

Zimbabwe: human rights in crisis

Shadow report to the African Commission on Human and Peoples' Rights

May 2007

This report is a response to the state report submitted by the government of Zimbabwe to the African Commission on Human and Peoples' Rights. Each chapter of this report was produced by a different human rights organization, and each organization takes responsibility for the content of its chapter.

CONTENTS

Introduction	3
Context	3
This shadow report	4
Chapter 1: Human rights violations under the land reform programme and Operation Murambatsvina	5
Human rights violations under the land reform programme.....	6
Human rights violations during Operation Murambatsvina.....	11
Conclusion	17
Chapter 2: Attacks on the rule of law	18
Independence of the courts: Article 26	18
Respecting and implementing Charter rights: Article 1	22
Equality before the law and equal protection of the law: Article 3	22
Liberty and security: Article 6	24
The right to a fair trial: Article 7	25
Conclusion	26
Chapter 3: Torture and ill-treatment	27
Context	27
Overview: torture and ill-treatment	28
Some individual torture cases	29
Conclusion	33
Chapter 4: Violations of the rights to freedom of association and assembly	35
Legislation	35
Trade unions.....	37
The political opposition.....	38
Human rights defenders	39
Case study: Women of Zimbabwe Arise.....	40
Conclusion	41
Chapter 5: Violations of the right to freedom of expression	42
Legislation restricting freedom of expression.....	43
Case law related to freedom of expression.....	44
Discussion of freedom of expression challenges in the state party report	48
Further restrictions on freedom of expression	50
Conclusion	52

Introduction

This report was produced by five independent human rights organizations in response to the government of Zimbabwe's state party report to the African Commission on Human and Peoples' Rights (African Commission). It presents a very different picture of the state of human rights in Zimbabwe to that contained in the government's report.

In October 2006 Zimbabwe submitted its 7th, 8th, 9th and 10th combined periodic state party report to the African Commission in accordance with article 62 of the African Charter on Human and Peoples' Rights (African Charter). The report gave a glowing account of Zimbabwe's record on civil and political rights, concluding that despite financial and human resource constraints, "Zimbabwe has shown commitment to the protection and promotion of the human rights".

However, despite the positive impression given by the periodic report regarding Zimbabwe's record on civil and political rights, the assertions in the report are undermined by the realities on the ground. Since the submission of Zimbabwe's last periodic report in 1996, Amnesty International, Article 19, Human Rights Watch, the International Bar Association and Redress have carefully monitored the human rights situation in Zimbabwe, through a combination of research, testimonies and field work. All five organizations contend that the government of Zimbabwe has failed to respect and protect the rights contained in the African Charter.

The following shadow report was produced by the five human rights organizations. Each chapter was written independently, but they have been collated together to facilitate easy consideration by the African Commission.

The five organizations submit that the facts presented in this shadow report provide an alternative view of Zimbabwe's human rights situation for the African Commission. It is to be hoped that the commissioners consider Zimbabwe's combined periodic report objectively and produce concrete recommendations to address the human rights situation in Zimbabwe, a country which continues to operate outside the African Union human rights framework.

Context

The government of Zimbabwe has brutally suppressed all forms of dissent since the Movement for Democratic Change emerged as a political opposition party in 1999 and the government was defeated in a referendum over a proposed new constitution in 2000. Repressive laws have been introduced or revived, ostensibly to regulate the activities of non-governmental organizations (NGOs), the media and civil society groups. These laws have been selectively applied to silence government critics.

The government has repeatedly claimed that western governments have sought its downfall after it embarked on a land reform programme targeting mostly farmers of European descent. However, most victims of the government's policies have been Zimbabweans of African descent who were targeted for daring to express their disapproval of government policies or who were seen as supporters of the political opposition.

In May 2005, the government embarked on Operation Murambatsvina (Shona for "clear the filth", but translated by the government of Zimbabwe in the state party report as "Restore Order"), a programme of mass forced eviction. Operation Murambatsvina left some 700,000 people without a home, livelihood or both. The mass evictions were carried out in total disregard of due process. As a result of international pressure, the government responded with what amounted to little

more than a public relations exercise. Operation Garikai/Hlalani Kuhle (Better Life) saw the government constructing some 3,325 structures after destroying more than 92,000 dwellings. Of the structures built under the reconstruction programme, approximately 20 per cent were allocated to police, soldiers and civil servants and the remainder were given mostly to people who were not affected by the mass evictions. Nearly two years on, many of the victims remain homeless or living in makeshift accommodation.

The human rights crisis in Zimbabwe is taking place in a context of a rapidly declining economy. Inflation is running at more than 1,700 per cent. Formal unemployment is at 80 per cent, and most employed people earn well below the poverty line.

This shadow report

Violations of the right to freedom from discrimination, the right to life and the right to property are outlined in Chapter 1 by Human Rights Watch. The chapter details how these rights have been repeatedly swept aside under the fast-track land reform programme initiated in 2000, and in Operation Murambatsvina in 2005.

Chapter 2, written by the International Bar Association, demonstrates how the principles of the rule of law and the independence of the courts in Zimbabwe have been severely compromised through intimidation of judges and lawyers. This has undermined the courts' jurisdiction and authority and resulted in discrimination in the application of the law.

Despite the prohibition of torture under international law, including the African Charter, and the Constitution of Zimbabwe, Redress submits in Chapter 3 that the government of Zimbabwe has systematically used torture on a huge scale. Perpetrators include the army, law enforcement agencies and other state agents including so-called "war veterans". The risk of further torture for those who dare to report such violations and the refusal by authorities to investigate has left victims without remedy or reparation.

Chapter 4, by Amnesty International, details how the government of Zimbabwe has repeatedly violated the rights to freedom of association and assembly in order to curtail peaceful criticism of the government from the public, civil society organizations and the political opposition. A combination of excessive use of force by the police and repressive legislation such as the Public Order and Security Act (POSA) has been employed to silence dissent.

Finally, Chapter 5, by Article 19, highlights the shortcomings of the state report's description of Zimbabwe's record on freedom of expression. It details the effects of restrictive legislation on journalists, newspapers and broadcasters. This chapter also shows how the government of Zimbabwe has clashed with the Supreme Court over unconstitutional moves such as the state monopoly on broadcasting.

Chapter 1: Human rights violations under the land reform programme and Operation Murambatsvina

Prepared by Human Rights Watch

The manner in which Zimbabwe's fast-track land reform programme was implemented in 2000 resulted in violations of a number of rights defined in the African Charter, including the right to property (Article 14). Other rights which were violated include the right to freedom from discrimination (Article 2), equality before the law (Article 3), the right to life (Article 4), the right to liberty (Article 5), the right to have one's cause heard (Article 7), and the right to work under equitable and satisfactory conditions (Article 15). The land reform programme also led to serious violations of rights read into the African Charter by the African Commission, including rights to food and adequate shelter.

The programme's implementation also raised serious doubts as to the extent to which it actually benefited the landless poor, as has always been claimed by the government of Zimbabwe. The stated aim of the fast-track programme - which the government has referred to in its state party report - was to take land from rich white commercial farmers for redistribution to poor and middle-income landless black Zimbabweans.

The need for land reform in Zimbabwe is generally acknowledged, even by representatives of the commercial farming sector, but the government refuses to acknowledge the violence and intimidation that accompanied the land reform programme. Under the land reform programme, ruling party militias, often led by veterans of Zimbabwe's liberation war, carried out serious acts of violence against farm owners and farm workers. Between 2000 and 2004, they used occupied farms as bases for attacks against residents of surrounding areas. The police did little to halt the violence, and in some cases were directly implicated in the abuses.

The government also fails to mention how the process of allocating land frequently discriminated against those who were believed to support opposition parties, and in some cases those supervising the process required applicants to demonstrate support for ZANU-PF, the ruling party. Zimbabwe's several hundred thousand farm workers were largely excluded from the programme, and many lost their jobs, driven from the farms where they worked by violence or laid off because of the collapse in commercial agricultural production. Even those people allocated plots on former commercial farms appeared in many cases to have little security of tenure, leaving them vulnerable to future partisan political processes or eviction on political grounds, and further impoverishment.

In 2005, the government of Zimbabwe launched Operation Murambatsvina ("clear the filth"), a campaign of forcible evictions and demolitions in urban areas throughout Zimbabwe. With little or no warning, often with great brutality and in complete contravention of national and international standards, tens of thousands of houses and thousands of informal business structures were destroyed without regard for the rights or welfare of the people evicted.¹ In the days and weeks after Operation Murambatsvina was launched, police burned, bulldozed and destroyed tens of thousands of properties around the country. The destruction resulted in mass evictions of urban dwellers from their homes and the closure of informal sector businesses throughout the country.

¹ Although the government claimed that the demolished structures were "illegal", Human Rights Watch found that many legal housing and business structures were also destroyed during the evictions campaign. See Human Rights Watch, "Clear the Filth: Mass Evictions and Demolitions in Zimbabwe", *A Human Rights Watch Background Briefing*, 11 September 2005.

The humanitarian consequences of this man-made disaster were catastrophic. There are few precedents of a government forcibly and brutally displacing so many of its own citizens in peacetime. According to UN estimates, 700,000 people – nearly 6 per cent of the total population – lost their homes, livelihoods, or both as the result of the evictions. About 2.4 million people – some 18 per cent of the population – have been either directly or indirectly affected by Operation Murambatsvina.²

Zimbabwean authorities claimed that the destruction of homes and other properties was part of a long-term plan to clean up the urban areas (a claim that is repeated in the government's state party report), restore order, rid the cities of criminal elements, and restore dignity to the people. However, there were many alternative analyses of Operation Murambatsvina, several of which alleged that the operation was part of the government's efforts to debilitate the urban poor, force them to move to rural areas, and prevent mass uprisings against the deteriorating political and economic conditions in high density urban areas.

Human rights violations under the land reform programme

Land reform is generally advocated in Zimbabwe as urgently necessary to address the stark inequalities in land distribution and wealth. However, as stated in the African Charter and reinforced by other binding international treaties, the rules providing for compulsory purchase should be clearly set out in law, and those affected should have the right to ensure that their interests are appropriately taken into account and to challenge decisions relating to compulsory acquisition before a competent and impartial tribunal. In addition, the security forces and criminal justice system must provide equal protection to all those who are victims of violence, and the law should take its course without interference from political authorities. None of the rules providing for compulsory purchase have been met by the government.

Discrimination in land allocation

Article 2: The right to freedom from discrimination

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

In its state party report, the government claims that the process of fast-track land reform was designed to meet the needs of disadvantaged black Zimbabweans. However, the process of land distribution itself raised serious concerns. There was party political control of access to the forms for applying for land and partisan discrimination in the allocation of plots. ZANU-PF war veterans' militias played a key role in distributing and allocating land, the same militias that were responsible for violence and intimidation against many who might have otherwise applied for a plot. A third problem was the general exclusion of farm workers from the benefits of land redistribution.

Although there was an official system for allocating land through the civil service and elected officials, in many cases this was superseded by informal processes

² UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs Anna Kajumulo Tibaijuka, *Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina*, 22 July 2005 [online], <http://www.unhabitat.org/documents/ZimbabweReport.pdf> (accessed 22 November 2005).

governed by the war veterans, who required demonstrated loyalty to ZANU-PF before allocating a plot.³

Some people from communal areas who genuinely needed land to raise themselves out of poverty, as well as some middle class people from urban areas who wished to enter commercial farming, were among those who obtained land for the first time. The extent to which real need was a criterion was difficult to assess because of the difficulties of accessing fast-track resettlement areas or talking to the ruling party militias that control most resettlement areas. Nevertheless, there were serious concerns about the politicized nature of beneficiary selection and thus about the extent to which fast-track land resettlement was really benefiting those who most needed land.

Because the fast-track process of resettlement was carried out so rapidly, short-circuiting legal procedures, some of those who moved onto new plots expressed concern that their title to land might not be secure.⁴ Others who wanted land did not take up the opportunity because they did not have the resources to plough the land and because there was little if any government support to assist new settlers. The absence of legal security and government assistance left them vulnerable to hunger and displacement. Development organizations following the crisis in Zimbabwe noted that the disruption to commercial agriculture caused by fast-track resettlement caused widespread food insecurity in the country.

Violence during the land reform programme

Article 4: The right to life

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Assaults against white farmer owners

War veterans and associated ZANU-PF militia occupying commercial farms intimidated and assaulted white farm owners in the course of occupying commercial farms. By March 2002, at least seven white farmers had been killed. Many of the farmers targeted were prominent supporters of the MDC. Farm owners were assaulted and threatened and their farms occupied whether or not their farms were listed for acquisition by the government. At the time, President Mugabe repeatedly singled out white Zimbabweans as enemies of the state.

Assaults against farm workers

Many more farm workers on commercial farms were victims of violence during land occupations than white farm owners. Dozens of farm workers were killed. Commercial farms were used as bases for war veterans and ZANU-PF militia to intimidate suspected opposition supporters in neighbouring communal areas. The police failed to take action against the perpetrators of violent crimes, and in some cases actively assisted illegal actions. The army, too, played a role in organizing and facilitating the occupations, without providing any check on the violence.

In June 2000, the National Employment Council for the agricultural industry (a tripartite body of government, employers and unions) reported that, as a result of the farm occupations, at least 3,000 farm workers had been displaced from their homes, 26 killed, 1,600 assaulted, and 11 raped. The majority (47.2 per cent) were supporters of the MDC; nearly as many (43.6 per cent) had no political

³ See Sam Moyo and Prosper Matondi, *Conflict Dimensions of Zimbabwe's Land Reform Process*, May 2001, p.15.

⁴ Human Rights Watch interviews, July 2001.

affiliation; a few (4.7 per cent) were ZANU-PF supporters.⁵ The Zimbabwe Human Rights NGO Forum documented the deaths of four farm workers and numerous assaults during 2001.⁶

Violence against farm workers was linked to the support given to the MDC by commercial farmers and, by implication, their workers. In many areas, it seems that farm workers were targeted for violence both so that the assailants could take over their homes, and in order to deprive the white farm owner of potential allies with a stake in keeping their jobs who might have supported the farm owner in resisting government policy. Weaknesses in the organizational representation of farm workers also made them vulnerable to assault and intimidation.⁷

Police failure to protect victims

The government called for peaceful coexistence between farm owners and the new settlers, but it dismissed violence against farm workers and farm owners as an unfortunate cost of long-overdue land reform that had been obstructed by white farm owners. Rural militias led by the war veterans were able to count on the fact that the police would not interfere or would intervene in only a limited way when they committed acts of political violence. Although the government denied allegations of police failure to act,⁸ political interference in police work was widely reported by opposition parties and human rights groups, as well as by some current and former police officers.⁹

There were numerous reports of police failure to apprehend perpetrators of violence. If they did arrest suspects, they then released them without charge and without registering the case number and providing it to the complainant. Even when police intervened to protect those threatened by violence, few alleged perpetrators were arrested. In numerous cases, farm workers and opposition activists explained that police had said the assaults were "political" and that as a consequence they would not intervene.¹⁰

On 6 October 2000, President Mugabe, using his presidential powers, issued an amnesty for politically motivated crimes committed between 1 January 2000 and 31 July 2000, the period of the campaign for the February 2000 referendum and the June 2000 parliamentary elections. The amnesty did not cover murder, rape, and robbery.¹¹ Some victims of violence who had returned home during the period of relative calm that followed the June elections were again assaulted by people who had been arrested and were then released following the amnesty.¹²

Reports to human rights NGOs and journalists describe the involvement of police and soldiers in assisting some land occupations, and in some cases in looting commercial farms. Even when courts ordered that occupations should be ended, or farms were not designated for acquisition, or were taken off the list following negotiations between the farm owner and the government, police often did not remove occupiers from the farms unless given instructions to do so by political authorities.

⁵ Cited in Cheater, *Human Rights and Zimbabwe's June 2000 Election*, p.34.

⁶ Zimbabwe Human Rights NGO Forum, *Political Violence Report January 2002*.

⁷ Human Rights Watch interview, union organizers, Harare, July 12, 2001.

⁸ Human Rights Watch interview, Dr. Vincent Hungwe, Principal Director of Land and Rural Resettlement, Harare, July 30, 2001.

⁹ Zimbabwe Human Rights NGO Forum, *Enforcing the Rule of Law in Zimbabwe*, Harare, September 2001.

¹⁰ Human Rights Watch interviews, July 2001.

¹¹ See International Bar Association, *Report of Zimbabwe Mission 2001*, para. 8.17.

¹² Human Rights Watch interviews, July 2001.

The right to property

Article 14: The right to property

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

In its state party report, the government of Zimbabwe argues that land reform has "enhanced the right to property". However, during the land reform programme, the government violated right to property in a number of ways.

Displacement and marginalization of farm workers

In many ways, those most disadvantaged by the fast-track land reform programme were farm workers. Before the land reform, there were 300,000 to 400,000 wage-earning workers on commercial farms.¹³ The UNDP reported that by January 2002, the number of farm workers displaced was estimated at 30,000 families.¹⁴

About 25 per cent of the farm workers were of foreign descent, mainly Malawian, Mozambican, or Zambian, although their families may have lived in Zimbabwe for several generations. Many of these did not have documents establishing Zimbabwean citizenship, either lacking papers altogether or carrying national identification cards bearing the designation "alien". Many farm workers who were not Zimbabweans by descent (even if they had citizenship) had no access to the structures that allocated plots in the communal areas.

Prior to the land reform, farm workers were already the lowest paid workers in the formal sector in Zimbabwe, often housed in poor conditions, and with inadequate access to schooling, healthcare, and other services. This situation persisted despite the fact that following independence, and under pressure from unions and NGOs working with farm workers, increasing numbers of farmers did improve the conditions of service for their workforce.¹⁵

In 1999, the government land policy framework for the first time acknowledged the need for farm workers to be resettled as well as those from communal areas, and recognized that those who entered the country as indentured labour from 1953 to 1963, and their children, were entitled to citizenship.¹⁶

Farm workers were among those with the greatest need for land. But farm workers were not among the groups targeted to benefit from the fast-track programme. As of October 2001, official government statistics indicated that only 2,122 of the 123,979 households recorded as resettled (that is, 1.7 per cent) were farm worker households.¹⁷

The General, Agricultural and Plantation Workers' Union of Zimbabwe (GAPWUZ), which at the time had about 100,000 members, in a paper presented to a September 2001 conference, characterized the fast-track land reform programme as "the biggest challenge currently facing farm workers in Zimbabwe.... There are

¹³ Dede Amanor-Wilks, *Zimbabwe's Farm Workers and the New Constitution*, 12 February 2000, available on the Africa Policy Information Center home page, www.africapolicy.org, accessed 21 December 2001; UNDP Interim Mission Report, January 2002, p.35.

¹⁴ UNDP Interim Mission Report, January 2002, p.35.

¹⁵ Nevertheless, only 59 per cent of farm workers' children attended primary school in 1997, compared to 79 per cent of children in communal areas and 89 per cent of urban children. Catholic Institute for International Relations, *Land, Power and Poverty: Farm workers and the crisis in Zimbabwe*, London, 2000, p.23.

¹⁶ Dede Amanor-Wilks, *Zimbabwe's Farm Workers and the New Constitution*, 12 February 2000, available on the Africa Policy Information Center home page, www.africapolicy.org.

¹⁷ UNDP Interim Mission Report, January 2002, p.36.

approximately 2 million people that can be labelled under the farm working community, and it is frightening to note that the land reform programme is silent as to the fate of the same."¹⁸

The large-scale occupation of commercial farms meant that workers' wage employment on the farm often ended. In some cases, they were allowed to remain on the farm, but could not work and were not paid; in others, they were displaced, and had to find shelter as best they could. Farm workers were in an invidious position as regards their political affiliations: because of their dependent situation, they felt obliged to show support for the political party favoured by the farm owner, and thus became vulnerable to violence from supporters of other parties, whatever their own beliefs.

Although farm workers were not precluded from applying for land under the fast-track process, the problem for those who could not prove their citizenship was that the process of registering for land formally involved registration with the council of the communal area from which they came, with no additional mechanisms put in place to enable them to access the new allocations easily. Moreover, those farm workers who were not of Zimbabwean descent had additional problems, since if they were displaced from the farm they had no other place to go. Zimbabweans, on the other hand, usually had the possibility of returning to their family's land in the communal areas.

Amendment of Section 16 of the Constitution

The government cites Section 16 of the Constitution in its state party report as providing for the right to property. According to the government, this section has been amended to provide for further instances where property can be compulsorily acquired in the public interest, which is necessary to finalize the land reform programme. However, the amendment to Section 16 (referred to as Constitutional Amendment No. 17), which was promulgated in August 2005, has removed the jurisdiction of the courts over cases of acquisition of land by the state and rendered impotent the fundamental right to protection of the law, a fair hearing, and the independence of the judiciary.

This amendment therefore effectively nullifies Section 16, which lays down requirements that must be met by law in the compulsory acquisition of property. These include reasonable notice of acquisition of property, provision of fair compensation, and the opportunity for disputes over acquisition of properties to be decided by the courts. Under the amendment, none of these rights are recognized. The amendment also violates Article 21(2) of the African Charter which states that: "In case of spoliation the dispossessed people shall have the right to the lawful recovery of property as well as to an adequate compensation."

Human rights obligations

The right to housing and shelter, protected by the African Charter in part by Article 14, places an obligation on the Zimbabwean government as a bare minimum not to destroy the housing of its citizens. It also requires the government and all of its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of the individual when they are seeking to satisfy individual, family, household or community housing needs. The violence directed against farm owners and workers, and the inaction of the police, violated these obligations. The state is obliged to guarantee access to legal remedies for those whose rights have been violated.

¹⁸ GAPWUZ, "Zimbabwe", in *Southern Africa Regional Conference on Farm Workers' Human Rights and Security*, Farm Community Trust of Zimbabwe, September 2001.

The government has a duty to guarantee equal protection of the law to all people (Article 3) without discrimination, (Article 2) and to prosecute serious violations of human rights (Article 26), including where the perpetrator is a private citizen. Independence of the judiciary is also a cornerstone of international human rights law (Article 26). Crimes should be investigated and prosecuted in a fair, effective, and competent manner by the relevant law enforcement and judicial authorities. The Zimbabwean Constitution provides similar guarantees.¹⁹

Human rights violations during Operation Murambatsvina

Operation Murambatsvina ("clear the filth"), a programme of mass forced evictions and demolitions of home and informal business, left at least 700,000 people without homes, livelihoods or both. The evictions were carried out with total disregard for the welfare of the people being evicted, and created a humanitarian crisis of immense proportions.²⁰

The evictions took a particularly heavy toll on vulnerable groups – widows, orphans, the elderly, households headed by women or children, and people living with HIV/AIDS.²¹ Thousands of people were left destitute, sleeping in the open without shelter or basic services. To date the government has taken no measures to investigate allegations of abuses during the operation and to provide adequate remedies to those whose rights had been violated.

The UN Special Envoy on Human Settlement Issues in Zimbabwe, Anna Tibaijuka, was deployed to Zimbabwe by the UN Secretary-General in June 2005 to assess the scope and impact of Operation Murambatsvina. She reported that the operation was carried out in an "indiscriminate and unjustified manner, with indifference to human suffering and, in repeated cases, with disregard to several provisions of national and international legal frameworks."²²

Despite condemnation from the international community and appeals from humanitarian organizations, the government of Zimbabwe has continued to defy its obligations under international law and has failed to protect those affected and displaced by the evictions. The government has refused to acknowledge the scale of the crisis precipitated by the evictions, and continues to blatantly violate the human rights of the people displaced by Operation Murambatsvina.²³

Denial of access to legal remedies

Article 7: The right to have one's cause heard

1. Every individual shall have the right to have his cause heard.

The UN Special Envoy's report concluded that during the evictions campaign, the government of Zimbabwe "breached both national and international law" and that

¹⁹ Section 18(1) of the Constitution stipulates that every person is entitled to the protection of the law. Section 18(9) of the Constitution says that every person is entitled to a fair hearing within a reasonable time by an independent court. The independence of the judiciary is guaranteed by section 79B.

²⁰ Although the government claimed that the demolished structures were "illegal", Human Rights Watch found that many legal housing and business structures were also destroyed during the evictions campaign. See Human Rights Watch, "Clear the Filth: Mass Evictions and Demolitions in Zimbabwe", *A Human Rights Watch Background Briefing*, 11 September 2005.

²¹ Human Rights Watch "Clear the Filth": Mass Evictions and Demolitions in Zimbabwe", *A Human Rights Watch Background Briefing*, 11 September 2005.

²² UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs Anna Kajumulo Tibaijuka, *Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina*, 22 July 2005 [online], <http://www.unhabitat.org/documents/ZimbabweReport.pdf> (accessed 22 November 2005).

²³ For more on further evictions of those displaced by the evictions see Amnesty International, *Zimbabwe: No Justice for the Victims of Forced Evictions*, September 2006.

it should compensate the victims for illegally destroyed property as well as redress the suffering caused by the evictions and their aftermath. The report further called on the government to identify and prosecute "all those who orchestrated this catastrophe".²⁴

Despite these clear recommendations, and Zimbabwe's international obligations to provide effective remedies to victims of human rights violations under the African Charter, the government has not carried out any inquiries into the manner in which the evictions were carried out. It has not investigated reports of excessive use of force by the police during and after the evictions and has taken no steps to change the legislation to provide for improved housing rights and security of tenure for those in danger of eviction and displacement.

The government has also failed to provide access to effective legal remedies to the victims of Operation Murambatsvina. According to lawyers representing the victims of the evictions, the courts, run by politically compliant judges, have to a large extent used delaying tactics in processing cases related to Operation Murambatsvina.²⁵ In addition, few people have sought compensation as most do not believe that they would receive justice or effective remedy. It seems highly unlikely that the vast majority of the victims will receive any compensation or other forms of reparation from the government.

Forced relocation to the rural areas

Article 12 (1): The right to freedom of movement and residence

Every individual shall have the rights to freedom of movement and residence within the borders of a State provided he abides by the law.

In its state party report on the right to freedom of movement, the government of Zimbabwe makes no mention of the hundreds of thousands of people forcibly displaced under Operation Murambatsvina.

The Zimbabwean authorities engaged in a concerted effort to coerce the people displaced by the evictions to leave the cities and move to the rural areas.²⁶ In different parts of the country police threatened, harassed, or beat internally displaced persons (IDPs), forcing them to relocate to rural areas where many had no homes or family and where social service provisions such as healthcare, education, clean water and economic opportunities were minimal. Fearing further displacement, many resorted to hiding during the day and only returning to the places of their temporary residence at night, to avoid detection and harassment by the police. Thousands of people were forcibly taken to holding camps around the country where they were forced to live in appalling conditions with little food or adequate shelter. Thousands of these people, mainly women and children, continue to live in dire conditions in a holding camp at Hopley Farm on the outskirts of Harare.

In one case documented by Human Rights Watch, the police forcibly relocated several hundred people from Mbare, a suburb of Harare, to the Hopley Farm holding camp. On 2 October 2005 policemen with dogs came to an informal IDP settlement in Mbare and threatened more than 250 men, women and children with physical violence and destruction of their property if they did not leave the area by 5 October. Lawyers from the organization Zimbabwe Lawyers for Human

²⁴ UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs Anna Kajumulo Tibaijuka, *Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina*, 22 July 2005 [online], <http://www.unhabitat.org/documents/ZimbabweReport.pdf> (accessed 22 November 2005).

²⁵ Human Rights Watch, *Evicted and Forsaken: Internally Displaced Persons in the Aftermath of Operation Murambatsvina*, 1 December 2005.

²⁶ Human Rights Watch interviews, Victoria Falls, Mutare and Harare, 26 September–7 October 2005.

Rights (ZLHR) managed to file an urgent application with the High Court preventing their further displacement.²⁷ Several weeks later, a representative of ZLHR informed Human Rights Watch that on 14 November at 2am, Harare City Municipal Workers, accompanied by the police, forced the families onto trucks and took them to Hopley Farm in contempt of the High Court order.

While compelling people to relocate to rural areas, the government made no effort to ensure that basic assistance would be available to the displaced after the relocation, or even to track down those who chose to move. International humanitarian agencies are still unable to trace thousands of people who were displaced to rural areas.

The government also failed to make arrangements to provide temporary shelter for the displaced. Up to a year after the evictions, many thousands of displaced people continued to live in the open, in disused fields or in the bush. Others lived in rudimentary shelters made from the debris of destroyed houses, or squeezed into tiny rooms with family members who had agreed to shelter them. The overcrowded conditions in the houses and camps inevitably led to the spread of communicable diseases such as tuberculosis.

By pursuing a campaign of forced evictions and compelling people to move to the rural areas against their wishes, Zimbabwe violated Article 12 of the African Charter, the right to freedom of movement and residence. It is widely agreed that incorporated in the freedom of residence is the right not to be moved. While such freedoms and rights may be regulated by and subject to legitimate laws or policy, the laws or policy cannot restrict the right in so far that the essence of the right is impaired. Any law or policy which imposes restrictions on the freedom of residence can only do so in a manner that is proportionate and suitable to achieve the lawful end intended, that is, the protection of fundamental values such as the rights and freedoms of others. The laws or policy must also not be inconsistent with other rights protected by the African Charter. The impact of Operation Murambatsvina on the freedom of residence protected by Article 12 of the Charter was such as to impair the very essence of the right and lead to a violation of this article.

Indiscriminate destruction of property

The government of Zimbabwe also violated the right to property through the indiscriminate destruction of property during Operation Murambatsvina. The government violated the human rights of hundreds of thousands of its own citizens by arbitrarily forcing them to destroy or cede their property without due notice, process or compensation.

In its state party report the government states that it has now embarked on Operation Garikai, a property ownership scheme designed to provide proper homes to many of those affected by Operation Murambatsvina. However, Operation Garikai failed to address the immediate shelter needs of the victims of the evictions, and few of those rendered homeless by Operation Murambatsvina have received housing under Operation Garikai. The criteria for allocation of housing under the programme, which include proof of formal employment, a specified salary, and the payment of an initial deposit and monthly instalments, make the housing unaffordable for the majority of the displaced.²⁸ By April 2006, the government had reportedly built only 3,000 housing units for those displaced.

²⁷ Human Rights Watch interview with Zimbabwe Lawyers for Human Rights, 6 October 2005. Human Rights Watch visited and interviewed the internally displaced on 29 September, a few days before police visited the area.

²⁸ Human Rights Watch, *Evicted and Forsaken: Internally Displaced Persons in the Aftermath of Operation Murambatsvina*, 1 December 2005.

The government has also failed to prioritize the victims of Operation Murambatsvina under the scheme. Almost two years after Operation Murambatsvina, thousands of people remain without adequate shelter.²⁹

The African Charter, under Article 14, forbids the wanton destruction of property, and in particular where such destruction involves violations of the right to shelter and housing, which is protected under the Charter by the combined effect of Articles 14, 16 and 18.

At a very minimum, the government of Zimbabwe has an obligation to ensure that those it rendered homeless during Operation Murambatsvina are re-housed. To this end the government must review and revise Operation Garikai in a transparent manner, in order to develop a comprehensive human rights-based housing programme to address the housing needs of all victims of Operation Murambatsvina.

Violations of economic, social and cultural rights

Article 16: The right to health

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. State parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17 (1): The right to education

Every individual shall have the right to education.

The breakdown of the rule of law and the widespread disregard for economic and social rights by the government of Zimbabwe were thrown into stark relief in 2005 during Operation Murambatsvina. Evictions carried out under Operation Murambatsvina were marked by violence and violations of a range of economic, social and cultural rights including the right to adequate housing, the right to education, the right to work and the right to health.

While acknowledging its responsibilities under the rights to health and education in its state report, the government typically fails to mention or acknowledge the extensive violation of these rights during Operation Murambatsvina and its failure to adequately address these violations. Throughout Operation Murambatsvina, educational and health facilities were destroyed, school children were displaced and denied access to educational facilities and people living with HIV had their treatment disrupted and discontinued.

Vulnerable groups ignored

During the operation, the government made few attempts to provide or facilitate priority humanitarian assistance to displaced vulnerable groups including children, female-headed households, chronically ill and elderly people.

People living with HIV/AIDS

Operation Murambatsvina disrupted access to medical treatment for a significant number of people living with HIV/AIDS. Scores of people living with HIV/AIDS lost their access to anti-retroviral treatment and home-based care. Six months after the evictions, many displaced persons living with HIV/AIDS were still unable to access anti-retroviral, tuberculosis or opportunistic infection treatment. Local

²⁹ See Amnesty International, *Zimbabwe: No Justice for the Victims of Forced Evictions*, AI Index: AFR 46/005/2006, September 2006.

NGOs working with those living with HIV/AIDS reported that they were unable to trace or reach many of their clients and alleged that the government had made no attempts to locate their displaced clients and facilitate access to treatment, food and shelter for those living with HIV/AIDS.³⁰

Children

The plight of displaced widows and mothers of children with disabilities also improved little in the months after the evictions. For example, according to the director of a local organization working with widows and orphans, many widows lost their homes or livelihood as a result of the evictions. Mothers of children with disabilities living in the urban areas of Harare were also heavily affected by Operation Murambatsvina. Before the evictions, many of these families were able to access physiotherapy and other forms of treatment for their children, as the women were renting out cottages and selling vegetables to earn their living. As a result of Operation Murambatsvina, some of the families lost their livelihood and could no longer afford to pay for medical assistance for their children or even for transport to take their children for treatment.

Many women and children who were forced to sleep outside, in inadequate shelters, or in overcrowded conditions with minimal assistance, saw their children's health deteriorate. The families received no assistance from the government. The situation of women and children living in the government-recognized holding camp, Hopley Farm, was no less precarious, as they also were deprived of any means of survival and the assistance provided was extremely limited.³¹

The report of the UN Special Envoy on Human Settlement Issues estimated that up to 223,000 children were directly affected by Operation Murambatsvina.³² In the aftermath of the operation, the government provided little or no assistance to displaced children living with their parents or guardians, children separated from their families, or child-headed households.

Many of the displaced children face significant hurdles in continuing their education. A survey on the effects of Operation Murambatsvina by Action Aid found that overall, 22 per cent of children who had been attending school before Operation Murambatsvina dropped out because of the evictions.³³ The displacement has also further hindered parents' ability to pay for schooling, causing more children to drop out of school. In addition, children have moved further away from their schools and many parents can no longer afford to pay the transport costs for their children to go school.

Government obstruction of international humanitarian assistance

Following the evictions campaign, UN agencies and international NGOs in Zimbabwe, in consultation with donors, directed their efforts towards meeting immediate needs for food, clean water, and shelter to those who lost their homes or livelihood as the result of Operation Murambatsvina. However, contrary to the recommendations of the UN Special Envoy on Human Settlement Issues, who called on the government to provide full and unimpeded access to local and

³⁰ Human Rights Watch, *Evicted and Forsaken: Internally Displaced Persons in the Aftermath of Operation Murambatsvina*, 1 December 2005.

³¹ Ibid.

³² UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs Anna Kajumulo Tibaijuka, *Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina*, 22 July 2005 [online], <http://www.unhabitat.org/documents/ZimbabweReport.pdf> (accessed 22 November 2005).

³³ Action Aid fact sheet, "Events, Outcomes and Responses to Operation Murambatsvina," September 2005.

international humanitarian organizations, the government deliberately obstructed the efforts of international agencies to assist the internally displaced.

In September 2005, almost six months after the evictions, the government refused to sign a draft emergency appeal proposed by the UN, which would have helped those hardest hit by the evictions, and refused to sign an agreement with the UN to mobilize much needed relief and reconstruction aid.³⁴ It also refused to endorse the UN's Common Response Plan for assisting victims of evictions.³⁵

The government refused to allow international agencies to provide tents or similar forms of temporary shelter to the internally displaced, fearing that the erection of tent camps would expose the scale of the crisis precipitated by the evictions. In August 2005, shortly after several international agencies erected over 100 tents for the displaced in the area of Headlands, Zimbabwe police took the tents down and explicitly told the UN country team that there should be no "tents made of plastic sheeting".³⁶ In October 2005, the government was still preventing international agencies from providing temporary shelter to the displaced, claiming that there was no "compelling need to provide temporary shelter as there is no humanitarian crisis".³⁷ In mid-November, the government reportedly finally accepted a UN offer to build 2,500 "units" for people made homeless by the evictions campaign. However it was unclear what kind of shelter was to be provided and who the beneficiaries would be.

The government also prevented international agencies from distributing food aid to the displaced. A report by the International Federation of Red Cross and Red Crescent Societies (IFRC) noted that assistance to the internally displaced presented "operational challenges because of the government directive of assisting only those within designated areas and with housing development approved by the city councils".³⁸ Representatives of other international organizations and UN agencies also claimed that the government had explicitly told them not to provide food and other assistance to those staying in the open outside the areas recognized by the government, namely Hopely Farm and Hatcliffe.³⁹ While some humanitarian agencies initially tried to continue the delivery of food assistance to the displaced, the government's non-cooperation effectively paralyzed their operations, and by September 2005 little food aid was being provided to the vast majority of the internally displaced. At the time Zimbabwean authorities made it clear to local and international humanitarian agencies that they would not allow local and international organizations free access to the displaced. Those who sought such access risked arrest, harassment and being barred from assisting any of the victims of the evictions.⁴⁰

³⁴ Augustine Mukaro and Godfrey Marawanyika, "Govt rejects UN aid for blitz victims," *Zimbabwe Independent Newspaper*, 2 September 2005 [online], <http://www.theindependent.co.zw/news/2005/September/Friday2/3131.html> (accessed 22 November 2005).

³⁵ The UN country team in Zimbabwe had to submit the Plan to the donors without the government's signature.

³⁶ Human Rights Watch, *Evicted and Forsaken: Internally Displaced Persons in the Aftermath of Operation Murambatsvina*, 1 December 2005.

³⁷ *Ibid.*

³⁸ International Federation of Red Cross and Red Crescent Societies (IFRC), "Zimbabwe assistance to the population affected by the clean up exercise," 18 October 2005 [online], http://www.ifrc.org/cgi/pdf_appeals.pl?05/05EA01602.pdf (retrieved 22 November 2005).

³⁹ Human Rights Watch, *Evicted and Forsaken: Internally Displaced Persons in the Aftermath of Operation Murambatsvina*, 1 December 2005.

⁴⁰ Human Rights Watch, *Evicted and Forsaken: Internally Displaced Persons in the Aftermath of Operation Murambatsvina*, 1 December 2005.

Conclusion

The implementation of the fast track land reform programme resulted in numerous violations of the African Charter. The right to property (Article 14) was blatantly ignored. The discriminatory and violent way in which the programme was implemented led to violations of the right to freedom from discrimination (Article 2), the right to life (Article 4) and the right to liberty (Article 5). The removal of land seizure cases from the jurisdiction of the courts led to violations of the right to equality before the law (Article 3) and the right to have one's cause heard (Article 7).

The African Charter does not specifically provide for protection against forced evictions, but has extensive provisions on the protection of human rights that are typically affected by the practice of forced evictions, such as the right to freedom of movement and residence (Article 12), the right to enjoy the best attainable state of physical and mental health (Article 16) and the right to education (Article 17). Decisions by the African Commission have articulated the obligations of state parties in protecting these rights. Evictions conducted by a state can give rise to serious human rights violations. This is particularly true when they are carried out by force or without procedural guarantees. The government of Zimbabwe's programme of forced evictions led to serious human rights violations.

About Human Rights Watch Defending human rights worldwide

Human Rights Watch (HRW) is the largest human rights organization in the United States of America, with offices across the world dedicated to protecting the human rights of people all over the world. It carries out research to hold perpetrators of human rights violations accountable and pressure them to end such practices.

Chapter 2: Attacks on the rule of law

Prepared by International Bar Association

Since it last reported to the African Commission, the Zimbabwean government has disregarded the doctrine of the separation of powers between judiciary, executive and legislature, and the rule of law has continued to deteriorate in Zimbabwe.

There are reports of the government failing to protect members of the judiciary from intimidation, threats and attacks by individuals or political groups. The government has actively undermined the standing of the judiciary amongst society through public statements and by ignoring orders of the court. It has permitted its police force to act with impunity in violating the rights to liberty, security and freedom from arbitrary arrest. The law has been applied in a discriminatory fashion, with arrests and prosecutions being made on political grounds. The right to a fair trial has not been respected and there have been frequent attacks on lawyers. The government's failure to respect the rule of law has led to countless citizens from across society being robbed of their homes, land and livelihoods with no legal redress. Furthermore, the government has failed to give effect to the economic, social and cultural rights of its citizens.

Independence of the courts: Article 26

Article 26: independence of the courts

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Article 26 of the African Charter guarantees the independence of the courts. This is understood to include respect for court decisions and the institutions of the judiciary. Under this Article, state parties have a positive obligation to ensure that the judiciary is impartial and independent, as well as a negative obligation to refrain from interfering with its independence. The latter obligation includes ensuring that third parties do not compromise the independence of the judiciary.

Despite these clear obligations, the government of Zimbabwe has consistently failed to protect the judiciary from interference from war veterans and other private individuals and has disregarded the doctrine of the separation of powers. The effect of failing to protect the independence of the judiciary in accordance with Article 26 has led to violations of other articles of the Charter namely Article 1 (duty to protect the rights enshrined within the Charter), Article 3 (equal protection of the law), Article 6 (right to liberty and security) and Article 7 (the right to a fair trial). In interfering with the independence of the judiciary, the government of Zimbabwe has promoted a culture of impunity for human rights abuses, thereby creating a further breakdown in public order.

Threats and violence against the judiciary and lawyers

Consistent with Article 26 of the Charter, Section 79B of the Zimbabwean Constitution stipulates that "a member of the judiciary shall not be subject to the direction or control of any person or authority, except to the extent that a written law may place him under the direction or control of another member of the judiciary". Despite Section 79, members of the government and ruling party have been involved in threats of violence and physical attacks on lawyers, magistrates

and prosecutors, and have failed to take action against others who have committed such acts.⁴¹

During a mission to Zimbabwe by the International Bar Association (IBA) in 2001, attacks on the judiciary by senior members of the executive, Ministers, Members of Parliament and the President were reported.⁴² The Minister of Justice, Patrick Chinamasa, is on record as stating that judges should be politically correct, and not behave like "unguided missiles", a situation in which he "wish[es] to emphatically state that [they] will push them out".⁴³

In November 2000, so-called war veterans and ZANU-PF supporters physically attacked the Supreme Court during a case, beating up a guard and preventing the court from sitting. The police dispersed the invaders, but took no further action against them.⁴⁴ In a separate incident in August 2001 a large crowd, allegedly ZANU-PF supporters, demonstrated for three days against a Karoi magistrate after he had granted bail to 106 farm workers who were charged with public violence for attempting to remove war veterans from their farms. In September 2001, after a Bindura magistrate sentenced 17 ZANU-PF supporters to three years' imprisonment each for public violence ahead of a by-election in June, it was reported that other party supporters held "an all-night vigil" outside his home and intimidated his wife. In November 2001 ZANU-PF militants assaulted a senior magistrate in Gokwe after he convicted a ruling party supporter on a robbery charge and sent him to jail for eight months. In August 2002 Walter Chikwanha, a Chipinge magistrate, was dragged from his courtroom by a group of war veterans and allegedly assaulted at the government complex after he dismissed an application by the state to remand in custody five opposition MDC officials. The magistrate reportedly had broken ribs and a fractured collar-bone.⁴⁵ These threats and acts of violence against magistrates and courts have not been condemned by the government and the perpetrators have not been brought to justice.

In a widely reported case in September 2002, Justice Blackie was unlawfully arrested and arbitrarily detained.⁴⁶ Justice Blackie retired and later indicated that his decision to retire was prompted by the pressures he was under.

As a result of undue pressure a significant number of judges have resigned. Chief Justice Anthony Gubbay was induced to retire early, due to these repeated attacks on the judiciary, compounded by a government minister who informed him that his safety could not be guaranteed.⁴⁷ Further, there was speculation that the appointment of three new judges to the Supreme Court Bench ahead of more senior judges was based on their political affiliations.⁴⁸

⁴¹ Dato Param Kumaraswamy, the former UN Special Rapporteur on the independence of judges and lawyers said: "The provision of adequate protection to judges and lawyers when their safety is threatened is a basic prerequisite for safeguarding the rule of law. This is simply fundamental, in order to guarantee the right to a fair trial by an independent and impartial tribunal and the protection of human rights. The apparent failure to do so in this case represents a serious threat to the independent judicial system in Zimbabwe." (United Nations Press release, 2 September 2002).

⁴² For a detailed report, see IBA, *Report of Zimbabwe Mission 2001*, 2001, p 53ff.

⁴³ *The Zimbabwe Independent*, 9 March 2001.

⁴⁴ IBA, *Report of Zimbabwe Mission 2001*, 2001, p 56.

⁴⁵ *Daily News*, 28 August 2001, *The Standard*, 9 September 2001, *The Daily News*, 17 August 2002 and *The Herald*, 21 February 2002.

⁴⁶ See press statement: <http://archive.ibanet.org/news/NewsItem.asp?newsID=65>

⁴⁷ Roy Martin, *Judging By International Standards* at <http://www.newzimbabwe.com/pages/judges3.11790.html>

⁴⁸ *Justice in Zimbabwe*, Legal Resources Foundation Report, September 2002, at http://www.lrf.co.zw/Documents/zimjust.doc#_Toc22091489

The Law Society of Zimbabwe is a central institution for the legal profession and continues to play an important role in the protection and promotion of the rule of law in Zimbabwe. The Law Society has issued statements in support of the judges such as former Chief Justice Gubbay and other members of the profession when they suffered attack or threats. The consequence of taking such a stand in defence of the rule of law and separation of powers has been extreme. The Law Society has suffered a series of attacks including an invasion of the offices by war veterans, the arrest, detention and ill-treatment of the former President of the Society, Sternford Moyo, and Executive Secretary, Wilbert Mapombere,⁴⁹ and criticism and threats against some of the Society's Executive Officers in the state-run media.⁵⁰

Undermining the courts' jurisdiction

In addition to the intimidation and harassment of the judiciary and legal profession, the government has sought to undermine the jurisdiction of the courts. In September 2005 the Executive introduced Constitutional Amendment 17 which removed the jurisdiction of its national courts to adjudicate in land disputes. Not only did this law effectively end thousands of cases of land disputes which had been pending before the courts, but it also permitted future land acquisitions to take place without the requirement of notice to affected landowners or the possibility of legal challenge before the courts.⁵¹ According to the African Commission, a fundamental change in the law of this nature "constitutes an attack of incalculable proportions on Article 7", and violates the independence of the courts as provided for by Article 26.⁵²

A growing trend has been also noted in which court orders have been ignored by the government and police. This report presents a few of the more notable cases.

In 2000, the Zimbabwe Supreme Court ordered the Commissioner of the Police to investigate allegations of torture perpetrated against two journalists who published a story about an alleged military coup. The Court stipulated that the police identify the perpetrators and that they be prosecuted. The police, however, ignored the order and failed to undertake any investigation, thereby permitting the perpetrators to go undetected.⁵³ When the judges in this case objected to the failure to comply with its order, President Mugabe publicly criticised them, stating, "[t]he judiciary has no constitutional right whatsoever to give instructions to the president on any matter as the...judges purported to do."⁵⁴

Following the government-sanctioned farm occupations and fast-track land reform programme in 2000, a series of court orders declared the occupations to be in violation of Section 16 of the Constitution. The IBA mission to Zimbabwe in 2001 found that a number of court orders declaring farm invasions illegal were ignored by the police claiming either that they lacked manpower or that it was a political matter.⁵⁵ President Mugabe is on record as having stated that attempts to uphold

⁴⁹ See press statements <http://archive.ibanet.org/news/NewsItem.asp?newsID=55>

⁵⁰ See press statement: <http://www.ibanet.org/iba/article.cfm?article=91>

⁵¹ ZLHR submissions to Parliamentary Portfolio Committee on Justice, Legal and Parliamentary Affairs, at http://www.zlhr.org.zw/media/releases/aug_04_05.htm

⁵² Communication 129/94, *Nigeria v. Civil Liberties Organization* and Communications 147/95 and 149/96, *Sir Dawda K. Jawara v. Gambia* para 74 where the Commission held that: "By ousting the competence of the ordinary courts to handle human rights cases, and ignoring court judgments, the Gambian military government demonstrated clearly that the courts were not independent. This is a violation of Article 26 of the Charter." Reported in the 13th Annual Report of the Commission 99/2000.

⁵³ *Chavunduka and Anor v. Commissioner of Police and Anor*, 2000 (1) ZLR 418 (S).

⁵⁴ *The Zimbabwe Independent*, 9 January 2004 at <http://www.newzimbabwe.com/pages/judic.1288.html>.

⁵⁵ IBA, *Report of Zimbabwe Mission 2001*, 2001, pp 40-45.

such court orders would be unsuccessful unless the Executive assisted.⁵⁶ In so stating, the president undermined both the independence and standing of Zimbabwe's courts.

In October 2000, the authorities threatened to seize radio equipment belonging to Zimbabwe's Capital Radio Station. In response, the radio station obtained an interim court order in accordance with Section 17 of the Constitution (protection from arbitrary search) preventing the police from seizing equipment until the company's urgent application had been heard. Despite having seen the court order, the police broke down the door to the company's studio and seized some of its broadcasting equipment. This conduct was justified by a police official who stated that he did not take his orders from the court but only from his superiors.⁵⁷ He also disregarded the advice of the Attorney-General not to proceed with the search and seizure. The police official was later found to be in contempt of court but was not punished.⁵⁸

In a widely reported case, the government ignored a number of court ruling in respect of Associated Newspapers of Zimbabwe (ANZ) publications. On 18 September 2003, High Court judge Justice Omerjee ruled that the police conduct of forcibly occupying the premises of the ANZ and seizing their equipment was illegal and that they had no legal right to prevent ANZ and its employees from gaining access to their premises. Administrative Court judge Justice Majuru also ruled in favour of the ANZ.⁵⁹ Justice Sello Nare upheld the ruling and allowed the ANZ to carry into effect the judgment of Justice Majuru.⁶⁰ The Information Minister, Jonathan Moyo, was reported to have said that the ANZ could not resume operations and that the ruling by Judge Nare was "academic" and could not be enforced.⁶¹

Disregard of laws and court orders was rampant in the recent government mass evictions programme, Operation Murambatsvina (see Chapter 1). In many instances, the police moved in without any notice and bulldozed homes to the ground with people not having any recourse to the courts.⁶²

In disregarding the law and orders of the court, the government of Zimbabwe is failing to give effect to the rights enshrined within the African Charter. Additional to this, it has also enacted legislation which is inconsistent with the Charter and goes as far as obstructing rights enshrined within the Charter despite there being a bill of rights within the Zimbabwe Constitution. An example of such a law is the Public Order and Security Act, enacted in 2002, which has been used widely by the government to interfere with and restrict freedom of association and expression (see Chapter 4).

Failure to respect the rule of law and Article 26 has also led the government of Zimbabwe to violate other provisions within the African Charter which are detailed below.

⁵⁶ "Mugabe warns of chaos", BBC News, at <http://news.bbc.co.uk/2/hi/africa/690846.stm>

⁵⁷ Testimony of the company's Legal Practitioner.

⁵⁸ *Justice in Zimbabwe*, Legal Resources Foundation Report, September 2002, at http://www.lrf.co.zw/Documents/zimjust.doc#_Toc22091489.

⁵⁹ He noted that the Media and Information Commission (MIC) was improperly constituted and could not issue a certificate of registration to ANZ and that the MIC should be properly constituted and issue ANZ with a certificate of registration.

⁶⁰ He said the order should remain in force and effect notwithstanding the filing of any notice of appeal against it by the MIC.

⁶¹ *Zimbabwe Independent*, Blessing Zulu, "Mugabe undermining Judiciary", 9 January 2004.

⁶² See: UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs Anna Kajumulo Tibaijuka, *Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina*, 22 July 2005, para. 6.3, p. 59, http://www.un.org/News/dh/infocus/zimbabwe/zimbabwe_rpt.pdf.

Respecting and implementing Charter rights: Article 1

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

Article 1 of the African Charter requires the state to recognise the rights enshrined within the Charter and to adopt legislative or other measures to give effect to them. The African Commission has confirmed that a state is not only obligated to recognize the rights, as Zimbabwe does in some instances in its Constitution and laws, but is also obliged to respect and give effect to them, which Zimbabwe has failed to do.⁶³

Disregard for the rule of law has led to a failure on the part of the government to give effect to a number of the rights contained within the African Charter and has harmed the enjoyment of economic, social and cultural rights both directly and indirectly. A number of examples are highlighted: i) widespread reports of the use of violence and torture, including rape, in Zimbabwe raise concerns under the right to health; ii) a result of widespread violence and lack of police protection has been a massive exodus of teachers from Zimbabwe,⁶⁴ particularly from rural areas, adversely affecting the right to education; iii) violence has also led greater number of health professionals fleeing Zimbabwe leading to a virtual collapse of the health sector in Zimbabwe;⁶⁵ iv) evictions carried out under Operation Murambatsvina, for example, were "marked by violence and violations of a range of rights including the right to adequate housing, the right to life, freedom from torture, freedom of movement, the right to education, the right to work and the right of access to health care."⁶⁶

Equality before the law and equal protection of the law: Article 3

Article 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

Article 3 of the African Charter provides for equality before the law and equal protection of the law. The government of Zimbabwe has consistently failed to accord with these provisions. In failing to protect the independence of the courts, by ignoring court orders and by adopting laws which remove legal redress for certain parts of civil society, the government has removed equality before the law. Furthermore, the criminal law has been applied selectively for political advantage. The African Commission has been categorical in demanding equal application of judicial decisions and has stated that it "is a breach of the principle of equality if judicial or administrative decisions are applied in a discriminatory manner".⁶⁷

⁶³ See African Commission, Communication No. 74/92 (1995), and No. 231/99 (2000).

⁶⁴ Some estimates place the number of teachers who have fled Zimbabwe (mainly for political reasons) at no less than 10,000. See:

http://news.bbc.co.uk/1/hi/programmes/from_our_own_correspondent/4045805.stm

⁶⁵ See Human Rights Watch, *No Bright Future*, June 2006

<http://hrw.org/reports/2006/zimbabwe0706/9.htm>

⁶⁶ ESR Review, Volume 6, no. 3, September 2005, available at

http://www.communitylawcentre.org.za/ser/esr2005/2005sept_press.php

⁶⁷ *Avocats Sans Frontières (on behalf of Bwampamye) v. Burundi*, African Commission on Human and Peoples' Rights, Communication No. 231/99 (2000).

Public reports have also documented partisan conduct by the police.⁶⁸ As the police force is an essential element in the administration of justice, its failure to be impartial compromises the rule of law and violates a number of provisions within the Charter.

Before the June 2000 general election, the police on various occasions turned a blind eye to violence perpetrated against opposition MDC supporters and commercial farmers.⁶⁹ The IBA mission in 2001 to Zimbabwe found that there was a strong perception amongst the population that prosecutions were taking place based on political allegiances alone.⁷⁰ A cursory look at prosecutions for political violence and under the Public Order and Security Act indicates that an overwhelming majority of those who have been prosecuted are members of the opposition.⁷¹ Public statements by the Police Commissioner and other cases confirm the practice of prosecuting political opponents.

In addition, there are numerous reports of the police beating civilians and engaging in acts of torture. The National Constitutional Assembly (NCA) Chairperson, Dr Lovemore Madhuku, was reported to have been severely assaulted by riot police during a demonstration in Harare in February 2004.⁷² In April 2004, human rights activist Tinashe Chimedza was brutally assaulted by the police as he was about to address a Students Forum. One of the lawyers who went to represent him, advocate Tonderai Bhatasara, was harassed and briefly detained by the police allegedly for walking into the police station wearing a hat.⁷³

Several lawyers have been threatened, attacked or obstructed by police when defending clients in custody. Members of the legal profession subjected to such abuses include: Otto Saki, who was denied access to his client and later witnessed his torture; Advocate Bhatasara and Jacob Mafume, who were subjected to abuse and threats as they tried to secure the release of their clients; Beatrice Mtetwa, who called the police for assistance after being carjacked, but was violently attacked by police in a police car and in Borrowdale police station;⁷⁴ Justice Blackie, who was arrested arbitrarily and imprisoned illegally; and Gugulethu Moyo, who was beaten in a police station where she had gone to represent a colleague who was being detained.⁷⁵

Members of the women's organization Women of Zimbabwe Arise (WOZA) have repeatedly been arrested and detained. In June 2004, 43 WOZA members were arrested during a peaceful meeting. Of the women, seven had small babies or children. The children were detained along with the women. Several of the women reported abuse, both verbal and physical. Some women were allegedly beaten with a sjambok (whip) on the soles of their feet.⁷⁶ Four of the women detained were charged under the Public Order and Security Act, but the charges were later thrown out by the court, because no actual violation was found to have been committed by the women.

On International Women Human Rights Defenders Day in November 2006 WOZA members peacefully marching in celebration of the event were arrested in

⁶⁸ See for example, IBA press statement: <http://archive.ibanet.org/news/NewsItem.asp?newsID=142>

⁶⁹ *Justice in Zimbabwe*, Legal Resources Foundation Report, September 2002, at http://www.lrf.co.zw/Documents/zimjust.doc#_Toc22091489.

⁷⁰ IBA, *Report of Zimbabwe Mission 2001*, 2001, p 93.

⁷¹ Public reports have documented that ZANU-PF has engaged in widespread acts of violence, see for example Zimbabwe Human Rights NGO Forum, *Monthly Political Violence Reports at* <http://www.hrforumzim.com>.

⁷² IRINnews.org, 5 February 2004.

⁷³ Students Solidarity Trust Statement, 23 April 2004, www.kubatana.net.

⁷⁴ See: <http://archive.ibanet.org/news/NewsItem.asp?newsID=127>.

⁷⁵ See press statement: http://www.icj.org/news.php3?id_article=2782&lang=en.

⁷⁶ See <http://web.amnesty.org/library/Index/ENGACT770372005?open&of=ENG-ZWE>.

Bulawayo despite the march being lawful. Several women sustained severe injuries, including bone fractures, from police action. More than 40 demonstrators were arrested and were held overnight in police custody. Of those detained with the adults, six were infant children.

The African Commission has urged Zimbabwe to "avoid any further politicisation of the police service" and to ensure that the police abides by the Constitution and does not serve any political interests.⁷⁷ Despite this categorical request, the government has yet to take action to rein in its police force.

Liberty and security: Article 6

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 6 of the African Charter protects the liberty and security of person and prohibits arbitrary arrest and detention. Any arrest which is not in accordance with the law, where the law is applied discriminately, or where the law is itself discriminatory, falls foul of the provisions of Article 6. The UN Human Rights Committee has stated that arbitrary deprivations of liberty can never be justified, not even during a state of emergency.⁷⁸

A number of the violations of the African Charter discussed earlier also raise concerns under Article 6. For example, the cases of Tinashe Chimedza and his lawyer, Tonderai Bhatasara, clearly represent violations of their right to security and liberty of person. So too do the cases of Advocate Bhatasara, Jacob Mafume, Beatrice Mtetwa, Gugulethu Moyo and Justice Blackie.

The treatment meted out to members of WOZA also constitutes a violation of Article 6. The beatings and mistreatment which took place in June 2004 after women attended a peaceful meeting represent not only an arbitrary detention but also violated the women's security. In November 2006 when the women were again targeted by the police for peacefully marching, similar violations occurred. Not only were the women arrested for a lawful activity, but also many women and children were forced to sleep in the yard of the police station due to lack of space in the police station. None of them were released so that they could take medicine required to treat life-threatening illnesses.⁷⁹

In a separate incident in September 2006, trade unionists taking part in a peaceful demonstration in Harare suffered shocking beatings and torture at the hands of the police. Some were allegedly subjected to a form of torture known as falanga (beatings on the soles of the feet), which often leaves victims with difficulty walking and significant pain for the rest of their lives.⁸⁰ After video footage of the beating of the trade unionists was released to the media, President Mugabe responded by publicly condoning the actions by the police.⁸¹ This clearly indicates the level at which such treatment is not only ignored, but actively supported by the Zimbabwean authorities.

⁷⁷ Executive Summary of the Report of the African Commission Fact-finding Mission to Zimbabwe, 24th to 28th June 2002.

⁷⁸ See UN Human Rights Committee General Comment No. 29, para 11.

⁷⁹ See http://www.defendingwomen-defendingrights.org/zimbabwe_further_harassment.php and <http://www.ibanet.org/iba/article.cfm?article=101>.

⁸⁰ See <http://web.amnesty.org/library/Index/ENGAFR460172006?open&of=ENG-394> or <http://web.amnesty.org/library/Index/ENGAFR460192006?open&of=ENG-ZWE>.

⁸¹ See <http://www.ibanet.org/iba/article.cfm?article=95>.

As is demonstrated by the examples cited above, the police in Zimbabwe have been allowed to commit human rights violations on a wide scale with impunity. The government of Zimbabwe is directly responsible for the activities of all of its state agents. The police have violated the liberty and security of a vast number of individuals, yet the government has done nothing to prevent such action. Worse, it has condoned it.

The right to a fair trial: Article 7

Article 7

1. Every individual shall have the right to have his cause heard. This comprises:

(a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

(c) the right to defense, including the right to be defended by counsel of his choice;

(d) the right to be tried within a reasonable time by an impartial court or tribunal.

2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

The right to a fair trial is recognised across a range of international and regional treaties to which Zimbabwe is a party. Although a number of the rights making up a fair trial may be suspended during times of state emergency, the UN Human Rights Committee has expressed the view that "the principles of legality and the rule of law require that fundamental requirements of a fair trial must be respected during a state emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected."⁸²

Under the African Charter the right to a fair trial incorporates a number of principles: the right to be tried by a competent and impartial court or tribunal; the right to defence including by counsel of one's own choice; the right to be tried within a reasonable time. In the example cited earlier of the removal of the courts' jurisdiction over land acquisition disputes following Constitutional amendment 17, the government of Zimbabwe is in breach of Article 7 1(a) which accords everyone's right to appeal to a national court in the event of a violation of their fundamental rights. As noted above, the African Commission has previously observed that ousting the jurisdiction of ordinary courts "constitutes an attack of incalculable proportions on Article 7", and "violates the independence of the courts".⁸³

Also notable are the reports of attacks, harassment and hindrance of lawyers in the carrying out of their professional activities. In such cases the right to a fair trial is violated by failing to ensure the defendant has access to their counsel of choice. Further, where legal counsel is intimidated, threatened or attacked, it will

⁸² See Human Rights Committee General Comment No. 29, para 16.

⁸³ Communication 129/94, *Nigeria v. Civil Liberties Organization* and Communications 147/95 and 149/96, *Sir Dawda K. Jawara v. Gambia* para 74 where the Commission held that: "By ousting the competence of the ordinary courts to handle human rights cases, and ignoring court judgments, the Gambian military government demonstrated clearly that the courts were not independent. This is a violation of Article 26 of the Charter." Reported in the 13th Annual Report of the Commission 99/2000.

not be possible for a fair trial to take place. The African Commission has underlined the right to communicate in confidence with counsel of choice; otherwise, there is a breach of Article 7.⁸⁴

Conclusion

The government of Zimbabwe continues to be responsible for an erosion of the principles of the rule of law and for widespread and systematic human rights violations. Judges and lawyers have been intimidated, the independence and standing of the courts undermined and the law applied discriminately or not at all. There would appear to be no indication that such action will decrease in the future.

Of particular concern is the action of Zimbabwe's police force and the way in which it is permitted to commit human rights violations with impunity. The government has direct responsibility for agents of the state and must ensure that they act in accordance with domestic, regional and international law. The rule of law in Zimbabwe is in desperately poor shape and only by giving effect to human rights norms, international treaty obligations and the African Charter will the quality of life begin to improve for its citizens.

About the International Bar Association The global voice of the legal profession

In its role as a dual membership organisation, comprising 30,000 individual lawyers and over 195 Bar Associations and Law Societies, the International Bar Association (IBA) influences the development of international law reform and shapes the future of the legal profession. Its Member Organisations cover all continents of the World.

The IBA's Human Rights Institute works across the Association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

The HRI intervenes by making representations to authorities worldwide; training lawyers, judges and prosecutors in human rights law and international humanitarian law; undertaking fact-finding missions and sending trial observers where there has been a significant deterioration in the rule of law; galvanises international support to lobby for change through media and advocacy campaigns; and provides long-term technical assistance to Bar Associations and Law Societies worldwide. In addition, it liaises closely with international and regional human rights organisations and produces newsletters and other publications that highlight issues of concern to worldwide media.

⁸⁴ *Centre For Free Speech v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. No. 206/97 (1999).

Chapter 3: Torture and ill-treatment

Prepared by Redress

Torture and cruel, inhuman or degrading treatment or punishment are prohibited under Article 5 of the African Charter.

Article 5: Freedom from torture and ill-treatment

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Context

Torture has always been a serious problem in Zimbabwe, both before and after independence. However, since the current period of widespread and systematic human rights abuses (including torture) began in 1998,⁸⁵ its scale is such as has not been seen since the liberation struggle in the 1970s. This is despite the prohibition against torture in Section 15(1) of the Zimbabwean Constitution: "No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment."

The campaign of violence, intimidation and torture which began in 2000 after the government's defeat in the constitutional referendum was seen as ZANU-PF's strategy to avoid another defeat at the polls in the June 2000 parliamentary election. The opposition MDC won nearly half the parliamentary seats, despite being virtually outlawed in large parts of the country, and the widespread use of physical violence including murder and torture against its perceived supporters. The MDC immediately launched High Court election petitions, challenging the results in 37 constituencies on the basis of ZANU-PF's violence. Faced with the prospect of losing the election if these petitions were upheld, the government turned its attention to assaulting witnesses in the petition cases. Witnesses are known to have been attacked and tortured in the constituencies of Chiredzi, Buhera North, Hurungwe, Karoi, Chinoyi, Kariba, Chikomba, Makoni and Mount Darwin.⁸⁶

The violent strategy continued throughout 2001 in preparation for the March 2002 presidential election, and torture became endemic. The period saw the widely disputed re-election of President Mugabe, the virtual destruction of the rule of law and the independence of the judiciary (see Chapter 2), and economic collapse. During 2003 gross human rights violations on a widespread and systematic scale, including torture, continued unabated, peaking during local, mayoral and parliamentary by-elections, and during opposition-led strikes and stayaways. In 2004 there was no significant improvement in respect for human rights, although there was a drop in reports of torture and organized violence immediately preceding the March 2005 parliamentary election. Shortly afterwards Operation

⁸⁵ For a detailed survey of the problem of torture in Zimbabwe see REDRESS (June 2006), *Torture in Zimbabwe, Past and Present: Prevention, Punishment, Reparation?* <http://www.redress.org/publications/Amani2005.pdf>.

⁸⁶ See *Politically Motivated Violence in Zimbabwe 2000-2001*, Zimbabwe Human Rights NGO Forum, Harare, August 2001, pp.37-41; Amani (2002), *Neither Free nor Fair: High Court decisions on the petitions on the June 2000 General Election*, Harare, Amani Trust.

Murambatsvina marked a new low in the government's human rights record. Reports of torture continue.⁸⁷

Overview: torture and ill-treatment

Such was the concern of the African Commission that it undertook a Fact-Finding Mission to Zimbabwe in June 2002. Among other findings, it stated that

"there was enough evidence placed before the Mission to suggest that, at the very least during the period under review, human rights violations occurred in Zimbabwe. The Mission was presented with testimony from witnesses who were victims of political violence and others victims of torture while in police custody...[T]he Government cannot wash its hands from responsibility for all these happenings...Government did not act soon enough and firmly enough against those guilty of gross criminal acts."⁸⁸

During the period July 2001 to November 2004 inclusive, one Zimbabwean human rights coalition reported 2,742 allegations of torture. This formed the single largest category of gross human rights violations (24 per cent) reported to it.⁸⁹ The decline in reported torture just before March 2005 reflected a change in tactics on the part of the government. However, it was soon followed by the violent destruction of tens of thousands of homes and the forced displacement of thousands of people in Operation Marumbatsvina. This reflected the government's disregard of international norms including the prohibition against cruel, degrading and inhuman treatment.

Zimbabwe's jails are also the site of on-going serious human rights abuses. Gross overcrowding, lack of proper food, medical care and hygiene, and overall neglect, singly and combined constitute cruel, inhuman and degrading treatment. Part of the reason lies in Zimbabwe's catastrophic economic decline: prisoners are entirely marginalized and very much at the mercy of their custodians.⁹⁰

Torture takes many forms and is perpetrated by the Zimbabwe Republic Police (ZRP), army, government militias, the Central Intelligence Organisation (CIO), government organized war veterans and ZANU-PF members. Beatings, rape and electric shocks are some of the methods used. Increasingly, "irregulars" commit the abuses – they may be in civilian clothes and their identity may be unknown, or they may be youth militia brought into an area from outside so that they will not be easily recognized, or they may be dressed up in police or military uniforms to further hide their identities. All of this has been widely reported in numerous documents, by both Zimbabwean and international human rights groups, and has been confirmed by the findings of the Zimbabwean courts in various civil suits.⁹¹

The torture cases set out below are a handful which have entered the public domain. They are cited to illustrate the wide range of victims and some of the main perpetrators, as well as the state's consistent failure to promptly and thoroughly investigate and prosecute offenders. As shown, even where it has been clearly established that torture has taken place, and where the courts have ordered the police to investigate, the state has not done so.

⁸⁷ See for example the monthly Political Violence Reports published by the Zimbabwe Human Rights NGO Forum since July 2001.

⁸⁸ See African Commission, *Executive Summary of the fact-Finding Mission to Zimbabwe 24th to 28th June 2002*.

⁸⁹ See REDRESS (March 2005) *Zimbabwe: The Face of Torture and Organised Political Violence*, page 7, referring to data collected by the Zimbabwe Human Rights NGO Forum, <http://www.redress.org/publications/ZimbabweReportMar2005.PDF>.

⁹⁰ See for example, ZWNEWS, 6 February 2004: <http://www.zwnews.com/issuefull.cfm?ArticleID=8581>.

⁹¹ See Zimbabwe Human Rights NGO Forum, *An Analysis of the Zimbabwe Human Rights NGO Forum Legal Cases, 1998–2006*, June 2006, Harare.

At the level of international law, torture is absolutely prohibited and gives rise to state responsibility as well as individual criminal liability. Torture is prohibited under Zimbabwe's Constitution but over the past six years it has become widespread and systematic. The African Commission Fact-Finding Mission set out recommendations to deal with this and other human rights violations, but there is no sign that the government intends to deal with the problem, which is one of its own creation and for which it is accountable. A culture of impunity for gross violations of human rights persists, including for those who commit or order torture.

Some individual torture cases

Chavunduka and Choto (1999)

In January 1999 an independent Harare newspaper reported that army officers had allegedly been arrested after a coup plot.⁹² As a consequence of the report (which the state branded as lies), two local black journalists, Mark Chavunduka and Raymond Choto, were unlawfully detained by the military and severely tortured. Despite urgently obtained court orders for their release, they were held for more than a week during which time they were beaten with fists and wooden planks and subjected to electric shock and water immersion torture, among other forms of gross ill-treatment. The case led to unprecedented public protests, including from the judiciary which addressed an open letter to President Mugabe calling upon him to restore the rule of law.

Protests included a peaceful human rights march on Parliament led by lawyers in court regalia. President Mugabe's response was to threaten the judges and to justify the treatment of the journalists, while the marchers on Parliament were stopped by the riot squad with dogs, tear-gas and batons. A meeting of human rights NGOs with Attorney-General Chinamasa drew his assurance that he would direct the Commissioner of Police to investigate.⁹³ He later reneged on this assurance. Eventually, after the journalists made an application to the Supreme Court, judges ordered the police to investigate the torture.⁹⁴ However, the police made no serious effort to do so. Mark Chavanduka died in 2002. In February 2005 it was reported that the government had paid Raymond Choto and the late Mark Chavunduka's estate a combined total of Z\$24 million (about US\$3000) civil damages.⁹⁵

Blanchard, Dixon and Pettijohn (1999)

In March 1999, three US nationals – Gary Blanchard, John Dixon and Joseph Pettijohn – were arrested at Harare International Airport on their way to Switzerland, and subsequently charged with the illegal possession of firearms. Before trial the men brought an urgent application in the Supreme Court stating that they had been severely tortured after their arrest, and that the conditions in which they were being held in a maximum security prison pending trial constituted cruel, inhuman or degrading treatment.⁹⁶

At the men's trial in September 1999 it emerged that in the days after their arrest by the Criminal Investigation Department, police officers tortured them, including by inflicting electric shocks to their genitals and beating the soles of their feet. Both state and private doctors gave evidence consistent with what the men said

⁹² See *Legal Forum* (Harare), Vol 11, No 1, (March 1999).

⁹³ *Legal Forum* (Harare), Vol 11, No 1, (March 1999), page 15.

⁹⁴ *Chavanduka & Anor v Commissioner of Police & Anor* 2000 (1) ZLR 418 (S).

⁹⁵ *Zimbabwe Online* (SA) 21 February 2005.

⁹⁶ *Blanchard and Others v Minister of Justice* 1999 (2) ZLR 24 (S); 1999 (4) SA 1108 (ZS).

had happened to them. The trial judge concluded that the police had indeed severely tortured the men, and noted that although one Detective Inspector had said that the state had been investigating the complaints:

"the only conclusion this court can come to is either nothing is being done about the complaints or if something is being done, clearly incompetence seems to be the situation, because it does not take four months to come up with a completed investigation about this, in which it has been alleged some twenty different persons were involved."⁹⁷

No steps have ever been taken against the torturers.

Masera, Zulu, Moyo, Sibanda, Mpofu, Dulini-Ncube (2001-2002)

One week before the June 2000 parliamentary elections, war veterans kidnapped MDC polling agent Patrick Nabanyama from his home in Bulawayo. He was never seen again but no body has ever been found. The alleged kidnappers were arrested and charged with murder in 2001. One of the accused was Cain Nkala, a war veteran leader in Bulawayo. In November 2001 Cain Nkala himself was kidnapped and within days several MDC members were arrested and charged with his murder. They were kept in custody under appalling conditions for many months.

The trial of six of them began in February 2003: Sonny Masera, Army Zulu, Remember Moyo, Kethani Sibanda, Sazini Mpofu and Dulini-Ncube, an MDC MP. Dulini-Ncube was denied treatment for his diabetes whilst in custody and later had to have an eye surgically removed.⁹⁸

At the Nkala murder trial the six accused MDC men said that the police extracted the evidence against them under torture, and a trial-within-a-trial was held to determine the admissibility of this evidence. The police denied any ill-treatment.

In March 2004 the trial judge ruled that the evidence was indeed inadmissible. She meticulously analysed the evidence of police officers involved in the case, contrasting their stories with those of the accused and each other, and including examinations of written statements and confessions, police diaries and logs, video evidence and other exhibits. She found the police had deliberately made false entries in their records, altered written statements, lied to the court, been evasive in their evidence, and had fundamentally violated the most basic human rights of the men on trial. In uncompromising language she threw out the incriminating statements, indications and even video recordings with the concluding comment:

"The evidence of the State witnesses who are police officers is fraught with conflict and inconsistencies. The witnesses conducted themselves in a shameless fashion and displayed utter contempt for the due administration of justice to the extent that they were prepared to indulge in what can only be described as works of fiction...The magnitude of their complicity was such as to put paid [sic] to this court attaching any weight to the truth or accuracy of their statements."⁹⁹

As a result, the evidence that the detainees had been tortured was accepted, including the following accounts. Remember Moyo was hit with a rifle-butt, pushed out of the back of a moving police vehicle while shackled in leg-irons and

⁹⁷ *S v Blanchard and Others* 1999 (2) ZLR 168 (H).

⁹⁸ The other arrested war veterans who had originally been arrested with Cain Nkala were tried and acquitted of Patrick Nabanyama's murder, on the basis that they had indeed kidnapped him but then handed him over to Nkala. Nkala was dead, Nabanyama's body had never been found, and there was no evidence to link them to Nabanyama's death. They were never subsequently charged with kidnapping, despite their admissions.

⁹⁹ *The State v Sonny Nicholas Masera and Five Others*, HH 50-2004, 2 March 2004.

handcuffs, had his head banged against a car wheel, was held on the ground on his back with his legs-spread eagled while a police officer jumped on his genitals with booted feet; he bled from his nose and ears, lost consciousness and was so badly injured he could hardly walk; later he was further assaulted in a cell, kept stripped naked, shackled and beaten by more policemen, a former MDC member and war veterans. Khetani Sibanda was detained, assaulted and threatened by men who later revealed themselves as CIO. He was forced to learn and repeat a story implicating other MDC members in Cain Nkala's murder. At one point he was taken to Ncema dam near Esigodoni and told that if he didn't co-operate he would be fed to the crocodiles; he was deprived of food, water and sleep. Sazini Mpofo was assaulted by being kicked and punched; he was driven around Bulawayo for many hours while being assaulted in and out of the vehicle, and at the police station.

None of the torturers have been prosecuted, nor any of the police officers disciplined.

Shumba and Sikhala (2003)

January 2003 saw the torture of an MDC MP, Job Sikhala, and his lawyer, Gabriel Shumba. This received wide international condemnation as it was seen as a direct attack both on the parliamentary opposition as well as on civil society, Gabriel Shumba being a human rights defender working for the leading human rights coalition in the country, the Zimbabwe Human Rights NGO Forum. Both men and three others were arrested while Gabriel Shumba was advising his client, Job Sikhala, who had faced constant police harassment since the June 2000 parliamentary elections. Over a three-day period Job Sikhala and Gabriel Shumba were separately moved from place to place, deprived of all food and severely tortured.

Gabriel Shumba was tortured by a group of about 15 men. He was kicked, slapped about his head, and tightly hooded so that breathing was extremely difficult; he was threatened with dogs and taken to what was believed to be CIO underground torture chambers at Goromonzi where he could hear the sounds of screaming in another room, thrown against a wall, stripped naked and shackled; he was then assaulted all over his naked body with fists, booted feet and thick planks and hung upside down and beaten on the bare soles of his feet with wooden, rubber and metal truncheons; he was given severe electric shocks to the feet, ears, tongue and genitals, and threatened with acid, crucifixion and needles thrust into the urethra; he was covered in some unknown chemical substance; having lost control of his bodily functions he was forced to drink his own urine and lick up his blood and vomit; his torturers urinated on him, took photographs of him being tortured, and threatened him with death. Job Sikhala was also said to have been severely tortured. The men were apparently forced to confess to false allegations, including the burning of a ZANU-PF vehicle and a plot to violently overthrow the government. Medical examinations after their release were consistent with their allegations, and when they appeared in court the evidence of torture was so clear that all charges were dropped immediately. Gabriel Shumba later fled to South Africa.¹⁰⁰

None of the allegations of torture have been investigated. Gabriel Shumba's case is pending before the African Commission.

¹⁰⁰ See Testimony to United States Congress House Committee on International Relations 10 March 2004; Amnesty International Report 26 June 2003; Lawyers Committee for Human Rights Alert 17 January 2003; Zimbabwe Human Rights NGO Forum, Political Violence Report, January 2003.

Sibanda, Luphahla, Botomani and Gama (2004)

In September 2004, four Bulawayo youths were kidnapped and allegedly severely tortured. The youngsters - Mandlenkosi Sibanda, Mandlenkosi Luphahla, Tisunge Botomani and Nkosilathi Gama - were all members of ZANU-PF, and were apparently tortured at Magnet House, the headquarters of the CIO in Matabeleland. They were said to have been kidnapped from their homes in the high-density suburb of Emganwini and tortured for over four hours. They were apparently beaten all over their bodies with clubs, belts and electric cables, sustaining broken bones and serious injuries to their genitals.¹⁰¹

The youths named the CIO agents and said that the head of the Bulawayo CIO, Innocent Chibaya, had witnessed the torture. As a result of the publicity, Vice President Msika was reported to have ordered an investigation into Innocent Chibaya as well as the police chief in Bulawayo, Charles Mufandaizze. Later that month a newspaper reported that two of the CIO officers said to be responsible, Sylvester Chibango and Medicine Furusa, had been charged and convicted of common assault and fined the equivalent of US\$8 each.

Chiyangwa, Karidza, Matambanadzo, Dzvairo, and Marchi (2004-2005)

State agents kidnapped ZANU-PF MP Phillip Chiyangwa on 15 December 2004 as part of an alleged spy-ring selling state secrets to South Africa. Others arrested around the same time were banker Tendai Matambanadzo, ZANU-PF diplomat Godfrey Dzvairo, ZANU-PF functionary Itai Marchi, and ZANU-PF's deputy-director for security Kenny Karidza.

Tendai Matambanadzo, Godfrey Dzvairo and Itai Marchi were jailed for breaching the Official Secrets Act after a secret trial in which they tried to withdraw guilty pleas made earlier. Their allegations that confessions had been made under duress were rejected. Godfrey Dzvairo was sentenced to six years' imprisonment, and Itai Marchi and Tendai Matambanadzo to five years each.

Phillip Chiyangwa was released in late February 2005. Most court proceedings were shrouded in secrecy but serious torture allegations emerged. Phillip Chiyangwa testified that he was kidnapped in the car park of a Harare hotel, a black hood was thrown over his head, and he was driven by a long and circuitous route to an underground location where he was detained in solitary confinement in a completely dark vermin-infested cell for two weeks, with no toilet facilities. Here he was interrogated for hours on end, threatened and intimidated until he had a mild stroke, but was denied medical attention. His condition was later confirmed by a doctor who recommended hospitalization, but this was refused. He was denied legal representation until brought to court on 30 December 2004.

Kenny Karidza, whose trial for spying began on 27 January 2005, was not brought to court sooner as there were reports that he had been so badly tortured that the CIO did not want him seen in public until he had somewhat recovered. More than a month after his arrest, sources said he was still unable to walk or talk properly, his legs were badly swollen and he was unable to eat. It appears that the case has developed into a trial- within-a-trial, with the accused objecting

¹⁰¹ *Zimbabwe Financial Gazette* 7 and 14 October 2004; *Zimbabwe Independent*, 19 November 2004; Zimbabwe Human Rights NGO Forum, Political Violence Report, September 2004. The newspaper that broke the story said the youths were targeted as a result of internal party struggles surrounding a notorious war veteran leader, Jabulani Sibanda.

to the admissibility of evidence proffered against him.¹⁰² The trial has not yet finished.

Conclusion

The government continues to be responsible for widespread and systematic human rights violations, including torture, and there is little sign of either a decline in violations or of any serious action to investigate allegations and prosecute offenders. There have been numerous reports of victims who have tried to report an abuse to the police, only to be detained and further abused by the police themselves. Very occasionally in a "non-political" case torturers are properly prosecuted, but this is very much the exception rather than the norm.¹⁰³

The police are now as much to blame for the systematic use of torture as other law enforcement agencies. During March 2003, in the lead-up to two parliamentary by-elections in Harare, as well as after a two-day peaceful general strike in protest against the government, a fresh wave of ZANU-PF violence was unleashed, resulting in hundreds of civilians being beaten and tortured. The police were heavily involved in these abuses. The CIO, army, youth militias, so-called war veterans and ZANU-PF groups have all participated in widespread and systematic gross human rights violations.

A recent analysis shows that in the period mid-2001 to the end of 2005 there were 15,523 reported human rights violations, with torture constituting the largest category – over 18 per cent of the total.¹⁰⁴

The jurisprudence of the African Commission is clear: the Article 5 prohibition against torture is premised on "the dignity inherent in a human being."¹⁰⁵ There is overwhelming evidence that the current Zimbabwean government has repeatedly trampled on that dignity through the widespread use of torture, the failure to prevent torture and the refusal to investigate and prosecute those responsible and to afford proper reparations to the victims of torture.

There is no realistic likelihood of the perpetrators investigating and prosecuting themselves. In this context thousands of victims have been left without any effective remedy or reparation for what they have suffered, and the culture of impunity persists. Unless consistent, widespread and effective external pressure is placed on the government, the human rights situation will continue to deteriorate.

The government's state party report dated 20 October 2006 has a section on Article 5 (with Article 4) at pages xvii-xxi. However, the word "torture" in the substantive text appears for the first time on page xx: "*Zimbabwe is facing challenges in the area of torture, as allegations of torture by law enforcement agencies have been raised by sections of civil society organisations as well as opposition political parties.*" The next paragraph deals with domestic violence, before returning to torture with the following paragraph: "*Zimbabwe is in the process of ratifying the Convention Against Torture and its optional protocol and*

¹⁰² News24.com 3 May 2005, http://www.news24.com/News24/South_Africa/News/0..2-7-1442_1698840.00.html.

¹⁰³ One recent example is *S v Reza and Another* HH - 2- 04 (Chinhengo and Makakarau JJ) where the appellants were two policemen convicted of assault with intent to cause grievous bodily harm, after assaulting a suspect with a sjambok (a hard leather whip) on the soles of his feet. The appeal judges held that the appellants' act fell within the realm of torture as defined in international law.

¹⁰⁴ Zimbabwe Human Rights NGO Forum: *An Analysis of the Zimbabwe Human Rights Forum NGO Legal Cases, 1998-2006*, June 2006.

¹⁰⁵ See *Malawi AA v Mauritania* 13th Annual Activity Report (1999-2000); *John D Ouka v Kenya* 14th Annual Activity Report (2000-2001); *Krishna Achuan (on behalf of Alice Banda) v Malawi* 8th Annual Activity Report (1994-1995).

is working with the office of the special rapporteur on torture with a view to inviting the rapporteur to assist law enforcement officers to appreciate the implications of torture.” The rest of the section reverts to the issue of domestic violence.

With these two sole paragraphs referring to torture the government has sought to side-step not only the facts of widespread and systematic torture but also the government’s responsibilities and obligations under the Charter with respect to the practice. It has not even attempted to deal with matters of court record, the testimony of torture victims presented to the African Commission’s 2002 Fact-Finding mission, and the large number of other credible reports. This transparent failure exposes a government seeking to evade liability and culpability for these international crimes.

**About The Redress Trust (REDRESS)
Seeking reparation for torture survivors**

REDRESS is a human rights organization working internationally to obtain justice for survivors of torture and related crimes and to end impunity for governments and individuals who perpetrate it, and to develop and ensure compliance with international standards. The organization provides specialized legal advice to individuals and communities in securing their rights, conducts advocacy with governments, parliaments, international organizations and the media, and works in partnership with like-minded organizations around the world.

Chapter 4: Violations of the rights to freedom of association and assembly

Prepared by Amnesty International

The rights to freedom of association and assembly are guaranteed under Articles 10 and 11 of the African Charter on Human and Peoples' Rights.

Article 10: Freedom of association

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in 29, no one may be compelled to join an association.

Article 11: Freedom of assembly

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

The rights to freedom of association and assembly are also guaranteed under Section 21 of the Constitution of Zimbabwe and in the International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe is a party. However, these basic freedoms have been regularly violated in Zimbabwe over the past 10 years.

The rights to freedom of association and assembly are most commonly violated in order to prevent members of the public, human rights and civil society organizations and political opposition parties from peacefully voicing criticism of the government and its policies. From 2000 onwards, violations of the rights to freedom of association and assembly increased markedly, frequently accompanied by other violations including arbitrary arrests and detentions, ill-treatment and torture.

Until 2000 government repression of the rights to freedom of assembly and association was mainly aimed at civil society groups and trade unions critical of government policy. However, following the emergence of the MDC, the denial of these rights increasingly targeted the political opposition.

The rights to freedom of assembly and association have been violated by a range of means. Before 2002 excessive use of force by police officers and the army and threats to shoot protestors - sometimes made by senior government officials - created a climate of fear in which individuals could not freely exercise their rights. After 2002, in addition to excessive use of force, the state also resorted to using repressive laws to curtail freedom of assembly and association.

Legislation

In 2002 the government introduced a law to curtail the rights to freedom of association and assembly, drawing on colonial-era legislation to do so. The Law and Order Maintenance Act (LOMA) was enacted in 1955 by the Rhodesian authorities to severely restrict freedom of expression, assembly and movement. It remained in place after independence. However, over the years, the Supreme Court had removed several unconstitutional clauses.

In 2002 LOMA was replaced by the Public Order and Security Act (POSA) which was fast-tracked through Parliament in December 2001, apparently to enable the

government to hamper the campaigning activities of the newly emerged MDC in the run-up to the March 2002 presidential elections. In January 2002, the Special Representative of the UN Secretary General on Human Rights Defenders, Hina Jilani, sent an urgent appeal to the Zimbabwean authorities regarding the passage through Parliament of the POSA in relation to concerns that the Bill would restrict the fundamental rights to freedom of expression, association and assembly.¹⁰⁶ Following a Fact-Finding Mission to Zimbabwe in 2002 the African Commission, in its resolution on the human rights situation in Zimbabwe, adopted in Banjul, the Gambia, in December 2005, called on the government of Zimbabwe "to respect the fundamental rights and freedoms of expression, association and assembly by repealing or amending repressive legislation, such as the Access to Information and Protection of Privacy Act, the Broadcasting Services Act and the Public Order and Security Act."

Provisions of the Public Order and Security Act

Sections 23-31 of the POSA regulate the organization and conduct of public gatherings and provide the police with extensive powers to control them. For example, Section 24 requires that police are given four days' advance notice of public gatherings or meetings. The POSA defines a public meeting as "any meeting in a public place or meeting which the public or any section of the public is permitted to attend, whether on payment or otherwise." The POSA imposes a highly restrictive definition of a public gathering – applying it to any meeting of two or more people. Sections 25 and 26 grant the police wide powers to break up and even prevent public gatherings altogether if they are deemed to endanger public order. Section 27 of the POSA allows police to ban demonstrations for a period of up to a month.

In practice, police have interpreted these provisions as a requirement for police permission to organize public gatherings or meetings and have applied the law selectively to refuse the political opposition and civil society groups permission to hold public gatherings and meetings. In some cases permission has been given initially but then withdrawn at the last minute with police repeatedly citing lack of manpower to monitor and control the meetings as a reason. Furthermore, in practice the police have used arbitrary criteria to distinguish between "private" and "public" gatherings, and have used the POSA to arrest people for meeting in their own homes or places of business.

Since its enactment the police have used the POSA to arbitrarily arrest hundreds of Zimbabweans, mainly opposition supporters and civil society activists. The penalties upon conviction for failing to comply with police orders are fines or imprisonment of up to six months under Section 25¹⁰⁷ or a year under Section 26;¹⁰⁸ or both fine and imprisonment.

Although the POSA has provided a pretext for widespread violation of the rights to freedom of association and assembly, to date no-one has been convicted under the Act. Many people arrested under the POSA for allegedly participating in "illegal" meetings or demonstrations have had the charges against them dropped or dismissed in court due to lack of evidence (see below).

¹⁰⁶ Special Representative of the Secretary General on Human Rights Defenders, Report to the 59th Session of the UN Commission on Human Rights, February 2003, E/CN.4/2003/104/Add.1, para. 513.

¹⁰⁷ Section 25 of the POSA refers to the crime of failing to comply with a police order to disperse during a demonstration.

¹⁰⁸ Section 26 of the POSA refers to the crime of "knowingly" opposing or failing to take heed of a police order not to hold a public meeting.

The Miscellaneous Offences Act

Many people have been arrested under the POSA only to have the charges changed to "conduct likely to cause a breach of the peace", an offence under the Miscellaneous Offences Act (MOA). In effect, the police have used the MOA to regularize arbitrary arrests.

When people are arrested they are frequently offered the option of paying a fine under the MOA - effectively an admission of guilt - in order to be released from custody. Police have reportedly told detainees that if they do not pay a fine then they would be detained for 48 hours or more and could face more serious charges. Squalid conditions in police holding cells and fear of harassment and ill-treatment force many detainees to pay fines for offences they have not committed. This practice, which means police avoid a judicial review of the legal grounds for the arrest, constitutes an abuse of police power and establishes an environment in which the practice of arbitrary arrest can flourish.

Trade unions

Trade unionists have long been among the main targets of government attempts to repress freedom of association and assembly. In the second half of the 1990s labour unions became increasingly critical of government policies and the declining standard of living in Zimbabwe.

Since 2000, it has become more and more difficult for workers in Zimbabwe to carry out legitimate organization and representation activities without police interference. This is largely due to the government's belief that labour activists from the Zimbabwe Congress of Trade Unions (ZCTU) and other unions have been working with the MDC to mobilize the electorate to vote ZANU-PF out of power. In-house meetings of the ZCTU, such as General Council meetings, have been monitored and sometimes disrupted by the police.

ZCTU officials and members have been subject to arbitrary arrest, torture and excessive use of force by the police. For example, on 13 September 2006, 15 members of the ZCTU, including President Lovemore Matombo, First Vice-President Lucia Matibenga and Secretary General Wellington Chibebe, were arrested in Harare after attempting to engage in a peaceful demonstration. They were severely assaulted during arrest. They were detained at Matapi police station and tortured. Doctors confirmed that the ZCTU activists were beaten on the soles of the feet - a torture method called *falanga* which leaves many victims with life-long problems with walking.

On the same day, 13 September 2006, in the farming town of Chegutu, 11 members of a ZCTU affiliate union, the General Agricultural and Plantations Workers' Union (GAPWUZ), were arrested after handing over a petition at a government office. They were taken to Chegutu Police Station and reportedly tortured while in police custody over a three-day period. They were made to lie on the stomach and were beaten on the soles of the feet while held in leg irons and handcuffs. The 11 trade unionists were later charged under POSA and granted bail.¹⁰⁹

The previous day, 12 September 2006, police had arrested ZCTU leaders across the country in an apparent pre-emptive action to forestall the ZCTU protest.

On 8 November 2005 more than 100 people were arrested in Harare when the ZCTU tried to hold a peaceful demonstration protesting against the grave economic situation in Zimbabwe. Lawyers were initially denied access to the detainees, who were moved by police from one police station to another in an

¹⁰⁹ Amnesty International interviews with the victims, February 2007.

apparent attempt to prevent contact with lawyers. Neither the detainees nor their lawyers were informed of the charges against them until the second day of their detention, when police said they would be charged under the POSA. However, the Attorney General refused to prosecute and all the detainees were released on 11 November.¹¹⁰

At least 100 trade union and human rights activists were arrested throughout the country on 18 November 2003 in order to prevent them from staging a peaceful demonstration against the economic crisis and human rights abuses in Zimbabwe. In Harare approximately 50 activists were arrested including ZCTU President Lovemore Matombo and Secretary General Wellington Chibebe. Those arrested in Harare remained in custody until 20 November 2003. On the afternoon of 20 November 2003 they were taken to the Magistrate's court and charged under the POSA. The following day the charges against all were dropped, reportedly for lack of evidence.

On 8 October 2003 at least 200 trade union activists were arrested in various parts of Zimbabwe ahead of planned demonstrations against high taxes and inflation. While some were arrested under the POSA, most of the union activists were charged under Section 7(b) of the MOA, and made to pay fines. Those arrested included ZCTU President Lovemore Matombo and Secretary General Wellington Chibebe, as well as many other members of the ZCTU's national executive.

The political opposition

The focus of much of the government's clampdown on freedom of association and assembly has been the MDC. In the run-up to the 2000 parliamentary elections, political meetings throughout the country were violently disrupted. People who were unable to produce a ZANU-PF party membership card were beaten. Conversely when prominent ruling party politicians were holding rallies, people were forced to participate. Many identified members of the MDC were made to publicly renounce their membership and had their membership cards and T-shirts burnt. These sessions were often televised. People who refused to cooperate were in many instances beaten by war veterans and youth militia.¹¹¹ As mentioned above, since 2002 the government has used provisions of the POSA to target the MDC and hamper its ability to campaign and mobilize support.

On 21 February 2007 police announced a three-month ban on rallies and demonstrations in Harare South District and Harare's suburb of Mbare. The police cited Section 27 of the POSA. However, the three-month period appears to be in breach of the POSA, which only allows bans "for a specified period not exceeding one month." Bans for up to a month were imposed in Chitungwiza, Harare Central District and Harare Suburban District.

Following the police bans, the Save Zimbabwe Campaign, a coalition of church and civil society organizations, organized a prayer meeting in Harare's suburb of Highfield on 11 March 2007. Police clamped down on the peaceful gathering, arresting about 50 activists. The activists, including MDC leaders, were severely beaten during arrest and later tortured while in police custody at Machipisa police station. Several suffered multiple fractures and soft tissue injuries and were hospitalized. Police shot dead Gift Tandare, the youth chairperson of the National Constitutional Assembly (NCA) local structure in a Harare suburb.

On 18 March 2007, MDC Member of Parliament Nelson Chamisa was attacked by eight men believed to be state security personnel as he approached the departure

¹¹⁰ *Amnesty International Report 2006*, AI Index: POL 10/001/2006.

¹¹¹ *Amnesty International, Zimbabwe: The toll of impunity*, AI Index: AFR 46/034/2002, June 2002.

lounge at Harare International Airport. He was hit with metal bars and suffered a broken skull. No one has been arrested.

On 27 March 2007, Last Maengahama, deputy secretary for local government of the MDC faction led by Morgan Tsvangirai, was abducted outside Borrowdale Shopping Centre in Harare by people in plain clothes who were believed to be security agents. Last Maengahama was returning from a memorial service for Gift Tandare, the activist shot dead by police in Harare on 11 March 2007. Last Maengahama was later deposited by his abductors in Mutorashanga, some 100 km from Harare. He had been severely beaten. No one was arrested for this attack.

Several MDC leaders and activists were arrested on 17 March 2007, including Arthur Mutambara, a leader of one of the MDC factions, when they tried to leave for South Africa.

At the time of compiling this report, 13 MDC activists, including MP Paul Madzore, were in detention, accused of attacking police stations and other installations. They were severely beaten by police while in custody, the beatings amount to torture, and were repeatedly denied bail.

On 23 February 2007 police reportedly told the United People's Party (UPP) that its inter-district meeting to be held the following day had been cancelled. The UPP had earlier been cleared by the police to hold the meeting, a requirement under the POSA. The incident took place around a time when the police were arbitrarily stopping any public activities by the political opposition and civil society groups.

On 23 February 2007 police in Bulawayo stopped a planned rally by the Morgan Tsvangirai-led faction of the MDC. Police arrived heavily armed and supported by anti-riot water cannon vehicles and barred MDC leaders and supporters from entering the venue.

On 17 February 2007 riot police stopped a planned MDC rally in Harare's suburb of Highfields despite a court order issued by the High Court barring police from disrupting the rally. Several people were assaulted by police and sustained serious injuries. Police later imposed a three-month ban on all demonstrations in parts of the city. The ban was apparently illegal as the period was above the one month provided for under the POSA. Following the disturbances in Highfields, police arrested Tendayi Biti, the Secretary General of the Morgan Tsvangirai faction of the MDC, as well as other leaders and accused them of inciting violence.

Human rights defenders

Human rights defenders have played a vital role in exposing the human rights violations that have taken place in Zimbabwe, particularly over the last five years. They have also been instrumental in organizing peaceful public displays of protest about human rights issues. In response, the government, in an apparent effort to conceal human rights violations and prevent public criticism of its actions, has become increasingly intolerant of the work of human rights defenders and is actively seeking to silence them, including by denying their right to peaceful association and assembly.

On 17 September 2003, the police used the POSA to arrest members of the National Constitutional Assembly (NCA) who were holding a peaceful demonstration to protest against the forced closure of *The Daily News* and *The Daily News on Sunday*. On more than three occasions in 2004, peaceful demonstrations arranged by the NCA resulted in hundreds of its members being arrested, beaten and harassed. Other NCA members have been detained.

In June 2002, approximately 80 people were arrested and charged with unlawful assembly under the POSA, during a rally held to commemorate the 25th

anniversary of South Africa Youth Day. A Supreme Court application challenging the constitutionality of the POSA was filed, but the case was adjourned to January 2003, effectively undermining any practical exercise of the right to freedom of assembly in this case.

Case study: Women of Zimbabwe Arise

Since February 2003 activists from WOZA have repeatedly been arrested by the police while taking part in peaceful demonstrations to protest against the worsening social, economic and human rights situation in the country. The treatment of WOZA illustrates the government's increasing repression of peaceful public demonstrations expressing criticism of government policies. It also highlights the way in which the law, particularly the combination of the POSA and MOA, is used to allow arbitrary arrests and detentions and to facilitate a range of other human rights violations by the police.

The cases below represent some of the more than 20 occasions when WOZA members have been arrested over the past four years for engaging in peaceful demonstrations and marches.

Arrested for demonstrating against increases in school fees (2006)

More than 100 members of WOZA and approximately 70 school children were arrested on 4 May 2006 following a peaceful demonstration in Bulawayo to protest against increases in school fees. While in detention at Bulawayo Central police station, two leaders of WOZA, Magodonga Mahlangu and Jenni Williams, were allegedly threatened by a senior police officer. The threat to Jenni Williams is reported to have amounted to a death threat. All the accused were later acquitted.

Arrested for praying in public (2005)

On the evening of 31 March 2005, the day of the parliamentary elections, police arrested approximately 260 women, some carrying babies, when WOZA attempted to hold a peaceful post-election prayer vigil at Africa Unity Square in Harare. During and after the arrests, several of the WOZA activists were badly beaten. Some were forced to lie on the ground and were beaten on the buttocks by police officers. Amongst those beaten by police was a 74-year-old woman, who reports that she was told to "pray because you are going to die".

The women and children were detained overnight in an open-air courtyard, under armed guard. The detainees were initially denied access to lawyers. Police reportedly told the women that they could pay a fine if they pleaded guilty to minor offences under MOA, and would be released. However if they did not pay the fine, they were told they would remain in detention over the weekend until 4 April when the courts re-opened, to face charges under the POSA. Over the course of 1 April all of the women – several of whom were elderly, injured or with their children – elected to pay fines rather than spend the weekend in the cells. Once again the MOA was used to elicit "admissions" of guilt.

Arrested on International Women's Day (2005)

On 8 March 2005 approximately 24 WOZA activists were detained by police in Bulawayo when they attempted to stage a demonstration to mark International Women's Day. Several of the women reported that they were taken to their homes which police officers then searched. The police officers did not produce search warrants. All of the activists were released later the same day without charge.

Arrested for handing out flowers on Valentine's Day (2005)

On 12 February 2005 some 53 women were arrested after a WOZA demonstration in Bulawayo to mark Valentine's Day. The activists marched with banners proclaiming "The Power of Love can conquer the Love of Power" and handed out roses to the public. At least three of the women arrested were reported to be bystanders, not involved in the WOZA action. The prosecutor reportedly refused to take court action under the POSA and the activists were released over the following three days on payment of "admission of guilt" fines under MOA.

Arrested for participating in a sponsored walk (2004)

On 19 September 2004 more than 30 WOZA activists began a 440 km sponsored walk from Bulawayo to Harare to raise funds for women's rights work. Other activists joined the walk at different stages.

On 28 September police arrested 48 WOZA activists, together with four men who were assisting them on the walk, some 60 km from Harare. The police claimed the walkers had contravened the POSA. They were reportedly intimidated and threatened by police officers. Another woman activist, Siphwe Maseko, was arbitrarily detained the same day when she attempted to deliver food to those in custody; she was released the following day without charge. The other 52 were held in custody until 1 October, when a magistrate ruled that they had no case to answer. All were released.

On 29 September WOZA activists who had not been arrested the previous day finished the walk, gathered at Africa Unity Square in Harare and held a brief prayer service for those in detention. As they began to disperse, nine activists were arrested by police, who reportedly claimed that they had contravened Section 19 of the POSA by "praying in public". Section 19 of the POSA refers to gatherings conducive to "riot, disorder or intolerance". The group was detained at Harare Central Police Station where three of the women were allegedly assaulted by a plain-clothes officer during interrogation. All of the activists were released on bail on 1 October. When they appeared in court on 13 October, no charge sheets were presented and all were released.

Conclusion

The government of Zimbabwe has selectively applied provisions of the POSA and MOA to restrict the right to freedom of assembly and association, in blatant contravention of the African Charter. The political opposition, trade unions, human rights groups and other civil society organizations have been targeted. Police have been used to break up meetings and have refused the political opposition permission to hold public meetings. In some cases, the police have disregarded court orders allowing demonstrations. Incidents of excessive use of force by the police have been extensively documented by local and international organizations.

**About Amnesty International
Working to protect human rights**

Amnesty International (AI) is an independent worldwide movement with over 2.2 million members from over 150 countries and territories, campaigning for a world in which every person can enjoy all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

Chapter 5: Violations of the right to freedom of expression

Prepared by ARTICLE 19

Freedom of expression and the right to receive information are guaranteed by Article 9 of the African Charter.

Article 9: Freedom of expression

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

While the government of Zimbabwe's state party report to the African Commission correctly cites Article 9 of the African Charter as the basis of the right to freedom of expression, it fails to cite also the African Commission's Declaration of Principles on Freedom of Expression in Africa, which was adopted by resolution by the African Commission in 2002.¹¹² The Declaration provides critically important details of the requirements of Article 9 of the African Charter and of how to give effect to freedom of expression.

The Declaration of Principles on Freedom of Expression in Africa

Principle I of the Declaration states:

1. Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable right and an indispensable component of democracy.
2. Everyone shall have an equal opportunity to exercise the right of freedom of expression and to access information without discrimination.

Principle II(2) of the Declaration articulates the circumstances in which the right of freedom of expression can be restricted, embodying the requirements of international law:

Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society.

These Principles provide a clear framework within which to assess whether the restrictions on the right of freedom of expression in Zimbabwe since 1996 comply with or violate the African Commission's requirements for the protection and promotion of the right of freedom of expression.

The Constitution of Zimbabwe

The state report notes that the right of freedom of expression is protected in Section 20 of the Constitution of Zimbabwe and that this section of the Constitution has not been altered (p. xxxi of the state report).

The state report notes that a number of pieces of legislation "have been enacted in terms of the Constitution" (p. xxxii). This statement is both misleading and

¹¹² See

http://www.achpr.org/english/doc_target/documentation.html?../declarations/declaration_freedom_exp_en.html.

incorrect. Since 1999, the Supreme Court has repeatedly struck down legislation on the explicit basis that it was inconsistent with Section 20 of the Constitution.

Further, there is no reference in the state report to the successful challenge to the constitutionality of the state monopoly on broadcasting in 2000, or the fact that despite the Supreme Court ruling, the monopoly has been kept continuously in effect since then. A state broadcasting monopoly is expressly prohibited in Principle V of the Declaration of Principles on Freedom of Expression in Africa, and thus constitutes an ongoing violation of Article 9 of the African Charter.

The state report also does not take note of the fact that numerous Communications have been filed with the African Commission in recent years concerning violations of Article 9. One of the requirements for a Communication to be ruled admissible is that all domestic remedies have been exhausted. It has become increasingly clear since 1996 that obtaining a judicial remedy in Zimbabwe – particularly in regard to human rights matters – has been rendered illusory. (See Chapter 2: Decline in the rule of law.)

Legislation restricting freedom of expression

The state report refers to the following pieces of legislation:

Broadcasting Services Act 2001 (BSA)

The BSA was enacted in response to the Supreme Court's ruling that the state broadcasting monopoly was unconstitutional. The BSA, however, provides the necessary tools for the maintenance of the broadcasting monopoly – a broadcasting regulatory body which is not protected from political influence and control, and with broad discretionary powers to call for broadcast licence applications and to issue licences. As a result, the state broadcasting monopoly has been held firmly, and continuously, in place since 2000, despite the Supreme Court's ruling.

Access to Information and Protection of Privacy Act 2002 (AIPPA)

Despite its name, the AIPPA is not concerned with the promotion of access to publicly-held information. Rather, the AIPPA establishes a repressive compulsory licensing system for all individual journalists and media outlets and also imposes a number of highly restrictive content prohibitions. It established the Media Information Commission (MIC) for the purpose, among other things, of processing compulsory annual licence applications from journalists and media houses. The MIC is government-controlled, with the Minister for Information and Publicity appointing its members and exercising significant powers of dismissal and control over their terms of office.

Postal and Telecommunications Act 2000 (PTA)

The PTA removed, again in name only, the state monopoly in the telecommunications industry.

The state report does not, however, make any reference to the following recent laws which have a significant impact on the right of freedom of expression.

Public Order and Security Act 2002 (POSA)

POSA is a highly authoritarian legislation which has been compared by constitutional lawyers to apartheid-era security legislation in South Africa.¹¹³ It was introduced as a replacement for some of the provisions of the Law and Order (Maintenance) Act 1960 (LOMA), which had been ruled unconstitutional by the Supreme Court, but many of the provisions of POSA are also of questionable constitutionality. Under POSA, it is illegal to undermine the authority of the

¹¹³BBC News, *Zimbabwe's Controversial Legislation*, 16 July 2002
<http://news.bbc.co.uk/2/hi/africa/1748979.stm>.

president, cause any hostility towards him or make abusive, obscene or false statements against him; also under POSA a group of three people on the street requires express police approval, and it is illegal for anyone to disturb the peace, security and order of the public in any way, or utter words which are intended to provoke a breach of the peace; finally, police are empowered to arrest anyone at a public meeting who is not in possession of an identity card. POSA has been used by the Zimbabwean government and security forces to shut down hundreds of protests and demonstrations and to intimidate civil society organizations in their day-to-day operations.

Presidential Powers (Temporary Provisions) Broadcasting Regulations 2000

Within a week of the Supreme Court ruling the state broadcasting monopoly to be unconstitutional, the President exercised his power under the Presidential Power (Emergency Regulations) Act to pass legislation with a life span of six months or less without any requirement to have it ratified by Parliament. The legislation which the President enacted was the Presidential Powers (Temporary Provisions) Broadcasting Regulations 2000. This was the basis for the broadcast regulatory framework which still exists to this day, and under which the state broadcasting monopoly has been held in place. After the lapse of six months, the Broadcasting Services Act was enacted in substantially the same terms as the Presidential Power (Temporary Provisions) Broadcasting Regulations 2000, despite the Parliamentary Legal Committee issuing a report declaring a number of the provisions of the Broadcasting Services Bill to be unconstitutional on the basis that they were inconsistent with Section 20 of the Constitution.

Broadcasting Services (Amendment) Act 2003

This Act was a response to a second ruling by the Supreme Court concerning the unconstitutional nature of the regulation of broadcasting in Zimbabwe. This Act corrected the bare minimum required by the Supreme Court ruling but did not fix the core problem, namely the overarching discretion and lack of independence of the regulatory body which enabled the maintenance of the state broadcasting monopoly. Without addressing this central issue, all other corrections to the broadcast regulatory framework were rendered void, as most of the provisions do not come into effect until a licence to broadcast is issued, and no licences have been granted.

Constitution of Zimbabwe Amendment (No 17) Act 2005

This Act amends Section 22(3)(a) of the Constitution to allow restrictions on the freedom of movement of human rights activists and others in the name of national interest, the public interest or the economic interests of Zimbabwe. The amendment also removes the constitutional prohibition on the enactment of a law which prevents a person from leaving Zimbabwe on these grounds in Section 4 of the Constitution.

In addition, the Interception of Communications Bill 2006 is presently under consideration, which would allow the authorities to monitor the communications of people and organizations suspected of being critical of the Zimbabwean government.

Case law related to freedom of expression

The state report refers to four specific cases concerning the right of freedom of expression:

Mark Chavunduka and Ray Choto v The Minister for Home Affairs & Attorney General of Zimbabwe S.C. 36/2000 [the *Chavunduka case*]

Independent Journalists Association of Zimbabwe and Others v The Minister of State for Information and Others S.C 136/02 [the *IJAZ case*]

Capital Radio (Private) Ltd v The Broadcasting Authority of Zimbabwe and Others S.C. 128/02 [the *Capital Radio case*]

The prosecution of Andrew Barclay Meldrum for violating Section 80 of the AIPPA [the *Meldrum case*]

The state report merely lists and briefly describes each of these cases without explaining their impact on the right of freedom of expression in Zimbabwe.

The state report also fails to refer to two cases of critical importance:

The Associated Newspapers of Zimbabwe (ANZ) case seeking registration with the Media Information Commission (MIC) [the *ANZ case*]

Capital Radio (Private) Ltd v Minister for Information, Posts and Telecommunications S.C.00/2000 [the *first Capital Radio case*]

Mark Chavunduka and Ray Choto v The Minister for Home Affairs & Attorney General of Zimbabwe [the Chavunduka case]

The state report fails to attribute any significance to the Supreme Court decision in the *Chavunduka case*, merely noting the existence of this case and that “[t]he Court decided in the applicants’ favour, but did not make any determination as to the falsity or truthfulness of the publication”. (p. xxxiv)

The *Chavunduka case* is, in fact, a landmark ruling by the Supreme Court. In handing down its judgment in this case in 2000, the Court demonstrated its willingness to strike down legislation inconsistent with Section 20 of the Constitution. In the *Chavunduka case*, the Court held that a statutory prohibition on “false news” undermines the realization of the right of freedom of expression.¹¹⁴

On 10 January 1999, *The Standard* newspaper published a story alleging that there had been an unsuccessful coup attempt in the Zimbabwean army. Two days later, Mark Chavunduka, the editor of *The Standard*, was arrested and held for over a week. Raymond Choto, the author of the article, voluntarily surrendered himself to the police. Both were severely tortured and spent time in the UK receiving treatment (see Chapter 3: Torture and ill-treatment). They were charged with publishing false statements likely to cause fear, alarm or despondency among the public or any section thereof and faced prison sentences of seven years.

The Supreme Court held that false statements were protected by the constitutional guarantee of freedom of expression, and that Section 50(2)(a) of LOMA breached that guarantee in that it was excessively vague, did not serve a legislative objective of sufficient importance to warrant overriding a constitutionally protected right and was excessively broad. On this basis, the Supreme Court held Section 50(2)(a) to be unconstitutional.

Despite the Supreme Court ruling, within two years the Zimbabwean government enacted Section 80 of the AIPPA which prohibits publishing false information which threatens the interests of the state (amongst other things). Within months of this provision being resurrected in the AIPPA, it was used against journalist Andrew Meldrum (see below).

The Independent Journalists Association of Zimbabwe and Others v The Minister of State for Information and Others [the IJAZ case]

The applicants challenged the constitutionality of Sections 70, 80, 83 and 85 of the AIPPA on the basis of inconsistency with Section 20 of the Constitution. In

¹¹⁴ *Law and Order Maintenance Act* 1960, section 50(2)(a).

2004, the Supreme Court upheld the constitutionality of most of the provisions. The applicant are now pursuing a Communication at the African Commission, which submits that these provisions constitute a violation of Article 9 of the African Charter.

Capital Radio (Private) Ltd v Minister for Information, Posts and Telecommunications S.C 00/2000 [the first Capital Radio case]

In a landmark decision, Capital Radio successfully challenged the constitutionality of the state broadcasting monopoly, facilitating the prospect of private broadcasting in Zimbabwe. The Supreme Court handed down its judgment on 22 September 2000, ruling the state broadcasting monopoly to be unconstitutional, on the basis of being inconsistent with Section 20(1) of the Constitution.

The Zimbabwean government's response was to rush through temporary regulations (the Presidential Powers (Temporary Provisions) Broadcasting Regulations 2000) requiring any prospective broadcaster to hold a broadcasting licence issued by the Minister in response to a call for broadcast licence applications. The first call for broadcast licence applications was made almost four years later in 2004, and no licences were issued then or since.

Capital Radio (Private) Ltd v The Broadcasting Authority of Zimbabwe and Others [the Capital Radio case]

This was the second Supreme Court application by Capital Radio concerning provisions contravening Section 20 of the Constitution (see below). In this application, Capital Radio challenged the constitutionality of a number of the provisions of the BSA, which formalized the broadcast regulatory framework initially introduced by unilateral presidential decree regulations (the Presidential Powers (Temporary Provisions) Broadcasting Regulations 2000). Capital Radio challenged the constitutionality of the composition of the Broadcasting Authority of Zimbabwe (BAZ), the licensing process, including restrictions on who may apply for a licence, and the conditions attached to licences, the short period of validity of licences, and various restrictions on programme content.

There was significant delay in the hearing of the proceedings and when judgment was finally handed down, the Supreme Court ruled that it had not considered the constitutionality of the majority of the provisions, on the basis that the applicant did not have standing to challenge them. The provisions which the Court did rule to be unconstitutional were the appointment of the Minister as the licensing authority, the short period of licence validity, the limit to one national commercial licence for each of radio and television, the limit to one signal carrier licence in addition to the state-controlled Zimbabwe Broadcasting Corporation (ZBC) and the requirement that a licensee, other than the public service broadcaster, could not hold both a broadcast licence and signal carrier licence.

The Zimbabwean government's response to this ruling of the Supreme Court was to enact the BSA Amendment Act which, as discussed above, modified the bare minimum of the BSA and did not address the overarching discretion and lack of independence of the regulatory body.

The Meldrum case

The state report describes the *Meldrum case* as one in which the applicant had published a false report that a woman, connected to the opposition, had been beheaded by ZANU-PF supporters in the presence of her two daughters during the 2000 election campaign.

What the state report fails to reveal is that in 2002 Andrew Meldrum, correspondent for the UK newspaper *The Guardian*, was acquitted of the

allegation levelled against him ("abusing journalistic privilege by publishing a falsehood"). Unhappy with this result of due process, the Zimbabwean government sought to have Andrew Meldrum removed from the country - without legal basis. Within hours of the ruling of the acquittal, Andrew Meldrum was served with a deportation order by the Ministry of Home Affairs. He made an application to the High Court challenging the deportation order. The High Court suspended the deportation order and referred the matter to the Supreme Court. No date was set for a Supreme Court hearing, however, and in 2003 he was abducted and forcibly deported with only the clothes he was wearing.

The ANZ case

When the AIPPA was enacted, the ANZ Group sought to challenge its constitutionality in the Supreme Court. On the basis that ANZ had pursued a constitutionality challenge rather than applying for a licence, the MIC refused to issue a licence to the ANZ Group for its publications *The Daily News* and *The Daily News on Sunday*, which were, at the time, the only independent newspapers in operation in Zimbabwe.

This denial of a publishing licence has been maintained ever since 2002. ANZ has tried to enforce its right to procedural fairness through the courts, but delays and weaknesses in the judicial system have resulted in the continued denial of a licence.

By way of summary, on 11 September 2003 ANZ made an application for a licence when directed to by the Supreme Court, as a necessary pre-requisite to its constitutionality challenge. On 12 September 2003, the Zimbabwean police raided the offices of *The Daily News* and *The Daily News on Sunday*, arresting staff, confiscating equipment, shutting down the media outlets and occupying the premises.

On 19 September the MIC rejected ANZ's licence application. In October, the Administrative Court ruled that the MIC's refusal was illegitimate because the MIC was improperly constituted (the Court ruled that the Chairman of the MIC was biased against ANZ). The Court further ruled that if the MIC was not properly constituted by 30 November 2003 and had not ruled on the ANZ application in a properly constituted capacity, ANZ would be deemed duly registered.

On 19 December 2003, the Administrative Court ruled that ANZ was entitled to resume publication. Despite the ruling, the police refused to end their occupation of the premises of *The Daily News* and *The Daily News on Sunday*. On 9 January 2004, the High Court ordered the police to cease occupying the premises but this order was ignored.

On 4 March 2004, the Supreme Court reserved judgment in MIC's appeal and the related cases. In March 2005, the Supreme Court handed down its judgment - confirming the Administrative Court's ruling that the MIC was improperly constituted. The Supreme Court also ruled that the chairperson should not have participated in the decision-making after he had been found to be biased against ANZ. The Supreme Court referred the matter back to the MIC to reconsider ANZ's licence application afresh.

In July 2005, the MIC rejected ANZ's registration application again. ANZ appealed this decision to the High Court, and in February 2006 the High Court ruled that the MIC must reconsider its July 2005 decision not to grant ANZ a licence.

ANZ has still not been granted a licence by the MIC.

Discussion of freedom of expression challenges in the state party report

The AIPPA

The state report comments that it believes there is a "negative perception around the impact of the provisions of the AIPPA, which is said to be a 'draconian' piece of legislation enacted with a view to restricting the citizens' freedom of expression." (p.xxxv)

There is, in fact, wide-ranging support for the statement that the AIPPA is a draconian piece of legislation which disproportionately represses civil liberties. For example, Dr Eddie Zvobgo, chairman of the Parliamentary Legal Committee, stated when the AIPPA was introduced into Parliament in 2002:

I can say without equivocation that this Bill in its original form was the most calculated and determined assault on our liberties guaranteed by the Constitution, in the twenty years I have served as Cabinet Minister.

Similarly, the African Commission has described the AIPPA as an example of legislation used to "control, manipulate public opinion and limit civil liberties."¹¹⁵ Furthermore, the Commission has called for "the repeal or amendment of repressive legislation" including AIPPA, POSA and the Broadcasting Services Act.¹¹⁶

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Abid Hussain, expressed deep concern about the AIPPA in January 2002, three months before its enactment. He appealed to the Zimbabwean authorities to reconsider the provisions of the Bill and not to proceed to pass it into law.¹¹⁷ His appeal was not heeded by the government.

In response to the challenge that the AIPPA is perceived to be a draconian piece of legislation, the state report submits that the AIPPA was a necessary response to the architects of regime change who were exploiting loopholes in the old legislation on information to subvert public opinion and undermine state security (p. xxxv).

However, the AIPPA was in fact enacted in order to control the growing criticism of the ruling party, ZANU-PF, since 2000. The AIPPA provides a number of mechanisms to intimidate and silence critical journalists and newspapers, both in terms of their permission to practice and the content of their reporting.

The Media and Information Commission

The state report notes that there have been criticisms that the Media and Information Commission's (MIC) registration process is politicized (p.xxxv).

The failure to ensure the independence of the MIC is a major weakness of the AIPPA. The independence of a regulatory body from political and commercial influence is a key tenet in international standards governing media regulation and the right of freedom of expression.

Members of the AIPPA are appointed directly by the Minister for Information and Publicity, and the Minister exercises significant powers of dismissal and control

¹¹⁵ http://www.kubatana.net/html/archive/hr/040719au.asp?sector=DEMGG&range_start=1.

¹¹⁶ Resolution on Zimbabwe adopted at the 38th Ordinary Session of the African Commission on Human and People's Rights.

¹¹⁷ Amnesty International, *Zimbabwe: Rights Under Siege*, 2 May 2003, <http://web.amnesty.org/library/index/engaf460122003>.

over their terms of office. There have also been a number of incidents which demonstrate that the MIC is, in fact, politicized.

For example, there is the well-publicized case of the MIC refusing to issue a licence to the ANZ Group, which published the only independent newspapers in Zimbabwe at the time the MIC was established. The Supreme Court ruled that the Chairperson of the MIC should not have ruled on ANZ's licence application due to the existence of bias against ANZ. This battle between the MIC and the courts has been ongoing since 2002 – with the MIC refusing to reconstitute a fresh panel to consider ANZ's licence application anew. At the time of its closure, the ANZ newspaper *The Daily News* had a circulation of nearly 1 million readers per day – 59 per cent of the market.

The heavy-handed punitive treatment of privately-owned media by the MIC is also an indication of the politicization of the regulatory body. For example, the MIC cancelled the licence of *The Tribune* newspaper in June 2004 after its publishing group, African Tribune Newspapers, failed to notify the MIC immediately of a change in ownership, when its management and senior editors bought the publishing company from Africa Media Group. In February 2006, the MIC suspended the newly-founded *The Weekly Times* for one year. The reason given was that it violated the AIPPA by misrepresenting information on its application by promising to make social issues a priority but instead focusing on political advocacy. The MIC threatened to ban *The Financial Gazette* in January 2006 if it did not retract a story which queried the independence of the MIC. On 29 January 2006, the MIC refused to renew the accreditation of 15 journalists working for the *Zimbabwe Independent* until the newspaper retracted a similar story.

In response to criticism in this area, the state report contends that the registration of media organizations is carried out according to the law and not political inclinations. The state report submits that the failure to register one media house (this is the first time the state report has referred, even tangentially, to the ongoing denial of a licence to the ANZ Group) should not be used as a yardstick to measure the state's capacity to uphold freedom of expression (p.xxxv).

The MIC's failure to provide a licence to ANZ is, however, illustrative of the structural weaknesses of the AIPPA in terms of protecting and upholding the right of freedom of expression. The decision-making processes of the MIC are not accountable in a manner necessary for the protection and promotion of media diversity.

Licensing of foreign journalists

The state report notes as a third "challenge" that there have been criticisms that the process for licensing foreign journalists is also politicized (p.xxxv). While the state report uses the AIPPA term "accreditation" of journalists, this term is used incorrectly, as the AIPPA is engaged in licensing and not accreditation.

Again, this criticism is in fact well founded given the treatment of foreign journalists reported in the domestic and international media. The right to freedom of expression is expressly guaranteed "regardless of frontiers", and foreign journalists are entitled to be treated in a fair manner and to be allowed to perform their role in the public interest.

The exclusion of foreign media from reporting on Zimbabwe has intensified since 2001. In 2001, the government deported three foreign journalists, branded others as "terrorists", banned the BBC from entering the country and blocked CNN broadcasts. As soon as the AIPPA came into effect in 2002, the authorities sought to apply it to the foreign media. In 2002, the MIC refused to renew work

permits for an AFP journalist and the bureau chief. By 2003, no foreign journalists were allowed to reside in Zimbabwe.

In 2005, all BBC and ABC journalists were denied accreditation to report on the parliamentary election in March 2005. Swedish journalist Fredrik Sperling, who obtained accreditation, was arrested the day after the election after he filmed a large farm expropriated by the Zimbabwean government and later occupied by a relative of President Mugabe.

Further restrictions on freedom of expression

A significant number of other challenges to the realization of the right of freedom of expression have arisen which are not referred to in the state report. In particular, the raft of repressive legislation which has been introduced since 2000 has resulted in a situation where the right of freedom of expression is being systemically violated. Much of this legislation is characterized by broad and unaccountable discretions afforded to public officials and political representatives. The drafting is frequently loose and ambiguous, which provides substantial scope for misuse of the legislation, including the illegitimate harassment and intimidation of the private print media.

The impact of the repressive legislation on free expression can be summarized as follows. Utilizing this legislation, the Zimbabwean government has:

- harassed, intimidated and arrested media workers;
- imposed an oppressive system of conditional licensing upon journalists and newspapers;
- heavily censored the content of the print media;
- ordered the closure of several independent newspapers;
- initiated oppressive litigation against newspapers and opposition politicians;
- obtained a majority shareholding in Zimbabwe Mirror Newspaper group through its state security agency;
- continuously maintained the state broadcasting monopoly, despite it being ruled unconstitutional by the Supreme Court in 2000;
- imposed travel bans on opposition members and human rights activists;
- excluded foreign journalists from Zimbabwe; and
- intimidated and prevented foreign radio stations from broadcasting into Zimbabwe.

Restrictions on broadcasting

The regulatory regime for broadcasting allows the continuation of the state broadcasting monopoly as well as failing to promote diversity in the broadcast sector, as required by Principle V of the Declaration of Principles on Freedom of Expression in Africa.

Specific aspects of the broadcast regulatory framework breach Article 9 of the African Charter:

- the role of the Minister in overseeing the exercise of powers by the Board of the Broadcasting Authority of Zimbabwe (BAZ), in appointing members of the Board and in setting the terms and conditions of office for those members;

- the unfettered discretion given to the BAZ to issue a call for broadcast licence applications;
- the lack of clear provisions in the BSA establishing a licensing authority and the retention by the Minister of the power to decide on broadcast licence applications despite a Supreme Court ruling that this power is unconstitutional;
- the restrictions placed on who can apply for a broadcasting licence;
- the punitive strict liability offences for broadcasting without a licence;
- the limit of one licence per medium for national free-to-air broadcasting;
- the onerous and extensive terms and conditions attached to a broadcast licence;
- the provisions regulating the amendment, suspension and cancellation of a licence; and
- the directions and conditions made as to the content of broadcast programming by private broadcasters.

Some foreign broadcasters have attempted to "broadcast in" to Zimbabwe despite being unable to apply for a broadcasting licence from the BAZ, as no call for radio broadcasting licences has ever been made. The experience of these foreign broadcasters shows some of the practices used by the Zimbabwean government in violation of the right of freedom of expression.

In August 2002, Voice of the People (VoP), which broadcasts into Zimbabwe on short wave, had its Harare office bombed. The police made no arrests, did not issue a report on the investigations, and no one was arrested in connection with the bombing. In December 2005, the Zimbabwean government tried again to silence VoP. On 15 December, the police raided their Harare office, confiscating equipment and files. This served to end VoP's broadcasts, which came from outside Zimbabwe. The Director and six of the VoP trustees were charged with broadcasting without a licence, which carries a potential two-year term of imprisonment. Eventually, after almost a year, the charges were dismissed by the court.

South West Radio Africa (SWRA), staffed by Zimbabwean journalists living in exile, broadcasts into Zimbabwe from the UK on shortwave radio. In the lead-up to the March 2005 elections, SWRA had its signal jammed so that it could no longer broadcast into Zimbabwe via shortwave. It took several months for SWRA to find an alternate path, which prevented it from providing information and news on political and economic issues prior to the election. SWRA has faced ongoing jamming throughout 2006 as well.

On 18 January 2006, journalist Sydney Saize was arrested and accused of writing a false story for the US government-funded Voice of America. He was released without charge after being held in police custody for three nights.

Taking over independent newspapers

The Zimbabwean government has recently sought to impose direct control over independent newspapers through acquiring a majority shareholding. In 2005, Zimbabwe's state security agency, the Central Intelligence Organization (CIO), engaged in a takeover of the publications of the independent publishing house, Zimbabwe Mirror Group Newspapers (ZMGN), which publishes the *Daily Mirror*, *The Sunday Mirror* and *The Financial Gazette*.

In August 2005, the *Zimbabwe Independent* reported that *The Financial Gazette* had been taken over 100 per cent by the CIO, while Ibbo Mandaza (the Chief

Executive Officer of ZMGN) had ceded 70 per cent of his shareholding to a group of CIO investors.

In October 2005, Ibbo Mandaza was suspended from his post following the takeover. He approached the High Court, which ruled that he should be reinstated. In May 2006, Ibbo Mandaza filed a further application in the High Court, alleging contempt of court by the company's directors for failing to reinstate him.

Restrictions on freedom of movement

President Mugabe, speaking at the conference of his ZANU-PF party on 10 December 2005, vowed to take "stern action" against NGOs and critics of his government. The conference later adopted a resolution welcoming moves to seize the passports of people "who go around demonizing the country".

The Zimbabwean government has used its power to impose travel bans on human rights activists and people critical of the government.

For example, a travel ban was imposed on Trevor Ncube, the publisher of Zimbabwe's independent newspapers, the *Zimbabwe Independent* and the *Sunday Standard*, in December 2005. The UK-based newspaper, *The Guardian*, reported on 15 December 2005 that, according to a list seen by Trevor Ncube in the Buluwayo immigration office, 15 other prominent critics of the government also had their passports confiscated pursuant to the constitutional amendments under the Constitution of Zimbabwe Amendment (No 17) Act 2005. It was reported by www.newzimbabwe.com that these 15 people included opposition politicians, businessmen and journalists known to be critical of the government. According to Amnesty International, they included opposition politician Paul Themba Nyathi and trade unionist Raymond Majongwe.¹¹⁸

Restrictions on human rights defenders

POSA is frequently used to intimidate and silence civil society organizations critical of the government. For example, Dr Frances Lovemore, Medical Director of the Amani Trust, an organization focusing on torture and other human rights violations, was arrested in August 2002 following allegations that the Trust was contravening POSA by "publishing or communicating false statements prejudicial to the State". The offices of Amani Trust were raided and searched by police. Dr Lovemore was released the day after her arrest. In November, the government accused Amani Trust of threatening peace and warned that arrests would be made. Shortly after, the Amani Trust closed its offices.

Conclusion

Since the Movement for Democratic Change (MDC) emerged as a political opposition party in 1999, the Zimbabwean government has pursued every measure possible to prevent a change of government from occurring through the democratic process. As independent newspapers began to publish details of the failure of political, social and economic policies, a major onslaught on any expression independent of the government's mandate was pursued. This was effected by shutting down independent newspapers, introducing highly repressive legislation governing access to information and regulation of the print media, and preventing any private broadcaster from obtaining a licence to broadcast, despite eligible and willing prospective broadcasters. The Zimbabwean government has ignored clear directives from the Supreme Court to restore respect for the right of freedom of expression and has harassed and persecuted individuals who dare to

¹¹⁸ *Amnesty International Report 2006, "Zimbabwe"*, AI Index: POL 10/001/2006, <http://web.amnesty.org/report2006/zwe-summary-eng>.

speak out. The free expression blackout has been tightly held in place for the entirety of the period of this report and there is no indication of change in the near future, despite repeated appeals from regional and international bodies.

About ARTICLE 19

Global campaign for free expression

ARTICLE 19 is an independent international human rights organization, whose mandate is the protection and promotion of the right of freedom of expression globally. ARTICLE 19 has an extensive programme of activities in Africa and in Zimbabwe in particular. They have been working with partner organizations in Zimbabwe for over ten years, seeking to challenge the repressive legal and regulatory framework for the media.

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