

To cite: P Mudau 'The ramifications of communication surveillance laws on human rights pertinent to elections in Zimbabwe' (2025) 25 *African Human Rights Law Journal* 801-821
<http://dx.doi.org/10.17159/1996-2096/2025/v25n2a14>

The ramifications of communication surveillance laws on human rights pertinent to elections in Zimbabwe

Paul Mudau*

Senior Lecturer, Department of Public, Constitutional and International Law, College of Law, University of South Africa
<https://orcid.org/0000-0002-8696-7495>

Summary: *This article critically examines the ramifications of the stringent enforcement of restrictive and prohibitive communication surveillance laws and practices, which unjustifiably traduce fundamental human rights and freedoms pertinent to Zimbabwean elections. Based on doctrinal legal research, this article examines how state surveillance, facilitated by laws permitting the monitoring of digital communications, impacts fundamental rights, including freedom of expression, freedom of assembly and the right to privacy. Evidence from Zimbabwe reveals a chilling effect on political participation, where fear of surveillance leads to self-censorship, reduced civic engagement and the erosion of trust among civil society actors. The deployment of spyware and mass surveillance tools, often lacking judicial oversight, has disproportionately targeted human rights defenders, journalists and opposition figures, undermining democratic accountability and electoral integrity. The article argues that the current surveillance regime in Zimbabwe not only contravenes human rights standards but also significantly impairs free and fair elections. It concludes with recommendations for legal reforms, institutional safeguards and advocacy strategies aimed at aligning surveillance laws and practices with democratic principles and human rights obligations.*

* LLB (Limpopo) LLM (Pretoria) LLM (Western Cape) PhD (Witwatersrand); mudaufp@unisa.ac.za

Key words: *communication surveillance; democracy; digital rights; elections; human rights; political participation; Zimbabwe*

1 Introduction

Zimbabwe's political landscape has long been characterised by authoritarian tendencies, with the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) party maintaining a tight grip on state institutions.¹ In recent years, this control has extended into the digital realm through the enactment, amendment, and enforcement of various communication surveillance laws.² These laws, particularly the Interception of Communications Act (ICA) of 2007,³ have raised serious concerns about the erosion of democratic principles and the infringement of constitutionally protected human rights.⁴ As elections remain a cornerstone of democratic participation, the intersection of surveillance and electoral processes in Zimbabwe demands urgent scrutiny.

The ICA grants sweeping powers to government ministers to authorise surveillance without judicial oversight,⁵ undermining the separation of powers and violating international, regional and domestic human rights standards. Despite Zimbabwe's 2013 Constitution⁶ explicitly recognising the right to privacy under section 57, the ICA remains misaligned with these protections. The lack of procedural safeguards, transparency, and accountability mechanisms has enabled unchecked surveillance practices that threaten the freedoms of expression, association, and political participation – rights that are essential during electoral periods.⁷

1 A Mare 'State-ordered internet shutdowns and digital authoritarianism in Zimbabwe' (2020) 14 *International Journal of Communication* 4244.

2 D Matyszak 'Democratic space and state security: Zimbabwe's Public Order and Security Act' (2014) 1. This included legislation such as the Law and Order (Maintenance) Act (LOMA), 1960; Sedition Act, 1936; the Subversive Activities Act, 1950; the Public Order Act, 1955; the Unlawful Organisations Act [Chapter 91]; The Emergency Powers Act [Chapter 83] and the Law and Order Maintenance Act [Chapter 65].

3 The Interception of Communications Act [Chapter 11:20].

4 M Hunter & A Mare 'Patchwork for privacy: Communication surveillance in Southern Africa' (2020) 36.

5 Sec 5 ICA.

6 The Constitution of the Republic of Zimbabwe Amendment 20 of 2013.

7 A Munoriyarwa 'The authoritarian roots of Zim's surveillance laws' 12 January 2024, <https://www.newsday.co.zw/theindependent/opinion/article/200021984/the-authoritarian-roots-of-zims-surveillance-laws> (accessed 6 September 2025). See also G Asimakopoulou and others 'Impact of information and communication technologies on democratic processes and citizen participation' (2025) 15 *Societies* 1.

Surveillance laws in Zimbabwe have disproportionately affected journalists, lawyers and human rights defenders,⁸ groups that play a pivotal role in safeguarding electoral integrity and democratic accountability. These laws do not protect journalistic privilege and lawyer-client confidentiality, exposing these actors to dragnet surveillance and intimidation.⁹ This legal vulnerability has had a chilling effect on investigative journalism and legal advocacy, both of which are crucial in exposing electoral malpractice and defending civil liberties. The ramifications of communication surveillance laws extend beyond individual rights to the broader integrity of Zimbabwe's electoral processes.¹⁰ Surveillance fosters an environment of fear and self-censorship, discouraging political dissent and civic engagement. In a context where opposition parties and civil society are already marginalised, surveillance further skews the playing field, undermining the credibility of elections.

Using a doctrinal legal research, the article critically examines the ramifications of Zimbabwe's stringent enforcement of restrictive and prohibitive communication surveillance laws and practices that unjustifiably breach fundamental human rights during elections. It unfolds in four parts, of which the first is the introduction. The second part unpacks the international and regional legal frameworks for digital and political rights. Third, it presents a case study of communication surveillance laws and practices during the Zimbabwean elections. The fourth part is the conclusion and recommendations.

2 International and regional legal frameworks for digital and political rights

2.1 International legal framework

During elections, respect for relevant human rights norms and standards is pivotal for the delivery of free and genuine elections. A wide range of fundamental human rights and freedoms requires full consideration and realisation, including free speech, opinion, information, assembly, association, movement, non-discrimination, privacy, the right to security of a person, and the right to political participation. These basic entitlements bear a particular significance

8 B Hungwe & A Munoriyarwa 'An analysis of the legislative protection for journalists and lawyers under Zimbabwe's Interception of Communications Act' (2024) 45 *Statute Law Review* 1.

9 As above.

10 Zimbabwe Human Rights Forum 'Communications and political intelligence surveillance on human rights defenders in Zimbabwe' (2014).

in electoral processes,¹¹ and are central to the advancement of genuine electoral democracy.¹²

Digital expressions and internet freedoms are under immense threat. Internet and telecommunications shutdowns have emerged as a popular means of information control.¹³ The intentional prevention or disruption of access to or dissemination of information online violates human rights law.¹⁴ Thus, an appropriate response must be premised on the international human rights foundation. In 2013, the United Nations (UN) Human Rights Council adopted the International Principles on the Application of Human Rights to Communications Surveillance,¹⁵ which stresses that laws and regulations related to communications surveillance must comply with international human rights standards and adequately protect human rights. Consistent with the above, regional and national legal frameworks need to respect, promote, protect and fulfil all the fundamental digital and political rights and freedoms that are necessary for a thriving multi-party democratic system of government. Furthermore, the Draft Legal Instrument on Government-Led Surveillance and Privacy will provide guidance on government-organised surveillance in the context of law enforcement and intelligence gathering and processing in the digital age.¹⁶

Fair media access for all political candidates and parties, including for campaigning and advertising purposes, is also important. 'Media regulations should provide for safeguards against political censorship, unfair government advantage, and unequal/inequitable access during the campaign period.'¹⁷ Accordingly, the right of access to information, as well as the right to express and disseminate information, is a 'foundational requirement of the practice of

11 Office of the United Nations High Commissioner for Human Rights (OHCHR) *Human rights and elections: A handbook on international human rights standards on elections* (2021) 67. See also United Nations Human Rights Council 'Freedom of expression and elections in the digital age – Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2025) 7-8.

12 R Krimmer and others *Elections in digital times: A guide for electoral practitioners* (2022) 24.

13 United Nations Human Rights Council 'Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. Report on the role of digital access providers' (2017).

14 United Nations Human Rights Council 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2017) 4.

15 United Nations Human Rights Council 'International Principles on the Application of Human Rights to Communications Surveillance' (2013).

16 'International: UN Privacy Rapporteur releases draft legal instrument on government-led surveillance and privacy' 11 January 2018, <https://tinyurl.com/3d8j7ne9> (accessed 25 August 2025).

17 C Christophorou *Media and elections: Case studies* (2003) 16.

democratic governance'.¹⁸ Internationally, the right to information and freedom of expression is entrenched by article 19(2) of the UN International Covenant on Civil and Political Rights (ICCPR)¹⁹ and article 21 of the UN Convention on the Rights of Persons with Disabilities (CRPD).²⁰ CRPD specifically obliges state parties to urge private entities,²¹ and to encourage the mass media²² to utilise the internet to provide information and services to the public, including persons with disabilities. According to article 17 of the UN Convention on the Rights of the Child (CRC),²³ state parties must recognise 'the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources'.

For voters to freely formulate and express their will, citizens must have access to information about candidates and political parties as well as their proposed programmes, and the democratic electoral processes. Civic and voter education, which is often credited with imparting citizens with the skills to constructively participate in democratic electoral processes, resonates with the right to access information.²⁴ Obviously, an informed choice essentially encompasses the elements of the right to seek and receive information, to establish a 'free' choice.

General Comment 34 of the Human Rights Committee recognises that freedom of expression includes 'all forms of audio-visual as well as electronic and internet-based modes of expression'.²⁵ The implications of these provisions for digital authoritarianism require governments to permit citizens to enjoy the rights to information and

18 African Commission on Human and Peoples' Rights 'Guidelines on Access to Information and Elections' (2017).

19 United Nations International Covenant on Civil and Political Rights (ICCPR), adopted 16 December 1966, entered into force 23 March 1976. The proviso states that '[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'.

20 United Nations Convention on the Rights of Persons with Disabilities (CRPD), adopted 30 March 2007, entered into force 3 May 2008. Under art 19 of CRPD: 'States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.'

21 Art 21(c) CRPD.

22 Art 21(d) CRPD.

23 United Nations Convention on the Rights of the Child (CRC), adopted 20 November 1989, came into force 2 September 1990.

24 P Mudau 'Promoting civic and voter education through the use of technological systems during the COVID-19 pandemic in Africa' (2022) 22 *African Human Rights Law Journal* 108.

25 Human Rights Committee 'General Comment 34 on Article 19: Freedoms of opinion and expression' (2011) para 12.

freedom of expression. ICCPR also recognises the right to peaceful assembly,²⁶ the right to freedom of association²⁷ and the right to political participation.²⁸ The protection of the right to privacy and data protection is about securing people's confidence and security online, as well as facilitating the free flow of information and ideas. International human rights instruments further recognised the right to privacy,²⁹ allowing an individual 'to hide or obscure elements of their life from the wider public'.³⁰ The personal data of citizens who are eligible to vote has become more susceptible to mass surveillance and digital interception.³¹

Finally, Principle 1(d) of the Johannesburg Principles on National Security, Free Expression and Access to Information states:³²

No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.

The restriction may be prescribed by law. However, cognisant of the stringent enforcement of restrictive and prohibitive communication surveillance laws and practices, which renege on digital and political rights, the law itself must be justifiable in an open and democratic society based on the values of human dignity, equality, and freedom.

2.2 African regional human rights system

The right of access to information is necessary for the realisation of the right to participate in government directly or through freely chosen representatives, as guaranteed by article 13 of the African Charter on Human and Peoples' Rights (African Charter).³³ Article

26 Art 21 ICCPR. The restriction of the right must be based on conformity with the law and the necessity to uphold the interests of national security or public safety and public order in a democratic society.

27 Art 22 ICCPR. Similar restrictions are applicable.

28 Art 25 ICCPR. Participation could be through vote and being elected at genuine periodic elections.

29 See art 12 of the Universal Declaration; art 17 of ICCPR; arts 22 and 31(1)(a) of CRPD; art 16 of CRC; and art 14 of the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted 18 December 1990, came into force 1 July 2003.

30 KP Humble 'International law, surveillance and the protection of privacy' (2021) 25 *International Journal of Human Rights* 1.

31 OHCHR (n 11) 3.

32 Johannesburg Principles on National Security, Free Expression and Access to Information.

33 African Charter on Human and Peoples' Rights, adopted by the Assembly of Heads of State and Government of the African Union 27 June 1981, entered into force 21 October 1986.

9 guarantees women's rights to participate in the political and decision-making processes.³⁴ Popular participation is also endorsed by article 3(g) of the African Union Constitutive Act.³⁵ The Guidelines on Access to Information and Elections in Africa (Guidelines)³⁶ state that it is impossible for citizens to meaningfully exercise their right to vote in the manner envisaged by article 13 of the African Charter without access to accurate, credible and reliable information about a broad range of issues prior to, during, and after elections. The African Charter on Democracy, Elections and Governance (African Democracy Charter)³⁷ recognises the effective participation of citizens in democratic and development processes,³⁸ and popular participation through universal suffrage as the inalienable right of the people.³⁹ The African Charter also enshrines other key rights, such as freedom of association⁴⁰ and freedom of assembly.⁴¹ The enjoyment of these rights and freedoms is protected from any kind of infringement based, among other factors, on political or any other opinion.⁴²

Crucially, the right to information as well as the right to express and disseminate information are provided by article 9 of the African Charter and Principle 4 of the Declaration of Principles on Freedom of Expression in Africa.⁴³ Principle 31(1) of the latter provides that 'access to information shall be granted as expeditiously and inexpensively as possible, and in accessible formats and technologies'. The African Charter does not expressly recognise the right to privacy. However, this right is inferred from other fundamental rights that are expressly guaranteed in the Charter.⁴⁴ Principle 41(3) of the Declaration of

34 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the African Commission on Human and Peoples' Rights 11 July 2003 and entered into force 25 November 2005 (African Women's Protocol).

35 The African Union Constitutive Act was adopted by the Assembly of the AU on 11 July 2000 and entered into force on 26 May 2001.

36 Guidelines (n 18).

37 African Charter on Democracy, Elections and Governance, adopted by the Assembly of Heads of State and Government of the African Union 30 January 2007, entered into force 15 February 2012 (African Democracy Charter).

38 Art 3(7) African Democracy Charter (n 37).

39 Art 4(2) African Democracy Charter.

40 Art 10 African Charter.

41 Art 11 African Charter.

42 Art 2 African Charter.

43 African Commission on Human and Peoples' Rights 'Declaration of Principles on Freedom of Expression in Africa' 2019.

44 JA Mavedzenge 'The right to privacy v national security in Africa: Towards a legislative framework which guarantees proportionality in communications surveillance' (2020) 12 *African Journal of Legal Studies* 360. 'States shall not use combating terrorism as a pretext to restrict fundamental freedoms, including freedom of religion and conscience, expression, association, assembly, and movement, and the right to privacy and property with due regard to Principle 1(M), Non-Derogations and Restrictions on Human Rights and Freedoms.' See

Principles on Freedom of Expression in Africa deals with privacy and communication surveillance. The proviso provides as follows:

States shall ensure that any law authorising targeted communication surveillance provides adequate safeguards for the right to privacy, including:

- (a) the prior authorisation of an independent and impartial judicial authority;
- (b) due process safeguards;
- (c) specific limitation on the time, manner, place and scope of the surveillance;
- (d) notification of the decision authorising surveillance within a reasonable time of the conclusion of such surveillance;
- (e) proactive transparency on the nature and scope of its use; and
- (f) effective monitoring and regular review by an independent oversight mechanism.

In article 7, the African Charter on the Rights and Welfare of the Child (African Children's Charter)⁴⁵ guarantees that 'every child who is capable of communicating [their] own views shall be assured the right to express [their] opinions freely in all matters and to disseminate [their] opinions'. Further, the African Children's Charter provides for the right to freedom of association.⁴⁶ The African Youth Charter⁴⁷ also confers on every young person the rights to freedom of expression,⁴⁸ freedom of association⁴⁹ and youth participation.⁵⁰ Article 11(2)(e) requires state parties to 'provide access to information such that young people become aware of their rights and of opportunities to participate in decision making and civic life'.⁵¹

In 2023, the Principles and Guidelines for the Use of Digital and Social Media in Elections in Africa were adopted by the Association of African Electoral Authorities (AAEA). Commendably, these Principles

African Commission on Human and Peoples' Rights Principles and Guidelines on Human and Peoples' Rights While Countering Terrorism in Africa.

45 The African Charter on the Rights and Welfare of the Child (African Children's Charter) was adopted by the AU Assembly on 11 July 1990 and entered into force on 29 November 1999.

46 Art 8 African Children's Charter.

47 African Youth Charter adopted by the African Commission 2 July 2006, entered into force 8 August 2009.

48 Art 4 African Youth Charter (n 47).

49 Art 5 African Youth Charter.

50 Art 11 African Youth Charter.

51 In addition, state parties must provide access to information and services that will empower youth to become aware of their rights and responsibilities, as required in art 11(2)(i) of the African Youth Charter. In art 26 the Charter provides for the responsibilities of the youth, which includes the duty to defend democracy, the rule of law, and all human rights and fundamental freedoms (art 26(j)); and a culture of voluntarism and human rights protection as well as participation in civil society activities (art 16(k)).

and Guidelines constitute the most comprehensive rights-based framework for digital and social media in elections in Africa. The Principles and Guidelines provide that '[a]ll fundamental rights can be directly and indirectly enhanced by access to the internet, including access to the digital and social media'.⁵² The enshrined rights include free, fair, and credible elections; freedom of opinion and expression; access to information; freedom of association and assembly; and the right to privacy. In this framework, the limitation of freedom of expression and access to information through internet disruptions instigated by either state or non-state actors is flagged as being inconsistent with international standards of legality, proportionality and legitimacy.⁵³

Additionally, in 2023, the African Commission on Human and Peoples' Rights (African Commission) adopted the Resolution on the Deployment of Mass and Unlawful Targeted Communication Surveillance and its Impact on Human Rights in Africa.⁵⁴ The Resolution calls on states to ensure surveillance is necessary, proportionate and authorised by law; align surveillance laws with international human rights standards; require judicial authorisation and independent oversight for surveillance activities; promote privacy-enhancing technologies and avoid weakening encryption; and provide effective remedies for victims of unlawful surveillance and prosecute violations.

3 Communication surveillance laws and elections in Zimbabwe

3.1 Constitutional framework for fundamental rights and freedoms

Zimbabwe adopted a new Constitution in 2013. The Constitution has been lauded for containing provisions that entrench elements of fundamental rights and freedoms, constitutionalism, and the rule of law.⁵⁵ Regarding international agreements, Zimbabwe is a dualist

⁵² See clause 4.1.2 of Principles and Guidelines.

⁵³ See clause 4.2 of Principles and Guidelines.

⁵⁴ African Commission on Human and Peoples' Rights Resolution on the Deployment of Mass and Unlawful Targeted Communication Surveillance and its Impact on Human Rights in Africa ACHPR/Res.573 (LXXVII) 2023.

⁵⁵ P Mudau & H 'Nyane 'A critical analysis of Zimbabwe's non-implementation of constitutional injunctions on devolution' (2022) 37 *Southern African Public Law* 6. Secs 2 and 3(1)(a)-(b) of the 2013 Constitution provide for the supremacy of the Constitution and the rule of law; fundamental human rights and freedoms are contained in sec 3(1)(c) of the Constitution; multi-party democratic political system; free, fair and regular elections; and adequate representation of the

state, meaning that a treaty can only bind the Republic after it has been incorporated into law/national legislation.⁵⁶ This is because, in a dualist regime, international law and domestic law are treated as separate legal systems.⁵⁷ Hence, section 34 of the Constitution states that '[t]he state must ensure that all international conventions, treaties and agreements to which Zimbabwe is a party are incorporated into domestic law'. International human rights treaties that were ratified before the 1993 amendment to the Constitution form part of domestic law.⁵⁸

Section 3(c) of the Constitution stipulates that Zimbabwe is founded on values and principles of fundamental human rights and freedoms. Chapter four of the Constitution is the Declaration of Rights. The state, including every institution and government agency at every level, must respect, protect, promote and fulfil these rights and freedoms.⁵⁹ The right to freedom of opinion and expression is a 'central pillar of democratic societies, and a guarantor of free and fair electoral processes, and meaningful and representative public and political discourse'.⁶⁰ Section 61 of the Constitution guarantees freedom of expression and freedom of the media.⁶¹ This right includes the freedom to seek, receive and communicate ideas and other information.⁶² In principle, media coverage should afford all political parties equal time for broadcasting their political advertisements.⁶³ In terms of sections 61(4)(b) to (c) of the Constitution, all state-owned media of communication must be impartial and afford fair

electorate are enshrined in secs 3(2)(a)-(b) of the Constitution; sec 131(8)(b) of the Constitution provides for the review of the constitutionality of laws; separation of powers is recognised in sec 3(2)(e) of the Constitution. All these elements are a prerequisite for the achievement of a functional constitutional democracy; see CH Fombad 'Challenges to constitutionalism and constitutional rights in Africa and the enabling role of political parties: Lessons and perspectives from Southern Africa' (2007) 55 *American Journal of Comparative Law* 11; P de Vos & W Freedman *South African constitutional law in context* (2021) 42-45.

56 N Ngwenya 'Compliance through decoration: Access to information in Zimbabwe' in O Shyllon (ed) *Model Law on Access to Information for Africa and other regional instruments: Soft law and human rights in Africa* (2018) 146.

57 M Killander & H Adjolahoun 'International law and domestic human rights litigation in Africa: An introduction' in M Killander *International law and domestic human rights litigation in Africa* (2010) 11.

58 As above.

59 Sec 44 Constitution. The Declaration of Rights binds the state and all executive, legislative, judicial institutions, and agencies of government at every level (see sec 45(1) of the Constitution).

60 OHCHR (n 11) 2 as cited from Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank la Rue (2014).

61 However, generally, there is lack of freedom of the press and associations in Africa has been rife; see art 8(m) of the Grand Bay (Mauritius) Declaration and Plan of Action, adopted by the First OAU Ministerial Conference on Human Rights in April 1999 in Grand Bay, Mauritius.

62 Sec 61(1)(a) Constitution.

63 I Currie & J de Waal *The Bill of Rights handbook* (2016) 425.

opportunity for the presentation of divergent views and dissenting opinions.

Nevertheless, the right to freedom of expression could be limited due to incitement of violence, advocacy of hate speech, malicious injury to a person's reputation and the breach of a person's right to privacy.⁶⁴ In the course of exercising freedom of expression, 'some views may deliberately or inadvertently misinform, mislead, discredit, defame or cause distress to individuals or groups'.⁶⁵ Accordingly, there is a need to balance the entitlements of digital rights with the potential harm that may arise from exercising such rights.⁶⁶

Furthermore, the right to access information is conferred by section 62 of the Constitution, insofar as the information is required for the exercise or protection of a right.⁶⁷ The essential civic and voter education that citizens must be informed about in order to exercise their electoral rights should be conducted and supervised by the Zimbabwe Electoral Commission (ZEC).⁶⁸ In section 58, the Constitution provides for the right to freedom of assembly and association, and the right to privacy is also entrenched in section 57 of the Constitution. Section 67 of the Constitution, entitled 'Political rights', is said to 'provide for multiple rights with affinity to elections or the electoral process'.⁶⁹ Political rights, as guaranteed in section 67 of the Constitution, encompass the right to campaign freely and peacefully for a political party or cause,⁷⁰ to vote⁷¹ and to be voted for.⁷² A meaningful electoral process upholds everyone's right to equality and non-discrimination, especially to prevent unfair treatment based on political affiliation. Therefore, the right to equality and non-discrimination is enshrined in section 56 of the Constitution.

64 Sec 61(5) Constitution.

65 AE Gwagwa *Free speech online: Content moderation in the algorithm era* (undated) 1.

66 Measures for human rights-based principles for content moderation include transparency, proportionality, and remedy, to protect freedom of expression. See Access Now 'Protecting free expression in the era of online content moderation' (2019) 3; D Basimanyane & D Gandhi 'Striking a balance between CCTV surveillance and the digital right to privacy in South Africa: Considerations for the information regulator' (2019).

67 Sec 62(2) Constitution. In the context of elections, the right to information would entail citizens' access to information related to campaign manifestos as well as competing candidates and political parties.

68 Sec 239(h) Constitution.

69 Law Society of Zimbabwe *Handbook on constitutional and electoral litigation in Zimbabwe: Context, legal framework and institutions* (2018) 72.

70 Sec 67(2)(b) Constitution.

71 Sec 67(3)(a) Constitution.

72 Sec 67(3)(b) Constitution.

3.2 Domestic legal landscape and practice for communication surveillance and elections

Evidence demonstrates that surveillance activities in Zimbabwe tend to intensify during times of heightened political engagement.⁷³ The disintegration of civil and political rights and the stifling of democratic space in Zimbabwe have been engineered under the pretext of crafting state security and public order.⁷⁴ Thus, prompting the legalisation of surveillance and interception of communication laws. The promulgation of the Postal and Telecommunication Act (PTA) of 2001,⁷⁵ the Access to Information and Protection of Privacy Act (AIPPA) of 2002 and the Public Order and Security Act (POSA) of 2002,⁷⁶ was supplemented by the Interception of Communications Act of 2007.⁷⁷ The primary purpose was to solidify the President's hold on power and drown out opposition.⁷⁸ POSA was specifically utilised by the late former President Robert Mugabe to consolidate his political power.

POSA has been criticised for suppressing dissent and criminalising 'the legitimate exercise of freedoms of expression, association and assembly'.⁷⁹ Indeed, ordinary citizens continue to face a regime that remains intolerant of basic rights, peaceful dissent, and free expression.⁸⁰ Citizens cannot easily 'campaign, or demonstrate and petition online, in line with their constitutional rights, without running the risk of being charged with inciting violence'.⁸¹

Shortcomings in AIPPA resulted in inadequate protection of the right to privacy as enshrined by section 57 of the Constitution. The introduction of AIPPA aimed to ensure fairer coverage in the electronic media in the month leading up to the election. However, in practice,

73 Zimbabwe Human Rights Forum (n 10) 45.

74 Matyszak (n 2) 1.

75 Postal and Telecommunication Act [12:05]. According to sec 12(1) of the Act, the Prosecutor-General, who is a presidential appointee, has the power to grant authority to a postal or telecommunication licensee to hand over any communication of an individual at the request of a police officer.

76 Public Order and Security Act [Chapter 11:17].

77 Interception of Communications Act [Chapter 11:20].

78 J Jafari 'Attacks from within: Zimbabwe's assault on basic freedoms through legislation' (2003) 10 *Human Rights Brief* 6.

79 Observatory for the Protection of Human Rights Defenders '2003: Systematic repression of human rights defenders in Zimbabwe' (February 2004) 3.

80 D Ndlela 'Creating a surveillance state: ED govt zooms in for critics with Chinese help' 1 March 2020, <https://thestandard.newsday.co.zw/2020/03/01/creating-surveillance-state-ed-govt-zooms-critics-chinese-help> (accessed 20 August 2025).

81 Media Institute of Southern Africa (MISA) 'Analysis of the Data Protection Act' 6 December 2021, <https://tinyurl.com/mtfea89> (accessed 20 August 2025).

the Act is often used to close nearly all privately owned media.⁸² In 2020, AIPPA was repealed by three new pieces of legislation: the Data Protection Act (DPA),⁸³ the Freedom of Information Act (FIA),⁸⁴ and the Zimbabwe Media Commission Act (ZMCA).⁸⁵

The object of FIA is to give effect to the rights of freedom of expression, media freedom, and access to information as provided in sections 61 and 62 of the Constitution. However, an in-depth analysis reveals that FIA lacks a clear-cut provision that expressly aims to fulfil the right to information.⁸⁶ Article 7(1) of FIA merely provides that anyone wishing to access information may make a request. The Cyber and Data Protection Act⁸⁷ of 2021 has been enacted to fortify the suppression of internet freedoms. Sabao and Nenjerama argue that the Cyber and Data Protection Act's 'criminalisation of internet-based protests viewed to be hostile to ZANU PF's hegemony is a testament to the levels to which ZANU-PF will go to maintain a hold on power'.⁸⁸

In December 2021, President Emmerson Mnangagwa signed into law DPA, which includes a cyber security regulatory framework.⁸⁹ DPA amended provisions of three laws: the Criminal Law (Codification and Reform Act),⁹⁰ the Criminal Procedure and Evidence Act,⁹¹ and the Interception of Communications Act. Apart from making provisions for data protection, another objective of the DPA is to create and foster a technology-driven business environment, encouraging technological development and the lawful use of technology. According to the DPA, the term 'sensitive data' encompasses political opinions⁹² and membership in a political association.⁹³ The classification of certain information as 'sensitive data' may be used to flag content that appears to contradict or challenge the interests of the ruling party. The processing of genetic data, biometric data and

82 R Matchaba-Hove 'Zimbabwe elections: 13 dimensions of unfairness' 18 May 2008, <https://tinyurl.com/m2s5uyn8> (accessed 20 August 2025).

83 Data Protection Act [Chapter 11:22].

84 Freedom of Information Act [Chapter 10:33].

85 Zimbabwe Media Commission Act [Chapter 10:35].

86 Centre for Law and Democracy 'Zimbabwe: Analysis of the Freedom of Information Bill, 2019' (2019) 3.

87 [Chapter 12:07].

88 C Sabao & TT Nenjerama 'Polytricking or political contestation? The digital space as alternative public sphere in the run up to the 2023 public elections in Zimbabwe' in E Mavengano & S Chirongoma (eds) *Electoral politics in Zimbabwe* (2023) 163.

89 MISA (n 81). Initially, when the Bill was gazetted in May 2020 and underwent public hearings in July 2020, it was called the Cybersecurity and Data Protection Bill.

90 Criminal Law (Codification and Reform Act) [Chapter 9:23].

91 Criminal Procedure and Evidence Act [Chapter 9:07].

92 Sec 3(a)(ii) Data Protection Act.

93 Sec 3(a)(iii) Data Protection Act.

health data may be conducted without the written consent of the data subject where, among other reasons, it is necessary to comply with national security laws.⁹⁴ Nevertheless, DPA has been criticised for crushing dissent and infringing on the digital rights of citizens.⁹⁵

ICA is regarded as Zimbabwe's primary communications surveillance law.⁹⁶ Under this Act, the Central Intelligence Organisation (CIO), the police, the Zimbabwe Revenue Authority (ZIMRA) and the Zimbabwe Defense Intelligence Agency are given interception powers. These powers are exercised without first requiring judicial oversight. The target for surveillance includes 'journalists from both the state-owned media and the private media, civic activists, NGO heads, opposition leaders and senior ZANU PF (ruling party) officials'.⁹⁷

ZMCA was enacted to confer powers on the Zimbabwe Media Commission as dictated by section 249(2) of the Constitution. Subject to section 2 of ZMCA, 'media' means various forms of information dissemination, including radio and television broadcasting, and the internet or any other electronic means. Nonetheless, the content of the ZMCA is questionable. First, the Act lacks a provision that prescribes term limits for the commissioners and chairpersons.⁹⁸ The indefinite duration of serving in the Commission has the potential to establish and ingrain a culture of bias, especially when considering the highly politicised nature of every facet of Zimbabwean society. Second, section 8 of ZMCA empowers the Commission to investigate any allegations of human rights transgressions. The Commission could be used to undermine media rights and target media outlets that expose major wrongdoing by government officials. Third, section 10(1) of ZMCA grants the Commission the discretion to investigate, hear or inquire into the form of public or closed proceedings. Media Institute of Southern Africa (MISA) argues that

this provision violates the 'right of access to information in section 62 of the Constitution and also media freedom, particularly the right to seek and receive information as stipulated in section 61 of the

94 Sec 12 Data Protection Act. In addition, the consent of the data subject shall not be applicable where 'the processing is necessary to protect the vital interests of the data subject or another person, where the data subject is physically or legally incapable of giving his or her consent or is not represented by his or her legal, judicial or agreed representative'; see sec. 12(3)(e) of the Data Protection Act.

95 K Chimhangwa 'Weaponising the law: Zimbabwe's new frontier in digital rights repression' 26 April 2022, <https://tinyurl.com/2yn84fx3> (accessed 20 August 2025).

96 Hunter & Mare (n 4) 36.

97 Media Policy and Democracy Project (MPDP) 'Drifting towards darkness: An exploratory research of state surveillance in post-2000 Zimbabwe' (2019) 7.

98 MISA 'Analysis of the newly enacted Zimbabwe Media Commission Act' 23 April 2021, <https://tinyurl.com/yjs82pa8> (accessed 23 August 2025).

Constitution'. Such wide discretion poses a threat to the exercise of rights.⁹⁹

Section 10(7) of ZMCA confers on the minister the power to order, at any stage during the investigation, hearing or inquiry, that the proceedings should be held in camera or as closed proceedings. The minister may rely on the grounds that the publicity of proceedings would prejudice the defence, external relations, internal security or economic interests of the state. This provision is deemed problematic because 'defence and internal security are mysterious and unqualified aspects',¹⁰⁰ as anything and everything can be declared a national security issue.

One more alarming fact is that the political system in Zimbabwe is highly militarised.¹⁰¹ The Zimbabwean Defence Force (ZDF) is a 'privileged political actor and overseer of the entire political system'.¹⁰² As a result, the military likewise plays a significant role in the digital surveillance of civilians,¹⁰³ with 'military-driven surveillance practices'.¹⁰⁴ The commander of the Zimbabwe National Army (ZNA), Edzai Zimonyo, once complained that social media 'poses a dangerous threat to our national security'.¹⁰⁵ According to Zimonyo, it is necessary for the military to circumscribe civilian communication on social media.¹⁰⁶ Clearly, this constitutes a form of regressive digital surveillance that infringes upon citizens' digital rights. Amid the violation of human rights owing to surveillance practices, the reliance on judicial recourse is far-fetched due to a highly politicised and partisan judiciary.¹⁰⁷ Among state apparatus, key actors in the surveillance of key opposition party members, leaders of civil society organisations, lawyers, journalists and non-governmental organisations (NGOs) are the Zimbabwe Military Intelligence (ZMI), the Police Internal Investigation Services (PISI) and the CIO.¹⁰⁸

99 As above.

100 As above.

101 J Hamill 'The three barriers blocking Zimbabwe's progress: Zanu-PF, Mnangagwa and the military' 30 December 2017, <https://tinyurl.com/2wzbmenn> (accessed 20 August 2025).

102 As above. See also E Masoning 'Zimbabwe's militarised, electoral authoritarianism' (2011) 65 *Journal of International Affairs* 47.

103 D Ndlela 'Military surveillance could endanger democracy' *News Day* 19 May 2020, <https://tinyurl.com/3mbtchms> (accessed 20 December 2022). See also 'Army's social media snooping bone-chilling' *News Day* 5 March 2020, <https://tinyurl.com/247krb2> (accessed 20 August 2025).

104 A Munoriyarwa 'The militarisation of digital surveillance in post-coup Zimbabwe: "Just don't tell them what we do"' (2022) 53 *Security Dialogue* 456.

105 Ndlela (n 103).

106 As above. 'Zimbabwe army says cellphones danger to security' 20 January 2007, <https://tinyurl.com/mr3jr92r> (accessed 20 August 2025).

107 A Magaisa 'Zimbabwe: An opportunity lost' (2019) 30 *Journal of Democracy* 143.

108 MPDP (n 97) 2.

The covert political intentions in technologies pretentiously aim to deliver digitally networked cities by utilising artificial intelligence (AI) to boost security in the cities.¹⁰⁹ However, such ambitions are viewed as the launching of a mass surveillance system targeting critics and opponents.¹¹⁰ In March 2018, Zimbabwe entered into an agreement with CloudWalk Technology, a Chinese facial recognition company, under which the latter would provide Zimbabwe with a massive surveillance infrastructure to track its citizens through a biometric voter registration.¹¹¹ Primarily, the objective is to access the database of all registered voters in Zimbabwe by creating an infrastructure for face biometrics in return for access to voters' digitised faces.¹¹² These face biometrics would simplify the identification of political dissidents. According to Polyakova and Meserole, China has been exporting digital authoritarianism to foreign regimes for decades.¹¹³ Gravett labels China's quest for a 'cyber superpower' and its implications on Africa as 'digital neo-colonialism'.¹¹⁴ China strategically and tactically applies 'economic and political pressure through technology to control and influence the actions of African nations'.¹¹⁵ Zimbabwe actually depends on 'an assorted mixture of surveillance technologies from China, Russia and Iran'.¹¹⁶

The integrity, availability and confidentiality of voters' personal data have always been a huge concern.¹¹⁷ These challenges were reflected in three ways: (i) selective access to voters' personal data; (ii) integrity of voters' biometric data; and (iii) data obfuscation and black-boxing.¹¹⁸ The electoral management body, the ZEC,¹¹⁹

109 AE Gwagwa 'Dynamic data obfuscation ahead of Zimbabwe's elections' (2018) 3.

110 As above.

111 A Hawkins 'Beijing's Big Brother tech needs African faces: Zimbabwe is signing up for China's surveillance state, but its citizens will pay the price' 24 July 2018, <https://tinyurl.com/2p9yn2cr> (accessed 20 August 2025). See also L Chutel 'China is exporting facial recognition software to Africa, expanding its vast database' 25 May 2018, <https://tinyurl.com/4akmsnsf> (accessed 20 August 2025).

112 J Nash 'CloudWalk has Zimbabweans face biometrics, but trust in voter roll still lacking' 14 June 2022, <https://tinyurl.com/2kr5kshh> (accessed 20 August 2025).

113 A Polyakova & C Meserole 'Exporting digital authoritarianism' (2019) 5.

114 W Gravett 'Digital neo-colonialism: The Chinese model of internet sovereignty in Africa' (2020) 20 *African Human Rights Law Journal* 127.

115 As above.

116 MPDP (n 97) 2.

117 Gwagwa (n 65) 1. Confidentiality is concerned with exposing information to those not intended to see it; integrity is about disrupting the accuracy, consistency, or trustworthiness of information being processed; and availability deals with rendering the information offline, unusable, or non-functional. See I Brown and others *Cybersecurity for elections: A Commonwealth guide on best practice* (2020) 29.

118 As above.

119 Public trust in the impartiality of ZEC is very low. The body is predominately composed of former military officials who are biased toward ZANU-PF; see Institute for Security Studies 'Slim chance that Zimbabwe's 2023 elections

established in terms of section 238 of the Constitution, denied opposition parties access to the voters' roll stored in its servers, citing reasons for protecting the security of sensitive data. This means that, in contravention of section 57 of the Constitution, which protects the privacy of personal data, the ZEC selectively availed the voters' database to ZANU-PF, which contained information on all registered voters' names, mobile numbers and constituency details.¹²⁰

In 2022, the ZEC confirmed that it had established a media-monitoring committee responsible for monitoring the activities of journalists.¹²¹ The purpose of the committee, comprising members of the Zimbabwe Media Commission and the Broadcasting Authority of Zimbabwe, is 'to ensure that the media adheres to its regulations'.¹²² This move is backed by law, subject to section 160K(1) of the Electoral Act, which states the following:

The Commission, with the assistance, at its request, of the Zimbabwe Media Commission established by section 248 of the Constitution, and the Broadcasting Authority of Zimbabwe established by section 3 of the Broadcasting Services Act [Chapter 12:06] (No 3 of 2001), shall monitor the Zimbabwean news media during any election period to ensure that political parties, candidates, broadcasters, print publishers and journalists observe the provisions of this Part.

Additionally, section 160K(2) of the Electoral Act requires the Zimbabwe Media Commission to produce a post-election report, which includes coverage of the election by the news media. Thus, the media and political players are obligated to adhere to the prescriptions outlined in Statutory Instrument 33 of 2008 (Media Coverage of Elections Regulations 2008).¹²³ Most journalists in Zimbabwe are victims of surveillance and its ramifications.¹²⁴ Fearful of retaliation, they rarely speak openly about it.

For the sake of retaining political power in the hands of the ruling ZANU-PF, digital authoritarianism extends so far that it even manipulates the voters' roll. According to Gwagwa, 'in Zimbabwe, some politically connected parties have already threatened reprisals

will be competitive' 22 May 2022, <https://tinyurl.com/mrvu6bcy> (accessed 20 August 2025).

120 As above. Some of the inadequacies relate to its communication and public outreach efforts, which are deemed to be lacking open and proactive communications that resonate with the citizens' needs for information. See 'IRI/NDI Statement on the Status of Election Reform in Zimbabwe' 26 July 2019, <https://tinyurl.com/mr3trvph> (accessed 20 August 2025).

121 'Zimbabwe: ZEC launches massive surveillance on media' 1 February 2022, <https://tinyurl.com/2p9ntd9r> (accessed 20 August 2025).

122 As above.

123 The Zimbabwe Electoral Commission (Media Coverage of Elections) Regulations of 2008.

124 MISA (n 81) 19.

against people who vote a certain way since they have access to biometric data and voters' serial numbers to monitor voting patterns'.¹²⁵ These practices lead to misidentification, fraud and civic exclusion of voters who have been identified as anti-political establishments spearheaded by ZANU-PF.

Reports suggested that the Zimbabwean government has sought technical support from China to enhance its capacity for monitoring digital communications.¹²⁶ Notably, the Robert Mugabe School of Intelligence, also referred to as the National Defence College, was reportedly preparing to host Chinese instructors to train military personnel in various intelligence-related technical disciplines.¹²⁷ The institution was also expected to be equipped with surveillance technology supplied by Huawei, designed to intercept diplomatic, political, commercial and private communications.

Empirical research reveals that surveillance in Zimbabwe has led to a pronounced chilling effect, where individuals self-censor, avoid political engagement, and refrain from associating with perceived dissidents.¹²⁸ This fear-driven behaviour undermines the rights to freedom of expression and assembly, which are essential for democratic participation.¹²⁹ There is growing avoidance of protests, political meetings, and online activism due to the perceived risk of being monitored or targeted. Such deterrence not only silences dissent but also distorts the electoral process by limiting the diversity of voices and ideas.

Surveillance laws and technologies have been weaponised against civil society organisations, journalists and human rights defenders. The use of spyware, coupled with SIM card registration and telecom data mining, has enabled targeted harassment and intimidation.¹³⁰ These practices compromise the safety and effectiveness of watchdog groups, which play a critical role in monitoring elections and advocating for transparency. The erosion of trust within civil

¹²⁵ Gwagwa (n 65) 3.

¹²⁶ Zimbabwe Human Rights Forum (n 10) 46.

¹²⁷ As above.

¹²⁸ E Yingyi & E Benyera 'The future of democracy in the digital era: Internet shutdowns, cyber laws and online surveillance in Zimbabwe' (2025) 50 *Alternatives* 283.

¹²⁹ G Karekwaivanane & N Msonza 'Zimbabwe digital rights landscape report' in T Roberts (ed) *Digital rights in closing civic space: Lessons from ten African countries* (2021) 43.

¹³⁰ Zimbabwe Human Rights NGO Forum 'Zimbabwe: New SIM registration database law represses twin rights to privacy and expression' 3 October 2013, <https://www.apc.org/en/blog/zimbabwe-new-sim-registration-database-law-represses-twin-rights-privacy-and-expression> (accessed 6 September 2025); International Centre for Not-for-Profit Law 'Regulation of digital surveillance and the impact on civil society in Africa: Experiences from South Africa' (2025).

society networks further weakens their ability to mobilise and hold the government accountable.

The ramifications of surveillance extend beyond individual rights to the structural integrity of Zimbabwe's electoral system.¹³¹ Surveillance fosters an environment of fear and suspicion, discouraging voter turnout and political activism.¹³² Moreover, opposition parties and independent candidates are disproportionately affected, as their communications are more likely to be intercepted or disrupted. This imbalance undermines the principle of fair competition and violates international norms governing free and fair elections. Without reforms, surveillance will continue to serve as a tool for political control rather than a means of public security.

4 Conclusion and recommendations

This article has demonstrated that Zimbabwe's communication surveillance laws, particularly the Interception of Communications Act, pose significant threats to human rights and democratic processes, especially during elections. The lack of judicial oversight, transparency and accountability mechanisms has enabled the misuse of surveillance powers to suppress dissent, intimidate civil society, and undermine electoral integrity. These practices violate constitutional protections and international human rights standards, creating a climate of fear and eroding public trust in democratic institutions. As a result, the state deliberately established legal frameworks and institutions that explicitly conduct surveillance on several targets, including opposition leaders, journalists, civic activists and NGO heads.

Zimbabwe needs to adhere to the generally accepted standards of surveillance activities. It is recommended that it must comply with international, regional, and domestic human rights instruments, including the International Principles on the Application of Human Rights to Communications Surveillance, the African Charter and the African Commission's resolution on surveillance. Centrally, the country must ensure that its communication surveillance laws, such as the Protection of Privacy Act, the Public Order and Security Act, the Interception of Communications Act, the Data Protection Act,

131 A Chibwe 'Intersections of citizen journalism, social media watchdogism, and citizen surveillance of the state and political elites in Zimbabwe's 2023 elections' (2025) 23 *African Studies Quarterly* 1.

132 F Mutasa & E Ndawana 'Youth participation in Zimbabwe's electoral processes post-2008: Challenges and prospects for peacebuilding' (2024) 33 *African Security Review* 277.

the Freedom of Information Act, the Cyber and Data Protection Act, the Broadcasting Services Act and the Zimbabwe Media Commission Act, which are clearly anti-digital and political rights, are aligned with the promotion and protection of fundamental rights and freedoms. Journalists and the media at large also bear responsibility for disseminating information by educating the public on the nature and impact of communications laws and practices governing surveillance in both electoral processes and everyday life. There is a need to balance the quest for maintaining state security and citizens' rights to privacy, freedom of expression, and information dissemination.

Specifically, ICA requires urgent and comprehensive reform. The Act currently permits broad and unchecked surveillance powers, including the collection of dragnet data, without judicial oversight. This undermines constitutional rights to privacy and freedom of expression, especially during elections. It is recommended that the ICA be redrafted to include judicial authorisation for surveillance warrants, clear limitations on scope, and explicit protections for journalists, lawyers, and civil society actors. These reforms should align with global best practices and Zimbabwe's constitutional obligations.

Effective oversight is essential to prevent the abuse of surveillance powers. Zimbabwe should establish an independent surveillance oversight board with the authority to monitor, audit and report on surveillance activities. This body should comprise representatives from civil society, legal experts and technologists, and should operate in a transparent manner. Additionally, parliamentary committees should be empowered to conduct regular reviews of surveillance practices and ensure accountability. These mechanisms would help restore public trust and safeguard democratic processes.

Transparency is a cornerstone of rights-respecting surveillance. Zimbabwe's legal framework should mandate post-surveillance notification to individuals whose communications have been intercepted, unless doing so would jeopardise an ongoing investigation. This would enable affected individuals to seek legal recourse and ensure that surveillance is not used arbitrarily or politically. Furthermore, public reporting on surveillance statistics, such as the number of warrants issued and types of data collected, should be required to promote openness and accountability.

Surveillance laws must not be weaponised to suppress political dissent or manipulate electoral outcomes. Legal reforms should explicitly prohibit surveillance targeting political candidates,

activists and voters, based on political affiliation. Additionally, digital platforms used during elections must be regulated to prevent the misuse of personal data and ensure that online political engagement is protected from state surveillance.

The Zimbabwean courts are largely viewed as biased in favour of the ruling party. Progress in establishing the rule of law, constitutionalism, and the protection of fundamental rights and freedoms will only occur when the government fosters a culture of respecting the judiciary's independence and adhering to its judgments, in line with section 163(3) of the Constitution. Hence, it is ideal for citizens, interest groups and pressure groups to lodge lawsuits with the intent and purpose of constitutionally invalidating surveillance laws and practices that impinge on human rights and undermine the ethos of democratic integrity and transparency.