

**AFRICAN CHARTER ON HUMAN AND
PEOPLES' RIGHTS**

**SHADOW REPORT TO THE COMBINED 7TH, 8TH AND 9TH
REPORT OF THE REPUBLIC OF ZIMBABWE**

EXECUTIVE SUMMARY

**COMPILED BY ZIMBABWEAN CIVIL SOCIETY
ORGANISATIONS**

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Preface

The civic organisations that produced this report have done so under most unsatisfactory conditions. The Government of Zimbabwe did not circulate its state report to all relevant stakeholders in advance of tabling the report before the African Commission on Human and Peoples' Rights. Such lack of consultation seriously undermines the effectiveness of the process of State party reporting as an evaluation exercise. It is noteworthy that State Party reporting is useful only if implemented by a State that has a genuine desire to take stock of its human rights performance and with a real intention to seek advice and support that would bring about practical change in respect of all areas of concern. The lack of active consultation by the government of Zimbabwe has led to the production of a report that selectively reports on issues, glosses over serious human rights concerns and lacks detail to support the claims that progress has been made. It is only pragmatic that a State that has limited capacity, both human and financial should actively engage other relevant stakeholders as it tries to gather information on the actual situation obtaining on the ground.

Overview

This shadow report clearly establishes that the Government of Zimbabwe has committed a series of abuses of the rights enshrined in the African Charter and has badly failed in its obligation under Article 1 of the African Charter to take legislative and other measures to give effect to the rights and freedoms enshrined in the Charter.

Over the period between 1996 to April 2006 the Government has passed a series of legislative measures that have drastically curtailed many of these rights and freedoms. This violates its obligations under the African Charter. The Government has criminalized dissent and protest by persons opposed to or critical of its policies. It has severely restricted freedom of speech and freedom of the media. It has made concerted efforts to compromise the independence of the judiciary. It has sought to transform the law enforcement agencies from professional, apolitical forces into forces that enforce the laws in a partisan fashion against the political opposition and brutally suppress anti-government

protest. Under its so-called Youth Training Programme it has indoctrinated youths and encouraged these youths to attack opposition supporters. These youths have been used in many instances to carry out police duties in contravention of Zimbabwe's national laws and have performed these "duties" with excessive zeal. They have also been deployed with the police to forestall anti-government demonstrations.

The State of Zimbabwe has failed in its obligations to respect and protect the protected rights and state agents and supporters of the ruling party have perpetrated many serious human rights violations and the Government has done far too little to prevent these abuses or to bring the perpetrators to book¹. Indeed some members of the Government have made statements that have encouraged or justified such abuses and many of the perpetrators have been granted amnesty. Many of the victims of the human rights violations that have occurred since the year 2000 have been denied the right to an effective remedy.

Violations of economic social and cultural rights have been abundant. The forced evictions of the urban poor during 2005 caused enormous suffering, leaving an estimated 700 000 people without shelter or means of support². The calamitous economic decline that has been experienced in Zimbabwe has pushed ever growing numbers of Zimbabweans below the poverty datum line and has badly affected health delivery.³

The human rights violations complained of in this report can not be justified on the need for land reform as claimed by the government of Zimbabwe. Equitable land redistribution in Zimbabwe was long overdue. However, the manner in which the Government carried out its fast-track land redistribution programme was

¹ There have been some isolated prosecutions of government officials for crimes that would constitute human rights violations but these have been insignificant in number or have only occurred long after the violations. They have therefore had little deterrent impact. Further, there have been a number of amnesties granted to violators.

² 700 000 is the estimated figure of the number of people affected as reported by the special envoy of the United Nations Secretary General (then) Ms Tabajuka. The government disputes this figure but does not dispute that a significant number of people running into thousands were affected and rendered destitute by the forced evictions.

³ It is estimated that as at February 2007 some 80 per cent of Zimbabweans now fall below the Poverty Datum Line. The consumer Poverty Datum Line, as at February 2007, was about Z\$580 000, a figure well below the wages earned by the large majority of the people.

unacceptable attended as it was by considerable violence. The exercise, noble as it was in principle, ended up in practice being a chaotic process with all sorts of criminal elements taking advantage of the program to enrich themselves.⁴ The chaotic land reform process resulted in a drastic drop in agricultural production and much of the best quality land found its way into the hands of high-ranking government officials, with some of the persons acquiring multiple farms. The manner in which the land reform program was implemented was incompatible with the human rights principle that those who are particularly vulnerable deserve special measures of protection and should be treated as priority.

Electoral processes in Zimbabwe have been fraught with irregularities and violence to an extent that would constitute a breach of the right to freely participate in the governance of one's country.

This report demonstrates that the African Commission should call upon the Government of Zimbabwe to take urgent measures to address properly all these issues and to put a stop to the widespread abuses of human rights that have been occurring.

Introduction

It is noted with regret that in its report the government of Zimbabwe has not met the guidelines set by the Commission on the drafting of state reports. In many respects the report reads like a compendium of Zimbabwean laws without any attempt to give information on the practical implementation and effects of these laws or whether the laws in themselves are sufficient to address the human rights issues under consideration. There is very little statistical information contained in its report. Its report consists mainly of generalised statements about the situation in Zimbabwe, some of which are very misleading. It fails to provide any in depth analysis of the situation on the ground regarding the enjoyment of the protected

⁴ See Masiyiwa M "The Fast Track Resettlement Programme in Zimbabwe: Disparity between Policy Design and Implementation" *The Round Table* Volume 94, Number 379/April 2005. See also *Minister of Lands, Agriculture and Rural Resettlement and Others vs. Commercial Farmers' Union* Judgment No. S-111-2001. For comment on the government commissioned Utete Report on the Fast Track Land Reform Programme, which concluded that there was extensive corruption in the process and that senior government officials had acquired more than one farm see *Media Monitoring Project Zimbabwe* Weekly Media Update 2003-36, Monday September 7th - Sunday September 14th 2003, available at <www.mmpz.org.zw>.

rights and says little about progress made by the state of Zimbabwe since the last periodic report was considered. As a result of the woeful inadequacy of the state report civil society organisations are only able to comment upon the aspects of the state report that are incomplete or misleading. The civic society organisations also provide a detailed overview of the state of human rights protection in Zimbabwe.

The state party of Zimbabwe has not presented a report in more than ten years, its last report having been submitted in 1996. The African Charter on Human and People' Rights (the Charter)'s requirement for periodic reports is every two years. Regular reporting is important as it allows regular dialogue between the African Commission on Human and People's Rights ("the Commission") and the state parties and allows the Commission to advise the state parties on the necessary legislative, policy and implementation changes needed for the state to comply with its international obligations. It further facilitates dialogue between the state and civil society. While acknowledging the effort made by the state party of Zimbabwe in submitting this report, it is important that there be strict and full compliance with the provisions of the African Charter on Human and Peoples' Rights. In the ten years that Zimbabwe has not reported it at has accumulated five over due reports, during which period opportunity for constructive discussion on the human rights challenges facing the country were missed. The Commission should enjoin the State party of Zimbabwe to make effort to timeously produce its reports.

Background

Zimbabwe has faced numerous challenges since the last state report to the Commission was filed in 1996. The challenges faced include a serious economic recession,⁵ the HIV pandemic and political and social polarisation. Between 1997

⁵ The Gross Domestic Product declined by 10,4 per cent between 2002 and 2003 alone, see *National Accounts 1985 to 2003* published by the Central Statistics Office. Manufacturing output declined by 13,2 per cent in 2002, and further declined by 13,8 per cent in 2003; finance and insurance declined by 23,7 per cent in 2003, see *National Accounts 1985 to 2003* published by the Central Statistics Office. Meanwhile inflation has fluctuated between 150 per cent and 600 percent, see Zimbabwe National Chamber of Commerce, available at <www.zncc.co.zw>. The total consumption poverty line in Zimbabwe increased 10,9 per cent between July and August 2005 to an amount of ZD 1 139 100,00, while the total consumption poverty line had increased 298,4 per cent from August 2004 to July 2005, see *Poverty Datum Line August 2005* published

and 2000 the increased poverty and political polarisation was reflected in food riots in 1998 (during which ordinary Zimbabweans demonstrated against the rising price of bread).⁶ When the demonstrations became violent the state security forces used excessive force to disperse the demonstrations leading to loss of life.⁷

In response to the challenges faced and in particular in an effort to exercise more freely all their political freedoms the citizenry embarked on a number of initiatives. Chief amongst these were the establishment of an independent daily newspaper⁸ and of private radio and television stations⁹, increased activism by NGOs on governance and human rights issues,¹⁰ and finally in the formation of a new opposition party.¹¹ These institutions were critical of government and exercised their nationally and internationally protected rights to protest against government policies. Indeed it is an individual's choice to choose to campaign against government policies and in so doing to associate with like minded people and organisations for as long as what is done remains within the ambit of lawful conduct as envisaged by international human rights law. In a normal democracy this is in fact considered necessary ingredients for development. In Zimbabwe such formations are subject to persecution.

In May 1999 the government of Zimbabwe appointed a Constitutional Commission to draft a new constitution for Zimbabwe. Some sections of Civil society, led by the National Constitutional Assembly while supporting the principle of establishing a new constitutional dispensation nonetheless opposed

by the Central Statistics Office. The Zimbabwean currency depreciated to a marked extent against international currencies, devaluing from 6 082,06 against the USD in February 2005 to around 60 000,00 to the USD in November 2005, see RBZ monthly reviews at <www.rbz.co.zw>. The Zimbabwe National Chamber of Commerce indicates that there will be an increase in month on month inflation from November 2005. A Copy of the World Bank Health, Nutrition and Population survey is annexed to this report marked "B".

⁶ See *Background to the Food Riots* by Zimbabwe Human Rights Ngo Forum accessible at http://www.hrforumzim.com/frames/inside_frame_reps.htm.

⁷ A *Consolidated Report on the Food Riots 19 - 23 January, 1998* Zimbabwe Human Rights NGO Forum, accessible at <http://www.hrforumzim.com/frames/inside_frame_reps.htm>

⁸ This paper, *The Daily News*, was often highly critical of government policies and exposed various human rights abuses that were occurring.

⁹ *Capital Radio* and *Joy TV*

¹⁰ For example the formation of a constitutional reform body, the National Constitutional Assembly (NCA) which actively campaigned for a new Zimbabwean Constitution

¹¹ The Movement for Democratic Change (MDC)

the work of the government appointed Constitutional Commission on the grounds that the Constitutional Commission process adopted by the government was deeply flawed in that the Commission was not properly representative of the different sectors of society and was top-heavy with ruling party supporters. Additionally, although the government had consulted widely on the contents of the Constitution the people expressed views over key issues were not properly reflected when the constitutional draft was compiled.

The draft Constitution was rejected by the people of Zimbabwe at a referendum in February 2000. This was the first defeat at the polls for the ruling party since 1980. Election violence increased dramatically during the referendum campaign and state security agents were allegedly directly involved in violence against opponents of the draft constitution. The ruling party was also involved in the violence and the state failed in its obligation to prosecute members of the ruling party for acts of violence. As an example the Zimbabwe Human Rights NGO Forum says that 165 cases of human rights violations were reported in the month of June 2000 and of those 5% were perpetrated by state security agents namely the Central Intelligence Organisation and the Criminal Investigation Department, the Zimbabwe Republic Police and the Zimbabwe National Army, and claims that 74% of the human rights violations reported during this month were perpetrated by the ruling party i.e. ZANU PF supporters and ZANU PF youth militia.¹²

At independence Zimbabwe inherited a skewed land ownership system with the white minority owning more than 75% of the agriculturally productive land. In the circumstances redistribution of land has been a priority for Zimbabweans since 1980 but, for a number of reasons, the pace of distribution was slow between 1985 and 2000 after a brief period of active distribution between 1980 and 1985. In 1999 the veterans of the struggle for liberation (war veterans) and peasants from overcrowded communal areas invaded minority white owned land. While originally opposing these invasions the government changed its policy after the constitutional referendum defeat. The government openly supported the

¹² See *Organised Violence and Torture in Zimbabwe in 2000*, Zimbabwe Human Rights NGO Forum (2000)

invasions which then multiplied. The fast-track resettlement programme began in early 2000, this was at a time that Government's popularity had reached an all-time low. It is apparent that the land occupations were not, as claimed by the Government, a spontaneous protest by land-hungry people. They were planned, organised and executed by ZANU (PF) as part of a political strategy to deal with increasing unpopularity. Large-scale, synchronised invasions of farms by "war veterans" occurred throughout the country within days of the referendum rejecting the constitution.¹³

It is important to appreciate that the farm invasions were illegal under Zimbabwean and international law. The invasions were often violent in nature (including assaults, rapes and murders)¹⁴ and led to confrontation between the invaders, farmers and farm workers. The government did not only fail in its obligation to protect the human rights of all those affected, rather it encouraged the invasions. Indeed many speeches by the government and ruling party officials incited the farm invasions as a preferred method by which land should be redistributed. Further the government failed to provide remedies to the victims of violence associated with the farm invasions.¹⁵

The land redistribution programme is a legitimate human rights priority of the government. However a land redistribution programme cannot suspend the enjoyment of other rights protected under the African Charter since all human rights are indivisible and interrelated (the Vienna Declaration and Plan of Action of 1994). The state therefore cannot argue that other rights are suspended while it implements the redistribution process (this includes both civil and political rights

¹³ See *Politically motivated violence in Zimbabwe 2000-2001 A report on the campaign of political repression conducted by the Zimbabwean Government under the guise of carrying out land reform* Zimbabwe Human Rights NGO Forum August 2001. This report points out that the farm occupiers were transported to farms in Government vehicles. Once there, they received monthly payments and regular food supplies, delivered in Government vehicles. Government Ministers, parliamentarians, Provincial Governors, other high-ranking ZANU (PF) politicians, local party officials and CIO and army personnel were involved in this process, linking up with the "war veterans" and directing or participating in the invasions and in the ensuing violence.

¹⁴ The HR Forum reports that in the year 2000 725 cases of violations of human rights relating to security of the person were recorded and of those 58% were assaults, 3% were murder and 1% were rape.

¹⁵ The government, and particularly the Commissioner of the Zimbabwe Republic Police, has publicly refused to implement particular court orders, for example consent orders between the government and the commercial farmers union ordering the eviction of land invaders.

and economic, social and cultural rights). Thus where political violence was associated with the programme or where newly resettled families do not have access to education or health facilities this is a violation of the Charter and must be dealt with accordingly.

Members of the judiciary (judges and magistrates) seen as opposing the land reform programme or opposing the government have been intimidated into resigning.¹⁶ There is a perception that the government has driven independent judges off the bench and packed the High Court and Supreme Court with judges who it believed would favour the ruling party.¹⁷ Where, despite these efforts, judges and magistrates have continued to give judgments contrary the perceived interests of the ruling party, government officials have vehemently criticised them, often in terms that amount to contempt of court.¹⁸ Government officials have also refused to comply with court judgments which they do not like.¹⁹ A judge²⁰ was arrested summarily in his chambers without respect for the Constitution.

Magistrates and prosecutors have been subjected to violence and intimidation from war veterans and ruling party supporters for making decisions seen to be in favour of the opposition or against the government. The government has failed to

¹⁶ Including members of the Supreme Court (such as the Chief Justice) and magistrates across the country. See International Bar Association, *Report of Zimbabwe Mission 2001* (London: International Bar Association, April 2001) for a discussion of the government's assault on independence of the judiciary

¹⁷ For a detailed survey of the undermining of justice in Zimbabwe see *Justice in Zimbabwe A Report* Compiled by the Legal Resources Foundation, Zimbabwe 30th September, 2002; *The Judicial Institution in Zimbabwe* Karla Saller University of Cape Town May 2004; *Attacks on the Judiciary in Zimbabwe* International Commission of Jurists 2002.

¹⁸ For example Minister Chinamasa was summonsed by the High Court for contempt after he attacked the High Court for giving what he considered a lenient sentence to three Americans convicted of illegal arms possession in 1999. Mr Chinamasa (who was Attorney-General at that time) was quoted as saying that "The nation should know and be told that the leniency of the sentences constitutes a betrayal of all civilised and acceptable notions of justice and Zimbabwe's sovereign interests." Mr Chinamasa was subsequently appointed Minister of Justice, Legal and Parliamentary Affairs.

¹⁹ For example, the government refused to obey the interdict against further acquisitions issues in *Commercial Farmers Union v Minister of Lands and Others* 2000 (2) ZLR 469 (S). See generally the IBA report referred to above.

²⁰ Justice Paradza, arrested on allegations of corruption. He was subsequently tried and convicted and he fled the country.

provide effective protection for the magistrates or to prosecute the alleged perpetrators of the violence.²¹

Elections since 2000 (the Parliamentary elections of 2000, subsequent by-elections, and the Presidential election of 2002) have all been marred by election and political violence²². The opposition parties have repeatedly alleged that the playing field has not been level because of such factors such as highly restrictive press and association/assembly laws, partisan political management of elections, political manipulation of food aid to influence voters and threats by pro-ruling party chiefs to expel people from their villages if they vote for the opposition.²³

Approximately 300 people have died as a result of political and land-invasion related violence including torture. There are also many cases of rape and kidnappings reported during this period. Zimbabwe Human Rights Forum reports that between 2000 and 2002, there were 2 087 cases of violent violations of human rights (rapes, murders, assaults). In the context of such widespread violations the State has conspicuously failed to provide an environment in which human rights are respected and protected and has failed to prosecute the alleged criminals. The perpetrators of these crimes have included state agents (the army, the police and the central intelligence organisation), ruling party militias and opposition party supporters²⁴. The government of Zimbabwe has failed to prosecute the majority of agents of the state and ruling party supporters accused of political violence, rapes and murders thus failing in its obligations to

²¹ For a detailed survey of the undermining of justice in Zimbabwe see *Justice in Zimbabwe* A Report Compiled by the Legal Resources Foundation, Zimbabwe 30th September, 2002; *The Judicial Institution in Zimbabwe* Karla Saller University of Cape Town May 2004; *Attacks on the Judiciary in Zimbabwe* International Commission of Jurists 2002.

²² A series of reports have been done by the Zimbabwe Human Rights NGO Forum on political violence surrounding these various elections. These are all available on the Forum's website. See for instance *Human Rights and Zimbabwe's Presidential Election: March 2002* Zimbabwe Human Rights NGO Forum accessible at <http://www.hrforumzim.com/frames/inside_frame_special.htm>.

See also *The Presidential election and the post-election period in Zimbabwe: a report prepared by the Mashonaland Programme of the Amani Trust* 10 May 2002.

²³ The Zimbabwe Election Support Network has monitored and reported on these elections pointing identifying the irregularities that have bedevilled these elections. These reports are available on this organisation's website – <www.zesn.org.zw>. As regards the issue of the media coverage of elections see the reports done on this issue by the Media Monitoring Project Zimbabwe which are available on this organisation's website – <www.mmpz.org.zw>

²⁴ Source

respect and protect the rights of the individual to life and security of the person.²⁵ Some civil claims for damages have been brought against the state by NGOs for violations relating to political related violence. However, the State, by failing to prosecute offenders and allowing a climate of impunity, has violated its international obligations to respect and protect the rights to life, freedom from torture and security of the person. Further, in 2002 the government of Zimbabwe passed a presidential amnesty for all perpetrators of politically motivated crimes from 2000 to 2002 (except for murder and rape), which added to the climate of impunity and violated the obligations of the state under international and regional law.

Between 2000 and 2002 the government enacted the Broadcasting Services Act, the Public Order and Security Act, and the Access to Information and Protection of Privacy Act. Collectively these Acts drastically curtail the rights to freedom of expression, association and assembly.

Licensing by a partisan state controlled body was introduced for broadcasters and mass media houses and journalists were required to register and accredit with the Media and Information Commission. The Commission is appointed and controlled by the Minister of Information. Mass media houses and journalists can be deregistered or de-accredited at the discretion of the Commission. The Commission is headed by a person who has repeatedly displayed blatant partisanship in favour of the ruling party. One daily newspaper that did not comply with the registration requirement because it was challenging the constitutionality of the requirement was forced to close down and its assets were seized by the state. The matter is now pending before the Commission. Other newspapers have also been closed down for failing to meet the requirements of the restrictive AIPPA. Criticism of the state president was criminalized, as was

²⁵See *Are they accountable? Examining alleged violators and their violations pre and post the Presidential Election March 2002 (Dec 2002)* Human Rights NGO Forum accessible at <http://www.hrforumzim.com/frames/inside_frame_reps.htm>. See also *Neither Free nor Fair: High Court decisions on the petitions on the June 2000 General election*, Harare, Amani Trust 2002; and *Torture by State Agents in Zimbabwe: January 2001 to August 2002* Zimbabwe Human Rights NGO Forum accessible at <http://www.hrforumzim.com/frames/inside_frame_reps.htm>.

the publication of falsehoods, having a chilling effect on the exercise of the freedom of expression.

The police were granted wide powers to prohibit public meetings and demonstrations, which power was used selectively against the opposition MDC. During election periods the MDC were denied permission to hold many campaign rallies. Civil society organisations also became victims of such arbitrary application of the law. Civil society does not object to the principle of giving notice to the police for intended public gatherings but rather the attitude of the police that they have absolute discretion to deny an organisation the 'permission' to meet. The police freely allow pro-government demonstrations whilst disallowing most demonstrations by organisations seen as being critical of the government.

Harassment of journalists by police and ruling party militia occurred throughout the period covered by the Government report. In January 1999 the police arrested two journalists in connection with a story concerning an abortive army coup. The journalists were handed over to military personnel who severely tortured the journalists. Court orders were ignored and when a number of judges publicly asked the government to provide a commitment to upholding the rule of law, the President accused the judges of effrontery and threatened them. In 2002 unidentified arsonists bombed the Daily News's printing press. This closely followed a threat against this paper by the Minister of Information. No arrests have since been made of any of the persons involved.

Harassment and arrest of human rights activists, union leaders and members of political parties opposed to the government have escalated during the period under review, as demonstrated by statistics from Zimbabwe Lawyers for Human Rights, attached hereto, marked A.

In 2004 the government amended the electoral laws, in an attempt to meet the requirements set by the SADC principles. The opposition however claimed that the amendments continued to allow government manipulation of the electoral process and threatened to boycott the Parliamentary elections in 2005. In particular they alleged that the Electoral Commission was not independent and

that the conduct of elections was left in the hands of highly politically partisan personnel including army personnel. The elections proceeded in March 2005 with the participation of the MDC. However, the MDC has rejected the results of the election, claiming that the result was rigged. Although there was a marked decrease in political violence during the March 2005 elections, political violence continued to be a concern as well as the use of food as a political tool, political intimidation by the Chiefs and vote rigging.²⁶ Government food aid was reportedly used to reward voters for voting for the ruling party and to punish those who were perceived to have voted against the ruling party²⁷. The opposition and civil society organisations claim that the elections were rigged.

During the months of May to July 2005 the government embarked on a “clean up” operation in Zimbabwe demolishing allegedly illegal shelters and destroying allegedly illegal vending stands. The police and city officials in Harare destroyed many houses without adequate warning or alternate accommodation and forced others to destroy their own houses. Children and the sick were displaced from areas where they went to school and where they received medical attention. The United Nations Special Envoy noted that the operation violated the right to housing protected at international law. She further noted that more than 700 000 people were directly affected, losing homes and livelihoods. The Zimbabwe Human Rights NGO Forum observed,

Some estimates put the number of people now displaced at well over a million. The forced displacement of thousands of families has meant that many children of these families are no longer attending school. Amongst those that have been made homeless in the blitz are babies and young children, orphans, women and women-headed households, elderly people, disabled people, people with HIV and other sick people. The

²⁶ *Of Stuffed Ballots and Empty Stomachs Reviewing Zimbabwe's 2005 Parliamentary Election and Post- Election Period (July 2005)* Zimbabwe Human Rights NGO Forum accessible at <http://www.hrforumzim.com/frames/inside_frame_reps.htm>.

²⁷ Opposition supporters have also been threatened by traditional leaders with eviction from communal areas. Chief Charumbira is quoted as having said "I have some names of UPP (United People's Party) and MDC supporters whom I have already earmarked for eviction. The position is that only ZANU PF supporters will be allowed to reside in my area. I want my (village) headmen to take note of this position. If you are an opposition supporter this is the time to mend your ways before we come for you and ask you to pack your bags. I don't know where you will go because other chiefs will take a similar stance." See ZimOnline Tuesday 24 October 2006

dislocation of these people has severely disrupted treatment and care programmes for people with HIV, and these persons will be exceptionally vulnerable as a result.²⁸

Torture in Police Custody

Torture has become and remains endemic within the police force in Zimbabwe, with reports of torture of opposition supporters and protestors, as well as the use of torture in ordinary criminal investigations. A recent example of the use of torture against perceived opposition leaders is the case of the Chibhebhe, the leader of the Zimbabwe Congress of Trade Unions. Together with three other members of the ZCTU executive he was arrested and beaten with baton sticks while in police custody in September 2006. The assaults were so serious that the trade unionists suffered fractures, which doctors confirmed were consisted with assaults with blunt objects.²⁹ The police claimed that the only force used was to prevent them escaping after they were arrested and that injuries suffered were sustained when they fell off a moving vehicle.

Members of the opposition were arrested and allegedly tortured in police custody after the government had broken up an opposition-led prayer meeting in Harare on 11 March 2007. The president of the anti-senate MDC, Mr Morgan Tsvangirai, was so seriously injured he was in intensive care in a private hospital with wounds to his head. Other members of the opposition and civil society organisations were also hospitalised. The police originally refused access to the prisoners by lawyers (one of whom was assaulted) and relatives until court orders were issued. Further unlawful arrests followed the subsequent release of the opposition leaders.

²⁸ *Order out of Chaos, or Chaos out of Order? A Preliminary Report on Operation "Murambatsvina"* Zimbabwe Human Rights NGO Forum accessible at <http://www.hrforumzim.com/frames/inside_frame_special.htm>.

²⁹ IRIN Saturday, October 07, 2006.

CIVIL AND POLITICAL RIGHTS

Non-discrimination before the law and equal protection of the law

Article 2

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

Article 3

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

Summary

- Discrimination along political party lines has been alleged against the government food aid programmes;
- There is a decline in the number of girls finishing primary school compared to boys;
- Discrimination against women under customary law continues to be allowed by section 23 of the Constitution of Zimbabwe.

Suggested Questions for State Delegates

- What measures is the government taking to ensure that there is no party political discrimination in the administration of food aid schemes?
- How is the government addressing the decline in attendance by girls in primary and secondary schools?
- How is the state of Zimbabwe proceeding to remove *de jure* discrimination against women under customary law?

Respect for life and integrity of person

Article 4

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

Summary

- Especially during the 1998 food riots and during election periods state agents have used violence on opponents of the ruling party. In the majority of cases the government has failed to prosecute ruling party supporters accused of killing, assaulting, kidnapping or raping members of society seen as opposed to the government. The few cases of prosecution that have taken place are isolated.
- Political violence has led to the death of approximately 300 people since 1999;
- 6 577 cases of political violence were reported during the period 2000-2005;
- The State of Zimbabwe has failed to prosecute perpetrators of serious violations of the rights protected under Article 5 of the Charter, especially where the perpetrators have been linked to the government or the ruling party;
- In 2005, under 'Operation Murambatsvina' forced evictions police and army officers assaulted individuals that failed to destroy their homes within short deadlines.

Suggested Questions to state Delegates

- What steps have been taken by the government of Zimbabwe to ensure that serious violations of the rights protected under article 4 of the African Charter, such as the violations that occurred during the food riots, during elections and during Operation Murambatsvina, are not repeated?
- What steps has the government of Zimbabwe taken to ensure that individuals accused of acts that constitute serious violations of the rights protected under article 4 of the Charter are prosecuted for these offences?
- What steps has the government of Zimbabwe taken to provide remedies to victims of serious violations of the rights protected under article 4 of the African Charter?

Respect for dignity and prohibition against exploitation, degradation and torture and inhuman punishment and treatment

Article 5

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

Summary

- The government of Zimbabwe has not criminalised the offence of torture and has not ratified the UN Convention against Torture;
- There is a large body of reliable evidence that torture has been used by the police, the army and ruling party militias in both political and non-political matters;
- The state has failed to investigate and prosecute allegations of torture leading to impunity for perpetrators;
- The conditions in many holding cells and prisons in Zimbabwe amount to cruel and inhuman treatment;
- The state of Zimbabwe continues to implement the penalty of caning against male children in violation of international law.

Suggested Questions for State Delegates

- What steps has the government of Zimbabwe taken to ensure that Torture is criminalised in accordance with international law?
- What steps have been taken by the government of Zimbabwe to ensure that torture by police, the army and militias is not repeated?
- What steps are being taken by the government of Zimbabwe to ensure that its prisons meet international and regional standards, considering that the Supreme Court of Zimbabwe has held that detention in some police holding cells constitute cruel and inhuman treatment?
- What steps are being taken by the government of Zimbabwe to investigate and prosecute alleged perpetrators of torture?
- What steps are being taken by the government of Zimbabwe to ensure that victims of torture access remedies?
- What steps are being taken by the government of Zimbabwe to end the practice of the caning of juveniles?

Right to liberty and security of person

Article 6

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

Summary

- Prisoners in Zimbabwe are detained for excessive periods, up to six years, before trial in violation of the African Charter on Human and Peoples' Rights;
- The police have arrested perceived opposition supporters and members of civil society without due cause and have only released them when they fail to prosecute;
- The army and central intelligence office have arrested and detained individuals illegally;
- The army has refused to release civilians despite court orders;
- The police have routinely arrested and detained members of protest marches;
- Members of the government and the ruling party have made threats against the security of members of the opposition;
- Under the Presidential Powers (Temporary Measures)(Amendment of the Criminal Procedure and Evidence Act) Regulations persons suspected of serious economic crimes can be detained without bail up to 21 days;

Suggested Questions for State Delegates

- What steps is the government of Zimbabwe taking to ensure that prisoners are not detained for excessive periods on remand before trial?
- What steps are being taken by the government to ensure that the police, army and central intelligence office do not continue illegally arresting and detaining perceived opposition supporters and members of civil society?
- What steps are being taken by the government to investigate and prosecute officers of the police, army and central intelligence office that have illegally arrested, detained and tortured members of the public?
- What steps are being taken by the government of Zimbabwe to ensure that victims of serious violations of article 6 of the African Charter on Human and Peoples' Rights?
- What steps are being taken by the government of Zimbabwe to investigate and prosecute members of the government and ruling party alleged to have made threats to the security of members of the opposition and civil society?
- What steps has the government of Zimbabwe taken to ensure the right to liberty and access to the courts to persons accused of serious economic crimes?

Right to have one's cause heard

Article 7

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

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

Summary

- There are serious structural and political limitations to the independence of the Judiciary in Zimbabwe. Magistrates remain administratively subject to the Ministry of Justice, Legal and Parliamentary Affairs and Judges are appointed by the President after consultation with the Judicial Services Commission, to which he appoints most of the members. Judicial officers are badly paid facilitating corruption and interference. Political pressures have included violence and threats from ruling party supporters and government officials;
- The excessive periods spent on remand by accused persons in Zimbabwe amounts to a denial of their right to have their cause heard;
- The government controlled public press has published stories that have prejudged the trial of members of the opposition;
- The Parliament of Zimbabwe, voting on partisan political lines, has passed a lengthy custodial sentence on an opposition Member of Parliament;
- The Zimbabwean government has refused to enforce decisions of the courts, especially related to land invasions between 1999 and 2002 and orders that the state investigate and prosecute allegations of murder against members of the central intelligence organisation;
- The government does not provide sufficient legal aid for the indigent in Zimbabwe, with only one centre in the whole country;
- During Operation Murambatsvina in 2005 the magistrates courts were specifically instructed not to hear any matters relating to the operation and refused to hear any applications for interdicts relating to the operation.

Suggested Questions for State Delegates

- What steps is the government of Zimbabwe taking to ensure that detainees on remand are tried within a reasonable time or granted bail?
- What steps is the government of Zimbabwe taking to ensure that all criminal matters are tried in duly constituted and competent courts, and that the press does not prejudge the guilt of accused persons?
- What steps are being taken by the government of Zimbabwe to ensure that all judgements and orders of the courts are enforced?
- What steps are being taken by the government of Zimbabwe to ensure that legal aid is available to indigent persons across Zimbabwe?
- What steps are being taken by the government of Zimbabwe to ensure that political interference with the administration of justice is prevented?

Right to receive information and freedom of expression

Article 9

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

Summary

- Under the Access to Information and Protection of Privacy Act (AIPPA) the print media is limited and controlled, with government control of registration of media houses and journalists;
- Under AIPPA freedom of speech is limited by criminalising the publication of false statements;
- The Media and Information Commission has been instrumental in the shutting down of private newspapers, including the *Daily News* for the non-registration of journalists;
- The Broadcasting Services Act limits freedom of expression by making it mandatory for broadcasters to receive a licence from a government controlled regulatory body;
- No licences have been awarded to non-government public broadcasters;
- The government has arrested individuals linked with broadcasters broadcasting into Zimbabwe from outside the country;
- Under the Public Order and Security Act it is criminal to publish derogatory statements of the President;
- The government has failed to investigate and prosecute the bombing of printing presses belonging to an independent newspaper;
- Journalists working for independent media houses are routinely harassed and arrested by the police and members of the ruling party, and have in some cases been tortured.

Suggested Questions for State Delegates

- What steps is the government of Zimbabwe taking to amend existing laws, especially the Access to Information and Protection of Privacy Act, the Public Order and Security Act and the Broadcasting Services Act to comply with its obligations to ensure the right to freedom of expression under the African Charter on Human and Peoples' Rights?
- What steps are being taken by the government of Zimbabwe to prevent harassment and illegal arrest of journalists?
- What steps are being taken by the government of Zimbabwe to ensure that independent broadcasters are licensed in Zimbabwe?
- What steps are being taken by the government of Zimbabwe to investigate and prosecute individuals responsible for the bombing of independently owned printing presses?

Freedoms of association and assembly

Article 10

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

Article 11

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

Summary

- The Public Order and Security Act (POSA) limits the freedoms of association and assembly by making it illegal to hold a meeting without giving the police 3 days notice of the meeting and certain police officers have wide powers to prohibit public meetings;
- The Police are given further wide powers to disperse protesters and organisers of demonstrations are held liable for all damage caused during the demonstration, regardless of fault;
- The police have interpreted POSA to allow them a discretion to disallow public meetings and have abused this by “denying permission” to meetings and demonstrations organised by the opposition or civil society;
- Meetings by the Opposition MDC, and civil society organisations such as the NCA and women’s groups have been violently dispersed by the police;
- War veterans, and members of the ruling party have attacked members of the opposition and civil society with impunity;
- There are serious limitations on the legal right to strike with the result that strikes are invariably held unlawful.

Suggested Questions for State Delegates

- What steps are being taken by the government of Zimbabwe to amend or replace the Public Order and Security Act to ensure protection of the rights of Zimbabweans to association and assembly?
- What steps are being taken by the government of Zimbabwe to ensure that the police do not abuse powers granted to them under POSA to prohibit and disrupt meetings and demonstrations arranged by the opposition and civil society organisations?
- What steps have been taken by the government to investigate and prosecute police officers who have unlawfully used violence to disrupt meetings and demonstrations?
- What steps has the government of Zimbabwe taken to investigate allegations of violence against members of opposition parties and civil society by militias loyal to the ruling party and to prosecute offenders?

Freedom of movement and residence

Article 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Summary

- The government of Zimbabwe has illegally deported persons, including Andrew Meldrum, from Zimbabwe despite court orders;
- The state has failed to protect individuals from militias that have, during election periods, established road blocks to keep opposition and civil society members out of areas perceived as ruling party strongholds;
- Constitutional Amendment 17 has allowed the government Constitutional authority to legislate to restrict the right to a passport on the basis of the undefined national interest.

Suggested Questions for State Delegates

- What steps are being taken by the government of Zimbabwe to ensure that unlawful deportations do not reoccur?
- What remedies are being made available by the government of Zimbabwe to persons, such as Andrew Meldrum, who have been unlawfully deported from Zimbabwe?
- What steps has the government of Zimbabwe taken to prevent militias from establishing illegal roadblocks?
- What steps are being taken by the government to ensure that legislation introduced under Constitutional Amendment 17 does not violate the right to movement as protected under the African Charter?
- What steps will the government of Zimbabwe take to ensure that Constitutional Amendment 17 will not infringe the right to freedom of movement as protected by the African Charter on Human and Peoples' Rights?

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Right to property

Article 14

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

Summary

- The state failed to protect commercial farmers' rights to private property by failing to prevent often violent farm invasions;
- The Land Occupiers (Protection) Act prevents commercial farmers from evicting settlers who settled on their land before 2002;
- Constitutional Amendment 17 has removed the right of farmers whose land has been expropriated from challenging the acquisition in Court;
- Operation Murambatsvina saw the destruction of houses, commercial properties, and commercial and personal property;
- Operation Garikai / Hlalani Kuhle has not been designed specifically to meet the requirements of persons directly affected by Operation Murambatsvina.

Suggested Questions for State Delegates

- What steps are being taken to ensure that violations of the right to property committed during Operation Murambatsvina do not recur?
- What steps are being taken to ensure that the right to property is protected against interference from non-state actors?
- What steps are being taken by the Government of Zimbabwe to ensure that the right to property is protected under the Constitution of Zimbabwe and the right can be enforced through the courts?

Right to work

Article 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

Summary

- Unemployment in Zimbabwe's formal sector is higher than 70%;
- Operation Murambatsvina had the effect of destroying employment and livelihoods in the informal sector;
- The government has introduced strict limitations on the right to strike in the Labour Act and POSA (the Ministry of Labour must certify that arbitration has failed before workers can strike, placing the right to strike at the discretion of a government department);
- The ruling party and government have harassed the main federation of trade unions, the ZCTU, which is seen as linked to the opposition and has created a parallel structure, the ZFTU, which is loyal to the ruling party;
- Farmers continue to use child labour, especially on plantations.

Suggested Questions for State Delegates

- What steps are being taken by the government of Zimbabwe to rectify the destruction to livelihoods and informal sector employment caused by Operation Murambatsvina?
- What steps are being taken by the government to ensure the internationally protected right to strike?
- What steps are being taken by the government of Zimbabwe to ensure the right of workers to organise themselves into independent trade unions?
- What steps are being taken by the government of Zimbabwe to eradicate the most harmful forms of child labour and to ensure that children are not prevented from receiving and education through subjection to child labour?

Right to health

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.

2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Summary

- In a retrogressive step public hospital care in Zimbabwe has declined in the last ten years with a reduction in life expectancy, and increased child mortality;
- State hospitals are understaffed and medicines are often unavailable;
- Lack of nutritious food has led to a 27% malnutrition among children across the country;
- The government has introduced cost-sharing schemes into the provision of health in Zimbabwe, limiting access to health care for the poor;
- Approximately 23% of the population is HIV positive but government is failing to provide sufficient HIV/AIDS drugs;
- There is political abuse of government schemes intended to allow access to health facilities for the very poor;
- The distance between communities and health facilities in the rural areas continues to be a serious blockage to the provision of health facilities.

Suggested Questions for State Delegates

- What is the government of Zimbabwe doing to correct the deterioration in the provision of health care in Zimbabwe?
- What is the government of Zimbabwe doing to address the HIV/AIDS crisis in Zimbabwe and the related decline in the life expectancy?
- What has the government done to ensure that those who cannot afford to pay for health care are able to access services?
- What steps have been taken by the government of Zimbabwe to ensure that the poor do not bear the brunt of the economic decline where access to health care is concerned?
- What steps have been taken by the government to ensure that health facilities are available to all Zimbabweans without discrimination?
- What steps have been taken by the government of Zimbabwe to ensure that health facilities are accessible in the rural areas?

Right to education

Article 17

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Summary

- By 2000 Zimbabwean adult literacy was estimated at 93%;
- However, the education system is under pressure:
 - Fees charged in both private and government schools are prohibitive;
 - Teachers in government and other public schools are underpaid;
 - Government control of the fees charged by private schools has limited the amount private schools can raise thereby compromising the quality of education;
 - Teachers have been threatened and harassed by ruling party militias in the rural areas;
 - The Drop out rate, especially for girls, between primary and secondary school is increasing.

Suggested Questions for state delegates

- What steps are being taken by the government of Zimbabwe to ensure that the economic decline in Zimbabwe does not especially hurt the poor with regards the enjoyment of the right to education?
- What steps are being taken by the government to ensure that private schools are allowed to provide education without undue interference from the state?
- What steps are being taken by the government of Zimbabwe to protect teachers from harassment and intimidation from militias?
- What steps are being taken by the government of Zimbabwe to prevent drop out at the end of primary school, especially by the girl child?

Summary of the effects of Operation Murambatsvina on the Economic, social and cultural rights

- The forced eviction of 700 000 people without the provision of alternative accommodation, which was the centre piece of Operation Murambatsvina, was a concerted attack on the right to shelter and housing and the right to dignity;
- Operation Garikai/Hlalani Kuhle failed to provide alternative accommodation to the majority of the victims of Operation Murambatsvina and was only implemented after the victims had already been made homeless;
- A substantive number of individuals directly affected by Operation Murambatsvina were recipients of anti-retroviral treatment supplied within their areas by NGOs before they were displaced;
- After the operation these patients were no longer able to access the drugs because they had been displaced;
- School children were also displaced during Operation Murambatsvina and were forced to move out of their homes with their parents, forcing the children out of class and in some circumstances preventing children from writing their examinations.

Suggested Questions for State Delegates

- How has Operation Garikai/Hlalani Kuhle met the challenge of Operation Murambatsvina? Of the 700 000 people evicted how many have been accommodated under the new Operation?
- How has the government of Zimbabwe responded to individuals who were receiving anti-retrovirals and who were displaced under Operation Murambatsvina?
- What steps were taken by the government of Zimbabwe to ensure that the right to education of all affected children was ensured? What steps were taken to minimise the effect of Operation Murambatsvina on the right to education of affected children?