



ONSLAUGHT AGAINST HUMAN RIGHTS DEFENDERS IN ZIMBABWE IN 2002

A report by ZIMRIGHTS

**In cooperation with
THE OBSERVATORY FOR THE PROTECTION
OF HUMAN RIGHTS DEFENDERS
A joint program of the FIDH and the OMCT**

**On the basis of the information provided ZIMRIGHTS,
Zimbabwe Lawyers for Human Rights (ZLHR),
Zimbabwe Election Support Network (ZESN),
and the Lawyers Committee for Human Rights (USA)**

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INTRODUCTION

Year 2002 has been marked by a high degree of political violence on the part of the security forces and members of the Zimbabwe African National Union – Patriotic Front (ZANU-PF), the party of President Robert Mugabe. The presidential elections in March, which lead to the re-election of President Mugabe, were denounced by observers and the international community, as unfair and not free. Numerous acts of violence were registered against supporters of the Movement for Democratic Change (MDC), the main opposition party. The human rights NGOs have also been banned from carrying out such tasks as civic education especially voter education, as well as election monitoring.

Another crucial issue was the severe food shortage that the country experienced this year. In December, approximately 6 million people (out of a total population of 11.9 million) were estimated to have insufficient production, income and entitlement to be able to meet their minimum food requirements. Though it is true that a drought has in recent months affected all of Southern Africa, thus limiting the food availability, it is far from enough to explain the amplitude and the severity of the food shortage. Political factors, among which the lack of democratic control and an extreme politicization of the issue of land rights seem to be the main causes behind the crisis. The manner in which the “fast track” land redistribution program has been enforced seems indeed to serve only narrow political interests, and has *de facto* harmed the very population it was supposed to benefit, i.e. the poor black rural population¹.

This extreme polarisation of political life and the intolerance of the authorities towards any kind of dissent or independent voice have lead to numerous political opposition members and representatives of civil society being charged and arrested. In this context, human rights defenders have been under fire, be they members of human rights NGOs, journalists defending democracy and denouncing human rights violations, trade unionists, or even lawyers and judges who took independent and impartial decisions against the government. Human rights NGOs were subject to increasing defamation campaigns on the part of the authorities, who intensified the pressure against them in particular by issuing a notice, in September, urging them to stop their activities, if they failed to register under the Private Voluntary Organisations Act (See below).

This move was strengthened by the adoption of extremely restrictive pieces of legislation such as the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) in 2002, all of which contradict human rights instruments ratified by Zimbabwe. These two pieces of legislation were among the most significant assaults on the basic fundamental freedoms especially, the right to freedom of assembly and association, the right to freedom of movement and the right to freedom of expression and were used as repressive tools against human rights defenders.

As a result, the situation lead to the international community expressing its deepest preoccupation. For example, the country was suspended from the Commonwealth in March 2002 following the grave breaches observed during the presidential elections, and the European Union adopted a package of sanctions in February 2002, including travel ban in the EU territory for Zimbabwean Ministers and Officials, as well as an arms embargo. The European parliament adopted four resolutions on Zimbabwe and the Council of the EU made a Declaration in December, following the arrest of trade unionists. However the UN Commission on Human

¹ See press release of the FIDH, ZimRights and Solagral (a French NGO on food security issues), on 17 December 2002

Rights did not adopt any resolution on Zimbabwe in 2002, nor did the Commission on Human and Peoples' Rights of the African Union.

Very much alarmed by the increasing violations of the rights of human rights defenders in this context, ZimRights, supported by the Observatory, decided to publish the present report. The rights of human rights defenders and associations are guaranteed by the Universal Declaration of Human Rights, international and regional human rights instruments ratified by Zimbabwe - in particular the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights -, as well as by the Declaration on Human Rights Defenders² adopted by the United Nations General Assembly in December 1998. Particular attention will be brought to this last Declaration in the present report.

1. HUMAN RIGHTS NGOs UNDER FIRE

“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

(b) To form, join and participate in non-governmental organizations, associations or groups”;

Article 5 of the United Nations Declaration on Human Rights Defenders

“Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present declaration”.

Article 13 of the United Nations Declaration on Human Rights Defenders

BACKGROUND

Since the year 2000 after the Constitutional referendum lost by the government³, the authorities have expressed dissatisfaction with the operations and activities of NGOs especially those in the human rights field. Those that have been specifically targeted and mentioned by name by government officials include Amani Trust, National Constitutional Assembly (NCA), Crisis Coalition, ZimRights, Zimbabwe Election Support Network (ZESN) Catholic Commission For Justice and Peace (CCJP), and Legal Resources Foundation (LRF).

In 2002, a number of ordinary members of the human rights organizations have been arbitrarily arrested and detained. They were subsequently released in a number of cases without being charged. Where charges were brought the state has often failed to carry out a prosecution and

² Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to promote and Protect Universally Recognized human Rights and Fundamental Freedoms

³ In February 2000, a referendum was organized by the Government in order to bring changes to the Constitution. The Government lost by 54,4 % of the votes against.

charges were often withdrawn before trial. Dr Lovemore Madhuku, chairman of NCA, has been detained four times, including three times for forty eight hours and then released. He has been under the constant surveillance of state agents who seem quite keen to disrupt his life as much as possible. Dr Francis Lovemore of Amani Trust was also arrested and detained before being granted bail. Tony Reeler, a director of Amani Trust, is now in exile. A ready example is also the over 100 ZESN election observers who were arrested in Manicaland during the March 2002 Presidential elections. Not a single case was successfully prosecuted and the majority of the cases have been concluded through withdrawal of charges before trial.

The government has also attacked civil society in the state-owned media as shown by the following examples:

- 31/03/02 *The Sunday Mail* published a story attacking Amani Trust and alleging that ZimRights was investigating Amani Trust for misuse of funds and links with the opposition. The government controlled paper, which is a government mouthpiece, stated that “chaotic accounting systems at Amani Trust, a Non-governmental organization that works hand in hand with the Movement for Democratic Change [MDC], are suspected to have led to the misappropriation of millions of dollars. Amani Trust has been accused of moving away from its original brief of providing medical and social service to victims of political violence by assisting MDC activists only (who) would then allegedly go on nocturnal missions of terror against ZANU-PF⁴ members”.
- 09/05/02 The Government controlled newspaper *The Chronicle* in its headline news titled “Crusade to demonize Zimbabwe” wrote that three human rights organizations were reportedly on a “crusade to demonize Zimbabwe by presenting unsubstantiated allegations of human rights abuses.” The paper further singled out Amnesty International, ZimRights, the Legal Resources Foundation as “three organizations known to be on an anti-Zimbabwe and anti-government crusade”. Quoting Mr. Dzvairo who is Zimbabwe’s Consul General to South Africa, the government paper alleged that the three human rights organizations had become unwitting tools for those with a destructive agenda over Zimbabwe. Finally Mr. Dzvairo is quoted as having said “we are too aware of foreign elements acting in cahoots with Zimbabwean citizens, political parties and organizations who are bent on exploiting loopholes in Zimbabwean law to this end”.
- 13/09/02 The government issued a notice in *The Herald* newspaper in terms of the Private Voluntary Organizations Act (PVO Act) threatening to arrest leaders of unregistered NGOs.
- 11/10/02 The President made a threat reported in *The Herald* to invoke the law (PVO Act) to prevent NGOs from receiving foreign funding. The PVO Act forbids unregistered NGOs from raising funds from any source.
- 14/11/02 *The Herald* reported the declarations made by the Minister of Justice Legal Affairs and Parliamentary Affairs, who released a list of NGOs presented as a threat to national security. The newspaper strongly criticized Amani Trust, contributing to the discredit and slander campaign against this organization.

THE PRIVATE VOLUNTARY ORGANISATIONS ACT and THE 13TH SEPTEMBER NOTICE⁵

A notice was published in *The Herald* of 13th September 2002, issued by the Legal Advisor to the Ministry of Public Service, Labour and Social Welfare, aiming at enforcing the 1966 PVO Act and at criminalizing any NGO failing to register under this Act⁶.

It states as follows in its essential parts:

"Any body or Association of persons, corporate or un-incorporate or any institution whose objects include one or more of those stipulated in section 2 of the Private Voluntary Organizations Act [Chapter 17:05], excluding those excepted under the same section, is a Private Voluntary Organization (PVOs) and should be registered in terms of the Private Voluntary Organizations Act, aforesaid.

Section 6 of the PVO Act, prohibits such a body, institution or association to operate without being registered. Section 25 of the same Act, makes it a criminal offence to operate without being so registered.

May all such bodies as are not registered urgently stop their operations until they have regularized their registration in terms of section 9. Failure to adhere to the Law will result in arrests being made..."

The Notice appears to be a re-assertion of the provisions of the 1966 PVO Act as amended, regarding registration of private voluntary organizations (PVOs) and in particular section 2(2) from which the spirit of the notice has been extracted. The Notice as such does not seek to create any new category of PVOs nor does it expand the existing one. The Notice also does not alter the range of exceptions set out in the Act in section 2.

Section 2 of the PVO Act defines a PVO as an association of persons, corporate or unincorporated, or any institution with any one or more of the following objects:

The provision of all or any of the material, mental, physical or social needs of persons or families;
Rendering of charity to persons or families in distress;
The prevention of social distress or destitution of persons or families;
The provision of assistance in, or promotion of, activities aimed at uplifting the standard of living of persons or families;
The provision of funds for legal aid;
The collection of contributions for any of the foregoing.

This definition excludes the following entities:

- a) The Zimbabwe Red Cross Society;
- b) Any political organization in respect of their political activities;
- c) Registered hospitals and nursing homes and work done for their benefit;

⁵ ZimRights agrees with a commentary that was circulated by ZESN on the above notice.

⁶ See Open Letter of the Observatory addressed to Zimbabwean authorities, December 2002

- d) Registered health institutions under the Medical, Dental and Allied Professions Act [Chapter 27:08];
- e) Any entity whose activities are for the sole benefits of its members;
- f) Any Trust established directly by any enactment or registered with the High Court;
- g) Any educational trust approved by the Minister;
- h) Any institution or service maintained and controlled by the State or a local authority; and
- i) Any religious body in respect of activities confined to religious work.

The sting in this notice is really in the requirement that all non registered bodies and associations of persons (corporate or otherwise), any of whose objects fall within the Act should cease operations forthwith or risk prosecution.

Even if the Notice aims at enforcing a text that has been legally adopted, the context of increasing criminalisation of independent NGOs, in which it occurs is a clear sign of attempt to undermine their role and prevent them to operate freely. Currently NGOs can be classified into two broad categories in Zimbabwe namely those that are registered as welfare organisations in terms of the PVO Act, and those that are formed either in terms of a trust deed or a constitution. NGOs have a choice on whether to register under the PVO Act or not. The PVO Act is administered by the Ministry of Labor, Public Service and Social Welfare. Through this process the government can have a measure of control over the activities of the NGOs. However NGOs operating as trusts or in terms of their constitutions are outside the government control. That is why the government is making frantic efforts to make it compulsory for all NGOs to register in terms of the PVO Act. Further and in any case the registration process is cumbersome and purely the prerogative of the state. Naturally NGOs perceived as political or unfavorable, besides placing themselves in a position where they can be directly monitored by the government, also run a risk of having their applications for registration turned down.

It must also be underlined that the Act contains provisions that contravene human rights instruments as regards freedom of association. In particular, Section 23 of the Act makes it a criminal offence to collect or even attempt to collect funds on behalf of an un-registered PVO.

Moreover, applying the act seems unrealistic for the following reasons:

The process of registration set out in section 9 of the Act is too cumbersome and experience suggests that it may - at times - take several months if not years. This prohibition will target many common law associations founded only in terms of their constitutions, as well as temporary networks (political or otherwise) currently set up to respond to the food crisis and those Trusts registered with the Registrar of Deeds and not the High Court. In particular, the notice aims to undermine attempts by political parties and several trusts to assist displaced farm workers and other disadvantaged communities. The requirement that temporary entities set-up to respond to the prevailing national crisis should be registered under the PVO Act defies logic. It is tantamount to saying that -faced with the incapacity of the State and registered PVOs to respond to the current food crisis due to its magnitude - all other bona fide attempts to assist are criminal. The exact ramifications of this Notice for organizations dealing with Aids orphans and widows, street children and the unemployed should be fully investigated. The writer's suspicion is that the greater number of groups working in this area are not registered in terms of the PVO Act.

As intimated above, the Notice is not contrary to the PVO Act and is therefore, at law, intra-vires the Act. Aggrieved parties must, therefore, look elsewhere for relief especially considering that the expectation at law is that prior to requiring affected parties to cease operations, they should have been afforded an opportunity to be heard in terms of section 18(9) of the Constitution of Zimbabwe and the requirements of the principles of natural justice met. Primarily because the

effect of the Notice goes to the root of their existence as associations under the law, the constitution requires that they be granted a fair and impartial hearing.

Conclusion

The notice by the government in terms of the PVO Act is a culmination of the apparent intention of the government to control the activities of NGOs as part of the overall strategy to limit the democratic space and increase authoritarianism. The government is creating a basis and justification for the clamping down on NGOs and the arbitrary arrests of NGO leaders. There is also a clear underlying intention to prevent foreign funding of the NGOs so as to render them ineffectual in their quest to ensure that the country creates a satisfactory culture of human rights. The PVO Act is therefore being used as a means to attack and undermine NGOs as human rights defenders.⁷

2. JOURNALISTS AS HUMAN RIGHTS DEFENDERS

“Everyone has the right, individually and in association with others:

- a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems”;
- b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- c) To study, discuss form, and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

Article 6 of the United Nations Declaration on Human Rights Defenders

The Public Order Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) passed respectively in January and March 2002, created a mine field for independent journalists, who dare denounce human rights violations and promote the Rule of Law, by criticizing the practice of anti-democratic measures. In particular, the POSA criminalizes “publishing or attempting to coerce the Government”, as well as making a public statement with the intention to, or knowing there is a risk of “undermining the authority or of insulting” the president, including statements likely to engender “feelings of hostility” towards the President, or any “abusive, indecent, obscene or false statement” about him personally, or his office. The AIPPA requires all journalists to be licensed by the government, creates a state-appointed media commission with disciplinary powers to withdraw journalists’ licenses, and imposes severe limits on foreign correspondents living in the country.

⁷ See in Annex the open letter of the Observatory addressed to the Zimbabwean authorities, dated 22 November 2002.

A list of some of the journalists who were arrested all from the independent media is as follows:

1.	Geoffrey Nyarota	Editor in Chief	Daily News
2.	Andrew Meldrum	Journalist	The Guardian
3.	Bornwell Chakaodza	Editor	The Standard
4.	Farai Mutsaka	Reporter	The Standard
5.	Basildon Peta	Journalist & Correspondent for many papers.	The Financial Gazette
6.	Brian Mangwende	Reporter	Daily News
7.	Peta Thornicroft	Correspondent	Daily Telegraph
8.	Lloyd Mudiwa	Reporter	Daily News
9.	John Gambanga	Editor	Daily News
10.	Tich Mbanga	Director	Daily News

A number of the journalists listed above like Geoffrey Nyarota, who was charged for allegedly “abusing his journalistic privilege by publishing falsehood”, under section 80 of the AIPPA, were arrested on many occasions using AIPPA or POSA or a combination of the pieces of legislation.

Very few cases have come up for trial, the notable one being the case of Andrew Meldrum who was acquitted in July 2002. Mr. Meldrum was arrested and tried for allegedly repeating a story that a family had witnessed the beheading of their mother in a case of politically motivated violence. This story was repeated in the *Guardian Newspaper* after it had earlier been published in the *Daily News* which story later proved to be inaccurate. However, no sooner had he been acquitted than the government immediately cancelled Mr Meldrum’s permanent residence permit and issued a deportation order by decree. The government’s deplorable action in this case resulted in the Zimbabwe Lawyers for Human Rights commenting as follows;

“ The use of Executive decree to suppress plurality of opinion and to silence the independent media is particularly deplorable. The deportation order was issued despite the fact that Mr. Meldrum had been acquitted by a competent court, and in violation of basic principles of equity and justice; the government has failed both to satisfy any of the statutory requirements for the cancellation of his permit and to provide reasons for his deportation. This is in keeping with the executive’s *modus operandi* whereby officials continue to act as though they are above the law. ZLHR members were once again encouraged to witness the upholding of Mr. Meldrum’s rights by the Honourable Justice Matika in the High Court who referred the matter to the Supreme Court for a determination of Mr. Meldrum’s constitutional rights, thus suspending the deportation order.”

3. LABOUR ACTIVISTS AS HUMAN RIGHTS DEFENDERS

“ (a) For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully”

Article 5 of the United Nations Declarations on Human Rights Defenders

“1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms”.

Article 12 of the United Nations Declaration on Human Rights Defenders

THE CASE OF THE ZIMBABWE CONGRESS OF TRADE UNIONS (ZCTU)

Introduction and background

Numerous breaches of labor rights have been registered in 2002 in violation of human rights instruments, in particular of the International Labor Organization (ILO) 98 Convention concerning the application of the principles of the right to organize and to bargain collectively ratified by Zimbabwe in 1998⁸.

Up to the year 1998, Zimbabwe had only one umbrella body representing labor unions being the ZCTU. The then secretary general of the ZCTU, Mr. Morgan Tsvangirayi is the leader of the opposition Movement For Democratic Change while his deputy in MDC, Mr. Gibson Sibanda, was the chairman of the ZCTU before the formation of MDC, in 1999. The government therefore perceived the ZCTU as aligned to the opposition and a major threat to the continued dominance of ZANU (PF) in the political life of Zimbabwe. It is not surprising that the ZCTU became an immediate target of attack by the government after the June 2000 parliamentary elections. The government assault on the ZCTU took both overt and covert means and included the following among others;

- The creation and registration of another union, the government and ZANU (PF) sponsored union called Zimbabwe Federation of Trade Unions (ZFTU) in 1999 which immediately caused mayhem on farms and in industry and commerce through demands against employers that were viewed as bordering on extortion,
- Recurrent arbitrary arrests and detention of the ZCTU leadership,
- Heavy handedness on the part of the police in dealing with any collective action on the part of ZCTU while turning a blind eye to aggressive activities of the ZFTU against employers. For example ZFTU inspired violent action resulted in Eastern Highlands Plantations suffering losses of over \$34 million in November 2001. Claremont Orchards in Manicaland had a work stoppage of over 3 months at the instance of ZFTU. The sugar plantations in the southern part of the country had work stoppage for over a month just before the Presidential elections as a result of unrealistic demands at the instigation of the ZFTU.
- Use of POSA to deny the ZCTU the right to associate, assembly and to demonstrate. At one point the ZCTU had to get a High Court order in April 2002 to prevent the police from forcing themselves onto ZCTU board meetings.
- Creating an atmosphere of general fear through threats, the presence of heavily armed police and security agents presence at ZCTU organized events and arbitrary arrests. In March 2002, according to the International Confederation of Free Trade Unions, policemen entered by force into the headquarters of the ZCTU in Harare in order to monitor a meeting of its Executive Council. When reminded that they were not invited

⁸ It must be noted that Zimbabwe did not ratify the 87 ILO Convention concerning freedom of association and protection of the right to organize

and should therefore leave the ZCTU premises, they threatened that unless they were allowed in, they would use force to disband the meeting⁹.

Specific events

On 9 December 2002 ZCTU leaders (Mr. Wellington Chibebe, Mr. Tambaoga Nyazika, Mr. Timothy Kondo, Mr. Settlement Chikwinya, Mr. David Shambare, Ms. Patience Mandozana, Mr. Thomas Nyamanza, Mr. Gideon Shoko and Mr. Hwinya Matambo) were arrested by the police, while holding a legitimate union meeting at Adelaide Acres¹⁰. Around the time of their arrest there was general rumor that the ZCTU was organizing a collective job action for its membership. Those arrested were taken into custody and held at various police stations until lawyers secured their release on December 11. On that day, a judge rejected a request by state prosecutors to charge the nine detainees under the POSA. Their arrest was therefore a pre-emptive move on the part of the government. Attempts to lay trumped up charges are always made in such an event to give public justification to arbitrary and unlawful conduct on the part of the state.

In reaction to these arrests, the Presidency of the Council of the European Union made a statement on 20 December, expressing its “profound concern” about the event and urging the Zimbabwean government “to engage in a political dialogue with civil society and to respect the rights of trade unions”.

THE CASE OF THE PROGRESSIVE TEACHERS UNION OF ZIMBABWE (PTUZ)

With regard to public service labour movements the case of the Secretary General of the Progressive Teachers Union of Zimbabwe (PTUZ), is very illustrative. Mr. Raymond Majongwe was arrested and detained in October 2002 for organizing a collective job action by members (teachers) of his labour movement¹¹. He appeared in court for remand in October 2002 and was granted bail in the sum of \$5 000.00. The state had been insisting on bail of \$50 000.00 but the magistrate Mr. W Mandinde stipulated a lesser figure. This led to Mr. Majongwe being re-arrested and taken to another magistrate who ruled that there was no basis to place him on bail again in the same matter. Meanwhile Mr. Majongwe complained of being tortured by State agents during his detention. He was having evident walking difficulties in televised footage of his court appearance before being granted bail. Mr. Majongwe is facing charges of contravening a section of the POSA for organizing the collective job action and the matter awaits trial. As is normal with politically motivated arrests in Zimbabwe, while the police rush to arrest, there is no corresponding speed to finalise the case in court. Mr Majongwe still awaits to be advised of his trial date by the Attorney General who incidentally happens to be a commissioner in the African Commission on Human and Peoples rights.

⁹ See for further details, ILO - the case N° 2184, Report N°329 (Zimbabwe) : Complaint against the Government of Zimbabwe presented by the International Confederation of Free Trade Unions (ICFTU).

¹⁰ See OMCT Economic social and Cultural Rights Case ZWE 111202 and 111202.1

¹¹ See OMCT Economic social and Cultural Rights Case ZWE 121002 and 121002.1

4. **PRESIDENTIAL ELECTIONS AND HUMAN RIGHTS DEFENDERS**

Everyone has the right, individually and in association with others to : know, seek, obtain, receive and hold information about all human rights and fundamental freedoms including having access to information as to how those rights and freedoms are given effect in domestic legislation, judicial or administrative systems

Art 6 (a) of the United Nations Declarations on Human Rights Defenders

“2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes”.

Article 18 of the United Nations Declarations on Human Rights Defenders

The Presidential elections in Zimbabwe were held in March 2002. They produced a disputed result and left the nation divided and severely polarised.

The elections were marred by violence and intimidation. Human Rights NGOs as human rights defenders were specifically targeted by the government. NGOs wanted to participate in the electoral process mainly through an umbrella body called the Zimbabwe Election Support Network (ZESN). Traditionally NGOs have collaborated with the government and in the process provided voter and general civil education. They also traditionally supplied the election monitors for all electoral processes. The following are instances and events which lead to the conclusion that NGOs and other civil society organisations were specifically targeted by the government during the run up to the Presidential elections;

a. Human rights defenders and Voter education

The government promulgated The General Laws Amendment Act in 2001 which forbids NGOs and civil society from conducting voter and civic education during the run up to the elections. Although the Act was at first declared unconstitutional by the Supreme Court of Zimbabwe in January 2002, the legislation was re-introduced through the backdoor by the President and Minister of Justice via the Presidential Powers (Temporary Measures) Act¹² and the Electoral Act respectively. Given this legislative backing the partisan police, over enthusiastic militias and veterans made it virtually impossible for any meaningful voter and civic education to be carried out by NGOs and other human rights defenders. Any attempts at voter and civic education meant that the respective NGOs or human rights defenders were taking severe personal risks. In the result there was no meaningful voter education before the Presidential election.

¹² The Presidential Powers (Temporary Measures) Act is an act of parliament that allows for the President to pass laws to deal with special situations that cannot wait for the Parliament to formally sit to pass legislation in the normal way. These powers have been consistently used to gain advantage over competitors.

b. Human rights defenders and election monitoring

The General Laws Amendment Act banned election monitoring by NGOs and civil society and left this to the civil servants. This is contrary to the Southern African Development Community (SADC) norms and was an attack on civil society to weaken its capacity to defend human rights.

Thus, General Laws Amendment Act relegated civil society to merely providing local observers to the electoral process subject to the invitation of the Minister of Justice. In what appeared to be a clear and deliberate omission of his duty the Minister invited only some 420 local observers to accredit out of 12 500 names submitted by ZESN in order to have at least 2 observers per polling station. The observation process was therefore largely ineffectual. This was another subtle attack by the government on the effectiveness of human rights defenders.

c. Human rights defenders and election days

From the second day of election the police and other militias went on a spree of arbitrary arrests and detention of local ZESN observers and unaccredited local ZESN observers who were observing the election from a distance of more than 100 meters. A number of them were subsequently released without charge while others were taken to court for remand. They were all remanded out of custody. Not a single case has been successfully pursued by the state, tending to confirm the view that the arrest of local observers was part of the planned institutional harassment to weaken human rights defenders' capacity to be effective in election observing. The following is a list of the ZESN observers who were arrested and the status of their respective as at 31 December 2002. All the arrests took place between 10 and 11 March 2002:

1.L Mphadzula, ZESN driver; arrested on 10 March 2002 in Mutare South Constituency. Taken to court, Court ref CRB 1130-1/02. Charges have since been withdrawn before trial on 14 November 2002.

2.M Matimbe, ZESN local observer; arrested on 10 March 2002 and taken to court on ref CRB 1130-1/02. Charges have since been withdrawn before trial on 14 November 2002.

3.Christina Bindura, ZESN observer; arrested on 10 March 2002 and taken to court. Charges have since been withdrawn before trial on 14 November 2002.

4.William Chaterera, ZESN local observer; arrested on 10 March 2002 and taken to court on CRB 1128-9/02. Charges were withdrawn before trial on 8 October 2002.

5.Godknows Mhere, ZESN local observer; arrested and taken to court on ref CRB 1128-9. Charges were withdrawn before trial on 8 October 2002.

6.Julias Kafesu, ZESN local observer; arrested and taken to court on reference no. CRB 1134/02. Charges were withdrawn before trial on 8 October 2002.

7.Ebba Tinani, ZESN local observer; arrested on 10 March 2002 and taken to Court on reference CRB 1082/02. State is failing to pursue case despite demand by accused to have matter finalised.

8.Muchaonani Nhachi, ZESN local observer; arrested and taken to court on CRB 1080/02. State is failing to prosecute matter with speed despite the accused's demand to finalise case.

9. Maxwell Musiyabako, ZESN local observer; arrested and taken to court on reference CRB1088-90/02. Matter still pending.

10. Eunice Nenzema, ZESN local observer; arrested and taken to court on reference CRB 1088-90. Matter still pending.

11. Knowledge Gudyanga, ZESN local observer; arrested and taken to court on reference CRB1081/02. Matter still pending.

12. Muguta Manziwi, ZESN observer; arrested and taken to court on reference CRB 1088-90/02. Matter still pending.

13. Brenda shamiso Dzvifu, ZESN observer; arrested and taken to court on reference CRB 1078/02. Charges withdrawn on 21 May 2002 after it could not be established who had arrested her.

14. Hamunyari Magoronga, ZESN observer; arrested and taken to court on reference CRB1077/02. Charges against him withdrawn before trial on 21 May 2002.

15. Winnet Chipepera, ZESN observer; arrested and taken to court on reference CRB1079/02. Charges withdrawn before trial on 21 May 2002.

16. Agnes Gopito, ZESN observer; arrested and taken to court on reference CRB 1085-87/02. Matter still pending.

17. Rosemary Makufa, ZESN observer; arrested and taken to court on reference CRB1085-87/02. Matter still pending.

18. Esma Mafunda, ZESN observer; arrested and taken to court on reference CRB 1088-90/02. Matter still pending.

19. Charity Chigota, ZESN observer; arrested and taken to court on reference CRB 1085-87/02. Matter still pending.

20. Phelistas Wazulu, ZESN observer; arrested and taken to court on reference CRB 1085-87/02. Matter still pending.

21. Fannie Mapungwana, ZESN observer; arrested and taken to court on reference H109/02. Charges withdrawn before trial.

d. Abduction and detention of Arnold Tsunga and other observers

During the election, Arnold Tsunga, President of ZimRights was the Manicaland provincial coordinator of the Zimbabwe Election Support Network. On 8 March 2002, he and other election observers namely Kumbirai Mafunda, Mr. Zimunya, Rev. Tsvamunhu (ZESN Provincial Chairman for Manicaland) went to Honde Valley to investigate a reported case of electoral violations which *inter alia* included arbitrary arrest and detention and torture of the MDC member of Parliament for Mutasa constituency, Evelyn Masaiti, and over 150 polling agents of the MDC. At Ruda Mr. Tsunga and his collaborators were surrounded by some twenty armed soldiers and marched at gun point to a military camp at Ruda Police Station. During the abduction

process they were assaulted by the armed soldiers using open hands, clenched fists, booted feet and gun butts. The soldiers threatened to shoot and kill them. They were detained for about three hours and released without charge after being intimidated and severely traumatized.

The arrest of local observers was largely vindictive and designed to frustrate the human rights defenders. There was no valid legal basis to arrest and detain. The police conduct was arbitrary, deliberately obstructive and heavy handed.

5. LEGAL ACTORS UNDER PRESSURE

“1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights”.

Article 9 of the United Nations Declaration on Human Rights Defenders

“Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession”

Article 11 of the United Nations Declaration on Human Rights Defenders

INTRODUCTION AND BACKGROUND

The limitations and pressures imposed on Zimbabwe human rights defenders are further aggravated by the lack of judicial remedies and a general lack of confidence in the possibilities of legal recourses. Attacks against lawyers have added to this difficult situation.

Since the year 2000 there has been substantial interference with the activities of the judiciary by the executive to the point that presently there has been a substantial loss of trust and confidence on the part of the public in the justice delivery system.

A number of judges including the Chief Justice, magistrates and prosecutors have resigned or been forced to resign from their positions by reason of political interference at the instance of or with the collusion of the executive. The following judges of the Supreme Court and High Court have been forced to resign between 2001 and 2002 namely; Chief Justice Gubbay, Justices

McNally, Ebrahim, Chatikobo, Devittee, Gillspie, Blackie. New judges whose credentials are questionable and who are viewed as being close to the government have been appointed to both the Supreme Court and the High Court bench resulting in the perception that the superior courts are being packed with partisan judges.

The perception is therefore that the judiciary is no longer independent. Lawyers, magistrates and public prosecutors have also been harassed politically. In some instances politically motivated demonstrations have been organized against magistrates as has happened at Rusape, Chinhoyi, Chipinge and Gokwe. In other instances, magistrates and lawyers have been abducted, beaten up

and arbitrarily detained. A legal firm was raided by armed police, ransacked and searched using and under pretext of dubious search warrants.

SPECIFIC EXAMPLES

a. Assault on Chipinge Magistrate Courts after a ruling that was unfavorable to ZANU PF:

On 16 August 2002, a mob singing ZANU PF revolutionary songs and holding placards assaulted the resident magistrate of Chipinge Mr. Khumalo and another magistrate Mr. Walter Chikwanha. They also assaulted other court officials including one security guard, Ms. Cecilia Sithole, Ms. Kadirire and Ms. Muhala. The mob was using sticks, open hands and clenched fists to beat up the court officials. They dragged Mr. Walter Chikwanha out of the court buildings, force-marched him from the court complex to the government offices complex where he was forced to chant ZANU PF slogans. Mr. Walter Chikwanha suffered a fractured rib, stiff neck, swollen shoulder and general swelling on the head as a result of the assaults. The magistrate's distress calls to the police were not responded to. The magistrates state that at all material times there were three police officers, armed with rifles who escorted the assailants and made no effort to stop the assaults. Two of the police officers were identified as Inspector Sibanda and Sgt. Mambara. The government complex to which the Magistrate Chikwanha was taken and publicly humiliated by war veterans, identified as Mrs. Mlambo, Mr. Muzamana, Mr. Masuka, Mr. Chindove, Fungai Rice, Mrs. Matutsa, Mr. Nhachi and Mr. Mavhuro, houses the police and the state security agents.

ZIMRIGHTS is concerned that no arrests of the known assailants have been made to date. What is even more worrisome is that the Minister of Justice never issued a public condemnation of the assaults of magistrates and court officers but instead transferred the victim, Magistrate Chikwanha, out of Chipinge to Mutare.

b. Arbitrary search at a legal firm, Gonese and Ndhlovu

Gonese and Ndhlovu, a legal firm based at Mutare had its offices raided and searched by heavily armed police in front of terrified clients at the end of May 2002. Innocent Gonese is the member of Parliament for the opposition MDC for Mutare Central constituency and the opposition's chief whip in Parliament. The search warrant was to the effect that the police had reason to suspect that the firm had arms of war and other offensive weapons. Clients' files were read, scattered and strewn onto the floor. The search was conducted by about 18 armed policemen and lasted over 30 minutes. Sadly this was about the third time during the year that state agents subjected the firm to this type of conduct, according to Mr. Ndhlovu a partner in the practice. ZimRights strongly condemns this unwarranted and unjustified conduct on the part of the police and other state agents which interferes with the smooth running of a legal firm and violates the privilege and confidentiality between lawyers and clients.

c. Demonstrations at Rusape Magistrate Court

It was reported in the Daily News in January 2002 that a senior ZANU PF member in Makoni West, Didymus Mutasa had organized a demonstration against a magistrate of Rusape Magistrate's Court for having refused to grant bail to ZANU PF youths. According to information made available to ZimRights some ZANU (PF) party members were arrested at Rusape in a case of politically motivated violence and taken to court. Rusape and Makoni district became quite notorious for politically motivated violence in the run up to the presidential election in March 2002. Sadly a senior ZANU(PF) member, Didymus Mutasa, was implicated in most reports

received by ZimRights and other human rights organizations. When the magistrate refused to grant the suspects bail, a demonstration was conducted against him and he was denounced as supporting the opposition. He escaped assault but the process terrified court officials and gravely interfered with the justice delivery system.

d. Law Society of Zimbabwe; Sternford Moyo and Wilbert Mapombere's case

ZimRights agrees with the observations of Zimbabwe Lawyers for Human Rights (ZLHR) on the facts and the law surrounding the arrest and detention of the Law Society President and Secretary and therefore substantially reproduces the ZLHR report in so far as it relates to human rights defenders.

On the 3rd of June 2002, Sternford Moyo and Wilbert Mapombere, President and Secretary of the Law Society, were arrested and detained by members of the Zimbabwe Republic Police. The offices of the Law Society, the Secretary's law practice and the private residences of both the President and the Secretary were subjected to search and official Law Society documents were seized. The two were charged with contravening section 5(2)(b)(1) of the Public Order and Security Act.

ZLHR viewed this conduct as an attempt to compromise the independence, effectiveness and integrity of the Law Society of Zimbabwe, and as a personal attack on its Secretary and President. The arrest of the President and Secretary came as part of a governmental campaign to silence criticism of the government.

Based on the charges and the submissions of the state representative at the hearing of an application for the release of Messrs Moyo and Mapombere ZLHR considered that the charges were palpably false, unfounded and apparently malicious for the following reasons:

There is no section 5 (2)(b)(1) in the Public Order and Security Act; It was alleged that the President of the Law Society of Zimbabwe organized a meeting on the 4th of March 2002 to plan "peaceful" "mass action" in support of the MDC at which meeting it was agreed that the MDC would cease reconciliation talks with ZANU PF. It is an undisputable fact that on the 4th of March 2002, the Presidential election had not yet taken place. The MDC had not engaged ZANU PF in any reconciliation talks and there had been no talk of mass action; In light of the accused persons' denials; the highly questionable authenticity of the semi-literate letters supposedly written by the accused and the impossibility of the facts of the offence alleged, no "reasonable suspicion" of an offence having been committed could remotely have arisen. In any event, the right to peacefully demonstrate, assuming the letters are authentic, is protected under Sections 20 and 21 of the Constitution which guarantee the right of freedom of expression and freedom of association and assembly; Further, the whole of Section 5 of the Public Order and Security Act is arguably unconstitutional as it severely restricts the exercise of the right to freedom of expression.

The apparent persecution of the Law Society of Zimbabwe and its secretariat came after vitriolic and unfounded attacks on the person of the President of the Law Society by the government through its Minister of State for Information and Publicity Jonathan Moyo, as reported in the Herald of 18 April 2002.

Sternford Moyo and Wilbert Mapombere are out of custody on bail awaiting trial. As stated above the Attorney General has the duty to set the case down for trial. He has not yet done so as of the end of 2002. Their trial date has not yet been set. A pattern has emerged, though, whereby most politically motivated cases where the state is in a hurry to arrest but runs out of steam when

it comes to prosecuting the accused persons due to absence of evidence. During their detention, they were deprived of access to their lawyers and adequate food and clothing. Their detention cells were also crowded. As part of efforts to frustrate their constitutional rights to access lawyers, they were shuttled from one police station to another and taken to some of the most notorious cells.

e. Justice Blackie's case

Background

In July 2002 Justice Blackie, then a judge of the High Court of Zimbabwe, found the Minister of Justice Patrick Chinamasa guilty of contempt of court and passed a sentence of imprisonment against him. This immediately caused a reaction by another Minister, Jonathan Moyo, the Minister of State for Information and Publicity whose reaction was quoted in the Government newspaper and mouthpiece, *The Herald* of 18 July 2002 in an article entitled 'Judgment against Minister sinister'. Minister Moyo was quoted as commenting without full knowledge of the precise details of the matter.

Minister Moyo argued that contempt charges should never have been laid against Minister Chinamasa. Moyo completely disregarded a Supreme Court directive to the contrary. He erroneously argued further that Minister Chinamasa was not given an opportunity to present his case before a decision was made. Minister Moyo insinuated that the Honorable Justice Blackie had been handing down 'racist' judgments. Justice Blackie was appointed to the Bench after Independence by the current President of Zimbabwe. The Minister's statement was not only defamatory but also designed to mislead the public and incite hatred against the judge. Meanwhile the police failed to execute the warrant of arrest against Minister Chinamasa despite the passage of several weeks and despite the fact that the Minister had not timeously sought cancellation of the warrant in due time.

Meanwhile Minister Chinamasa was also quoted in early July 2002 in *The Herald*, as having threatened to cause the Chief Justice, G Chidyausiku, to set up a tribunal to investigate Justice Blackie for issuing the warrant of arrest. Justice Blackie resigned from the bench at the end of July 2002.

This is the relevant background that underlies the subsequent harassment of Justice Blackie after he left the bench.

Justice Blackie's arrest

Former High Court Justice Blackie was arrested on 13 September 2002.

The arrest and detention of former Justice Blackie appeared to be arbitrary and passed for outright retribution by the government for his judgment against the Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, in which the minister was sentenced to a three-month term of imprisonment and a fine for two instances of contempt of court. The judgment was subsequently nullified in a procedurally questionable manner by the High Court in Harare. Although the police were obliged to imprison Mr Chinamasa by order of court, he was not arrested, yet former Justice Blackie was arrested and detained on unsubstantiated and seemingly unreasonable suspicion of having committed an offence.

Justice Blackie like most individuals seemingly critical of the government was arrested on a Friday, and detained over the weekend in deplorable conditions in various police holding cells without proof of commission of an offence. He was denied food, warm clothing and essential medication (something which happens with frightening regularity to individuals detained on suspicion of committing an offence). The former judge's legal practitioners initially advised that his whereabouts were not revealed to them and that a court order had to be sought for his safe production on Saturday morning.

Subsequent to his being released on bail in mid-September 2002 Justice Blackie successfully applied for a relaxation of his bail conditions to allow him to make a trip to South Africa. The magistrate who granted the application Mr Wilbert Mandinde was immediately publicly condemned by the Attorney General in The Herald of 15 November 2002 and was accused of abusing judicial discretion in that his judgment was predetermined. Further he was sued in the High Court in his personal capacity by the Attorney General for his decision in the Blackie matter. Soon thereafter he was suddenly transferred to Victoria Falls from Harare and he has subsequently resigned from the bench for fear of further persecution.

Justice Blackie still awaits trial. He is facing allegations of corruption in that he is being accused of passing judgment in an irregular manner in a matter over which he presided as a judge of appeal.

GENERAL CONCLUSION

It is quite clear from the above summary that indeed human rights defenders in Zimbabwe are on the frontline. There is overt and covert pressure being brought to bear upon human rights defenders by the authorities and like-minded militias. The deteriorating human rights situation in Zimbabwe calls for specific ongoing attention to be given to the plight of human rights defenders as the country cannot afford to have them go underground. ZimRights therefore calls for greater networking and collaboration among human rights defenders and offers itself available for strategic alliances with institutions of like mind which have the necessary material resources but which are thin on human resources so that particular, careful and continuous attention can be given to the needs and plight of human rights defenders in Zimbabwe.

RECOMMENDATIONS

ZimRights and the Observatory for the Protection of Human Rights Defenders urge:

- The Zimbabwean Authorities to:

- 1/ Immediately put an end to any kind of harassment and reprisals against all human rights defenders and associations;
- 2/ Ensure that all human rights defenders in Zimbabwe are able to pursue freely their activities and in particular, the authorities are required to respect freedoms of association, peaceful assembly and expression, in conformity with the provisions of human rights international instruments ratified by Zimbabwe, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights, the African Charter (articles 9, 10 and 11) and the Declaration on Human Rights Defenders;
- 3/ Recognize the role of human rights defenders in the construction of the Rule of Law and democracy in the country and promote the Declaration on Human Rights Defenders at all levels of the State.

4/ Guarantee in all circumstances the independence of the judiciary and ensure that the charges against the defenders cited above are dropped, since their charges arose from conduct aimed at improving respect of human rights;

5/ Order impartial investigations into acts of violence perpetrated against human rights defenders in order to identify those responsible, bring them to trial and apply the penal, civil and/or administrative sanctions as provided by law;

6/ Revise legislation to put it in conformity with international human rights standards, in particular the provisions of the Public Order and Security Act (POSA) and of the Access to Information and Protection of Privacy Act (AIPPA), as well as facilitate the registration of independent human rights NGOs, so as to suppress any kind of obstacles and discrimination in this procedure;

7/ Ratify the ILO 87 Convention concerning freedom of association and protection of the right to organize and implement the Recommendations of the ILO Committee of the Freedom of Association.

8/ Implement the principles stipulated in the NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, and adhere to the NEPAD African Peer Review Mechanism

9/ Give a positive answer to the request made by the Special Representative of the UN Secretary General on Human Rights Defenders in 2002, to visit Zimbabwe and enquire into the situation of human rights defenders in the country;

10/ More generally, conform with the provisions of the Universal Declaration on Human Rights as well as with the international and regional human rights instruments, to which Zimbabwe is party.

11/ Establish an Independent Human Rights Commission.

- The international community:

- The United Nations:

To adopt, at the 2003 session of the Commission on Human Rights, a resolution on Zimbabwe, condemning human rights violations perpetrated by the regime, in particular those targeting human rights defenders;

- The European Union:

1. To maintain and renew the targeted sanctions adopted by the European Union in February 2002 and to increase support for human rights NGOs and human rights defenders;

2. To increase diplomatic pressure on African Governments in particular Southern African states to condemn the repression in Zimbabwe and in particular to link trade and AID with democracy and good governance.

- The African mechanisms

1/ Ask the African Commission on Human and Peoples' Rights (ACHPR) to give particular attention to the situation of human rights defenders in Zimbabwe and in particular to adopt, on the occasion of the next session of the ACHPR in May 2003, a resolution on this situation.

2/ Ask the African Union, the Southern of West African Development Community and the NEPAD to give particular attention to the situation of human rights defenders in Zimbabwe as they play a key role in the building of democracy and peace and to adopt necessary measures

➤ ZIMRIGHTS



ZIMRIGHTS – ZIMBABWE HUMAN RIGHTS ASSOCIATION

Mission : To promote, protect and defend human rights, through education, legal aid and counseling, lobbying and advocacy, networking, documentation, research and publications.

Field activities : Civil and political rights, Education and social rights, education , child rights and livelihood, democracy and good governance

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➤ THE OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDRES

Activities of the Observatory

- a) a mechanism of systematic alert of the international community on cases of harassment and repression against defenders of human rights and fundamental freedoms, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) international missions of Investigation and Solidarity
- c) a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- d) the preparation, publication and world-wide diffusion of reports on violations of the rights and freedoms of individuals or organisations, that work for human rights around the world;
- e) sustained action with the United Nations (UN) and more particularly the Special Representative of the Secretary General on Human Rights Defenders and as necessary with geographic and thematic Special Rapporteurs and Working Groups
- f) sustained lobbying with various regional intergovernmental institutions, especially the OAS, OAU, the European Union, OSCE, the Council of Europe and ILO.

The Observatory's activities are based on the consultation and the co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by the OMCT and FIDH:

"Each person victim or risking to be the victim of reprisals, harassment or violations, due to his compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments".

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The Observatory for the Protection of Human Rights Defenders

An FIDH and OMCT venture - un programme de la FIDH et de l'OMCT - un programa de la FIDH y de la OMCT

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