

ZIMBABWE

ONGOING RISKS FOR HUMAN RIGHTS DEFENDERS IN THE CONTEXT OF POLITICAL DEADLOCK AND PRE-ELECTORAL PERIOD

International Fact-finding Mission Report



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I. INTRODUCTION

“A vibrant civil society is a crucial part of any democratic society’s development, in all spheres including human rights, and it should be strongly supported even if some of its messages make uncomfortable reading for those in authority”¹.

Ms. Navi Pillay, United Nations High Commissioner for Human Rights, at the end of her first ever mission to Zimbabwe (May 20 to 25, 2012)

1. Past activities of the Observatory on Zimbabwe

Over the past few years, the Observatory for the Protection of Human Rights Defenders – the Observatory – a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), focused its attention on the worrying situation of human rights defenders in Zimbabwe. The latter is still characterized by acute acts of harassments, intimidation and reprisals, including particularly repeated arbitrary arrests and detentions, judicial harassment and acts of torture and ill-treatment as well as obstacles to the exercise of their right to freedoms of association, expression and peaceful assembly.

In addition to publicly and regularly denouncing the systematic and sustained repression of human rights defenders in Zimbabwe, the Observatory has conducted several fact-finding missions in the country that have shed light on the authorities’ determination to systematically silence any kind of protests or criticism regarding Zimbabwe’s human rights record.

In January 2008, the Observatory carried out a fact-finding mission to assess the situation of human rights defenders in the context of high levels of intimidation and violence in the run-up to the March 2008 presidential and legislative elections. The mission report, *Run up to the March 29 Presidential and Parliamentary Elections – A Highly Repressive Environment for Human Rights Defenders*, described the increasing use of violence by State agents in order to silence political opposition and its perceived supporters, mainly human rights defenders. The Observatory severely condemned the widespread use of force, which was accompanied by, or even relied on, a repressive legislative framework and on a selective enforcement of the laws. In its recommendations, the Observatory urged the Zimbabwean authorities to repeal all restrictive legislations and to take the necessary measures to guarantee the protection of human rights defenders from deaths threats, acts of torture, abductions and disappearances. More generally, the Observatory also called on the authorities to put an immediate end to arbitrary arrests and detentions, surveillance visits by the army, Government-backed militias and Zimbabwe African National Union - Patriotic Front (ZANU-PF) supporters and breaking or forcible entry into offices, defamation and media hate propaganda, restriction of movement or restriction on public meetings of human rights defenders.

2. Political context

In 2008, Zimbabwe experienced a major crisis linked to the national elections. The violence that culminated during the March 29 elections – with summary executions and enforced disappearances of political opponents or those considered to support the opposition – continued under other forms after the ZANU-PF lost control of Parliament to the opposition Movement for Democratic Change (MDC) for the first time since the independence of the country. In addition, the results of the first round of the presidential elections – held on the same day and not disclosed for over a month – gave MDC leader Mr. Morgan Tsvangirai 47.9% against 43.2% for Mr. Robert Mugabe. The run up to the second round of the presidential election, scheduled for June 27, 2008, witnessed a generalisation of the use of force and acts of violence including arbitrary arrests and detentions, death threats, disappearances, acts of ill-treatment and

1. UN Statement, *UN Human Rights Chief ends first ever mission to Zimbabwe*, May 29, 2012.

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torture, intimidation, raids and visits of offices perpetrated by the army, Government-backed militias and ZANU-PF supporters against the opposition and those considered to support the opposition. One objective of ZANU-PF leaders and their supporters was to silence human rights defenders, NGOs and journalists who reported on the irregularities observed during the electoral process, and on the deteriorating human rights situation, as well as political opponents and ordinary citizens perceived as supporting the opposition.

On June 22, 2008, Mr. Morgan Tsvangirai announced his decision to withdraw his candidacy in the hope to decrease the politically-motivated violence. This led to the "re-election" five days later of Mr. Robert Mugabe as the unique candidate. It was widely recognised that the 2008 elections did not meet the international standards of free, fair and credible elections, as they were marred with systematic and widespread violence and human rights violations and abuses, including against human rights defenders, in a context of total impunity.

The government that emerged from this marred electoral process led by President Mugabe was considered by a large part of the international community, including the African Union (AU), to be illegitimate.

This prompted the Southern African Development Community (SADC) to intervene in Zimbabwe through a mediation process led by the President of the Republic of South Africa, Mr. Thabo Mbeki, who was appointed as facilitator. He was later replaced by the new South African President Jacob Zuma. The mediation resulted in the conclusion, on September 15, 2008, of a Global Political Agreement (GPA) between the major political parties: the incumbent President Robert Mugabe's ZANU-PF, as well as the two wings of the Movement for Democratic Change (MDC – T, led by Mr. Morgan Tsvangirai and MDC – M, led by Mr. Arthur Mutambara). The aim of the GPA was to create a basis for a political solution to the governance crisis that shook the country as a result of the failure to hold free and fair elections.

The GPA led to the formation of an Inclusive Government - known as the Government of National Unity (GNU) – in February 2009, which was still in office as of October 2012.

Under this agreement, Mr. Robert Mugabe retained the presidency while Mr. Morgan Tsvangirai became Prime Minister and Mr. Arthur Mutambara Deputy Prime Minister.

The Inclusive Government formed under this agreement was initially tasked to implement the GPA over a short period of time in order to adopt the necessary reforms that would allow for free and fair elections to be held.

However, more than three years after the adoption of the GPA, its objectives have still not been achieved.

On the contrary, towards the end of 2011, President Mugabe, who continued to exert close control over the country by unilaterally appointing several officials in key political and administrative positions, including ambassadors, provincial governors and judges, called for the end of the coalition government, and for the organisation of general elections, before a referendum on a new Constitution. In mid-December 2011, his party (ZANU-PF) adopted a series of resolutions during its National Conference held in Bulawayo. In reality, ZANU-PF is now actively calling for the end of GNU.

On the other hand, both MDC formations have continuously refused to participate in any elections until the implementation of the reforms provided for in the GPA.

In spite of this political deadlock within the GNU, it is likely that elections will be held in Zimbabwe in 2013.

In this new pre-electoral context, and three years after the entry into force of the GNU, political violence, lack of respect for the rule of law and human rights violations remain a serious concern in Zimbabwe. Human rights defenders, including NGO members, journalists, trade

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unionists and lawyers, are once again suffering the brunt of violations of their rights, including acts of intimidation, arrests and other forms of hindrances aimed at hindering their work.

It is in this context that the follow-up international fact-finding mission to Zimbabwe mandated by the Observatory from December 11 to 18, 2011 met with members of political parties, Government officials, human rights defenders, including journalists, lawyers, judicial officers, representatives of civil society organisations, trade unionists, organised rate payers organisations and artists, and members of the diplomatic community.

3. Scope and composition of the mission

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One of the aims of the mission was to assess the environment in which human rights defenders had been carrying out their activities, four years after the 2008 elections, under a weak GNU, and in a context where the organisation of the next elections was dominating the political debates.

More precisely, the mandate of the mission was to:

- Compare the findings of the 2008 Observatory Fact-Finding Mission Report in Zimbabwe and with the situation of human rights defenders at the time of the visit;
- Identify and assess the laws used to stifle the work of journalists and human rights defenders;
- Identify the patterns of harassment against human rights defenders, as well as their perpetrators;
- Document personal testimonies of victims of repression;
- Determine the capacity of the national institutions to ensure protection of human rights defenders;
- Identify the position of the Government on the recommendations of various regional and international bodies regarding the situation of human rights defenders;
- Formulate appropriate findings and recommendations.

The delegation was composed of Mr. **Arnold Tsunga**, Lawyer, Vice President of FIDH and Director of the African Regional Programme of the International Commission of Jurists (ICJ); Justice **Thomas Masuku**, former Judge of the High Court of Swaziland and Botswana; and Ms. **Berita Kopolo**, an academic attached to the Centre for Human Rights of the University of Pretoria. The mission delegates were accompanied by Mr. **Okay Machisa**, National Director of the Zimbabwe Human Rights Association (hereinafter called ZIMRIGHTS), an affiliate of FIDH.

4. Methodology

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The mission conducted interviews in the major cities such as Harare, Bulawayo and Mutare. It also gathered relevant information from newspaper articles, desk research and supporting documents from some of the interviewees.

More specifically, the mission met representatives from ZIMRIGHTS, Bulawayo Agenda, Radio Dialogue in Bulawayo, Bulawayo Urban Progressive Rate Payers Association (BUPRA), Trustee-Vavezi (an offshoot of Nhimbe Trust) in Bulawayo, Legal Resources Foundation (LRF) in Mutare, Centre for Research and Development; representatives from the Prime Minister's Office and the MDC; members of the Law Society of Zimbabwe; as well as foreign diplomats accredited to Zimbabwe including the Ambassador of the Republic of South Africa, the Ambassador of France and US diplomats.

Accordingly, the information contained in this report draws on elements provided by a variety of sources, as well as on the observations, assessments and analyses of the mission delegates. The mission assessed how the political, legal, and international environment in Zimbabwe contributes to, or on the contrary affects, the situation of human rights defenders in the country.

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The definition of a "human rights defender" used by the mission delegates stems from the 1998 United Nations (UN) Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms – also known as the UN Declaration on Human Rights Defenders:

“A person who, individually or in association with others, promote or strive for the protection and realization of human rights and fundamental freedoms at the national and international levels”.

5. Obstacles

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Despite the mission's attempts, it appeared almost impossible to obtain the views of Government officials. If the mission met with Mr. Jacob Mafume, a legal adviser within the Prime Minister's office, it could not meet the Prime Minister himself nor obtain a meeting with the office of the President.

II. PRE-ELECTORAL PERIODS IN ZIMBABWE: INCREASED RISKS FOR PUBLIC FREEDOMS

1. The political deadlock hinders the implementation of reforms and the establishment of a favourable environment for free and fair elections

The mission observed that the degree of human rights violations in the country follows a recurring pattern that usually culminates during electoral periods. The country was facing a political deadlock where the leading parties, especially ZANU-PF, were unlikely to reach any agreement likely to improve the political environment, since the MDC considered the implementation of the reforms foreseen by the GPA as a pre-condition for the organisation of elections, while ZANU-PF called for elections as a means to put an end to the prevailing deadlock.

The mission delegates concluded that it was unlikely that any meaningful and genuine reforms could emerge from the political stalemate, and that in the run-up to the new elections called by ZANU-PF, there were strong reasons to believe that the environment in which human rights defenders operated was alarming and would further deteriorate. At the end of her first mission to Zimbabwe, held from May 20 to 25, 2012, Ms. Navi Pillay, UN High Commissioner for Human Rights, stated that *"concern is [...] rising both inside and outside the country that, unless the parties agree quickly on some key major reforms and there is a distinct shift in attitude, the next election which is due sometime in the coming year could turn into a repeat of the 2008 elections which resulted in rampant politically motivated human rights abuses, including killings, torture, rapes, beatings, arbitrary detention, displacements and other violations"*².

At the time of the mission, many outstanding areas of reform continued to prevent the achievement of a situation favourable to electoral fairness and justice, in particular:

- the constitutional reform process was taking place in the particular context of Zimbabwe where people have never been given a chance to participate effectively in the production of their own constitution, in a political, party-driven manner and effective people participation was excluded;
- no reforms had been implemented in the security sector, and the security forces were considered at worst as an appendage of ZANU PF, and at best as biased in favour of the ZANU-PF by the latter;
- the institutions that were expected to offer protection (e.g. courts, police, prosecution authorities, etc.) were still weak and unable to guarantee a genuine separation of powers and to fight corruption that has reached endemic levels;
- ZANU-PF was keeping stranglehold over the security and coercive structures of the State e.g. the army, the police, the intelligence services whom they deploy to harass the opposition and human rights defenders;
- perpetrators of violence and of serious human rights abuses in the framework of the 2008 elections were still free, and a climate of impunity continued to prevail.

2. SADC endorsement and implementation of reforms: the pre-conditions for the organisation of the elections remain unmet

Formally speaking, SADC was the guarantor of the GPA. Accordingly, any decision to hold elections could not be taken without the endorsement of SADC and cannot result from the decision of a single political party represented within the GNU.

2. UN Statement, *UN Human Rights Chief ends first ever mission to Zimbabwe*, May 29, 2012.

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At SADC Summits held in Luanda (August 2011), Livingstone (March 2011) and Sandton (June 2011), attempts were made by SADC States to find a way out of the current deadlock, but the Summits resulted in similar conclusions about SADC being “fatigued by the Zimbabwean issue”³.

It was established in particular by SADC States that three basic categories of obstacles were hindering the full implementation of the GPA⁴:

- a) the outstanding issues upon which there had been an agreement and a signature by the mediators;
- b) the more difficult outstanding issues, upon which an agreement may be possible with political will such as the appointment of provincial governors with the involvement of the Prime Minister and;
- c) the “outstanding thorny and toxic issues” on which any agreement appears impossible before new elections are held such as the security sector reform, the removal of military personal from running elections in Zimbabwe, repeal of repressive legislation such as the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA).

Even for issues falling in the first category, and notwithstanding the signed agreements, their implementation was at best largely insufficient. Initial but limited progress had often been reported to the SADC Heads of State and during Government Summits. However, the parties subsequently took backwards steps. This lack of progress can be explained by the fact that under the current government leadership mode, no room is left for reforms such as security sector reform and repeal of repressive laws like POSA that may alter the political playground before new elections are held.

Given the role of facilitator devoted to the SADC in the reform agenda, it is clear that the following pre-conditions provided for in the GPA must be fulfilled before an election can be organised:

- a referendum on a new constitution must have been conducted;
- a new constitution must be adopted and implemented;
- the election must be endorsed by SADC, as the guarantor of the GPA;
- an independent and impartial body responsible for the running of elections must also be in place.

The fulfilment of such pre-conditions depends largely on SADC’s leverage on the party of President Mugabe, as ZANU-PF is for the time being unlikely to accept that security agents be prevented from running and conducting the elections, as was the case during the June 2008 elections.

Another key institution that must be set up is the Human Rights Commission so as to create a structure and framework that deals with serious violations of human rights as often happens during elections. After a long political stand-off, on October 12, the government finally gazetted the enabling legislation - the Zimbabwe Human Rights Commission Act (Chapter 10:30).

Most of the above-mentioned issues have not yet been resolved. The Prime Minister, a key figure in the political equation in Zimbabwe, has never fully and openly supported the call for elections since the pre-requisites including those mentioned above, have not yet been met.

The mediators for the main political parties (ZANU-PF, MDC-T and MDC-M) – i.e. people representing their party in the mediation process - have therefore reached a point where they cannot not take the mediation process on outstanding issues any further.

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3. Such elements were reported to the mission delegates by an Ambassador to Zimbabwe from a SADC member State.

4. Interview with Ambassador Mavimbela of South Africa to Zimbabwe, December 2011.

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Any movement on outstanding issues will now only be possible with the active involvement of the political party principals represented in the GNU, i.e. President Mugabe, Prime Minister Tsvangirai, Deputy Prime Minister Mutambara and professor Welshman Ncube, the leader of the smaller MDC formation. However, these figures will not move on these issues unless there is pressure from the SADC facilitator, South African President Jacob Zuma. Delays by SADC facilitator to intervene in order to resolve the outstanding issues are therefore prejudicial to any meaningful reform agenda. This might have already undermined the possibility for Zimbabwe to go through a peaceful, credible, free and fair election.

This situation may in turn create a real danger that another GNU may emerge from the next elections and that the environment in which human rights defenders operate is unlikely to improve in the near future.

Some of the parties to the GPA are aware that negotiations and compromises are necessary to establish a peaceful atmosphere, as well as legal and political institutions and framework. However other parties in the GPA are convinced that they could do without the laborious and taxing exercise of negotiation and compromise and rather call for the elections.

Some of the interlocutors felt that the reforms that have taken place are merely cosmetic and fail to address the key issues. In the words of one civil society organisation, the changes are merely "lipstick" reforms, devoid of any real and meaningful change in the poisoned political climate in the country. They are unable to ensure full, free and fair participation by all Zimbabweans in the governance of their country.

During the interviews, a number of interlocutors expressed their fears that although the MDC factions were the main victims of the violence and intimidation by ZANU-PF, war veterans and the youth militia, and that, in many cases, the opposition did not react, a time may come when they would either begin to take act or take preventive steps. This would raise violence to unparalleled levels and should therefore be avoided.

The only area to witness some progress seemed to be the drafting of the new Constitution. However, ZANU-PF publicly voiced its disapproval.

The mission delegates closely considered the draft Constitution. They concluded that the section on the bill of rights included interesting language as it was comprehensive and covered social, cultural and economic rights as well as civil and political rights. Moreover, its section on procedural rights was excellent and comprehensive. However, the right to be examined by a physician and a lawyer, which is a crucial guarantee for the prevention of torture, is limited as individuals can only request it "*at their own expense*". This practically could result in excluding the poor from the right to enjoy such protection.

Regarding the protection of human rights defenders the mission concluded that the draft constitution could be strengthened, notably by: defining the principles of peaceful co-existence, non-violence and tolerance as national values; banning torture and making it a criminal offence; banning enforced disappearances and making it a criminal offence; considering the offences set forth in in the Rome Statute establishing the International Criminal Court (ICC) as criminal offences, in order to contribute to the fight against impunity; and providing for the right to a fair trial and the independence of the judiciary.

3. Reactions of fear to recent calls for elections, and illustrations of past election-related violence

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The discussions with the interlocutors clearly revealed two diverging views regarding ZANU-PF's unilateral call for elections. On the one hand, according to newspaper articles, those loyal to the ZANU-PF show support for the call. On the other hand, for the majority of members from different organisations met during the mission, including Church and religious leaders, CSOs and other organisations and individuals active in the protection and promotion of human rights, the call has generated a lot of anxiety and uncertainty.

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Most of the interlocutors recalled with anxiety the atmosphere that had prevailed before and after the election period in 2008, characterized by politically-motivated violence, torture, evictions, maiming, extra-judicial killings, enforced disappearances and other violations. Those who had personally been victims during the elections, or whose relatives, friends or acquaintances had been subjected to such acts of violence, feared for the worst.

Those fears were compounded by the fact that those responsible for the violations, including the youth militia, had never been investigated and were freely roaming the streets. Over 200 people are reported to have been extra-judicially executed in a targeted and systematic way, and there has been no serious investigations or prosecution of the perpetrators and all those responsible.

The interlocutors feared that in case an election was held in the prevailing atmosphere, a blood-bath was feared. The "infrastructure of violence", comprising youth militias, war veterans, some soldiers, police force, intelligence operatives, ZANU PF local leaders, hitmen and torture basis set up in 2008, has never been dismantled notwithstanding the GNU. It may have declined at some point, but there have been recurring signs of its re-activation since the call for elections.

III. LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS

1. Zimbabwe's regional and international obligations with regard to the protection of human rights defenders

The Zimbabwean Government is bound by a number of regional and international instruments that impose obligations on the State to ensure that people in Zimbabwe enjoy a minimum standard of basic and fundamental human rights, as contained in the Universal Declaration of Human Rights.

These instruments include:

- the International Covenant on Civil and Political Rights (ratified in 1991);
- the International Covenant on Economic Social and Cultural Rights (ratified in 1991);
- the Convention on the Rights of the Child (ratified in 1990);
- the Convention Against all Forms of Discrimination against Women (ratified in 1991);
- the African Charter on Human and Peoples' Rights (ratified in 1986) and its Protocol on the Rights of Women in Africa (ratified in 2008);
- the African Charter on the Rights and Welfare of the Child (ratified in 1995) and
- the SADC Treaty⁵.

2. Government position on regional and international recommendations on the situation of human rights defenders

The mission observed that some governmental and security authorities showed a negative attitude towards human rights defenders.

Despite the recommendations addressed to the authorities of Zimbabwe by regional and international human rights mechanisms regarding compliance with the international obligations relating to fundamental rights and freedoms, the Government of Zimbabwe has taken no meaningful action to address the abuses or violations pointed out in the reports of regional and international bodies.

For instance, the Universal Periodic Review of Zimbabwe carried out by the United Nations Human Rights Council in October 2011 issued recommendations calling on the State to "*stop impunity enjoyed by perpetrators of human rights violations against civil society activists, NGOs and human rights defenders and [to] incorporate the United Nations Declaration on Human Rights Defenders in national legislation*" and to "*ensure that human rights defenders, independent journalists or lawyers and civil society representatives are effectively protected from any form of intimidation and harassment while performing their legitimate duties*"⁶.

Member States of the Human Rights Council also called on the Zimbabwean authorities to "*guarantee freedom of expression for the entire population, especially journalists and human rights defenders, in the run up of the next presidential elections*" and to "*adopt necessary measures to guarantee the full enjoyment of the rights to freedom of assembly and association, and*

5. <http://www.sadc.int/index/browse/page/171>

6. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review (Zimbabwe), UN Document A/HRC/19/14, December 19, 2011.

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[stop] selectively curtail the full enjoyment of these rights, and [reform] the provisions contained in the Public Order and Security Act and more specifically in the Criminal Procedure Act, which occasionally have hindered the work of human rights defenders. Rescind the provision contained in Section 121 of the Criminal Procedure Code that can extend to seven days [...] the time that security forces can keep a person detained before bringing charges".

At the regional level, the African Commission on Human and Peoples' Rights (ACHPR), in its 2008 Resolution on the Forthcoming Election Run-Off in Zimbabwe⁷, called on "*the government to guarantee the protection of human rights defenders during the election process*" and to "*take all necessary measures to ensure that Zimbabweans exercise their right to vote in peaceful environment free of intimidation and violence*".

In its 2004 Resolution on the Protection of Human Rights Defenders in Africa, the ACHPR also called on "*States to promote and give full effect to the UN Declaration on Human Rights Defenders [and to] take all necessary measures to ensure the protection of human rights defenders*"⁸

Despite these recommendations, the Government has not followed-up on them, and human rights defenders in Zimbabwe have continued to be harassed, intimidated and their work hampered.

3. Domestic legal framework relevant for the work of human rights NGOs and human rights defenders

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The Constitution protects the freedoms of expression and of assembly and association [Sections 20 and 21 of the Constitution]. The Constitution protects the right to hold meetings and to demonstrate in public as part of the freedoms of expression and of assembly and association in conformity with the Universal Declaration of Human Rights [Articles 19 and 20] and the African Charter on Human and People's Rights [Articles 9, 10 and 11].

According to the same, these are not absolute or unqualified rights: Sections 20 and 21 of the Constitution allow Parliament to make laws limiting freedoms of expression, assembly and association "in the interests of defence, public safety, public order" and for the purpose of protecting the rights or freedoms of other persons, as long as the laws are "reasonably justifiable in a democratic society". Sections 20(6) and 21(4) go on to say that no one has a right to exercise their freedom of expression, assembly or association in or on "any road, street, lane, path, pavement, side-walk, thoroughfare or similar place which exists for the free passage of persons or vehicles". This does not mean that all processions and demonstrations in public roads and streets can be prohibited: in 1994 the Supreme Court said that, properly construed, the sections simply state that the right to hold demonstrations and processions in public roads and streets does not give licence to interfere with or obstruct the free passage of persons or vehicles.

A number of laws, including some that were adopted before independence in 1980, are still used to threaten, harass and intimidate human rights defenders, journalists, artists, members of the clergy or political opponents of ZANU-PF, particularly members of the MDC.

The most relevant laws are:

– the Public Order and Security Act (POSA);

In 2002, the Parliament passed POSA, which makes great inroads into the rights of individuals and groups. POSA provides for the notification of the regulating authority of any intentions to hold a meeting that is "of a political nature". The Act has stifled popular debate, be it political, academic or civic. Since its adoption, many human rights defenders have been arrested, detained and prosecuted under its provisions.

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7. ACHPR Resolution, Resolution 132 on the Forthcoming Election Run-Off in Zimbabwe, May 2008.

8. ACHPR Resolution, Resolution 69 on the Protection of Human Rights Defenders in Africa, June 2004.

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– the Criminal Law Codification Act;

– the Access to Information and Protection of Privacy Act (AIPPA);

This Act, which targets mainly the media, has been used effectively to silence the independent media such as the now defunct, privately-owned *Daily News* and the *Daily News* on Sunday. Journalists have experienced difficulties in having their accreditation processed in terms of the requirements of the Act. AIPPA has severely restricted the enjoyment of the right to freedom of expression and freedom of the press. A number of journalists from the independent media have been arrested and charged under AIPPA for offences such as the publication of falsehoods, and failure to register or accredit under the politicised and non professional body of the Media and Information Commission.

– the Miscellaneous Offences Act; This Act has wide-ranging provisions that can be interpreted to formulate a charge.

– the Financial Regulation Act;

– the Official Secrets Act;

– the Broadcasting Services Act;

– the Interception of Communications Act; and

– the common law offence of criminal defamation.

These laws constitute blatant hindrances to the rights enshrined in the UN Declaration on Human Rights Defenders and in other instruments to which Zimbabwe is bound (see above), and are applied selectively to stifle those promoting human rights and dignity for all in Zimbabwe.

At the time of the mission, a number of individuals were facing legal proceedings related to one or more of these repressive pieces of legislation. Others were in police custody or in pre-trial detention under the provisions of Section 121 of the Criminal Law Codification Act. The latter allows a prosecutor to overrule a bail order by the court, and results in continued and often arbitrary detentions. Section 121 has regularly been invoked against human rights defenders and has resulted in the abuse of the use of pre-trial detention against human rights defenders.

Journalists from different media houses interviewed during the mission stated that with the advent of the GNU, they had anticipated increased freedom of the press, that would have allowed independent television stations, radio stations and newspapers to operate freely and to fully play their role in the country. However, the AIPPA law, which requires accreditation of journalists, makes it difficult for individuals to enter the profession or to practice journalism as free-lancers, since AIPPA allegedly grants licenses selectively to pro-government journalists while denying them to independent journalists. Moreover, AIPPA has also been selectively and wrongfully used to close down newspapers, some of which have remained closed to date.

The selective and arbitrary application of these laws has fuelled an atmosphere of fear amongst human rights journalists, and a reform of the AIPPA in this area is therefore critical ahead of the next elections.

4. Capacity of Zimbabwean institutions and actors to offer protection to human rights defenders

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The institutions that would be expected to offer protection to human rights defenders in the country include the courts, lawyers, the police, prosecution authorities and the Human Rights Commission (which is not yet legally operational).

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Most of the institutions are weak or are deliberately weakened and manipulated for political ends. Some of the institutions that were primarily set up to offer protection end up being the persecutors themselves.

Police and security agents appear to be the main violators of the rights of human rights defenders, as they are responsible for their arrest, abduction, harassment, intimidation and even torture or murder. Despite their duty to carry out their tasks in an impartial and professional way, the evidence on the ground, however, suggests that a number of them have been politicised and play active political roles in stifling the enjoyment of the rights and freedoms of those perceived not to be "politically correct", i.e. who express critical views, regardless of their political beliefs. The cases of Ms. **Jestina Mukoko**, Ms. **Manjoro** and Ms. **Maguwu** are an illustration of this lack of respect for basic standards by law enforcement officials (see below).

The independence and impartiality of the prosecuting authorities is also questionable. In some instances, cases of selective prosecution were reported, while in others, the law was deliberately used to achieve political goals. Some politically motivated criminal cases are launched by the Prosecution in spite of any clear legal basis.

The mission observed that Zimbabwe had a well-established legal system, supported by a judiciary system and a fairly independent legal profession. In theory, the legislative framework (Constitution and domestic laws) provides for an independent judiciary. Zimbabwe is also bound by a number of international human rights instruments that guarantee the right to an effective remedy before independent and impartial tribunals. However, in practice, the judiciary is not independent, due to, i.e.:

- A faulty and opaque appointment process that has resulted in the key judicial positions being taken over by persons close to one political party and to the executive,
- A funding model that makes it dependent on the executive and often results in inadequate funding of the judiciary,
- The absence of a clearly understood and publicly enforced judicial code of conduct, in the framework of which any action against judicial officers would be made public, which would make the judiciary not only independent, but also accountable to the public,
- Poor working conditions of the judiciary and supporting staff, which makes them potentially corruptible,
- A general climate of intimidation and fear due to a national culture of violence, impunity and intolerance that makes judicial officers live with some degree of fear and apprehension,
- A general collapse of the legal systems, including those that support an independent judiciary, due to the governance crisis that has gripped the country for over a decade, and
- The politicisation of key organs of the judiciary (such as the Attorney General's Office, the police, the security sector, the prisons), which has resulted in a selective application of the law.

Despite those difficulties and in a context of adversity, a core group of judges, magistrates and prosecutors has continued to act with independence and impartiality. Some observers had hoped that this core group would lead and support judicial reforms during a genuine political transition.

In particular, in the area of procedural justice, the judiciary, with the support of a group of human rights lawyers (mainly from Zimbabwe Lawyers for Human Rights - ZLHR) who have been very active in dutifully and fearlessly taking many cases to courts for the sake of human rights, regardless of the outcome, have made it more difficult for the law to be used as an instrument of repression. Pre-trial detention has decreased and practically every detention is subject to judicial oversight. Human rights defenders are no longer detained for prolonged periods without some political cost for the authorities. Since 2003, when ZLHR, an NGO created in 1996 in Harare, established a human rights defenders legal emergency response project focusing on pre-trial justice, over 1,000 human rights defenders have benefited from legal representation and have generally been granted police or judicial bail. Thanks to this project, not a single human rights defender has been convicted since 2003, although many

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have faced broad sets of charges in the framework of fabricated cases brought against them. The combination of the lawyers' efforts and the rulings of the judiciary on pre-trial bail have made it possible to provide human rights defenders in Zimbabwe with some degree of legal protection of their rights.

However, as a result of the intensification of political pressure, particularly since the 2008 elections, most judicial officers have become afraid of carrying out their duties in accordance with the principles of their profession, and with their oaths of office. This has generally resulted in great loss of confidence by the population in the courts as an independent and impartial institution ready to deliver justice.

In some instances, the very orders, injunctions or decrees of the Courts, when issued, have not been adequately implemented for lack of any enforcement mechanism.

IV. PATTERNS OF HARASSMENT AGAINST HUMAN RIGHTS DEFENDERS

Many human rights defenders interviewed by the mission delegates showed great apprehension and, to some extent, a sense of helplessness. Some of them reported a lack of access to Zimbabwean ordinary citizens, which prevented them from conducting civic education activities aiming at informing them about human rights standards as well as about their own rights. Most of the time, access to the people was made impossible by State security agents. The latter used intimidating tactics and regularly order human rights defenders to report at police stations, with no clear reasons. In some of the cases, it turned out that the officer who had ordered them to report was not present at the station. In such situations, no apology was made to the defenders summoned. Furthermore, cases were reported where human rights defenders were arrested without any meaningful and effective access to legal remedy.

It appears that the main perpetrators of the acts of harassment, intimidation and other human rights abuses against human rights defenders were primarily, in particular:

- the police, including members of the Central Intelligence Organization (CIO),
- ZANU-PF members, including the militias (war veterans and the youth),
- some traditional leaders holding a political brief from ZANU-PF,
- the Censorship Board, and
- Provincial Governors.

During the mission, the interlocutors provided detailed reports of serious harassment that had been inflicted on some of the human rights defenders in Zimbabwe. Some shortened accounts of these facts are presented below.

1. Arbitrary arrests and detention

The mission observed that arbitrary arrests and detentions of human rights defenders were very common. While, since ZLHR launched its legal emergency response project for human rights defenders in 2003 (see above), not a single human rights defender has been convicted by the authorities, the arrests and detentions, besides their arbitrary character, in fact constitute *per se* some form of extra-judicial punishment.

Case of Mr. Abel Chikomo

Mr. **Abel Chikomo**, Executive Director of the Zimbabwe Human Rights NGO Forum (the Forum), was interrogated and asked to report to the police on several occasions in November 2010, February and March 2011 regarding his activities, and in particular the Forum public campaign against torture, its Transitional Justice National Survey and several press statements issued in 2011 by the organisation on the resurgence of politically-motivated violence. On March 30, 2011, he was formally charged with "managing and controlling the operations of an illegal Private Voluntary Organisation (PVO)", under Section 6(3) as read with Subsection 1 of the PVO Act. As of October 2012, Mr. Chikomo had not received any notification to appear before a court and remained free.

Case of Ms. Cynthia Manjoro

Ms. **Cynthia Manjoro**, ZIMRIGHTS National Programme Manager, has been active for a long time in the field of the protection of human rights and freedoms in Zimbabwe. She is a former student activist who has worked with the Media Institute of Southern Africa (MISA) – Zimbabwe, Restoration of Human Rights (ROHR) and Zimbabwe National Students Union (ZINASU).

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Ms. Manjoro is one of the 29 Glen View residents facing unsubstantiated charges of murdering a police officer in Glenview in 2011. On May 11, 2011, a police officer, Inspector Petros Mutedza, was killed at Glenview 3 shopping centre. The police arrested 25 individuals on suspicion of having killed the officer, including Ms. Cynthia Manjoro and M.P. Madzore. Most of them are members of the MDC.

Ms. Manjoro was not on the spot when the police officer died, and the mission delegates interviewed a witness who unequivocally stated that, at that time, she was with Ms. Manjoro at a totally different location, i.e. in Harare, far away from the scene. The only sufficient connection to warrant her arrest by the police was the fact that her vehicle, which she had lent to her brother on that night, was allegedly seen at the scene of the murder.

When Ms. Manjoro accompanied her brother to the police station at the Law and Order Section in Harare to recover her car, she was interrogated by the police on her work at ZIMRIGHTS. Police officers also showed her pictures of extra-judicial killings and torture cases that had taken place in Zimbabwe in the run up to, during, and after the elections in 2008. The police officers then released her brother without interrogating him, and put Ms. Manjoro in detention for her alleged involvement in the murder.

Once taken into police custody, the investigating officers stated that she had been arrested because of her active involvement in human rights issues. All the questions dealt with her work as a human rights activist, and not with her alleged role in the murder.

Ms. Manjoro was kept at the Chikurubi maximum security prison for 59 days, before being granted bail on July 28, 2011. She described her conditions of detention as inhuman and degrading, particularly for a young lady who, at the time of the events, had just delivered a baby. She was held in solitary confinement, kept in leg irons in a dirty smelly cell, filled with lice, without being allowed visits.

In addition, the conditions of her release on bail were very strict, as she had to report to the police station at least three times a week (on Mondays, Wednesdays and Fridays), and, as a consequence, could not work and travel outside of Harare. On March 1, 2012, she was indicted for murder, together with at least 25 other activists, and remanded in custody. She is currently held at Chikurubi Maximum Prison. The bail application for Ms. Cynthia Manjoro and 28 others has been postponed indefinitely after the presiding judge was declared unable to rule, for alleged health reasons.

On October 15, 2012, Ms. Manjoro was freed on bail, but the trial was still underway in Harare, and its proceedings were not satisfactory, as the Presiding Judge acted in violation of ordinary fair trial standards. For instance, he admitted what was essentially inadmissible evidence and allowing the prosecution's witnesses to resort to dock-identification of the accused persons. Dock identification is generally seen as highly inappropriate and prejudicial to the accused persons.

Case of Mr. Farai Maguwu

Mr. **Farai Maguwu** is the Executive Director of the Centre for Research and Development (CRD), a research centre dealing with mining issues in Mutare. He was, amongst others, involved in the research and documentation of human rights violations in Marange, where hundreds of people were extra-judicially killed and later buried in mass graves, in late 2008. He became a man to eliminate in the eyes of individuals with economic interests in the diamond sector in the Marange area.

Mr. Farai Maguwu was arrested on June 3, 2010 in Mutare on charges of "communicating and publishing falsehoods against the State with the intention to cause prejudice to the security or economic interests of the country" (Section 31 of the Criminal Law (Codification and Reform) Act), liable to 20 years' imprisonment.

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Mr. Maguwu was accused of having handed over a CRD report on human rights violations taking place in the diamond-mining area of Chiadzwa to the Kimberley Process Monitor during its visit to Zimbabwe in May 2010 – an accusation he denied. The report included cases of unlawful arrests and detentions, torture and extra-judicial executions allegedly perpetrated by the police, the army and security agents, in connection with diamond mining. The CRD has played a central role in recording human rights abuses carried out by state security agents against local people in the Marange diamond fields, and has frequently made this information available to Kimberley Process participating governments and working groups. However, Kimberley Process participating countries have so far failed to reach a consensus on suspending Zimbabwe from membership.

While in detention, Mr. Farai Maguwu was reportedly denied access to his medication, which led to complications and the need to operate him on June 18. On the same day, one of his guards, known as “Murigani”, put him into iron shackles as he was lying on his bed.

The Court dismissed his applications for release on numerous occasions until July 12, 2010, when the Harare High Court Judge Mawadze Gurainesu released Mr. Farai Maguwu on bail, despite the opposition of the State on the ground that the State was taking too long to investigate and that it would therefore not be lawful to keep him in remand for allegations that were yet to be proven.

Mr. Farai Maguwu was granted bail on the following conditions: payment of a 1,500 USD bail deposit, daily reporting to Mutare central police station, obligation to reside in his home in Mutare and prohibition to travel more than 40 km away from Mutare, except for the purpose of court hearings in Harare.

Finally, on October 21, 2010, the Harare High Court withdrew charges after the State presented a document from the attorney's general office, giving instructions to drop the case.

Despite his acquittal, harassment against him continued. On September 10, 2011, as he was about to board a plane to Ireland for a work-related trip, members of the CIO carried out a body search and searched his belongings. They took away his money, computer laptop, digital camera and documents, which included his boarding pass and passport, which resulted in Mr. Maguwu eventually missing his plane. The following morning, ZLHR moved an urgent application for the return of all his items, but the CIO denied any knowledge of the items in question. However, they later handed back his documents, but the remaining items seized from him, including his money and electronic devices, were never returned to him.

In spite of their efforts to prevent Mr. Maguwu from travelling to Ireland, he eventually succeeded to leave by road to Johannesburg a few days later. However, on his return, on October 10 2011, members of the CIO were again waiting for him at the airport. He was taken aside, searched thoroughly and interrogated about the conference he had attended before being finally allowed to go home.

He then started receiving anonymous calls on his mobile phone, with the caller remaining silent. At time, CIO members also parked their vehicles at his office without any comment or explanation. On other occasions, they entered the CRD office and questioned the staff to intimidate them.

In 2011, he was again intimidated. While he was in Namibia, Mr. Maguwu was surrounded by Zimbabwean security forces, who accused him of being a sell-out.

Cases of Ms. Ellen Chademana and Mr. Ignatius Muhambi

In 2010 and 2011, human rights defenders working on sexual orientation were systematically persecuted and are still subjected to an ongoing judicial and administrative harassment. For instance, on May 21, 2010, two LGBT activists of the organisation Gays and Lesbians of Zimbabwe (GALZ), Ms. **Ellen Chademana** and Mr. **Ignatius Muhambi**, were arbitrarily arrested by nine police officers. The police carried out a search of the GALZ offices and confis-

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cated work materials (laptops, records, etc.). On May 24, 2010, the activists were formally accused of "possessing pornographic material" and "undermining the office of the President" after a statement of the former Mayor of San Francisco denouncing Mr. Mugabe's homophobia was found in GALZ office. They were released on bail on May 27 under the condition that they report twice a week at a police station in Harare, charges against Mr. Muhambi were eventually dropped in July 2011 and Ms. Chademana was acquitted on December 16, 2010.

Case of Ms. Jestina Mukoko

Ms. **Jestina Mukoko** is a prominent human rights defender who runs the Zimbabwe Peace Project (ZPP). ZPP is involved in human rights work and is based in Harare, with peace monitoring officers throughout the country. Ms. Mukoko told the mission delegates about the painful flashbacks regarding the events in December 2008.

In the morning of December 3, 2008, police and security agents came to Ms. Mukoko's house and bundled her still in her pyjamas in a car with no registration number. In the car, Ms. Mukoko was made to sit between two men, one of whom ordered her to put her head on her lap. Along the way, she was blind-folded with a blanket as the car stereo belted out loud music. She was not allowed to put on appropriate clothing or fetch her optical glasses. She was taken to a private house where she was given a dress and shoes and then interrogated for hours by five men and one woman on a range of issues, including an organisation called Harvest House. After ordering her to remove her shoes, the interrogators started beating her on the sole of the feet. She was ordered to reveal the identities of the persons they referred to as "big fishes", whom they were looking for within the human rights movement. She was also asked about specific individuals named by the interrogators and was also accused of recruiting youths to be trained by the MDC in Botswana as saboteurs, in order to overthrow the present government.

Ms. Mukoko was then ordered to lift her feet as she was being bastinadoed. As she had no undergarments, the women officers went to purchase underwear for her. The beating continued throughout the night and was interrupted when the police and security agents, interspersed with the police drinking alcohol. Ms. Mukoko's feet became swollen and showed signs of internal bleeding. "The feet did not feel like they were mine any longer", she told the mission delegates.

She was asked about the identity of her contact persons at MDC and beaten up if she overlooked details requested by her torturers. The interrogators produced a list of persons from the civil society and ordered her to provide their addresses, although she denied knowing them.

The interrogation continued unabated for about four days. On the fifth day, she was forced to kneel on gravel as a punishment for having allegedly lied to them – a position that was painful. After her interrogators asked her about her son and his safety, she asked for permission to call him to find out how he was doing. They laughed and stated that they were not that cruel. During the interrogations, they told her that they had received precise information about her from people who lived and interacted with her.

The police frequently threatened her with death and told her that there were many graves where she could be buried. She was also subjected to simulated drowning, locked in a freezer and beaten as the security forces tried to make her confess a plot to overthrow Mr. Mugabe. They also argued that the legal requirement that a suspect be brought to Court within 28 hours did not apply to them.

On December 22, 2008, 19 days after her kidnapping, she was finally taken, blindfolded, to a police station that she later identified as being Highlands police station. From there she was transferred shortly afterwards to Matapi, a place that was declared by the Supreme Court of Zimbabwe sitting as a constitutional court to be "unfit for human habitation". She was kept *incommunicado* and allowed no access to lawyers or any other persons. She was forced to

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record a "warned and cautioned statement"⁹ there, before she was taken back to her house, allegedly to search for "arms of war".

Ms. Mukoko appeared before Court for the first time on December 24, and was remanded into the custody of Chikurubi Maximum security prison, where she was kept for about 68 days despite the fact that her detention was clearly illegal and violated the most basic principles of the right to a fair trial. Although she made two applications to the court to receive urgent medical attention, her applications were turned down. She was eventually taken to the hospital, but despite her urgent need for medical treatment, the prison officials refused to leave her in hospital and took her back to prison, with the intravenous tubes dangling from her body, and no medical personnel to take care of her. It was only after she became hypertensive that a doctor was called.

On a later occasion, while doctors recommended that she should be admitted to hospital, the prison officials refused to comply with their orders. The doctors requested the prison guards to sign a waiver stating that they had returned Ms. Mukoko to prison against their firm orders.

She was eventually allowed to request release on bail on March 6, 2009, but she was again remanded back to custody and was kept in prison for a further 24 days. After she challenged in Court the legality of her abduction and torture, the matter was brought before the Constitutional Court on September 28, 2009. The Court upheld that her constitutional rights had been violated by State agents and ordered a permanent stay of prosecution. The Court also held that her fundamental right to be free from torture had been violated by "the State, through its agents". It also declared that State agents had violated her constitutional right to personal liberty and had denied her protection of the law, and that the violations committed had been to such an extent as to warrant a permanent stay of criminal prosecution against her. All charges pending against her in the criminal case were therefore withdrawn.

Ms. Mukoko is still running ZPP and was awarded the *Legion d'honneur* by the French Ambassador to Zimbabwe, Mr. François Ponge, on March 22, 2011, for her ongoing fight for freedom and equality in her country.

2. Reprisals for exercising the right to freedom of peaceful assembly

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As regards the right to freedom of peaceful assembly, the notorious Public Order and Security Act (POSA) is still widely used to ban public meetings or rallies of opponents to President Mugabe and his party, including meetings organised by human rights defenders. The scope of some of the public order laws (i.e POSA and the Criminal Law Act (Codification and Reform)) is now being unilaterally extended by the police beyond the clear and express mandate of Parliament.

Case of Women of Zimbabwe Arise (WOZA)

Women of Zimbabwe Arise (WOZA) and its members have been subjected to constant harassment, including at the judicial level, aiming at sanctioning their human rights activities. Dozens of its members have been regularly subjected to arbitrary arrest and detention, ill-treated and tortured in custody, and judicially harassed. WOZA leadership has been often particularly targeted and subjected to spurious charges. For instance, Ms. **Jennifer Williams**, WOZA National Coordinator, and Ms. **Magodonga Mahlangu**, member of WOZA, have been prosecuted on fabricated charges of "theft" and "kidnapping", following their arrest on September 21, 2011 together with ten other persons, after they held a peaceful march in Bulawayo to commemorate the International Day of Peace. The demonstration was violently dispersed by the authorities. The two women human rights defenders were then detained at Mlondozi female prison, Khami prison complex, Bulawayo, without access to the necessary medication they requested. They were eventually granted bail on October 4, 2011. On October 6, 2011,

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9. A statement that police officially record after arresting someone for possible use in court. This procedure is known in common law.

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the Two Tredgold Magistrates Court remanded the judicial case pending against Ms. Jenni Williams and Ms. Magodonga Mahlangu to December 12, 2011. In March 2012, a review process was brought before the High Court after Ms. Williams was denied her request to be released on bail. The High Court finally ruled that the trial proceedings had to be stopped and that Ms. Williams and Ms. Mahlangu should be granted bail. Not only was she arbitrarily detained, but she was not provided with a medical assistance either while in custody, although she was not even able to walk on her own as a result of the beatings sustained during the repression of the protest.

As of October 2012, the criminal charges against these two activists had not yet been dropped, and the outcome of the judicial process remained uncertain.

Moreover, in the afternoon of February 7, 2012, ten WOZA members, including Ms. Jennifer Williams, Ms. **Sikhangezile Ndlovu**, Ms. **Silibaziso Nzima**, Ms. **Wendy Moyo**, Ms. **Nothando Tshembe**, Ms. **Priscilla Ncube**, Ms. **Thabitha (Thalitha) Ndlovu**, Ms. **Sitshiyiwe Ngwenya**, Ms. **Faina Maphosa** and Mr. **Kholwani Ndlovu** were arrested by the police in Bulawayo while they were participating in a peaceful procession that converged in front of the Joint Operations, Monitoring and Implementation Committee (JOMIC) offices, while commemorating the 10th anniversary of WOZA.

WOZA had also arranged a meeting with JOMIC in order to request them to act urgently according to their mandate to ensure the implementation of the GPA and to call for an end to the rights abuses by the police. As she was emerging from the meeting, Ms. Williams was arrested by riot police who were assaulting demonstrators as well as bystanders. This incident was witnessed by members of the JOMIC delegation, who had asked during the meeting to be provided with concrete evidence of the activities of the police. Nine other WOZA members and four bystanders were also arrested on different parts of the city.

Moreover, four WOZA members who had been arrested reported that they had been beaten upon arrest, handcuffed and dragged to the central police station. They alleged to have been ill-treated in detention, had to stay out in the cold during the night in a open fenced area of the police station, and in the sun for long hours during daytime. In addition, several demonstrators who were not arrested were beaten up and had to be treated for bruises at their homes as the riot police were waiting for them in front of the private clinic where injuries are usually treated.

On February 9, 2012, the ten WOZA members arrested on February 7 were presented to the Tredgold Magistrates Court of Bulawayo and formally charged for "criminal nuisance" under Section 46 of the Criminal Law (Codification and Reform) Act [chapter 9:23]. They were initially detained for "failing to notify the police of a demonstration" under Section 25 of the POSA.

All ten activists were then released pending trial. The court provisionally scheduled their trial date to February 13, 2012. The four bystanders who had also been arrested on the same day were released without charges.

On February 13, 2012, ten WOZA members appeared before the Tredgold Magistrates Court in Bulawayo, before Magistrate Vivian Ndlovu. However, no documents had been delivered beforehand to the defence team by the state, thus making it impossible for the defence to adequately prepare for the trial. The defence lawyer summarised the activists' complaints against the police, and informed the state that at the next hearing set on February 21, 2012, they would submit a written application for refusal of further remand.

On February 14, 2012, a peaceful march organised in Harare by WOZA to commemorate its 10th anniversary was violently repressed. Two processions marched to the Parliament building where they were planning to hand over a newsletter that documented the harsh beatings and arrests they had been victims of. They were stopped 50 metres away from the Parliament door by riot control police officers who dispersed the crowds and started beating up people indiscriminately.

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One of the participants was beaten up by four police officers who were taking turns to hit her on the neck and shoulders, apparently after she told them: "the thieves are going free while you beat us". Ten participants had to seek medical attention for bruises and lacerations caused by batons injuries.

Case of Zimbabwe Lawyer for Human Rights (ZLHR)

On February 10, 2009, human rights lawyers **Roselyn Hanzi** and **Tawanda Zhuwarara**, ZLHR members, were arrested and charged with "participating in an illegal gathering aimed at breaching the peace" (Section 25 subdivision 1 POSA) as they were bystanders at a demonstration that WOZA was involved in for Valentine's day commemorations. They were falsely accused of participating in a peaceful but illegal march. They were eventually acquitted on May 28, 2009 because for lack of evidence.

The "treason" case

On February 19, 2011, a few days after the Defence Minister, Mr. Emmerson Munangagwa, threatened to crack down on any dissent inspired by the North Africa street protests, 45 individuals, including union leaders, students and human rights activists, were arrested by the police as they were attending a meeting to discuss the social protest movements in Egypt and Tunisia and their impact on those countries. They were charged either with "treason", which carries a penalty of life imprisonment or death, or with "attempting to overthrow the Government by unconstitutional means", which is punishable by a penalty of up to twenty years in prison. On March 7, 2011, 39 activists were released after a magistrate court in Harare dismissed the charges against them. However, labour and student activists **Munyaradzi Gwisai**, **Antonetar Choto**, **Tatenda Mombeyarara**, **Edison Chakuma**, **Hopewell Gumbo** and **Welcome Zimuto** remained in custody until March 16, 2011. They were released on a 2,000 US dollars bail each, on condition by the High Court to report three times a week to the police. From April 2011, they had to report once a week. On March 19, 2012, Harare Magistrate Kudakwashe Jarabini found them guilty of "*conspiracy to commit a crime*" under Section 188 of the Criminal Law (Codification and Reform) Act. They were each sentenced to a US\$ 500 fine, 24 months' suspended imprisonment, and 420 hours of community service.

Case of Legal Resources Foundation (LRF)

The Legal Resources Foundation (LRF) is one of the oldest human rights organisations in Zimbabwe. It was established in 1984 to improve access to legal counsel and information services for all Zimbabweans, irrespective of their financial resources.

The mission delegates were informed that the work of this NGO was stifled in various areas within the country. For instance, in 2010, a workshop conducted by the LRF in Buhera was disrupted by the police that came to the venue in an unmarked vehicle and ordered the participants to disperse, although the LRF is not required to seek permission from the police to carry out its activities. Two LRF officers were interrogated by the police after the dispersal. The police officers subsequently came to the LRF office to inquire about the reasons for its human rights work. The harassment resulted in the LRF being forced to abandon its human rights activities in the rural areas.

3. Obstacles to awareness-raising events, including in the Arts sector

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The mission was also informed of cases of harassment against persons involved in artistic events involving a human rights dimension. In many cases, artists or promoters were refused permission to hold exhibitions or festivals, and if granted, the police sometimes ordered them to submit their programmes to them for scrutiny before they were allowed to perform. The police required registration certificates as well as the identity of the directors and funders of the entities involved. The relevant legislation provides that the police be informed beforehand of events for security reasons, but it does not have the authority to grant or withhold permissions to host or hold such events. More precisely, POSA imposes on anyone who intends

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to hold a public meeting an obligation to notify the police of such intention. The police have abusively interpreted the notification requirement and have requested individuals and organisations to apply to the police for permission to hold public events.

Even in cases where permission is granted to host artistic events, the police, either in uniform or in plain clothes, attend the events to intimidate participants, including the public, some of whom eventually feel uncomfortable and decide to leave. ZANU-PF militia have disrupted such events even when 'permission' had previously been sought and granted.

Furthermore, several human rights defenders were arrested and detained for their work on the occasion of artistic events. One example is that of Mr. **Okay Machisa**, ZIMRIGHTS Executive Director, who was arrested in Harare on March 23, 2010 by a group of 20 officers of the Zimbabwe Republic Police (ZRP), without any warrant. ZIMRIGHTS was organising a photography exhibition entitled "Reflections", displaying 71 pictures depicting acts of violence inflicted during the elections in 2008. 65 pictures were confiscated by the police without warrant. The event was authorised by the Harare High Court as part of a programme to incite reflections on 2008 political violence. Brought to the Harare Central Police Station, Mr. Machisa was released a few hours later after the intervention of ZLHR. After threatening him with unspecified criminal prosecutions, on March 24, the police finally returned the photos of the exhibition following an order of the High Court issued the same day. Again, on April 26, 2010, a group of police officers arrested Mr. **Joel Hita**, Ms. **Olivia Gumbo**, Ms. Cynthia Manjoro and Ms. **Lio Chamahwinya**, respectively Regional Chairperson in Masvingo, National Programme Manager, and both members of ZIMRIGHTS, while they were preparing the launch of the same photo exhibition in Masvingo. Once again, the police confiscated all the pictures and took the defenders to the Masvingo police station. Everyone was released a few hours later, except Mr. Hita, who was released on April 27, 2010. On April 28, he appeared before the Masvingo Magistrate Court on the charge of "holding a public meeting without notifying the authorities". On August 5, 2010, the Attorney General's office also decided to prosecute ZIMRIGHTS itself as an organisation, under the same charges and in the same criminal case. On January 23, 2012, Magistrate Mwanyisa (Masvingo jurisdiction) acquitted Mr. Joel Hita and Ms. **Pelagia Razemba Semakweli**, Acting ZIMRIGHTS National Chairperson, of charges of "holding a public meeting without notifying the authorities". The charges had been brought under POSA. This acquittal followed an application for exception to the charges, filed on the same date, by defence lawyer Blessing Nyamaropa, member of ZLHR, and based on the repeal of the said offence in 2007. The application was conceded by the Public Prosecutor.

In another case, Mr. **Owen Maseko** was arrested for being the manager of an art gallery that was banned by the Censorship Board for political reasons as the gallery covered ZANU-PF history of violence and the massacre which was committed in the 1980's. The display of several art works was not allowed. Mr. Maseko was arrested less than 24 hours after his new exhibition opened at the National Gallery in Bulawayo in March 2010. He was charged with "insulting the President" under Section 33 Criminal Codification and Reform Act. He faces a sentence of up to twenty-four years imprisonment, but the ruling has not been issued yet. As an artist, Mr. Maseko has used art as a form of expression, including, as in the case mentioned here, to address human rights issues.

This method of harassment substantially decreased in the immediate post-GNU period but subsequently picked up again as the political leadership increasingly moved to the idea of elections and dissolution of the GNU.

4. The "Maguta Group": a real threat to human rights activities in rural areas

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ZIMRIGHTS also informed the mission delegates that several of their activities were forcibly stopped in the rural regions of Zimbabwe, for failing to produce a memorandum of understanding giving government authority to allow human rights work in these areas. In particular, ZIMRIGHTS was concerned by a group called the "Maguta Group", which was ostensibly established by the authorities to monitor and ensure food security especially in rural Zimbabwe.

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The activities of the "Maguta Group" have become suspicious, and considered as a *de facto* deployment of ZANU-PF intelligence using state funds for political activities in the rural areas. The members of this group often move in unmarked vehicles and include various security agents of the state, the army intelligence, the police intelligence, the central intelligence, and ZANU-PF leaders within the rural structures. In reality, ZIMRIGHTS believes that these are elements deployed by ZANU-PF to monitor rural areas for electoral purposes and to use administrative prerogatives to prevent human rights defenders and legitimate political opponents to ZANU-PF to access rural areas. This Maguta Group is suspected of having worked as a coordinator of perpetrators of organised violence and torture during the 2008 elections, which resulted in hundreds of targeted extrajudicial politically-motivated killings of unarmed civilians. ZIMRIGHTS is also concerned that the Maguta Group, which has no traceable reporting or complaint-filing mechanism that could be used by human rights defenders and civilians, poses a real danger to human rights defenders and civilians if elections are held before reforms of the security sector.

5. Harassment faced by media practitioners

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Independent newspapers and journalists who report and inform the public about social issues, including those that may embarrass those in power, have regularly been subjected to judicial harassment and intimidation. The media remain gagged and journalists continue to be forced to exert self-censorship. Although the Zimbabwe Media Council (ZMC) - the new autonomous entity replacing the Media and Information Commission - announced on May 26, 2010 its decision to issue for the first time licenses to three independent dailies, which would allow them to resume publication after a seven-year ban, privately-owned newspapers continue to operate in an unfavourable climate. The legislation remains repressive and allows for close surveillance of journalists and constant control of the media. The Government confirmed its unwillingness to reverse this tendency on October 22, 2010, by proposing a General Law Amendment Bill that includes a provision that would allow the authorities to block public access to official documents, including judicial decisions, new legislation and public records.

The Media Monitoring Project Zimbabwe (MMPZ) case

The Media Monitoring Project Zimbabwe (MMPZ), an independent Zimbabwean trust promoting freedom of expression and independence of the media since 1999, has been regularly harassed by State agents. Tree Advocacy officers from MMPZ, Mr. Fadzai December, Ms. **Molly Chimhanda**, and Mr. **Gilbert Mabusa**, were arrested on December 5, 2011 by Zimbabwe Republic Police in Gwanda, after holding a civic education meeting on November 24, 2011, on the need for an independent media. They were charged under POSA for "failing to give notice of the meeting", despite the fact that the meeting was convened by members of MMPZ's Public Information Rights Forum Committee for Gwanda and was therefore not a public meeting as contemplated under POSA. MMPZ offices in Harare were searched and 127 training DVDs were confiscated. The Gwanda police authorities alleged that these DVDs constituted illegal material that had been distributed by the MMPZ advocacy officers.

The officers were eventually released on bail one week after their arrest but were still charged with "insulting" the President Mugabe as of October 2012. Their trial date had not been set yet.

The Standard case

In November 2010, Messrs. **Nqobani Ndlovu** and **Nevanji Madanhire**, respectively reporter and editor for the independent weekly *The Standard*, were both charged for "publishing and communicating false statements prejudicial to the State" (Section 31 Criminal Law – Codification and Reform Act). Section 31 has been widely used to arrest media practitioners. Messrs. Ndlovu and Madanhire were arrested after reporting the recruitment by the police forces of war veterans loyal to the ZANU-PF for the purpose of preparing next presidential elections. They were eventually released on bail and, on February 28, 2011, Magistrate Don Ndirowei ruled that the case would proceed by way of summons. The matter was yet to be set down at the time of the report.

6. Propaganda and slandering of NGOs by ZANU-PF

The mission heard a large number of testimonies from human rights defenders who were concerned with the security sector's ability to infiltrate civil society organisations and some donor agencies in order to monitor the work of defenders. Such practices aim at disrupting and undermining the human rights defenders' ability to promote human rights and fundamental freedoms. One of the latest forms of harassment was the extensive and detailed publication, in the pro-government newspaper *The Patriot* in July-August 2011, of the list of funders of most civil society organisations, together with the amounts granted. *The Patriot* also published the home addresses of some human rights defenders in order to intimidate them and expose them to anonymous threats.

These civil society organisations were also threatened with closure as the Government considered them as agents of "regime change". The mission took place in December 2011, when ZANU-PF was holding its national conference in Bulawayo, which focused on the next elections in Zimbabwe. The ZANU-PF conference documents that the mission analysed dealt with the issue of national security and concluded that Zimbabwe faced no meaningful danger from outside its borders. However, they contained a specific mention of the danger posed by the NGO sector and human rights defenders to the power wielded by ZANU-PF. The topic of civil society organisations was an agenda item of the ZANU-PF national conference in December 2011. The conference adopted a resolution that decided the forcible closure of the NGOs that were receiving foreign funding and engaging in human rights activities.

In February 2012, on the basis of this resolution, the Provincial Governor of Masvingo, one T Maluleke, allegedly published a list of NGOs that were banned from operating in Masvingo. In a written reaction to this decision, ZLHR and Crisis Coalition said among others:

“ On 14 February 2012, at a press conference convened in Masvingo, Governor Maluleke ordered the suspension of the activities of 29 NGOs for allegedly failing to register their operations with his office.

The Governor's actions were illegal and are a nullity at law.

The law in this country clearly shows that he has no regulatory authority; nor does he have the power to register or de-register NGOs. Even the Provincial Council that he heads in terms of the Provincial Councils and Administration Act does not have regulatory powers over NGOs.”

The ZANU-PF leadership has continued to publicly call for the closure of some unnamed human rights organisations, mainly those active in the civil and political areas, arguing that they are "agents of regime change". The mission delegates anticipate that, as elections approach, the ZANU-PF resolution will be implemented by militias and affect the operational abilities of human rights defenders involved in rural work until after the elections. The mission delegates noted that a similar scenario had happened during the election run off between May and June 2008 in order to prevent effective election observation among other things.

7. Obstacles to the participation of human rights defenders in international and regional meetings

The mission delegates also gathered information about the regular hindrances to the participation of Zimbabwean human rights organisations in regional and international meetings, such as the SADC Summits.

In May 2011, civil society organisations attending the SADC extraordinary Summit in Windhoek, Namibia, found themselves harassed and intimidated by Zimbabwean security agents in Namibia. The SADC Lawyers Association published a press statement stating that "security agents who refused to identify themselves targeted Zimbabwe National Association of Non Governmental Organisations (NANGO) chairperson, Dairai Chikwengo, Crisis in

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*Zimbabwe Coalition officials MacDonald Lewanika, Pedzisayi Ruhanya and Dewa Mavhinga and other representatives of the Zimbabwe Election Support Network who were distributing statements with civil society demands to the summit. They were taken away from the hotel by the Namibian police under the watchful eye of the Zimbabwean state security agents". The statement further indicated that "The SADC Lawyers' Association Executive Secretary Makanatsa Makonese, Executive Director of the Zimbabwe Lawyers for Human Rights Irene Petras, Lloyd Kuvheya of the Southern Africa Litigation Centre and Joy Mabhenge of the Institute for a Democratic Alternative in Zimbabwe were also targeted whilst holding a meeting at the Safari Court Hotel. They were taken from the hotel into the parking area by armed police officers and interrogated by aggressive Zimbabwe state security agents for more than an hour. The security agents asked personal questions about the CSO representatives' addresses in Zimbabwe, villages of origin, who had paid for their tickets to Namibia and where they were staying in Namibia. They also demanded the four's passports to record their national identity numbers and other identity information"*¹⁰.

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10. SADC Lawyers Association Statement, *SADC Lawyers Association Condemns the Harassment of Civil Society Representatives by Zimbabwean State Security Agents at the SADC Extraordinary Summit In Windhoek*, May 23, 2011.

VIII. CONCLUSIONS AND RECOMMENDATIONS

In the views of most of the interlocutors met during the mission, the signing of the GPA and the subsequent coming in office of the Inclusive Government (GNU) in February 2009 had raised expectations and hopes for a drastic change of mindset and actions by the political leaders. Human rights defenders and organisations that had been marginalized, harassed and victimized in the past had expected to be treated as equals with ZANU-PF members and supporters, and that violations, threats and intimidation would come to an end. However their hopes did not materialise.

On the contrary, the Zimbabwean authorities have continued to resort to pieces of legislation to selectively and systematically restrict the space for the enjoyment of freedoms of expression, association and assembly of human rights defenders, and to encourage and condone serious violations of their rights, including arbitrary arrests and detentions or acts of torture. So far, most perpetrators of human rights violations against human rights defenders have not been charged and remain free. The authorities have also ignored and abused with impunity several court orders and judgements issued by the judiciary in favour of petitioners regarding a number of human rights practices and abuses carried out by the Government. A climate of impunity still prevails within the society, and civil servants associated with ZANU-PF still operate with a sense of impunity.

The serious and widespread violations that took place in the context of the 2008 elections and before 2008 have gone unpunished even though the perpetrators are known and in some cases live in the midst of the victims. The GPA has not been fully implemented, notably in critical areas that would guarantee security of all citizens, justice for the victims of human rights violations and accountability for their perpetrators or agents. The reform of the security sector that aims to place the security forces under effective civilian oversight, and to exclude them from the electoral processes, has not been carried out. The judiciary is generally still weak, and in need of reform and strategic support to strengthen its ability to deal efficiently with procedural justice. The election management body, including the Zimbabwe Electoral Commission, remains largely unreformed and underfunded to make it effective in running Zimbabwe's elections in a free and fair manner that would allow the country to have a leadership which is both legitimate and pro-human rights and freedoms. The political leadership seems more bent on retaining power than on fully implementing the GPA. The SADC mediation process has run out of steam, with no meaningful pressure being brought to bear on the GNU to fully implement the GPA in order to improve the human rights situation before the next election. The current constitutional making process has yet to be completed. While the draft constitution indicates some reasonable efforts at incorporating a more progressive human rights bill, it is important that this process be concluded as soon as possible and that law reforms be undertaken to bring them into conformity with the new Constitution. In general terms, the situation of human rights defenders in Zimbabwe remains grim as their operating space can be further shrunk at any time, especially in pre-electoral period.

Recommendations:

The Observatory for the Protection of Human Rights Defenders reiterates its 2008 recommendations to the Zimbabwean authorities. In particular, the Observatory calls on them:

- To guarantee in all circumstances the physical and psychological integrity of all human rights defenders in Zimbabwe;
- To put an immediate end to any act of harassment – including at the judicial level - against all human rights defenders in Zimbabwe;
- To guarantee, at all times, in law and in practice, the freedoms of opinion and expression as well as the right to peaceful assembly, in compliance with the Zimbabwean Constitution and the international and regional instruments ratified by Zimbabwe, notably the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples' Rights (ACHPR);

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- To conform with the provisions of the UN Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations on December 9, 1998, especially its Article 1, which states that "everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels", Article 11 which reads that "everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession" and Article 12.2, which provides that "the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration";
 - To assess the domestic legislation and bring it into conformity with international and regional human rights standards, in order to ensure the full enjoyment of fundamental rights and freedoms. In particular, to review the POSA, the AIPPA and the Criminal Law (Law Reform and Codification) Act;
 - To identify all State agents who have been implicated in the violations of the rights of human rights defenders, bring them before a civil competent and impartial tribunal and apply to them the penal sanctions provided by the law;
 - To bear equal responsibility for human rights violations committed by non-State actors especially when the State fails to apply due diligence to prevent, punish, investigate, or redress the harm caused by non-State actors who seem to operate with the acquiescence of the State;
 - To restore a professional police service to ensure that it maintains law and order in full compliance with the Constitution and in a totally depoliticized way, and is accountable to the law;

Therefore, to disband the Law and Order unit that operates under political instructions and without accountability, as previously recommended by the African Commission on Human and People's Rights in 2004;

- With regard to the administration of Justice: to refrain from undermining the independence and integrity of the judiciary, to sanction every act of torture and ill-treatment and make sure that offenders are brought to justice, to take all necessary measures to ban incommunicado detention and to comply with minimum guarantees in pre-trial detention. In particular, the Observatory calls on the authorities to take all necessary measures to ensure that those responsible for the alleged human rights violations perpetrated in the run-off, during and after the 2008 general elections be brought to justice and duly sanctioned according to law;
- To fully comply with the Resolutions and Recommendations adopted by regional and international bodies on the situation in Zimbabwe, in particular ACHPR Resolutions 128, 132 and 138 urging the authorities to take all necessary measures to ensure that Zimbabweans exercise their right to vote in a peaceful environment free of intimidation and violence, to implement the GPA without any further delay and to guarantee the protection of the rights of human rights defenders during the election process; the ACHPR Resolutions 69, 119 and 196 on the situation of human rights defenders calling on States to adopt specific legislation on the protection of human rights defenders, to put an end to judicial harassment and other acts of intimidation against human rights defenders, or to initiate independent investigations on cases of violations of the rights of human rights defenders so as to prosecute the perpetrators; the recommendations of the Universal Periodic Review (UPR) with regard to the respect and protection of the rights of human rights defenders;
- To implement its commitment taken during the United Nations Universal Periodical Review (UPR) in October 2011 to provide the Zimbabwe Human Rights Commission with adequate financial, technical and material capacity and take all necessary measures to guarantee its effective independence, transparency and impartiality to ensure its conformity with the Paris Principle, and seek accreditation with the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC);
- To issue a standing invitation to the Special Rapporteurs of the African Commission on Human and Peoples' Rights and the United Nations, in particular their respective Special Rapporteurs on Human Rights Defenders and the ACHPR and UN Special Rapporteurs on Torture, and to the UN Special Rapporteur on the Independence of Judges and Lawyers;

- To reply positively to the country visit requests addressed to Zimbabwe by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Freedom of Association in September 2011 and by the Special Rapporteur on Human Rights Defenders in 2002, 2004, 2008, 2010 and 2011;
- To implement its commitment taken during the UPR to submit regularly reports to the UN treaty bodies, especially by submitting a report to the Human Rights Committee (due since 2002) and a report to the Committee on Economical, Social and Cultural Rights (due since 2003);
- To ratify and implement other major human rights instruments including the African Charter on Elections, Democracy and Governance, the Protocol to the African Court on Human and Peoples' Rights (and make the declaration under article 34.6 of the Protocol recognising direct access to the Court for individuals and NGOs), the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearances, the Rome Statute of the International Criminal Court;

To the Judiciary

- To improve its efficiency in pre-trial justice by ensuring effective oversight of all forms of detentions;
- To design and implement with technical support from other institutions a systematic and sustained continuous legal education and training programme for members of the judiciary;
- To fully implement the code of conduct for members of the judiciary in order to improve the efficiency and integrity of the judiciary;
- To implement the Judicial Service Commission strategic plan and seek technical assistance as necessary at any stage of its implementation¹¹;
- To guarantee in all circumstances the implementation of fair trial standards;
- To ensure greater collaboration and ongoing dialogue with key stakeholders in the justice area, such as the Law Society of Zimbabwe, the Police, and the Prisons.

To the African Union and the Southern African Development Community

- To call for the full implementation of the GPA including the constitutional making process before the next elections are held in Zimbabwe;
- To guarantee the presence and deployment of local and international observers during the next elections in Zimbabwe;
- To make every effort to ensure that the military and security sector are not involved in the organisation and management of the next elections in Zimbabwe.

To the United Nations

- To the UN Special Rapporteur on Human Rights Defenders: to send a reminder to Zimbabwe regarding her pending request for a visit;
- To the UN Special Rapporteur on Rights to Freedom of Peaceful Gathering and Freedom of Association: to send a reminder to Zimbabwe regarding his pending request for a visit;
- To the UN Special Rapporteur on the Independence of Judges and Lawyers: to send a new request for a visit to Zimbabwe;
- To the UN High Commissioner for Human Rights, following her May 2012 visit: to follow up with the authorities on her request to repeal laws that are adverse to human rights and have been abused to persecute human rights defenders and journalists, and curtail the freedom of the press.

11. The Judicial Service Commission is created by section 90 of the Constitution of Zimbabwe. One of its functions is to tender advice to the President on appointments to certain posts specified in the Constitution, including the appointment of judges. Its other equally important function is to employ all persons within the Judicial Service as defined in Section 3 of the Judicial Service Act [Chapter 7.18].

To the European Union (EU)

- Regarding the multilateral process: to take into account the particular weight and crucial facilitator role played by the SADC in the reform agenda and consequently to urgently pursue formal and informal exchanges with its member States in order to secure their commitment to support the implementation of the GPA and to adopt much stronger positions against Zimbabwe if needed. To use also the dialogue and other opportunities with the African Union to obtain its support to the process;
- Regarding the restrictive measures that had been taken in the fields of Common Foreign and Security Policy (CFSP) and pursuant to Article 96 of the Cotonou Agreement: to ensure that the current process of the removal of the restrictive measures is effectively progressive, cautious and directly linked to progress made by the Zimbabwean parties to implement the SADC roadmap. To that end:
 - Link any further removal of targeted restrictive measures to a peaceful, fair and credible constitutional referendum; but also to the adoption of a new constitution that satisfies high standards of protection of human rights and human rights defenders, to the independent, transparent and efficient functioning of the Human Rights Commission, to the establishment and efficient functioning of an independent and impartial body responsible for the running of elections;
 - Make sure that restrictive measures are conversely reinstated in case no further progress is made in those fields, or if regress is observed in the implementation of the GPA and SADC roadmap;
 - Ensure that the independent civil society organisations are involved in the process of assessing progress made.
- Regarding the persistence or even the resurgence of the trend of arbitrary arrests and detentions of human rights defenders, the numerous cases of reprisals for exercising the right to freedom of peaceful assembly, harassment of the media:
 - Encourage and ensure that the delegations and Head of Missions take all conservatory, protective, preventive and reactive measures, including local statements and proactive *démarches* in line with the various EU Guidelines, in particular the EU Guidelines on Human Rights Defenders, notably through:
 - regular meetings with human rights defenders;
 - prison visits to human rights defenders detained;
 - observation of trials held against human rights defenders as a means to sanction their human rights activities;
 - Systematically condemn harassment, arrest and violence against human rights defenders, urge all responsible parties to put an end to these activities, stress that those responsible for such abuses and violation be held accountable, all this also by highest level public statements;
 - Reinstate however target restrictive measures if no further progress is achieved in those fields;
 - Continue in any case to use the flexible instruments at its disposal as the European Instrument for Democracy and Human Rights (EIDHR) and the Instrument for Stability to face urgent needs and complement the activities financed under other budgetary lines in support to GPA and SADC roadmap implementation;
- Concerning the current preparation of the Country Strategy Paper in the framework of the European Development Fund:
 - Set a scenario-based approach, recognising that assistance will need to be adapted depending on which scenario Zimbabwe is in. This Flexible Scenario-Based Response Strategy should distinguish between:
 - 1) short term perspective and alternative means to provide financial and technical aid in case of regress and/or increasing violence and violations;
 - 2) support to mid-terms measures and reforms to ensure fair and peaceful election process and GPA implementation;
 - 3) support to long terms measures provided by traditional governmental channels in case of engagement in stabilisation process: immediate results must be sought in terms of protection of human rights defenders, freedoms of expression and association, constitutional reforms; intermediary results have to be achieved in terms of investiga-

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tions and prosecution of the perpetrators of the 2008 violations, removal of repressive legislation as POSA, AIPPA and the Criminal Law (Law Reform and Codification), dismantlement of the "infrastructure of violence", comprising youth militias, some soldiers, police forces, intelligence operatives etc.; other results have to be sought such as reform of the judiciary (appointments, funding etc.), reform of the security sector, etc.;

- Maintain the political dialogue provided for in Article 8 of the ACP-EU Partnership Agreement to support the implementation of the reforms foreseen in the GPA and be clear with the Zimbabwean counterparts that, in case of failure or recrudescing violence, all sanctions could be reinstated and could be supplemented by the suspension of trade facilities and agreements;
- *In fine*, and as requested by the EU Strategic Framework and Action Plan on Human Rights and Democracy endorsed in June by the Council of the EU, to "make use of the full range of instruments at its disposal", looking for the "best articulation between dialogue, target support, incentives and restrictive measures" "in all areas of its external action without exception" including "trade, investment [...] corporate social responsibility, and development policy as well CFSP"¹².

To the African Commission on Human and Peoples' Rights (ACHPR)

- To examine, at its next session in May 2013, the situation of human rights in Zimbabwe and to adopt a resolution denouncing the violations of Zimbabwean human rights defenders' rights;
- To the Special Rapporteur on Human Rights Defenders in Africa of the ACHPR: to request and undertake a country visit to Zimbabwe.

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12. See Council of the European Union, EU strategic framework and action plan on human rights and democracy Luxembourg, 25 June 2012, 11855/12.



Establishing the facts**Investigative and trial observation missions**

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis. FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society**Training and exchange**

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community**Permanent lobbying before intergovernmental bodies**

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting**Mobilising public opinion**

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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Created in 1985, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 311 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of NGOs working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social **assistance to victims of torture** and ensures the daily dissemination of **urgent interventions** across the world, in order to prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also **submits individual communications and alternative reports** to the United Nations mechanisms, and actively collaborates in the **respect, development and strengthening of international norms** for the protection of human rights.

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the International Labour Organisation, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

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Activities of the Observatory

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

With this aim, the Observatory seeks to establish:

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

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

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

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

E-mail : Appeals@fidh-omct.org

OMCT Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29

FIDH Tél: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80