

# The Chilling Effects of Surveillance and Human Rights: Insights from Qualitative Research in Uganda and Zimbabwe

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## Abstract

States are increasingly developing and deploying large scale surveillance and AI-enabled analytical capabilities. What is uncertain, however, is the impact this surveillance will have. Will it result in a chilling effect whereby individuals modify their behaviour due to the fear of the consequences that may follow? Understanding any such effect is essential: if surveillance activities interfere with the processes by which individuals develop their identity, or undermine democratic processes, the consequences may be almost imperceptible in the short term but profound over the long term. Currently, surveillance-related chilling effects are not well understood, meaning that insufficient weight is given to their potentially society-wide impacts. This article seeks to help redress this balance. Drawing on empirical research in Zimbabwe and Uganda it highlights how State surveillance has chilled behaviour, with significant implications for rights essential to individual development and democratic functioning, specifically the rights to freedom of expression and to freedom of assembly. Importantly, this qualitative research identifies a pattern of common themes or consequences associated with surveillance in general, allowing us to move beyond hypothetical or individual experiences, and providing a greater understanding of the nuances of surveillance-related effects that can help inform decision-making surrounding large scale digital surveillance.

**Keywords:** artificial intelligence; chilling effect; human rights law; surveillance

## 1. Introduction

States are increasingly investing in surveillance, artificial intelligence, and machine learning technologies with the aim of incorporating these tools into governmental activities and decision-making processes ([Human Rights, Big Data and Technology Project 2018](#)). This is particularly evident in the intelligence and law enforcement sectors, where a number of States have developed large-scale surveillance and analytical capabilities, ranging from near population wide communications data collection ([La Quadrature du Net and Ordre des barreaux francophones et Germanophone 2020](#)), to

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the deployment of facial recognition technology across surveillance camera networks (Amnesty International 2022; Ryan-Mosley 2022), and a series of predictive policing tools (Deeks 2018; Oswald et al. 2018). These surveillance and analytical capabilities represent a step change in the relationship between the State and those subject to its jurisdiction. They allow the State to monitor the minutiae of individuals' day-to-day lives, to generate patterns of life, to identify 'unusual' or 'suspicious' behaviour, and to make individually-focused decisions on this basis (Tele2 Sverige AB and Watson 2016: 99).

In the face of this advanced surveillance capability the question arises as to whether individuals will be prompted to change what would otherwise be their normal behaviour in order to avoid unwanted inferences being drawn? Will they refrain from lawful—if sometimes controversial—activities such as engaging with different or 'radical' ideas, meeting with certain people, protesting, or organizing or participating in political activities, because of the fear of the potential consequences?

The short answer is that we do not know for sure. The existence of a surveillance-related 'chilling effect' is a well-known phenomenon that arises when individuals or groups modify their behaviour due to a fear of the consequences that may result if that behaviour is observed (Solove 2007; Kaminski and Witnov 2015).<sup>1</sup> However, research to-date has struggled meaningfully to delineate the full range and extent of the chilling effect, and so its precise impact is uncertain. This presents clear problems when attempting to factor the chilling effect into decision-making processes or judicial adjudication, as claimed impacts are too easily dismissed.

This article attempts to address this problem. Drawing on in-depth qualitative interviews with 44 participants in Uganda and Zimbabwe, we document the impact of the fear of surveillance exerts, particularly with respect to political participation, and explicitly connect these impacts to human rights law protections. In a deliberate attempt to move beyond the right to privacy lens which has been the focus of much surveillance-related discussion, this article focuses on the right to freedom of expression and the right to freedom of assembly. Surveillance activities normally involve an ensemble of different analogue and digital observation, visual and data-focused techniques. As such, separating out discrete effects of one specific advanced surveillance technique is untenable. It also artificially extracts the form and impact of surveillance from its broader context. Instead, this article examines current surveillance practices, which involve assemblages of 'traditional' and digital components, in order to gain a more comprehensive insight into what a chilling effect arising from advanced surveillance may look like. By identifying a pattern of common themes or consequences associated with surveillance we hope to contribute towards the establishment of a more robust evidence base, capable of informing governmental and judicial decision-making.

Three prominent findings emerge from the research. Specifically, interviewees overwhelmingly reported that the fear of surveillance prompted: (i) self-censorship, (ii) an unwillingness to engage with individuals or organizations believed to be subject to surveillance,<sup>2</sup> and (iii) an erosion of trust which affected a group's ability to organize and mobilize, and therefore to be effective politically. Significantly, participants from Uganda and Zimbabwe reported remarkably similar effects, despite the differences in the social, cultural and political contexts.

1 It is important to emphasize that the fear of immediate harm or punishment—for instance through detention or enforced disappearance—is not the sole prerequisite for a chilling effect to occur. It may simply be that individuals do not wish to gain the attention of the State and so modify their speech to avoid doing so. In essence, individuals are wary of 'raising their head above the parapet'. This indicates that knowing—or suspecting—that State surveillance exists may itself be sufficient to create a chilling effect.

2 This is reported from two perspectives: individuals stating an unwillingness to engage with those subject to surveillance, and those who were subject to surveillance reporting that individuals were unwilling to engage with them.

The remainder of the article articulates this contribution over four further areas of discussion. Section 2 sets out why it is important to understand the chilling effect in greater, more nuanced, detail, highlighting why it has often been perceived as difficult to do so, and outlining our approach. Section 3 then sets out the methodology used to collect data from Uganda and Zimbabwe to support the analysis and conclusion presented in the article. Section 4 focuses on freedom of expression, examining the emergence of surveillance-related self-censorship and the impact of intimidation. Section 5 focuses on freedom of assembly, examining how an erosion of trust—caused by the fear of surveillance—affects the ability of individuals and groups to organize politically, and then discussing individuals' reluctance to engage with people who they perceive as being subject to surveillance.

## 2. Why understanding the chilling effect is necessary

Understanding the impact of any potential chilling effect is essential to evaluate the human rights compliance of current surveillance techniques as well as more future-oriented large-scale surveillance and analytical capabilities. Simply put, evaluating the legitimacy of a surveillance measure is determined by examining the 'competing interests' at play (*S and Marper v. the United Kingdom* 2008: 112, 122, 125). That is, the potential benefit to human rights—for example, through the prevention of crime, the protection of public order, or the maintenance of national security—against the potential harm to human rights—through interference with the right to privacy, the prohibition of discrimination, the right to freedom of expression, and so on (*Mégret* 2014: 112). Given the potential long-term impacts, it is important that this analysis be conducted prior to deploying surveillance tools, and explicitly incorporated into the pre-deployment decision-making process.

The difficulty is, that although the existence of a surveillance-related chilling effect is known (*Murray and Fussey* 2019: 43–47; *Stevens et al.* 2023), its precise impact and contours are difficult to determine (*Penney* 2016: 123). Solove highlights some of the issues arising:

It is hard to measure the deterrence caused by a chilling effect because it is impossible to determine with certainty what people would have said or done in the absence of the government activity. Often, the primary evidence will be a person's own assertions that she was chilled, but merely accepting such assertions at face value would allow anyone claiming a chilling effect to establish one. At the same time, demanding empirical evidence of deterrence is impractical because it will often be impossible to produce (*Solove* 2007: 155).

In part driven by this position, attempts to measure the chilling effect associated with large scale digital surveillance have focused primarily on quantitative research studies. Recent focus has emphasized identifying changes in online information-seeking behaviour after Edward Snowden's public revelations of mass State surveillance activities (*Marthews and Tucker* 2014). While these studies demonstrate that a greater awareness of State surveillance appears to prompt a reduction in the seeking out of information that could be deemed 'suspicious', they do little to demonstrate the wider impact of such effects. In essence, they lack the nuance necessary to fully demonstrate the consequences of surveillance, obscuring the range and scope of chilling effects, and doing little to understand their form and dynamics beyond a series of individual acts.

Uncertainty as to the extent of the chilling effect presents a significant problem when considering the development and deployment of large-scale surveillance and analytical tools. As mentioned, to determine human rights compliance—and indeed to evaluate the overall impact of any measure—the 'competing interests' at play must be evaluated. As it stands, however, the balance is arguably tilted in favour of authorizing surveillance and/

or analytical activities, potentially inappropriately, and with possible long term negative consequences underplayed. Three principal reasons may be advanced to explain this imbalance. First, courts are often willing to take intelligence and other security agency claims of utility at face value, given the (legitimate) secrecy associated with issues of national security, and the associated difficulty in effectively evaluating intelligence agency claims (*Big Brother Watch and Others v. the United Kingdom*, Joint Partly Concurring Opinion of Judges Lemmens, Vehabovic, and Bošnjak 2021: 2). Second, intelligence and security agencies have begun to engage more directly with courts.<sup>3</sup> As part of this engagement they are in a position to demonstrate the potential utility of surveillance measures in a confirmatory manner by reference to successful surveillance operations. Third, and arguably as a direct result of the uncertainty surrounding the chilling effect, the potentially harmful consequences of surveillance activities—particularly at a societal level—are typically not examined in great detail, and as a result are arguably given less weight. This creates an imbalance between the arguments in favour of surveillance, on the one hand, and an examination of possible harm, on the other. In the European Court of Human Rights, for example, reference is frequently made to the danger that secret surveillance measures ‘may undermine or even destroy democracy under the cloak of defending it’ (*Szabo and Vissy v. Hungary* 2016: 57), but very little attention is paid to the society-wide impact of mass surveillance, that is, to the potential impact of a surveillance-induced chilling effect with ramifications beyond individual experiences or decisions to self-censor.<sup>4</sup>

This presents the risk that States and courts underestimate the impact of large-scale surveillance activities and allow surveillance that may cause unacceptable—but currently unknown, or at least uncertain—harm to human rights. If surveillance activities interfere with the processes by which individuals develop their identity, or undermine democratic processes, the consequences may be almost imperceptible in the short term but profound over the long term.

Although, as highlighted above, there are difficulties associated with documenting the full impact of the chilling effect, we do not believe this to be an impossible task. Qualitative research offers a way to better understand the actual impact of surveillance on individuals, how it influences the decisions they make, and how they engage with others and the world around them. This article draws on a series of interviews with individuals either subject to surveillance, or who believe they were subject to surveillance.<sup>5</sup> From this sample a number of striking commonalities emerge. Importantly, the empirical evidence suggests that the impact of surveillance extends beyond the right to privacy, and directly engages the rights to freedom of expression and assembly. This is significant given the centrality of these rights to the effective functioning of a participatory democracy (McGoldrick 2018). This approach also helps to move beyond what Solove referred to as individual’s ‘own assertions’ of chilled behaviour, by identifying a pattern of common themes or consequences associated with surveillance in general, affecting both the individual and beyond, and providing a greater understanding of the nuance of such experiences.

The surveillance activities discussed herein are a mix of digital and traditional offline techniques. Equally, this research is focused on Uganda and Zimbabwe, States known for

3 See, e.g., the extensive documentation relied on by the European Court of Human Rights in *Big Brother Watch and Others v. the United Kingdom* (2018).

4 To date, the examination of large scale surveillance measures has either focused on the existence of an appropriate legal basis, or when the ‘necessary in a democratic society’ test has been evaluated, this has been done by examining a specific right, in isolation (most typically the right to privacy, although freedom of expression has also been examined in the context of journalistic sources). This means that the broader impact, and the multifaceted nature of the chilling effect—which as discussed below incorporates a number of different rights—is not taken into account.

5 Interviewees were typically subject to a combination of traditional physical surveillance and digital surveillance. As this article demonstrates, however, the insights gained are relevant to understanding the broader societal impact of large-scale digital surveillance.

their repression of human rights defenders and political opponents. These two factors are not regarded as limitations, however. Chilling effects arise due to the fear of surveillance and the consequences that may follow. As such, a deeper understanding of how chilling effects manifest will be of relevance, irrespective of the nature of surveillance. Importantly, research indicates that chilling effects are not binary in nature, that is it does not appear to be the case that an individual does or does not engage in particular activities. Instead, chilling effects appear to be nuanced in complex ways, leading to changes or alterations in behaviour (Stevens et al. 2023). It is therefore likely that similar effects will be felt in all contexts, although the degree to which individuals modify their behaviour and in what circumstance, may differ. Indeed, similar research conducted in the UK and the US suggests parallels in the chilling effects of surveillance, hinting at context-independent commonalities (Starr et al. 2008; Stephens Griffin 2020; Ali 2016). The potential for such commonalities is reinforced by the fact that chilling effects are felt most acutely at the margins of society, by those who feel themselves removed from, or in opposition to, the status quo (Murray and Fussey 2019: 47). The key factor is arguably perceived dissonance with the State, rather than the specific context.

### 3. Methodology

Fieldwork was conducted in both Uganda and Zimbabwe and took the form of semi-structured interviews with key informants. Participants were selected on the basis that they had previously experienced or had strongly suspected that they had been subjected to direct government surveillance in both digital, and real-world contexts. Not only are these constituencies largely absent in research on surveillance chilling effects, such experiences of surveillance allow an expression of actual, rather than hypothetical, harm to surface. All interviewees were also involved in work aimed at holding their respective governments and ruling party figures to account, making them particularly vulnerable to State surveillance attention. Various, these individuals identified themselves as members of opposition parties, human rights defenders, civil society leaders and journalists. Altogether, 44 interviews were conducted: 12 in Zimbabwe and 32 in Uganda.

Many of those interviewed were 'high-profile' or well known in the public-sphere within their respective countries, and so some of their stories have been documented in the media. However, for the purpose of consistency with those who requested to remain anonymous, anonymity for interviewees has been applied throughout the research. Equally, this mitigates any potential negative effects or attention for interviewees which could occur as a result of their participation. Interviews were semi-structured in composition to strike a balance between appropriately focusing and structuring the conversations with participants, while offering sufficient latitude for the range of subjective experiences to be expressed. Interview questions emphasized accessing concrete experiences of State surveillance and tracing through the behavioural, interpersonal and organizational implications of such experiences. This included questions concerning direct and indirect experiences of police surveillance, moments when such realization occurred, and drawing out examples of behavioural change. Added questions were posed over vicarious dimensions of surveillance chilling effects, including an exploration of how knowledge of others' subjection to State surveillance impacts their activities and vice-versa.

A thematic analysis of the data was conducted to identify patterns and commonalities between the experiences of the interviewees. It was during this process that the more detailed considerations of specific human rights implications were teased out and analysed. The presentation of data below organizes these accounts into discernible themes. Aligning with established practices of social science research methodology, the qualitative nature of the fieldwork was positioned to access deeply held beliefs and how participants invested their experiences and actions with meaning. As such, the data is presented to emphasize

prominent and consistent themes, while exploring their internal nuances, rather than presenting any numerical analysis of categorical variables and data. Key themes are reported with reference to their impact on human rights in the sections which follow.

To facilitate more universal insight the primarily legal framework adopted is the International Covenant on Civil and Political Rights, with additional reference made to the European Court of Human Rights as its case law on surveillance is particularly well developed. National case law from Zimbabwe and Uganda, or from the African regional human rights system, is not directly incorporated as it does not further illuminate the specific human rights concerns raised herein.

#### 4. The chilling effect and freedom of expression

The right to freedom of expression is codified in Article 19(2) of the International Covenant on Civil and Political Rights:

Everyone 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.

Similar provisions are established in the regional human rights instruments (African Charter on Human and Peoples' Rights, Article 9; American Convention on Human Rights, Article 13; European Convention on Human Rights, Article 9).

The scope of the right to freedom of expression is broad. It includes the right both to receive and impart information, whether in person or by means of other forms of communication, including when that information may be seen as shocking or offensive.<sup>6</sup>

Freedom of expression is widely regarded as fundamental to the effective functioning of participatory democracy (*Ingabire Victoire Umuhoya v. Republic of Rwanda*: 132). This was clearly stated by the Grand Chamber of the European Court of Human Rights:

Democracy thrives on freedom of expression. It is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself (*Centro Europa 7 S.R.L. and Di Stefano v. Italy* 2012: 129).

Central to this is the role that freedom of expression plays in facilitating the free exchange of ideas (*Aduayom et al. v. Togo* 1994: 7.4). This allows individuals to access and to evaluate different ideas and philosophies, and in doing so, to freely develop their own identity (UN Human Rights Committee 2011: 2), and their own political beliefs (Joseph and Castan 2013: 18.01). As summarized by Bhagwat: '[w]ithout speech, democracy would be impossible because citizens would have no way to discuss and form their views, including their views about the conduct and competence of public officials' (Bhagwat 2011: 994).

Indeed, the importance of political speech is specifically recognized. Although freedom of expression is not an 'absolute' right and so may be legitimately circumscribed under certain conditions (McGoldrick 2018: 1.2), human rights bodies have consistently held that there is 'little scope ... for restrictions on political speech or debate on questions of public interest' (*Mariya Alekhina and Others v. Russia* 2018: 212). Similarly, the Human Rights Committee has stated that the limitations clause 'may never be invoked as justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights' (UN Human Rights Committee 2011: 23).

<sup>6</sup> The right to freedom of expression is not, however, absolute. It may be subject to lawful limitations that are prescribed by law, serve a legitimate aim, and are a necessary and proportionate means to achieve the Stated aim in a democratic society. See, e.g., African Commission on Human and Peoples' Rights, 'Declaration of Principles on Freedom of Expression and Access to Information in Africa', 2019, Principle 9.



Given its centrality to political debate, advocacy, and governmental accountability, freedom of expression also plays a key role in relation to securing all other human rights protections, and in this regard it has been referred to as the ‘touchstone’ (Nowak 2005: 438) for other rights.

As discussed in this section, our research indicates that a surveillance-induced chilling effect gives rise to a significant interference with the right to freedom of expression. This manifests both directly, through individuals’ self-censorship, and somewhat more indirectly, by an unwillingness to engage with, or to be perceived as associated with, certain people, thereby blocking the exchange of ideas.

#### 4.1 Self-censorship

One of the clearest themes emerging from the research was a surveillance-induced self-censorship. In light of the importance placed on the free exchange of ideas, and the free development of an individual’s personality, this is clearly inimical to the object and purpose of the right to freedom of expression. An interviewee from Zimbabwe, straightforwardly expressed this reality:

I always practice what I would call self-censorship. I carefully construe how I communicate on certain issues and discuss them in a way that does not provide an opportunity for surveillance to become actionable. I protect myself using quite deliberate language (Participant 1).

Self-censorship was also reported in the context of social media posts. As stated by an interviewee from Uganda: ‘Before posting it makes you think: “What am I posting? How much trouble will it bring me”? ... is it worth being taken back [to prison] for?’ (Participant 14; Participant 24). This phenomenon was similarly reported by interviewees from Zimbabwe: ‘You also start to be conscious of what you post on social media to avoid drawing attention to yourself’ (Participant 9). Another participant from Zimbabwe reinforced this point, while also highlighting the impact that it has on their ability to work and secure income:

We are afraid to exercise, especially, our right to freedom of expression, which has had a great impact on our artistic work. We are afraid that if we express our opinions we risk being labelled enemies of the State, so we either censor ourselves and in some instances have had to turn down some clients because we are afraid that even if they are willing to pay us good money, the risk of clashing with the authorities is high (Participant 6).

One interviewee also spoke of the chilling effect arising once an individual realized that they were in fact subject to surveillance:

When those that have chosen to speak out realize that they have been put under surveillance, they shrink back into their shell. For example, I bumped into a lady in court, recently, who could not believe that what she had said had attracted media attention! I could see that she was shaken, she was complaining that she was being followed and that her posts were being monitored. That has obviously discouraged her (Participant 4).

At times these acts of self-censorship are apparently undertaken not only out of self-interest, but also to protect others: ‘surveillance worries me as these people (friends and family) can be identified and either attacked or used against me’ (Participant 15). Of course, people will inevitably try to work around self-censorship and to test the boundary between ‘acceptable’ and ‘unacceptable’ speech. One interviewee from Uganda, for example, maintained their public profile but moderated how they expressed themselves:

The surveillance and arrests have moderated me. I am not as radical as I should be because if I am on TV the surveillance is not only on me, it's also on the owner of the TV. Owners of those media houses feared, and they persuaded me to reduce the tempo ... I was bringing out the truth direct [plainly], now I have to talk in parables (Participant 16).

Equally, in Zimbabwe, one interviewee felt protected to a certain degree by their own profile, and so used their platform to allow other individuals to express themselves indirectly:

... about a third of the stuff that I tweet does not come directly from me, people send me information that they are afraid to share ask me to open up a conversation about the issue. These include people that I interact with in civil society, government, and the private sector, who for one reason or the other feel that they cannot freely or openly speak on an issue ... Surveillance has affected the way people interact with each other and the way they comment on issues (Participant 3).

While these workarounds are laudable, and represent a brave attempt to challenge oppressive regimes, the fact that individuals feel the need either to censor their own speech, or to develop workarounds, clearly constitutes a significant interference with the right to freedom of expression, with evident implications for democratic functioning.

## 4.2 An intimidation-induced chilling effect

As mentioned at the outset, a key component of the chilling effect is the *fear* of the consequences that may result if particular behaviour is observed. One Ugandan participant noted that: '[p]eople are scared to say some things in meetings, while others don't participate in some topics because they are not sure they are safe' (Participant 25). In Zimbabwe, in particular, potential consequences may be severe as political opponents are frequently detained, subject to torture or other forms of ill-treatment, or forcibly disappeared. This fear of repression is something that surfaced repeatedly in interviews. One interviewee expressed the situation succinctly: 'Forced disappearance is a reality for us, and many people are afraid that if they probe or speak out, they will disappear' (Participant 3). Another interviewee expanded on this phenomenon:

There is a lot of fear. People can see the brutalization that is happening to activists now and they have opted to stay quiet for their own protection ... Not a lot of people are willing to compromise their safety and the safety of their families, they would rather just conform and not be involved in those discussions. The risk of surveillance has covered people into submission (Participant 9).

The UN Special Rapporteur on the Rights to Freedom of Opinion and Expression has commented on the use of overt physical violence to induce a chilling effect:

Physically silencing criticism or dissent through arbitrary arrests and detention, enforced disappearance, harassment and intimidation is an old phenomenon, and also applies to Internet users ... Such actions are often aimed not only to silence legitimate expression, but also to intimidate a population to push its members towards self-censorship (UN Human Rights Council 2011: 33).

This points to another component of the chilling effect, which appears to extend beyond individuals own direct expression—as mentioned above in the context of self-censorship—to also affect who individuals either engage with or are perceived to be associated with. As noted by one interviewee from Uganda: 'I don't associate with politically charged people on social media because I don't want to be tagged in a particular group' (Participant



27). Similar modifications were reported in Zimbabwe: ‘The idea of surveillance changes people’s behaviour in general ... you change your behaviour, you change where you go and who you see. Instead of mixing and mingling freely you are always looking over your shoulders’ (Participant 12).

Although the level of repression—and presumably, therefore, the level of intimidation-induced chill—is extreme in Zimbabwe and Uganda compared to certain other States, this example may nonetheless illustrate a more widespread issue. For example, research in the UK indicates that overt police surveillance at anti-fracking protests has chilled others from engaging in protest themselves (Gilmore, Jackson, Monk and Short 2020), presumably because they are wary of drawing surveillance onto themselves. As reported by one interviewee:

... Some officers wear cameras, just as a normal sort of, part of the uniform ... Young people will be filmed, local people that actually aren’t getting involved with protests, [but] that are actually supporting the camp, it’s a deterrent. There’s people that feel really strongly about this, locally. Who are just too scared to get involved (quoted in Gilmore, Jackson, Monk and Short 2020: 370).

Interestingly, this research also suggested a similar wariness of ‘guilt by association’ as that reported in Zimbabwe and Uganda. In the UK previously supportive third parties—who, for example, had allowed protestors to camp on their land—withdraw support after being contacted by the police (Gilmore, Jackson, Monk and Short 2020). It appears that, if individuals observe a surveillance-related consequence in others, or fear one, they may be prompted to modify their own behaviour, even in more ‘benign’ situations.

The right to freedom of expression protects the right both to receive and impart information, reflecting the centrality of these components to individuals’ identity development, and the effective functioning of participatory democracy (UN Human Rights Committee 2011: 2; Joseph and Castan 2013: 18.01). Chilling effects that interfere with this, whether as a result of self-censorship or a reluctance to engage with potentially ‘suspect’ individuals or ideas, are particularly severe, striking as they do at the very core of the right.

## 5. The chilling effect and freedom of assembly

The right to freedom of assembly is codified in Article 21 of the International Covenant on Civil and Political Rights:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Similar provisions are established in the regional human rights instruments (African Charter on Human and Peoples’ Rights, Article 11; American Convention on Human Rights, Article 15; European Convention on Human Rights, Article 11).

The right to freedom of assembly guarantees the right to gather peacefully. Perhaps the most stereotypical manifestations of this right are public protests, but the right encompasses indoor and outdoor gathering of any nature, whether public or private (*Kudrevicius and Others v. Lithuania* 2015: 91), and can therefore include, for example, ‘political, economic, artistic and social gatherings’ (McGoldrick 2018: 228). It is explicitly recognized that an assembly may result in disruption to daily life, but this should not justify preventing the assembly, of itself (*Kudrevicius and Others v. Lithuania* 2015: 155). Similarly, while

assemblies with violent intent are not protected by the right to freedom of assembly, isolated acts of violence do not deprive an assembly as a whole of protection. This is an important element of human rights protection, as isolated acts of violence are frequently used as a pretext for broader crackdowns or restrictions (*Frumkin v. Russia* 2016: 99).

As with freedom of expression, the right to freedom of assembly is regarded as central to the effective functioning of democratic life (*Kudrevicius and Others v. Lithuania* 2015: 91), and as essential to ‘effective participation in civil and political society’ (Joseph and Catan 2013: 18.01). As stated by the UN Special Rapporteur on the Rights to Freedom of Assembly and Association:

The rights to freedom of peaceful assembly and of association play a key role in empowering individuals belonging to groups most at risk to claim other rights and overcome the challenges associated with marginalization. Such rights must therefore not only be protected, but also facilitated (UN Human Rights Council 2014: 72).

Similarly, it has been noted that negative statements from a government official may result in intimidation,<sup>7</sup> generating a chilling effect that prevents individuals from participating in the life of an association (Schabas 2015: 500). This resonates with the point made above about how a State’s response to a particular activity may result in a chilling effect, leading to an unwillingness to engage with certain people, or in certain activities.<sup>8</sup>

The right to freedom of assembly is not an absolute right, and so can be subject to limitation under certain conditions. However, given its centrality to democratic functioning, the scope of any limitation is narrow: ‘only convincing and compelling reasons can justify restrictions’ (*Gorzelik and Others v. Poland* 2004: 88). In *Kudrevicius and Others v. Lithuania*, the Grand Chamber of the European Court of Human Rights clearly stated:

Any measure interfering with freedom of assembly and expression other than in cases of incitement to violence or rejection of democratic principles—however shocking and unacceptable certain views or words used may appear to the authorities—do a disservice to democracy and often even endanger it (*Kudrevicius and Others v. Lithuania* 2015: 145).

## 5.1 Trust and the (in)ability to organize

Central to the exercise of the right to freedom of assembly is the ability to organize. This is intrinsic to any form of collective action and involves numerous different elements, including, for example, the ability to recruit new members, to engage more broadly with the public, and to plan and coordinate activities. Trust—a key component in the establishment and maintenance of relationships—is therefore fundamental to the exercise of the right to freedom of assembly. In this regard it is notable that a key theme emerging from the research is how surveillance—or the fear of surveillance—undermines trust and interpersonal relationships. Interestingly, it appears that it is precisely the uncertainty associated with surveillance, itself an inherent part of the chilling effect, which seems to create a spiral of paranoia and mistrust. The suspected presence of informers emerged as a key causal factor in this regard, with the difficulty in proving if someone is an informer, or not, an exacerbating factor. Similar effects have been noted in other contexts. Ali, for example, found that the presence of informers led to a ‘fracturing of inter-community trust’. This generated severe negative effects on political mobilization within the targeted community, through the erasure of spaces considered

<sup>7</sup> In this instance, the level of intimidation, and thus the associated chill, is linked to the stature of the government official, and the scope of their authority.

<sup>8</sup> See Section 4.2.

safe to openly express opinions, organize and form political identities (Ali 2016). It is noteworthy that the infiltration of activist groups appears to be commonplace across jurisdictions, as demonstrated by a number of revelations in the UK (Evans and Morris 2022; BBC News 2021), and in the US (Goldman and Apuzzo 2012). One activist from Zimbabwe explained these practices and their impact:

I will begin by stating that back in the day, what was prominent especially for dealing with youth activists, is that the intelligence worked informally. So, they would be enrolled at the university and integrate themselves into the students bodies, where most of the activists were found. In such instances some of the planning information would leak, and you have your suspects because you see them at certain places when you are planning an activity ... It makes you overly suspicious of people and overly cautious about the people that you trust and that you interact with. You do not entertain phone calls from private numbers and you change your number frequently (Participant 9).

This suspicion of informers within an activist's group or community was repeated by another interviewee: 'there are informal agents—these are not formally employed as intelligence gathering agents, but they have links with people in intelligence. These are usually friends, fellow activists, and colleagues of the people that are targeted' (Participant 3). The resultant paranoia and mistrust was also explicitly referenced:

I have heard stories about fellow comrades being under surveillance and it made me very anxious. I started seeing shadows everywhere, even when I would go out with friends for drinks, I would leave without saying goodbye because I felt like I was constantly being watched (Participant 11).

The impact the erosion of trust—the fracturing of inter-community trust—has on the ability to organize effectively was commented on by a number of interviewees. For instance, one participant from Uganda stated simply that: 'There is a break of trust with some colleagues' (Participant 28). Another noted:

... for human rights groups and social movements, once the group is infiltrated, it destroys trust and unity among colleagues, making it exceedingly difficult to plan actions even when the course is genuine and sincere. Over the years the ability of the State to surveil and infiltrate groups has had a negative impact on activism and the personal lives of activists, especially those that are in the forefront of organizing. It has restricted everything that we had planned, as activists, to be doing, because there was no longer trust (Participant 11).

The impact of this on the effectiveness of political opposition was clearly stated: 'I think just increasing the level of distrust is enough to ensure that there isn't an effective offline movement that is carried forward' (Participant 7). Another interviewee commented that:

... as activists we are very deliberate about how and where we meet and, I cannot stress this enough, who we meet with, and the purpose of the meeting. There must be that chain of trust before one begins to mobilize (Participant 1).

These factors clearly undermine the ability to organize. For instance, requiring a 'chain of trust' before mobilization will negatively affect a group's potential mass appeal, limiting participation to a select few. This inability to organize on a larger scale was raised by a number of different interviewees. One interviewee from Zimbabwe stated that:

Organizing and mobilizing have been severely affected because of surveillance. Instead of organizing and mobilizing for big demonstrations, we then resorted to just organizing amongst trusted friends and having the demonstrations as a small group because we cannot trust many people getting involved and take the risk of having the demonstration stopped, or exposing the main organizers. Surveillance makes you trust no one. If you are surveilled once and are involved in activist activities, everyone is a suspect, and you treat everyone as though they have ill intentions (Participant 11).

Another interviewee reported a similar impact: ‘you must be strategic and learn to keep a smaller circle of trust. From my perspective, organizing is never really mass in nature. Personally, as an activist, I keep quite a low profile and usually only get involved on a one-on-one interface’ (Participant 1). A similar experience was reported by a Ugandan participant:

You become secretive. You have to disguise your objectives, your movements. That disrupts your ability to organize, to coordinate ... When you look at phones, you cannot organize on phones, people perceive that infrastructure to be infiltrated. So, because there is a negative perception of electronic infrastructure [being unsafe] its ability as a platform to organize is also limited (Participant 22).

Another interviewee highlighted the impact of surveillance on the ability to organize, while also noting the effect on interpersonal relationships, specifically other people’s reluctance to engage with them:

I think it has affected the ability to mobilize and organize to a large extent ... As a member of a social movement, you draw attention to yourself and people begin to disassociate from you. I think surveillance has affected the effectiveness of social movements (Participant 4).

The impacts of surveillance on individuals ability to organize, and to build and grow political groups, is dramatic. This research indicates that a surveillance-related chilling effect may fundamentally impair individuals’ ability to organize and mount an effective political opposition, undermining both the right to freedom of assembly, and the functioning of democratic society.

## 5.2 A reluctance to engage with individuals who may be subject to surveillance

The reluctance of other people to engage with individuals who they believe may be subject to surveillance is a theme which emerged clearly from the research, particularly in Uganda. This factor has a straightforwardly negative impact on the right to freedom of assembly, as it restricts open engagement. This was expressed by one interviewee:

Most of our community or engagements have been curtailed because the people you want to work with are suspicious. They think government [agents] are following them and they are afraid of negative impacts (Participant 29).

Another interviewee reported a similar experience: ‘[S]ome people fear being seen with us because they may be dispersed. There are people who fear talking to us for fear of being victimized’ (Participant 20). This also directly affects political engagement:

At an individual level, surveillance makes it hard for me to freely engage with the population, since they live under fear of intimidation and harassment by the State agents (Participant 21).

This will inevitably impact on the effectiveness of a political opposition, including, potentially, their ability to engage at an international level. For example, one participant from Uganda stated: ‘Many people, including embassies, think we are surveilled [so] they interact with us as little as possible depending on circumstances because they think you’re putting them at risk’ (Participant 24).

## 6. Conclusion

Research indicates that State surveillance in Zimbabwe and Uganda has resulted in a significant chilling effect, whereby individuals feel pressured to modify their behaviour. This appears to manifest in three key ways. First, individuals have reported the need to self-censor, directly restricting their own expression. Second, participants report an unwillingness to engage with individuals or organizations believed to be subject to surveillance, as they are wary of a form of ‘guilt by association’. This affects both the right to freedom of expression and to freedom of assembly. Third, surveillance erodes trust, affecting individuals’ ability to form and maintain relationships, negatively impacting on their ability to build networks and to organize politically, directly undermining the right to freedom of assembly.

Importantly, this research makes clear that surveillance does not exclusively, or even primarily, engage the right to privacy. While the right to privacy must remain an integral part of the equation, any analysis of the potential impacts of large-scale surveillance which does not incorporate other rights will not only be incomplete, but fundamentally flawed. This article makes clear that a surveillance-induced chilling effect can have a significant impact on the rights to freedom of expression and assembly. This has the potential to erode individual’s ability to freely develop their identity—and so to become informed engaged citizens—and to frustrate the ability to organize and advocate for change. The evident danger is the stagnation of democracy, and the emergence of a creeping authoritarianism by default. The impact of the chilling effect in this regard is particularly insidious given that its effects are typically felt most acutely amongst those at a distance from the mainstream or status quo, including amongst those advocating for political change. Research such as this—focused on the actions and experiences of those subjected to surveillance—also moves beyond simply identifying a chilling effect, to providing necessary insights into the diversity and nuance of its impact beyond the individual. This enables a better understanding of the extent to which democratic participation can be hindered—or potentially precluded—by the presence of surveillance and the varying forms that this can take.

Of course, the degree to which a chilling effect may arise in other, less authoritarian contexts is unclear, and will arguably depend on a number of factors, such as the legal framework and safeguards imposed on surveillance, the level of opposition to the status quo, and the degree to which surveillance informs individually-focused governmental decision-making. However, that the majority of interviewees in both Uganda and Zimbabwe reported experiencing similar effects is striking. Research in other jurisdictions, such as the UK (Stephens Griffin 2020; Aston 2017) and the US (Ali 2016; Starr et al. 2008), also suggests the presence of some parallel effects regarding behaviour change or deterrence from participation even where the sanctions or personal consequences experienced may not be considered as severe.

The findings presented in this article suggest that the current approach to surveillance may be inadequate in the modern digital age. As large scale surveillance activities directly bring into play the rights to freedom of expression and assembly, impacting on processes relating to identity development and democratic engagement, human rights analysis may need to move away from its traditional focus on individuals, to incorporate broader collective and society-wide impacts. This may pose a direct challenge to how human rights are currently addressed. Indeed, it may necessitate a more explicit acknowledgement of the societal processes that make the realization of rights possible. Although it is common

to refer to the interconnected and interdependent nature of human rights, large scale and algorithmically assisted surveillance may necessitate a more genuine engagement on this front, forcing a rethink with respect to how human rights are examined, and responded to.

This also raises concerns with respect to the adequacy of the ‘necessity’ test. This test examines whether an interference with a right is necessary in light of the legitimate aim pursued. In an analogue world this has been (relatively) straightforward. For example, does a State’s censorship of a journalist violate their right to freedom of expression, or not. When harm moves beyond the individual to encompass societal processes and the effective functioning of participatory democracy, however, the ‘necessity’ calculation must adapt. How are such broad and profound harms to be conceptualized and incorporated into human rights analysis? Effectively dealing with harm of this magnitude is a real and pressing challenge, one made harder by the fact that the harm in question may be almost imperceptible in the short-term.

Further research is clearly required but we do believe that the approach deployed in this article has the potential to provide greater clarity as to how the chilling effect impacts on a variety of different rights. It certainly suggests that a potential chilling effect is something that should be taken seriously, and which should be incorporated by police or other State agencies into any pre-deployment impact assessment, and addressed by human rights actors in their engagement with State surveillance practices.

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## Conflicts of interest

None declared.

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