

# THE OBSERVATORY

## FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS

**L'OBSERVATOIRE**  
pour la Protection des Défenseurs  
des Droits de l'Homme

**EL OBSERVATORIO**  
para la Protección de los Defensores de  
Derechos Humanos

# *Report*

## International Fact-finding Mission

### **ZIMBABWE: Run up to the March 29 Presidential and Parliamentary Elections - A Highly Repressive Environment for Human Rights Defenders**

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*Un programme de la FIDH et de l'OMCT - A FIDH and OMCT venture - Un programa de la FIDH y de la OMCT*

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## ABBREVIATIONS AND ACRONYMS USED IN THE REPORT

ACHPR	African Charter on Human and Peoples' Rights
AIPPA	Access to Information and Protection of Privacy Act
BSA	Broadcasting Services Act
CID	Criminal Investigation Department
CIO	Central Intelligence Organisation
FHRI	Foundation for Human Rights Initiative
FIDH	International Federation for Human Rights
HRDs	Human Rights Defenders
ICCPR	International Covenant on Civil and Political Rights
IEC	Independent Electoral Commission
JOC	Joint Operation Command
LHRC	Legal Human Rights Centre
LSZ	Law Society of Zimbabwe
MDC	Movement for Democratic Change
MIC	Media and Information Commission
MISA	Media Institute of Southern Africa
MOA	Miscellaneous Offences Act
NCA	National Constitution Assembly
NGOs	Non-Governmental Organisations
OMCT	World Organisation Against Torture
PISI	Police Internal Security Intelligence
POSA	Public Order and Security Act
PTUZ	Progressive Teachers' Union of Zimbabwe
RBZ	Reserve Bank of Zimbabwe
SADC	Southern African Development Community
UZ	University of Zimbabwe
WOZA	Women Of Zimbabwe Arise
ZANU	Zimbabwe African National Union
ZANU-PF	Zimbabwe African National Union Patriotic Front
ZAPU	Zimbabwe African People's Union
ZCTU	Zimbabwe Congress of Trade Unions
ZESN	Zimbabwean Election Support Network
ZHLR	Zimbabwe Lawyers for Human Rights
ZIMCODD	Zimbabwe Coalition on Debt and Development
ZIMRIGHTS	Zimbabwe Human Rights Association
ZINASU	Zimbabwe National Students Union
ZRP	Zimbabwe Republic Police

## I. INTRODUCTION

### 1. Delegation's composition and objectives

In the past few years, the Observatory for the Protection of Human Rights Defenders (Observatory), a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), has undertaken several missions in Zimbabwe on the situation of human rights defenders<sup>1</sup>. These missions have generally shed light on the government's will and determination to systematically silence any kind of protest. Particularly, the Observatory has previously reported the systematic and sustained repression of human rights defenders in Zimbabwe through a combination of measures - mainly a very repressive operating legislative framework and a selective administrative application of such repressive laws. These legislative provisions and selective administrative measures are generally a blatant violation of the rights of human rights defenders as contained in international human rights instruments, notably the 1998 United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms [UN Declaration on Human Rights Defenders] and other instruments that the Zimbabwean Government has signed and ratified, such as the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR).

Since March 2007 there has been an escalation in the brazen use of force and violence by State agents in Zimbabwe to silence the legitimate political opposition and its perceived supporters - mainly the human rights defenders. Such was the alarming use of force and other crude methods including arbitrary arrests and detentions, disappearances and torture that even the Southern African Development Community (SADC) political leadership set up a mediation (facilitation) process presided over by South African President Mbeki to try and mediate to resolve the crisis in Zimbabwe in order to create the possibility of Zimbabweans holding free and fair elections. Notwithstanding the efforts of the SADC political leadership to assist Zimbabweans to resolve their crisis and the full cooperation of the opposition, the Government of Zimbabwe decided to announce, in a unilateral manner, that harmonised elections for the Presidential, Parliamentary and local government elections were going to be held on March 29, 2008. This was regardless of whether the SADC Mbeki mediation would have produced a result or not. The Observatory was concerned that the run up to the Parliamentary and Presidential elections - without prior constitutional changes advocated by the opposition parties and civil society activists - would constitute a specific operating environment, which the Observatory feared could expose human rights defenders to heightened persecution.

In this context, the Observatory decided to send a fact-finding mission in order to assess the situation of human rights defenders in Zimbabwe in the run up towards the country's elections on March 29, 2008 as well as to strengthen the protection of human rights defenders who have been operating under a difficult environment for some time. The mission was held from January 21 to 31, 2008.

The Observatory delegation was composed of Mr. Osman Hummaida, a Sudanese lawyer and a member of OMCT Assembly of Delegates, Mrs. Sheila Nabachwa, a member of the Ugandan Foundation for Human Rights Initiative (FHRI), and Mr. Deus Kibamba, a member of the Tanzanian Legal Human Rights Centre (LHRC).

The delegation's work was guided by the following goals:

- To investigate on the patterns of persecution of human rights defenders and identify the perpetrators of these violations;
- To collect first-hand information on which categories of human rights defenders (members of trade-unions, NGOs, judges, lawyers, etc.) have suffered the greatest degree of persecution, and collect first-hand testimonies on cases of repression;
- To enquire on the capacity (or lack of capacity) of Zimbabwean institutions to offer effective protection to human rights defenders;
- To draft recommendations to be submitted to the Government of Zimbabwe and to international organisations, notably the African Union, and the European Union.

To achieve its objectives, the delegation visited the following places in Zimbabwe: Harare, Bulawayo, and Mutare.

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<sup>1</sup> See Observatory Fact-Finding Mission Report, 2003: *Systematic repression of human rights defenders in Zimbabwe*, February 2004. In June and September 2006, the Observatory also carried out judicial observation missions in Zimbabwe, jointly with the International Commission of Jurists (ICJ).

The delegation was able to meet with the following civil society representatives:

- Mrs. Maureen Kademaunga, Gender and Human Rights Officer, and Mr. Marvelous Kumalo, Advocacy and Policy Analysis Officer, Zimbabwe National Students Union (ZINASU)
- Mr. Arnold Tsunga, Mrs. Irene Petras, Mrs. Rose Hanzi and Mrs. Rangu Nyamurindira, Zimbabwe Lawyers for Human Rights (ZHLR)
- Representatives of the Media Institute of Southern Africa (MISA)
- Dr. Lovemore Madhuku, Chairperson, National Constitution Assembly (NCA)
- Representatives of the National Consultative Forum - Bulawayo
- Representatives of the Christian Alliance
- Representatives of the Zimbabwe Human Rights Association (ZimRights) - Bulawayo
- Rev. Steven Maengamhuru, ZimRights provincial coordinator for Manikaland
- Mrs. Janet Mudzviti, Zimbabwe Coalition on Debt and Development (ZIMCODD)
- Representatives of the Zimbabwean Election Support Network (ZESN)
- Mr. Moyo Gordon, Executive Director, Bulawayo Agenda
- Mr. Zenzele Ndebele, Production Manager, Radio Dialogue
- Ms. Jennifer Williams, Coordinator, Women of Zimbabwe Arise (WOZA)
- Representatives of the Zimbabwean Congress of Trade Unions (ZCTU) - Mutare

The mission also had meetings with representatives of the judiciary and the Zimbabwe Election Commission.

The Observatory wishes to thank Mr. Arnold Tsunga, FIDH Vice President, Chairman of ZimRights and a member of Zimbabwe Lawyers for Human Rights (ZLHR), for the precious help he offered to the mission and in editing the report. The Observatory also wishes to thank all members of ZimRights and ZHLR.

## **2. Historical account of the present situation**

The Republic of Zimbabwe, formerly Rhodesia, is a land-locked country located in the southern part of Africa, between the Zambezi and Limpopo rivers. It is bordered by South Africa to the south, Botswana to the west, Zambia to the north and Mozambique to the east.

The country, with a population of approximately 12 million, is constitutionally a Republic, but the Government, led by President Robert Mugabe and his Zimbabwe African National Union Patriotic Front (ZANU-PF) since independence, is over-powerful and not subject to any effective checks and balances. The last two national elections, the Presidential elections in 2002 and the Parliamentary elections in March 2005, were neither free nor fair by even the minimum international standards<sup>2</sup>. Although the Constitution allows for multiparty politics, the ruling party and security forces regularly intimidate and commit abuses against opposition parties and their supporters and often obstruct their activities. The divided Movement for Democratic Change (MDC) is the country's official main opposition party and, despite the fraudulent elections, the MDC factions currently hold 41 of 120 elected seats in the House of Assembly and seven of 50 elected seats in the Senate. Furthermore, the country is run by security chiefs through a body known as the Joint Operation Command (JOC), which has been responsible for what is referred to as a low intensity warfare and often uses command power to control the legitimate political opposition as well as human rights defenders.

The ongoing crisis in Zimbabwe finds its origins in 1965, when Ian Smith, the leader of Southern Rhodesia, issued a Unilateral Declaration of Independence (UDI) from Britain. He imposed white-minority rule. This action resulted in the adoption of international sanctions and in a guerilla war which, by 1979, had claimed some 36,000 lives and displaced some 1.5 million people. Britain brokered a peace deal in 1979 involving Smith's government, Robert Mugabe's Zimbabwe African National Union (ZANU) and Joshua Nkomo's Zimbabwe African People's Union (ZAPU), which culminated in the Lancaster House Agreement.

Mugabe became Zimbabwe's Prime Minister and Africa's most feted leader following the 1980 elections. The 1988 merger of ZANU and ZAPU, creating ZANU-PF, paved the way for constitutional change, giving Mugabe executive presidential powers and turning the country into a de facto one-party State. Forcible seizures of mostly white-owned land by veterans of the liberation struggle crippled the economy and led to a chronic shortage of basic

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<sup>2</sup> The Commonwealth group invited by the Zimbabwean authorities to observe the 2002 presidential election strongly condemned the conduct of the poll. Observers from a Norwegian mission and the local Zimbabwe Election Support Network (ZESN) also issued condemnation of the elections, saying it was held in a climate of fear. See Commonwealth Observer Group's preliminary report on Zimbabwe presidential elections, [www.afrol.com](http://www.afrol.com).

commodities and services from 2000. Following a seriously flawed 2002 presidential election, Mugabe resorted to using State machinery, war veterans and youth militias to intimidate the population, suppress dissent, gag the media and violate human rights.

Zimbabweans continue to face economic turmoil characterised by endemic corruption and homelessness, especially after homes of 700,000 people were destroyed during the “Operation Murambatsvina” in May 2005<sup>3</sup>, unemployment of over 80%, food shortages and collapse of vital services. The prevalence of HIV/AIDS among adults was estimated in 2005 to be 20.1 %<sup>4</sup>. In January 2008, the annual inflation rate rose to almost 100,000 % , the world’s highest<sup>5</sup>.

The Government has generally engaged in the pervasive and systematic abuse of human rights and intimidation. The ruling party’s dominant control and manipulation of the political process through intimidation and corruption have effectively negated the right of citizens to change their government using peaceful and non-violent means. Unlawful killings and politically motivated kidnappings have occurred. The State has sanctioned the use of excessive force and torture, and security forces have tortured members of the opposition, union leaders, human rights defenders and civil society activists. Prison conditions are harsh and life threatening. Security forces have arbitrarily arrested and detained journalists, demonstrators, and religious leaders; lengthy pre-trial detention is a problem. Executive influence and interference in the judiciary are other problems. The Government continues to forcibly evict citizens and to demolish homes. It also continues to use repressive laws to suppress freedoms of speech, press, assembly, movement, association, and academic freedom. Government corruption and impunity remain widespread.

The following human rights violations also continue to occur: harassment of human rights and humanitarian non-governmental organisations (NGOs) and interference with their attempts to provide humanitarian assistance; violence and discrimination against women; child labour and prostitution; discrimination against persons with disabilities and ethnic minorities; an increase in the number of HIV/AIDS orphans and child-headed households; harassment and interference with labour organisations critical of government policies; and attempts to supplant legitimate labour leaders with hand-picked supporters.

In addition, human rights defenders have faced many restrictions related with their rights to peaceful assembly, freedoms of association and expression. Lawyers, activists and members of the opposition are regularly arbitrarily arrested, detained and beaten during arrest and while in police custody.

### **3. Context in the run up of the March 29, 2008 harmonised Presidential and Parliamentary elections**

During the mission’s visit, less than two months before the scheduled elections, Zimbabwe was closer than ever to complete collapse. Inflation was over 100,000%. Four out of five of the country’s twelve million people live below the poverty line and a quarter has fled, mainly to neighbouring countries<sup>6</sup>. A military-led campaign to slash prices has produced acute food and fuel shortages, as the mission has witnessed not only in Harare, but in Bulawayo and Mutare too. The initiative launched by the Southern Africa Development Community (SADC) to facilitate a negotiated political solution, initially thought to be the only realistic chance to escape a crisis that increasingly threatened to destabilise the region, has all but failed to produce a possible solution with the current President Mugabe and his henchmen showing determination to remain in power at any cost.

On January 23, 2008, the Movement for Democratic Change (MDC) planned a Harare protest march against Government for the economic run down and to demand a new Constitution before the March 2008 elections. The opposition and civil society activists’ belief was that a new Constitution was essential before the country could go into another election, since the current Constitution centralised power in the Executive and was seen as the main weapon that Mugabe’s Government had used not just to retain power, persecute opposition and human rights defenders, but also to remove checks and balances that are so necessary for democracy and the rule of law. Holding elections under the current Constitution, which has been amended so many times to consolidate rather than to devolve power, was seen as a sheer waste of time as the elections were unlikely to be free and fair. Although many

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<sup>3</sup> On May 19, 2005, with little or no warning, the Government of Zimbabwe embarked on an operation to “cleanup” its cities. Because of its speed, it resulted in the destruction of homes, business premises and vending sites. It is estimated that some 700,000 people in cities across the country lost either their homes, their sources of livelihood or both. Hundreds of thousands of women, men and children were made homeless without access to food, water and sanitation or health care.

<sup>4</sup> See The World Health Report 2006 of the World Health Organisation (WHO).

<sup>5</sup> See The Zimbabwe Situation, [www.zimbabwesituation.com](http://www.zimbabwesituation.com).

<sup>6</sup> See International Crisis Group, Africa Report n°132, *Zimbabwe : A Regional Solution ?*, September 18, 2007.

had thought the march would be “allowed” to proceed given the SADC initiative, the police banned the rally from taking place, claiming that it was illegal and was likely to cause “public disorder and unrest”<sup>7</sup>. Following the prohibition order issued by the Zimbabwe police, police made a pre-dawn raid of Mr. Morgan Tsvangirai’s house (the leader of the main MDC) and arrested him. Mr. Tsvangirai was later released with Government referring to his interaction with the police as merely “an invitation” by the law and order authorities for a discussion on the proposed march. After a court application to reverse the ban was filed on behalf of MDC, the Magistrate’s Civil Court in Harare ruled on March 22, 2008 that the march should not be held in town as earlier planned and that the MDC could continue and have a rally at the Glamis stadium at the Harare showground. As political activists were going down to the stadium, the police started beating and arresting people for no apparent reason. This is seen as evidence application of repressive law, as about three weeks before the MDC planned march, militias linked to President Mugabe’s Government, lead by a war veteran, Mr. Jabulani Sibanda, had been allowed to march in Harare in what they referred to as the million men march. Not only were these militias linked to the ruling party given permission to march, but they were also given police escort.

Furthermore, there have been countless attacks and harassment on political activists, most especially those of the MDC. Outstanding among these was the March 11, 2007 beating which prompted the initiation of the SADC Facilitation (Mediation) initiative between Government and the opposition<sup>8</sup>.

The SADC initiative is fragile but South Africa and the other regional countries are the only external actors having a chance to make a difference, given the bad public relations that existed between the country and the international community after President Mugabe’s Government used extensive propaganda and public posturing to portray the Zimbabwean crisis as one not of governance, but one reflecting a bilateral dispute between Zimbabwe and its former colonial master United Kingdom, supported by other Western Governments. Western sanctions - mainly targeting just over 200 members of the leadership with travel bans and asset freezes - have proven largely symbolic, and general condemnations from the United Kingdom and the United States of America continue to be “manipulated” by the Government of Zimbabwe as they help Mugabe to claim that he is the victim of and victor over neo-colonial ambitions. To prove this, Mugabe outmanoeuvred rivals in March 2007 to gain the ZANU-PF nomination for a new term. The party also bypassed Mbeki’s mediation by advancing a unilateral Constitutional Amendment No. 18 in September 2007 that merely made cosmetic changes tightening its hold on power and providing what has been viewed as an insurance position for ZANU-PF in that the Constitution provides for Parliament and not the people of Zimbabwe as is the custom to choose the next President of the country in the event that Mugabe does not last his term in office if re-elected in March 2008 through hook or crook. The concern of civil society is that through this amendment ZANU-PF has guaranteed that it will remain in power for at least another five years whatever the views of Zimbabweans are given that Mugabe will most likely declare himself the winner of elections after the March 29 vote. Worse still, the MDC is bitterly divided and appears unable to mobilise effective collective opposition. It is very evident now that Zimbabwe is more at crossroads than ever before. But a solution usually comes at crisis point. Former Finance Minister Simba Makoni’s decision to challenge Mugabe on independent candidature is a courageous position that Zimbabwe had not seen in the recent past. It remains to be seen how far this new breath will last.

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<sup>7</sup> Similarly, the Government’s Secretary for Information and Publicity Mr. George Charamba, has spoken strongly against what he terms ‘reckless statements’ by MDC officials in which they threatened a repeat of civil unrest in Kenya.

<sup>8</sup> On March 11, 2007, a prayer meeting that was supposed to take place in Harare was brutally and violently broken up by the police in Zimbabwe resulting in injury to over 60 people, including the leader of the main opposition MDC party, Morgan Tsvangirai.

## **II. PATTERNS OF HUMAN RIGHTS VIOLATIONS AGAINST DEFENDERS, INCLUDING MAIN PERPETRATORS**

The situation of human rights defenders in Zimbabwe is indicative of the general human rights situation in the country. Death threats, disappearances, fears of arrest and torture of human rights defenders are alarmingly common. All the human rights defenders interviewed by the mission held the view that the operating environment of defenders and NGOs in Zimbabwe was very harsh and dangerous. Human rights defenders have been linked to the opposition party MDC and termed “agents” of the West by Government. Moreover, the Government has continued to remain adamant and largely non-responsive on policy and practice issues raised by NGOs and their umbrella bodies all over Zimbabwe.

In the run up to the March 29, 2008 harmonised Presidential and Parliamentary elections, the defence of human rights remains severely constrained, through State and non state related activities of clamp down and erosion of the democratic space.

Multi pronged responses were undertaken by civil society with key actors taking positions in respect of the March 2008 elections, electoral harmonisation and constitutional amendments. Such individuals and organisations were met with State repression and violence through the various law enforcement agents resulting in arbitrary executions of some activists and journalists, arbitrary arrests and detentions, kidnapping and abductions, torture and incommunicado detention, surveillance, defamation through the public media, etc. (this list is not exhaustive).

The economic environment has continued to create fertile ground for authoritarian rule as more of the ordinary citizens began to share and show feelings of discontent and rage over the prevailing economic mis-governance routed in infringement of human rights and absence of enabling constitutional framework.

Much of the period in the run up to the elections in 2008 was characterised by continued economic stagnation and decline, the continued selective application of repressive laws such as the Public Order and Security Act, together with the criminalisation of public gatherings and meetings under the newly enacted Criminal Codification and Reform Law Act, which carries stiffer penalties and sentences.

Those defenders most frequently arrested, tortured or threatened, such as trade unionists, lawyers, journalists, students, religious leaders and women activists, have been upholding civil and political as well as economic, social or cultural rights. Human rights defenders who are exposing the daily violations or seeking justice for victims of human rights violations committed by the State security apparatus have also been particularly targeted.

Few attacks against human rights defenders are investigated and even fewer result in convictions. As a result, arrest, torture and intimidation of human rights defenders have increased in large part of the country due to the failure to investigate and punish those responsible.

The Zimbabwe State’s responsibility for attacks against human rights defenders is usually direct, although, in some cases, war veterans, youth gangs and ZANU-PF supporters have reportedly been responsible. For instance, as the mission wound up its mission in February 2008, the war veterans and ZANU-PF youths abducted and tortured teachers who are members of the Progressive Teachers Union who were protesting at the poor conditions affecting teachers and school children in Zimbabwe. The beatings took place at the ZANU-PF headquarters in Harare. This typifies the electoral operating environment facing human rights defenders in Zimbabwe.

From reports, meetings and testimonies obtained by the mission there is an established pattern of systematic violations and attacks against human rights defenders in Zimbabwe by both the State apparatus and ZANU-PF supporters. It seems evident that both the State agents and its collaborators have adopted specific strategies and measures to silence or restrict the activities of human rights defenders. These strategies and measures vary from one region to another. For example, in Matabeleland region, disappearances, abductions followed by torture or extrajudicial killings and frequent death threats are more common patterns than in Harare and Mutare. Similarly, strategies and measures taken against students and religious leaders are different from those against the lawyers, journalists and trade unionists.

The most alarmingly common patterns of violations that have been established are as follows:



## 1. Legal sanctions and restrictive legislations

Legal sanctions and selective application of repressive legislations are frequently used against human rights defenders to incriminate them or to hinder and restrict their ability to conduct their activities. It is evident that the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA), the Broadcasting Services Act (BSA), the Miscellaneous Offences Act (MOA) and the Financial Regulation Act are the pieces of repressive legislation that are used extensively to erode the universally recognised rights and fundamental freedoms in Zimbabwe especially the freedoms to assembly, association and of movement.

In its 2003 report “*Systematic repression of human rights defenders in Zimbabwe*” as well as in its last annual reports, the Observatory has already analysed these very restrictive laws, which for many of their provisions violate the provisions of the International Covenant on Civil and Political Rights (ICCPR), the African Charter of Human and Peoples’ Rights (ACHPR) and the UN Declaration on Human Rights Defenders

- **The Public Order and Security Act (POSA)**, adopted in January 2002, has since become one of the favourite tools of the Zimbabwean Government to suppress dissent and criminalise the legitimate exercise of freedoms of expression, association and assembly. The Act prohibits a wide range of speech acts. In particular, article 16 (2) prohibits any statement likely to “*engender feelings of hostility towards, or causing hatred, contempt or ridicule of the President, as well as any statement considered abusive, indecent, obscene or false*” about the President. Likewise, article 15 prohibits “*publishing or communicating false statements prejudicial to the State*”, as well as any statement “*adversely affecting the economic interests of Zimbabwe, or undermining public confidence in a law enforcement agency*”. The extremely vague wording of such articles has encouraged a more frequent recourse to those provisions, which are in any circumstances contrary to the Zimbabwean Constitution in its section 20, which guarantees freedoms of expression and information. The Act has repeatedly been used against journalists, human rights activists and trade union activists.

POSA also constrains freedoms of association and assembly. In addition to requiring the organisers of any public meeting to inform the local police of a meeting four days in advance (the police being allowed to cancel it altogether for the sake of “public order” - a provision systematically used against opposition parties and human rights defenders, though never on the ruling party meetings), article 19 also prohibits any act that “*forcibly disturbs the peace, security or order of the public or any section of the public; or invades the rights of other people; [or intends] to cause such disturbance or invasion or realising that there is a risk or possibility that such disturbance or invasion may occur*”. The combination of the requirement to inform public venues and the vagueness of the provision amounts to an arbitrary and selective limitation of freedom of assembly.

- **The Access to Information and Protection of Privacy Act (AIPPA)**, passed in March 2002 and amended in 2003, allows in effect for the authorities to exercise close political supervision on all media operating in Zimbabwe. Sections 38-42 of AIPPA provide for the establishment of a Media and Information Commission (MIC), whose board is appointed by the Minister of Information. The MIC is responsible for the now mandatory registration of all media and journalists operating in Zimbabwe (section 66). This also holds true for foreign journalists. Once issued, the licence is valid one for one year and renewable at the discretion of the MIC.

Furthermore, under section 65 of the Act, the MIC can take action against any journalist who publishes information deemed to “*threaten the interests of defence, public safety, public order, the economic interests of the State, public morality or public health*”. AIPPA has been used to systematically curtail freedom of expression and limit access to information in Zimbabwe. The Broadcasting Services Act (BSA) allows for close governmental control of the entire broadcasting sector.

In September 2000, *Capital Radio*, a private radio station, filed a suit with the Supreme Court against the then Broadcasting Act, arguing that it was unconstitutional, as it contravened Section 20 of Zimbabwe’s Constitution which guarantees freedoms of expression and information. The Court ruled in favour of *Capital Radio* and declared that the Act was unconstitutional. In response, however, the Government passed the Presidential Powers (Temporary Measures) Broadcasting Regulations, which were to become the BSA. Those temporary measures were replaced in 2001 by the BSA.

- **The Miscellaneous Offences Act (MOA)**. The MOA has been used extensively as an instrument to harass human rights defenders in cases where the police did not suspect that a human rights defender had committed an offence and yet the police would be determined to use the law as a pretext to trample on the rights and freedoms of human rights defenders. The Act had an offence in terms of which human rights defenders would be charged with conduct that would likely result in a breach of the peace. From 2003 to 2007, when the Act was amended or repealed,

section 7 of the MOA was used more than any other legislation to arrest and detain human rights defenders. In 2007, the relevant section of the MOA was replaced by Section 37(1)(a)(i)(ii) of the Criminal Law Codification and Reform Act Chapter 9:23, which criminalises “*Participating in gathering with intent to promote public violence, breaches of the peace or bigotry*” As will be seen below, this section of the Criminal Codification and Reform Act is now one of the main legislative tools selectively applied to target human rights defenders.

#### • ***The Financial Regulation Act and the Price Control Act***

Human rights defenders, including, among others, lawyers, journalists and political opponents, are the usual victims of these Acts. These legislations restrict the ability of human rights groups to operate foreign currency accounts freely. In its fiscal review, the Government decreed that all foreign currency of NGOs in commercial bank accounts had to be compulsorily deposited with the Reserve Bank of Zimbabwe (RBZ). The commercial banks would maintain what the government referred to as “window transactions” but they would not be allowed to hold the actual cash in the bank. Any NGO wanting to spend its money would then apply to the Reserve Bank through its commercial bank to be allocated its foreign currency. Such application would contain a breakdown of details of exactly what this money is needed for and where it would be spent. The human rights organisations experience on this new process has been that in addition to create another method of gathering intrusive information about the activities of NGOs, the Reserve bank has also used administrative details or incompetence to delay the processing of transactions especially of targeted NGOs in a manner where they have literally sabotaged activities. This, besides rendering the human rights organisations ineffective, has also created a potential conflict between NGOs and their funding partners when perceptions of incapacity to deliver begin to be raised. The Executive Director of Zimbabwe Lawyers for Human Rights (ZLHR) told the mission that her organisation was waiting in some instances for over two months before there could be any movement on their applications to use their own money and this posed a peculiar but grave danger to programming.

The Government has also used the Price Control Act as a tool to attack some human rights defenders, especially those working in private legal firms, doing extensive pro bono work of defending other human rights defenders in the courts. The most notable case is that of the legal firm Bere Brothers in Mutare who were raided many times by the price control team on allegations that they were charging above what the Government wanted them to charge for their services. A partner in the firm, Mr. Zviuya, told the *chargés de mission* that they were very distressed by the aggressive raids that were done against them between June and September 2007 under the guise of price controls. He informed that hoards of uniformed and non-uniformed people would invade their office at a time and harass the lawyers, their staff and clients and cause severe pandemonium, accusing the legal firm of trying to sabotage the Government.

#### **2. Arrest, police assault, acts of torture (sometimes leading to death) and arbitrary detentions**

Police assaults and brutality followed by arrests usually happen after peaceful demonstrations and protests. The police usually target protest leaders - particularly students and trade unionists. The mission was provided with countless evidence and stories of police brutality, arrest and subsequent torture against the leaders of peaceful demonstrations. Moreover, an increasing number of human rights defenders have been placed in arbitrary detention, in violation of article 9 of the International Covenant on Civil and Political Rights and article 6 of the African Charter on Human and Peoples’ Rights.

#### **3. Surveillance visits and breakdown of offices**

One of the common tactics used by the Central Intelligence Organisation (CIO) to intimidate human rights defenders and spread fear among them is to put human rights defenders (HRDs) under surveillance, making frequent surveillance visit to their offices and bugging of their telephone line. For instance, between March 16 -18, 2007, CIO officers made surveillance visits to the offices of ZLHR at least seven times. Similar incidents were experienced by the National Congress of Trade Unions when the CIO broke down their offices and confiscated books documents and other resources from their office in Mutare.

#### **4. Death threats, harassment and intimidation acts**

Death threats are commonly used against the defenders, and are particularly directed to the most prominent figures in the human rights community. Such threats are usually received by phone calls or letters or even face-to-face interactions. Examples of such threats are documented in the section under experiences.

Furthermore, both the police and CIO have adopted systematic tactics to intimidate, harass and spread fear among NGO representatives, particularly in Mutare and Bulawayo. Indeed, most of NGOs representatives the mission met in the two regions described the numerous incidents in which members of their organisations were subjected to various methods of threats, harassment and intimidations. For instance, members of the Catholic Commission for Justice and Peace - Mutare and representatives of Christian Alliance<sup>9</sup> in Bulawayo and the Midland gave accounts on how the members of their organisations were frequently summoned by the police for questioning and interrogation in an intimidating way, received threats and nauseous phone calls and in some cases they were required to make their whereabouts known to the police.

## 5. Defamation and media hate propaganda

Recently, the Zimbabwe Government and the security agencies have embarked on a new tactic of defamation and media hate propaganda, employing the largely State owned media outlets against its opponents, targeting in particular lawyers and journalists. Writers and columnists known by their affiliation or support to ZANU-PF have written “hate messages” against HRDs, most commonly portraying them as traitors and agents to the west and other degrading description.

## 6. Abductions and enforced disappearances

Abductions and enforced disappearances are one of the common practices that were frequently used against human rights defenders as well as political opponents. Abductions of defenders and activists usually take place from home streets or offices. Following abduction victims are usually taken to a remote and deserted building or farm where they are subjected to physical and psychological torture including beating and bunching. Verbal abuse usually including insult and threats with death and rape particularly against female victims. Usually victims after being subjected to such maltreatment and abuses are dumped in streets of deserted places and in some occasions they might be taken back home.

## 7. Restrictions on public meetings and events

NGOs, community and religious groups are required to inform the police before holding public meetings, prayers or any other public forms of meetings. Despite the fact that there is no legal ground for such requirement, the police insist they should be informed before organising such a meeting. When failing to comply with such a demand, the organisers face breaking into their meetings and subsequent arrest of the organisers. In this context, the Church in Zimbabwe started to awaken to the political pressures in the country when some of its members were arrested for engaging into prayers on issues of governance and corruption in Zimbabwe. Like other human rights defenders, church leaders and faith based groups including pastors and members of the Christian faith have continued to be intimidated, harassed, physically abused and barred from holding their religious events that provide for a discussion of politically sensitive issues in Zimbabwe. For instance, pastors are frequently arrested and barred from holding public religious prayers and in some cases police would lock and prevent access to prayers venues for the public (a number of prayer meetings and prayer rallies were disrupted and in some instances even cancelled with posters announcing such meetings torn, vandalised and at times sealing off the venues where these meetings are planned). Police officers in some instances refused to grant permission to the Christian Alliance to organise public prayers mostly because of the incidence that had happened in Kadoma on January 28, 2007. A number of pastors like **Pastor Mwehegenshi** who were key in organising such prayer meetings under the “Save the Zimbabwe” campaign<sup>10</sup> have been summoned by the Central Intelligence Organisation a number of times and, beaten up for organising prayer meetings that focus on the governance of country and criticising the Government. In some cases, the NGOs are required to make the agenda or the content of the speech to be disclosed to the police prior to the meeting. However, some of the Bulawayo police authorities and local authorities have taken it upon themselves to create even more stringent requirements for human rights defenders to hold meetings. In some instances, the authorities have required the National Constitution Assembly (NCA) before organising public meetings to present to them the meeting agenda, which the police are at liberty to dictate on and to change in terms of duration of the meeting, speakers and at what time it should be scheduled.

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<sup>9</sup> Christian Alliance is an organised network of Christian leaders and organisations whose purpose is to be “instrumental in resolving the crisis in the country peacefully and permanently so that Zimbabweans can again live in freedom, peace and prosperity”.

<sup>10</sup> The Save Zimbabwe Campaign is a coalition of religious and other civil society groups which main activity is to bring together the main political players in Zimbabwe in order to help to contribute to the return to political stability in Zimbabwe.

## **8. Denial of food supply and other basic services**

With the current economic crisis and shortage of food and fuel supplies in Zimbabwe, the majority of the population in the country - particularly in the rural areas - are heavily dependant on food aids and food supplies and quotas to be provided by the governments and the other relevant agencies controlled by the Government. Members of the Zimbabwe Congress of Trade Unions (ZCTU) and members of the Save Zimbabwe Campaign both explained that the Government and the agencies controlled by ZANU-PF use food as weapons against the affiliate of their organisations. The people who are suspected to support the ZCTU usually receives less amount than the food quotas, and it was clearly explained to them by the officials that if they want to receive food supplies as the others they would have to distant themselves from such organisations. Members of ZimRights in Bulawayo who are seen attending meeting organised by their organisation are also not beneficiaries to the food distribution.

Likewise, some members of the NCA in Kipinga (180 km from Mutare town) are also victimised and not given food. However, the NCA members decided to try and grow their own food to mitigate this.

The mission was informed that the politicisation of food distribution was even worse in Manika land since Mutare is historically seen as the home of the opposition party MDC.

## **9. Restriction on freedom of movement and travel abroad**

Despite the fact that there is no formal or legal ban from travelling abroad in place against HRDs, in reality the latter have reported a number of incidents where they have been hassled, questioned, intimidated and delayed when they intend to travel abroad for human rights or similar political events. For example, during the SADC heads of States meeting in August 2007, in Zambia, a Peoples' Summit was organised parallel to the meeting. Members of the Zimbabwe Coalition on Debt and Development (ZIMCODD) were denied entry to Zambia and were sent back to Zimbabwe where their leaders, including Ms. **Janet Mudzuiti**, were interrogated by the Chirundi police and detained for two days. They were later released with no charges laid on them.

## **10. Access to financial resources and restriction on bank transaction**

As said above, in early 2008, ZLHR had been waiting for two months for foreign currency to undertake programming and had not received money from the Reserve Bank of Zimbabwe. ZLHR is contemplating suing the Bank as their programming is crippled and are unlikely to meet with contractual obligations in terms of contracts with partners, which creates complications for future funding. According to ZLHR, this is a very calculated, direct, subtle and potentially crippling attack to incapacitate HRDs from delivering in promotion and protection of human rights without taking brazen action that would invite a political attention to the government especially in the run up to these elections. Regrettably ZLHR is not the only organisation that has faced this type of subtle attack after depositing donor funds with the commercial banks. To that extent, the National Association of NGOs (NANGO) has tried to engage with the Reserve bank authorities on this strategy that human rights defenders views as an expropriation of assets strategy, but to no avail.

### III. INDIVIDUAL RECOUNTS AND EXPERIENCES OF HUMAN RIGHTS DEFENDERS

This section attempts to record some of the experiences and testimonies the human rights defenders have undergone in the past one year or so and in the run up to the March 29, 2008 harmonised Presidential and Parliamentary elections.

#### A. Human rights defenders of civil and political rights

##### 1. Zimbabwe National Students Union (ZINASU)

The Zimbabwe National Students Union (ZINASU) is a representative body of students in higher and tertiary institutions in Zimbabwe. With a membership of over 10,000 students, ZINASU is an outspoken student movement defending academic freedoms<sup>11</sup> of its members in Zimbabwe. The union also focuses on advocacy of issues of human rights of the people of Zimbabwe, free and fair elections and political and public accountability. As a founder member of the MDC, ZINASU has been engaged in both constructive dialogues with the government as well as a more aggressive strategy in some cases, using methods like peaceful marches, petitions, and campaigns on issues of academic freedoms for students in Zimbabwe. As a result, ZINASU has been a prime target of State overt and covert brutality and oppressive tactics and strategies.

##### *Mass eviction of students at the University of Zimbabwe - UZ (June 2007)*

On June 27, 2007, a notice appeared on the UZ notice boards directing University students to pay to a top up fees of ZW\$ 1,000,000 to feed university students. Deadline of payment was set for June 29, 2007. Mr. Lovemore Chinoputsa, a student leader, filed an urgent chamber application with the High Court for the indictment of evictions and payment of top up fees. By June 29, only 12 out of the 5,600 students had paid the top-up. On July 7, students staged peaceful demonstrations at UZ campus, to which heavily armed police with sophisticated artillery, teargas canisters, water canons and dogs descended on the students. Six students were arrested, including Mr. **Shaun Matsheza**, ZINASU Vice President, and Mr. **Caeser Sitiya**, a member of the Student Representative Assembly, who were later released on bail on July 9, 2007, from Harare Central Police Station. Several students were seriously injured and received medical attention at Avenues Clinic. Mr. **Jotham Shumba** sustained a broken limb and Mr. Caeser Sitiya developed an infection on his leg after a dog bite.

Following these incidents, the University authorities, backed by the Zimbabwe Republic Police (ZRP) riot police section, forcefully evicted all students from the halls of residence after giving them one hour to vacate the halls. The evictions occurred at a time when students were preparing for their end of semester examinations. Claiming damage to University property, the University was then closed henceforth<sup>12</sup>.

During the mission's interview with the ZINASU members, this move to close the UZ campus was one widely viewed as one of the Government's tactics to demobilize, intimidate and disorganize academic cycles of students and their leaders that are critical catalysts for social and political change in Zimbabwe, especially in the run up to the 2008 harmonised elections<sup>13</sup>. ZINASU is very active in advocating for free and fair elections and has been encouraging its members to participate in voter registration and contestation for youth parliamentary seats. This trend and harassment of student leaders is not unusual as ZINASU could recount a number of incidences where its members had been harassed, intimidated and even expelled from school as a result of their activism.

##### 2. Zimbabwe Lawyers for Human Rights (ZLHR)

The Zimbabwe Lawyers for Human Rights (ZLHR) is a human rights organisation in Zimbabwe that is well known by the Justice, Law and Order Section of the Zimbabwe Republic Police for their countless interaction and actions in pursuit of justice and fair trial. However, in the course of its activity, ZLHR has been strongly and frequently repressed by the Government<sup>14</sup>.

In the worsening human rights climate of the past five years, tremendous demands have been made on human rights lawyers in Zimbabwe. There have been so many arrests of human rights defenders that human rights lawyers

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<sup>11</sup> Which includes affordability of education, access, and quality conducive learning environment, among other issues.

<sup>12</sup> The University remained closed in January 2008 at the time of the mission.

<sup>13</sup> According to ZLHR, the University would re-open on April 7 after the elections, save for the School of Medicine, which has different semester dates and has since opened.

<sup>14</sup> For example in 2006 alone, the unit responded to 93 cases of arrests and torture/assaults after the September 13, 2006's ZCTU attempted countrywide demonstrations.

were called upon to attend to. Every time there was any kind of mass protest, human rights lawyers were called. On each occasion, great numbers of people have been arrested, and human rights lawyers found themselves stretched to provide adequate service to all the people who were arrested<sup>15</sup>.

ZLHR has therefore found itself on the frontline in the defence for human rights and in the process they have become targets of persecution themselves from the Government and perpetrators who dislike being challenged and held accountable for their conduct.

### ***Post March 11, 2007 events - From threats to direct attacks on ZLHR members***

March 11, 2007 events organised by the Save Zimbabwe Campaign<sup>16</sup> are among the activities and strategies that human rights defenders and pressure groups have employed to exert pressure on the ZANU-PF Government to respect human rights and ensure stability in Zimbabwe. Such events in the run up to the 2008 elections are key events in informing the electorate on the performance and human rights practices of the Government of Mr. Robert Mugabe.

The high handed methods used by the state agents towards the lawyers from ZLHR and human rights defenders are no doubt meant to intimidate, keep them off and silence critics, especially with an impending election<sup>17</sup>.

***On March 11, 2007***, while inquiring on the whereabouts of his client, a member of the MDC, who had been arrested, lawyer Mr. **Harrison Nkomo** was assaulted with a baton stick by officers of Machipisa police station in Harare in full view of other police officers and civilians. He had to flee the scene with police officers pursuing him and threatening to beat him further merely for wanting to do his job as a lawyer. He was warned not to return to the police.

***Also on March 11, 2007***, lawyer **Irene Petras**<sup>18</sup> was threatened by Detective Inspector Rangwani at the Law and Order section at Harare Central Police Station when she attempted to gain access to her clients. The detective shouted that the police were “*in a war situation and will use our own rules of engagement against lawyers’ before ordering her and colleagues to leave the police station*”.

***On March 16, 2007***, lawyer Mr. **Otto Saki** received an anonymous telephone call at the offices of ZLHR from an unnamed individual who warned him to stop representing members of the Save Zimbabwe Campaign or face death. He was told that all the ZLHR lawyers would be silenced and would face the same consequences (i.e. being subjected to State organised violence and torture) that their clients had met on March 11, 2007.

***Between March 16, 2007 and March 17, 2007***, officers from the Central Intelligence Organisation (CIO) made surveillance visits to the offices of ZLHR at least seven times in an attempt to harass and intimidate lawyers working for the organisation so that they would not continue to ensure protection of the law to people whose causes the government of Zimbabwe did not approve.

***On March 17, 2007***, another ZLHR lawyer, Mr. **Dzimbabwe Chimbga**, was stopped and harassed by intelligence and immigration officials at the airport when returning to Harare from Namibia. He was warned to desist from taking up such cases where he represents people whose causes are unpopular with the government of Zimbabwe. He was told and threatened that all the lawyers working with and for ZLHR would be “dealt with” shortly.

***A letter dated March 22, 2007***, addressed from the Central Intelligence Organisation (CIO) to the Zimbabwe military intelligence corps was leaked to press at the beginning of April 2007 in which instructions were being given to the military intelligence under one Colonel Chaminuka, in collaboration with ZANU-PF intelligence wing, to extra judicially execute a number of people including two lawyers, Messrs. **Arnold Tsunga** and **Lovemore Madhuku**. A colonel Muhambi of the Zimbabwe military intelligence confirmed that he was aware of the existence of the letter but denied that they had such an operation and stated categorically that even if Colonel Chaminuka was in fact present at the Zimbabwe military intelligence corps, they would not proceed to investigate the matter and report to the concerned threatened parties.

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<sup>15</sup> In 2006 alone the human rights defenders emergency legal support unit attended to over 950 cases.

<sup>16</sup> See above.

<sup>17</sup> Most of the cases referred to have been documented by ZLHR in a number of thematic publications. Some of them were re-narrated to the mission by ZLHR members.

<sup>18</sup> Ms. Irene Petras is now Director of ZLHR.

Members of ZLHR are not the only human rights lawyers who have been targeted by the authorities. Thus, countless records and statements of lawyers that have been harassed have been recorded by ZLHR and the Law Society of Zimbabwe (LSZ). According to ZLHR, attacks on the legal profession especially in 2007 escalated from media hate propaganda<sup>19</sup> to overt threats, attacks and lately assaults and unlawful arrest and detention of lawyers who are attempting to perform their professional duties in a repressive human rights environment as the above examples demonstrate. Such actions on the part of the State authorities is a threat, not only to the legal profession in Zimbabwe and the human rights defenders they seek to protect, but should be viewed as a direct attack against the profession in the region, aiming at silencing them due to fear of intimidation and risk of life.

### 3. Zimbabwe Human Rights Association (ZIMRIGHTS) - Bulawayo

The Zimbabwe Human Rights Association (ZimRights) is a wellknown human rights NGO in Zimbabwe, with a membership consisting of a network of human rights activists. It was registered in 1993 with the purpose of promoting, protecting and defending human rights in Zimbabwe.

#### *Constant surveillance*

Members of ZimRights continue to be considered as a threat in Manicaland and thus are under constant surveillance by the police and CIO operatives on their activities. Almost every week, members of ZimRights are summoned to the police or are “visited” by the police or CIO to spy or find out what the association is up to. All these are viewed by the human rights defenders as deliberate efforts to slow down the work of human rights defenders.

### 4. Women of Zimbabwe Arise (WOZA)

**Women of Zimbabwe Arise (WOZA)** is a social movement which is a visible courage building forum for women as they advocate for accountability of political and public leaders in Zimbabwe. WOZA has over 50,000 card carrying members who are mostly women.

#### *174 members of WOZA and Men of Zimbabwe Arise (MOZA) - Bulawayo*

As has become the custom every year, members of WOZA and MOZA staged their Valentines’ Day 2007 demonstrations on February 13, 2007, throughout the country to protest against human rights abuses committed in the country. Police descended on such a public procession in Bulawayo, indiscriminately assaulting and arresting 174 activists. The arrests were arbitrary as only seven of them had their information recorded by the arresting details at the time of their arrest. The others were hauled to the police station by the police without being told why they were being deprived of freedom or whether they were under arrest. Lawyers discovered that the accused persons were neither recorded in the Detention Book nor advised of any charges against them, thus being arbitrary arrested in violation of both domestic and international law, in particular Article 9 of the ICCPR and Article 6 of the ACHPR. They merely sat in the corridors and offices of the Law and Order Department for up to six hours. “Profiles” chronicling the personal history and political persuasion of the detained persons were compiled and lawyers were excluded in this process.

Lawyers further witnessed an assault by uniformed police officers on a young man who was later identified as Mr. **Bekhitamba Hlongwane**. Four uniformed officers forced him down the stairs and proceeded to harass him verbally, slap him and command him to bend over and touch his toes before he was pulled by his hair strands, which constitutes a degrading treatment, in violation of Article 7 of the ICCPR and Article 5 of the ACHPR. When it was noted that lawyers were in attendance, they were ordered to leave under heavy threats of sending in “Support

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<sup>19</sup> For instance, on January 31, 2007, the *Herald* had a title: “Law Society Okays Madhuku’s Readmission” where the operational phrase read: “The society also elected well-known Government critic Ms. **Beatrice Mtetwa** as its president during its council [meeting] held on Monday, a development that has been viewed by observers as the society’s resolve to be confrontational with the Government. Political analyst, Dr Tafataona Mahoso, said critics of the LSZ had been proven right that the group was biased and sympathetic to its political ally. The critics who said [Madhuku] would have an easy sail have been proven right and that the decision itself is ideologically and politically-biased and we would hope that the bias would just be limited to Dr Madhuku alone and not other issues”, said Dr Mahoso in an interview”. On May 11, 2007, the *Herald* had another article titled “LSZ: A guild without lawyers” by Nathaniel Manheru where the key message read thus: “Ugly, jilted and lonely, Beatrice Mtetwa’s Law Society badly needs lawyers and the rest of Zimbabwe, never mind that it tells the world it is a bona fide Zimbabwean organization representing well over 1,000 lawyers. Until its latest circular, which has turned out to be a costly misadventure, this legal fossil from racist Rhodesia’s yesteryears had never had its claim in respect of lawyers challenged and tested. Now we know and hey, beyond its shrewish style, it passes for little or nothing to most lawyers. Lawyers do not own it. Remnant Rhodesian law firms do, alongside a raft of regime-change machinery set up by the British, Americans and like-minded Europeans. Equally, beyond the activists at its helm, it owns no lawyers, the majority of whom have long felt orphaned and embarrassed by its repeated indifference and indiscretion respectively. It is a Rhodesian fossil, one stale and ashen”.

Unit' reinforcements of the police force to beat up the lawyers.

Detained persons were scattered around in peripheral detention centres, namely Donnington, Hillside, Nkulumane, Mzilikazi, Sauerstown and Queenspark. Ms. **Magodonga Mahlangu**, a WOZA leader, was isolated and detained incommunicado at Bulawayo Central Police Station. Ms. **Jennifer Williams**, WOZA coordinator, received several death threats from unidentified persons who vowed to abduct and kill her. Members of WOZA spent the night monitoring the station where she was being held.

On the same evening, 36 activists were released; among them were breastfeeding mothers, pregnant women and juveniles. The detention of children and juveniles with their mothers is a violation of the African Charter on the Rights and Welfare of the Child.

On the morning of February 14, the officer in charge of the Criminal Investigation Department (CID) Law and Order agreed to release all but seven of the detainees, who were due to be charged under the Criminal Code and to proceed to Court on February 15, but this decision was overruled, and the 138 activists spent two nights in arbitrary detention. However, on February 15, the police officer made it clear that he had decided to charge all 138 activists and would thus take them to court as soon as 138 warned and cautioned statements were recorded from the detainees and sets of fingerprints obtained from them. In light of the grave concern that surrounded the safety of Ms. **Magodonga Mahlangu**, who had been detained separately, an Urgent Court Application for her release was immediately drafted and filed with the courts.

Whilst the group was not taken to Court on February 15, 2007, Detective Assistant Inspector Mathe, Officer in Charge of the Law and Order section of the police force proceeded to take the docket to court of the Senior Public Prosecutor's for directions, where he was advised to immediately release the detainees and if necessary to proceed with the case in future if there was sufficient evidence that the detainees had committed a crime by way of summons. At about 5 pm, all activist were duly released, five hours after the 48-hours deadline specified by the law had passed.

There were complaints of assault at the time of arrest, constituting an excessive use of force. Injuries included various bruises, welts and contusions and a broken tooth. None of the injured was permitted medical attention. Police at Mzilikazi police station went as far as denying accused persons access to Anti-Retro-Viral treatment for HIV and AIDS related conditions! Further to this, police allowed unidentified persons suspected to be from the intelligence operatives to shoot videos and group photographs of the arrested.

*Joyce Chando and 25 other members of WOZA*

On March 5, 2007, members of WOZA engaged in a peaceful protest along Robert Mugabe Way in Gweru to celebrate Women's day, were dispersed by the police, who indiscriminately beat them upon arrest. The 26 WOZA members who were arrested were charged with contravening Section 37 (1) (a)(i)(ii) of the Criminal Law Codification and Reform Act Cap 9:23. In addition, there were complaints of abuse at the hands of the police. In particular, Mrs. **Joyce Chando** was seriously assaulted and suffered swollen head and facial features. Mrs. **Theresa Nyeve** was also severely assaulted. Police refused to refer those with visible injuries for medical treatment. Lawyers liaised with police to secure the release of women with babies and young children, which the police eventually yielded to. However, they were particularly adamant in their denial of food, only allowing the persons in custody to have a meal late into the night. Moreover, eight family members and friends who brought food for the accused persons were detained and accused of complicity. The 26 detainees all appeared in court on March 6, and were remanded out of custody on March 21. The eight persons who had delivered food had their charges altered on the court day from section 37 of the Criminal Law Code and offered release upon payment of admission of guilt fines, which they refused. They were further detained and charged with criminal nuisance as defined in section 46(2)(f) of the Criminal Law Codification and Reform Act Cap. They were released on bail and remanded on March 22.

*Rosemary Siziba and five others WOZA members - Bulawayo*

On August 24, 2007, at around 4 am, CID officers in Bulawayo raided the homes of five WOZA activists, including Mrs. **Rosemary Siziba**, who was arrested with her one-year old baby. Lawyers spent the better part of the day searching different police stations, trying to locate them. It eventually emerged that they had been taken to Khami Prison, more than 22 km out of the city of Bulawayo. They were later released the same day and subsequent interviews revealed that the police wanted to question them about the operations of WOZA and Ms. Jennifer Williams' whereabouts. The activists declared that they ignored everything about the issues they were being



questioned about.

*Praise Mlangeni - Bulawayo*

On September 12, members of the Police Internal Security Intelligence (PISI) raided the home of Ms. **Praise Mlangeni**, a WOZA activist, without a search warrant and proceeded to confiscate paint and other instruments for painting graffiti. Several other items were taken including a WOZA membership card and flyers. Ms. Praise Mlangeni was then instructed to report to Nkulumane police station the following day. Lawyers accompanied the activist to the police station where they managed to secure all items except the WOZA membership card, which the officer indicated required permission from higher authorities. Lawyers found out that their client was alleged to have undermined the security of the State by inscribing graffiti in public places. They threatened to make her disappear if she continued to undermine the government.

*Ms. Magodonga Mahlangu, Ms. Rosemary Siziba and Ms. Sitshiyiwe Ngwenya<sup>20</sup>*

On September 18, 2007, three members of WOZA, Ms. **Magodonga Mahlangu**, Ms. **Rosemary Siziba** and Ms. **Sitshiyiwe Ngwenya**, were arrested and taken to the Bulawayo police station where they were charged under sections 140 and 143 of the Criminal Codification Act for “malicious damage to property owned by the State”. The charges relate to messages reading “choose love over hate” that have been written on roads around Bulawayo. Ms. Mahlangu was reportedly brought to a police station located 30 kilometres away from the city. While she was in detention, Law and Order officers subjected her to intensive interrogations and threatened her with death. The three activists were then brought to court on September 19, 2007, where lawyers facilitated their release. However, they remain prosecuted for “malicious damage to property owned by the State”.

*Ms. Jennifer Williams and 74 others WOZA/MOZA members*

At noon on October 15, 2007 male and female (some with suckling babies) members of WOZA/MOZA were arrested at Parliament Building whilst carrying out a procession to Parliament to hand over a report on violence against WOZA members to the Speaker of Parliament. Police deployed at the scene initially ordered everyone to disperse but a police officer accosted Mrs. Jennifer Williams and told her that she was being detained. At seeing this, other members of WOZA/MOZA handed themselves over to the police. They were taken to Harare Central Police Station where they were detained at the V Section of the police station. Officers from Harare Central Operations, led by Assistant Inspector Shumba and under overall supervision of Superintendent Tenderere began drafting their Arrest Sheets for the detained defenders. Meanwhile, Mr. Nyakutombwa, the lawyer deployed, was denied access to his clients and was refused to be advised of the charges his clients were facing in violation of domestic and international law which always requires that anyone being deprived of their freedom need to be advised promptly of the reason of their arrest in a language that they understand. Another Lawyer, Mr. **Tafadzwa Mugabe**, also joined in to assist the detainees but faced police in an uncooperative spirit.

At around 3 pm, Superintendent Tenderere arrived and asked police officers if the two lawyers had been attended to. He was advised that they had been assisted whereupon he summoned two baton-wielding officers and approached the two lawyers in a visibly aggressive mood. He confronted Mr. Mugabe and said that he had told him that he did not want to see him in his police station. He hurled several abusive insults and claimed that he was not afraid of any court process that Mr. Mugabe would file and issue as he had loads of court papers in the office. According to him there was nothing special about Mr. Mugabe and his colleague being lawyers. He then physically tugged Mr. Mugabe and pushed and shoved him towards the exit whilst saying that the lawyers were only welcome at the station at his pleasure. He kept gesturing at assaulting Mr. Mugabe and eventually hit him on the right cheek. He proceeded to poke his finger into Mr. Mugabe’s cheek and continued with more verbal insults, threats of assault and gestures of assault. All this was in full view of dozens of police officers milling around the area out of curiosity and also because it happened at the fuel bay. The two baton wielding riot officers then escorted the two lawyers out of the police station and instructed two other policemen manning the main entrance not to let them back in.

At 7 pm, the defenders were released without charges. Food that had been taken into the police station and received by police officers disappeared and is believed to have been gobbled by the hungry police officers whose conditions of employment are believed by the human rights defenders to be pathetic earning less than USD 20 per month. They returned the following morning to collect their cell phones and other personal belongings and only found six packs of food out of a total of 55 packs. No explanation was given by the ZRP.

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<sup>20</sup> See Observatory Urgent Appeal ZWE 006 / 0907 / OBS 117, issued on September 21, 2007.

Meanwhile formal charges were levelled against Superintendent Tenderere at Harare Central Police station's Charge Office for the assault on lawyer Mr. Tafadzwa Mugabe. A further formal complaint against police and a suitable civil claim will also be pursued as against the perpetrator.

During a mission's interview with WOZA in Bulawayo, Jennifer Williams informed the *chargés de mission* that since December 8, 2007, a number of their members have continued to be kidnapped, interrogated and taken to police cells where they are continuously assaulted and abused. One of their colleagues who was abducted in the cold passed away last year as she never recovered from the pneumonia.

Because of these constant police raids of WOZA members' homes, WOZA does not have an office. They meet in 'safe houses', which are usually the homes of its members. Once they suspect that they are being followed, they move to another home.

## 5. National Constitution Assembly (NCA)

Created in 1997, the National Constitution Assembly (NCA) mandate focuses on the development of a new Constitution for Zimbabwe in a participatory and democratic manner. NCA has both individual and institutional members including trade unions, youth movements and workers in the formal and informal sector among others<sup>21</sup>.

As the elections draw nearer, the National Constitutional Assembly message, "*Genuine elections are only possible under a new, democratic and people driven Constitution*", has grown louder and more agitating to the Government<sup>22</sup>. And for this, NCA members have continued to organise themselves and demonstrate in order to send their message to the Government as well as the entire country. As a result, NCA members have continued to be harassed, physically assaulted and intimidated by the authorities in total impunity, and under the pretext that they are, as the Government has labelled it, "*inciting violence*"<sup>23</sup>.

*Mr. Manex Mauya and seven others NCA members - Mutare*

On February 28, 2007, members of the NCA congregated in Mutare in order to demonstrate for a new people driven Constitution. Eight members, including Mr. **Manex Mauya**, were arrested and detained at Mutare Central Police Station. The accused persons were taken to court on March 2 and released on bail. The matter was remanded to April 30, 2007. Charges were later dropped.

*Mr. Bernard Dube - Mutare*

On July 11, 2007, members of the NCA staged a peaceful protest for a new people driven constitution in Mutare. Members of the police force apparently failed to apprehend the actual demonstrators, thereby summarily arresting Mr. **Bernard Dube** as the leader of the NCA in Manicaland. The police predicated their arrest on a Z\$13 million withdrawal from the organisational account that they claimed was meant to sponsor the demonstration. Mr. Dube denied the allegations, asserting that the funds were for a workshop the NCA were planning to hold. He was released upon furnishing the police with relevant documentation to support his claim. This practice of arresting to investigate by the police which is in the category of arbitrary arrests is commonplace in Zimbabwe.

*Mr. Synodia Magaya and 205 others NCA members - Harare*

On July 25, 2007, members of the Zimbabwe Republic Police arrested NCA activists who took to streets soon after the opening of Parliament by President Robert Mugabe in order to call for a new Constitution. The police did not pounce on them immediately, but followed their peaceful activists closely. However, after the NCA activists dispersed, the police moved to arrest and assault some of the activists in the City Centre before taking them to Harare Central Police Station. More NCA activists were arrested by the police at the NCA offices around 5 pm and were severely assaulted before they were taken to Harare Central Police Station. In all, 206 NCA activists, including Mr. **Synodia Magaya**, were taken into police custody. At around 6 pm, the police, CIO operatives, ZANU-PF officials and militias started to brutalise the detained persons. They were informed that they would not

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<sup>21</sup> Interestingly, some of the NCA members are retired police officers who subscribe to the objectives of the NCA. These members have many times provided techniques to NCA members on how to handle demonstration and breakups by the police.

<sup>22</sup> NCA has argued that free, fair and democratic elections must be held under a new constitution; Elections cannot be postponed beyond 2008 and must be held as soon as possible under a new constitution, all draconian laws such as POSA and AIPPA must be repealed and that the suffering of the people of Zimbabwe must end now, through good governance under a new Constitution.

<sup>23</sup> Also, the NCA has continued to call upon Mbeki to be impartial during the SADC talks between ZANU PF and MDC, has condemned government's clamp down on the opposition, mistreatment of civilians and abuse of their rights in various statements.

be detained, but would however receive a thorough beating in order to deter them from taking to the streets. They were subjected to intense assault and humiliation from 6 pm to 11 pm, when they were released. Distress signals were immediately sent and ambulances and other private vehicles spent the greater part of the night ferrying the injured persons to various hospitals scattered around the Capital. Most of the activists had broken limbs and/or deep lacerations and some were detained and spent several days under treatment and observation. Three to four people, including a 63-year-old woman, lost their lives after the incident. A notice of intention to sue covering all 206 NCA activists for unlawful arrest and torture was drafted and filed on January 20, 2008.

#### *Attempted bomb on Mr. Madhuku's family*

In the early hours of January 1, 2007, a petrol bomb was thrown at the home in Waterfalls of Dr. **Lovemore Madhuku**, NCA Chairperson. Luckily the petrol bomb dowsed before it had blown up his cars in a garage. Even with the call to the Waterfalls police to intervene, very little concern was given to this case, the police claiming that they did not have transport to get to the house.

Sharing with the mission, Dr. Madhuku told that that he had been in and out of prison 20 times or more for his advocacy for a new Constitution and change in governance.

#### *Arrest of Mr. Tapera Kapuya during the SADC Peoples' Summit*

During the SADC heads of States meeting in August 2007, a Peoples' Summit was organised parallel to the meeting, in Zambia. At this occasion, Mr. **Tapera Kapuya**, member of the NCA, was arrested and detained by the Zambian special branch apparently working in cahoots with Zimbabwean intelligence operatives on August 15, 2007. He was targeted because he had a poster that was demanding that President Mugabe gives the people of Zimbabwe a people driven constitution before the March 2008 elections. He was only released after six hours of detention.

According to Mrs. Moyo, leader of the NCA in Bulawayo, unlike earlier years when the local authorities were not bothered with NCA meetings and demonstrations, their attitude has changed since 2007. As the 2008 elections draw nearer, the grip by the Government authorities on the activities of critical organisations like NCA has become tighter, largely because the Government is afraid of any one denouncing the lack of respect of human rights and bad governance.

As required by POSA, holders of public meetings have to inform the police before the meeting is held of their intention to hold such fora. However, some of the Bulawayo police authorities and local authorities have taken it upon themselves to create even more stringent requirements for human rights defenders to hold meetings. In some instances, the authorities have required NCA before organising public meetings to present to them the meeting agenda, which the police are at liberty to dictate on and to change in terms of duration of the meeting, the choice of speakers and at what time it should be scheduled.

In addition, a number of NCA leaders continue to be victimised and harassed, especially during days preceding planned meetings and demonstrations to the extent that many of the leaders keep away from their homes days before and days after the meetings just to ensure their safety. Police and the CIO normally 'visit' the homes of the NCA leaders, intimidate them and their families in a bid to prevent them from holding such politically sensitive meetings<sup>24</sup>.

## **6. Christian Alliance**

Officially launched at St Mary's Anglican Church in Bulawayo on February 3, 2006, the Christian Alliance is an organised network of Christian leaders and organisations whose purpose is to be "instrumental in resolving the crisis in the country peacefully and permanently so that Zimbabweans can again live in freedom, peace and prosperity".

#### *Mr. Wilson Mugabe and seven others members of Christian Alliance - Kadoma*

On January 28, 2007, the Christian Alliance convened a meeting in Kewada Hall to mark its launch in Kadoma. A total of 69 pastors and 260 lay people were in attendance. As is the norm during such gatherings, there were to be

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<sup>24</sup> In 2007, during the human rights day celebrations organized by ZimRights, organisations like ZCTU, NCA and Bulawayo Agenda (a Zimbabwean NGO whose aim is to provide a platform for citizens to exchange their views through public meetings, workshops, seminars and conferences) were cancelled from the list of participants by the police because of their record of criticism of government.

talks and prayers over the subject of corruption. However, police stormed into the church building in the middle of proceedings and arrested eight of the pastors, accusing them of preaching politics and inciting the people to turn against the government by praying against corruption. A video camera that had been used to capture the events of the day was confiscated and the pastors were detained at Kadoma central police station.

Police indicated that they would release the accused persons but this was later as local officers received fresh “instructions from above” to further detain them. The police then proceeded to their aggressive interrogation throughout the night, wherein they underwent verbal abuse and attempts to get them to denounce each other. All accused were taken to court the following day and released on bail, with the matter remanded to March 5, 2007. The State Public Prosecutor opted to drop charges against five of the pastors and an application for refusal of remand was set to be heard on April 23, 2007. The magistrate ruled that the police had not adduced sufficient evidence to warrant the placing of the remaining three pastors on remand and were then ordered to proceed by way of summons.

Pastor Mugabe shared with the mission that because the Christian Alliance was now associated with the opposition<sup>25</sup>, a number of prayer meetings and prayer rallies were disrupted and in some instances even cancelled with posters announcing such meetings torn, vandalised and at times sealing off the venues where these meetings are planned<sup>26</sup>. Police officers in some instances refused to grant permission to the Christian Alliance to organise public prayers mostly because of the incident that had happened in Kadoma on January 28, 2007. A number of pastors like Pastor Mwehegenshi who were key in organising such prayer meetings under the “Save the Zimbabwe” Campaign have been summoned by the CIO a number of times and regularly beaten up for organising prayer meetings focusing on the governance of the country and criticising the President Mugabe<sup>27</sup>.

## **B. Human rights defenders of economic, social and cultural rights**

### **1. Zimbabwe Congress of Trade Unions (ZCTU) - MUTARE<sup>28</sup>**

ZCTU was formed in 1981 and has key Zimbabwe political figures like Messrs. Joshua Nkomo and Robert Mugabe (ZANU-PF) at the heart of its formation<sup>29</sup>. ZCTU works towards promoting, advancing and safeguarding the economic, social and constitutional freedoms of workers by securing legal, political, democratic and good governance framework in Zimbabwe through strengthening its capacity and independence and those of its affiliates.

ZCTU has been classified as one of the “enemies” of the Government largely because of its criticism of the Government’s human rights practice and policy towards workers and the general public. Because of the thin line separating trade unionists and political activists in Zimbabwe<sup>30</sup>, since the year 2000 ZCTU has continued to suffer at the hands of State appointed and established entities such as officers from the Ministry of Labour and Social Welfare, the Criminal Investigations Department, Zimbabwe Federation of Trade Unions and various law enforcement and intelligence agencies.

Reported cases of torture of ZCTU members remains on the increase and it has become a widespread phenomenon practiced with the tacit and explicit consent.

In addition, laws like the Labour Act Amendment No. 7 or the Incomes and Pricing Act have been used to retrench workers and especially those belonging to ZCTU. The Income and Pricing Act has also been used to regulate prices of especially informal workers amidst the economic crisis<sup>31</sup>. Many workers have as a result been forced out of business due to the economic crisis and inflation in Zimbabwe.

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<sup>25</sup> Paster Mugabe has many times been summoned by the CIO, questioning him about the work of Christian Alliance and accusing him of working with the MDC. They have threatened to “deal” with him if he does not stop this association.

<sup>26</sup> Prayer meeting organised in Ncoba stadium in Gweru town in 2007.

<sup>27</sup> Similarly faith based institutions like the Catholic Commission for Justice and Peace have also been harassed by the police for their involvement in governance and peace issues. A number of times they have been summoned to the police to explain the objectives of meetings or even prayer meetings organized, sometimes they are detained for more than two hours and many times the police has demanded for a copy of the prayer that the commission plans to say during a prayer meeting. The psychological torture and frustration by the authorities many times deter Christians from participating in such fora.

<sup>28</sup> ZANU-PF has set up a surrogate Zimbabwe Federation of Trade Unions headed by war veterans.

<sup>29</sup> It is no wonder that the clashes between ZCTU and ZANU-PF have been regarded as fights between “brother and brother”.

<sup>30</sup> Before forming MDC, Mr. Morgan Tsvangarai was an active member of the ZCTU.

<sup>31</sup> Workers - especially those in the informal sector were required by Government not to increase the prices of goods and services up to a certain amount. If they did, they would be breaking the law and would be arrested. Further to this, there has also been an attempt by Government to amend the Labour Act – in order to outlaw trade unions but this has failed so far.

On July 27, 2007, the ZCTU held a seminar on HIV/AIDS at the Kadoma Ranch Motel. However, people claiming to be police officers disrupted the meeting, claiming that it was unsanctioned and unlawful. Four of the participants were taken to Kadoma police station for further interrogation. However, only Mr. **John Ngirazi** was detained and charged with contravening section 28(a) of the Public Order and Security Act (POSA). Despite the intervention of lawyers, Mr. John Ngirazi was detained up to July 30, when he was released without appearing in Court.

## **2. Progressive Teachers' Union of Zimbabwe (PTUZ)<sup>32</sup>**

On February 1, 2007, at around 5 am, several police officers from the Law and Order Section at Harare Central Police Station stormed into the house of Mr. **Raymond Majongwe**, Secretary General of the Progressive Teachers Union of Zimbabwe (PTUZ). His wife indicated that Mr. Majongwe had travelled out of Harare and could not possibly attend to them. The officers refused to heed to this information and continued to harass Mrs. Majongwe, threatening to arrest her and confiscate her identity documents. After protracted exchanges, the police officers left with a stern demand that Mr. Majongwe reports to the Harare Central Police Station at 8 a.m. without fail. No reasons were disclosed for their intention to question and obviously arrest him. Finally, Mr. Majongwe and his lawyers decided to report to the police station on February 5, 2007, fearing to be detained during the weekend.

On February 5, 2007, numerous soldiers arrived in a truck and a car in front of Mr. Raymond Majongwe's house. The engine-turned vehicles stayed parked over 20 minutes with voices being heard in the background. Blinding lights were also directed at the house.

In the past, Mr. Raymond Majongwe has been arrested, detained, beaten, prosecuted (but not convicted) on numerous occasions for engaging in peaceful protests for workers' rights and democracy in Zimbabwe. Throughout the country, in particular in rural areas, PTUZ members have been regularly harassed.

For instance, on February 2, 2007, Messrs. **Charles Kagurambamba**, **Henry Chinorumba** and **P. Dube**, three teachers and PTUZ members, were arrested at the Gaza Secondary School in Chipinge, for having organised a sit in calling for better work conditions of work and salaries. They were released on the same day from the Chipinge Police Station.

Furthermore, on February 14, 2007, police picked up Messrs. **Raymond Majongwe** and **McDonald Mangauzani**, founder and national Treasurer of PTUZ, as they held a meeting with other teachers at Haig Park Primary School on allegations of holding an illegal gathering and detained them at Harare Central Police Station overnight. This meeting took place in the framework of a national strike called by PTUZ in order to press the Government to increase the salaries of teachers. Police ferried them to court the next day, only to be informed that prosecutors had declined to vet the docket because it had been presented to them after 11.30 am. In the circumstances, they could only be returned to holding cells but it emerged that the detainees were booked out of their cells that same evening and were to be handed over to five security agents. Mr. Otto Saki, lawyer from ZHLR, came at the central police station, resulting in the release of Messrs. Majongwe and Mangauzani into his custody by the officers.

While in police custody, Mr. Mangauzani was severely tortured by State agents who accused him and other union leaders of inciting teachers to go on strike over low salaries. He was also denied access to medical treatment by police even when it was proved to the law enforcement agents that Mangauzani was on special medical treatment for hypertension. After his release, Mr. Mangauzani's health condition continued to deteriorate until his death on March 20, 2007.

## **3. Zimbabwe Coalition on Debt and Development (ZIMCODD)**

The Zimbabwe Coalition on Debt and Development (ZIMCODD) mainly engages on issues of trade, development and economic social and cultural rights in Zimbabwe. In the run up to the 2008 elections, the economic context has continued to create fertile grounds for authoritarian rule as more of the ordinary citizens have begun to share and show feelings of discontent and rage over the prevailing economic mis-governance routed in infringement of human rights and absence of enabling constitutional framework. Consequently, members of coalitions such as ZIMCODD were not spared by government agents in an attempt to clamp down on dissenting voices.

*Public meeting on debt and development in Zimbabwe*

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<sup>32</sup> See Observatory Urgent Appeals ZWE 001 / 0207 / OBS 014 and 014.1, issued respectively on February 2 and 7, 2007.

In May 2007, ZIMCODD organised a meeting at Royal Hotel in Bulawayo where their members and the public discussed the current economic situation in Zimbabwe. Two key members of ZIMCODD were very critical of government policy and as a result, were beaten by suspected intelligence agents severely for the comments they had made about the ruling party and its management of the economy. One of the victims was reportedly severely tortured with his face put down a toilet bowl and flashed over after the toilet had been used.

#### *Refusal to attend the People's Summit in Zambia - August 2007*

During the SADC heads of States meeting in August 2007, a Peoples' Summit was organised parallel to the meeting. ZIMCODD members planned to attend the summit, travelling by road through the boarder post of Chirundi. They carried along some materials on economic rights and development of the Independent Electoral Commission (IEC). While they were cleared on the Zimbabwe side, they were refused entry at the Zambia border [surprisingly after their passports had been stamped and cleared by the Zambia authorities]. When they demanded to know why they had been refused entry, the authorities claimed that the IEC materials carried "subversive" messages. They however refused to be deported, objecting that their passports be stamped "deported". They were sent back to Zimbabwe where their leaders, including Mrs. **Janet Mudzuiti**, were interrogated by the Chirundi Police and detained for two days. They were later released with no charges laid on them. The bales of t-shirts and other IEC materials were confiscated and were never returned to them up until January 2008.

Even with such levels of intimidation, their members have hardened and continue to speak out, especially on the deteriorating economic situation as a key issue for the upcoming elections. Women participation however remains low largely because of their family obligations. The time occasionally sanctioned by the authorities to hold some of the rallies and meetings hinders their participation.

### **C. Cases of repression against journalists human rights defenders**

#### **1. Media Institute of Southern Africa (MISA)**

The MISA Zimbabwe Chapter focuses primarily on the need to promote free, independent, diverse and pluralistic media as envisaged in the 1991 Windhoek Declaration on promoting free and independent media. The chapter has grown since 1997 with about 320 members comprising media practitioners and media houses.

Freedom of expression is guaranteed under the Zimbabwean Constitution. Under protection of freedom of expression, the constitution expressively states that: "*Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive, and impart ideas and information without interference, and freedom from interference with his correspondence*"<sup>33</sup>.

This provision notwithstanding, the space for free expression has continued to shrink in Zimbabwe largely through the use of repressive legislative pieces such as the Public Order and Security Act (POSA), the Access to Information and Privacy Act, the Interception of Communications Act and the Broadcasting Services Act as well as through administrative action especially by the Zimbabwe Republic Police (ZRP).

Members of MISA have continued to be intimidated by Government agents. Sometimes, their tools of work - including in some instances destruction of offices - have been undertaken in order to prevent them from effectively performing their mandate and constitutional roles as journalists.

Although there were no journalists in detention by the time of the mission, there has been a pattern of arrest and detention of critical journalists. Many were released after a couple of days and charges dropped. This pattern normally serves to intimidate the journalists from speaking out and covering sensitive stories.

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<sup>33</sup> Article 21 (2) of the Zimbabwe Constitution

One notable journalist **Gift Phiri**, a journalist with *The Zimbabwean*<sup>35</sup> was arrested on April 1, 2007 in Sunningdale, by members of the Zimbabwe Republic Police (ZRP), on allegations that he was a “petrol bomber” and taken to Harare Central Police Station. The police officers confiscated and seized his computer and cell phone and several floppy disks from his home. At Harare Police Station, Mr. Phiri was severely assaulted on two occasions by at least six police officers including Superintendent Tavaziva of CID Law and Order, using button sticks and baseball bat to strike his back and buttocks while stepping on his head. During the assault, he was accused of working for the British and for a paper published in Britain and writing several articles that were falsehoods. Mr. Gift Phiri was subsequently charged with practicing journalism without accreditation and made to sign a warned and cautioned statement in the absence of his lawyer. The matter was brought to court by the ZLHR and he was found not guilty.

*Mr. Tsvangirai Mukwazhi*

On March 11, 2007, Mr. **Tsvangirai Mukwazhi**, a freelance photojournalist, was arrested while trying to cover the planned Save Zimbabwe Campaign prayer meeting. He was detained at Machipisa Police station, where he was assaulted. At the time of his arrest, Mr. Tsvangirai Mukwazhi’s motor vehicle, camera, laptop and other property were taken into police custody. Mr. Mukwazhi was released after a High Court order according to which persons arrested on March 11 should be brought to court by 12 pm or be released. Lawyers from ZLHR sought to recover his property but were only able to recover his motor vehicle as the other property including laptop and camera have since gone missing while in police custody.

*Mr. Tapiwa Chininga*

On March 17, 2007, Mr. **Tapiwa Chininga**, a student journalist working with *New Ziana*, was arrested at Blue Base Police Post in Kuwadzana after asking two police officers politically questions that included: “*Why were the police changing their way of policing and were now using guns and engaging in running battles with the public, which conduct never happened in the past?*”; “*Is the police are allowed to torture people, in light of what happened to Morgan Tsvangirai and other MDC members while in police custody at Machipisa police station?*” ; “*Why the police had denied the MDC the right to hold a rally at Zimbabwe Grounds in Highfields in contempt and defiance of a High Court order allowing to do it?*”.

After being assaulted by Constable Simbarashe Nengane, Mr. Tapiwa Chininga was charged under section 41 (b) of the Criminal Law (Codification and Reform) Act (Chapter 9:23) for allegedly using “threatening abusive or insulting words” against the police officers. On March 30, 2007, criminal charges were withdrawn before plea with the State having the option to proceed by way of summons.

The attitude of the Government towards the opposition and independent journalism remains sharply intolerant, highly critical and punctuated with “hate speech”. It is feared that it will be again the case in the run up to the March 29, 2008 harmonised elections towards the media in covering stories and issues critical of State actions.

This context can only have a chilling effect and self-censorship amongst independent media. Women journalists like Mrs. **Faith Zaba**, now a media and public relations consultant since the closure of the *Tribune* where she had just been promoted to assistant editor and was the newspaper’s political editor, writes that: “*working under the repressive Access to Information and Protection of Privacy Act which makes one liable to a two year jail term if convicted under the law, some female journalists are opting to cover safe beats like health, entertainment and other social issues or going into public relations after college*”.

## **2. Radio Dialogue**

*Radio Dialogue* is a community radio in Bulawayo, which was established in 2002. It aims at providing a channel of communication on economic, political, social, cultural and developmental issues that confront the community in Bulawayo.

The Broadcasting Authority of Zimbabwe has not yet invited applicants for community radio licenses, so *Radio Dialogue* does not have an operating license<sup>36</sup>. Therefore, the radio at present is simply a recording and production

<sup>34</sup> See Observatory Urgent Appeal ZWE 002 / 0507 / OBS 042, issued on May 4, 2007.

<sup>35</sup> A weekly published in London, UK.

<sup>36</sup> The Broadcasting Act requires the Broadcasting authority to advertise and invite applicants interested in opening up radio stations. Until

studio with no signal transmission facilities. The products like audiovisuals facilitate dialogue and discussion on governance issues including elections, voter education and corruption, among others.

Because of its formation in 2002, around the same time MDC was formed, the Government highly suspected that *Radio Dialogue* was an instrument of the MDC. Further to this, the radio produced a documentary titled “A moment of madness”, which documented the 1980 “genocide” of the Matebele land people, allegedly orchestrated by ZANU-PF because of their lack of support for ZANU-PF<sup>37</sup>. Because of this, the radio station was raided in 2002 and its equipment stolen and vandalised.

Their forum theatre shows have at times been stopped or frustrated especially if the police felt that they were going to be inciting the public and giving the public “too much” information.

In 2007, *Radio Dialogue* prepared a film festival for the people in Bulawayo on issues of elections and governance. Abruptly, the festival was blocked with the police claiming that such a festival could not be staged since the President Mugabe was expected in the area to officiate at an exhibition. The organisers had spent £ 10,000 to organise this event.

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this is done, no one can apply for licensing.

<sup>37</sup> It is alleged that over 100,000 people in Matebeleland were killed.



#### IV. CONCLUSIONS AND RECOMMENDATIONS

1. In view of this information, the Observatory for the Protection of Human Rights Defenders would like to make the following recommendations to the Zimbabwean authorities:

- To guarantee in all circumstances the physical and psychological integrity of all human rights defenders in Zimbabwe;
- To put an end to any act of harassment against all human rights defenders in Zimbabwe;
- To guarantee, at all times, the freedoms of opinion and expression as well as the right to hold peaceful demonstrations and to political assembly, in compliance with the Zimbabwean Constitution and the international and regional instruments ratified by Zimbabwe and, notably the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples Rights (ACHPR);
- To conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially its Article 1, which states that “everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”, Article 11 which reads that “everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession” and Article 12.2, which provides that “the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”;
- To ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments ratified by Zimbabwe.

2. Furthermore, the Government of Zimbabwe has mastered the use of pieces of legislation to indiscriminately and systematically violate the rights of human rights defenders. The use of repressive legislation selectively to restrict space for the enjoyment of freedoms of expression, association and assembly of human rights defenders by the Zimbabwean authorities is totally unacceptable in a democratic society.

The Observatory therefore urges the Zimbabwean Government:

- To evaluate its domestic legislation in order to bring them in conformity with international and regional human rights standards in so far as the legislation should allow for the full enjoyment of fundamental rights and freedoms.
- In particular, to repeal sections of the Public Order and Security Act, Access to information and Protection of Privacy Act and the Criminal Law (Law Reform and Codification) Act.
- To facilitate together with civil society organisations a Constitutional making process which is highly participatory and people centred in order to come up with a Constitution that is central to the protection of human rights of the citizens of Zimbabwe.
- To ratify the additional protocol of the African Charter on Human and Peoples’ Rights establishing the African Court on Human and Peoples’ Rights and make the Declaration under Article 34.6 recognising direct access to the Court for victims and NGOs.

3. Most of perpetrators of human rights violations against human rights defenders have gone freely without trial or some cases have gone on forever with inordinate delays. The Government of Zimbabwe and its agents have also ignored and abused with impunity a number of Court orders and judgments that have been made by the judiciary in favour of petitioners on a number of human rights practices and abuse by the Government.

The Observatory thus calls upon the Government:

- To identify all State agents who have been implicated in the violations of human rights defenders’ rights, bring them before a civil competent and impartial tribunal and apply to them the penal sanctions provided

by the law.

- To bear equal responsibility for human rights violations committed by non-state actors especially when the state fails to apply due diligence to prevent, punish, investigate, or redress the harm caused by such non-state actors who seem to operate with the acquiescence of the State.
- To refrain from undermining the independence and integrity of the judiciary while upholding the cardinal principle of separation of powers.
- To invite the Special Procedures of the United Nations Human Rights Council to visit Zimbabwe.

4. The SADC Initiative has largely been a forum where civil society involvement has been limited or none at all. Given the centrality of civil society and especially human rights organisations in the governance and human rights context of Zimbabwe.

The Government of Zimbabwe President Mbeki and the SADC political leadership should therefore be called upon to involve non-state actors in this dialogue in order to ensure sustainable and a holistic solution to the crisis.

5. A number of the State agents and officials in these institutions mainly due to political pressure have acted contrary to their mandates of dispensing justice impartially.

The Observatory therefore calls upon the Government to:

- Restore and uphold the independence of these institutions as key human rights protection institutions.
- In particular, restore a professional Police service in order for the force to perform its functions of keeping law and order without any fear or favour and to answer to the law and constitution of the land and not political parties; to disband the Law and Order unit which operate under political instruction and without accountability as previously recommended by the African Commission on Human and People's Rights in 2004.

6. The March 29, 2008 harmonised Presidential and Parliamentary elections have not been greeted with a lot of enthusiasm by human rights defenders and political activists largely because they are seen as process full of flaws with very un-levelled playing field.

The Observatory thus urges the Government of Zimbabwe to:

- Act in a demonstrable manner through practicing tolerance while guaranteeing peace, security and protection of the law to everyone to open up the democratic space and allow for the people to effectively participate in the civic affairs of the nation so that confidence can be restored in elections as a viable method of selecting public officials.
- Open up access to the public media so that there is equitable access to the public media by all stakeholders.
- Allow civil society to be involved in an unimpeded manner in voter and civic education without risking further persecution.
- Restore a free media, which is essential for democracy.

7. The Observatory further urges the *African Commission on Human and Peoples' Rights* (ACHPR):

- To examine, at its next session in May 2008, the situation of human rights in Zimbabwe and to adopt a resolution denouncing the violations of Zimbabwe human rights defenders' rights, in particular in the electoral context.
- To have a careful look at the current situation in Zimbabwe so as to observe the conditions of the electoral process and the human rights situation.
- The Observatory also calls upon the Special Rapporteur on Human Rights Defenders in Africa of the ACHPR to issue a public statement denouncing the harsh environment for human rights defenders in the run up to the forthcoming elections.

8. Moreover, the Observatory calls upon *the African Union Peace and Security Council*:
  - To hold, without further delay, a meeting on Zimbabwe where Zimbabwean human rights defenders and international NGOs would be invited to present the situation of human rights in the context of the Presidential and Parliamentary elections.
  
9. Finally, the Observatory strongly urges the *European Union* (EU):
  - To continue to condemn serious human rights violations committed by the Government of Zimbabwe, and grant particular attention to the protection of human rights defenders in accordance with the EU Guidelines on human rights defenders.

# THE OBSERVATORY

for the Protection of Human Rights Defenders

## L'OBSERVATOIRE

pour la Protection des Défenseurs  
des Droits de l'Homme

## EL OBSERVATORIO

para la Protección de los Defensores de Derechos  
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### Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

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

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

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by the OMCT and FIDH: "Each person victim or risking to be the victim of reprisals, harassment or violations, due to his compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments".

*Un programme de la FIDH et de l'OMCT - A FIDH and OMCT venture - Un programa de la FIDH y de la OMCT*

**fidh**

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