

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

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

**COMPILED 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 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. As a matter of fact the State has retrogressed by enacting legislation that is inimical to the provisions of the African Charter. Over the period between 1996 to April 2006 the Government has passed a series of legislation that drastically curtailed many of the rights and freedoms contained in the Charter. It has criminalized dissent and protest by persons opposed to or critical of the Government. The restrictions are beyond what is justifiable in a democratic state. It has severely restricted freedom of speech and freedom of the media. It has

made concerted efforts to purge the judiciary of independent judges and to replace them with judges aligned to the ruling party. It has sought to transform the law enforcement agencies from professional, apolitical forces in forces that will enforce the laws in a partisan fashion and will 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 party of Zimbabwe has failed in its obligations to protect. 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 book.¹ 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.

Violations of economic social and cultural rights have been abundant. The widespread forced evictions in the year 2005 caused enormous suffering, leaving an estimated 700 000 people without shelter or means of support.² The calamitous economic decline that has been experienced in Zimbabwe has pushed growing numbers of Zimbabweans below the breadline and badly affected health delivery services.³

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.

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 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.

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

The Government of Zimbabwe has presented to the African Commission on Human and People's Rights a combined report covering the period from 1996 to April 2006.

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. There is

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>.

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 rights and says little about progress made by the state of Zimbabwe since the last periodic report was considered.

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 include a serious economic recession,⁵ the HIV pandemic and political and social polarisation.

⁵ The Gross Domestic Product is estimated to have 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

Between 1997 and 2000 there was increased poverty and political polarisation. The economic meltdown in 1998 resulted in violent protest over increases in basic food.⁶ The state party of Zimbabwe responded to the protest by resorting to excessive and indiscriminate use of force.⁷ Thereafter there were a number of significant developments all aimed at creating democratic space for Zimbabweans to exercise fully their human rights. Some of these developments include the formation of an independent daily newspaper *The Daily News*,⁸ the broadcast of private radio and television stations (*Capital Radio* and *Joy TV*), the more active participation by NGOs in governance and human rights matters (for example the formation of the National Constitutional Assembly (NCA) calling for a new Zimbabwean Constitution), and finally in the formation of a new opposition party, the Movement for Democratic Change (MDC). All these developments constitute avenues for legitimate forums for political dissent. 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 NCA, opposed the work of the government appointed Commission on the grounds that the process adopted by the government was

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 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

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, the draft constitution prepared by the Constitutional Commission was unacceptable to civil society in that although the government had consulted widely on the contents of the Constitution some concerns over important issues were ignored, disregarded or not properly taken into account. The draft Constitution was rejected by the people of Zimbabwe at a referendum in February 2000. The NCA was the driving force behind the campaign to reject the Constitutional Commission draft.

The overwhelming NO vote against the Constitutional Commission was the first poll defeat to ZANU (PF). Immediately after the Election violence increased dramatically during the referendum campaign and state security agents were allegedly directly involved in violence against opponents of the draft constitution. Some supporters of the ruling party were also involved in the violence and the state failed in its obligation to prosecute these perpetrators. 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 officers in a branch of the Zimbabwe Republic Police known as the Criminal Investigation Department, and more generally regular members of the Zimbabwe Republic Police and the Zimbabwe National Army. The Forum claims that 74% of human rights violations reported during this month were perpetrated by the ruling party i.e. ZANU PF supporters and ZANU PF youth militia.⁹

Redistribution of minority white owned 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. There had been a brief period of active distribution between 1980 and 1985. In 1999 the veterans of the struggle for liberation (war veterans) and peasants from communal areas invaded some minority white

⁹ See *Organised Violence and Torture in Zimbabwe in 2000*, Zimbabwe Human Rights NGO Forum (2000)

owned land. While originally opposing these invasions the government changed its policy after the defeat in the 2000 referendum. The government openly supported the 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.¹⁰

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)¹¹ 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.¹²

¹⁰ 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.

¹¹ 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.

¹² 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.

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 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.¹³ 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.¹⁴ 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.¹⁵ Government officials have also refused to comply with court judgments which they do not like.¹⁶ A

¹³ 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.

¹⁴ 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.

¹⁵ 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.

¹⁶ 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.

judge¹⁷ 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 delivering judgments seen to be in favour of the opposition or against the government. The government has failed to provide effective protection to the magistrates or to prosecute the alleged perpetrators of such violence.¹⁸

Elections since 2000 (the Parliamentary elections of 2000, subsequent bye-elections, and the Presidential election of 2002) have all been marred by election and political violence¹⁹. The opposition parties have repeatedly alleged that the electoral playing field favours the ruling ZANU (PF) because of such factors such as highly restrictive press and association/assembly laws, partisan political management of elections, political manipulation of food aid by government officials to influence voters and threats by pro-ruling party chiefs to expel people from their villages if they vote for the opposition.²⁰

Approximately 300 people have died as a result of political and land-invasion related violence. The Zimbabwe Human Rights Forum reports that between 2000

¹⁷ Justice Paradza, arrested on allegations of corruption. He was subsequently tried and convicted and he fled the country.

¹⁸ For a detailed survive 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*. See also Appendix A to this document on the Independence of the Judiciary.

¹⁹ 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*.

²⁰ 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

and 2002, there were 2 087 cases of violent violations of human rights (rapes, murders, assaults). 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.²¹ Non governmental organisations have attempted to address some of these challenges by instituting civil claims against the state. 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 that occurred between the years 2000 to 2002 (crimes such as murder and rape were excluded from this amnesty). Such a blanket amnesty added to the climate of impunity and violated the obligations of the state under international human rights 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 state controlled body was introduced for broadcasters and mass media houses and journalists were required to register and accredit respectively with the Media and Information Commission, appointed and controlled by the Minister of Information. Under this law 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

²¹See *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>.

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. Other newspapers have also been closed down for failing to meet the requirements of AIPPA. Criticism of the state president was criminalized, as was 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 regularly against the opposition MDC in the majority of elections until 2005 and against civil society organisations such as the NCA. The political rights of the MDC, the NCA and other groups to freedom of association, assembly and expression have been interfered with and denied by the police. 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 issued threats against 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 opposition political parties 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. The MDC has rejected the results of the election, claiming that the result was rigged.

There was a marked decrease in political violence during the March 2005 elections, but the use of food aid as a political tool, political intimidation by the Chiefs and vote rigging remained serious issues of concern.²² 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 party. 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 warning and forced others to destroy their own houses. Children and some sick people who were living in the targeted areas were displaced without alternate accommodation or sufficient medical attention and facilities. The United Nations Special Envoy noted that the forced evictions violated the right to housing protected at international law. She further noted that

²² *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>.

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 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.²³

There has been an increasing militarization of the Zimbabwean state, with army officers being appointed to key positions on various government bodies and parastatals and the army being used in various roles, for instance in the agricultural sector. This growing influence of the military in civilian affairs is symptomatic of a state that is heading in an ever more authoritarian direction.

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.²⁴ 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.

²³ *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>.

²⁴ IRIN Saturday, October 07, 2006.

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. One member of the Opposition MDC, Gift Tandare, was shot dead by police during the disturbances. 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. Another member of the MDC and member of Parliament was assaulted and seriously injured by thugs at the Harare International Airport.

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.

Up until early 2000, the government continued with its policy of reconciliation as reflected by the ruling party and government's incorporation of different interest

groups in their structures. It continued to promote women's development and gender equality. Discrimination however continued to be permitted by the Constitution, which allows discrimination on the grounds of gender/sex if this occurs with relation to personal and family law and the practice occurs under customary law. Section 23(3) of the Constitution therefore exempts customary law from the non-discrimination clause of the Zimbabwean Constitution. Section 23(3) of the Zimbabwean Constitution is in contradiction with articles 2 and 3 of the African Charter as it specifically allows customary law, as applied by the Courts, to discriminate between men and women in the application of family and personal law. To this extent the State of Zimbabwe has failed in its obligation to domesticate the provisions of the African Charter with respect to non-discrimination and has failed in its obligation to ensure non-discrimination and equality before the law.

In the case of *Magaya v Magaya* 1999 (1) ZLR 100 (S) the Zimbabwean Supreme Court held that section 23(3) of the Constitution exempted the customary law rule that only male descendants could inherit from the deceased from scrutiny under the non-discrimination clause of the Zimbabwean Constitution. The court held that women could not inherit property as an heir under customary law. Although the government has amended the Administration of Estates Act (as at 1 October 1997) to ensure that all heirs of intestate estates benefit from the estate (whether male or female) estates governed by the law prior to that date continue to be distributed according to the discriminatory practice. Despite the amendment to the Administration of Estates Act discriminatory acts such as asset stripping by male relatives of the deceased continue in violation of the law. The State of Zimbabwe has failed to protect its citizens from such violations of the rights protected under articles 2 and 3 of the African Charter.

The rights to life (article 4), health (article (16)) and the right to economic, social and cultural development (article 22) as interpreted by the African Commission

on Human and Peoples' Rights include the right to food, see *The Social and Economic Rights Action Center for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. No. 155/96, (2001). The Commission has further held that the right to food is inextricably linked with the right to dignity (article 5). The State of Zimbabwe has failed to ensure that the right to food be enjoyed without discrimination in that it has allowed partisan distribution of food aid and has therefore failed in its obligation to comply with the requirement of non-discrimination under article 2 of the African Charter. Food aid is used as a campaigning tool by members of the ruling party who refuse to allow access by members of the opposition to government relief distribution and attempt to interfere with aid agency food programmes. In 2002 a mother of nine "tried repeatedly during 2002 to get on to WFP feeding lists and was told by the local community leaders responsible for drawing up lists that she was not eligible as she was [a member of the] MDC. The kraal head... came to her home and told her she had to surrender her MDC cards if she wanted to benefit from ... donor food."²⁵ Food aid continued to be politicised during the 2005 election with voters in rural constituencies rewarded with maize where they had voted for the ruling party.

During the fast track land reform and especially during elections the government used racist propaganda to incite anti-white feeling. Racial discrimination has also affected the administration of justice. White farmers attempting to evict settlers from their farms have had court orders ignored by the government. The state report refers to the Land Reform Programme as a method of fighting racial discrimination in the private sector. However, where racist statements have been made by state officials during the process this has had the effect of creating

²⁵ Human Rights Violations: Politicization of International Relief Assistance Human Rights Watch *October 2003; Partisan distribution of food and other forms of aid at District Level The Case of Manicaland* Zimbabwe Peace Project September; *Zimbabwe Power and hunger – violations of the right to food* Report by Amnesty International; *Operation Taguta/Sisuthi Command Agriculture in Zimbabwe: its impact on rural communities in Mataberland* Solidarity Peace Trust April 2006. In a number of electoral cases in the High Court the court has found that food was used as a political weapon against members of the opposition.

racial discrimination against minority white Zimbabweans, a position that is not compatible with the African Charter.

While the state report refers to the utilisation of the Land Reform Programme as a method of correcting racial imbalances in the country in accordance with its obligations, an acceptable approach, the effect of the land reform has not markedly improved the enjoyment of rights by the majority of Zimbabweans. Because of corruption within the land reform, high quality land has been distributed to senior government officials and the majority of landless people confined to virgin land. This situation has not improved the ability of the poor and vulnerable to provide for their basic needs in accordance with economic, social and cultural rights protected under the Charter. Much of the best quality commercial farmland has been used for patronage purposes and has found its way into the hands of ruling party officials, with some officials grabbing multiple farms. Further, the state report does not give accurate information regarding the effect of the land reform programme on the rights of women: there is no disaggregated information on the basis of gender regarding beneficiaries and victims of the programme.

Efforts to increase gender representation in educational facilities are commendable. However, statistics from UNICEF indicate that as school attendance and primary school completion rates have fallen in Zimbabwe over the last five years, the proportion of girls to boys completing primary education has dropped. Attempts to meet this problem with affirmative action at Universities will not solve the problem. The government report has not given details as to how much progress has been made in realising equality between the girl and boy child in the provision of education. There is no indication whether affirmative action has succeeded in achieving equality and non-discrimination. Information available tends to show that the drop out rate among primary school students of the girl child means that in practice discrimination against the girl child remains a serious problem in Zimbabwe. Further, the recent introduction of commercial fees

for University Education and the reduction in government support for students have probably a particularly negative effect on the rights of the girl child and prospective female candidates and professionals. Unfortunately the state report does not deal with this issue.

Although the ruling party has adopted a policy that at least one third of all its candidates must be women this has not successfully translated into a strong representation in Parliament as female candidates are often chosen by political parties, including the ruling party, in seats where they are unlikely to win. However, no information has been given on employment within the government. Indications from government are that employment continues to be gender biased. In 2001, for instance, out of the 29 Directors in the different ministries, only one was a woman, of the 57 Deputy Directors, 16 were women and of the 10 assistant directors only 2 were women.

The government has introduced a Ministry of Women's Affairs but the state report is silent on how this Ministry is working towards the equality of women; specifically there is no evidence on what programmes the Ministry is running, what its priorities are and what budgetary allocations it will receive. The government also highlights its Gender Policy, which is supposed to give equal opportunities in business and employment to women. However, what the report does not show is how this policy is actually going to be implemented to achieve this goal. Further the report does not show that this policy only became official in 2005 and that in practice, this policy has not been mainstreamed into the different government departments, let alone legislation and other policies.

Considering the gender impact of HIV/AIDS the Government report does not show what gender sensitive strategy it has in place for people living with HIV and AIDS, seeing as its National Aids Trust Fund initiatives failed to address the practical needs of women living with HIV and AIDS.

The state report does not give information on how negative customary practices, such as lobola, polygamy and female genital mutilation are being gradually eradicated as claimed. Considering the serious nature of the problems created by these practices, the government has an imperative obligation to eradicate these practices as soon as possible.

The government has regulated the manner in which private schools charge fees and levies, arguing that the fees and levies in such schools are kept artificially high in order to maintain racial division in education. However, the effect of the government's regulation has been to prejudice the enjoyment of the right to education by children whose parents can afford private education. In fact, the majority of children in private schools, which include mission schools as well as commercial entities, are mainly black and the regulation of fees has negatively affected all children, whether black or white. Such a failure in the obligation to respect the right to education cannot be justified on the basis that it is designed to correct racial imbalances as the policy does not succeed in doing so.

Lesbian, gay, bisexual, transsexual and intersex people (LGBTI people) in Zimbabwe remain subject to discrimination, harassment and violence. Laws, general social stigma and the persistent calls by political leaders in Zimbabwe for homosexuals to be arrested, translate into a climate of fear for LGBTI people in the country. The main NGO advocating LGBTI rights, GALZ, is unable to counter frequent claims by the state owned media that homosexuals are by nature criminals because it is not given the right of reply. Furthermore, the criminalization of consensual sex between adult males remains an invitation by the unscrupulous to engage in blackmail. Not only is GALZ continuing to grapple with this problem, but the difficulty is compounded by the police most frequently taking the side of the extortionist, and often concluding with the extortionist in the attempt to extract money from the gay man. The Government of Zimbabwe has entrenched rather than addressed the situation. In 1999, GALZ made a submission to the government-led Constitutional Commission, calling for the

inclusion of sexual orientation in the anti-discrimination clause in the new draft national constitution. Its arguments in this regard were ignored. Under the present constitution, there is little that GALZ can use to challenge homophobic laws. The recent codification of the Criminal Law broadens the definition of sodomy to include any physical contact in public that may be interpreted as sexual and increases the penalties for same-sex sexual activity between men. Although no laws prohibit sexual contact between women, such is the prejudice in the minds of law enforcement agents that it is difficult to get them to follow up cases involving women who have been attacked on the basis of their sexuality.

Unlawful restrictions and harassment of GALZ when it attempts to participate in community events and to hold meetings continue. Each year Zimbabwe hosts an International Book Fair ZIBF. Despite winning a High Court appeal in 1996 to participate at this event, in 2005 and 2006, GALZ was forcefully removed from ZIBF by persons believed to be members of the Government's security services. On both occasions, the police, who are paid to provide protection to all participants, stood by and watched. GALZ members have been arrested for holding membership meetings in hotels. In 2006 alone, the police unlawfully stopped four meetings of GALZ members. Homosexuals are invisible in all national HIV/AIDS programming and, in this context, although it is known that sexual relations take place between men and between women in prisons, it remains illegal to distribute condoms amongst prisoners.

International human rights fora, established under treaties to which Zimbabwe is a signatory, have accepted LGBTI rights as human rights. The Zimbabwe government is duty bound in accordance with these treaties to amend its laws accordingly.

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?

What measures does the GoZ hope to put in place to ensure that women benefit from the various land allocation schemes?

How widely has the GoZ disseminated its National Gender Policy and what are some of the practical measures in place for its operationalisation?

What steps has the GoZ taken to popularize its obligations to its citizens under the African Charter on Human and People's rights as well as in respect to CEDAW?

When does the GoZ intend to make the recently enacted Domestic Violence operational and what measures have been put in place for its operationalisation?

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.

The state of Zimbabwe has an obligation under this article and under international human rights law to refrain from arbitrarily depriving individuals of their lives. The right to life entails an obligation on the state to protect individuals from unlawful interference with their bodily integrity from third parties. The state of Zimbabwe has failed in both its obligation to respect and its obligation to protect with respect to these rights. State agents have used violence on a widespread basis against opponents of the ruling party and 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. Admittedly there have been few prosecutions of ruling party supporters but regrettably this has not been at the levels commensurate with the incidences complained of.

Farm invasions in 1999, 2000 and 2001 were often violent in nature and often led to violent confrontation with other communities on the farms, which led to assaults, rape, and murder. The violence was predominantly perpetrated by war veterans who spearheaded the land invasions and on occasion by farm workers trying to evict settlers. Statements by the government inciting land invasions as a form of land reform lead to the conclusion that land invasions were subject to a command structure from the ruling party and government. The government has failed to institute prosecutions for the majority of perpetrators of violence during this period. Many of the murders reported during the period of land invasions remain unresolved.

According to Amani Trust, during the period June 2001 to June 2003 34% of all perpetrators of violence were state agents, and between March and August 2005 50% of perpetrators were state agents.

In 1998 there were public protests against increases in the price of basic food. The protests turned violent and the security agents responded disproportionately when they indiscriminately fired live ammunition at the protesters. The resort to use of force by the security agents was not consistent with the United Nations Minimum Standards on the Use of Lethal Force. Eight people were killed during the protests.

All elections since the constitutional referendum of February 2000 and until the Parliamentary elections of March 2005 have been marred by political violence, which at times resulted in extra judicial killings. The Human Rights NGO Forum reports that there have been 3 328 political violence cases reported to the Human Rights NGO Forum and 3 249 through the press since 2000²⁶. Political violence has led to the death of approximately 300 people since 1999. Some of these deaths have been caused by agents of the state (policemen or soldiers) during election periods while other have been caused by militias, ruling party youth wings, opposition supporters and war veterans. Statistics from Amani Trust show that in 2004, 703 cases of human rights violations relating to violence were reported compared to 453 in 2003. There were 3 politically motivated killings in 2004 and 132 torture cases. The figures for state agents as perpetrators rose from 213 in 2003 to 251 in 2004. In 2003 no incidents of youth militia as perpetrators were recorded but 144 cases were reported in 2004. From March-August 2005 313 new cases of human rights violations relating to violence have been recorded by the Amani Trust²⁷. There is a systematic pattern in the chain of command in the carrying out of these violent acts that link the actions of ruling party militias and youth wings and war veterans to the government of Zimbabwe.

²⁶ Human Rights NGO Forum, accessible at http://www.hrforumzim.com/frames/inside_frame_special.htm.

²⁷ Amani Reports 2003-5

Under its so-called Youth Training Programme youths have been given military style training and have been indoctrinated and encouraged to attack or harass opposition supporters.²⁸

The government of Zimbabwe has failed in its obligation to protect the right to life and integrity of the person and to provide a remedy to the victims of political violence by prosecuting those accused of perpetrating political violence. The government of Zimbabwe has noted that civil claims have been brought against the government for many of these violations. However, civil remedies in the absence of criminal prosecution are not sufficient to meet the obligations of the state. Further, in these cases decisions have been made against the government but the government has failed to pay the damages ordered, which have as a result of inflation, become meaningless awards. Below is a schedule of the outstanding judgements that the government is failing and/or refusing to pay.²⁹

FILE NAME	DATE OF SETTLEMENT	DATE OF JUDGMENT	REF NO.	CASE NO.	AMOUNT DUE	INTEREST	TOTAL VALUE OF CAPITAL DEBT + INTEREST IN NEW CURRENCY	VALUE IN US\$ @ \$250
Jethro Nyakunu	11/09/03				\$53 000.00 (Old Currency)	\$61 833.33	\$106.00	0.42
Garikayi Murungweni	06/00				\$10 000.00 (Old Currency)	\$10 000.00	\$20.00	0.08
Lameck Sengure	06/03/04				\$2,7 Million (Old Currency)	\$2 677.50	\$2 702.68	10.81
Nyaradzai	24/05/02		4/HA/1702L	HC	\$135	\$135	\$270.00	1.08

²⁸ *National youth service training - "shaping youths in a truly Zimbabwean manner" An overview of youth militia training and activities in Zimbabwe, October 2000 – August 2003* Solidarity Peace Trust 5 September, 2003

²⁹ Compiled by the Zimbabwe Human Rights NGO Forum.

Katsande			MM	11049/98	000.00 (Old Curren cy)	000.00		
Ishmael Makarabwe			4/HA/4430 RG/IM	HC 10148/03				
Gabriel I Kawara	7/12/99		4/Def/363/		\$10 000.00 (Old Curren cy)	\$10 000.00	\$20.00	0.08
Ruth Manikai		01/07/05	4/HA/4457 FR mhb	HC 10435/20 03	\$8 552.50 (Old Curren cy)	\$9 980,65 (Old Currenc y)	\$17.11	0.07
Rachel Ndlovu		2/11/05	4/HA/4407 EJ/cc	HC 9782/03	\$20 050 000.00 (Old Curren cy)	\$8 187.10	\$28.24	0.11
Gavin Prince		22/11/06	4/DEF/499 CRM/IM	HC 8934/04	\$33 617.50 (New Curren cy)	\$1 961,02	\$35 578.02	142. 31
Phanuel Mapingure		16/11/05	4/HA/4272 CM/mhb	HC 9922/200 3	\$950 000.00 (Old Curren cy)	\$1 050.00 (Old Currenc y)	\$951.02	3.80
Kerina Gweshe		01/03/06	4/DEF/492 KRSM/cc	HC 9784/200 3	\$10 000 000.00 (Old Curren cy)	\$10 000 000.00 (New Currenc y)	\$20 000.00	80.0 0
Sophia Matasva		29/03/06	4/HA/5208 RGM	MC 3791/200 5	\$4 850 000.00 (Old Curren cy)	\$2 910.00 (New Currenc y)	\$7 760.00	31.0 4
Bridget Dube		03/06/06	4/HA/4886 EJ/cc	MC24692 /05	\$15 000 000.00 Old Curren cy)	\$2 625.00	\$17 625.00	352. 50
Trust Shumba	04/10/04		4/HA/2497 CM	HC 10391/20 01	\$1 085 000.00 (Old Curren cy)	\$854.43	\$1 939.43	7.76
Margaret Kulinji	20/02/06	20/02/06	4/DEF/487 RGM/cc	HC 9320/03	\$7 000 000.00 (Old Curren cy)	\$2 450.00 +	\$9 450.00)	37.8 0
Sonile			4/DEF/481	HC	\$25	\$8	\$33	133.

Kulinji			KRSM/cc	9931/03	000 000.00	390.41	390.41	56
Barry L T Gondo			4/DEF/537- CM/cc	HC 10178/20 04	\$5 650 000.00 (Old Curren cy)	\$988.75	\$6 638.75	26.5 6
Joyce Mwachinduka		14/02/05	4/HA/2715 FR	HC3240/0 2	\$2 001 375.00 (Old Curren cy)	\$1 400 962.50	\$3 402.00	13.6 1

The 2005 general election showed a marked decrease in violence but violence by police officers against demonstrating workers and political violence during some mayoral elections have been reported in 2006. Further, while political violence has decreased there have been very limited efforts to punish perpetrators and remove the culture of impunity.

The forced evictions that took place in Zimbabwe during the months of May, June and July 2005 reportedly resulted in three deaths. During the evictions the police used violence to ensure that the orders were complied with, assaulting residents and vendors. In many instances the residents were given a short period within which to demolish their own houses placing pressure upon the residents and leading to injury being sustained by the residents while demolishing their own houses.³⁰

In the state report it is alleged that officers in the civil service who are involved in violations of the rights protected in Article 4 of the Charter are censured and are not “immune” from due process of the law. This is not correct. As noted above the culture of impunity in the country has meant that officers involved in such violations have not been censured or prosecuted. Further, the law enforcement agencies frequently refuse to comply with court orders which have been obtained

³⁰ *The Aftermath of a Disastrous Venture: A Follow-up report on "Operation Murambatsvina"* Zimbabwe Human Rights NGO Forum http://www.hrforumzim.com/frames/inside_frame_special.htm ; *Discarding the Filth operation murambatsvina* Solidarity Peace Trust 27 June 2005

in respect of unlawful detention and other unlawful interference with personal integrity.

The government passed legislation to reintroduce juvenile whipping despite a Supreme Court Ruling that had ruled such punishment to be unconstitutional. The civic organisations that prepared this report strongly believe that the practice of juvenile whipping as a criminal punishment violates the dignity of juveniles and is contrary to the internationally recognised prohibition against cruel and inhuman punishment.

While the government report refers to mechanisms adopted by it to facilitate the right to life and it accepts the positive duties inherent in the right to life to facilitate basic needs protected under economic, social and cultural rights, the government report fails to refer to challenges that negatively affect the enjoyment of economic, social and cultural rights and thus affect the right to life. Food shortages and the absence of medicines and medical staff in hospitals across the country (see below) have the effect of violating the right to life. The life expectancy in Zimbabwe is currently pegged by UNICEF at 38 years, as a result of the failure by the government to fulfil its obligations to provide basic needs. Such failure has been especially noted in the failure by the state to provide anti-retroviral drugs to those Zimbabweans who cannot afford to buy the drugs.

Summary

- **Especially during the 1998 food riots and during election state agents have used violence on opponents of the ruling party and 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;**
- **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 army and police officers assaulted individuals that failed to destroy their homes within short deadlines.**

Suggested Questions for 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.

Freedom from torture is of immediate application and cannot be derogated from in any circumstance under the Charter or under international law. The states party to the African Charter undertake to take measures, including but not limited to legislative measures, to ensure that everyone enjoys the right to freedom from torture. Section 15 of the Zimbabwean Constitution protects the right to freedom from torture, inhuman or degrading punishment or other such forms of treatment, but does not specify what constitutes these forms of human rights violations.

Despite the protection in the Constitution Zimbabwe does not specifically criminalize torture. The state of Zimbabwe has also failed to ratify the United Nations Convention Against Torture. This notwithstanding the prohibition of torture is understood to be part of customary international law which means that the State party of Zimbabwe has specific obligations to take all necessary measures to combat torture.

Frequent allegations have been made of torture of political opponents, including assault and rape, by both members of the security forces and members of ruling party militias and war veterans with the apparent consent and approval of the government.³¹ Thus in 2002 the NGO Forum noted,

³¹ *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 Zimbabwe Human Rights NGO Forum also refers to amnesties for political offences, which had the effect of granting impunity to perpetrators of torture during the period.

there is increasing evidence of the involvement of formal State agencies such as the Zimbabwe Republic Police (ZRP), the Central Intelligence Organisation (CIO) and the Zimbabwe National Army (ZNA) in the perpetration of gross human-rights violations. In recent months, human-rights organisations have seen a dramatic increase in cases in which State agencies are alleged to have committed human-rights violations. This represents a change in the profile of human rights violations, which hitherto have been allegedly committed mainly by Zanu PF supporters, youth militia and so-called 'war veterans'.³²

There have been allegations of torture of arrestees and detainees throughout the country. In violation of national and international law police regularly use force in arresting suspects where no force is required, use excessive force against arrestees resisting arrest and assault and torture detainees to extract confessions. Arrests and detentions are designed to humiliate detainees, for example, when a person is arrested s/he is made to sit on floors by police officers even though there are benches provided for that purpose.

Suspects in police detentions are systematically tortured and subjected to cruel and inhuman treatment by investigating officers to extract confessions. Torture is apparently endemic within the Zimbabwean police force and is used as the primary source of obtaining information. There have been numerous reports of people forced to 'confess' to committing crimes or to give information to the authorities through torture.

Political opponents of the government accused of criminal offences are subjected to torture, cruel and degrading treatment. In the case of *S v Sikhala and others* the magistrate refused to place the accused persons on remand after he was convinced with medical evidence that the accused persons (including an opposition member of Parliament and his lawyer) had been tortured while in custody. More recently there have been allegations that some senior members of the political opposition MDC formations were subjected to torture while in police

³² *Ibid.*

custody. They appeared in court with broken limbs and other physical scars consistent with injuries sustained during torture.

The government fails to abide by its duty to provide a remedy by failing to institute enquiries into allegations of torture such as those made in the *Sikhala* case, and failing to prosecute suspected torturers.

The issue of impunity has been raised many times in the reports of the Human Rights Forum and, most recently, has been extensively argued by Amnesty International. It is evident that torture is a serious problem in Zimbabwe – the plethora of reports attests to the truth of this statement – and it seems now that State agencies are themselves seriously implicated in torture. Undoubtedly impunity, whether formal in the case of amnesties, or informal in the way that the State refuses to take serious action in respect of any allegation of torture, contributes strongly to the continuance of torture in Zimbabwe.³³

In cases of public protest, members of the riot squad often takes it upon themselves to administer severe beatings upon unresisting protestors they have arrested before they take them into custody. Most of these assaults seem to be to punish and intimidate the protestors and not to break up violent demonstrations or to subdue those resisting arrest. The use of such force is blatantly illegal.

Despite the fact that torture constitutes offences at Zimbabwean law, the failure by the government of Zimbabwe to investigate and prosecute alleged perpetrators of torture indicates state complicity in torture. Failure to investigate and prosecute individual police officers accused of torture further constitutes a failure by the government to meet its obligation to protect the right to freedom from torture. Chief Inspector Dowa of the Zimbabwe Republic police was implicated in several cases involving the torture of detainees, which came to light while he was on duty at the United Nations. The United Nations recommended that he be investigated and arraigned before the courts for prosecution, but the government has failed to investigate and prosecute the matter, giving credence

³³ *Ibid.*

to the belief that he acted with the state's acquiescence in torture. Additionally when torture has been used against political opponents of government, government officials, including the President, have sometimes sought publicly to justify or condone the torture.

The state has also been implicated in cases in which third parties (war veterans and youth militia groups like the Kwekwe based 'Taliban' and Mbare-extracted *Chipangano*) linked to the ruling party and the government are allegedly involved in torture. The war veterans, traditional leaders and youth militia are linked to the ruling party and come under the authority of members of government acting in their capacity as members of the ruling party. There is a command structure for these non-governmental groups which confirms the control of government over their activities. The groups have also been accused of perpetrating acts of torture, cruel and inhuman treatment and degrading punishment especially against actual or perceived opponents of government, with the tacit approval of the government or members of the security forces.

The Supreme Court has ruled that the conditions in some Zimbabwean police cells amount to inhuman treatment.³⁴ The cells condemned by the Supreme Court are reflective of the generality of police cells in Zimbabwe. The Zimbabwean government, by failing to ensure that police cells meet international standards and do not create unduly cruel conditions for prisoners has failed to fulfil its obligations under article 5 of the African Charter.

The effect of operation *Murambatsvina* was further to restrict the dignity of those people directly and indirectly affected by the operation. The report of the United Nations Special Envoy was to the effect that 700 000 people were directly affected by the operation. According to a National Survey Report on the impact of Operation *Murambatsvina* produced by the Combined Harare Residents Association (CHRA), Action Aid International and the Zimbabwe Peace Project

³⁴ *Kachingwe & Anor v Minister of Home Affairs & Anor* S-145-04

(ZPP) in August 2005, the operation affected a total of 1,193,370 people in six sampled areas of Harare, Bulawayo, Mutare, Kariba, Beitbridge, and Victoria Falls. Men, women and children were forced out of their homes and exposed to the elements, with no sanitation and no services. Families were relocated to transit camps, which did not have any services or proper amenities or accommodation. Some members of families were forced to relocate to the rural areas splitting families and negatively impacting on the dignity of the affected persons. The destruction of houses and forced relocation from the urban areas constituted an invasion of the privacy of the affected individuals and an attack on their dignity. During the implementation of the operation government ministers referred repeatedly to the evictees in derogatory terms such as “mushrooms.” The manner in which the government effected operation Murambatsvina displayed a complete lack of respect for the right to dignity of those affected by the operation.

The State Report refers to the imposition of caning on juvenile offenders and argues that the penalty is “strictly supervised.” With respect, the imposition of caning on a juvenile is a violation of the state’s obligation to respect the dignity of the individual and constitutes cruel and inhuman treatment and is therefore a violation of the state’s obligations under article 5 of the Charter.

Summary

- **The government of Zimbabwe has not criminalised the offence of torture and had 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.

International and national law require reasonable cause and suspicion for arrests to be effected legally. Further, international law requires that these arrests should not occur arbitrarily, which is interpreted to mean that the arrests are not inappropriate, unjust, unpredictable and effected without due process of the law. The state further has an obligation to ensure that the individual enjoys security of his/her person. The state has an obligation to protect the individual from illegal and arbitrary interferences with his/her liberty from third parties. The concept of security is a broad concept that includes protection of all persons, including detainees, against unlawful assaults, threats and other interference with their security. Detention of persons in remand custody awaiting trial is allowed in accordance with the African Charter and international law only to the extent that it is necessary and reasonable in the circumstances of the case to, for example, prevent flight, prevent interference with the evidence and to prevent recurrence of the offence.

Illegal and arbitrary arrests by the police, especially of perceived critics of the government, have occurred throughout the period. In many cases arrests have been effected without reasonable cause and in violation of the procedures set out in the Zimbabwean legislation. Detention in Zimbabwe's remand prisons awaiting trial has been unnecessarily and unreasonably prolonged in the majority of cases, breaching the government's obligation to respect the individual's right to liberty and to be tried for alleged offences within a reasonable period of time. Regulations have been promulgated by the state that exclude certain categories of detained persons from bail for a period of 21 days while the police investigate accusations of "serious economic crimes" and certain crimes of a political nature. Threats have been made against individuals, members of the opposition, and members of the racial minority by members of the government, the ruling party and groups linked to the ruling party. The state has failed to provide protection or a remedy for the victims of such threats by instituting prosecutions.

Illegal arrests, i.e. arrests where there is no reasonable suspicion have occurred in high profile cases such as the illegal arrest of the former president of the Law Society Sternford Moyo. However, numerous other cases occur on a daily basis, examples including the arrest of two journalists (Pedzisai Ruhanya and Ishmael Mafundikwa) during Morgan Tsvangirai's treason trial, who were arrested purportedly under section 21 of the Public Order and Security Act (which makes it an offence to commit acts or make statements that engender hostility towards the police) and were released when the Attorney General's office refused to prosecute. The failure to prosecute the two journalists indicates that they were arrested and charged without reasonable suspicion.

Arms of the state not permitted to arrest civilians and third parties acting on their own have unlawfully interfered with the right to liberty. The army, which does not have arresting or detention powers, illegally and arbitrarily detained two journalists from the *Standard* newspaper in 1999. Ray Choto (arrested by the police on January 19 1999 then handed over to the military for interrogation) and Mark Chavhunduka (arrested by the army on January 12 1999) were detained and questioned by the army over a story they had written in the *Standard* on January 10 1999, about an alleged coup plot against the state president and government by disgruntled soldiers in the DRC. The two journalists were badly tortured while in the custody of the army. The army refused to release the two journalists despite three High Court orders demanding their release. After their release from the army's custody, the High Court in March 2000 ordered the police commissioner to investigate reports that the two were tortured while in the army's hands. The police have apparently failed to comply with this court order. The government has compensated some of the victims of the torture in an out of court settlement but has not investigated and prosecuted those accused of the crimes.

In many other cases journalists are arrested and detained under the Access to Information and Protection of Privacy Act or the Public Order and Security Act

and are often released without charge. Activists of the National Constitutional Assembly and the Women of Zimbabwe Arise, both NGOs, are regularly arrested and detained for peaceful demonstrations across the country. In many instances they are released without charge. It appears that there is a deliberate strategy on the part of the State to use pre trial detention as punitive and deterrent measure.

While unreasonable and unnecessary detention have been noted in high profile trials (the detention of the former Minister of Finance, Mr Kuruneri, for a prolonged period on charges of externalisation of currency, and the detention of Mr Makamba, a former member of the ruling party on corruption charges for a period of 6 months), prolonged detention is the norm within the pre-trial system in Zimbabwe with one accused person being on remand in excess of six years.

Threats against the security of individuals have come from various levels within government and the ruling party. The *Daily News* reported that the president has stated that, “Those who try to cause disunity among our people must watch out because death will befall them.” The then Home Affairs Minister Dumiso Dabengwa was quoted by the *Independent* newspaper on 17 March 1999, threatened that the state would not hesitate to deal with “naughty journalists” by invoking the Law and Order (Maintenance) Act, especially section 50(2), which allowed arbitrary arrests.

The arbitrary arrests of members of the women activist group Women of Zimbabwe Arise (WOZA) during their peace marches in Bulawayo shows the state’s failure to respect its citizens’ right to liberty and freedom of assembly. The law to regulate protest marches and other demonstrations has been applied in a partisan manner evidenced by the frequent arrests of perceived opposition supporters during marches and the failure to arrest ruling party supporters during their demonstrations. There are a number of cases in which individuals complaining to the police of assaults by police or the ruling party have been subjected to illegal and arbitrary arrest and detention.

The government promulgated the Presidential Powers (Temporary Measures) (Amendment of Criminal Procedure and Evidence Act) Regulations, which curtail the right of individuals to liberty. The amendment prohibits persons accused of serious economic crimes and certain other crimes from being released from custody on bail for a period of 21 days from their arrest. These regulations remove the discretion of the judiciary in relation to the granting of bail and are an open invitation for the police to arrest without reasonable cause and then conduct investigations to try to find evidence implicating the arrested persons in these crimes.

Although the state report refers to national interests it is not indicated how the prolonged detention without access to a court can be in the national interests and how this can be justified in a democratic society. Essentially the regulations allow the police to arrest in order to investigate allegations, a position that is in violation of Zimbabwe's obligations under international law. The general principles of justice should apply to such cases and where an individual does not face a jail term, as conceded to be the usual situation in the state report, bail should on principle not be denied.

The use of community service as an alternative to custodial sentences is in conformity with the African Charter and International Law as it protects the right to liberty. However, the scheme requires trained and competent staff and is expensive to administer. The use of community service by Zimbabwean courts has declined in the last three years, partly because of the absence of funds to properly fund the project.

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.

The state report refers extensively to the independence of the judiciary. However many circumstances serve to militate against the independence of the judiciary, including structural and political issues. The President of Zimbabwe has an excessive role in the appointment of judges, taking advice only from the Judicial Services Commission. Judges salaries are inadequate forcing them to seek income elsewhere. Many judges have been direct beneficiaries of the land reform programme as a result and this makes them beholden to the government. Intense pressure was applied to judges perceived as being opposed to government to force them to resign. Threats against sitting judges and magistrates by political figures within government and the ruling party have been common, and some magistrates have even being assaulted by supporters of the ruling party. A sitting judge has been arrested in chambers on charges of corruption. Individual magistrates have received instructions on how to deal with particular cases and in certain cases circulars have been sent instructing how certain types of cases are to be dealt with. (For instance the

magistrates' courts were instructed not to deal with cases arising from Operation Restore Order).

While the country's Constitution provides for one to have their cause heard by a competent court, the state has been in breach of its obligation to observe this right in several cases. Members of the government have labelled members of the opposition as criminals before the trials have even commenced, let alone completed. This has the effect of trying the individual in the media and denying him or her the right to be presumed innocent until proven guilty and the right to a fair trial. Further the administration of justice in Zimbabwe has been compromised as the executive has overridden court decisions or has sought to influence the courts to make rulings in its favour, especially in cases involving perceived or known political opponents.

Former finance minister, Christopher Kureneni who had a lengthy stay in remand prison after being arrested on charges of externalisation of foreign currency is one example to show how the state failed to protect the right to be presumed innocent until proven guilty. Although there was no cogent reason to deny him bail, Mr Kuruneri was repeatedly denied bail and detained in custody before he was finally released into house arrest. The political pressure on the judiciary through political statements labelling Mr Kuruneri a saboteur of the economic recovery programme was intense. Although Mr Kuruneri's case is one of the most high-profile matters it is routine practice for remand prisoners to spend extended periods awaiting trial in inhumane holding cells. The effect of this system is to punish the accused person before trial. According to a Law Society of Zimbabwe report there are suspects who have spent up to five years in remand prison while awaiting trial, only to be released without conviction.

In November 2001 a Bulawayo-based war veteran's leader, Cain Nkala, was murdered. Subsequently the police arrested and arraigned a number of members of the opposition for the murder and the state broadcaster and the government

owned newspaper *The Herald* published allegations surrounding the case linking the accused persons to the committal of the crime. Much of the evidence published was subsequently thrown out of court as either being pure fabrication or having been the result of the torture of the accused persons. The accused persons were acquitted when the state failed to prove its case. However, the manner in which the case had been reported by the state media had had the effect of convicting the accused persons before the court had heard the matter.

In 2003 the then MP for Chimanimani constituency, Mr Bennett – a member of the opposition MDC, was tried by Parliament in terms of the Privileges, Immunities and Powers of Parliament Act after he had assaulted the Minister of Justice in Parliament following an exchange of insults between the two parties. He was subsequently convicted by Parliament and sentenced to imprisonment for one year. The “trial” was conducted by a parliamentary committee in which the majority of members were members of the ruling party. There was no chance that he would receive a fair hearing from Parliament and the excessive penalty is indication of the lack of impartiality by the trying authority. The failure to give Mr Bennett a fair trial constituted a violation of the state’s obligation to respect the right protected under article 7.

It is implicit within the right to have one’s cause heard that the state will enforce the decisions of the courts. The Zimbabwean state refused to enforce numerous decisions of the courts for the evictions of illegal settlers during the farm invasions between 2000 and 2003. Court orders that individuals accused of murdering members of the opposition be investigated and prosecuted were also ignored by the state, specifically the case of Kitsiyatota and Mwale who were named by the High Court as suspects in the murder of MDC activists during the 2000 parliamentary elections. In the Mwale and Kitsiyatota case, some persons were put on trial for the murders but these did not include Mwale, who was not arrested even though there was evidence of his involvement and despite his being named in the trial. Efforts by the Attorney-General’s office to persuade the

police to arrest Mwale have also been unsuccessful. Failure by the state to enforce court orders is a violation of the state's obligation to respect and fulfil the right protected under article 7 of the Charter.

Legal aid services provided by the government are restricted to one centre in the capital city. This centre is understaffed and under-funded. It does not have the capacity to provide legal assistance even in serious criminal cases and the majority of criminal cases are determined by the courts after the accused attempts to represent himself or herself. In addition to the lack of capacity, the legal aid directorate is unknown by the majority of Zimbabweans and there is no attempt to advertise its services. NGOs providing legal aid services are unable to fill the vacuum and the majority of Zimbabweans facing criminal charges are unable to acquire legal representation, even in serious cases. The exception is murder cases in which the court will appoint a lawyer in private practice to represent the accused person. However the fee provided by the state for this service is completely inadequate leading often to poor quality legal representation in such cases.

The system adopted in the Labour Courts of flexibility and informality has allowed representation of workers by union officials and has assisted in ensuring fair determinations. However, access to representation by union officials does not equate to access to legal representation and does not necessarily meet the obligations on the state. In technical legal cases before the Labour Court the absence of legal representation denies the parties their right to have their cause heard properly.

Denial of the right to hearing: applications arising out of Operation Murambatsvina

According to the Zimbabwe Lawyers for Human Rights (ZLHR), on Wednesday 5 October 2005 lawyers from their Public Interest Litigation Unit attended at the Civil Magistrates Court in Harare seeking a provisional order in the form of an

interdict stopping members of the Zimbabwe Republic Police (ZRP) and City of Harare from forcibly evicting people displaced by Operation Murambatsvina from new shelters they has erected in Mbare high-density suburb. Upon reading the application the Magistrate on duty left the room with the application. On his return he advised that the Provincial Magistrate had informed him that Magistrates Courts had no jurisdiction over cases linked to Operation Murambatsvina. The lawyers sought audience with the Provincial Magistrate, where they were informed that the Magistrates' Court had never handled any cases relating to the forced evictions.

In a similar incident on Friday 14 October 2005 the same Magistrates Court is alleged to have refused to entertain an urgent application for an interdict, sought by ZLHR on behalf of some vendors threatened with eviction from stalls they had been licensed to use by the City of Harare in Mabelreign. The Magistrate before whom the lawyers appeared advised them that the magistrates had been provided with "written orders" to the effect that they were not to consider any applications against the City of Harare as they had no jurisdiction over such matters, particularly the cases relating to Operation Murambatsvina. While the Magistrate did concede that the orders were not in line with the law he advised that he had no option but to comply with the directive.

ZLHR then had to redirect the case to the High Court. The latter case it was only heard on 20 October 2005, by which time serious prejudice had been caused to informal traders who were forcibly evicted from the stalls on 18 October 2005.

The Magistrates' claims of lack of jurisdiction were made even though ZLHR has already taken at least four cases before various Magistrates Court, including the Harare Civil Magistrates Court, where two final orders and two provisional orders had been granted in favour of the victims of Operation Murambatsvina. The courts continue to readily entertain ordinary applications for interdicts, but ignore those relating to Operation Murambatsvina where litigants are in danger of

damage being inflicted by state officials. Such discriminatory conduct on the part of the courts only serves to frustrate the right of people whose human rights are under attack to seek protection of the law. It also calls into question the impartiality of these judicial officers and their ability to impart justice without fear or favour. These events have highlighted the failure by the state to ensure that the courts remain independent, as provided under Article 26 of the African Charter, and to ensure that every person has her/his cause heard before a competent court or tribunal.

ZLHR has issued two public statements in relation to these serious issues and has written to the Chief Magistrate requesting an investigation into the matter and a response to ZLHR. To date, the letter has neither been acknowledged nor responded to, and no action has been taken by the authorities to uphold the separation of powers and ensure that all persons are able to rely on the courts as protectors of their fundamental rights and freedoms. The failure by the state in this matter to ensure that the magistrates' courts of Zimbabwe continue to exercise their jurisdiction without political interference constitutes a failure to respect the rights to fair hearing as protected under article 7 of the African Charter. To the extent that orders were issued to magistrates by the executive, as claimed by magistrates, the government of Zimbabwe has interfered directly with the administration of justice and such interference is a flagrant disrespect of the right protected under article 7 of the African Charter.

Summary

There are serious structural and political limitations to the independence of the Judiciary in Zimbabwe;

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.

It should be noted that it is essential that this provision be read together with the important African Commission document agreed in 2002 entitled Declaration of Principles on Freedom of Expression in Africa.³⁵

The State's attitude towards the right to freedom of expression and information are confirmed in the state report where the state claims that it "owns" the media and that other players are simply licensed to operate the media. This assertion is a blatant violation of international law. Freedom of the media is an inherent part of the right to freedom of expression and the freedom to receive information and the state cannot own all media, and cannot claim to own privately owned media. Besides its apparent contradiction, this assertion confirms that attitude of the state that it entitled to control all media in Zimbabwe to ensure that the freedom of expression is limited to expression with which it agrees. It looks upon the exercise of freedom of expression, including the freedom of the media, as a privilege instead of what it should be in any free and democratic society, namely a basic human right. Indeed the exercise of this right is essential for the exercise of all other human rights.

The State has promulgated legislation that severely curtails the individual's enjoyment of the right to freedom of expression and the right to information. The

³⁵ Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia.

major legislation is the Broadcasting Services Act and the Access to Information and Protection of Privacy Act (AIPPA) and the Public Order and Security Act (POSA).

The Broadcasting Services Act created a regulatory body to approve and grant licences to independent broadcasters, the members of which authority are appointed by the Minister of Information and serve at his pleasure (so-called independent disciplinary committee must recommend dismissal). All independent broadcasters must receive a licence from this entity or they cannot legally broadcast.

AIPPA controls and regulates the print media, setting up a convoluted and non-transparent mechanism for requesting information from the state, requiring registration of media houses and journalists and allowing the Minister of Information, through the Media and Information Commission which is answerable directly to the Minister, to control the registration and functioning of media houses and journalists. POSA criminalizes the expression of opinions where such opinions are seen as derogatory of the President. In addition to legislation that has directly infringed the rights to freedom of expression and freedom of information the government has failed to protect the independent media from sabotage and attacks by third parties and has failed to investigate and punish those guilty of bombing printing presses.

There are a number of provisions in the Broadcasting Services Act that have the effect of limiting the right to freedom of expression. Firstly, the Act returns the control of licensing of television and radio stations to the state with the complete control by the Minister of Information over the licensing of broadcasters (Sections 6, 11 and 15). This is in violation of international norms and the Windhoek Charter on African Broadcasting. Secondly, section 24 of the Act allows the Minister of Information to directly interfere with programming in those broadcasters that do receive a licence, while section 8 of the Act restricts foreign

ownership of broadcasters. These legislative limits on the right to freedom of expression under the Act constitute a failure by the government of Zimbabwe to respect the right to freedom of expression. Further, since the Act was promulgated the government has not registered any independent broadcasters and the state broadcaster continues to enjoy a monopoly despite a ruling by the Supreme Court that this monopoly was unconstitutional. Thus the policy of the government not to licence independent TV and radio stations is in violation of its obligation to promote the right to freedom of expression and the right to hold opinions protected under the Charter. The government has also arrested individuals linked with broadcasters broadcasting into Zimbabwe from outside the country.

Under Section 39 of AIPPA the Media and Information Commission has the power to register mass media houses, “accredit journalists”, enforce professional and ethical standards and monitor content. The Commission is governed by a Board whose members are all appointed by the Minister of Information after consultation with the President. Although some of the members are nominated by bodies representing journalists and media houses these members are selected by the Minister from a list submitted from an association of his choosing and do not in any case constitute a large enough number to prevent the nominees of the Minister from deciding all matters themselves. Registration of mass media houses and accreditation of journalists is effected not by an independent body reflective of the media houses and journalists but by a government appointed and controlled body, which has the power to deregister and de-accredit media houses and journalists. The chairman of the Media Commission is a well known supporter of the ruling party and has shown blatant bias the performance of his functions. In one case involving an independent newspaper the Supreme Court ruled that he had displayed bias against the paper in comments made in his column in a pro-government newspaper.³⁶

³⁶ *Associated Newspapers of Zimbabwe (Pvt) Ltd v The Minister of State for Information and Publicity & Ors* S-111-04

Section 80 of AIPPA makes it a criminal offence to publish falsehoods and had a chilling effect on the freedom of information, making journalists afraid to investigate and publish sensitive stories. There is also the nebulous offence in section 31 of the Criminal Law (Codification and Reform) Act of publishing or communicating false statements prejudicial to State. A person convicted of this offence can be sent to prison for up to twenty years.

The sections of AIPPA that deals with the right to freedom of information sets up a bureaucratic regime that can take up to 60 days before a decision on whether to allow the information from the government department is made. There are many wide and vague exceptions and qualifications to the right of access to information contained in these sections.

The bombing of the *Daily News* printing press in January 2001 by yet to be identified bombers illustrates the state's failure to fulfil the rights of individuals to freely receive information. The bombing sucked in the state in that it came barely hours after the then Minister of Information, Professor Jonathon Moyo had publicly issued a threat to the paper. According to the MMPZ, "Although it took place more than a year before the presidential elections, the bombing continued to have a serious impact on the capacity of the country's largest daily newspaper to get the news to its readers."³⁷

ANZ, the publishers of the main independent daily newspaper filed a challenge with the Supreme Court on the basis that AIPPA violated the rights to freedom of expression and of information protected in the Zimbabwean Constitution. ANZ further refused to apply to Media and Information Commission for registration and its journalists refused to apply for accreditation, arguing that the requirements to do so were in violation of the Zimbabwean Constitution. The Supreme Court refused to hear the case on the grounds that ANZ had dirty hands by failing to register before it challenged the legislation.

³⁷ See, *Media under Siege* (Harare2002).

ANZ was then forced to apply for a licence from the Media and Information Commission, which was denied on the basis that it had breached the Act and was therefore not entitled to registration. Police seized computers and other property belonging to the newspaper and forced it to close. The forced closure of a newspaper, whose only “crime” was to challenge the constitutionality of Zimbabwean legislation constitutes a failure to respect the right of individuals to receive information from the independent press and of the rights of the journalists and of the media house to express their opinions as protected under the Charter. Meanwhile the total number of newspapers that have been closed during the last five years is four, demonstrating the concerted attack on the freedom of the press.

Harassment and arrests of journalists has continued throughout the period, with charges under section 80 of AIPPA being the most common (i.e. for publishing falsehoods).

Foreign journalists have been arrested and deported, with the BBC being banned from the country Andrew Meldrum was arrested and charged under section 80 of AIPPA for publishing falsehoods. Although he was acquitted, and despite a court order, he was deported from Zimbabwe. During the 2005 election two foreign journalists were on March 31 arrested and detained for thirteen days mainly for covering the Zimbabwean elections without MIC accreditation until they were subsequently deported after their acquittal.

As non-government controlled radio stations have not been allowed to operate in Zimbabwe, a number of independent stations have been set up to beam their programmes into Zimbabwe from outside the country such as SW Radio Africa. The Government has made concerted efforts to jam these stations so that their signals cannot be received in Zimbabwe.

Government control over and interference with the public broadcasting media has been a serious cause for concern. It also exercises heavy handed control over the government-controlled newspapers. For instance, seven journalists of the *Chronicle* newspaper were suspended from the paper in December 2004 following the publication by the paper of a story that covered intra-party factionalism within the ruling party.

The arrest and torture of two journalists from the *Standard* newspaper has been referred to under the section on the right to dignity. The arrest and alleged torture by the army of the two journalists was as a result of their exercise of their rights to freedom of expression and the arrest served to intimidate other members of the journalist profession to exercise their right with caution. The arrest itself was therefore both a violation of the rights of the individual journalists arrested and of all Zimbabweans.

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.

While protection for the freedoms of association and assembly are enshrined in the Zimbabwean Constitution, the effect of legislation and policy implementation by the government of Zimbabwe has seen during the period in question extensive limitation of the rights. The Public Order and Security Act (published in the Government Gazette on 22 January 2002) (“POSA”) restricts the rights to freedom of association and assembly. The police have applied POSA to prohibit public meetings and demonstrations by bodies perceived as opposed to the government. In some instances, the state has allowed third parties including war veterans and ruling party youths militias to harass, intimidate and assault people associating with or belonging to opposition political parties trade union and civil society organisations, with the effect of creating a strong disincentive to individuals to exercise the rights to freedom of association and assembly. In such circumstances the government has failed to intervene to protect the rights of those attacked in the exercise of the rights and has failed to provide an effective remedy.

Section 12 makes it a criminal offence to do or say anything which may cause "disaffection among the Police Force and Defence Forces." Under section 16 of POSA it is an offence to insult the office of the president. Section 15 makes it a criminal offence to make a wholly or materially false public statement knowing or

"realising that there is a risk or possibility of,

(a) inciting or promoting public disorder or public violence or endangering public safety;

or

(b) adversely affecting the defence or economic interests of Zimbabwe; or

(c) undermining public confidence in a law enforcement agency, the Prison Service or the Defence Forces of Zimbabwe; or

(d) interfering with, disrupting or interrupting any essential service."³⁸

Section 15 of POSA has a chilling effect not only on the right to freedom of expression but also to the right to freedom of assembly and association, especially the rights of persons working for institutions defined as essential services.

It is sections 23 to 31 that have the most marked effect on the rights to freedom of association and assembly. The police must be advised three days in advance of all public meetings (section 24), the police may regulate public gathering in the interests of public order and security (section 25), the police may prohibit a public gathering in the interests of public order (section 26), police officers may prohibit all public meetings in areas under his jurisdiction in the interests of public order (section 27), the organisers of demonstrations who have not notified the police of the demonstrations will be liable for damages for any damage caused by the demonstration (section 28), and the police are authorised to use force to disperse "illegal" demonstrations (section 29). Read together these sections grant the police wide powers to interfere with the rights to freedom of association and assembly, granting wide discretion to police officers to prohibit public meetings. Police officers have further misinterpreted section 24 of the Act to mean that the

³⁸ These offences are now contained in the Criminal Law (Codification and Reform) Act. The penalty for the offence of making a false statement prejudicial to the state now attracts a maximum sentence of imprisonment for twenty years.

person wishing to hold a meeting must apply for “permission” and have thus reversed the onus and avoiding the requirement under the Act that they should only prohibit meetings on reasonable grounds that the meeting may lead to public disorder. The government has taken concerted steps to transform the police force into a politically partisan force and this partisan force applies the laws in a politically partisan manner.

Public meetings by the MDC (the opposition Movement for Democratic Change), the National Constitutional Assembly (NCA) and women’s groups perceived as pro-opposition have been especially targeted by using the sections of the Act that regulate public meetings. On Valentine’s Day in 2003 women marching in protest were arrested for demonstrating without permission. The police had denied them “permission” to march and they had proceeded with their peaceful march. 48 women were detained for four hours and released without charge while another 15 were only released the next morning, also without charge. In April 2003 more than 100 women with 19 babies were arrested and detained. In September 2006 the Zimbabwe Congress of Trade Unions attempted to organise a demonstration in Harare and were allegedly violently assaulted and tortured while in police custody. The President of Zimbabwe in a statement carried in the national and international press subsequently justified the acts of the police.

The riot squad of the police often administer beatings upon unarmed protesters they have arrested and who are not resisting arrest. These beatings upon arrest and later at police stations are administered to deter people from participating in anti-government protests.

The *Zimbabwe Independent* reported in 2005 that the MDC had their six applications to hold rallies in Chipinge, some of which were to be addressed by former MDC Chimanimani legislator, Roy Bennett, turned down by the police who claimed that there was a possibility of Bennett being attacked by Zanu PF supporters after his fight with justice minister Patrick Chinamasa in Parliament.

The police claim that they cannot spare the manpower to ensure the safety of MDC supporters and members at rallies in some rural constituencies but they have no problem in providing full protection for all ruling party rallies.

The police have been implicated on several occasions in the barring and banning of individuals from attending opposition political parties' meetings and rallies by dispersing gatherings which are legal even under domestic law. The *Zimbabwe Independent* of May 14 2004 reported that about a dozen baton-stick wielding police officers assaulted MDC supporters gathering at a stadium in the Kambuzuma high-density suburb in Harare while dispersing the meeting. Assistant Police Commissioner Wayne Bvudzijena claimed that the police may have seen something sinister, "If they (police) observed something sinister, then there was need for them to react When there is need to disperse a crowd, we use what we call minimum force" (*Zimbabwe Independent* May 14 2004).

The government barred the Confederation of South African Trade Unions (COSATU) from meeting with the Zimbabwe Congress of Trade Unions (ZCTU) and civil society organisations claiming that the intended meetings were political. The Public Service, Labour and Social Welfare Secretary, Lance Museka informed Cosatu that because, "These organisations are critical about the government of Zimbabwe and indeed most of these are quasi-oppositional political organisations In view of the foregoing, the mission is not acceptable....." This was especially an interference with the rights of the ZCTU to associate freely with other labour bodies in the region.

The right to strike and to organise collectively are inherent in the rights to freedom of association and assembly. The right to strike is dealt with in more detail below under the section on the right to work. However, it is important to note that although section 108 of the Labour Act allows and protects "lawful collective action" this is restricted to situations where the Ministry of Labour has certified that all attempts at solving the dispute amicably have failed. The Ministry

has never issued such a certificate and therefore there have not been any legal strikes in Zimbabwe during the period under discussion. This has had a serious effect on the enjoyment of the rights to association and assembly and constitutes a breach of the state's obligation to respect the rights.

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.

The government has illegally deported persons from Zimbabwe in violation of court orders; has failed to protect individuals from third parties who have, especially at election times, constructed roadblocks to keep opposition politicians out of ruling party strongholds; and recently passed Constitutional Amendment number 17 to allow restrictions on the right to leave Zimbabwe.

The case of Andrew Meldrum, a journalist clearly shows the state's failure to respect the right of individuals to residence in the country. After reporting on the alleged murder of a Karoi woman by Zanu PF activists in the British media, Meldrum was deported from Zimbabwe despite court orders barring his deportation.

Amendment 17 to the Zimbabwean Constitution amends the Constitution (to allow the right to freedom of movement to be limited in the "national interest," and

to allow the state to introduce legislation to empower it to restrict the right to leave Zimbabwe. Section 3 of the Amendment amends section 22 (3)(a) of the Constitution by including the “national interest” as permissible ground for interfering with the right to freedom of movement (a ground that is vague and is not defined in the Constitution) and amends section 22 (4) to allow the right to leave Zimbabwe to be interfered with. Government officials have announced that the amendment will be utilised to allow the state to withdraw passports of Zimbabweans who leave the country to “tarnish” Zimbabwe’s image and to introduce a system of exit visas. The amendment is not in compliance with the international law regarding the limitation of the right to freedom of movement as it allows excessive discretion to the government to limit the right on vague and uncertain grounds. Further, the legislation suggested by the government to introduce exit visas and to limit the rights of critics of the government to leave Zimbabwe would be a flagrant violation of the obligations under the African Charter.

During elections in 2000 and 2002 members of the ruling party’s youth wing, and members and graduates of the government’s national youth service and war veterans erected roadblocks on roads entering rural areas perceived as ruling party strongholds to prevent members of the opposition from entering these areas. Members of the opposition have been assaulted, tortured and raped in ruling party strongholds³⁹. The effect of the roadblocks and the attacks on opposition members has been to prevent members of the opposition from exercising their right to freedom of movement by entering areas perceived as ruling party strongholds, and to prevent supporters of the opposition from residing in their homes, or returning to their homes once they have fled political violence. The state did little to prevent these interferences with the right to movement during elections and allowed these violations to continue during the 2000 Parliamentary, 2002 Presidential and by-elections since. Although violations of this nature were minimal during the 2005 elections there were some

³⁹ [See the various reports of the Zimbabwe Human Rights NGO Forum available on its website -](#)

reports of areas where the ruling party refused access to members of the opposition.

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?

Right to participate freely in government and right to equal access to public service

Article 13

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

2. Every citizen shall have the right of equal access to the public service of his country.

3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Political violence, displacement of persons due to the land reform programme, loss of citizenship by descendants of immigrants from SADC countries, government control of elections, state control of the media and controls on election education have, in combination, negatively affected the exercise of the right to political participation. Politicisation of government controlled food aid programmes in some areas of the country and the limitation of opportunities in some higher education institutions to graduates of the government controlled youth service programme have curtailed the right of equal access to public property and public services.

The fast track land reform programme, effected between 2000 and 2003 led to the displacement of farm workers from their residence at farms throughout the country. This displacement occurred during the farm invasions when settlers forcibly evicted farm workers but continued throughout the period. Attacks and displacement of farm workers increased during elections and many farm workers were unable to vote as they were evicted from the constituencies in which they had been registered; Zimbabwean law only allows one to vote in one's registered constituency. This applies even to the Presidential election and voters can only vote for the President in their own constituencies. The result has been the disenfranchisement of a large number of citizens. The government failed to protect farm workers from displacement and once the farm workers were displaced it failed to take steps to ensure that their right to participation in elections was respected by creating alternative methods of voting for displaced persons.

Election related violence also resulted in perceived and known opposition supporters and white commercial farmers displaced from their homes not being able to vote. War veterans, ruling party youth militia, the army, CIO and the

police were allegedly involved in political violence throughout the period being reported on. The majority of state agents have not been disciplined or charged for acts of violence against opposition supporters and ruling party supporters and militia have received protection from state agents such as the police, who have refused to arrest those accused of violence.

Members of the government made inflammatory statements against the opposition, which have led to heightened tension. For example as reported by the *Zimbabwe Independent* newspaper on July 16 2004, the state president reportedly fanned violence when addressing youths at the University of Zimbabwe on 10 July 2004 when he urged his party's youths to wage a "*vigorous campaign*" for Zanu PF to win the March 2005 parliamentary elections, and that he would personally hold them "answerable for any defeat."

Referring to political violence during the 2002 Presidential election the Human Rights NGO Forum noted that,

there have been high levels of political violence, with all available evidence indicating that, although not the sole perpetrators, ZANU PF supporters have been the major perpetrators of gross human rights abuses against members of opposition political parties or ordinary citizens. The level of violence rose steadily between June 2001 and December 2001. In January 2002, when campaigning in the Presidential election intensified, there was a sharp increase in violence. This increase continued for the next two months, with February and March recording all-time highs.⁴⁰

In 2002 the government amended the citizenship laws, withdrawing citizenship from numerous members of Zimbabwean society, especially farm workers and white Zimbabweans. Before 2002 dual citizenship was illegal but a Zimbabwean could renounce foreign citizenship before a Zimbabwean immigration official. Further there was no law excluding those with claims through their ancestors to

⁴⁰ *Are they accountable? Examining alleged violators and their violations pre and post the Presidential Election March 2002* Zimbabwe Human Rights NGO Forum accessible at <http://www.hrforumzim.com/frames/inside_frame_reps.htm>.

foreign citizenship from holding Zimbabwean citizenship. The effect of the **new** law was two-fold; firstly all renunciations of foreign citizenship had to occur before the authorities of the countries for whom it was being renounced and then proved to the Zimbabwean authorities; and secondly those who had a claim to foreign citizenship, usually because their parents or grandparents had emigrated from SADC countries, had to renounce these potential citizenships. The amendments caused confusion during the voter registration exercise for the 2002 presidential elections. The deadline set by the amendments for those with actual or potential dual citizenship to renounce the foreign citizenship or potential citizenship, the 7th of January 2002, was close to the 9 & 10 March elections and gave little time for those affected to regularise their status. Further, many of those affected were illiterate farm workers who were not aware of the changes in the law until they tried to vote. The result of the amendments to the citizenship laws was to deny large proportions of the Zimbabwean population their right to participate in the government of their country.

The country's electoral bodies have been run in secrecy and the government has maintained control over the bodies. The Delimitation Commission, the body that demarcates the boundaries for the elections, for example has been headed by a man with a military background. Decisions over the constituency boundaries have been challenged as being biased towards the ruling party by deliberately mixing urban areas (perceived opposition strongholds) and rural areas (perceived ruling party strongholds). Lack of transparency in the Delimitation Commission has caused confusion to voters and may have led to many voters failing to vote because of constituency boundary shifts made by the Delimitation Commission. An example is that of Harare South, where scores of voters at such polling stations like Saturday Retreat school were told on the day of voting that their names appeared in the new Mbare constituency, and not in Harare South. The Electoral Supervisory Commission (ESC) failed to conduct adequate and timely voter education and information exercises to notify the electorate of the changes, and where they may register to vote.

During all elections prior to the 2005 Parliamentary elections the opposition was given very limited access to state media to allow it to campaign, in violation of international norms regarding the conduct of elections. The state controlled media have as a general rule refused to flight advertisements from the MDC and NGOs perceived to be “against” the government. During the 2005 elections the electoral law was amended to make it mandatory for public media to accept advertisements from the opposition. However, the public broadcaster delayed the broadcast of advertisements and attempted to interfere with the content of the advertisements, thus limiting the effectiveness of the amendments and denying the population the right to full information upon which to make an informed decision in the elections.

Political violence during elections has been especially concentrated. Members of the opposition have been assaulted, raped, kidnapped and killed. There are members of government and state agents who have been implicated in acts of murder (Zanu PF political commissar and minister without portfolio, Elliot Manyika’s alleged involvement in the murder of Tichaona Chinozvidya during the Zengeza by-election), and torture (Chenjerai Hunzvi’s alleged setting up of torture bases in the capital’s Budiriro high density suburb) during elections but the government has failed to investigate and prosecute these matters, denying the victims their right to a remedy and failing in its obligation to respect the right political participation as well as the right to life and personal integrity.

Certain areas have become impenetrable by the opposition because of the level of political violence practiced in the area. There were reported cases of opposition supporters being assaulted by ruling party youth militias and war veterans after visiting relatives in rural areas. Some ruling party supporters and top government officials have declared certain rural constituencies perceived as ruling party strongholds ‘no-go’ areas for the opposition and its MDC supporters. These areas have included Mashonaland West and Central provinces and

Mutoko North. These declarations were enforced by youth militia and the war veterans who in the 2000 and 2002 elections erected illegal roadblocks on roads entering into these areas to check on the people entering the areas.

The former Member of Parliament for Chimanimani, a member of the opposition MDC, was prevented from participating in the 2005 Parliamentary elections after he was convicted by Parliament for assaulting the Minister of Justice, and sentenced to one year in prison. Zimbabwean legislation bars any person from contesting a Parliamentary election if he/she has been convicted and sentenced for a criminal offence and sentenced to an effective period of more than six months. The effect of the Zimbabwean legislation is to violate the right guaranteed under the African Charter as there is no ground for restricting the rights of all persons sentenced to more than six months to stand for elections. Further, even if it permissible under the Charter to restrict the rights of persons to stand for elections on the ground that they have been sentenced by a competent court (which is not conceded) the specific case is a violation as the sentence was not imposed by an independent and impartial court and constituted a political interference with the right of the former MP to stand for election.

The introduction of the Zimbabwe Electoral Commission has the potential to improve the conduct of elections, which have until 2005 been administered by an Electoral Commission, appointed by the President without input from Parliament, and the Registrar General's office, an office of government under the control of the executive. However, the way in which the Electoral Commission is composed does not create confidence that its members will be independent. Its current chairman is a known supporter of the ruling party. The 2005 Parliamentary elections were conducted in an atmosphere where there was confusion between the ZEC and the IEC as to the powers of the two bodies.

During all past elections, including the 2005 Parliamentary elections, the opposition and numerous observer missions have declared the elections not to

be free and fair, citing electoral violence, voter intimidation, lack of voter education, political interference with the running of elections, and the rigging of results. The general atmosphere during elections in Zimbabwe is tense as election violence perpetrated in previous elections continues to act to intimidate members of the opposition from freely exercising their right to vote.

Constitutional Amendment Number 17 as it relates to freedom of movement and freedom of political participation.⁴¹

Prior to its recent amendment section 22(1) of the Constitution of Zimbabwe provided that, “No person shall be deprived of his freedom of movement”. Embodied in such protection are: (i) the right to move freely throughout Zimbabwe; (ii) the right to reside in any part of Zimbabwe; (iii) the right to enter and leave Zimbabwe; and (v) immunity from expulsion from Zimbabwe.

Subsection (4), as read with subsection (3)(a), provided that, although in the interests of defence, public safety, public order, public morality or public health, it is lawful to restrict the freedom of movement of persons, such right is not to be construed as authorizing a law preventing a citizen from leaving Zimbabwe or excluding or expelling him from the country. It reads: “(4) *The provisions of subsection (3)(a) shall not be construed as authorizing a law to make provision for preventing any person from leaving Zimbabwe or excluding or expelling from Zimbabwe any person who is a citizen of Zimbabwe*” (emphasis added).

⁴¹ The right to freedom of movement is recognized under international human rights instruments to which Zimbabwe is a State Party. For example, in terms of Article 12(2) of the African Charter on Human and Peoples’ Rights, “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 restriction provided for by law for the protection of national security, law and order, public health or morality”. Article 12(2) of the International Covenant on Civil and Political Rights states that, “Everyone shall be free to leave any country, including his own.”

Constitutional Amendment No.17 has removed the above-emphasized portion of S.22 (4), which disallows the making of laws that make provision for preventing any person from leaving Zimbabwe”.

In the case of *Chirwa v Registrar General*⁴², it was held that the onus is on the State “...seeking to limit the [applicant’s] right to enter and leave Zimbabwe guaranteed under s 22, [to] also show that the objective which the limitation intended to achieve was of sufficient importance to overcome the protected constitutional right. Further, the Respondent must demonstrate that the means adopted to achieve this are proportional or appropriate to the ends”⁴³.

The amendment has therefore reversed the ruling of a duly constituted Court in Zimbabwe (thus usurping the function of the Judiciary) by overruling that portion of the judgment. The Memorandum to the Amendment, while it was still in Bill form, provided the following explanation: “An example of the type of mischief that may justify the imposition of the restrictions on the freedom of movement contemplated by this clause is where, for instance, it is discovered that a person intends to depart Zimbabwe for purpose of engaging in terrorist training abroad.”

Sections 22(2) and (3)(a)-(f) of the freedom of movement provisions already cater for this mischief. There is an array of existing security and anti-terrorist laws already on the statute books⁴⁴ and in the common law to adequately protect against suspected terrorist activity. It cannot be reasonably justifiable in a democratic society to remove such a critical protection from the Bill of Rights for

⁴² 1993 (1) ZLR 1 (H)

⁴³ Per Adam J at p.20 C-D

⁴⁴ In this regard refer to TITLE 11(DEFENCE, SECURITY AND PUBLIC ORDER) of The Statute Law of Zimbabwe (1996 Revised Edition). It contains *inter alia* the Commonwealth Forces (Jurisdiction) Act [Chapter 11:01]; Defence Act [Chapter 11:02]; Defence Procurement Act [Chapter 11:03]; Emergency Powers Act [Chapter 11:04]; Foreign Subversive Organizations Act [Chapter 11:05]; Geneva Conventions Act [Chapter 11:06]; Law and Order (Maintenance) Act [Chapter 11:07]; National Service Act [Chapter 11:08]; Official Secrets Act [Chapter 11:09]; Police Act [Chapter 11:10]; Preservation of Constitutional Government Act [Chapter 11:11]; Protected Places and Areas Act [Chapter 11:12]; Unlawful Organizations Act [Chapter 11:13]; Public Order and Security Act [Chapter 11:17]; Chemical Weapons (Prohibition) Act [Chapter 11:18]; Anti-Personnel Mines (Prohibition) Act [Chapter 11:19]

a purpose already achievable through other laws that the state has zealously enforced in the past.

It is therefore respectfully submitted that one of the real objectives of the amendment is to reverse the progressive reasoning of Justice Adam in the above-cited case. It has the unfortunate retrogressive effect of further diminishing the protection of human rights in Zimbabwe and of legislating against protections offered to individuals under the African Charter, specifically Article 12(2) thereof. It is also another unfortunate example of Executive interference with and overruling of judicial decisions with which they disagree, or which they do not wish to enforce. It is also a clear infringement of Article 7 and Article 26 of the African Charter, which guarantees an individual the right to have her/his cause heard by a competent court or tribunal, and also secure the independence of the judiciary respectively.

This new provision will make it possible for the State to pass laws which cancel travel documents of residents, withdraw passports or just declare them invalid and thus make it impossible for people to move out of Zimbabwe.

The Amendment also adds to the grounds open to the authorities to justify impositions of restrictions on freedom of movement. Added to the traditional grounds of interests of defence, public safety, public order, public morality or public health, is the ground of “the national interest”, “the public interest or the economic interests of the State”. These are undefined and therefore allow the authorities unfettered discretion to clamp down on any person they would not wish to travel out of the country for any purposes whatsoever.

Examples of persons who could be affected by this provision include MPs critical of a government policy who are invited to address international forums; activists who wish to travel to address regional or international meetings or conferences; and labour representatives travelling to participate at an ILO conference. State

officials, including the President himself, and the Minister of Justice, Legal and Parliamentary Affairs, have publicly stated that the rationale for this amendment lies in preventing such activities and stemming pressure for democratisation and reform.

Limiting the freedom of movement of human rights and labour activists and members of political parties is a violation of the right to freedom of movement as protected by the African Charter (article 12 of the Charter) and a failure to respect and promote the right to freedom of political participation as protected under article 13 of the African Charter. Where the intention of the state is to prevent persons from leaving Zimbabwe because of their exercise of their rights to freedom of expression in the pursuance of their right to political participation in the affairs of Zimbabwe such legislation has the effect of violating the obligations of the state to respect not only the right to freedoms of movement and expression but also the right to political participation. The limits on the right to freedom of movement, if they are indeed enforced as intimated by the executive, would have the effect of limiting movement on the basis of the individual's belonging to a political party, labour organisation, human rights organisation or other such entity and would thus be a violation of the right to association protected under article 10 of the African Charter.

The introduction of Constitutional Amendment No.17 has severely restricted an individual's entitlement to the enjoyment of freedom of movement, together with the attendant freedoms of expression, association, and political participation which are protected in terms of Articles 9, 10 and 13 of the African Charter respectively. This amendment must be repealed if the State's protestations that it has complied with the Charter are to be taken seriously.

Constitutional Amendment Number 17 reintroducing the bi-cameral Parliament and the effect of this on participation

Constitutional Amendment No.17 has reconstituted the Parliament of Zimbabwe as a bi-cameral legislature consisting of a Senate and a House of Assembly.

Out of the intended 66 Senators, a total of 16 will be people who have not been democratically elected by the people of Zimbabwe exercising their right to a secret ballot. In the House of Assembly, 20 non-constituency MPs remain unelected. This undermines the principle that “the authority to govern derives from the will of the people demonstrated through elections conducted on the basis of universal and equal suffrage exercised through a secret ballot, and the principle that every citizen has the right to participate in government directly or through freely chosen representatives,” as enshrined in the Zimbabwean Electoral Act [*Chapter 2:13*] and in the SADC Principles and Guidelines Governing Democratic Elections, to which Zimbabwe has bound itself. This is also a clear contravention of Article 13.1 of the African Charter, as it denies free participation by the electorate.

In addition, such intended re-establishment of the Senate also imposes fiscal obligations on the State which, in the current economic climate, will be impossible to sustain and will have adverse social effects by drawing funding away from areas which critically require sustenance, and this will inevitably lead to further violations of the economic, social and cultural rights which, although not adequately protected in the Constitution of Zimbabwe, are protected in international human rights instruments to which Zimbabwe is a State Party, most importantly the African Charter.

Summary

Political violence and the impunity enjoyed by members of the ruling party involved in political violence has limited political participation in the country;

Interference with the citizenship of Zimbabweans descended from immigrants from other countries in SADC limited political participation especially by farm workers;

The political control of elections exercised through presidential appointment of electoral commissioners has interfered with free and fair elections;

State interference with freedom of expression and association and assembly have further limited the exercise of the right to political participation;

Politicisation of food aid programmes has limited the ability of voters to vote according to their wishes;

Constitutional Amendment Number 17, to the extent that it allows legislation to be introduced that will limit the right to movement on grounds of “the national interest” may limit the right of members of the opposition to travel and interact with other parties in the region, limiting the parties and the members of the parties’ rights to political participation;

Unelected members of Parliament (especially in the Senate introduced under Constitutional Amendment 17) limit the right to political participation by allowing the executive to directly appoint members of the Legislature.

Questions for State Delegates

What steps are being taken by the government to ensure that political violence does not continue, that perpetrators are investigated and prosecuted and that victims are provided effective remedies?

What steps are being taken by the government to ensure that Zimbabweans descended from SADC immigrants are not denied their rights to political participation?

What steps are being taken by the government of Zimbabwe to ensure that electoral commissions are independent and free from political interference?

What steps are being taken by the government to ensure that food aid programmes implemented by the government are not politicised?

What steps are being taken by the government of Zimbabwe to ensure that all members of Parliament represent the electoral choices of Zimbabweans, considering the appointment by the executive of non-constituency members?

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Introduction

Between 1997 and 2005 Zimbabwe has experienced very serious economic deterioration. The gross national product has dropped 30 percent in the past four years and "has been classified by the United Nations as the fastest shrinking economy during peace time in the world." This decline in the economy has seen increased poverty, worsening rate of unemployment⁴⁵ and an increased inability of the population to meet its own basic needs. At the same time the HIV/AIDS pandemic has placed a huge burden on the health delivery system in Zimbabwe. Serious droughts and floods have further eroded the capacity of Zimbabweans to meet the basic requirements for their survival.

Although Zimbabwe is party to the International Convention on Economic, Social and Cultural Rights and to the African Charter on Human and Peoples' Rights the Zimbabwean Constitution does not provide for protection of economic, social and cultural rights. The fact that the Constitution has not been amended to incorporate these rights is, in itself, indicative of a failure to take the necessary legislative measures to ensure the protection of the rights, an obligation that Zimbabwe has undertaken at the international arena. While the state's failure to provide and create a conducive environment for the enjoyment of economic, social and cultural rights has been a serious cause for concern the state has more worryingly directly interfered with the enjoyment of these rights. The state has destroyed shelter and livelihoods during its Operation Murambatsvina (forced evictions), while also interfering with the rights to health and education, it has failed to respect and protect the right to private property and has failed to respect the rights of farm workers to shelter and has unreasonably interfered with private

⁴⁵ Unemployment is estimated to be at least 70%.

schools to the extent of compromising the quality of education and thus failing to respect the right to education.

Failure to provide economic, social and cultural rights in a non-discriminatory manner has not only been a violation of article 2 of the African Charter on Human and Peoples' Rights but has also been a violation of the individual rights protected under the Charter. Where the provision of food aid has depended on political affiliation, and where accessibility and availability of some forms of higher education has depended on whether a candidate had participated in the national youth programme (which allegedly recruits exclusively from the ruling party) this has constituted a failure by the state to fulfil its obligations to provide to everyone adequate food and education.

While the state has engaged on a number of policies allegedly designed to alleviate poverty, and therefore to realise economic, social and cultural rights the state has failed to implement reasonable and transparent policies to progressively realise the rights protected under the African Charter. Lack of transparency has led to the corruption of government programmes designed to progressively realise economic, social and cultural rights or to address issues of vulnerability.

It is acknowledged that in general terms the provision of socio economic rights is dependent on the availability of resources and that this can only be realistically achieved in a progressive fashion. These notwithstanding certain rights are capable of immediate application and cannot be subjected to progressive realisation. The right to access economic and social rights without discrimination cannot be implemented progressively. Each state also has an obligation to prioritise vulnerable groups and to spend whatever meagre resources available to it in a cost efficient manner.

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.

FORCED EVICTIONS

The state report does not acknowledge that Operation Murambatsvina had the effect of infringing individuals' rights to protection of private property. Houses, commercial stands and commercial and personal goods were arbitrarily destroyed and seized by the state during the operation. Thereafter the government of Zimbabwe embarked on a housing project allegedly targeted at benefiting those rendered homeless by the evictions. The government argued that its intention was to provide housing for the homeless in Zimbabwe and those who are on the waiting list for houses in the urban areas. The state report notes that residential stands under this project will be targeted "especially to those affected by Operation Restore Order", Although this has been the stated intention of operation Halani Kuhle, the Girl Child Network notes that the programme is biased in favour of those working in formal employment as can be demonstrated by the fact that there is a requirement that those wishing to participate in this project should produce payslips as proof of earnings. Regretably the majority of those affected by the forced evictions are people working in the informal sector. These people are not in a position to satisfy this requirement.

LAND INVASIONS

The land reform programme adopted by the government followed violent and illegal invasions of white owned farms by war veterans and peasants, which the government refused to prevent. The Zimbabwean legislation has been amended

to prevent farmers deprived of their land from challenging the compulsory acquisition in the courts and restricting compensation to compensation for improvements. The restrictions imposed by these laws are inconsistent with the internationally recognised right to protection of private property as read together with the right to an effective remedy.

While land reform is a necessity in Zimbabwe for the fulfilment of economic, social and cultural rights and is permissible under the African Charter on Human and Peoples' Rights, international law requires that property be acquired in accordance with a programme and that fair compensation be paid. In Zimbabwe there is a primary distinction to be made between "land invasions" occurring throughout the period and the government's "Fast Track" land reform programme. Land invasions were chaotic, illegal and violent. These invasions constituted illegal acts under Zimbabwean law and cannot be said to have constituted a land reform programme at international law.

The state's initial obligation with regards to land invasions was to protect the owners of land from arbitrary interference by other members of society. As there were sound social and legal reasons for challenging minority ownership of property, legislative and legal measures should have been taken by the state. Between 1980 and 2000 the government did not allow land invasions and ruthlessly enforced eviction orders obtained by commercial farmers (without providing alternative accommodation to the "squatters" in violation of international law). However after the population rejected the Draft Constitution in 2000 the government refused to comply with all court orders for the eviction of "settlers." Numerous eviction orders were granted by the lower courts and the High Court and the state originally consented to a Supreme Court order that police effect evictions against all illegal settlers. However the government ultimately refused to allow the police to assist in evicting the invaders. This conduct was itself unlawful and in violation of the consent order. The government of Zimbabwe failed to protect the right to private property in disregarding a Supreme Court ruling that

government's land reform programme was illegal because of the arbitrary occupation of farms, the violence on the farms and the absence of a land reform programme as required by the Zimbabwean Constitution.

The government enacted the Land Occupiers (Protection) Act, which prevented the eviction of those who had illegally and violently settled on private property before a specific date in 2002. The effect of the Act was to restrict the rights to property protected under the Charter as the effect was that the owners of land could not evict settlers from their land pending the acquisition of the land by the government in accordance with the "fast track" land reform or until the settlers were moved to another area under the auspices of the land reform. This legislation constituted a failure in the state's obligation to protect the right to property.

Further, members of the ruling party and of the government encouraged and incited people to violently invade minority white owned farms. The state followed through on "invaded" farms and listed these farms for acquisition and proceeded to divide and allocate them to settlers before the acquisition process had been finalised. The actions by the ruling party and government constitute a violation of the state's obligation to respect the right to property protected under the African Charter.

The African Charter on Human and Peoples' Rights refers to encroachment of the right to property only in accordance with appropriate laws. This would include general international rules on the acquisition of property and also any domestic law and bilateral agreements between Zimbabwe and other members of the international community. Zimbabwe is party to numerous Bilateral Investment Privacy and Protection Agreements (BIPPA). These agreements protect the investment by foreign investors from acquisition by the Zimbabwean government. Farms protected under these agreements were acquired under the Fast Track land reform after being illegally settled. Some of the property includes

Horticultural and Hunting Concerns and Safari Lodges. 70 farms owned by Dutch nationals under BIPPA were invaded and closed.

The 17th Constitutional Amendment has made it impossible to seek legal recourse in the event that one's land has been compulsorily acquired by the state, while allowing the prior owner only to challenge the amount of compensation awarded to him by the government. This amendment has violated the individual's right to property as it created restrictions to the exercise of the right to property and ousted the jurisdiction of the courts.

The fast track land reform programme instituted by the government has failed to meet the obligation of the state to fulfil the right to property. The land reform programme has failed to adequately and transparently distribute agricultural land to the landless members of Zimbabwean society, primarily because of corruption of the programme by members of the government and the ruling party. The failure by the government to adopt a reasonable and progressive policy to fulfil the right to property between 1985 and 2005 has been a violation of the state's obligation to progressively realise the rights protected under the Charter.⁴⁶

⁴⁶ The government appointed Utete Land Review Committee estimates the number of beneficiaries under the small scale resettlement programme at 127 192 families (out of a projected 300 000 families), while 7 260 families were given land under the commercial farming scheme (out of a projected 50 000 families). The Utete Committee also noted that of 3 500 white commercial farmers a total of 1 323 farmers remained farming in Zimbabwe, and noted that farm workers had been either displaced, resettled within the new resettlements or remained un-resettled on the farms. See <www.economic.c.zw/agriculture/land>.

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.

Zimbabwean legislation generally protects the right to work under satisfactory conditions and outlaws discriminatory practices in the workplace. However, serious issues have arisen with regard to freedom of trade unions, the right to strike, equality in opportunities for education and employment with the state. Following the link between the main umbrella trade union organisation – Zimbabwe Congress of Trade Unions (ZCTU) and the main opposition party MDC – the government has restricted the right to strike, utilising both amendments to the Labour Act and the introduction of the Public Order and Security Act (POSA). The economic decline in Zimbabwe has seen unemployment reach at least 70% in the formal sector and Operation Restore Order had the effect of further increasing unemployment as livelihoods were destroyed.

The government has introduced a policy that when recruiting for training in nursing and teaching (and other institutions for higher learning) it will give precedence to graduates of the government's national youth service.⁴⁷ Further where the government has recruited temporary (untrained) teachers it has recruited only those who have served in the national youth service. The net effect therefore of the policy adopted by government is to restrict recruitment of staff

⁴⁷ The national youth service is run in a military manner and recruits from members of the ruling party's youth structures. Members of the national youth service have been involved in election violence on behalf of the ruling party and are accused of having set up torture camps during elections.

and of students to supporters of the ruling party. This constitutes discrimination prohibited under article 2 of the African Charter.

Right to form and join trade unions

Although legislation protects the right to form trade unions, except in the armed and security forces, this right has come under threat by administrative actions by members of government and the ruling party. The ZCTU, perceived as an opponent of government because of its links with the opposition, has been threatened, a number of its meetings have been prohibited by the police and its leaders and its members have been arrested.

Members of the ruling party have set up parallel structures and created a competitor union body called the Zimbabwe Federation of Trade Unions, which has utilised violent and illegal tactics to represent workers' grievances, leading in some cases to the closure of firms. The state has not interfered with the tactics adopted by ZFTU and has allowed this to continue.

Right to strike

The Zimbabwean Constitution does not protect the right to strike. Members of the armed forces and those working for essential services, identified by the government, cannot ever go on strike. If the workers work in an area not considered essential, a majority of the workers must give their consent to the strike, after a secret ballot, and then the Ministry of Labour must certify that arbitration and conciliation have failed in solving the dispute, and fourteen days notice of the strike must be given. The effect of the requirement that the Ministry of Labour issue a no settlement certificate is to give the government a discretion on when to allow a strike. The practical effect of this has been that there have been no legal strikes in Zimbabwe in the last five years and workers who continue to strike are subject to criminal sanction. The legislation in Zimbabwe is therefore in violation of the African Charter and of Zimbabwe's obligations under

the International Labour Organisation treaties. When workers do strike and demonstrate they are invariably violently dispersed.⁴⁸

Child labour in farms and plantations

Farmers continue to violate Zimbabwean and international law regarding the use of underage children on farms. Child labour is usually used on plantations during picking and harvesting seasons as cheap casual labour. The conditions under which children work, missing out on school, working long hours, violate rights protected under the Charter including the right to education and the right to the best attainable standard of health. Although Zimbabwean law prohibits most forms of child labour for children under 16, the government does not strictly enforce the law, failing in its obligation to protect the right.

⁴⁸ A ZCTU demonstration in September 2006 was broken up by the police and some of the ZCTU leaders were allegedly brutalised and tortured by the police.

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.

Introduction

Traditionally the Zimbabwean government has placed much emphasis on the delivery of health services to its population. However, the health delivery system in Zimbabwe has deteriorated markedly in the last five to eight years. Government hospitals are understaffed and do not have medicines. There is a shortage of nurses to staff clinics in the rural areas and doctors are unavailable at these clinics. Medicines in the private sector have become unaffordable to the majority of Zimbabweans. The HIV/AIDS pandemic has become a serious problem – while HIV/AIDS drugs are sold in Zimbabwean pharmacies at prices that are competitive on the global scale the majority of Zimbabweans cannot afford the drugs. World Health Organisation figures placed life expectancy for men at 37.7 and for women at 38 in 2002; child mortality for men was 115 and for women it was 107 per 1000. It is estimated that 3 000 people die a week from AIDS and that 700 000 children in the country have been orphaned by the disease (UNICEF estimates that 1 out of 5 children has been orphaned by HIV/AIDS). These figures confirm that the Zimbabwean health delivery system is in crisis. Failures in health service delivery by the government are compounded by the absence of adequate and accessible food for the population. Because of limited food availability and affordability, 5 million people, almost half of the total population of 11.6 million, cannot meet their nutritional requirements and are vulnerable to disease and death. UNICEF estimates chronic malnutrition of 27% among children. The government has failed in its obligation to fulfil the right to health as protected under the African Charter as the continued decline in the standard of living and access to health facilities threatens not only the individual's attainment of the best attainable standard of health but also his/her right to life. Further the situation in Zimbabwe since the last report in 1996 has seen a reversal of many of the policies adopted by government to ensure access by Zimbabweans to health facilities. The absence of medicines and other materials at hospitals and the absence of doctors and nurses across the country means that access to health facilities for the majority of Zimbabweans has been

negated. The state of Zimbabwe has effectively retrogressed in its protection of the right to health over the last nine years.

Health budgets have continued to decline in the last eight years, both in real terms and expressed as a fraction of the total budget. Total health expenditure in 2001 was 6.2% of the GDP, being an amount of international dollars 142 per person per year. The government spent 12.2 per cent of its budget in 2002 on health, spending a total per capita of international dollars 78. In 2002 total expenditure on health was 8.5 % of GDP.

Policies such as free access to health facilities have been eroded in the last decade with cost sharing and commercialisation introduced in state hospitals. Overcrowding and understaffing in the referral hospitals and the lack of medicines in state hospital pharmacies has forced individuals either to seek health care in the expensive private sector or to “choose” not to be treated. The decline in the population can to a large extent be linked to the decline in the health system coupled with the HIV/AIDS pandemic. The retrogressive steps taken by the government by reducing real spending on the health sector is a violation of its obligations under the African Charter.

Although the government has continued with a policy of cost sharing it has made provision for free treatment for children under five and for adults over 60. Further, immunisation programmes have been held successfully throughout the country with the assistance of UNICEF. The government is also implementing a nationwide Nevirapine therapy programmes to prevent mother to child transmission of HIV/AIDS. However there is limited care for children diagnosed with Tb and HIV/AIDS.

Despite projected growth the population of Zimbabwe has fallen, according to government statistics, from 11,9 million in 1997 to 11,6 million people in 2002. While part of the decrease in numbers may be attributed to emigration these

figures show a drastic decline in population, which to a large extent has been caused by the government's failure to provide antiretroviral treatment for and to address the HIV/AIDS pandemic. Although the government has been raising money from all tax-payers under the AIDS levy since 1999 the government has still not implemented a nationwide antiretroviral programme and is still concentrating on pilot programmes in Harare and Bulawayo (the two biggest cities). The government has failed to implement a reasonable policy to utilise its resources to progressively deliver antiretroviral and other therapy to Zimbabweans.

HIV/AIDS and the right to Health in Zimbabwe

Approximately 23 % of the population are HIV positive and the government is obliged under the African Charter to design policies to meet the health needs of this significant proportion of the population. However, 60% of the HIV and AIDS budget is utilised for prevention. Considering the number of people living with HIV/AIDS and the general awareness levels in Zimbabwe the state is unreasonable in failing to direct the majority of the budget towards HIV/AIDS therapy and the care of HIV/AIDS patients. While the government has declared a national state of disaster on HIV/AIDS allowing national production of antiretrovirals protected by international patents and although one Zimbabwean company is manufacturing and selling the drugs to the government and the private sector at relatively low (relative to the international prices) the company faces restrictions in the importation of raw materials and does not manage to meet the demand. Raising exchange rates have seen the raw materials imported into Zimbabwe increase in price and the subsequent rise in the price of antiretrovirals in the private market has induced many middle-class Zimbabweans to utilise the public health system for antiretrovirals (where antiretrovirals are further subsidised), placing the public health system under strain. Government and NGO run antiretroviral schemes are still generally confined to the urban areas of Zimbabwe.

Political Interference

In accordance with article 2 of the African Charter on Human and Peoples' Rights all rights are to be protected without discrimination. This includes the right to the highest attainable standard of health. The government operates a scheme through the Ministry of Social Welfare in terms of which those who are too poor to afford medical attention are allowed free access to government medical facilities. In rural areas, where recommendations on whether to treat persons under the facility are made by councillors and other political figures medical attention has become subject to political discretion. This is a violation of article 16 of the Charter, read with article 2 of the Charter.

Problems facing Health Delivery in Rural Areas

In rural areas the distance to health facilities continues to be a barrier, especially since the breakdown in rural transport systems (as a result of shortages of fuel and spare parts because of the foreign currency shortage). Clinics in rural areas are normally unmanned by doctors and some are not even manned by nurses as a result of the exodus of trained personnel, e.g. Dunoly Farm Clinic.⁴⁹ Health staff are underpaid and work in unacceptable conditions in government hospitals, with the lack of infrastructure, materials and medicines makes their work impossible. Large numbers of staff are leaving the country and hospitals and referral centres are staffed by junior inexperienced doctors.

Land Reform and the Right to Health

During the fast track land reform programme the government moved people onto land where there were no facilities, including clinics and hospitals. This has increased the distance to be travelled by those requiring medical attention during a period when public transport has become increasingly unaffordable for the poor.

Operation Restore Order

⁴⁹ Information received from the Girl Child Network.

During Operation Restore Order communities were displaced from homes across the country and initially held in “transit” camps where they were unable to access health facilities, lived in the open and did not have proper facilities. Further, among those displaced under operation Restore Order were persons receiving antiretroviral drugs through donor assisted projects in the areas from which they have been displaced. The displacement means that they will no longer be able to access the treatment.

Resources for implementation of the right to Health

Protection of health requires political will to provide the necessary human and financial resources required to provide adequate health services for all citizens, regardless of financial or employment status. Although the Government of Zimbabwe has legislation and policy in place to safeguard the health rights of its citizens, the resources required to implement and deliver health services have been severely depleted and eroded by the current economic crisis. The impact of the diminished access to health is well illustrated by the fall in standard health indicators which have been published in numerous reports issued by international health monitoring agencies. Of significance is the Ministry of Health’s concern about the deteriorating statistics, and delays in publishing of data, and withholding of key data. The Zimbabwe Demographic Health Survey (ZDHS), a survey conducted by the Central Statistical Office of the Government of Zimbabwe, and supported by the Ministry of Health and Child Welfare, the National Aids Council, the Zimbabwe National Family Planning Council, the National Microbiology Reference Library, USAID Zimbabwe, the United Nations Development Program, the United Nations Children’s Fund, the Centre for Disease Control and the United Kingdom Department for International Development, is still in preliminary report format, awaiting the release of some key health indicators eg. Maternal Mortality Rate, that has yet to be released by the Ministry of Health and Child Welfare (MoHCW). This preliminary report was released in draft format in July 2006, and to date (February 2007) the report is not finalised.

Health Policy and Implementation Gap

Although the MoHCW has clearly defined commitment to national equity in health, as defined in two successive policy documents, Equity in Health (MoH 1980) and The National Health Strategic Plan 1997-2007 whose theme is “Working for quality and Equity in Health”, the support by the Public Service Commission (PSC) and the national budget leads to significant difficulty in the implementation of the policy. The PSC approved staffing of health institutions that provide 65-70% of the health care in Zimbabwe is significantly lower than the MoCHW recommendations.⁵⁰

PSC-MoHCW Staffing Policy Gaps (2000)

Category	Ideal Posts(MoHCW)	Approved Posts(PSC)	%Gap
Doctors and Dentists	1532	690	55%
Nurses(All)	11229	8339	26%
Nurse Aids	2882	1087	62%
Pharmacists	369	156	61%
Radiographers	283	136	52%
Public Lab Techs	330	105	68%
Dental Techs	229	100	56%

Source: MoHCW(1997b), Initiatives Inc (2000)

The spending on human resources in the public health sector has decreased from 47% in 1999 to 34% in 2004 (from Estimates of Expenditure, Government of Zimbabwe 1999-2004). The impact of this is that the health services are facing a critical staff shortage, with 52% of doctors', 32% of nurses' and 92% of pharmacists' positions vacant (WHO 2005). In 2004, the MoHCW published figures that showed that 2 825 work permits were processed in one year for Zimbabwe health professionals to work in the United Kingdom, a figure that

⁵⁰

represents 25% of the professional health work force in the Zimbabwean public sector.⁵¹

The expenditure on health services per capita has also decreased over the past 10 years as illustrated in the table below.

	1997	1998	1999	2000
Per Capita total expenditure on health at average exchange rate (US\$)	66	59	35	42
Per Capita total expenditure at international dollar rate	221	275	192	182
Per Capita government expenditure on health at average exchange rate(US\$)	39	33	17	22
Per Capita government expenditure on health at international dollar rate	131	154	94	92

Source: WHO Zimbabwe report 2004

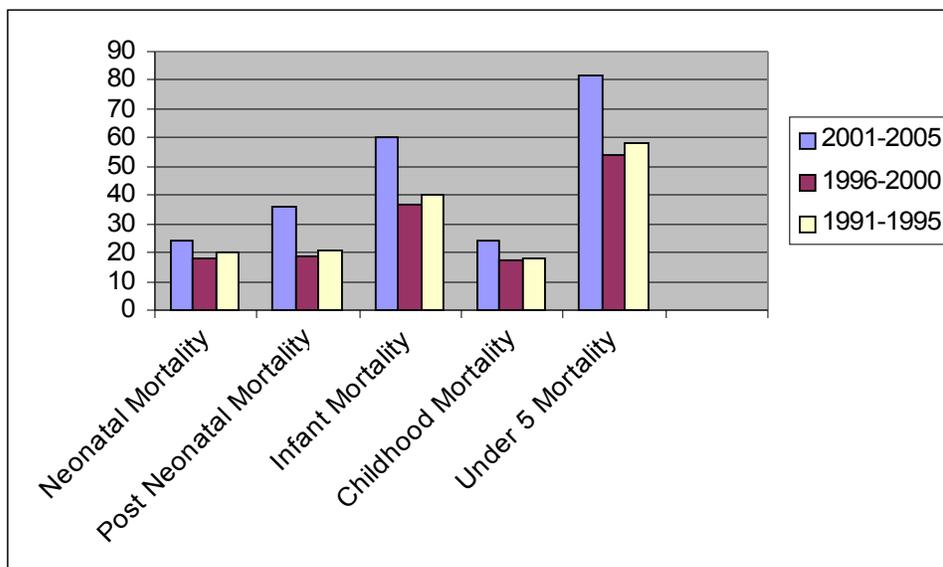
(<http://www.who.int/whr/2004/annex/country/zwe/en/print.html>)

The impact of diminishing resources, both financial and human for the delivery of health care services, and the escalating poverty due to hyperinflation and unemployment have led to a complex health crisis where both the health delivery and the ability to access health services are greatly diminished. Compounding the situation is the high prevalence of HIV Aids (21.3%) of the total population, the increased incidence of infectious diseases due to HIV Aids such as Tuberculosis (The incidence of TB has increased by 500% in the last decade).

The ZDHS figures show a significant increase in the infant and childhood mortality rates in the last 5 years, after improvement in the preceding 10 years.

Early Childhood Mortality rates (Deaths per 1 000 live births)

⁵¹ XXX



Source: ZDHS Preliminary report (2005-2006)

The key social indicators also illustrate the impact of limited access to health care and high prevalence of HIV Aids.

	1990	2002
Percent of people living below the poverty datum line	22.5	70 (est 2003)
Illiteracy(percent of population age >15)	19.3	10.7
Gross primary enrolment (school)	83	95
Infant mortality(per 1000 live births)	49	72
Child Malnutrition (percent of children under 5)	11.5	13
Life expectancy at birth (years)	62	39
HIV/Aids Prevalence Rate; 15-49 years	12	25

Source: Development Economics Central Database, Human Development Reports (UNDP).

HIV/Aids is a primary reason for the dramatic decrease in life expectancy in Zimbabwe. In 2004 there were 1.82 million people living with HIV Aids, and only 4 500 were able to access AntiRetroviral treatment program started by the MoHCW in that year. By 2005 the total number receiving ARVs was only 24 000

and this included all NGO, donor and private sector programs. There are 1.3 million HIV/Aids orphans (2005).

The public health issues of Zimbabwe are a cause for concern and are included in most of the regional and international assessment reports of the country. Issues such as the diminished life expectancy, the high infant and maternal mortality rates, and the disease burden created by poverty, such as diarrhoea, malaria, acute respiratory infections and malnutrition affect the development of the country. The Millennium Development Goals in Zimbabwe are far behind target, even by the Government of Zimbabwe's own admission in its report to the UN (2004).⁵² Malnutrition has increased by an average of 2-4% with one district showing a 9% increase, in a survey from Nov 2004-March 2005. (WHO)⁵³

The collapse of water and sanitation facilities both in the urban and rural areas has led to cholera epidemics in previously non-affected areas. Harare has had 5 outbreaks in as many years.

The right to health and the ability to access appropriate health care by the citizens of Zimbabwe are severely impaired by the current health delivery and access crisis. The impact on the mortality and morbidity is stark. The accurate figures that are available for comparison over the past 10 years indicate the suffering due to diminished health care services. The consequences for the region are also of concern. The probability of resistant HIV to current available treatment is high, with inadequate resources for uninterrupted treatment programs and monitoring of patients. Malaria and TB are also issues of regional concern.

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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.

Between 1980 and 2000 the Zimbabwean government made huge strides in realising the right to education, especially primary education. According to UNICEF Zimbabwe had achieved an adult literacy rate by 2000 of 93 percent, which was the highest in sub-Saharan Africa. However, the education system has fared badly as a result of the economic decline in the last five years. With inflation at more than one thousand per cent per annum fees set by the government are insufficient to run schools and parents are incapable of meeting any extra demands placed on them by schools. Schools across the country fail to purchase enough textbooks and other equipment needed for the proper education of children. With food shortages and rising unemployment school dropouts are a serious concern as the number of students finishing primary school has fallen in the last five years. The exodus of trained teaching staff from the country has left many schools, especially in the rural areas, understaffed and staffed with under qualified staff with little experience. This has been caused by unacceptable conditions for teachers – salaries are so low they are non-taxable, with current salaries being around USD 120 on the official exchange rate.

The government has interfered with the provision of education by private schools refusing to allow private schools to raise fees and levies to meet inflation, even though such increases were agreed upon by the parents in parent associations. The effect of such regulation of private schools is to interfere with the right of individuals to receive education.

Ruling party supporters, war veterans and youth militias in the rural areas have regularly harassed teachers for being suspected members of the opposition MDC, threatening and at times assaulting them. The attacks on teachers has been especially noticeable during election periods, when teachers have been subjected to violence and have in some cases fled the areas in which they were teaching fearing for their lives. The government has failed to take steps to ensure the safety of teachers in the rural areas and thus has failed in its obligation to protect.

There is a high dropout rate between grade seven (end of primary school) and form one (beginning of secondary school). While the primary and immediate obligation on the government of Zimbabwe is to ensure universal primary education, the state of Zimbabwe has an obligation to progressively ensure that secondary education is provided to the majority of Zimbabweans. Primary school completion rates had fallen from 82.6% in 1990 to 75.1% in 2000 to 63% in 2003 according to UNICEF. Very few Zimbabweans proceed from form four to form six (the level necessary to be accepted into University). While the government has set up six universities across the country, it has also introduced cost sharing in all higher education facilities. This has, to some extent seen poorer students failing to attend higher education institutions, even though the government does offer loans to cover education and subsistence costs.

Violations of the rights of students at tertiary institutions

During this period, and especially during 2006, the rights of students have been excessively interfered with by the state. The rights that were most violated during the year were the rights to freedom of expression/association/movement, political discrimination/ intimidation victimization, freedom from arbitrary and unlawful arrest and detention. These rights recorded 337 violations in the year. This was mainly due to the existence of repressive legislation in the name of POSA among others. This was further exacerbated by the fee hikes, which constituted the

centre of most demonstrations by students in 2006. Incidents of assaults and torture were also high recording 77 and 35 respectively.

On 8 May 2006 Bindura saw possibly the worst part of the year as regards torture by state agents on students. Students were subjected to all kinds of torture, inhuman and degrading treatment and punishment at the hands of the police, state security agents and ZANU-PF activists. The arrests in the year 2006 seemed to be a way of punishing students since most of the arrests did not lead to prosecutions or to the students having charges preferred against them. The students would be arrested and then later released after having been heavily assaulted and tortured by the police. The police therefore became not only arresting officers but also judicial officers as well meting out all kinds of punishment on the students. In this situation, there seemed to be no need to take the students to court. In any case, if they had been taken to court they would have most likely won the cases, much to the chagrin of the police officers, state security agents and ZANU-PF activists. The students were regarded more and more as opposition rather than mere students requiring the protection of the state. Nineteen students were suspended or expelled in the year 2006 compared to the 7 recorded for 2005. The highest number of students whose rights were violated was recorded in February. This was the beginning of the semester/year when the Government announced without adequate notice that tuition fees and accommodation fees had gone up far beyond what the students could afford. This shock announcement was followed by peaceful demonstrations after the Government and tertiary colleges had denied students who had not paid the unreasonably high fees access to education. This in reality meant that more than half the students at these institutions could not attend lectures. The second highest number of students whose rights were violated was recorded in May, towards the end of the semester. This included the gruesome torture of students at Bindura State University.

Attached hereto is a compilation of allegations of violations of the rights of students at tertiary institutions in Zimbabwe.

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;

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?

What steps is the GoZ taking to ensure that the teacher-pupil ratio does not continue to decline?

What measures have been put forward by the government to make higher and tertiary education affordable to the majority of Zimbabweans who are failing to pay the new fees?

What remedies have been given to those students who have been assaulted, dismissed, suspended or tortured by university security officers or state agents?

Effect of Operation Murambatsvina on shelter, health and education

The Right to Housing

The Right to housing is provided for, *inter alia*, in article 11 of the ICESCR; article 25 of the Universal Declaration of Human Rights (UDHR); article 20 of the African Charter on the Rights and Welfare of the Child (ACRWC) (specifically in relation to children); article 27 of the Convention on the Rights of the Child (CRC)(specifically in relation to children); and article 16 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (specifically in relation to women). In the SERAC case (above) the African Commission has noted,

Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health, cited under Article 16 above, the right to property, and the protection accorded to the family forbids the wanton destruction of shelter because when housing is destroyed, property, health, and family life are adversely affected. It is thus noted that the combined effect of Articles 14, 16 and 18 reads into the Charter a right to shelter or housing ...

General Comments 4 and 7 of the Committee on Economic, Social and Cultural Rights (CESCR), elaborate on the scope and content of this right. The United Nations Commission on Human Rights has addressed the question of forced evictions in Resolution 1993/77. In 2002 the UN special rapporteur on the right to housing in her report⁵⁴ addressed pertinent issues related to the right to housing.

The essential point to be noted is that the right to housing is considered to be “of central importance for the enjoyment of all economic, social and cultural rights”. Further, individuals as well as families are entitled to housing regardless of age, economic status, group or other affiliation or status and other such factors. The right to housing is perceived as being intrinsically linked to human dignity. The

⁵⁴ E/CN.4/2002/59.

right must be enjoyed without discrimination including on the basis of economic status. CESCR has stated that:

The State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.... In cases where eviction is considered to be justified, it should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with general principles of reasonableness and proportionality.⁵⁵

In respect of Zimbabwe specifically, and in response to Zimbabwe's initial report on the implementation of the ICESCR, CESCR noted as one of the principal subjects of concern, the fact that:

Despite the fact that the "extended family" provides a safety net for some of the homeless, the Committee notes that the situation in relation to the right to housing remains clearly inadequate. The Committee is particularly concerned about the precarious situation of persons living in illegal structures or unauthorized housing (para. 107 of the report). Persons should not be subjected to forced eviction unless this is done under conditions compatible with the Covenant.⁵⁶

The Committee was concerned that Zimbabwe had failed to provide information on forced expulsions. The Committee was also keen to know what measures the Government had taken to resettle the inhabitants of the "illegal" sector on other planned residential sites or to upgrade the illegal settlements.⁵⁷ In its suggestions and recommendations, in respect of the right to housing, CESCR said that:

The Committee recommends that appropriate measures be taken in order more effectively to guarantee the right to housing and, in particular, **to ensure that no forced evictions are carried out without alternative housing being offered,**

⁵⁵ General Comment 7 paragraph 14.

⁵⁶ See paragraph of the concluding observations of the Committee on Economic, Social and Cultural Rights: Zimbabwe, *op cit*.

⁵⁷ See paragraphs 43 and 47 of the Summary Record of 10th Meeting Zimbabwe. 06/06/97. E/C.12/1997/SR.10. (Summary Record)

in accordance with the Committee's General Comment No. 4 (1991). It would also like to receive further information on the number of forced evictions carried out and on the application of article 11 of the Covenant in Zimbabwe, in particular with respect to the right to housing (emphasis added).⁵⁸

The international obligations of the government of Zimbabwe regarding shelter can therefore be summarized as ensuring that no person is forcibly evicted, by the state or by third parties, unless alternative accommodation is provided. One of the effects of Operation *Murambatsvina* is that many people have been rendered homeless; after being forcibly evicted by the central government and/or local authorities without provision of alternative accommodation. Their 'illegal' houses were demolished by the local authorities and the Government without any alternative accommodation being simultaneously provided for them. The Government has, therefore, clearly been acting in contravention of its obligations in terms of articles 14, 16 and 18 of the ACHPR. Although government has proceeded to establish a scheme to provide houses to the homeless and those on the housing waiting list, this scheme only came into effect after Operation *Murambatsvina* had left the individuals homeless.

The Right to Health

A number of the people affected by the operation were infected and affected by AIDS, some of whom were receiving antiretrovirals from NGO projects in the areas from which they were evicted. The displaced persons will find it difficult to access antiretrovirals in the areas to which they have moved because many of the projects are specific to specific suburbs within Harare and because the government does not provide antiretroviral treatment in all hospitals. Individuals with HIV who forced to relocate to the rural areas will be especially prejudiced in their enjoyment of the right as drug programmes are still mainly restricted to the urban areas.

By moving people arbitrarily, this has affected the number of social programmes that had been in place to deal with the issues of HIV/AIDS and the potential

⁵⁸ See paragraph 21 of the Concluding Observations, *op cit.*

danger that has been created by simply stopping access to drugs without following proper drug termination procedures for HIV/AIDS drugs treatments.

The Right to Education

General Comments 11 and 13 of the CESCR has elaborated on the scope and content of this right. In the context of Operation *Murambatsvina* it is important to understand the centrality of education to a child's development. In this regard the contents of the UNESCO Convention against Discrimination in Education (1960) as well as General Comment 1 of the Committee on the Rights of the Child provide useful insight on what is an appropriate policy to respect observance of the right of children to access education.

For purposes of an analysis of the effects of Operation *Murambatsvina* it suffices for us to highlight the fact that education as a human right, is considered so important to the extent that there is an obligation on every member state to the ICESCR to provide for it free of charge and on a compulsory basis, particularly with regard to primary education. It is implicit in this obligation that the State should not interfere with access to education. The focus by the current UN Special Rapporteur on the right to education has already moved from elaboration of normative content to effective implementation.

Operation *Murambatsvina* in its effect is a blatant violation of 'accessibility and availability' of the right to education in respect of all young children who have been internally displaced as a result of this operation. Families that were evicted from "illegal" structures in Zimbabwe under Operation *Murambatsvina* were forced to relocate, either within the cities, to "transit" camps or to the rural areas (which the government announced was the desired outcome). The effect of such relocations was to remove children from schools in which they were enrolled, where they had paid school fees and levies, bought uniforms and were attending classes.

The Porta Farm Evictions: An example of the effect of Murambatsvina⁵⁹

Porta Farm, which is outside Harare, became a transit camp in when the Government decided to clear away hundreds of poor urban squatters from various locations in Harare ahead of the Commonwealth Summit in Harare, so that Queen Elizabeth would not have to see squalor as she went through Harare. This was another *Operation Murambatsvina*. The Government later pledged to provide proper housing for the people at Porta Farm, but this promise was never honoured.

The transit camp remained and grew, and Porta Farm became an established settlement as many people transformed plastic shelters into small brick houses. Over the years, Porta Farm evolved into a stable community with clinics, primary and secondary schools, pre-schools, and an orphanage. The numbers at Porta Farm increased to about 5 000 in 1993 when some of those evicted, contrary to a court order, from Churu farm settled at Porta Farm. By 2005, the population at Porta Farm had increased to about 12 000 people.

Several times in the past the authorities have tried to move the squatters from Porta Farm. In 1991, the Harare City Council threatened to remove the residents. The residents then obtained a provisional High Court interdict prohibiting the Council from evicting them until it had found alternative accommodation with the necessary basic services for them.⁶⁰

⁵⁹ The description of the evictions from Porta Farm in this section was compiled by the Human Rights NGO Forum, and is reproduced from its website at http://www.hrforumzim.com/frames/inside_frame_special.htm.

⁶⁰ High Court 3177 of 1991

In 1995, the Harare City Council again tried to evict the residents. Another High Court provisional order was obtained preventing the demolishing of houses and eviction of the residents.⁶¹

In August 2004, the Ministry of Local Government then attempted to evict the residents. A High Court order was obtained against the Ministry to prevent the eviction.⁶²

In September 2004, the Harare City Council brought an application for an order to evict the people at Porta Farm. The court refused to grant the order, saying the 1995 High Court order had not been discharged and was still operative.⁶³

At 6.00 am, on the morning of 27 June 2005, the police distributed flyers informing the residents that they would be moved to Caledonia farm the following day, so they should pack their belongings. The next morning demolitions of shacks and houses started, an hour after lawyers representing residents had served the Government with a letter reminding it of the November 2004 court order. The police were shown copies of the 1995 and 2004 orders, but they ignored them. The residents reported that the police responded by saying that "they were not in a classroom and that they could not read, and that they were not going to obey any court orders as they are acting on orders from above". After the evictions started, an interdict was obtained from the Norton Magistrates Court to try to stop the evictions.⁶⁴ This interdict was also ignored.

⁶¹ *Kuronga and 39 others at Porta Farm v Harare City Council* HH-4233 of 1995.

⁶² *Chiyuku v Minister of Local Government* HH-10671 of 2004.

⁶³ High Court 11041 of 2004.

⁶⁴ Norton Magistrates Court Case no 376 of 2005.

It is alleged that that three, or possibly four, people died at the Porta Farm as a result of the evictions. A pregnant woman allegedly died when she fell from a truck on which she was being taken away, a five-year-old boy was allegedly run over by a truck, and a terminally ill woman allegedly died when being bundled into a moving truck.⁶⁵

After the police had acted in violation of the court orders, the lawyers for the residents sought to obtain an order holding the police and the City Council Commission and the Ministry of Local Government in contempt. Without giving any reasons, the judge refused to grant this order.⁶⁶ It is difficult to see on what possible basis the contempt order was refused.

On 29 June 2005, the UN Special Envoy's team visited Porta Farm, and witnessed the demolitions and the transportation of residents to Caledonia Farm. The mission said it was shocked by the brutality it witnessed. The next day, the Special Envoy visited Porta farm again, and saw what she described as a serious humanitarian crisis with around 1000 evictees sleeping out in the open.

Many of the evicted people had nowhere else to live, so they started to return to Porta Farm, and a large number of people were living among the ruins of their demolished houses. However, on the morning of 23 July 2005, the police returned to Porta Farm. The ruins of the houses were bulldozed to ensure that they could not provide any remaining shelter for

⁶⁵ Report by Zimbabwe Peace Project 1 July 2005. See also *Zimonline* 8 July 2005. See also the appeal of the Zimbabwe Association of Doctors for Human Rights to other medical associations relating to Operation Murambatsvina.

⁶⁶ *Chinyuku v Minister of Local Government, Minister of Home Affairs, Commissioner of Police and Chairperson, Harare Commission* HH-3225-2005.

the people. The police told the people that they had to leave the farm by that evening, informing them that they would be back with police dogs to ensure that they had all left. One 65-year man told the press that “They broke our houses, and we ran away, but we came back because we have nowhere else to go. I have been here since I was a child. I have no rural home. I am looking after five grandchildren here because my daughter died. I have no rural home, I want to fix the house they destroyed and live here. Help us please.”⁶⁷

⁶⁷ *Sunday Independent* (South Africa) 24 July 2005.

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?