesotho/>

<sup>47</sup> Available at [http://static.moiabrahamfoundation.org/u/2015/10/02201403/26\\_Lesotho.pdf](http://static.moiabrahamfoundation.org/u/2015/10/02201403/26_Lesotho.pdf)

<sup>48</sup> Ibid, at p8

<sup>49</sup> African Governance Report: "*Agendas 2063 & 2030: Is Africa on Track?*" Available at: <https://mo.ibrahim.foundation>

<sup>50</sup> Ibid, at p44.

<sup>51</sup> Ibid, at p50.

<sup>52</sup> Ibid, at p53.

Lesotho's current constitution was adopted in 1993.<sup>53</sup> The constitution declares the country to be a "sovereign democratic kingdom"<sup>54</sup> with the king as the head of state. Chapter II of the constitution provides for the protection of 'fundamental human rights and freedoms' and lists various rights including the right to life, personal liberty, privacy, non-discrimination, fair trial, freedom of movement and residence, freedom of conscience, expression, peaceful assembly and association, and the right to participate in government.<sup>55</sup> The Constitution however retains the death penalty<sup>56</sup> for certain criminal offences such as murder<sup>57</sup> and treason.<sup>58</sup> Part VI (ss92-95) of the Penal Code deals with the offences of genocide, crimes against humanity and war crimes.<sup>59</sup> No specific penalty is stipulated in the Penal Code for these international crimes but section 100(3) of the Code states that:

*"where no penalty is provided for in the Schedule, the court may impose, on a person convicted for an offence provided for in this Code, such penalty as provided for by any other law, and where no such penalty is provided for in any other law the court shall impose a penalty that it thinks fit, taking into consideration the gravity of the offence and the Sentencing Guidelines issued by the Chief Justice under the Criminal Procedure and Evidence Act, 1981."*

In the last 20 years, Lesotho has experienced a great degree of political instability. In 1998, a political crisis following the general election held in that year forced the intervention of the South African Development Community (SADC) "to prevent any further anarchy and to create a stable environment for the restoration of law and order".<sup>60</sup> SADC's political statement controversially became the excuse for South Africa and Botswana to send their troops to the country's capital Maseru. In 2014, there was a coup attempt following a highly contested general election. Tensions within the military led to the killing of a former commander of the Lesotho Defence Force Lieutenant-General Maaparankoe Mahao in 2015. Mahao was accused of having been behind the coup attempt. Once again, SADC intervened in an attempt to broker peace and South Africa appointed to pay the role of mediator.

The 2015/16 Amnesty International report mentioned above<sup>61</sup> observes that soldiers perceived to be loyal to the assassinated army commander were arrested and detained, while some were harassed and tortured. Although the High Court in October 2015 ordered that the 23 arrested

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<sup>53</sup> Available at [http://library2.parliament.go.th/giventake/content\\_cons/lesotho.pdf](http://library2.parliament.go.th/giventake/content_cons/lesotho.pdf). The Constitution was amended in 1996, 1997, 1998, 2001 and 2004. See the Electoral Institute of South Africa, *Africa Democracy Project*. At <https://eisa.org.za/wep/les5.htm>

<sup>54</sup> Article 1(1) of the Constitution.

<sup>55</sup> See Article 4 of the Constitution.

<sup>56</sup> Article 5(2)(d).

<sup>57</sup> Section 40 of the Penal Code. The Code was revised in 2010. Available at <http://www.wipo.int/edocs/lexdocs/laws/en/ls/ls022en.pdf>

<sup>58</sup> Section 74 & 75 and the Schedule to the Act.

<sup>59</sup> The commentary section in the Penal Code states that the definition of these offences are taken word for word from the Rome Statute.

<sup>60</sup> Theo Neethling, *Military Intervention in Lesotho: Perspectives on Operation Boleas and Beyond*. Available at [http://www.operationspaix.net/DATA/DOCUMENT/6107~v~Military\\_Intervention\\_in\\_Lesotho\\_Perspectives\\_on\\_Operation\\_Boleas\\_and\\_Beyond.pdf](http://www.operationspaix.net/DATA/DOCUMENT/6107~v~Military_Intervention_in_Lesotho_Perspectives_on_Operation_Boleas_and_Beyond.pdf)

<sup>61</sup> Ibid, note 48, above.

soldiers be released on “open arrest” (a form of military bail), only five of them had been released by the end of the year. The report goes on to state that members of the armed forces obstructed police investigations into high profile criminal cases, while senior politicians and the army continued to interfere with the media. This included the harassment and intimidation of journalists.

Freedom House aptly captures the politico-military tensions that characterise Lesotho when it states that “*in recent years, the country has seen politically motivated assassinations and assassination attempts, and political leaders operate within the country at some risk to their personal safety.*”<sup>62</sup> In February 2020, Maesaiah Thabane, the second and current wife of Lesotho’s Prime Minister Thomas Thabane, was charged with the murder of Thabane’s first wife Lipolelo Thabane. The murder took place in June 2017.<sup>63</sup> In April 2020, the Prime Minister deployed troops in the streets of the capital city Maseru allegedly to “*restore order against rogue national elements.*”<sup>64</sup>

Political tensions in the country have resulted in widespread abuse of individual rights and freedoms. Amnesty International in its 2019 report on Lesotho<sup>65</sup> warns that there are many allegations of torture and ill-treatment of civilians by the police. Even where such violations are reported, there are usually no, or inadequate investigations. Amnesty cites the case of Kabelo Ratea who was allegedly tortured by police after being arrested on accusation of robbery. Police at the Hamatela police station allegedly tortured him until he soiled himself. They then forced him to eat his feces. Poshoane Moloi was also allegedly tortured and died in the hands of the police on 27 December 2018.

Other incidences cited by Amnesty include police allegedly rounding up approximately 45 men at a village on 27 December 2018, and transporting them to a river where they made them to lie down on their stomachs, and then kicked and ordered them to roll. Also earlier in February 2018, police allegedly killed a villager named Terene Pitae during protests by the community against the activities of a mining company.

Customary law and practices restrict the right of women to inherit property, as well as their rights in marriage and divorce. Furthermore, women cannot inherit chieftainships, which are the preserve of men. Lesotho has no law to deal with domestic violence which remains high in the country. Forced and child marriages are common.<sup>66</sup> Lesotho’s constitution protects judicial independence however; there have been questionable appointments or suspensions of judges all of which lend credence to allegations of judicial interference. In 2017, Prime Minister Thabane re-appointed former Appeal Court president, Kananelo Mosito after the latter had resigned in 2016 to avoid

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<sup>62</sup> Freedom House, Freedom in the World 2019 Report (Lesotho). Available at <https://freedomhouse.org/country/lesotho/freedom-world/2019>

<sup>63</sup> Aljazeera, 18 February 2020, *Lesotho leader's wife's murder trial to start next month*. Article available at <https://www.aljazeera.com/news/2020/02/lesotho-leader-wife-murder-trial-start-month-200218095805456.html>

<sup>64</sup> Reuters, 20 April 2020, *South Africa tries to ease internal Lesotho tension after PM deploys army*, <https://www.reuters.com/article/us-lesotho-politics/south-africa-tries-to-ease-internal-lesotho-tension-after-pm-deploys-army-idUSKBN2221QP>

<sup>65</sup> Report available at <https://www.amnesty.org/en/countries/africa/lesotho/report-lesotho/>

<sup>66</sup> Freedom House, *ibid* n64 above.

impeachment for misconduct.<sup>67</sup> In September 2018, Lesotho King Letsie III suspended the Chief Justice Nthomeng Majara on the recommendation of the Prime Minister allegedly because she (Chief Justice) had been involved in a controversial rental transaction and mismanaged the court. Civil society groups however argued that her suspension was politically motivated. Furthermore, the suspension defied two orders issued by the High Court, which had ruled that the government could not take any action against the Chief Justice.<sup>68</sup>

There are allegations that journalists are subjected to threats and intimidation from both authorities and private individuals and whereas citizens have a right to organize and protest peacefully, protests are sometimes violently broken up by the police.<sup>69</sup> Corruption and impunity remain a major problem in the country. According to Transparency International's Corruption Perceptions Index (2019), Lesotho scored a mere 40 on the index placing the country at 85 out of 180.<sup>70</sup> Furthermore, the main anti-corruption agency-The Directorate on Corruption and Economic Offences, lacks prosecutorial powers, and faces capacity and funding challenges.<sup>71</sup>

On 27 March 2020, the Prime Minister declared a state of emergency (deemed to have come into effect on 18 March 2020) and ordered a stringent national lockdown to deal with the Covid-19 pandemic. Human rights organisations including the Transformation Resource Centre (TRC) have argued that security forces have engaged in acts of torture, and in degrading and inhuman treatment of individuals while enforcing the lockdown.<sup>72</sup> The organization has made a number of recommendations with the aim of ensuring that individual rights are respected and protected. These recommendations include that all measures adopted to deal with Covid-19 should comply with national and international human rights obligations, the state of emergency should not become a pretext to undermine democracy, and government should ensure that there are independent investigations of all alleged human rights violations, accompanied by the prosecution of perpetrators.<sup>73</sup>

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<sup>67</sup> Carmel Rickard, Legal Brief, *Simmering tension as Lesotho PM backtracks on senior jurist*.

<https://legalbrief.co.za/diary/a-matter-of-justice/story/simmering-tension-as-lesotho-pm-backtracks-on-senior-jurist/>

<sup>68</sup> Freedom House, *ibid* n64 above.

<sup>69</sup> *Ibid*.

<sup>70</sup> Transparency International, The Report is available at <https://www.transparency.org/cpi2019>

<sup>71</sup> Freedom House, *ibid* n64 above.

<sup>72</sup> Mokitimi Ts'osane, *Covid19: TRC's Human Rights Commentary on Violation of Human Rights during the Lockdown in Lesotho*

<sup>73</sup> *Ibid*.

## 2.3. MOZAMBIQUE

Mozambique gained independence from Portugal in 1975, however, one year later, the country descended into a brutal civil war which lasted until 1992 when the ruling Frelimo Party and the rebel movement Renamo signed a peace agreement. Part II of Chapter 1 of Mozambique's 1990 constitution contains the country's Bill of Rights.<sup>74</sup> It provides for fundamental rights, duties and freedoms that include the right to life, dignity, equality before the law, freedom of expression and freedom of association. Chapter 3 (Articles 86 to 95) of the constitution is a departure from many other constitutions in the region (except the South African constitution) in that it provides for 'economic and social rights and duties'. This includes 'the right and duty to work'.<sup>75</sup>

The 2019 UNDP Human Development Report ranked Mozambique at 180 out of 189 countries making it one of the least developed countries in the world.<sup>76</sup> Life expectancy at birth is 63 years for women and 57.1 for men.<sup>77</sup> Many years of civil conflict have meant that Mozambique has lagged behind in many of its key development indicators such as health, education and infrastructure. More than half of the country's population of 24 million people lives below the poverty line.<sup>78</sup>

Despite the signing of the peace agreement in 1992, tensions have remained high between the government and Renamo, which is the main opposition party, resulting, on occasion, in armed conflict between them. As recently as April 2016, the UN News Service reported that it had "received 'worrying information' about ongoing armed clashes in Mozambique between national security forces and members of Renamo."<sup>79</sup> The report went on to warn of human rights violations "including cases of enforced disappearances and summary executions."<sup>80</sup> The armed clashes were triggered by the refusal by Renamo to accept the outcome of legislative elections held in 2014. Consequently, the army initiated operations against the group resulting in over 10 000 people fleeing the country since December 2015.<sup>81</sup>

Beyond the ongoing political tensions between the ruling Frelimo and the opposition Renamo, armed conflict bordering on civil war has also erupted in the country's Cabo Delgado region which has seen attacks by members of an Islamist extremist group known as "Al-Shabaab".<sup>82</sup> The group

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<sup>74</sup> Available at [http://www1.chr.up.ac.za/undp/domestic/docs/c\\_Mozambique.pdf](http://www1.chr.up.ac.za/undp/domestic/docs/c_Mozambique.pdf)

<sup>75</sup> Article 88(1) states that "work shall be a right and a duty of all citizens, regardless of sex."

<sup>76</sup> UNDP, *Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century*. Available at: <http://hdr.undp.org>. Mozambique was in the same position five years previously as documented in the UNDP Human Development Report for 2015. See report at [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/MOZ.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/MOZ.pdf)

<sup>77</sup> UNDP, 2019, at p314.

<sup>78</sup> BBC, Mozambique country profile, available at <http://www.bbc.com/news/world-africa-13890416>

<sup>79</sup> Mozambique: UN reports 'worrying' information about human rights violations, available at <http://www.refworld.org/country,,,MOZ,,5724a4d0d9,0.html>

<sup>80</sup> Ibid.

<sup>81</sup> UNHCR (March 2016), *Growing number of Mozambicans flee to Malawi*. Available at <http://www.unhcr.org/news/latest/2016/3/56e91b486/growing-number-mozambicans-flee-malawi.html>

<sup>82</sup> Amnesty International report on Mozambique (2019). Report available at <https://www.amnesty.org/en/countries/africa/mozambique/report-mozambique/>

has been accused of hacking civilians to death, razing down whole villages and looting food. These attacks have been conducted over a period of more than two years and over 200 000 people have been forced to flee their homes.<sup>83</sup> It is very not clear what this group's demands are.<sup>84</sup> Since it began its attacks, the jihadist group has caused massive suffering to the province's communities, burning huts, decapitating villagers and killing people. Government's response to the attacks has been brutal. Civilians suspected of being extremists or of supporting the extremist group, as well as journalists reporting on the violence, have been harassed, arbitrarily arrested, tortured and even summarily executed.<sup>85</sup>

In its 2015/16 report on Mozambique, Amnesty International, while praising a number of positive developments in the country such as the decriminalization of abortion, the option of non-custodial sentences as an alternative to imprisonment, and the criminalization of actions that are destructive to the environment, also voiced concerns about the suppression of freedom of expression and detention without trial.<sup>86</sup> Another report by Amnesty US pointed out that there had been mounting human rights abuses since the eruption of violence between Renamo and the government in late 2012. This violence had led to the death of many civilians and the displacement of more than 6,000 people.<sup>87</sup> The report also called to attention the systemic violation of human rights by police in the country:

*“In addition to renewed conflict, the conduct of the Mozambican police continues to violate Mozambique's constitutional protections of fundamental rights and freedoms. These include deaths in detention and extrajudicial executions of suspected criminals, as well as excessive use of force and firearms. Existing internal police accountability systems are largely ineffective, with very little follow-up to cases of human rights violations by police. Police codes of conduct and disciplinary procedures are inadequate and do not conform to international human rights standards. Limited access to justice by victims and their families is compounded by a weak and often corrupt justice system and other obstacles.”<sup>88</sup>*

In this climate of civil strife, there have been increasing reports of gross violation of human rights in the country. The UN News Service Report cited above quoted the UNHCR as having received reliable information fingering the security forces for “*summary executions, looting, destruction of property, rape, ill-treatment, and other human rights violations.*”<sup>89</sup> Citing information from the Office of the UN High Commissioner for Human Rights, the UN News Service report further added that Renamo had carried out attacks against the police and military forces, and committed human rights abuses against civilians perceived to be associated with the ruling party, or suspected of cooperating with security forces.<sup>90</sup> Furthermore, human rights defenders who called for public

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<sup>83</sup> BBC News, available at <https://www.bbc.com/news/world-africa-52532741>

<sup>84</sup> Ibid

<sup>85</sup> Supra, note 82.

<sup>86</sup> Amnesty International, *Mozambique 2015/2016*, available at

<https://www.amnesty.org/en/countries/africa/mozambique/report-mozambique/>

<sup>87</sup> See report at <http://www.amnestyusa.org/our-work/countries/africa/mozambique>

<sup>88</sup> Ibid.

<sup>89</sup> Supra, note 81 above.

<sup>90</sup> Ibid.

demonstrations in favour of accountability and transparency had also been harassed and threatened.<sup>91</sup>

In August 2019, Mozambique's President Filipe Nyusi and Renamo leader Ossufo Momade signed a new peace agreement pledging to end years of violence and undertaking to pave the way for peaceful general elections. The elections took place in October 2019.<sup>92</sup> Although the ruling Frelimo party won with a landslide, Human Rights Watch has reported that incidences of violence marred the elections<sup>93</sup>and, somewhat predictably, the opposition Renamo rejected the election results.<sup>94</sup> Power remains centralized in the hands of the executive, which dominates the other branches of government. Business elites connected to the ruling Frelimo enjoy access to investment and business opportunities in the oil, gas and agricultural sectors.<sup>95</sup>

Official corruption is staggeringly high among the political and business elite and government appears unwilling or simply unable to investigate and prosecute persons engaged in the looting of public resources. According to Transparency International, Mozambique is ranked 146 out of 180 countries in terms of corruption perceptions, with a score of 26. It is therefore one of the most corrupt countries in the world, in the same bracket as countries like Angola, Bangladesh, Guatemala, Honduras, Iran and Nigeria.<sup>96</sup>

An example of the interface between high political office and official corruption is the case of Manuel Chang, Mozambique's former finance minister who is currently in custody in South Africa awaiting extradition for financial crimes.<sup>97</sup>Chang was arrested in South Africa in December 2018 following an arrest warrant issued against him. He has been accused of looting approximately USD 2 billion. Both Mozambique and the United States have requested that he be extradited to their respective countries to be prosecuted.

In May 2019, the then South African Minister of Justice Michael Masutha ordered that Chang be extradited to Mozambique. However, Masutha's replacement Ronald Lamola and the Helen Suzman Foundation took the minister's decision on review to the High Court, which subsequently set it aside on among other grounds, the fact that extraditing Chang to Mozambique, will make no legal sense as he enjoys immunity from prosecution in the country.<sup>98</sup> Extraditing Chang to the US on the other hand risks creating tensions between South Africa and other African countries, which may see such a move as South Africa kowtowing to powerful western interests. America has requested that Chang be extradited to America instead of Mozambique because among other

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<sup>91</sup> Ibid.

<sup>92</sup> Human Rights Watch, Mozambique (2019). <https://www.hrw.org/world-report/2020/country-chapters/mozambique>.

<sup>93</sup> Ibid.

<sup>94</sup> See Aljazeera, 19 October 2019, *Mozambique opposition rejects election results*, <https://www.aljazeera.com/news/2019/10/mozambique-opposition-rejects-election-results-191019135525946.html>

<sup>95</sup> Freedom House, 2019 report. Available at <https://freedomhouse.org/country/mozambique/freedom-world/2019>

<sup>96</sup> Transparency International, Corruption Perceptions Index (2019). The Report is available at <https://www.transparency.org/cpi2019>,

<sup>97</sup> Borges Nhamire, Business Day, 10 February 2020, *Mozambique drops appeals for Manuel Chang's extradition*

<sup>98</sup> Brenda Masilela, IOL, 1 November 2019. *Court sets aside Masutha's decision to extradite Mozambique's Manuel Chang*. Available at <https://www.iol.co.za/news/africa/court-sets-aside-masuthas-decision-to-extradite-mozambiques-manuel-chang-36467419>

issues, they submitted their extradition request before Mozambique submitted its own and the investigations in America are at a more advanced stage.

Freedom of expression, peaceful assembly and association remain under attack in Mozambique. There has also been an escalation in the repression and clampdown on civil society organisations, journalists, human rights defenders and activists.<sup>99</sup> Journalists experience frequent harassment and intimidation leading to self-censorship. Furthermore, government is alleged to retaliate to criticism from private media by cancelling public advertising contracts.<sup>100</sup> The country has experienced deterioration in many of its basic indicators including on basic services (-47.8)<sup>101</sup> and transparency and accountability (-14.3)<sup>102</sup>

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<sup>99</sup> Ibid, Amnesty International, n86 above.

<sup>100</sup> Freedom House, n95 above.

<sup>101</sup> Mo Ibrahim Foundation, African Governance Report (2019), at p33.

<sup>102</sup> Ibid, at p46.

## 2.4. NAMIBIA

Despite some concerns, Namibia enjoys a good record of respect for human rights and freedoms. Freedom House reported in its 2015/16 assessment that human rights groups in the country generally operate without interference”.<sup>103</sup> In its most recent report (2019), the organisation pointed out that Namibia remains a robust constitutional democracy with the opposition able to operate freely.<sup>104</sup> The constitution guarantees freedom of expression, assembly, religion and media freedom, among others, and government generally respects these rights.<sup>105</sup> Whereas there are allegations of self-censorship by the state media, private media is robust and critical of government.<sup>106</sup>

The government respects civil liberties including the right to freedom of expression, association and political activity.<sup>107</sup> One political party-the South West African People’s Organisation (SWAPO) has dominated Namibia’s politics since the country’s independence from South Africa in 1990. In general however, the country retains a strong, vibrant democracy, with a media that is critical and able to operate without hindrance.

Namibia’s political and economic stability have enabled the country to score relatively highly on some of the key development indicators. The UNDP in its 2019 Development Report placed the country at 130 (medium human development) out of 180 countries.<sup>108</sup> Gross National Income per capita stands at USD 9,683, and life expectancy at birth is 63.4 years.<sup>109</sup>

In terms of governance, the 2015 Mo Ibrahim Foundation Index of African Governance ranked Namibia fifth out of Africa’s 54 countries with a positive improvement of 2% in overall governance since 2011.<sup>110</sup> The country was amongst the top five in the areas of participation and human rights (3<sup>rd</sup> position) and safety and rule of law (4<sup>th</sup> position), and amongst the top ten in sustainable economic opportunity (6<sup>th</sup> position), and human development (10<sup>th</sup> position). In its 2019 report, the Foundation’s report on African Governance while rating Namibia highly on national security (99.7)<sup>111</sup> and country level transparency and accountability (59.8)<sup>112</sup> found that

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<sup>103</sup> Freedom House, Freedom in the World 2015 – Namibia. Available at <http://www.refworld.org/country,...NAM,,55c084fb1b,0.html>

<sup>104</sup> Freedom House, Freedom in the World 2019 – Namibia. Available at <https://freedomhouse.org/country/namibia/freedom-world/2019>

<sup>105</sup> Ibid.

<sup>106</sup> Ibid.

<sup>107</sup> Chapter 3 (Articles 5-25) of the Namibian Constitution provides for fundamental rights and freedoms. See the Constitution at [http://www.gov.na/documents/10181/14134/Namibia\\_Constitution.pdf/37b70b76-c15c-45d4-9095-b25d8b8aa0fb](http://www.gov.na/documents/10181/14134/Namibia_Constitution.pdf/37b70b76-c15c-45d4-9095-b25d8b8aa0fb)

<sup>108</sup> UNDP, 2019. *Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century*. Available at: <http://hdr.undp.org>.

<sup>109</sup> Ibid, at p302.

<sup>110</sup> 2015 Ibrahim Index of African Governance, available at <http://static.moibrahimfoundation.org/u/2015/10/02193252/2015-IIAG-Executive-Summary.pdf>

<sup>111</sup> Mo Ibrahim Foundation, African Governance Report (2019), at p48.

<sup>112</sup> Ibid, at p45.

the country had experienced declines in the areas of rule of law (-14.3)<sup>113</sup>, property rights (-10.6)<sup>114</sup> and education quality (-15.0).<sup>115</sup>

Transparency International's 2019 Corruption Perceptions Index ranked Namibia 56 out of 180 countries with a score of 52.<sup>116</sup> It was the fourth least corrupt country after Seychelles (ranked 27 with a score of 66), Botswana (ranked 34 with a score of 61) and Mauritius (ranked 56 with a score of 52) on the African continent.<sup>117</sup> Four years earlier, Transparency International had ranked Namibia 45 out of 170.<sup>118</sup> Whereas Namibia remains, relatively speaking, corruption free (when compared to countries like South Africa which was ranked at number 61 in 2015 and 70 in 2019)<sup>119</sup>, it is concerning that the country seems to be deteriorating in this regard.

The country has a strong legal framework for tackling corruption but there are allegations that anti-corruption laws are applied inconsistently, and that the Anti-Corruption Commission (ACC), the main government agency dealing with corruption, is slow to move on cases involving high profile individuals.<sup>120</sup> These concerns notwithstanding, the ACC has acted on some of the country's most senior politicians and charged them with a range of financial and economic related crimes. In December 2019, the Commission charged former fisheries minister Bernhard Esau and justice minister Sacky Shanghala with corruption, money laundering, fraud and tax evasion. The two, together with a number of other individuals, were arrested after an undercover investigation by Al Jazeera's revealed how one of Iceland's largest fishing companies (Samherji), colluded with well-connected senior politicians and business people in the country to gain preferential access to the Namibia's lucrative fishing grounds.<sup>121</sup>

Human rights concerns in Namibia have centred on issues such as freedom of expression, violence against women and girls, access to justice and the protection of the rights of the San minority group. Amnesty International's 2015/16 report for Namibia cites the case of a journalist working for *New Era*, which is one of the country's major newspapers, who was physically assaulted and briefly detained by police for taking photos of police officers arresting a criminal suspect. The officers ordered the journalist to delete the photos from her camera before releasing her.<sup>122</sup> At the same time, violence against women and girls remains a major concern prompting the United

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<sup>113</sup> Ibid, at p46.

<sup>114</sup> Ibid, at p44.

<sup>115</sup> Ibid, at p27.

<sup>116</sup> Transparency International, Corruption Perceptions Index (2019). The Report is available at <https://www.transparency.org/cpi2019>

<sup>117</sup> Ibid.

<sup>118</sup> Transparency International, Corruption Perceptions Index 2015. Available at <https://www.transparency.org/cpi2015/>

<sup>119</sup> Ibid, Transparency International, Corruption Perceptions Index for 2015 and 2019.

<sup>120</sup> Freedom House, Freedom in the World 2019 – Namibia.

<sup>121</sup> Al Jazeera, *Officials in Namibia corruption scheme to remain in custody* <https://www.aljazeera.com/news/2019/12/officials-namibia-corruption-scheme-remain-custody-191202140206392.html>

<sup>122</sup> Amnesty International Report 2015/16 – Namibia. Available at <http://www.refworld.org/country,...NAM,,56d05b2e43,0.html>

Nations Aids programme-UNAIDS and a local Namibian women rights organisation, *Victims 2 Survivors*, to call for gender-based violence to be declared a national disaster.<sup>123</sup>

Freedom House has also observed that “*violence against women, including sexual violence, is reportedly widespread, and rights groups have criticized the government's failure to enforce the country's progressive domestic violence laws.*”<sup>124</sup> Economic and geographic barriers, a shortage of public defenders and a lack of capacity in the lower courts have also been cited as some of the key factors affecting the right of access to justice for Namibians.<sup>125</sup>

Namibia’s long running Caprivi Detainees' trial concluded in September 2015 with the High Court finding 30 of the 65 accused guilty of charges ranging from high treason, to murder, and attempted murder. This case is important given its origins and the human rights ramifications that followed in its wake. In 1998, a group of people in the Caprivi Strip launched an uprising with the objective of seceding from Namibia. They argued that their right to self-determination had been frustrated by the government of Namibia, which they accused of marginalising and excluding them from the national political and economic processes.

The response by the government was swift and brutal. The military was sent to Caprivi to quell the secession bid forcing many inhabitants to flee to neighbouring countries such as Angola, Botswana and Zambia to seek asylum. During both the military intervention and the lengthy trial that followed, there were allegations of serious human rights violations including executions, disappearances, and torture and ill-treatment of prisoners to obtain confessions. The following extended quote from Amnesty International illustrates the point:

*The detainees were originally arrested and charged in 1999 for allegedly attempting to secede the then Caprivi region from the rest of the country. They had spent more than 14 years in remand prison. The majority of them suffered health problems linked to age and prolonged detention and many of their relatives had no means of visiting them. Many of the Caprivi detainees were possible prisoners of conscience because they were arrested solely on the basis of their actual or perceived political views, ethnicity or membership of certain organizations. The length of their pre-trial detention violated the rights of the accused to a fair trial. Ten of the accused died in police custody before the High Court trial commenced ... in 2003, while another 12 who went on trial died before its end.*<sup>126</sup>

Human rights organisations in the country urged the Chief Justice to intervene and order a separate trial for the treason accused after strong evidence emerged during the trial that police had used torture to obtain confessions.<sup>127</sup> To date, eight prisoners from the Caprivi group are still in detention.<sup>128</sup> Amnesty International also reports that in July 2019, the Botswana Court of Appeal

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid, note 103 above.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid, n122 above.

<sup>127</sup> Werner Menges (2006), Supreme Court responds to treason trial torture claims, available at <http://www.namibian.com.na/index.php?id=22851&page=archive-read>

<sup>128</sup> Amnesty International (2019) Report on Namibia. Available at <https://www.amnesty.org/en/countries/africa/namibia/report-namibia/>

declared a group of Namibian refugees who had fled from Caprivi as “illegal immigrants” thus clearing the way for them to be repatriated/deported back to Namibia. This was despite protests by the refugees that it was not safe for them to return home as they belonged to a political party banned by the government of Namibia. Botswana began to repatriate the refugees in September.<sup>129</sup>

Like its neighbours South Africa and Botswana, Namibia, is home to a number of indigenous groups such as the Khoi, the Nama and the San. The San live in the dry and arid lands of the Kalahari Desert but they are also spread throughout many regions of the country in the South and the South West. Urbanisation has led to much of the ancestral land that the San have traditionally relied upon for their food and cultural practices being threatened. According to the organisation Minority Rights Group International, the quality of life of the San people has deteriorated since the advent of democracy in 1990:

*In Namibia, the San's quality of life declined post-independence due to land redistribution and incidents of expulsion from their traditional grazing lands. They faced increasing obstacles to their hunter-gatherer culture, as most land was distributed among other ethnic groups. Post-independence, many San ended up seeking new livelihoods in nearby towns or migrating to communal areas occupied by other groups, for example in the Omaheke Region.*<sup>130</sup>

The rights group continues to observe that the Namibian government has failed to provide the San with skills, education or other assets thus making very few of them to be able to find secure and well-remunerated work in towns and cities. Unable to find work, facing discrimination and with declining food resources, many San households have been forced to rely on state pensions and food donations from government and NGOs.<sup>131</sup> Other major human rights concerns reported in Namibia include a lack of housing with over 500 000 people living in shacks or informal settlements, high unemployment and a growing rural to urban migration to which government has not sufficiently responded in terms of shelter and social services.<sup>132</sup>

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<sup>129</sup> Amnesty International (2019) Report on Botswana. Report available at <https://www.amnesty.org/en/countries/africa/botswana/report-botswana/>

<sup>130</sup> Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2015 - Case study: The San in southern Africa - adjusting to urbanization as a first people*. Available at <http://www.refworld.org/country,...NAM,,55a4fa2615.0.html>

<sup>131</sup> Ibid.

<sup>132</sup> Amnesty International (2019) Report on Namibia. Available at <https://www.amnesty.org/en/countries/africa/namibia/report-namibia/>

## 2.5. SOUTH AFRICA

South Africa enjoys a healthy and vibrant democracy albeit one facing many challenges given the stubborn persistence of high rates of race based unemployment, inequality and social exclusion. The South African constitution has been lauded as one of the most progressive in the world with a Bill of Rights that guarantees civil and political as well as socio-economic and environmental rights. The South African constitution is the only constitution on the African continent that explicitly outlaws discrimination based on sexual orientation.<sup>133</sup> Major human rights challenges confronting the country include a very high rate of unemployment, which currently stands at 29.1% (6.7 million people) of the labour active population of 23.1 million people<sup>134</sup>, gender-based violence and widespread poverty and inequality. In total, there are about 10, 3 million people (or 38,7% of the labour active population) out of work in South Africa.<sup>135</sup>

Unemployment reflects apartheid racial patterns with Black Africans being the most unemployed (9, 3 million or 43%), followed by Coloureds (722 000 or 30, 1%), Indians/Asians (135 000 or 20, 6%) and finally Whites (202 000 or 9, 8%).<sup>136</sup> Women have a higher rate of unemployment (5, 3 million or 42,4%) compared to men (5, 3 million or 35,5%).<sup>137</sup> Youth unemployment is particularly concerning. Out of the 10, 3 million unemployed people in the South African labour market, 2, 6 million of them are aged between 15 and 24 years while 3, 9 million are aged between 25 and 34 years. It means in other words that the youth make up approximately 6, 5 million (63%) of all unemployed people in the country.<sup>138</sup>

Poverty and racial inequality define South Africa's social landscape 26 years after the formal demise of apartheid. Lack of employment and income-earning opportunities have pushed many South Africans into poverty. A significant number of people now rely on the state administered social grants for survival. The 2018 General Household Survey<sup>139</sup> reported that the percentage of households receiving social grants had increased from 30,8% in 2003 to 44,3% in 2018.<sup>140</sup> In terms of racial distribution, 33,9% of Black Africans, 29,9% of Coloureds, 12,5% of Indians and 7,5% of Whites relied on social grants<sup>141</sup> once again laying bare the racial demographics of poverty and inequality in the country. Social grants are the second most important source of income (45,2%) for households after salaries (64,8%), and the main source of income for almost a fifth of the population nationally.<sup>142</sup>

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<sup>133</sup> Section 9 of the Constitution. The Constitution is available at

<http://www.justice.gov.za/legislation/constitution/SACConstitution-web-eng.pdf>

<sup>134</sup> Statistics South Africa, Statistical release P0211 Quarterly Labour Force Survey (Quarter 4, 2019) released on 11 February 2020. Available at <http://www.statssa.gov.za/?p=12948>

<sup>135</sup> Ibid, at page 37. This using the expanded definition of unemployment which includes people who are too discouraged to look for work because jobs are simply unavailable.

<sup>136</sup> QLFS, at page 39-40 of the report.

<sup>137</sup> Ibid page 37-40 of the report.

<sup>138</sup> Ibid page 41 of the report.

<sup>139</sup> Statistics South Africa, General Household Survey 2018 (released on 28 May 2019), available <http://www.statssa.gov.za/?p=12180>

<sup>140</sup> Ibid, at p30.

<sup>141</sup> Ibid, at p31.

<sup>142</sup> Ibid, at p31.

Poverty, inequality and social exclusion have resulted in serious levels of violence in the country. According to official police crime statistics for the one year period between March 2018 and April 2019, a total of 21 022 people were murdered in South Africa.<sup>143</sup> During the same period, there were 18 980 attempted murders and 52 420 sexual offences (which include rape and sexual assault).<sup>144</sup> Violence against lesbian, gay, bisexual, transgender and intersex people remains high and worrying despite the fact that sexual orientation is constitutionally protected, and the laws that criminalised homosexuality have long been removed from South Africa's statute book.<sup>145</sup>

Gender -Based Violence (GBV) remains a huge challenge and major cause for concern in South Africa. It pervades the political, economic and social structures of society and is driven strongly by patriarchal social norms and complex and intersectional power inequalities, including those of gender, race, class and sexuality. It disproportionately affects women and girls although men have been victims too. It is hard to obtain accurate statistics on GBV because it is largely hidden as it often happens in the private sphere and there is also low reporting by victims. A study by StatsSA in 2016 showed that one in five partnered women had experienced physical violence in the 12 months prior to the survey.<sup>146</sup> Statistics from the South African Police services showed that in the 2017/18 period 2930 adult women had been murdered.<sup>147</sup> This means that a woman is murdered every three hours in South Africa.<sup>148</sup>

In November 2018 a Presidential Summit on GBV and femicide was held in Johannesburg. During the Summit the President acknowledged that GBV and femicide is a national crisis. At the end of the Summit a declaration was made in which a commitment to a “*united, comprehensive and effective prevention and response to gender-based violence and femicide in South Africa*”<sup>149</sup> was made. However GBV and femicide remain staggeringly high. For instance in the first week of the COVID -19 lockdown, South African Police recorded 2300 GBV complaints.<sup>150</sup>

Xenophobia and xenophobic violence remain widespread and rampant in South Africa. In May 2008 at least 62 people (overwhelmingly non-nationals) were killed and thousands were displaced in the worst outbreak of xenophobic violence to date.<sup>151</sup> Between April and May 2015, another

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<sup>143</sup> South African Police Service, Crime Statistics of the Republic of South Africa, available at <https://www.saps.gov.za/services/crimestats.php>

<sup>144</sup> Ibid, at p5.

<sup>145</sup> In *National Coalition for Gay and Lesbian Equality and Another v Minister of Justice and Others* (CCT11/98) [1998] ZACC 15; 1999 (1) SA 6; 1998 (12) BCLR 1517 (9 October 1998), the Constitutional Court declared as unconstitutional laws that criminalised homosexuality. See also HURISA's report titled: *A Country In Crisis National Dialogue Report*, published in August 2019.

<sup>146</sup> Stats SA (2017). South Africa Demographic and Health Survey 2016: Key Indicator Report. Available at <http://www.statssa.gov.za/publications/Report%2003-00-09/Report%2003-00-092016.pdf>.

<sup>147</sup> Africa Check, *Five facts: Femicide in South Africa*. Available at <https://m.polity.org.za/article/five-facts-femicide-in-south-africa-2019-09-04>

<sup>148</sup> Ibid

<sup>149</sup> Presidential Summit Against Gender-Based Violence and Femicide Declaration. Available at [https://www.gov.za/sites/default/files/gcis\\_document/201903/summit-declaration.pdf](https://www.gov.za/sites/default/files/gcis_document/201903/summit-declaration.pdf)

<sup>150</sup> Africa Check. Available at <https://africacheck.org/spot-check/south-african-police-record-2300-gender-based-violence-complaints-in-first-week-of-lockdown-not-87000/>

<sup>151</sup> A large body of scholarly articles on xenophobia in South Africa can be accessed at [https://scholar.google.co.za/scholar?q=xenophobic+violence+%2B+2008&hl=en&as\\_sdt=0&as\\_vis=1&oi=scholar&sa=X&ved=0ahUKEwjB\\_57Cj4TNAhUDBMAKHWITA7cQgQMIGTAA](https://scholar.google.co.za/scholar?q=xenophobic+violence+%2B+2008&hl=en&as_sdt=0&as_vis=1&oi=scholar&sa=X&ved=0ahUKEwjB_57Cj4TNAhUDBMAKHWITA7cQgQMIGTAA)

wave of xenophobic violence gripped the country leaving several people dead and an estimated 2400 people displaced.<sup>152</sup> In August and September 2019, a third major wave of xenophobic violence hit the country, mostly in the cities and urban areas of Johannesburg and Durban. At least 12 people were killed in those attacks, including South Africans who were mistaken for foreigners or who were otherwise caught in the melee of looting foreign-owned shops.<sup>153</sup>

No one has been successfully prosecuted for acts of xenophobic violence in the country, something that is not surprising given that government stridently denies that the violence is underpinned by xenophobia. Following the 2019 attacks, Loren Landau, a professor at the African Centre for Migration and Society, which is based at the University of the Witwatersrand, and a leading researcher on forced migration, commented that xenophobic violence in South Africa is “*not irrational .... or a spontaneous popular revolt. Nor is it simply “criminality,” as South Africa’s political leaders repeatedly claim. Rather, it is an act rooted in the failures of South Africa’s transformation. Continuing white privilege, world-leading levels of inequality and unemployment play a role. So too do erratic policing, cowardly political leaders and a disillusioned population.*”<sup>154</sup>

In 2015 following widespread criticism for its failure to act decisively on xenophobic violence, government launched what it called “Operation Fiela”, ostensibly to stop the violence, and to deal with crime in the country. However, this operation saw hundreds of refugees and asylum-seekers being detained unlawfully and risking deportation. Police refused lawyers and human rights organisations access to the hundreds of refugees and asylum seekers who were detained at the Johannesburg Central Police Station until they were faced with contempt of court threats for ignoring a court order requiring that access be granted.

Besides these more pronounced waves of violence against migrants-predominantly against Africans and Asians,<sup>155</sup> what can be characterised as ‘low-intensity xenophobic violence’ continues in many townships across South Africa. Reports by organisations like Human Rights Watch, Amnesty International, the Consortium for Refugees and Migrants in South Africa, and the African Centre for Migration and Society all demonstrate the fact that violence against foreign nationals continues unabated, and government seems unable or unwilling to address the root causes of this problem.

Violence by the police is also an issue of major concern. The police oversight body-the Independent Police Investigative Directorate reported that in the 2018/19 period, 607 people died

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<sup>152</sup> See e.g. Human Rights Watch, World Report 2016 - South Africa, available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=56bd991fc>

<sup>153</sup> Amnesty International, South Africa 2019. <https://www.amnesty.org/en/countries/africa/south-africa/report-south-africa/>. See also BBC, 2 October 2019. *South Africa: How common are xenophobic attacks?* Available at <https://www.bbc.com/news/world-africa-47800718>

<sup>154</sup> Loren B. Landau, *What’s Behind the Deadly Violence in South Africa?* <https://www.nytimes.com/2019/09/16/opinion/south-africa-xenophobia-attacks.html>

<sup>155</sup> Many commentators have described the violence against migrants in South Africa as “Afrophobia” because it is overwhelmingly directed at blacks from other African countries. See e.g. Rothney Tshaka, *Afrophobia versus xenophobia in South Africa*. Available at <https://www.unisa.ac.za/sites/corporate/default/News-&-Media/Articles/Afrophobia-versus-xenophobia-in-South-Africa>

in the hands of the police.<sup>156</sup> Two hundred and fourteen deaths occurred in police custody while 393 deaths resulted from police action. There were 137 cases of rape by police officers, 270 cases of torture and 3,835 cases of assault reported in the same period.<sup>157</sup>

Other major human rights concerns noted in South Africa relate to the violation of the right to freedom of expression and association by local authorities and police officers, extra judicial executions by the police, and the disappearance of activists and human rights defenders.<sup>158</sup> HURISA National Dialogue 2019 Report and the 2018 *Enabling Environment National Assessment: South Africa*<sup>159</sup> report, documented incidences of individuals who had been killed in suspicious circumstances or who had simply disappeared. They included Sikhosphi “Bazooka” Radebe, an activist from Bizana in the Eastern Cape who was killed in March 2016 for what many believe to have been his role as a leader of a community-based campaign against an Australian company attempting to mine titanium in the area.<sup>160</sup>

Similarly, S’fiso Ngcobo of the social movement *Abahlali base Mjondolo* in Kwazulu-Natal was killed in highly suspicious circumstances,<sup>161</sup> while Nomawethu Kunene who was instrumental in exposing the corruption underpinning the “Life Esidimeni” tragedy<sup>162</sup> simply disappeared from her house in Johannesburg at the beginning of 2018.<sup>163</sup> She has not been seen to date. Another activist named Papi Tobias also disappeared under mysterious circumstances in February 2016 and has not been seen since.<sup>164</sup>

For almost a decade, human rights activists and organisations in South Africa fought against government’s efforts to introduce a repressive state information protection law (Protection of State Information Bill). The National Assembly passed the Bill in April 2013 and submitted it to the then president Jacob Zuma for his assent, however the latter referred it back to the National Assembly for reconsideration.<sup>165</sup> Civil society organisations and activists have also complained

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<sup>156</sup> IPID Annual Report (2018-2019), available at <http://www.ipid.gov.za> at p38.

<sup>157</sup> Ibid.

<sup>158</sup> See the following HURISA reports: (1) *A National Assessment of the Enabling Environment for Civil Society Organisations in South Africa* (2015); (2) *A Baseline Survey of Laws that Impact on Freedom of Expression in South Africa* (2016); and (3) *An Enabling Environment National Assessment: South Africa [Final Country Report]* (2018)

<sup>159</sup> This and other reports are available on request from HURISA.

<sup>160</sup> See also the article by Greg Nicolson, Daily Maverick (24 March 2016). *Goodbye Bazooka: Wild Coast anti-mining activist killed*. <http://www.dailymaverick.co.za/article/2016-03-24-goodbye-bazooka-wild-coast-anti-mining-activist-killed/#.V1f1KKIjYuM>

<sup>161</sup> According to Abahlali, five of its members were killed in a period of eight months. See <http://abahlali.org/node/16523/>

<sup>162</sup> This refers to the tragic circumstances surrounding the deaths of 143 people who were unlawfully moved from government psychiatric facilities to private, often unregistered non-governmental organisations. See e.g. Mpumelelo Mkhabela, News24, 23 March 2018: *The reasons for the Life Esidimeni tragedy hidden in Moseneke's report*. At [https://www.news24.com/Columnists/Mpumelelo\\_Mkhabela/the-reasons-for-the-life-esidimeni-tragedy-hidden-in-mosenekes-report-20180323](https://www.news24.com/Columnists/Mpumelelo_Mkhabela/the-reasons-for-the-life-esidimeni-tragedy-hidden-in-mosenekes-report-20180323)

<sup>163</sup> Amanda Maliba, May 6, 2018, Family of missing whistle-blower 'left in dark over probe'. Available at <https://www.iol.co.za/news/politics/family-of-missing-whistle-blower-left-in-dark-over-probe-14808187>

<sup>164</sup> *Papi Missing for a Year Now*, available at <https://www.pressreader.com/south-africa/sowetan/20170206/281689729548793>.

<sup>165</sup> See *What's still wrong with the Secrecy Bill?* At <http://www.r2k.org.za/2014/09/11/whats-still-wrong-with-the-secrecy-bill/>

for many years about being subjected to unlawful surveillance by the state.<sup>166</sup> In September 2019, the Pretoria High Court held that parts of the Regulation of Interception of Communication and Provision of Communication Related Information Act (70 of 2002) (RICA) (the law used by the state to conduct surveillance) were unconstitutional in that they did not provide sufficient safeguards for the issuing of surveillance directions.<sup>167</sup> The matter is currently before the Constitutional Court awaiting determination.

Also in a significant victory for the right to freedom of assembly, the Constitutional Court held in November 2018 that section 12(1)(a) of the Regulation of Gatherings Act (205 of 1993) was unconstitutional and invalid to the extent that it made the failure to give notice, or the giving of inadequate notice, by any person who convened a gathering, a criminal offence<sup>168</sup>.

Corruption in South Africa has been rising ever since the country transitioned to democracy in 1994. However, it is during President Jacob Zuma's nine years in power (2009 to 2018) that official corruption simply became a way of life in the country. In 2015, Transparency International ranked South Africa 61 overall with a score of 44 in its Corruption Perceptions Index.<sup>169</sup> Four years later in 2019, South Africa had slid down to position 70, a decline of nine ranks on the index.<sup>170</sup> Corruption in public sector cost South Africa an estimated 27 billion annually, according to report by corruption watch dog- Corruption Watch. This is a crippling effect on basic service delivery, especially for the poor and destitute of our communities

Year after year the Auditor General reported irregular expenditure which remains at 29.7 billion in 2017/2018 audit report & 25.2 billion by the 2016/2017 audit report. Fruitless and wasteful expenditure, the 2017 / 2018 Audit report revealed that only 18 out of over 278 municipalities in the country scored a clean audit and the lack of attention is paid to water and sanitation infrastructure

In January 2018, President Zuma signed a proclamation to establish a *Judicial Commission of Inquiry to Inquire into Allegations of State Capture, Corruption and Fraud in the Public Sector Including Organs of State*.<sup>171</sup> Since its establishment, the Zondo Commission (as it is popularly known)<sup>172</sup> has heard evidence of high-level corruption, money laundering, embezzlement and nepotism, among others, by well-connected individuals, senior public servants and politicians during the Zuma years. Many of these acts of corruption have resulted in the collapse of once well-

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<sup>166</sup> The Right2Know Campaign, <https://www.r2k.org.za/category/surveillance/>. See also Amnesty International, Report 2015/16 - South Africa. Available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=printdoc&docid=56d05b16a>

<sup>167</sup> Franny Rabkin, Mail and Guardian Online, 16 Sep 2019, High court finds parts of Rica 'unconstitutional'. <https://mg.co.za/article/2019-09-16-high-court-finds-parts-of-rica-unconstitutional/>

<sup>168</sup> *Mlungwana and Others v S and Another* CCT32/18 [2018] ZACC 45; 2019 (1) BCLR 88 (CC); 2019 (1) SACR 429 (CC) (19 November 2018). Available at <http://www.saflii.org/za/cases/ZACC/2018/45.html>

<sup>169</sup> Transparency International, Corruption Perceptions Index 2015. Available at <https://www.transparency.org/cpi2015/>.

<sup>170</sup> Transparency International, Corruption Perceptions Index (2019). The Report is available at <https://www.transparency.org/cpi2019>.

<sup>171</sup> Information and documents relating to the commission can be found at <https://sastatecapture.org.za/>

<sup>172</sup> The Commission is chaired by the Deputy Chief Justice Raymond Zondo.

performing public enterprises such as Eskom (electricity), South African Airways (state-owned airline) and Transnet (state logistics company).

Although South Africa has good reputation of setting up Commissions of Inquiries. These include Commission into public violence, truth and reconciliation, marikana among others. These have not brought awaited justice ensuring perpetrators are held criminally liable, victim of human rights violations provided reparations and reinstatement of stolen funds into treasury.

Lastly, it is useful to consider South Africa response to the global Covid-19 pandemic, and how its response has affected individual rights and freedoms. South Africa's first case of the corona virus was reported in early March 2019. The government responded swiftly by declaring the pandemic a national disaster and shortly thereafter put the country on a national lockdown. Locally, many people praised government for its quick and decisive response. Even the World Health Organisation commended South Africa for the way it had dealt with the pandemic.<sup>173</sup> The President placed the country on a stringent lockdown between 27 March and 30 April 2020. Police, supported by the military, patrolled the streets of the country to enforce the lockdown with civilians only allowed to travel to shops to buy food or to receive medical care, among other limited purposes.

Unfortunately, security forces have been accused of serious violations of human rights including assaults and murder. As early as 3<sup>rd</sup> April, media was reporting that at least eight people had been killed by security officers.<sup>174</sup> By the time the president relaxed the lockdown from Level 5 to Level 4 (allowing limited movement and some businesses to operate), reports indicated that almost 100 cases of police brutality were being investigated.<sup>175</sup>

In one of the most disturbing incidents, police and the military were accused of killing Collins Khosa, a resident in South Africa's most densely populated township Alexandra. Security officers allegedly found him drinking alcohol in his yard and assaulted him following an altercation. Khosa later died of injuries.<sup>176</sup> The family approached the Constitutional Court on an urgent basis for orders to prevent further brutality by security forces, and for the Court to order the SA National Defence Force to adopt a code of conduct. The Court however refused to hear the matter arguing

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<sup>173</sup> Speech by President Cyril Ramaphosa on 23 March 2020: South Africa's response to Coronavirus COVID-19 pandemic. Available at <https://www.gov.za/speeches/president-cyril-ramaphosa-south-africas-response-coronavirus-covid-19-pandemic-23-apr-2020>

<sup>174</sup> Suné Payne, Daily Maverick, 7 May 2020, *Police reportedly using 'sjamboks, hammers and irons to assault people,' committee hears*. Available at <https://www.dailymaverick.co.za/article/2020-05-07-police-reportedly-using-sjamboks-hammers-and-irons-to-assault-people-committee-hears/>. See also Daneel Knoetze, Citizen, 3 April 2020, *Eight people allegedly already killed by police during lockdown – more than the virus*, <https://citizen.co.za/news/south-africa/crime/2265100/eight-people-allegedly-already-killed-by-police-during-lockdown-more-than-the-virus/>

<sup>175</sup> Daneel Knoetze, GroundUp, 6 May 2020. *Covid-19: Slain Alex man's case highlights failures of police and army watchdogs*. Available at <https://www.groundup.org.za/article/slain-alex-mans-case-highlights-police-oversight-failings/>

<sup>176</sup> This case was widely reported in South Africa mainstream and social media. See e.g. SABC, *Family of Alexandra man allegedly killed by soldiers doesn't trust SANDF probe*. <https://www.sabcnews.com/sabcnews/family-of-alexandra-man-allegedly-killed-by-soldiers-doesnt-trust-sandf-probe/>

that there were no good grounds for seeking direct access to it.<sup>177</sup> The family has since taken the matter to High Court in Pretoria High.

It would seem unfortunately that from the earlier overwhelming goodwill extended to the government by the citizenry, matters have reached such a low point that many people have now begun to question the constitutionality and lawfulness of some of government's decisions. In a media article, senior counsel Vuyani Ngwalana questioned the constitutionality of the National Command Council (NCC), the body set up by the President to coordinate cabinet's efforts at the national level in response to the pandemic.<sup>178</sup> He argued that the body lacked constitutional legitimacy, as it is not clear under which section of the Constitution it is established. He added that strangely, the NCC excludes certain members of cabinet including the Deputy President. Ngwalana also criticized the violation of individual rights and liberties by police and the military.<sup>179</sup>

## 2.6. ESWATINI (SWAZILAND)

The absolute nature of the Swazi dictatorship is best illustrated by the unilateral decision of King Mswati III to change the name of the country from Swaziland to 'Eswatini' in April 2018, without any consultation, constitutional process or the approval of parliament.

Eswatini became independent from British rule in 1968 and adopted a multi-party system of parliament. After an attempted coup in 1973, King Sobhuza II suspended the constitution and parliament and ruled by decree until his death in 1982. There followed a period of intense political in-fighting in the Swazi royal family until 1986 when one of the King's sons, Prince Makhosetive ascended to the throne as Mswati III.<sup>180</sup> Mswati is the head of state; he retains absolute control over the executive, the legislature and the judiciary. He is also immune from civil suits and criminal prosecution.<sup>181</sup>

All reports regarding the human rights situation in Eswatini present the image of a country where citizens enjoy very few, if any, of the rights which are now commonplace in most countries around the world. The king wields absolute power in the kingdom. He appoints 10 of the 65 members of the House of Assembly (parliament) as well as the Prime Minister, who is the head of government. He also appoints 20 members of the 30-seat Senate (upper house of parliament).<sup>182</sup> Only two

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<sup>177</sup> Franny Rabkin, Mail and Guardian online, 27 Apr 2020. Khosa case: Going straight to the Constitutional Court isn't always the right path. Available at <https://mg.co.za/article/2020-04-27-khosa-case-going-straight-to-the-constitutional-court-isnt-always-the-right-path/>

<sup>178</sup> Vuyani Ngwalana, SC, Sunday Independent, 2 May 2020: *Do Covid-19 regulations pass the constitutionality test in SA?* <https://www.iol.co.za/sundayindependent/analysis/do-covid-19-regulations-pass-the-constitutionality-test-in-sa-47474336>. The much longer legal opinion by the writer is titled: *Do the Covid-19 Regulations Pass the Rationality and Constitutionality Test in South Africa?*

<sup>179</sup> Ibid.

<sup>180</sup> Swaziland: History and Politics, available at <https://www.issafrica.org/af/profiles/Swaziland/Politics.html>

<sup>181</sup> Amnesty US, Swaziland Human Rights, available at <http://www.amnestyusa.org/our-work/countries/africa/swaziland>

<sup>182</sup> Freedom House, Freedom in the World 2019 – Eswatini. <https://freedomhouse.org/country/eswatini/freedom-world/2019>

women have been directly elected to parliament.<sup>183</sup> The king has tight control over the country's political system with candidates being vetted and approved through what is known as the *Tikundla* system. *Tikundla* is a system under the control of chiefs who vet and approve candidates, and therefore determine the outcome of elections.<sup>184</sup> The majority of Swazis live in rural areas under the control of chiefs, who are appointed by the king. The king controls most of the public land in the country.<sup>185</sup>

Government exercises a tight control over all aspects of the life of Swazi citizens. Political parties are banned and leaders of organisations such as the proscribed People's United Democratic Movement (PUDEMO), Mario Masuku, are routinely arrested and held in jail for lengthy periods for agitating for political reforms. Freedom of expression and freedom of association are severely restricted. Academic freedom is limited by prohibitions against criticizing the monarchy while government restricts freedom of assembly and association by using the sweeping powers granted to it under the 2008 Suppression of Terrorism Act.<sup>186</sup> Journalists face intimidation, harassment, and assault, and are arrested on a regular basis.

The Terrorism Act gives the government the power to declare any organization as a terrorist organisation. Government has used this law to ban a wide number of organisations including PUDEMO, which is the country's biggest opposition party, its youth wing, the Swaziland Youth Congress, and the South African-based Swaziland Solidarity Network.<sup>187</sup>

Despite the introduction of a new Public Order Act (12 of 2017) which replaced the colonial era Public Order Act (17 of 1963)<sup>188</sup>, severe restrictions remain in respect of freedom of expression, association and assembly.<sup>189</sup> In terms of the new Act, criticism of the king and Swazi culture are still prohibited.<sup>190</sup> Section 3(2)(a) of the old Act stated that "*no public meeting or public procession shall take place save under and in accordance with the terms and conditions of a licence in that behalf issued under this section.*" According to the new Police Act (2018), anyone planning to hold a gathering is only required to 'notify' the police and does not have to apply for a permit.<sup>191</sup> However, this presumably new development has not translated into a greater ability for citizens to enjoy their right to assemble as police routinely break protests.

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<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Lisa Van Wyk (2015), *Five things you didn't know about human rights in Swaziland*. Available at <https://www.amnesty.org/en/latest/campaigns/2015/05/five-things-you-didnt-know-about-human-rights-in-swaziland/>

<sup>186</sup> Swaziland: History and Politics, available at <https://www.issafrica.org/af/profiles/Swaziland/Politics.html>.

<sup>187</sup> Magnificent Mndebele, Mail and Guardian Online, 14 March 2019: <https://mg.co.za/article/2019-03-14-eswatini-fights-for-free-political-expression/>

<sup>188</sup> Police and Public Order Act, 17 of 1963. Available at <https://www.issafrica.org/cdct/mainpages/pdf/Corruption/Legislation/Swaziland/Swaziland%20Public%20Order%20Act.pdf>

<sup>189</sup> Human Rights Watch, Report on Eswatini, 2019. <https://www.hrw.org/world-report/2020/country-chapters/eswatini-formerly-swaziland>

<sup>190</sup> Freedom House, Freedom in the World 2019 – Eswatini. <https://freedomhouse.org/country/eswatini/freedom-world/2019>

<sup>191</sup> Ibid.

The king holds ultimate authority over the appointment and removal of judges. Although the king allegedly acts on the advice of a judicial service commission, the commission is made up of members appointed by, and answerable to, the king.<sup>192</sup> Women face discrimination despite the ruling by the Eswatini High Court in August 2019 that the common law doctrine of marital power (which gives a husband the ultimate decision-making power over his wife and the matrimonial property) is unconstitutional.<sup>193</sup> Homosexuality is prohibited in terms of Swazi common law<sup>194</sup> but this prohibition notwithstanding, the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community is active in the country and held a pride march in June 2019 without harassment by the police.<sup>195</sup>

Corruption is widespread and a major contributor to Eswatini's financial crisis.<sup>196</sup> This should not be surprising given that the 2019 Transparency International's Corruptions Perceptions Index placed the country at position 113 (with a score of 34) out of 180 countries.<sup>197</sup> It is the second lowest score of the seven countries considered in this analysis.

According to UNAIDS, 210 0000 people were living with HIV in Eswatini in 2018, while the HIV prevalence (i.e. the percentage of people living with HIV among adults in the age bracket 15–49 years) was 27.3%.<sup>198</sup> Of the about 190 000 adults living with HIV, 120 000 of them (63.16%) are women meaning that women have been disproportionately affected by the disease.<sup>199</sup> By 2015, approximately 19 000 children aged between 0-14 years were living with HIV. Fifty-six thousand (56 000) children below the age of 18 years have been orphaned by Aids.<sup>200</sup>

The 2015 Mo Ibrahim Index of African Governance placed Swaziland (as it was then known) at number 26 out of 54 African countries. This was ahead of countries like Ethiopia (31) Cameroon (37) and Nigeria (39) which are presumably democratic states with multi-party systems of government.<sup>201</sup> Swaziland scored highly on safety and rule of law, and sustainable economic opportunity (16<sup>th</sup> overall on both scores) but very poorly on participation & human rights (49<sup>th</sup>). On human rights, Swaziland was only better than Sudan (50<sup>th</sup>), Eritrea (51<sup>st</sup>), Equatorial Guinea (52<sup>nd</sup>), South Sudan (53<sup>rd</sup>) and Somalia (54<sup>th</sup>). Except for Equatorial Guinea, the rest of the countries in this group were in a state of armed conflict or civil war.

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<sup>192</sup>Freedom House, Ibid.

<sup>193</sup> Freedom House (2019) Report on Eswatini; Human Rights Watch, Report on Eswatini, 2019.

<sup>194</sup> Refugee Documentation Centre (Northern Ireland) (2012). Treatment of homosexuals in Swaziland. Available at <https://www.refworld.org/docid/50c064c92.html>

<sup>195</sup> Human Rights Watch, Report on Eswatini, 2019.

<sup>196</sup> Freedom House, Swaziland, available at <https://freedomhouse.org/report/freedom-world/2015/swaziland>

<sup>197</sup> Transparency International, Corruption Perceptions Index (2019). The Report is available at <https://www.transparency.org/cpi2019>

<sup>198</sup> <https://www.unaids.org/en/regionscountries/countries/swaziland>

<sup>199</sup> UNAIDS statistics-2019. <http://www.unaids.org/en/regionscountries/countries/swaziland>.

<sup>200</sup> Ibid.

<sup>201</sup> 2015 Ibrahim Index of African Governance, available at <http://static.moibrahimfoundation.org/u/2015/10/02193252/2015-IIAG-Executive-Summary.pdf>.

In its 2019 Report on African governance, the Foundation stated that Eswatini had alongside Mauritania recorded the largest declines in maternal mortality.<sup>202</sup> The foundation added that country had also recorded the highest decline in transparency and accountability (-29.2) alongside Tunisia.<sup>203</sup> However, the Eswatini had showed improvement in women representation in the judiciary (+50.0)<sup>204</sup> and the rule of law (access to justice) (+21.3).<sup>205</sup> The UNDP has ranked Eswatini at position 138 (Medium Human Development) out of the 189 countries surveyed, with a Human Development Index (HDI) of 0.608.<sup>206</sup> Life expectancy at birth is 64 years for women and 55.3 for men.<sup>207</sup> Given its very small population of 1.3 million inhabitants, Eswatini's Gross National Income per capita is relatively high at USD 9359<sup>208</sup> but the level of inequality is high as well (at 0.43)<sup>209</sup>, and so is poverty.

Lastly, it is worthwhile to consider Eswatini's COVID 19 response. The Country went on partial lockdown since 27 March 2020 with only essential businesses allowed to operate, travel severely restricted and people banned from meeting in groups of more than 20. As soon as the Country went into lockdown, there were reports of people who were unable to feed themselves due to loss of income. A government food aid scheme intended to feed over 300 000 individuals from 63 000 families was announced,<sup>210</sup> and people were meant to be fed within 14 days. However this did not happen. Soon after the commitment to distribute food to people was made, parliament rejected a plan put forward by the Deputy Prime Minister Themba Masuku to send people money instead of food.<sup>211</sup> This, the Deputy Prime Minister said had been suggested to reduce the chances of people gathering together to receive food parcels and risk catching the corona virus. The National Disaster Management Agency (NDMA) spokesperson, also announced that people in urban areas would not get food as the government was directing its efforts only in rural areas.<sup>212</sup> Without a clear food aid plan, the NDMA set about registering people for food aid and this became chaotic as people crowded to register and did not observe social distancing regulations. In Shiselweni region, people were asked to pay E50 before they could be registered for food aid. As a result there are complaints that a lot of deserving folks were left out of the registration process because they did not have money to pay.<sup>213</sup> Vulnerable citizens continue to struggle to fend for themselves.

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<sup>202</sup> Mo Ibrahim Foundation, African Governance Report (2019), at p33. The declines recorded were -9.4 for Eswatini, and -14.1 for Mauritania.

<sup>203</sup> Ibid, at p46

<sup>204</sup> Ibid, at p40.

<sup>205</sup> Ibid, at p44.

<sup>206</sup> UNDP, 2019, at p302.

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid, at p310.

<sup>210</sup> Swazi Media Commentary. Available at <https://swazimedia.blogspot.com/2020/05/chaos-as-swaziland-govt-misses-target.html>

<sup>211</sup> Ibid

<sup>212</sup> Ibid

<sup>213</sup> Times of Swaziland. Available at <http://www.times.co.sz/news/128157-residents-made-to-pay-e50-for-%E2%80%98free-food%E2%80%99.html>

## 2.7. ZIMBABWE

There was a great deal of hope for Zimbabwe that the country would turn a leaf with the removal of long-running dictator Robert Mugabe in November 2017. This, however, has not happened. Instead, more than two years since Mugabe's removal from power by the military, the government continues to operate in pretty much the same way as it did before. The following quotations from Amnesty International's 2019 report on Zimbabwe capture the gravity of the situation :<sup>214</sup>

*“During his first year as President of Zimbabwe, Emmerson Mnangagwa has presided over a systematic and brutal crackdown on human rights, including the violent suppression of protests and a witch-hunt against anyone who dared challenge his government, Amnesty International said today.*

*What we have witnessed in Zimbabwe since President Emmerson Mnangagwa took power is a ruthless attack on human rights, with the rights to freedom of expression, peaceful assembly and association increasingly restricted and criminalized,” said Muleya Mwananyanda, Amnesty International's Deputy Director for Southern Africa.*

*The authorities have shown blatant contempt for basic freedoms and they have demonstrated that there is no space for dissent in the so-called “new dispensation”. Time and again they have resorted to the same brutal tactics that were used by President Mnangagwa's predecessor Robert Mugabe to clampdown on human rights.”*

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<sup>214</sup> Amnesty International Report 2019 – Zimbabwe, available at <https://www.amnesty.org/en/latest/news/2019/08/zimbabwe-mnangagwas-first-year-in-office-marked-by-a-systematic-and-brutal-crackdown-on-human-rights/>

Human Rights Watch reported in its 2020 report that government remained intolerant of basic rights, peaceful dissent and free expression.<sup>215</sup> In August 2018, the government cracked down on post-election protests when soldiers were deployed on the streets of Harare and severely assaulted citizens. Six people were confirmed dead, although there were fears the death toll could be higher.<sup>216</sup> In January 2019, the government severely cracked down on nationwide demonstrations called to protest against the on-going economic decline and violation of human rights. According to Human Rights Watch, security forces killed at least 17 people, raped 17 women, shot and injured 81 people, and arrested over 100 individuals.<sup>217</sup> At the same time, government blocked social media and shutdown the internet in an attempt to stop people mobilizing for the protests until the High Court ordered that the blockage and shutdown be lifted.<sup>218</sup>

Zimbabwe remains a cause for serious concern for human rights organisations and activists both within and outside the country. The government and state agents routinely violate key rights and freedoms including the right to freedom of expression, assembly, privacy, human dignity and security of the person. Amnesty International in its 2016 Zimbabwe country report warned of disappearances, journalists and human rights defenders being denied their right to freedom of expression, and the forced evictions of informal traders and farm dwellers.<sup>219</sup> The situation has not changed at all.

The government of President Mngangwa continues to rely on a slew of repressive laws such as the Criminal Law (Codification and Reform) Act (2004), the Public Order and Security Act (2002), the Access to Information and Protection of Privacy Act (2002), and the colonial era Protected Places and Areas Act (1959). Chapter 4 of Zimbabwe's new constitution, which was approved by parliament in May 2013,<sup>220</sup> protects a wide range of fundamental rights and freedoms including the right to life, personal liberty, dignity, fair trial, property, freedom expression, freedom of the media, and freedom of assembly and association. It also protects the right to demonstrate and present petitions, and to administrative justice.<sup>221</sup> The Zimbabwean government has given scant regard to these rights.

Human Rights Watch has commented that despite the presence of the new constitution, basic fundamental rights and freedoms continue to be violated with impunity:

*The new constitution, which parliament approved in May 2013, enshrines respect for the rule of law, and commits the government to fully implement and realize the right to freedom of association, assembly, expression, and information. ... However, the government has yet to repeal or amend as appropriate other laws, including the Access to Information and*

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<sup>215</sup> HRW, World Report 2020 (events of 2019). Available at <https://www.hrw.org/world-report/2020>. (At p648).

<sup>216</sup> HRW, Zimbabwe: At least 6 dead in post- election violence. Available at <https://www.hrw.org/news/2018/08/03/zimbabwe-least-6-dead-post-election-violence>

<sup>217</sup> Ibid, n221

<sup>218</sup> Freedom House Report on Zimbabwe (2019) (*"Freedom on the Net"*). Available at <https://freedomhouse.org/country/zimbabwe/freedom-net/2019>

<sup>219</sup> Amnesty International Report 2015/16 – Zimbabwe, available at <http://www.refworld.org/country,...ZWE,,56d05afc24.0.html>

<sup>220</sup> Report available at [www.parl.zim.gov.zw/component/k2/.../1290\\_da9279a81557040d47c3a2c27012f6e1](http://www.parl.zim.gov.zw/component/k2/.../1290_da9279a81557040d47c3a2c27012f6e1)

<sup>221</sup> Articles 48 to 79 of the Constitution.

*Protection of Privacy Act (AIPPA) and the Public Order and Security Act (POSA), the provisions of which severely restrict basic rights. Failure to amend or repeal these laws, and to address the partisan conduct of police, severely limits the rights to freedom of expression, association, and assembly guaranteed in the new constitution and international law.*<sup>222</sup>

Journalists from both state-controlled and the independent media, as well as activists, have withstood the worst of repression under the Criminal Law (Codification and Reform) Act. They routinely face charges like ‘publishing falsehoods’, ‘criminal nuisance’ and ‘participating in a gathering with intent to promote public violence or, to breach the peace’. At the same time, gays and lesbians remain a repressed and marginalised group in Zimbabwe. President Mugabe routinely denounced gays and lesbians in public forums, and condemned homosexuality as contrary to the African way of life and its belief systems. During his address to the UN General Assembly in September 2015, Mugabe rejected what he called “*attempts to prescribe new rights that are contrary to our norms, values, traditions and beliefs.*”<sup>223</sup> He accused western countries of using aid as a stick to enforce the acceptability of homosexuality in Africa.<sup>224</sup>

In 2006, Zimbabwe’s parliament extended the definition of “sodomy” to include all forms of physical contact between men. Section 73 of the Criminal Law (Codification and Reform) Act-, which became effective from July 2006, now states that:

### ***Sodomy***

*(1) Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.*

*(2) Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.*

The punishment for sodomy is a fine or imprisonment for a period not exceeding one year or both. Human rights defenders and the LGBTI community remain in a precarious position in Zimbabwe. In a publication titled: “*Canaries in the coal mines: An analysis of spaces for LGBTI activism in Zimbabwe*” (2017), the *Other Foundation* warned that besides the criminalisation of

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<sup>222</sup> Human Rights Watch, World Report 2015: Zimbabwe. Available at <https://www.hrw.org/world-report/2015/country-chapters/zimbabwe>

<sup>223</sup> Zimbabwe Independent (27 November 2015), Mugabe comes face-to-face with gays. Available at <http://www.theindependent.co.zw/2015/11/27/mugabe-comes-face-to-face-with-gays/>

<sup>224</sup> Ibid.

homosexuality, laws and policies regarding ‘criminal nuisance’, ‘prostitution’ and ‘fraud’ are often used to victimize LGBTI persons in the country.<sup>225</sup>

Furthermore, public discourse on sexual orientation and gender identity is influenced by conservative views on African traditions articulated publicly by senior political and religious leaders; homophobic media coverage, the politics of colonialism and its post-colonial residues—including in the legal system, and the narrow interpretations of Christianity. Consequently, these factors are used by the state and others to create the perception that same-sex practices are alien to Zimbabwe, despite documented, albeit little-known archival evidence to the contrary.<sup>226</sup>

A coalition of civil society organisations has highlighted the serious state of human rights violations in Zimbabwe. In its shadow report<sup>227</sup> to the African Commission on Human and People’s Rights (ACHPR) the coalition, which was made up of HURISA, the Centre for Human Rights (based at the University of Pretoria) and the International Trade Union Congress-Africa pointed out that there has been no improvement in politics, democracy, human rights and the rule of law, in Zimbabwe.<sup>228</sup> The coalition lamented the *“persistence of a culture of hostility, tyranny with impunity by [the government of Zimbabwe] towards citizens, opposition, media, human rights defenders or anyone [who seeks] to speak about the human rights crisis affecting the country.”*<sup>229</sup>

In an interesting highlight, the coalition mentioned that despite claims by the government of Zimbabwe in its report to the ACHPR that it had repealed POSA, this was not correct as the law remained in the country’s statute books and had been used by the government to crack down on the January 2019 protests. It was correct however that the government of Zimbabwe was in the process of repealing (but had not repealed) POSA and aimed to replace it with a new Maintenance of Peace and Order (MOPO) Bill. MOPO on the other hand contains many similar provisions to POSA granting the state security and police broad discretionary powers to authorize, regulate or manage gatherings. Many leaders of the trade union movement including Gift Mutasa and Japhet Moyo of the Zimbabwe Congress of Trade Unions are currently facing criminal charges for participating in peaceful protests.<sup>230</sup> There have also been claims of state orchestrated abductions and torture of members of the opposition, journalists and those deemed to be anti-government. However, the government’s response has been that of denial and calling these abductions fake without proper investigations.

Zimbabwe’s economy collapsed between the years 2007 and 2009 with inflation in 2008 hitting a staggering 231,000,000%.<sup>231</sup> Much has changed since then and inflation has been contained to a manageable 13.52 %.<sup>232</sup> However, the country’s economy has failed to grow at a rate sufficient

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<sup>225</sup> The report is available at *the Other Foundation*, <http://theotherfoundation.org/>

<sup>226</sup> Ibid, at page 4 of the report.

<sup>227</sup> The report is not dated but it was prepared for the 65<sup>th</sup> Ordinary Session of the ACHPR which took place from 21 October to 10 November 2019 in Banjul, Gambia.

<sup>228</sup> A copy of the report is available on request from HURISA.

<sup>229</sup> Ibid.

<sup>230</sup> Ibid.

<sup>231</sup> The Guardian, Zimbabwe's inflation rate surges to 231,000,000%, available at <http://www.theguardian.com/world/2008/oct/09/zimbabwe>

<sup>232</sup> Zimbabwe Inflation Rate, available at <https://tradingeconomics.com/zimbabwe/inflation-rate-mom>

enough to spur employment creation, thus forcing many Zimbabweans to flee to countries like South Africa and Botswana, and even as far afield as Europe and Australia in pursuit of survival. With many years of no economic development, the country has been placed at position 150 out of 189 by the UNDP.<sup>233</sup>

Life expectancy at birth in the country is 62.6 years for women and 59.5 years for men.<sup>234</sup> The Gross National Income per capita is low (USD 3080 for men and USD 2280 for women)<sup>235</sup> and inequality is high (at 0.435).<sup>236</sup> The country's public health system has collapsed leading to one of the highest mortality rates in the world (443/1000 live births)<sup>237</sup> behind only countries like Kenya (510/1000) and Angola (477/1000).<sup>238</sup> Eight percent of the population is in "severe multi-dimensional poverty"<sup>239</sup> while 21.4% of the population lives below the poverty line of USD1.90.<sup>240</sup>

Corruption is endemic in the country. The 2019 Transparency International's Corruptions Perceptions Index placed Zimbabwe at position 158 (with a score of 24) out of 180 countries.<sup>241</sup> It is the lowest score of the seven countries considered in this analysis. In terms of governance, the 2015 Mo Ibrahim Index of African Governance rated Zimbabwe at position 44 out of 54 African countries in respect of overall governance meaning that Zimbabwe was the 10<sup>th</sup> least well governed country on the continent.<sup>242</sup> The 2019 Mo Ibrahim Foundation Report on African governance<sup>243</sup> while finding that the country had experienced positive change in respect of promotion of gender equality (+8.3)<sup>244</sup>, enabling environment for infrastructure development (+13.9)<sup>245</sup> and rural sector improvement (+9.8)<sup>246</sup> also found that the country had deteriorated in indicators such as undernourishment (-6.2).<sup>247</sup> In sum, Zimbabwe remains one of the least enviable so-called democracies on the African continent.

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<sup>233</sup>UNDP, 2019. Beyond income, beyond averages, beyond today: Inequalities in human development in the 21<sup>st</sup> century. Available at: <http://hdr.undp.org>

<sup>234</sup> Ibid, at p314.

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Ibid, at p318.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid at p321.

<sup>240</sup> Ibid.

<sup>241</sup> Transparency International, Corruption Perceptions Index (2019). The Report is available at <https://www.transparency.org/cpi2019>

<sup>242</sup> 2015 Ibrahim Index of African Governance, available at <http://static.moibrahimfoundation.org/u/2015/10/02193252/2015-IIAG-Executive-Summary.pdf>

<sup>243</sup> Mo Ibrahim Foundation, African Governance Report (2019), available at

<sup>244</sup> Ibid, at p40.

<sup>245</sup> Ibid, at p55.

<sup>246</sup> Ibid at p57.

<sup>247</sup> Ibid, at p32.

## CHAPTER 3: CONCLUSION

The southern African region is unique in the sense that it was essentially the last part of Africa to free itself from colonial domination and racist oppression. While the former British colonies of Bechuanaland (Botswana), and Swaziland became independent in the mid '60s, the Portuguese colonies of what is today Angola and Mozambique won their freedom in the mid '70s. The last three; Zimbabwe, Namibia and South Africa gained freedom between the early 1980s and the early 1990s.

It may not be surprising that given the effect of many years of deeply entrenched racial oppression, the last three countries began their democratic experiment with a strong commitment to human rights and the respect for individual freedoms. The South African and Namibian constitutions are exemplary in this regard with the South African constitution lauded as one of the most progressive in the world. Unfortunately for Zimbabwe, over three decades of one party political domination has all but eroded the edifice of human rights in the country.

Swaziland is Africa's last absolute monarchy with the king running the country like a personal fiefdom. Rights that are now taken as common place in many jurisdictions around the world- e.g. freedom of expression, association, political choice and liberty from arbitrary arrest and detention- are alien to many Swazis.

Lesotho and Mozambique are yet to overcome internal political crises which when combined with extreme levels of poverty constrain many of their citizens to lives of oppression and social exclusion. Botswana remains an outlier because despite the domination of one political party since independence in 1966, and the violation of the rights of the minority Basarwa (San) people, it is the one country in the region that consistently scores highly when it comes to respect for human rights, governance and political accountability. Overall, the region presents a mixed-bag of outcomes but it is clear that there is a human rights and democratic deficit which needs the urgent attention of human rights organisations and defenders both locally and internationally.

Civil society has played a singularly important role in fighting oppressive regimes, and defending and advancing human rights on the African continent. It can be said with much more emphasis that civil society has to continue playing this role in the face of increasingly belligerent governments that view civil society organisations as illegitimate social and political actors.

The narrowing down of the civic space is a phenomenon that many civil society organisations in the southern African region are familiar with. A continental conference organised by civil society organisations in Johannesburg in November 2011 under the theme: "Protecting Democracy – Reclaiming Civil Society Space in Africa" noted that "*in spite of the opening up of space for civil society in the post-independence era, a worrying trend, particularly in the recent years, is emerging where civil society space is shrinking fast especially in countries presided over by dictatorial regimes.*"<sup>248</sup>

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<sup>248</sup> See conference report titled: *Protecting Democracy – Reclaiming Civil Society Space in Africa* (21-23 November 2011), Johannesburg, South Africa.

The conference adopted a set of “*eight key priority intervention areas to take forward the discourse and advocacy on reclaiming civil society space in Africa*” which include enhancing mechanisms to protect and support activists and human rights defenders, and strengthening and supporting coalition building and solidarity actions.<sup>249</sup> There is still a long way to go.

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<sup>249</sup> Ibid, at p73.

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