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Resisting Repression

Legislative and Political Obstacles to Civic Space in Southern and Eastern Africa

Civil Society Watch (CSW) Report

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March 2004

CONTENTS

ACRONYMS

AIPPA	Access to Information and Protection of Privacy Act
ANC	African National Congress
ANZ	Associated Newspapers of Zimbabwe
ARLPI	Acholi Religious Leaders' Peace Initiative
BAZ	Broadcasting Authority of Zimbabwe
BSA	Broadcasting Services Act
CID	Criminal Investigation Department
CIO	Central Intelligence Organisation
CMAG	Commonwealth Ministerial Action Group
CRC	Constitutional Review Commission
CSO	Civil Society Organisation
DP	Democratic Party
EMS	Electronic Media Statute
ESC	Electoral Supervisory Commission
ESO	External Security Organisation
FHRI	Foundation for Human Rights Initiatives
KANU	Kenya African National Union
ILO	International Labour Organisation
ISO	Internal Security Organisation
IPPG	Inter Party Parliamentary Group
LOMA	Law and Order Maintenance Act
LRA	Lord Resistance Army
LRAA	Labour Relations Amendment Act
MDC	Movement for Democratic Change
MIC	Media and Information Commission
MP	Member of Parliament
NARC	National Rainbow Coalition
NCA	National Constitutional Assembly
NEC	National Executive Council
NEPAD	New Partnership for African Development
NGO	Non Governmental Organisation
NPO	Non Profit Organisations
NRM	National Resistance Movement
PJS	Press and Journalists Statute
POA	Public Order Act
POSA	Public Order and Security Act
PPOA	Political Parties and Organisations Act
PPSA	Preservation of Public Security Act
PVO	Private Voluntary Organisations Act
RA	Reform Agenda
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
UDHR	Universal Declaration on Human Rights

UJCC	Uganda Joint Christian Council
UPDF	Uganda People's Defence Forces
UYD	Uganda Young Democrats
WiPSU	Women in Politics Support Unit
WOZA	Women of Zimbabwe Arise
Zanu-PF	Zimbabwe African National Union-Patriotic Front
ZAPU	Zimbabwe African People’s Union
ZBC	Zimbabwe Broadcasting Corporation
ZCTU	Zimbabwe Congress of Trade Unions
ZIPRA	Zimbabwe People’s Revolutionary Army
ZNA	Zimbabwe National Army
ZRP	Zimbabwe Republic Police

Preface

CIVICUS is a global alliance of civil society organisations established in 1993 to nurture the foundation, growth and protection of citizen action throughout the world. In just over 10 years of existence, CIVICUS has worked to strengthen civil society worldwide and to protect space for civic expression, particularly in areas where it is under threat. With over 650 members in more than 100 countries, CIVICUS has become a central actor in the growing civil society movement. This diverse global network of national, regional and international members serves as a powerful advocacy centre, convener, and information clearing-house for civil society. Under the Civil Society Watch Programme, CIVICUS plans to actively support processes in different countries around the world where space for civil society organisations is variously restricted.

CIVICUS therefore commissioned this study to focus on the legislative frameworks and country practices relating to freedom of association, expression and assembly in four African countries; Zimbabwe, Kenya, Uganda, and South Africa. The study focuses on the grave and worsening situation in Zimbabwe, as part of an advocacy intervention under the Civil Society Watch Programme. This programme aims to provide support to civil society in various countries of the world and works to ensure that an enabling legal and political climate obtains for civil society to flourish.

Rather than set out all the various laws in the countries under study, the report has highlighted some of the main legislation impinging on civil society activities. In all cases, an attempt has been made to examine the wider, especially, political context in which the laws have been made or are applied. The study has tried to avoid the impression of creating a league table of good governance, as that approach would not be helpful to addressing the underlying issues. It recognises that civil society faces different challenges in each country examine, and needs in concert with others, to address these within their context.

The research for this report was carried out over a nine month period with visits to Zimbabwe and South Africa. Special recognition and gratitude goes to Tawanda Hondora who in addition to discussing the issues contributed an invaluable monograph on which much of the analysis on Zimbabwean legislation was drawn. From Kenya, Churchill Soba's research laid the foundation for the examination of developments in that country. Many others, who in the current environment in Zimbabwe must remain unnamed, were willing to discuss candidly the situation in that country. In the interests of consistency we have not named the interviewees from other countries; they know themselves and their contributions were invaluable for obtaining a better understanding of the varied situations under study. Without the support and patience of CIVICUS staff in Johannesburg the research would not have been able to get off the ground or come to any fruition. This is a commissioned study, and the views expressed herein do not necessarily represent the position of CIVICUS, and the errors are certainly that of the author.

This report is humbly dedicated to the longsuffering people of Zimbabwe in the hope that their freedom will not be long in coming.

1
Introduction

Across Africa during the latter part of the twentieth century, an emergent civil society began to find its voice and to define its role in the complex relationship between the governments and the governed of the continent. For Africa, independence had come at different stages, and against contrasting political backgrounds, but always with a sense of optimism for new political beginnings characterised by respect and open government. The experience however has been mixed as the new leaderships did not always break with the political intolerance of the colonial period and in some cases developed new and repressive authoritarianisms. Surveying the landscape today, the continent on the one hand presents a disturbing picture of repression and legislative restrictions, but against many odds, civil society has taken root in various countries, refusing to be forced off the political and social agenda. African people are beginning to insist that only those whom they freely elect should govern them. They are also demanding that those in power should respect their right to organise and express themselves as members of their communities. Civil Society Organisations (CSOs) are forging new solidarities with counterparts across the continent and globally, in support for the quest for social justice and the fight against poverty.

Today, various organisations, pressure groups and social movements around Africa are coming together, as civil society, to remind governments of their obligations to maintain good governance under just laws. In this process, civil society has sometimes discovered how hostile governments can be to the demand for these basic entitlements. But there are also signs on the continent that governments are beginning to be responsive to their obligations those whom they govern; a number have recognized the contribution that an emergent and vibrant civil society can make to policy, and have sought to engage and appropriate this new-found energy and confidence.

Whilst there has been a welcome outbreak of democratic practices around the world, the picture remains mixed, with illiberal governance and failed states still blighting the political landscape of Africa. For nationals of such states, basic civil liberties are still a far off aspiration. A vibrant civil society is a precondition for a thriving democracy, which must be built on sound values, reflected in legislation and adherence to commonly accepted principles enshrined in international law. Where there is a vital civil society, democracy is likely to flourish, but where the rights to expression, assembly and association are circumscribed, civil society will not thrive and political governance will thereby suffer. Whilst internal mechanisms and interventions can produce necessary democratic and human rights changes in a country, the most effective interventions are the result of solidarity action encompassing regional and international civil society and other states and international bodies.

This study sets out to consider and analyse the legislative frameworks and specific laws under which civil society operates in Zimbabwe, South Africa, Uganda and Kenya: two countries each, from Southern and Eastern Africa presenting marked differences but also similarities in the challenges and opportunities for civil society in those regions. The

main focus of the study is on Zimbabwe, where the political and economic situation has seemed to spiral out of control. There the government has introduced and applied four main pieces of legislation: the Public Order and Security Act (POSA), the Access to Information Protection or Privacy Act (AIPPA), the Broadcasting Services Act (BSA), and the Private Voluntary Organisations Act (PVOA) to target its dissenters, from the political opposition, the Movement for Democratic Change (MDC), to civil society organisations which have tried to assert their right to exist and to organise freely. The focus on Zimbabwe in the report acknowledges the gravity and severity of the situation in that country, where the government has continued to act in disregard of international standards and in its own constitutional framework. The crisis in Zimbabwe is undeniably complex and encompasses not just political issues but also economic, social and humanitarian dimensions: all of these are relevant and merit study.

The Role of International Human Rights Law

Human rights are not the creation of states. All the countries under consideration subscribe to the key international and African legal instruments enshrining the fundamental rights of expression, association and assembly, under scrutiny in this study. The International Covenant on Civil and Political Rights (ICCPR) under Articles 19, 21 and 22; the African Charter of Human and People's Rights under Articles 9, 10 and 11 have all been ratified. These principles are set out and elaborated upon in the African Commission's Declaration of Principles on Freedom of Expression in Africa as adopted by the 32nd Session of the African Commission held in Banjul in October 2002 (Banjul Principles). Further underlining treaty commitments, are the declarations which elaborate further on the Freedom of Expression. The Windhoek Declaration on Promoting an Independent and Pluralistic African Press (1991) which calls for national media and labour laws to give an appropriate role to representative associations to better defend press freedom.[1] After 10 years the Windhoek Charter on Broadcasting in Africa was established; it emphasises the need to create enabling democratic and localised environments for broadcasting in African countries based on regard to international human rights law and accepted values of diversity and free flow of ideas.[2]

Although none of the states under consideration in this study incorporates treaty obligations directly into national law, each instead requires national legislation to incorporate treaty provisions. Ratification opens the states to scrutiny under the monitoring and states reporting mechanisms created by such treaties. Thus each state party should normally submit periodic reports, of the status of these rights to the relevant commissions. By making formal commitments, states are expected to conduct national affairs in conformity with the objects of the treaty, as a matter of good faith.

As seen in the Zimbabwean situation, states can adopt an insular mentality and ignore their legal obligations and become impervious to outside criticism. At that stage invoking international standards alone, without other political measures of dissuasion is unlikely to yield the desired changes in its practices. However, it is important, not only for the needs of the immediate situation being addressed but also in order to vindicate international law

[1] Paragraph 13.

[2] The Windhoek Charter on African Broadcasting, 2001 (see Part 1, para 1)

and standards, to bring challenges or complaints to international fora especially the mechanisms under the African Charter, as civil society in Zimbabwe has done.

Laws guaranteeing the freedoms of association, expression and assembly find expression in the national constitutions of the countries under consideration, even in Zimbabwe. Any analysis of specific laws needs to acknowledge that laws emerge from specific national political and social histories and developments, and enforcement of such legislation is as much, perhaps even more, a matter of politics that of ordinary policing. It is also recognised that the ambit of state repression in Zimbabwe is in fact wider than the mere enforcement of these laws, and involves the consistent use of extra-legal methods of suppression of dissent. All indications are that the government will continue to use legislation to curb the activities of perceived opponents, especially civil society.

Beyond describing the unfolding crisis in Zimbabwe, the object of the study is to reflect of the avenues and dynamics for civil society to influence governance issues across Africa. Much effort has justifiably been expended on Zimbabwe for the last five years in particular and it is clearly vital that civil society should reflect on the prospects for change there and how best to influence it. In the other countries under study too, laws impinge on civil society, though perhaps in less overtly repressive ways in the manner of their application. Nevertheless, the protection of space for civil society to function is equally important and vigilance is the only safeguard against future infringements.

2
Zimbabwe's Troubled History

Attempts by the government to deflect attention from its own handling of the political, economic issues in Zimbabwe have failed to conceal the extent of the crisis in Zimbabwe. The tragedy that has unfolded in Zimbabwe has roots in Zanu-PF's failure to manage a viable transition from a racially and economically segregated colonial past to a modern socially just state. As with the case for South Africa during its transition, independence for Zimbabwe had come as a result of protracted negotiations in which the white minority had secured certain guarantees over the land question and a political role in the new Zimbabwe. This compromise, brokered during the Lancaster House negotiations which preceded independence in 1980, deliberately, and in the perceived interests of political progress, deferred the thorny land question to a later date.

Soon after independence, Zimbabwe faced other challenges: the relationship between Joshua Nkomo's Zimbabwe African People's Union (ZAPU) whose military wing the Zimbabwe People's Revolutionary Army (ZIPRA), had also fought for the liberation of Zimbabwe and Zanu-PF was characterised by tensions[3] which remained even after the bitterly contested elections of 1980. Although these elections were declared legitimate, they had been marked by violence and intimidation and provided glimpses of the extent to which Zanu-PF might later go to keep its grip on power. But a more disturbing, though at the time hardly remarked upon manifestation of repression, was the vicious manner in which the Fifth Brigade of Army stamped out an embryonic ZIPRA insurgency in Matabeleland. In the end, rapprochement was reached between these two parties leading to the Unity Accord of 1987. When towards the end of the 1990s Zanu-PF felt its political dominance threatened by the emergent Movement for Democratic Change (MDC), it reverted to the tactics it had used in the past, but also showed that it had taken lessons from the Rhodesian repression. It is from the Rhodesian Law and Order Maintenance Act (LOMA) that POSA was constructed some twenty years after independence.

The Descent into Repression

Since 2000, Zanu-PF has systematically set about closing off avenues for dissent and has been ready to use the police to ensure that alternative political opinions do not have the opportunity to flourish. At the same time, it was essential and indeed inevitable that civil society would become engaged in the economic and political crisis into which Zimbabwe was fast sliding. Today non-government organisations, religious bodies and other civic groups have come together under various umbrella bodies, including Crisis in Zimbabwe Coalition and the National Constitutional Assembly (NCA), which have maintained pressure on the government to institute political changes and to repeal repressive legislation.

The February 2000 Constitutional referendum was held to determine whether the government's proposed changes to the constitution would be accepted. The government's

[3] These differences went back a long way to the period of the struggle for independence.

surprise and unprecedented defeat came in the wake of growing disaffection especially in urban areas about the political and economic direction of the country. The defeat however signalled a turn for the worst as the government now recognising its vulnerability set on a course of retaining its hold on power by all means possible. Events leading up to the referendum had produced the National Constitutional Assembly (NCA) a coalition of most NGOs in the country which had worked on proposals for a new Constitution but had been ignored by the government whose own draft Constitution had been rejected.

Still smarting from the unexpected loss during the referendum, and facing defeat in the elections of 2000, Mugabe played the land card. Having failed to inject urgency and consistency in the process of equitable land reform, war veterans and militias were now allowed a free hand in commercial land seizures and driving farm workers off the land, in what has become known as the *jambanja*[4]. Scores of black farm workers and opposition party supporters were killed in the process. This controlled chaos abetted by Zanu PF continues flaring up at tactical moments to meet the repressive expediencies of the moment. Despite the high levels torture and serious assaults perpetrated by known war veterans and other hired militia, few arrests were made and until now no successful prosecutions have been carried out. Zanu-PF targeted not only the land but also businesses. Using the same formula, and the message that the country's ills were caused by the white minority companies were invaded in 2000 by the war veterans in what was seen as extortion exercises.

The Presidential elections of 2002 saw an even greater use of political violence and law as a tool of repression. In addition to war veterans, the Zanu-PF government began training youth militia[5] who came to be responsible for much of the political violence that gripped the country in the run-up to the presidential election. In a flurry of legislative activity around this time, the government using its in-built majority derived form the presidential powers to appoint 20 members of parliament, forced through AIPPA, the BSA, POSA, and several other enactments.

The political standoff continued into the following year and in March 2003, the Movement for Democratic Change (MDC) called for a stay away which was widely observed, but led to a severe backlash by the government. While the two days passed off largely quietly, the state security machinery soon reacted violently and rounded up over 400 pro-democracy activists, civic leaders, opposition MPs and others. A further 800 people including relatives of activists were subjected to beatings, torture and rape. In a departure from the past, when "war veterans" and "militias" committed the bulk of the excesses, uniformed security personnel now carried out the attacks. These attacks were characterized by extreme brutality and sadism. The government also prevented the MDC from effectively participating in two parliamentary by-elections later in March by targeting and beating party activists.

At the beginning of June, 2003, the opposition again called for a massive stay away, billed the "final push". Again the security forces and para-militaries were deployed very

[4] A new word in the Shona lexicon meaning chaos or violence, used to depict the recent political upheavals.
[5] With the deceptively innocuous-sounding name of the National Youth Training Service

heavily indeed to disperse peaceful demonstrators. Several people were reported to have been assaulted or injured.[6] The Zimbabwe police carried out scores of arrests of pro-democracy activists across the country. The MDC President, Morgan Tsvangirai was arrested on June 2 and charged with contempt of court for defying a High Court order barring mass action. He was later also charged with treason along with Secretary General Welshman Ncube. The two now face two sets of treason charges. The police have also targeted primary and secondary schools and the university. Churches and church leaders were subjected to intimidation. President Mugabe, who now seems personally to be at the helm of the repression in Zimbabwe, pronounced the demonstrations a failure.

Independently of the political parties, civil society has continued to call for the democratic right to associate and organise and the need for a new constitution: on 18 April 2003, religious leaders organised a march through Harare. Just before that date, the National Constitutional Assembly (NCA) organised a demonstration in Harare town centre calling for a new constitution. More recently, the Zimbabwe Trade Unions called for a march in 18 November 2003 which resulted in massive arrests of civil society representatives and activists. The authorities have continued to break up perceived opposition meetings of the opposition often with extreme violence.

Closing the Space for Civil Society Actors

The impact of this legislation on civil society has been direct and costly. The government has targeted non-partisan NGOs like the Women in Politics Support Unit, (WiPSU) which works to encourage women politicians of all persuasions. They have often been thwarted in their attempts to carry out non-partisan voter education and civic mobilisation of women in constituencies. Even seemingly harmless meetings discussing economic policy, such as one planned by the Zimbabwe Coalition on Debt and Development in Mutare in June 2002 on the New Economic Partnership for African Development (NEPAD) initiative, have been refused on the improbable basis that holding the meeting presents a threat to public security. Although the organisation obtained a High Court order that it could proceed with the meeting the damage had been done. Some organisations had withdrawn from the workshop and plain clothed policemen sat in on the meeting. Other organisations have had to tailor their activities to fit with the prevailing climate. The Legal Resources Foundation, for example has apparently altered its programmes on the constitution and the declaration of rights in response to intimidation and been prevented from carrying out outreach in the rural areas. Outreach work is all but closed to most organisations except in the towns and their environs. Many have either closed down or are now treading more carefully.

In order to arrange any public meetings for electoral education, for example, permission is additionally required from the Electoral Supervisory Commission (ESC). This is not all, in rural areas, which Zanu-PF sees as its strongholds, further authorisation for meetings is required from the village headmen and local Zanu-PF leadership. The result of this is that if one does not fly the colours of Zanu-PF, they are unlikely to have the space to carry out activities consistently. No such obstacles, however, are placed in the

[6] For a full report see Crisis in Zimbabwe Coalition (June 2003) Defiance vs Repression: critical Reflections on the "final push" June 2-6.

way of activities in Zanu-PF held constituencies where the police will facilitate rather than obstruct proceedings.

Today, no one is above suspicion for the government; even religiously-based bodies require permission to hold meetings, and this is often refused. Churches perceived to be unsympathetic have been the subject of criticisms and some church ministers have been warned about the content of their prayers, if these are deemed to be critical. Pastors in remote rural areas are even more vulnerable to Zanu-PF functionaries and the state agents. Depending on the political climate, consent is sometimes given and on other occasions can be denied without explanations. It has been reported in Bulawayo, that the commencement of contacts and dialogue between Zanu-PF and the MDC saw a relaxation of the police attitude towards some organisations, such as the Bulawayo Agenda holding meetings.

Security operatives routinely targeted offices of several civil society organisations. A cynical strategy that the security agencies have employed to intimidate organisations is to deliberately avoid their publicly visible leaders and instead directly harass individual employees and their families. Where an organisation might voice criticism it is often denounced as a collaborator with the MDC. The Amani Trust, which focuses on support to victims of political torture and organised violence, was forced to close after government harassment following a damaging report on rape cases in national youth camps. In August 2002, Amani staff were arrested and detained, and organisation accused of threatening Zimbabwe's peace and security. In November 2002 the organisation was cited as contravening the Private Voluntary Organisations Act, and threatened. Shortly afterwards it was forced to suspend its operations due to concerns about the safety of its staff. Amani Trust director, Tony Reeler, had to relocate to South Africa.

On July 24 2003, 48 members of Women of Zimbabwe Arise (WOZA) were arrested and one of them assaulted by the police for participating in a demonstration to protest against the POSA in Bulawayo. The women had gathered outside Tredgold Building, while their delegates handed over a letter protesting against POSA to the Senior Prosecutor for Bulawayo. After marching through the city riot police arrived and arrested protest organiser Jenni Williams. The women were apparently detained for two days and interrogated during the period of their detention. All were charged under POSA for participating in an 'illegal gathering', with Jenni Williams having a second charge (under S17[7] – POSA) laid against her for allegedly organising the march.[8]

Attacks on Organised Labour

After an initial post-independence period of weakness and government manipulation, organised labour has now become the bedrock of opposition to the Mugabe government, and appears set to continue in this vein. Having decided to take an independent stand, the Zimbabwe Congress of Trade Unions (ZCTU) has been subjected to a campaign of

[7] Section 17 provides for offences committed against public order. For further discussion of POSA see below.

[8] Zimbabwe NGO forum, July 2003, Violence report.

intimidation and an attempt to cripple its activities. Workers have been beaten, arrested, and tortured by state agents and the ZANU PF militia. Their leaders have been subjected to arrests for attending union meetings and especially following the mass three-day boycott in April this year.

These actions contravene orders by the High Court preventing interference with meetings of the labour movement or the POSA provisions that allow professional and social groups such as the ZCTU to hold meetings of their members. The government also declined a request by the International Labour Organisation (ILO) to send a mission to Zimbabwe, insisting that it was already addressing the issues of concern.[9] The Labour Relations Amendment Act (LRAA) enacted by Parliament in December 2002, does not in fact address the issues of the independence of the labour movement.

Undermining the Judiciary and law enforcement agencies

During the last three years, Zanu-PF has embarked on a campaign to intimidate the judiciary and purge it of judges deemed unsympathetic toward it. The Chief Justice Mr Anthony Gubbay was forced to resign and a further six judges followed suit. Two judges were subjected to unprecedented arrests as war veterans were allowed to attack magistrates with impunity. It is widely feared in the country that newly appointed judges will against this background be too compromised or afraid to act independently of the executive. Although individual judges have continued to demonstrate independent actions, the government has found other ways of either ignoring or circumventing decisions it is not like. Mugabe has clearly seen that a strategy of repression could not stand alongside an independent judiciary and has therefore set about ensuring a compliant bench. These assaults on the judiciary have far-reaching implications and threaten the rule of law and will undermine for a long time, confidence in a central pillar of justice.

[9] Daily News, ZCTU blasts government 6/23/2003

The Land Issue – Diversion or Legitimate Concern

In 1980, it was apparent that in achieving a settlement, the Lancaster House process had left the land question for an independent Zimbabwe to grapple with later. Because independence in Zimbabwe had been preceded by a long and bitter war of liberation, which Zimbabwe African National Union (ZANU) and Joshua Nkomo's Zimbabwean African Patriotic Union (ZAPU) had fought on the land platform, expectations were invariably high. Under Rhodesia's racially-based system, extreme alienation from the land had seen over 80% of the most arable land in the hands of white commercial farmers and interests. Those who actively fought for independence, more than others, came to symbolise the unfulfilled promise of land. These liberation war veterans[10] have since independence retained a special, though often turbulent, relationship with the ruling ZANU Patriotic Front (PF) government acting as mobilisers but also able to bring pressure to bear on the government to protect their interests[11].

As it emerged from the civil war the new Zimbabwe at first made impressive progress in vital sectors; for example, extending social and economic benefits to its majority population and seeing to increased investment in inclusive education and social infrastructure. Where under the racially selective Rhodesian government, social investment for the minority had been relatively high, the increased costs to the new state of its inclusive approaches inevitably took its toll on the economy. But later in the 1980s, alongside other African countries, Zimbabwe had to adopt an Economic Structural Adjustment Programmes, which saw cut-backs in the provision of social services. The government faced a challenge to deliver on promises of land reform while keeping alive the goose of commercial agriculture that laid the golden eggs sustaining the economy. Mugabe's government, and other stakeholders, including the international community, failed to act with sufficient urgency and credibility to address the legitimate land question. Even though the government had, on paper, a reasonably balanced land reform policy which sought to attain a good balance between equity, productivity and sustainability, whilst committed to acquiring additional land for distribution, the government was to abandon this approach for political ends.

Initially, a combination of corruption and political caution on the side of the government thwarted the pace of land reform and led to disillusionment as the economic hardships after the late 1980s began to bite. In reality, the social and economic complexity of the land problem had required all stakeholders to come together to work out the most viable modalities for equitable but viable land redistribution. Instead, the impression was allowed to develop that in the face of necessary land reform, white commercial farmers would invoke the law and the constitutional provisions on property rights to cling to an inequitable status quo. This important issue was needlessly and recklessly allowed to drift until after 20 years of independence until the arguments were overtaken by cynical political calculations.

[10] They are not to be confused with the latter-day "war veterans" who have usurped the title but many of whom are clearly too young to have seen action during the war of liberation of the 1970s.

[11] War Veterans extracted concessions of payments from the government in 1997.

The government's Fast Track Land Resettlement programme, rushed in after 2000, has together with the *jambanja* had a devastating impact on the lives of former farm workers, 70% of whom have lost jobs with only 5% receiving any land. Under the campaign slogan "Land is the economy and the Economy is the Land." The invasions continued, leading to the deaths of more than eight commercial farmers and 2000 commercial farm workers, and a massive displacement of whole communities. The impact on agricultural output has been dramatic and disastrous. Food production has plummeted with the consequence that Zimbabwe now relies upon emergency food aid to prevent the starvation of its people.

Almost everyone fair-minded person outside government sees through the cynical manipulation of the land question for Zanu PF's political ends. It is, however, an issue which resonates with the rest of Africa in particular and allows for Mugabe to stake a claim to an issue of justice and to portray those who would oppose him politically as aiders and abettors of land injustice. The response of civil society has been to accept the legitimacy and urgency of the land question but to reject Zanu-PF's attempts to use the land to mask its own mismanagement of the process and the deflect attention from the party political goal of clinging to power.

3
Zimbabwe—A Cynical Legislative Strategy

It is difficult to think of any other government in independent Africa which has more systematically abused legislation to curb dissent than Zanu-PF. This government has stocked up its arsenal of repression with various set pieces of legislation, including; the Broadcasting Services Act (BSA) (2001), the Public Order and Security Act (2002), the Access to Information and Protection of Privacy Act (2002), and, the Private Voluntary Organisations (PVO) Act (2002). All of these laws have shrunk the space for activities of civil society and the perceived opponents of the government. Of these laws, the most notorious ones of these are the twin devils'[12] of POSA and AIPPA. They violate fundamental human rights enshrined, not just in the Zimbabwean Constitution but also in the African Convention on Human and People's rights, the United Nations Convention on Human Rights, and many other instruments to which Zimbabwe is a party.

The Public Order and Security Act (POSA)

Following independence, the Zimbabwean government was not in a hurry to repeal in its entirety the dreaded Law and Order Maintenance Act, which had been enacted in 1975 by the Rhodesian authorities and directed at the pro-independence movements. In December 2001, after the 2000 elections in which the crisis in Zimbabwe came to a head, and in anticipation of campaigns for the Presidential elections the following year, the government rushed POSA through Parliament. The law has come to have a devastating impact on fundamental freedoms in Zimbabwe especially the rights of assembly and expression.

POSA contains a host of provisions that adversely affect the ordinary Zimbabwean; the operation of NGOs, and more significantly, the exercise of freedom of expression. More than any other enactment, POSA contains particularly oppressive provisions, which adversely affect the practice and operations of journalists and mass media service providers, NGOs, the ordinary Zimbabwean and the exercise of freedom of expression.

Under Section 5 of the Act, no one may set up an organisation to overthrow the government by unconstitutional means; usurp the functions of government, or, extraordinarily, to coerce the government, inter alia, through boycotts and civil disobedience. Contravention of the section attracts a possible 20-year term of imprisonment. Opposition MPs and lawyers have been targeted under section this section; in January 2003 five people including Job Sikhala, MDC a Harare Member of Parliament (MP), Gabriel Shumba, a lawyer with the Zimbabwe Human Rights NGO Forum, and three other MDC members were arrested and charged under Section 5 of POSA. The five were subjected to torture while in police custody, and in a pattern seen in the enforcement of POSA, charges brought against them failed for lack of evidence. This section introduces unusual concepts as reflected in the offences it creates, such as: 'Coercing the government' for instance is broadly defined to mean, "constraining, compelling or restraining by –

[12] As they were described to CIVICUS by an activist in Bulawayo; (September 2003).

(i) physical force or violence or, if accompanied by physical force or violence or the threat thereof, boycott, civil disobedience or resistance to any law, whether such resistance is active or passive; or
(ii) threats to apply or employ any of the means described in paragraph (a);

To the extent that it restricts free speech, and the expression of opinion, section 5 is not reasonably justifiable in a democratic society. "C oercion" is too loosely defined and will in practice be too broad in application, imposing a "chilling effect" on the exercise of media freedom. Commenting on the political situation in the country, and in particular making suggestions around the political situation obtaining, is part of free speech. At stake is the public's right to know and express opinion.

The Act has paid particular attention to protection of security agencies from criticism; thus, Section 12 criminalizes the causing of "disaffection among the Police Force and Defence Forces", and makes in punishable by imprisonment for up to two years. The prohibition extends to utterances or statements disseminated by journalists and other person or organisation. It is immaterial that the author of the report in question did not intend to cause dissatisfaction within the armed forces. In other words, what gives rise to culpability is the result and not the intention of the author's action.

In addition, section 15 punishes, with up to 5 years imprisonment, the publishing of statements, which is likely or does incite or promote public disorder or public violence; adversely affect the defence or economic interests of the country; undermine public confidence in the police, prison or defence forces; or interfere with any essential service. This strict liability offence punishes false and inaccurate statements and the defence of truth is available to an accused person although partially true statements give rise to criminal liability. Besides, the ingredient of the likelihood to incite disorder effectively left for the state to determine.

The effect and implications of section 15 of POSA are similar to section 50(2) of the now repealed Law and Order Maintenance Act after the section had been declared unconstitutional by the Supreme Court. The main objection to section 15 lies in the fact that it primarily targets false statements. Today though, the first avenue of defence is that the Supreme Court in the case of Chavunduka & Choto v Minister of Home Affairs[13] has held that the criminalisation of making false statements is unconstitutional. The Supreme Court has already declared limiting freedom of expression on the basis of such legal provisions invalid. It held:

"Because s 50(2)(a) is concerned with likelihood rather than reality and since the passage of time between the dates of publication and trial is irrelevant, it is, to my mind, vague, being susceptible of too wide an interpretation. It places persons in doubt as to what can lawfully be done and what cannot. As a result it exerts an unacceptable "chilling effect" on freedom of expression, since people will tend to steer clear away

[13] Unreported, Judgment No SC 36/200, civil application No 156/99 (22 May 2000)

from the potential zone of application to avoid censure, and liability to serve a maximum period of seven years' imprisonment." [14]

Another flaw with section 15 was in the use of the word "false". *"The use of the word "false" is wide enough to embrace a statement, rumour, or report which is merely incorrect or inaccurate, as well a blatant lie…negligence is criminalized. Failure by the person accused to show, on a balance of probabilities, that any or reasonable measures to verify the accuracy of the publication were taken, suffices to incur liability even if the statement, rumour or report that was published was simply inaccurate."*[15]

Section 16 of POSA protects the office of the president by punishing any perceived insults directed at the president, while section 21 makes acts or statements engendering feelings of hostility towards police officers punishable by up to two years in prison. Journalists who have been arrested under this provision include, in February 2003, the deputy news editor of the *Daily News*, Pedzisayi Ruhanya, and freelance journalist, Ishmael Mafundikwa. Although they were not brought to trial their arrest was sufficient interference with freedom of the media.

POSA specifically set out to control the freedom of assembly: thus sections 23-31 give the Zimbabwean police force excessive powers to ban and disrupt public gatherings at their discretion. And the police have lost no opportunity to exercise these powers against civic organisations and the opposition. Section 24 which requires that police are given four days' advance notice for the holding of public gatherings or meetings has been cynically turned on its head by the police who have instead introduced their own procedure under which no meetings can be held without permission from the police. This unilateral circumscription of the law, shows the extent to which the police now operates freely as an instrument of repression, even when the law does not formally curtail freedom. Even when permission is granted, police will often limit the topics for discussion, and routinely include a requirement that their officers attend the meetings, ostensibly to ensure that the peace is not breached, but in reality to keep tabs on the perceived oppositional sentiments. Any meetings, which do not receive police clearance, are then treated as illegal. Under sections 25 and 26 police have wide powers to break up and even prevent public gatherings altogether if they are deemed to endanger public order. Permission is routinely refused and police may object to particular subjects being discussed. As already illustrated above, many civil society leaders have been arrested under this law. POSA therefore criminalizes most NGOs activities which could conceivably involve criticism of the government and renders civic society activities subject to police scrutiny, since no meeting may be held without police notification.

[14] Chavunduka (Supra) @ page 562D.
[15] Chavunduka (Supra) @ page 562F.

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

To maintain its control over the print media, The Access to Information and Protection of Privacy Act (AIPPA) was enacted by the government in March 2002, in anticipation of the Presidential elections. The name of the Act is perhaps intended to be ironic, as it does nothing to improve access to information or protect privacy, but instead serves to prevent access to information held by public bodies, and criminalizes legitimate investigation into the conduct of the state by the media and individuals. Despite attempts and interventions during its passage in Parliament to temper its worst effects, and international protests at the proposals the will of the government once again prevailed. Since its promulgation, over 70 journalists, all from the private media, have been arrested; several media houses threatened; and the Daily News, the only non-government controlled daily newspaper in Zimbabwe has been forced to close down and its equipment and printing press embargoed. While most sections of AIPPA are objectionable as they infringe media freedom, it is the requirement that journalists and mass media organisations should periodically register with the Media and Information Commission (MIC) and the host of offences listed in the Act that attract the greatest criticism.

Although there has been some amendment of the Act, it has left intact the most pernicious provisions which have all attracted various challenging litigation in the courts. Here the media and civil society have suffered a major setback in February 2004, as the Supreme Court to widespread criticism rule by a majority of 4-1 on a petition filed by the Independent Journalists Association of Zimbabwe (IJAZ), that the provisions requiring registration are not inconsistent with the constitution. In a judgement which departed markedly with its own previous jurisprudence on freedom of expression the court chaired by the Chief Justice Chidyausiku, ruled that the requirement under section 79 of AIPPA to register as a precondition for practice did not contravene section 20 of the Constitution. The majority of the court held that section 79 was necessary in the interests of public order-a ground which was apparently not argued by the state.[16] Section 20(2)(a) of the constitution does list "public order" as one of the grounds that may be used to limit freedom of expression, but only if such limitation is "reasonably justifiable in a democratic society" a matter which the majority judgement did not seem to adequately address. Apart from the unusual procedural approach the reasoning of the Supreme Court that freedom of expression can be protected while circumscribing the means through which the information might be produced and conveyed is highly dubious. The court failed to take into account the clear in-built biases and the appearance of partiality the composition of the MIC and the powers of the Minister meant for the accreditation system. [17]

[16] Information minister Jonathan Moyo had invoked national security and economic interest grounds whilst it was also submitted that the provision was necessary in the interests of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings.

[17] Tawanda Hondora. *Conflict views in media case* Zimbabwe Independent, Feb 13th 2004

The Media and Information Commission

The Media and Information Commission is established, under sections 38-42 of the Act. However, the MIC is appointed, remunerated, enjoys tenure of office and is dismissed at the instance of the Minister of Information;[18] who is also a presidential appointee and senior ruling party official. The Commission has the power to accredit journalists, to register and regulate mass media outlets. It also has the power to deregister, organisations and also has very wide disciplinary powers. Under section 18(9) of the Constitution: *"…every person is entitled to be afforded a fair hearing within a reasonable time by an independent and impartial court or other adjudicating authority established by law in the determination of the existence and extent of his civil rights or obligations."* [19] Since the Commission is appointed and mandated by Minister in terms which do not satisfy the requirements a neutral and objective arbiter, it arguably falls foul of section 18(9) of the Constitution. For an official of the ruling party to control both the private and public media is undemocratic. Moreover, the Minister of Information is the overall head of the government-controlled and competing Zimbabwe Newspapers Group. It is therefore unconscionable that the minister in charge of a competing print mass media service group should regulate, with powers to licence and discipline, the private mass media. In another clear attempt to leave no information outside the ambit of state control, section 66 is so widely drafted that any agency which disseminates mass media products, including electronic communication, must register with the Commission, regardless of size or frequency of publication. Thus, in law today, all NGOs, which exchange information, must register.

The foreign press has incurred the ire of the government on account of its coverage of the situation in Zimbabwe. The government has consistently accused the international press of bias, and many journalists have been forced or locked out of Zimbabwe. The BBC continues to be banned from the country. The government appears determined to go to great lengths to rid Zimbabwe of foreign journalists as the arrest of deportation of Andrew Medrum, long-term correspondent of the United Kingdom Guardian paper in Harare demonstrated. Following his arrest and acquittal in June 2003 and despite favourable judicial outcomes and urgent High Court orders preventing his removal, Meldrum was still expelled from Zimbabwe.

The Closure of the Daily News

For a long time, and even through the past three tumultuous years, the Daily News remained the only daily newspaper to print views countering those of the government. To the shock of many observers and no doubt to the embarrassment of regional actors who have advocated a conciliatory approach towards Zimbabwe, in September 2003, the Government closed down the paper on the basis that it was not properly registered. Its challenge to the Supreme Court yielded an unhelpful judgement to the effect the paper had to first comply with the legislation before launching a challenge after the ruling the paper was closed. And when it attempted to assert its right to publish by running a copy of the paper in October, members of the board of Associated Newspapers of Zimbabwe

[18] Refer to sections 38-42 of AIPPA.

[19] Section 18(9) merely represents the constitutional codification of the *audi alteram partem* principle, which is a common law principle.

(ANZ), which owns the paper, were arrested and now face criminal charges. Police removed equipment from the papers offices ostensibly to help in investigations but it was suspected the real intent was in order to ensure that the paper was incapacitated.

The litigation over AIPPA has been quite involved, with various civil suits still pending before the courts. However, the current drift of the much interfered with higher judiciary is clearly discernible, and illiberal. For their part, the ANZ, publishers of The Daily News and its sister paper, The Daily News on Sunday, has been locked in a legal battle with the MIC since September 2003. The newspaper group was ordered to stop publishing when it was held that the company was operating without a licence and its journalists were not accredited as required under AIPPA. It refused to register its publications with the MIC. After a series of cases it won the right to reopen in the administrative court but was challenged by the MIC with the minister insisting that the MIC's appeal meant that no licence could be issued. In February 2004 the High Court in Harare dismissed an urgent chamber application filed by the ANZ seeking a declaratory order to have its journalists accredited by the Media and Information Commission (MIC). The court dismissed the applications on grounds that the county is in no position to sit on the application, as a matter of urgency and the applicants should as such follow the normal channels. In the face of the disruptions the Daily News has financial bowed to the pressure; has laid off its staff, and is no longer publishing.

Zanu-PF's strategy of a roots and branches assault on the legal system seems to have paid off, in its own terms. By intimidating the judiciary and appointing its own preferred judges the impression is created that the government has ensured that it can ultimately obtain the judgements that it desires. This interference with the judiciary is bound to have long-term consequences for the rule of law which are serious as it undermines the confidence in the impartiality of the judicial system. While it might be arguable that the requirement of accreditation/registration is simply technical; that most countries require journalists to register with some authority anyway, and that the requirement is therefore not unconstitutional the manner in which accreditation system is created and in particular the antipathy of the minister in charge towards private media, testifies to the fact that registration is not a benign requirement. No doubt the challenges will continue on this issue.

The Broadcasting Services Act (BSA)

Whilst the BSA and AIPPA are primarily targeted at the media, they indirectly affect the operations of other NGOs and civil society actors by the restrictions imposed on the nature of information they can receive and the medium through which the information is disseminated. The trigger for the Broadcasting Services Act was apparently the legal challenge against the then Broadcasting Act by a private radio station, Capital Radio, in September 2000. Capital Radio challenged the state monopoly on all broadcasting exercised by the Zimbabwe Broadcasting Corporation which was entrenched by the section 27 of the Broadcasting Act as being contrary to Section 20 of the Constitution which guarantees freedom of expression. However, when the Supreme Court decision paved the way for Capital to begin broadcasting, the government moved to thwart the

opening of the airwaves and swiftly introduced new regulations under Presidential legislative powers to create provisional regulatory framework for broadcasting[20].

The regulations though valid for a six-month period, in effect, deferred implementation of the Supreme Court judgment and instead established the Broadcasting Authority of Zimbabwe (BAZ), giving the Minister of State for Information the authority to issue licences for new broadcasters. Equipment belonging to independent broadcasters was seized and they were declared illegal under the new legal framework. Capital Radio only managed 8 days of broadcasting before it too had to close. The government then raced through Parliament formal legislation that became the Broadcasting Services Act in early April 2001. The Act largely replicated the restrictive content of the regulations.

Like AIPPA, the BSA concentrates regulatory powers in the Minister[21] who appoints all the members of the BAZ, which issues licences. In effect the control of broadcasting has returned to the government. The minister has wide powers to determine the content of programmes and can ban any broadcaster who is considered a national security threat. The architecture of the BSA is remarkably similar to that of the AIPPA. A Broadcasting Services Authority is the implementing organ[22] with a Board which is appointed by the Minister of Information. The minister is the licensing authority enjoying absolute discretionary power over a whole range of matters relating to broadcasters including the issuance and withdrawal of licences; making regulations under the Act; and even the programme content. These powers are designed to keep broadcasters under a tight leash.

Although the technical regulation of broadcasters is not unusual in a democracy, in the case of the BSA and taken in the wider political context in Zimbabwe; the conclusion that registration is a pernicious requirement is difficult to deflect. The entrenchment of the state owned broadcaster; the scope of the powers exercised by the minister; and the ruinous effect, in practice, on the broadcasting industry exemplify the illegitimacy of the provisions of the BSA. These provisions appear therefore to offend against principles of freedom of information in international law and as set out in the Constitution of Zimbabwe[23] properly construed.

In a bid to limit external influence, which has been a preoccupation of the government throughout the crisis in the country, the Act requires 75% of content to be local and prevents foreign interests from owning broadcasters. Whilst the ZBC continues to have monopoly, it is barred from leasing any television channels to any other station[24]. The only other independent station in Zimbabwe, Joy Television, was shut down at the end of May 2002, leaving the ZBC with undisputed monopoly. No other licences have been granted. Thus the BSA has failed to give expression to the Supreme Court decision and remains in contravention of section 20 of the Constitution. Although Capital Radio has

[20] Presidential Powers (Temporary Measures) (Broadcasting) Regulations, October 2000
[21] Of Information
[22] Refer to section 4(1) of the BSA.
[23] Section 20
[24] Section 13.

brought a challenge there has not yet been a ruling owing to administrative failures to convene the court.

The Private Voluntary Organisations (PVO) Act

This is a relatively older piece of legislation, which was enacted in the colonial era, although it had lain dormant for many years. Rather than introduce new legislation, the Government, which had always accepted that NGOs could operate as trusts without formal registration with the High Court, has now invoked section 6 of the Act, which provides for registration of private voluntary organisations to register formally. In September 2002, it published a notice in the Herald Newspaper advising NGOs to register with the government through the High Court. Under section 25 of the PVO, unregistered organisations may not operate without liability to prosecution and imprisonment of up to two months. In September 2002, the government issued a notice to NGOs that are not registered to cease operations, even though the procedural requirements of the PVO are in fact quite unclear and the Registrar of Deeds is fully competent to register trusts, which have been the preferred mode of registration for many NGOs.

The Act grants the Minister of Public Service, Labour and Social Welfare, through the Private Voluntary Organisations Board intrusive powers over the accounts, source of funding[25] and other issues relating to NGOs.[26] The Minister may suspend the executive committee of an NGO in his discretion, if it appears to him that the organisation has ceased to operate in accordance with its Constitution, or if the operations of the organisation are affected by mal-administration, or if the organisation is involved in any illegal activities, or if it is desirable in the public interest.[27] The Minister does not need to get a court order or consult with any body in reaching a decision, nor is it deemed necessary to give the aggrieved organisation/person the right to be heard. In other words, the *audi alteram partem*[28] rule is not observed under the PVO Act.

NGOs remain concerned that the government will legislate further on the registration of NGOS and provide for a more elaborate and in all likelihood harsher legal regime. In a speech at the opening of the parliament in July 2003, President Robert Mugabe is reported to have stated that a Non-Governmental Organisation Bill would soon be introduced "in order to ensure that the operations of non-governmental organizations are consistent with, and supportive of, governmental policies and programmes". Analysts in Zimbabwe believe that the new NGO Bill is partly intended to ensure that those organizations are brought under greater governmental control. President Mugabe and his ministers have on several occasions publicly condemned Zimbabwean NGOs, accusing them of being agents of the UK and US, intent on destabilizing the country. The exact provisions of the NGO Bill have yet to be revealed, and it has been the general practice of the government to keep such controversial bills secret until the very last possible moment, in order to limit public debate and opposition. Organizations in Zimbabwe have,

[25] Refer to sections 15 – 20 of the PVO Act.
[26] Refer to section 21 of the PVO Act.
[27] Refer to section 21 of the PVO Act.
[28] Maxim referring to the obligation upon decision makers to hear the other side's case as well.

however, long suspected that such legislation was being drawn up. A coalition of NGOs was preparing a draft bill for the regulation of NGOs, to present to the government. It appears likely that the draft prepared by the government is highly restrictive[29].

[29] http://www.lchr.org/defenders/hrd_zimbabwe/alert072403.htm (Accessed, February 26th 2004) Independence of Zimbabwean Non-Governmental Organisations Under Threat, July 2003.

4
Kenya—Towards Genuine Democracy

In Kenya, as in Zimbabwe, a violent struggle for independence produced a structure of repressive legislation and a policing culture of violence and impunity. Today, the worst provisions of these laws are of historical interest only, having been repealed. The Public Order Act[30] (POA) which was enacted in 1950 was used to quell the agitation and the Mau Mau struggle. The POA was to remain on the statute books with only piecemeal and gradual amendments as post-independence Kenya African National Union (KANU) government demonstrated reluctance to abandon the methods of the colonial era. As with POSA in Zimbabwe, the main target of the POA was to curtail the freedom of assembly. Thus section 5(3) gave a virtually unfettered discretion to the District Commissioner to regulate the holding of meetings. If the Commissioner considered that a meeting or procession might prejudice the maintenance of public order, or be used for any unlawful purpose he may refuse to grant a licence. In practice, this meant that any meetings of a political nature, which were not likely to be sympathetic to KANU, did not stand a chance of receiving permission.

Freedom of Association in Kenya

Freedom of association and assembly is protected under Section 80 of the constitution of Kenya which includes the right to form or belong to associations. The provision comes with the normal limitations in the interests of public defence, public order, public morality, the rights and freedoms of others. Permissible limitations must fulfil the requirement that they have to be done under the authority of law and must be reasonably required or shown to be "reasonably justifiable in a democratic society'. Under this provision, the powers of Chiefs, purportedly exercised under the Chief's Authority Act were challenged in Imanyara v Attorney General.[31] It was held that chiefs had no powers to issue licences for meetings or cancel such meetings.

Dismantling Repressive Laws in Kenya

Political change in Kenya was gradual, and along the path of change some of the most significant victories for freedom were the repeal of repressive legislation and powers. In 1997, civil society groups recognised ahead of elections that it was vital to have a more level playing field and that mobilisation for change could not be left to the disparate political parties. In April that year, various groups met in Limuru and formed the National Convention Assembly (NCA) as a forum for dialogue on the pressing political and economic issues that Kenya was facing. In Kenya too, there was concern about the emerging political polarisation and the impasse, which threatened to lock Kenya into a cycle of bad governance. The key resolution of the meeting was that certain initial legislative reforms should be carried out pending more substantive future reconsideration of the constitution. These included the repeal of some laws[32] including sections of the Penal Code, which criminalized free speech, and the freedom of association. Between

[30] Chapter 56.
[31] HCCC No 1208 of 1994 (unreported).
[32] These included the Public Order Act, The preservation of Public Security Act, the Chiefs Authority Act, Societies Act, and the Vagrancy Act.

May and June these mass actions forced the government to concede to some minimum constitutional and legal changes for freer and firer elections and the Constitutional Review Commission Act 1997 was formed to provide a framework for constitutional change. In 1998, negotiations between civil society and the political class saw the push for a further amendment of the Constitutional Review Commission Act. Although this was a victory, the following years saw the KANU parliamentary caucus resolving to exclude civil society involvement in the organs of the constitutional review and in 1999 resolution was passed by parliament establishing a select committee led by Raila Odinga to review the Constitution of Kenya Review Act according to the wishes of Kenyans and facilitate the formation of the Review Commission.[33]

Beyond these calls for legislative changes, the NCA called for mass action across the country, which put pressure on parliament to carry out reforms. This effort led to the formation of the Inter Party Parliamentary Group (IPPG), a plenary of Members of Parliament from both the ruling party KANU and the opposition. Among other issues considered by the IPPG was a look at legislation inhibiting freedom of expression and assembly in Kenya. The IPPG tabled and obtained key amendments to the principal legislations, through the enactment of the Statute Law (Repeals and Miscellaneous Amendments) Act, 1997. The Act amended the Public Order Act (Chapter 56 of the Laws of Kenya), section 5. The Act substituted the legal require that a licence must be obtained before a rally can be held with a simple notification requirement. This opened up the space somewhat for political parties to hold rallies without interference. Hitherto, the Provincial Administration had been in charge of licensing rallies, a task it had carried out in a shamelessly partisan manner ensuring that government critics never had the opportunity to take their case to the people. The Preservation of Public Security Act (PPSA)[34] which had given powers of detention to the Minister of Home Affairs was also amended in the run up to the elections of December 1997. Up to that point, the Minister could simply by insertion of a notice in the Gazette detain, without trial, any person on the grounds that he was satisfied that they were a threat to public order and security. [35]

The Statute Law (Repeals and Miscellaneous Amendments) Act, 1997 also introduced far-reaching reform to the law of sedition by amending s 52, and repealing sections 56, 57 and 58, of the Penal Code (Chapter 63 of the Law of Kenya). Section 52 gave the minister wide powers to proscribe publications which he deemed prejudicial to the interests of the state. The amendment required the minister to have reasonable grounds before he could exercise his powers. More importantly, the exercise of powers would now be subject to the important limitation of being "reasonably justifiable in a democratic society." The amendment also established a Prohibited Publications Review Board to review all publications previously prohibited under section 52 and advise the minister as to whether such prohibition should be lifted; and to advise the minister generally on the exercise of powers under section 52. The advice given to the minister by the Board is binding.

[33] See Website of Kituo Cha Katiba; www. Kituochakatiba.co.ug
[34] Chapter 57, Laws of Kenya.
[35] See part III of the Act.

Other pieces of legislation include the Societies Act[36] and the Chief's Authority Act.[37] The former governs the registration of organisations and directly affects the freedom of association of civil society. These laws have now been repealed in relevant parts, following the reforms introduced by the IPPG in 1997 to temper the worst effects of official interference with the registration process. The Societies Act had given the Registrar of Societies wide discretion over the registration of associations. In a country where the public service was politicised and susceptible to political pressure, the registrar could deny registration to organisations perceived as a threat. The amendments introduced a requirement for a timely response by the registrar to an application for registration, and this removed the practice where the registrar could simply sit on an application and effectively stop the organisation from operating. Today, a right of appeal lies to the High Court against the refusal to register a Society.

Chiefs in Kenya have been reserved a prominent role in local government arrangements particularly in rural areas. Through the Chief's Authority Act, they are the first tier of government and often have a decisive influence on any associational activities in their areas. Whilst their influence can be benign, they are prone to illiberal interpretations of their role and have often been a curb on the activities of civil society organisations. Organisations doing outreach work or based in the rural areas would like to see a situation where these powers are circumscribed and where they are retained are consistently carried out in accordance with the constitution.

It was clear in KANU's Kenya, though perhaps to a lesser extent that in Zimbabwe under Zanu-PF, that legislation was deliberately used to stifle dissent; thus when the National Rainbow Coalition (NARC) emphatically swept KANU from power in Kenya in the elections of December 2002, the atmosphere changed dramatically and Kenya is now realising an environment of improved governance although several areas of concern persist, reminding us that the struggle for civic space is not won by events but by incremental processes which require vigilance to maintain. Although the new government has taken clear steps towards embracing democratic governance there still remains legislation and activities that require change to ensure freedom of expression, association and assembly.

The Non Government Organisations Coordination Act[38]

Before the 1990 Non Government Organisations Act was enacted, Kenya did not have a specific legislative framework governing the operations of the NGO sector. The Kenya National Council of Social Services (KNCSS) which had been formed in 1964 as a quasi-official institution under the Ministry of Culture and Social services was supposed to coordinate NGO activities and to give advice to the government on the sector. Coordinating role the KNCSS was expected to play proved inadequate in the face of phenomenal growth of voluntary agencies during the 1980s. The KNCSS was replaced by the statutory scheme of the NGO Act. Until then, NGOs were registered under ordinary civil laws including the Companies Act, the Societies Act and the Trustees Act

[36] Chapter 108, Laws of Kenya.
[37] Chapter 128, Laws of Kenya.
[38] Act No. 19/1990.

as well as administratively under the Ministry of Culture and Social Services. These various pieces of legislation establish two main options for registration. The first is administrative, and the registration is carried out by the Ministry of Culture and Social services. Smaller and localised organisations operating mainly in the regions register in this simpler manner.

The NGO Act now sets out an elaborate mechanism for registration. And in a variation from other jurisdictions, the Act not only provides a state mechanism under the NGO Coordination Board[39] but also establishes a system for self regulation by establishing the Kenya National Council of NGOs (KNC). Section 23 of the Act gives the KNC self-regulatory powers, and it can adopt its own rules and proceedings. The Act obliges the Council to adopt a code of conduct for NGOs[40], and in addition the Minister may make rules[41] under the Act generally. In 1992, the Minister made the NGO Coordination Regulations[42] which sets out specific procedural and substantive requirements including for registration. Initially, the law had provided for renewal of registration of NGOs every three years but that provision was repealed to allow for perpetual existence. The council has established an executive and trustees' broads and a general assembly as its main organs.

Application fees for NGOs are set at 10 000 shillings[43]. There have been complaints that this figure might be too high for some NGOs. But the provisions which could potentially undermine the activities of NGOs relates to registration; Section 14 of the Act empowers the Board to refuse registration of an applicant on three grounds: if satisfied that its proposed activities or procedures are not in the national interest or if satisfied the applicant has given false information in the process of registration; or, it may act on the recommendation of the KNC. However, an applicant can appeal from the decision of the Board; initially to the relevant Minister,[44] and from the minister to the High Court within 28 days of receipt of the decision. Thus when the legal campaigning NGO Clarion challenged its deregistration in the High Court, it was re-registered before the matter could be determined. Previously, the Minister's power to de register an NGO for making a false statement was final but under an amendment, section 34 (2) now provides for appeal to the High Court from that decision.

In 1995, the Council prepared the NGO Code of Conduct setting out the principles and benchmarks for the operations of NGOs.[45] These included such values as probity; self-regulation; justice; service; cooperation; prudence and respect. In practice there are numerous networks of NGOs which bring together organisations working in particular fields. Even though the NGO Coordination Act set out to harmonise the framework governing NGOs there still exists parallel mechanisms for registration. This is because

[39] Section 3.
[40] Section 24.
[41] Section 32.
[42] Legal Notice No. 152 of 1992.
[43] About 100 US dollars
[44] Section 19.
[45] Legal Notice No. 306 of 1995.

NGOs can also be companies and thus registered under the Companies Act, though most were originally registered under the Societies Act.

Freedom of Expression in Kenya

Despite constitutional guarantees, freedom of expression in Kenya was for a long time limited by laws and administrative action. Section 56 of the POA for example, defined seditious intention and seditious publication widely, encompassing such nebulous concepts as; bringing into hatred or contempt, or exciting disaffection against the person of the President or the government. It also provided that in a prosecution under this section, an accused person would be deemed to intend the consequences of his conduct. Section 57 provided for the punishments for sedition, including imprisonment for 10 years and the granting to the police of draconian powers of confiscating or dismantling any printing machine suspected of being used to print or reproduce a seditious publication. This section was often used to disable printing presses of government critics and paralyse their operations. These provisions clearly went beyond what was reasonably required in a democratic society to restrict any freedom of expression a requirement under Section 79 of the constitution guarantees freedom of expression[46] but then qualifies the right on grounds which include public safety and public order.[47] Lawyers[48] were critical of the PPSA, arguing that it contravened the provisions of the constitution.

Despite the generally improved environment for expression, the current government has sometimes restricted the exercise of these rights and has left in place restrictive legislation. The media regulatory framework allowed for the abuse and manipulation of the process of licensing with permits and broadcasting frequencies being withheld or revoked as a means of targeting alternative media. In general the government adopted a restrictive interpretation of laws. The Kenyan Penal Code retains the provision precluding the publishing of "false statement, rumour or report which is likely to cause fear and alarm to the public or disturb the peace". The Books and Newspapers Act[49] amended in 2002 by the Moi government inserted new clauses that are highly restrictive of the media. The Act imposes exorbitant publishing fees and strict penalties for those who violate the new rules. The law required publishes to purchase a bond of one million Kenya shillings (12,800 US dollars) before printing any publication and to deposit copies of their papers with a registrar within 2 weeks of publication. These measures were apparently aimed at curbing the 'alternative press', which is made up of a number of independent small-circulation publications such as Kenya Confidential, Wembe and others. Since 10 January 2004 there has been a clampdown on those who have not paid up the fees; with numerous independent newspapers seized and newsvendors arrested for non-payment of the fees and fines of 20,000 shillings (200 dollars) imposed. Since they have limited financial means, most of the newspapers have been unable to pay the increased fees, which are a form of libel insurance bond, since 2002. As a result, most of them have continued to appear without paying the fees. Whilst the alternative press has borne the

[46] Subsection 1.
[47] Subsection 2.
[48] Paul Wamae, Chairman of Kenya Law Society, in Nairobi Law Monthly, Issue No. 60, January 1996.
[49] Chapter 111, Laws of Kenya

direct brunt of the actions, the chilling effects of the fee changes have been felt across the mainstream press board.

In other ways too, members of the media have continued to come under physical attack from the security forces although there is a marked decrease in such incidents under the new government. Rights are often violated in tandem, thus during the course of 2003, in incidents where police dispersed demonstrators who sought to criticise the government, they also attacked journalists who were covering such events. In September 2003 police arrested East African Standard journalists Tom Mshindi, Favid Makali and Kemchetsi Makokha for publishing an article about the confession of suspects in the killing of a university professor.

However, none of this seems to have curbed the candour or independence of the media. The print media continued to grow and established papers wrote persistent critical articles of the government. Broadcasting media has also grown even though the Kenya Broadcasting Corporation retained the national monopoly of the media. The International press was free to operate. Whilst the government in general tried to avoid exerting overt official pressure, it leant upon individual journalists and media houses to influence publication. Public figures began to use libel laws to attack critical publications. The resultant hefty libel awards against publishers[50] have led to a form of self-censorship since printers and distributors are now equally responsible along with publishers and authors for libellous content as well as book stores that sell such material.

Kenya has liberalised the airwaves and this process has introduced a regulatory scheme. In principle any person can apply to broadcast but the inefficiencies and suspected reticence by governments to give effect to the law results in inordinate delays. The IPPG package had recommended that all pending applications for radio and TV licenses be processed within 30 days, but the government has not given practical effect to this recommendation. Thus the process of applications for licences and frequencies remains long and tedious. Many applicants still remain unlicensed leaving the government with the monopoly in the broadcast media.

The Ongoing Constitutional Review

In its current form the Constitution of Kenya provides a framework for the protection of rights. Constitutions are however living instruments to be interpreted by the courts and applied in a case by case basis. Judicial interventions are necessary in a democratic society to define the limits of legislation but it is perhaps more important to ensure that the basic law is sound. The process of constitutional change provides an opportunity for introducing a national statutory scheme which frees civil society actors to engage fearlessly in the processes of development and governance. The proposals in the draft constitution guarantee the freedom and independence of the media.

[50] For example former Kanu minister, Nicholas Biwott, was awarded a record total of 60 million shillings (750 000 US dollars) in damages against authors and even a bookstore, for implicating him in the murder of former minister, Robert Ouko.

Another important proposal is a strengthening of the guarantees of access to information. Civil society actors working in areas of advocacy including, for example, the environmental protection lobby which has traditionally be well developed in Kenya, require information in order to engage meaningfully with the state. Thus under the proposals the government will be obliged to publish and publicise any information of public interest. It is also proposed to guarantee the right to freedom of association and to peacefully assemble and demonstrate without any prior permission. Should these changes be adopted as they ought, it will provide. If these changes come to fruition as they should, they would provide a cornerstone for a viable and participatory democracy Kenya.

Political changes which have unfolded in Kenya over the last 15 years have come about on account of increased vigilance by civil society pro-democratic forces. From the repeal of Section 24 of the Kenya Constitution in 1991[51] to the process of constitutional review of embarked upon in 1997, with the enactment of the Constitution of Kenya Review Commission Act, civil society actors have been at the forefront of calling for democratic changes. They have also been growing and actively engaging in development and social services and interventions across the country. Kenya has shown how an active and persistent civil society with strategic political alliances can help to prise open civic and political space. They have demonstrated that the concerted efforts of national actors with strategic alliances with other international partners are capable of delivering credible transitions.

After many years of de facto single party rule, the accession of the NARC government has reintroduced in Kenya the prospect of changes of government. This can only have a salutary effect on governance as it would encourage those in power to ensure that a culture of respect for the rights of voters is fostered. And if such political attitudes come to be underpinned by solid constitutional amendments, great strides would have been made by the country. There are also warning signs that the struggle for civic space must be maintained regardless of the identity of the party in power. And despite the considerable gains on paper brought about by the IPPG reforms, the police continue to forcefully break up opposition rallies with impunity, sending the signal once more that the battle for basic freedoms taken so much for granted elsewhere, is far from over here. The momentum for change must be continually consolidated and guarded by civil society actors.

[51] Act No. 12 1991.

5
Progress and Stagnation in Uganda

Politically, Kenya and Uganda provide examples of transitions from very poor governance, which are at different stages. Following independence both countries failed to consolidate good governance and democratic practices and instead sought to curtail opposition using legislation and repressive administration. The growth of civil society coincided with the end of the dictatorships and suppression of the 1970s and the early part of the 1980s. When the National Resistance Movement took power in 1986, it sought to make a break with Uganda's past repressive governments and to open up space for civil society, though not political parties. In Uganda there is broadly a freedom of expression, with a wide variety of media outlets especially FM radio stations. The independent print media, which include more than two dozen daily and weekly newspapers, can be very critical of the government and it is fair to say that no oppositional view is denied aeration. Various NGOs can operate in a relatively free atmosphere. However, the government's commitment to the rights enshrined in its constitution often seems tenuous where issues it deems to be politically threatening are involved. In those cases it has resorted to unlawful methods for curbing dissent. The current political debate concerns the future of the country's political system and the issue of lifting presidential term limits; these threaten to test and polarise civil society approaches.

Freedom of Expression

The Constitution of Uganda (1995) sets out a range of fundamental rights and freedoms, which include the right to freedom of expression. According to Article 29 (1) (a) of the constitution: *"Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media."* Uganda, like most countries, is a signatory to the main international instruments including the International Covenant on Civil and Political Rights (ICCPR), which guarantee the right of freedom of expression.

The freedom of expression as guaranteed in the constitution is, however, subject to a general limitation. Article 43 states that no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest[52]. 'Article 43(2) attempts to set out what would <u>not</u> qualify as action in the "public interest"; thus, the state in upholding the public interest may not subject a person (or broadcaster) to political persecution (43(2)(a)) or limit their freedom of expression beyond what is acceptable and justifiable in a free and democratic society; or in any other way contravene the constitution.

Media Legislation

The Press and Journalists Statute of 1995 (PJS) and the Electronic Media Statute, 1996 (EMS), regulate the operation of radio broadcasters and journalists. The EMS establishes the Broadcasting Council to license and regulate Radio and Television stations. All radio stations are required to obtain a licence from the Broadcasting Council and in addition to

[52] Article 43(1).

register with the Media Council under the PJS. The Media Council can suspend journalists and publications. In practice, the two councils do not play a censorship or obstructive role and the state tends to use prosecution to target journalists. There are however certain provisions which journalists consider a means to intrude on the freedom of journalists. Sections 28 and 29 of the PJS require all journalists to register and obtain a practicing licence before they can operate. Many journalists regard these provisions as an infringement on press freedom, much for the same reasons advanced by the IJAZ in its constitutional case in Zimbabwe.

However, legislation also protects broadcasters from interference; section 8 (1) of the EMS gives a station a right to broadcast: *"No person or authority shall, on ground of the content of a programme, take any action not authorised under this statute or any other law to prevent the broadcasting of a programme*." The only restrictions set out in the Statute relate to the broadcasting of pornographic matters and obscene publications which would offend or corrupt public morals, and to broadcasting which infringes the privacy of an individual or which contains false information. In addition section 39 of the PJS protects journalists emphasising that they cannot be compelled to disclose their information sources except with that person's consent.

Judicial Interventions

The Uganda government has frequently used the Penal Code as a hammer with which to hit 'errant' journalists. Section 39(a) prohibits the publication of information prejudicial to security. But for a long time, the clear favourite was Section 50, which prohibited the publication of "false news likely to cause fear alarm or to disturb the peace", to charge journalists. Journalists of the independent newspaper The Monitor frequently fell foul of this provision. In a decision hailed as a decisive blow for the freedom of expression, the Supreme Court in February 2004 in a case brought by two Monitor journalists, Onyango Obbo and Andrew Mwenda who had been charged with Section 50 offences, the court ruled that section 50 of the penal call offended against the provisions of the constitution protecting freedom of expression.[53] In arriving at this decision the court also drew upon international jurisprudence citing with approval decisions in other countries.

The ruling in the Obbo & Mwenda case followed an earlier declaration by the Supreme Court in that the banning of access to information in parliamentary records was unconstitutional. Evidently the courts have wholly embraced the concept that freedom of expression is an inherent right guaranteed by the constitution. Following the ruling by the Supreme Court, the state dropped other Section 50 charges which had been brought against Mr Onyango-Obbo and another reporter Mr Frank Nyakairu. These charges had arisen from a report in October 2002 that a UPDF helicopter gunship had crashed in Northern Uganda following an LRA attack. The government reacted to the story by closing *The Monitor* paper for a few days as police and security agents raided it ostensibly in search of evidence.

More recently, the government has itself resorted to the courts to impose curbs on publication of material it considers prejudicial. Clearly this is much more preferable to

[53] Onyango Obbo and Mwenda v Attorney General Constitutional Appeal No.2/2002 (11 February 2004),

arbitrary arrests and cloaks the government's interventions with judicial approval. When on 5 February 2004, the paper published an article about an ongoing inquiry into corruption in the army the government obtained an injunction from the High Court in Kampala preventing *The Monitor* from publishing any further information on the ongoing probe. It successfully argued that the details of the inquiry were of a highly sensitive and classified security nature. Earlier, in December 2003, the government had also successfully applied to court to stop the same paper from publishing leaked reports of the Constitutional Review Commission's recommendations on proposed constitutional amendment provisions.

The Penal Code Act

Although there has been immense success in the field of freedom of expression and free speech, other laws that threaten these rights still remain. But the Supreme Court ruling now raises the possibility of further challenges to the constitutionality of these provisions. The Penal Code Act retains a number of provisions which arguably fall foul of the new jurisprudence of the Supreme Court. For example, Section 38A still retains the offence of sedition and the publication of information prejudicial to security. The Monitor continues to face a charge under this section. These offences which are set out further in Sections 41 and 42 of the Penal Code are vague in scope using language such as "bring hatred or contempt"; "excite dissatisfaction"; "disturb public peace," 'cause alarm or fear" all of which are open to abuse by the state. More directly, restrictive provisions include Section 49A of the code which makes it a criminal fence to induce a boycott. Under Chapter IX it has offences relating to 'unlawful societies,' offences which are overly broad and many of which are based on the subjective belief of the government with absolutely no measures of safeguards or control.[54]

In reality the trials on these issues have hardly been successful and the charges are normally used to put pressure on the press. This in itself is oppressive because of the long periods spent attending court often whilst in detention. It is more usual for journalists to be called to police stations and interrogated about particular press reports and then to be released hours later without charges. This is a blatant form of intimidation to curb the press. In the past, editors of other papers like the *Citizen*, *Crusader*, *People*, *Rupiny*, *Uganda Express*, *Uganda Confidential*, *Assalaam*, and *Shariat* have all been held in this way. In 1995, Hussein Musa Njuki, editor of *Assalaam*, an Islamic oppositional paper, died in police custody under unclear circumstances. These arrests however do not seem to have stemmed the flow of information but it is feared that journalists are practicing self-censorship.

More recently, the government introduced anti-terrorism legislation, enacted in the wake of the September 11 attacks and in the context of the armed insurgencies in Uganda. The Anti-Terrorism Act, 2002, punishes the publishing and dissemination of news or materials promoting terrorism might be used against journalists and civil society

[54] These provisions were used by the first Obote regime in 1969 to outlaw the Democratic Party, the Conservative Party and the Uganda/Vietnam Solidarity Party, simply because these were in opposition to the government of the day.

organisations.[55] Some local journalists fear that the Act would encourage self-censorship and generally discourage the public from giving information to the press. So far no charges have been brought against the press under the Anti-Terrorism Act 2002.

Even when their activities do not directly offend against the law, FM stations have come under attack for holding live talk shows[56]; which are stridently political in nature. Although the Information Minister attempted to curb these talks, the position was formally reversed later and the radios have continued their talks. Radio stations in areas of conflict in northern and eastern Uganda have come under greater scrutiny and attempts at interfering with content, as the government is more sensitive to criticism in those areas. Radio Veritas a local radio station in Soroti was briefly closed on 22nd June amidst allegations by the government that the radio had caused confusion and panic in the region by reading a statement from the LRA, although the station maintained that it was merely trying to deliver accurate information in an attempt to prevent villagers from falling victim to rebel attacks in a dangerous situation.[57] The government has more recently attacked Catholic priests who have issued critical statements of its handling of the security situation in Northern Uganda.[58] Like in Kenya, the press in Uganda practices self-censorship as a survival mechanism although here the motivation is threats rather than the fear of libel actions which are relatively rare and are not considered a prohibitive to attract.

Freedoms and Restrictions of Association in Uganda

Uganda has a relatively open space for organisations other than political organisations, and a diverse range of civil society exists, including dozens of human rights focused organisations. *Article 38 of the 1995 Constitution* stipulates that every Ugandan has a right to participate in the affairs of government, individually or through representation and to participate in peaceful activities to influence government policies through civic organizations. As such the activities of civil society organisations are constitutionally protected. The National Objectives in the Constitution, although non-justiciable, are an indicator of government's willingness to recognise particular principles which should inform policy and legislation for the well-being of its citizens.[59] It specifies that the State shall guarantee and respect the independence of NGOs that protect and promote human rights.[60]

The Non Government Organisations (Registration) Act 1987

Like in most states, the government exercises control over the registration of nongovernmental organisations (NGOs), through the Non-government Organisations

[55] Section 9 (1) (b) of the Anti Terrorism Act, 2002.

[56] Known as *ebimeeza* (Luganda for 'tables'; an allusion to roundtable talks)

[57] Justice Resources, (2003) monograph, Protection of Human Rights in Uganda

[58] Father Carlos Rodriguez a Spanish missionary was fiercely attacked by local and national leaders for writing a critical article about the army's handling of the security situation in Pabbo camp in Gulu district in Northern Uganda.

[59] Uganda Constitution (1995) Objective II (v) and (vi): all political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organizations and practice. Civic organizations shall retain their autonomy in pursuit of their declared objectives.

[60] *Objective V (ii) (supra)*

Registration Act (1987). The National Board for Non-Governmental Organisations, established by the statute, includes representatives of the internal security organisation (ISO) as well as the external security organisation (ESO). They monitor the activities of NGOs and the since the Board has the power to revoke the registration of an organisation in the "public interest" - what amounts to public interest not clearly defined- it is inevitable that NGOs will feel constrained to practice self-censorship. In practice, a system of periodic renewal of registration allows for controls to be exercised by the board, which is established to consider and issue registration certificates.

Section 8 allows persons to appeal to the Minister in case of any grievances by the Board. However it does not provide for appeal against the Minister's decision. But clearly the decisions of the board and the minister are subject to judicial review. Individual NGOs can challenge a refusal to issue a registration certificate as was the case when the board attempted to deregister one agency, Caring for Orphans and Widows and Elderly Association (COWE) which instead went to the High Court and obtained an order for registration.

Under section 11 the Minister can give written directions of a general or specific nature relating to the Board's functions with which it is to comply. The board lacks independence and is an instrument of state control. In general, the impact of the statute is to exert pressure on organisations, which also have to present their annual plan of activities, to act cautiously and to ensure that they conform to the government's expectations. Today, civil society organisations are more concerned about proposed amendments to the NGO Act, which would seek to tighten the registration requirements and will further expand the Minister's powers to make regulations and to determine the duration and form of permit to be issued to an NGO. Whether the law will conform to the constitution will of course be determined when it has been enacted.

NGOs continue to operate without government restrictions although concerns remain about the intentions of the government towards these agencies. Human rights monitoring has continued with international and local organisations allowed to cover the situation in the country although the government has reacted angrily to some reports. A number of agencies like the Refugee Law Project of Makerere University law Faculty; the Foundation for Human rights Initiative and other coalitions of NGOs have issued reports and other criticisms of the government's human rights practices and polices. Most recently government officials called for the deportation of Roman Catholic Priest Father Carlos Rodriguez, for criticising the government's handling of the conflict. The President has personally attacked the Acholi religious leaders who are critical of the government policy towards the conflict in the North. The Movement government leadership has warned off civil society from becoming involved in divisive party politics.[61] Although this might fall short of the systematic and cynical abuse of legislation one might encounter in Zimbabwe, it is intended to have a dampening effect on civil society

[61] In August 2003 President Museveni repetitively warned civil organisations about getting involved in partisan politics, arguing that it undermined unity. The Prime Minister, Apollo Nsibambi reiterated this warning, advising religious leaders and civil society organizations not to involve themselves in politics because they might mislead their followers and undermine the fragile unity.

engagement on vital issues which affect ordinary people. But there is evidence that human rights organisations are in fact practicing self censorship on criticisms and areas they probe.

Civil society organizations in Uganda especially the NGO sector have experienced an enormous spurt of growth and activity in the last twenty years. Increasingly, government policies like the Poverty Eradication Action Plan (PEAP)—the national development framework—have built in participatory methods which assume and require an enabling environment for civil society organizations to associate mobilize and express views. As individual organizations some NGOs have appeared to act alone and to be under resourced and lacking in vision. They have sometimes appeared to be stuck in "safety first" mentality thus limiting their potential.[62] They have certainly been quite insular and taken little interest in events outside Uganda's borders. Yet regional solidarities need to be developed in collective civil society voices are to be heard on the critical issues of governance which are affecting the continent and Zimbabwe in particular.

Restricting Political Space

Despite a resolution by the Movement National Executive Council to lift restrictions on party activity, the Political Parties and Organisations Act 2002 maintained curbs on political parties and organisations. When political parties and those advocating for inclusive politics attempted to organise political rallies and demonstrations, these were often forcibly halted by the police. Security agents have on a regular basis subjected individual members of opposition groups to harassment. Reform Agenda claimed that between 7th and 12th January 2003, eight of its members—including Dan Mugarura and Pascal Gakyaro—were subjected to arrest, harassment and temporary incommunicado detention at the hands of security operatives.[63] On 22nd March 2003 a rally organised by the Democratic Party at Constitutional Square was brought to an end when police fired teargas into the crowd.[64] There are numerous other examples of rallies, meetings and workshops organised by opposition groups such as the Reform Agenda, the Conservative Party and the Uganda Young Democrats and even the Parliamentary Advocacy Forum (PAFO)[65] being forcefully halted by the police. Even where the demonstrations were non-political, police still intervened for example, on 14 May 2003, riot police prevented a group of ethnic Banyoro demonstrators from marching into the capital city to protest about services to their region.

Uganda represents significant progress in opening up freedom of expression and association after the years of dictatorship. Today the space for civil society to operate is underpinned by sound constitutional provisions and an independent judiciary which is increasingly assertive and likely to hold in check legislative excesses. The Movement government has however demonstrated disturbing intolerance for alternative, especially

[62] Makara, Sabiti, NGOs In Uganda: Their Typologies, Roles and Functions in Governance, Centre for Basic Research Kampala, Uganda (2002)

[65] PAFO is made up of members of parliament opposed to some government policies including the lifting of the constitutional presidential term limits.

political views, and is sensitive to criticisms of its handling of security issues. Ensuring a culture of respect for fundamental freedoms will additionally require civic education and a truly open political environment and more publicly accountable government.

6
South Africa— Optimism and the Rainbow Constitution

Whilst Kenya and Uganda have had longer periods of transition, in South Africa on the other hand, the process of the end apartheid provided an intensive opportunity to revisit and to re-conceive a new democracy. Emerging from the repressive period of apartheid, South Africa faced a major challenge to introduce a new and independent political and social dispensation based on social and economic justice. It required a solid legal foundation and in the South African Constitution, the Rainbow nation has surmounted that first hurdle. The processes leading to its adoption involved intensive and broad consultation and negotiation with and amongst civil society actors. The result is the 1994 Constitution, which in refreshing language and scope, provides for freedom of speech and of the press, and of association and assembly which characterise democratic societies. And the Government has generally respected these rights in practice.

Freedom of Expression in South Africa

The Constitution of South Africa takes a broader and more democratic perspective of the freedom of expression. Section 16(1) of the South African Constitution explicitly mentions that freedom of the press and other media is part of freedom of expression. It also provides that the right to freedom of expression includes the freedom to receive and impart information and ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research. The right of access to government information is an extension of the freedom of expression and here South Africa like Uganda is one of a few countries in the world which, have formally recognised the right of access to government information[66]. The constitution also guarantees the right to assemble, demonstrate, picket and petition and to associate.[67]

Guarantees set out in the law are buttressed by independent the formal legal institutions including the judiciary and the South African Human Rights Commission (SAHRC), provide impartial avenues for redress. A powerful illustration of the integrity and independence of South African institution came in July 2003, when on a petition from the Freedom Front, the SAHRC ruled that on a petition by the Freedom Front that the slogan "Kill the Boer, kill the farmer," which had been chanted by the African National Congress (ANC) Youth League amounted to hate speech outlawed by the Constitution.

However, in South Africa too, there are issues of concern for civil society. With various legislative and administrative structures, operating in tandem in the country, accessing meaningfully the policy and decision-making processes can nevertheless still be difficult. Government officials also continued to display sensitivity to media criticism of state programs and policies. Journalists often came under attack by reference to their colour but this did not go beyond such criticisms though they might have led to self-censorship. Several laws remained on the statute books that were potentially restrictive and purported to limit publication of information about security agencies, mental institutions and prisons. Censorship is carried out through the Foreign Publication Board which reviews

[66] Section 32 Constitution of South Africa (Act 108 1996)
[67] See Section 17 and 18

and judges written and graphic materials. The Board has power to edit ban materials that are regarded as offensive especially pornography.

Freedom of Peaceful Assembly and Association

During apartheid several laws which required registration of organisations had been used for purposes of social control and to ensure that non-government organisations were kept under check. The new Constitution provides for freedoms of assembly and association, and the Government generally respected these rights in practice. After independence, CSOs advocated and contributed new proposals which resulted into the enactment of the Non-Profit Organisation Act of 1997 creating the framework for CSOs to register and operate freely in the country. Although there remain some complaints about bureaucracies hitches in the administration of the new legislation. The Labour Relations Act of 1995 was introduced shortly after independence in consultation between the government, National Economic Development and Labour Council. Where previously the apartheid government had sought to restrict further whatever space had been enjoyed by the Unions the new Act now provided for several new institutions including the Commissions for Conciliation, Mediation and Arbitration (CCMA) as well as a Labour, and Appeal Courts. Establishing these institutions was of course only a first step and the challenge of making them operational has been more problematic across the private and public sectors.

The Non-Profit Organisations (NPO) Act 71 of 1997

The NPO Act is not a consolidating law and does not repeal existing laws or nullify previous registrations under other statutes. For example, the Companies Act (61/1973) and the Trust Property Control Act (57/1988) provide well established legal avenues for registration of non-profit making organisations. The process of enacting the NPO was, like the constitution, participatory and with civil society involvement. The Act sets out to: "encourage and support non-profit organisations in their contribution to meeting the diverse needs of the population of the Republic" and provides the administrative and regulatory framework for NPOs it including; good internal governance, cooperation, transparency and accountability.[68]

Unlike the framework in Zimbabwe, registration as a non-profit organisation is voluntary and as stated earlier, there is no need for existing organisations to re-register. However, the constitutions of NPOs are required to conform to specific best practice standards of internal management. Upon approval of its application, the organisation receives a certificate of registration and a registration number, thereafter it is required to file returns of financial statements and particulars of activities and office bearers. Many of the regulations under the Act are as yet untested and as long as it is not compulsory to register, the take up will depend on the perceived benefits and costs of registration. The possibility that registration can continue under other legislation will enable the NPO to grow gradually into its regulatory role and to win, by merit rather than sanction, the involvement of organisations the thousands of CSO organisations in South Africa.

[68] Section 2.

The Fundraising Act of 1978

Of all the apartheid era laws, the Fundraising Act was the one envisaged for control of non government entities. It contained a number of provisions through which the state could interfere to prevent certain organisations from raising support for perceived subversive activities. Such organisations could be refused registration on the grounds of contravention of broadly defined "public interest".

Not surprisingly, the NPO Act repealed a number of the worst provisions of the Fundraising Act, in order to bring the legislation in line with the constitution, and new thinking. It also transferred the responsibility for implementation of the rest of the sections to the Directorate for NPOs in the Welfare Department. The effect of this is that organisations registered as fundraising organisations are now under the ambit of the NPO Act. Surviving provisions of the Fundraising Act allow for the government to inspect the affairs of organisations suspected of making collections from the public without registration under the Act and to impound and dispose of irregularly collected items. This function is intended to protect the public from being defrauded by bogus charities and are not in themselves offensive where the requirements for registration are not too onerous to fulfil.

The Welfare Organisations, National Welfare Act [69]

Under this Act, regional welfare boards are set up to register fundraising organisations which plan activities in a range of welfare social services.[70] Certificates issued by the boards specify the area of activity. An organisation's registration can be suspended or withdrawn by the regional board if it fails to comply with its certificate or to fulfil its objects effectively. Similarly where the need for its services no longer exists, the registration might not be renewed. These decisions can be appealed to an appeals committee.

Effective institutions for redress and functioning political systems might appear to obviate the need for other interventions, but in fact the need for specific advocacy on various policy issues remain and need to be directed at the appropriate level of government. Part of the transition to democracy involved the restructuring of regional and local government arrangements, creating new institutions that are accountable for a range of public interest issues especially on social service provision. The vigorous debate on HIV-AIDS in South Africa, illustrated the need for open avenues of discourse and space to protest where necessary. Gaps between expectations and delivery have inevitably opened up across many social and economic areas. Tensions between the post-apartheid government and the Trade Unions have ensued as each assumed different roles and sometimes conflicting priorities. But an effective and credible judiciary means too that avenues for redress are not closed and civil society can challenge executive action as has already been demonstrated. South Africa with its past presents an example to Zimbabwe which in turn is a salutary warning of the dangers of drifting from democratic foundations and mismanaging sensitive economic, social disparities within the society.

[69] Act 100/1978

[70] Section 13.

The challenges of continuing social and economic disparities bequeathed by apartheid and based racial and even regional differences remain, and require sensitive collective and courageous engagement. With the crisis in Zimbabwe unfolding, these fault-lines in South African society cannot be ignored and the people of South African need to make sure that the laudable guarantees in the constitution are matched by equal commitments to redressing past and continuing imbalances especially over housing, land and economic opportunities. Civil society actors in South African have the legal and political spaces unavailable in other jurisdictions that need to be utilised. They need too to make a contribution to regional and continental advocacy commensurate to the influence their government has on the continent.

7
Which Way Forward for Zimbabwe?

The problems in one part of Africa reflect on and affect all others. From Zimbabwe's fits of sneezing Southern Africa and even countries beyond the continent have caught the cold. The increased flow of Zimbabwean refugees and economic migrants, fleeing the collapsing economy, pose a challenge to neighbouring states. The difficult questions are how to effect political changes and the necessary transitions to begin to rebuild a new democracy. Even a cursory examination convinces one that Robert Mugabe is unwilling to relinquish his hold on power in fear of retribution and at the same time Zanu-PF is so entrenched that there is an apparent balance of forces with the broad opposition which is able to mobilize opinion and some protest but not to make headway in forcing the internal collapse of the government. There do not appear to be viable alternatives to making political accommodations and engaging in dialogue with Zanu-PF, as a party. Whilst Robert Mugabe remains at the helm, the prospect for a breakthrough seems slim, but certainly both parties have the capacity, if the will were found, to hammer out transitional arrangements which would allow for a rebuilding of institutions.

Some in Zimbabwe question the sincerity of Zanu-PF as it has made overtures, albeit inconsistently, towards dialogue; while others have given up on any notion that outside pressure can have an impact of Robert Mugabe. An insistence that Mugabe and Zanu-PF must act in accordance with the law, and in particular, dismantle the administrative and legislative apparatus of repression can appear rather naïve in the face of the government's determination to quash opposition and entrench itself but such calls must not cease as they are reminders that the rule of law is the foundation of a free society. Civil society organisations continue to hold out for genuine dialogue and a principled transition whilst pressing for some immediate changes. The Crisis in Zimbabwe Coalition and other commentators have expressed concern about the political polarization which has emerged; "the failure of the two major political parties to develop an amicable solution to the political impasse"[71] which has resulted in a worsening economic and humanitarian crisis, aggravated by the failure of the harvests following the land seizures.

This readiness by civil society to give support to dialogue, may not be universally understood and shared, but reflects a maturity and realism that is not often echoed by international proponents of change. Intractable conflicts often need to end by negotiation and accommodation rather than by capitulation and outright victory. Such outcomes might seem unsatisfactory to absolutists, but civil society actors need to operate with an appreciation of political strategy and to argue for a place around the dialogue table. Many in Zimbabwe insist, however, that any transitional process must have at its heart a renewed respect for the rule of law, and crucially, must go beyond power sharing arrangements and aim to achieve a truly democratic and socially and economically just dispensation. For it is clear that a new and secure Zimbabwe cannot be built on the foundations of any structural social, economic, political and ethnic imbalances. These ideals can never be achieved through backroom deals between politicians, but require a practical and critical role of a civil society, acutely aware of its constituency and

[71] Paper; Crisis in Zimbabwe coalition, Talks about Talks? Or a mere waste of time?, July 2003.

committed to the values of human rights and social justice. Zimbabweans must be allowed to grapple with the dilemma that an insistence on retribution for past wrongs might prolong current crises.

What Role for Regional and International Interventions

There is consensus that nationals of affected countries ought as a matter of principle and expediency to bear the principal but not exclusive responsibility for bringing about and determining the direction changes. They work under situations of considerable risk which must be respected, but means too that their efforts need to be complemented by those in less restricted environments. In Zimbabwe it is well to think of the influence in terms of concentric circles, with Zimbabweans at the centre and then outwardly; regional actors; continent interventions; and truly international interventions. There is wide consensus that South Africa is an important and perhaps the key actor, although there is some exasperation with President Thabo Mbeki's preferred 'quiet diplomacy'. The situation in Zimbabwe clearly has economic consequences for the rest of the region and Africa generally. Political and business opinion in the region is also concerned about the negative impact the situation in Zimbabwe impacts negatively on region as a whole.

Amongst the regional actors, the Southern African Development Conference (SADC) has attempted to deal with the Zimbabwe challenge but its interventions have been characterised by a reticence to start fights with Mugabe that it might not win. This might explain public stances taken by SADC, for example, in April 2003, SADC issued a communiqué on the situation in Zimbabwe by criticising "those opposed to Zimbabwe", who had "tried to shift the agenda from the core issue of land by selective diversion of attention on governance and human rights issues". Some of the governments in the region continue to take this line in public in the face of contrary evidence of the breadth of repression and abuses in Zimbabwe well outside the land issues. That SADC communiqué also failed to draw the link between the climate of repression and the deterioration in social and economic conditions in the country,[72] despite the terms of the principles of the Declaration and Treaty of SADC that members should act in accordance with human rights, democracy and the rule of law. There is no shortage of worthy script in Africa: within the African Union founding tenets, too, similar aspirations towards rights and democracy also exist. The emphasis by the African Union and the NEPAD peer-review mechanism promised a new period of mutual candour, but that is yet to be manifested in the Zimbabwean context where Mugabe's consistent portrayal of the situation as a fight for the dignity of Africans against intrusions by the West has appear to wrong-foot some African leaders.

Regional African leaders have displayed extreme reticence to criticise Zimbabwe publicly. For some, but not all, there are national sensitivities to take into account, after all, the land question (ostensibly the cause of the crisis in Zimbabwe) is not yet resolved in their countries. Robert Mugabe was once the shining example of the possibilities of reconciliation and African renaissance, and it is difficult to let go of our heroes of the past without facing up to fundamental questions about what went wrong and whether there is real hope for governance in Africa today. Leaders need to be made to pay heed to the

[72] See, Zimbabwe and SADC: Setting the Record Straight, Crisis in Zimbabwe Coalition, April 15, 2003

analysis and experience of Zimbabwean civil society. Very few leaders in the region have received consistent representations from civil society actors in their own countries about the situation in Zimbabwe. Pressure should be maintained on SADC leaders to bring to bear whatever influence they can muster against Zanu-PF. This should preferably come from civil society within their own countries to take clearer stands on Zimbabwe and to seek ways in which accommodations can be reached within Zimbabwe. Other avenues to invoke include legal mechanisms such as the African Commission on Human and Peoples' Rights, which has received representations from Zimbabwean civil society. There is though no serious dispute about the record of the regime, which has not attempted to hide its repressive tracks, nor is that a shortage of regional and international avenues for naming and shaming President Mugabe and his government, it is vital that civil society is not seen to be stuck to only one tune of condemnation. Highlighting the gravity of the situation is nevertheless essential and must be continually done, ensuring that principled exit strategies and face-saving strategies are identified and utilised by the government and the MDC is equally vital for the prospects of a resolution of the crisis. In this regard the role the churches have attempted to play in mediation is important and should be built one whenever the political will for dialogue is manifested by the parties.

In its reactions to the Zimbabwean situation, the international community has already played its hand in terms of sanctions and condemnation in international fora. With Zimbabwe's exit from the Commonwealth in December that door of influence is virtually shut, although acceptance into the legal fold can still remain as an incentive mechanism for the future. African and global civil society must therefore in genuine consultation and dialogue with Zimbabwean counterparts examine the limits of their interventions on the crisis in Zimbabwe.

Zimbabwe must not be ignored neither should the complexity of the situation be glossed over. Informed and measured dialogue should continue within Africa and the international community, in order to find the most appropriate ways of encouraging rather than obstructing urgent change in Zimbabwe. Even though the situation in Zimbabwe has polarised opinion in Africa and indeed within the Commonwealth any responses to the situation in Zimbabwe, or any other country, must listen intently to national civil society whilst maintaining the need for absolute adherence to international norms of justice.

Beyond their own borders civil societies are discovering their common ideals and are sharing experiences—positive and negative—and building solidarities across national barriers. Where Africa's leaders have struggled to forge effective cooperation across boundaries, civil society faces the challenge to lead by example, and to develop linkages to ensure that citizens of all countries enjoy the freedoms which are their entitlement. Nowhere is the need for concerted support more apparent that in Zimbabwe today, a country which is rightly a matter for urgent deliberation because of the gravity of the humanitarian and human rights and political situation there. The crisis there has a regional impact and as well as a symbolic importance for Africa and in addressing Zimbabwe, through their national and regional fora, civil society actors in various

countries will not only show solidarity, but will also strengthen their capacity to confront the various issues and challenges they face in their own countries.

8
What Future for Civic Freedom in Africa

On the Continent of Africa, as its people re-negotiate their relationships with their governments, they are increasing associating and organizing for governance, social and economic changes through civil society bodies. Civil society organizations come in all shapes and sizes and at their best, bridge the inevitable spaces that exist between government and the people. They have a vital role to play in a range of interventions involving varying degrees of engagement with the state. From social service provision to campaigning for legislative and political reforms civil society in its multifarious manifestations plays a key role in improving conditions under which ordinary people live. These goals however are undermined when governments or laws restrict the space for civil society to and ordinary people to associate and organize. Illiberal tendencies within African governments manifest differently, as the experience in countries under this study demonstrate. At one end of the spectrum is Zimbabwe where the most flagrant and cynical manipulations of the machinery of government has been deployed to quash dissent. On the other hand the guarantees of the most laudable constitutional mechanisms, as adopted in South Africa, still require an independent judiciary and advocacy on specific policies to be maintained in order to realize enshrined ideals.

Freedoms cannot be taken for granted and need to be continually nurtured and defended if they are to flourish rather than die. Within each nation, attention needs to be given not only to developments at the national-usually urban and elitist level-but also to the health of rural civil society. Although much of the headline-grabbing debate is on national issues there are immense local needs requiring critical civil society involvement. The laws that oppress in the capitals are often applied with even less challenge in more rural or regional environments where civil society actors are more vulnerable and often feel unable to effectively challenge the state or to obtain redress for infringements. In Northern and Eastern Uganda, for example, where there has been armed conflict between the government and rebel groups[73] for over 17 years, civil society is often limited in expressing its views and freely associating on issues that are considered to be political. Radio coverage of issues has sometimes been curbed by security officials in Gulu forcing local stations into self-censorship.

The difficulty in Africa is not the content of the fundamental laws; the courts in Kenya, Uganda and South African have repeatedly upheld constitutional principles to strike down government interventions. Zimbabwe's Supreme Court had established itself as a leader in the field of developing jurisprudence in line with international law. Indeed, in a perverse compliment, the government set out to systematically attack, and then to subvert the institution of the judiciary by appointing its own (and it hopes) more pliant judges to the highest judicial offices. The temptation to influence the outcome of court decisions is not limited to Zimbabwe, in Uganda too, in the face of reverses suffered in the courts on political and human rights issues, President Museveni has publicly attacked the bench for having closet sympathies with the opposition. The Cabinet has made recommendations for constitutional amendments reducing the age and qualifications for appointment of

[73] The surviving insurgency is by the Lord's Resistance Army (LRA).

individuals as judges to the High Court, in a clear bid to seek the appointment of its own legal cadres to these offices.

Kenya's transition has raised hopes for changes although the pace of such change has not met expectations as the incidents of restrictions have continued. Nevertheless, civil society began the process of breaking out of the KANU by advocating for legislative changes and a level political playing field in the run-up to multi party elections. The challenge of rebuilding a functioning democracy still remains and requires continual engagement with the state. As in South Africa, the role played by civil society in political transition lead to intimate association between the new government and civil society. Such close 'political' association of civil society with the state, which often involves the transformation of civic actors into state actors, brings with it challenges, often requiring the re-definition of their respective roles. In Zimbabwe, the MDC has drawn heavily from CSOs to fill its ranks. This transfer of human capital, is inevitable, and indeed an example of the exercise of fundamental freedoms, but it also creates the perceptions within insecure governments that civil society actors are aspiring politicians and therefore a worthy target for political attacks. At the extreme end is of course the response of Zanu-PF in Zimbabwe, but even in Uganda, President Yoweri Museveni and high ranking government officials have often found it necessary to remind civil society actors including religious leaders to keep out of politics.

Governance issues are now routinely influenced by the interventions of the "international community" mainly Africa's lenders and donors. This internationalization of governance issues is often resented by African leaders and when civil society groups appear to support donor conditionalities, this can put them on the path of conflict with their governments. Commitments exacted by threats, however subtle, cannot in the end be genuinely held; therefore civil society, whilst working with others to contribute to universal values, needs to be seen to build local commitments to democratic ideals. For every call for intervention by international actors, there should be other local initiatives to point to. Africa needs to build and maintain good governance cultures based on respect for the rule of law, with truly independent judiciaries as its custodians.

It is crucial hat Africa finds workable formulas for effecting practical and value-based transitions from bad or indifferent governance to progressive and inclusive models of democracy. Universal human rights and national enabling legislation undeniably provide a necessary paradigm for envisioning just societies and the rule of law must be the starting point for realising the freedoms which are enshrined in international human rights. But building true democracies is a process, which though it benefits from a superstructure of law and justice institutions, requires genuine commitments to shared ideals across society. This can be achieved through appropriate and continual civic education coupled with the example of determined advocacy for rights. Whilst introducing rights-compliant legislation is an initial and necessary intervention, it is not, as the examples of different African countries demonstrates, a sufficient step towards building such societies. It will take multilayered and participatory approaches to build genuine common understandings of principles of fairness, respect and inclusion of other views going beyond mere lip-service to human rights instruments. Civil society has an

indispensable though challenging role in cajoling the state in Africa towards good governance and open societies. It can do this using home grown national methods as well as drawing upon the solidarities across national and continental boundaries.

BIBLIOGRAPHY

All Publications

Advocacy Alert, "Independence of Zimbabwean Non-Governmental Organisations Under Threat" July 2003 (http://www.lchr.org/defenders/hrd_zimbabwe/alert072403.htm February 26th 2004).

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

Amnesty International, Zimbabwe: Rights under Siege, (AI Index: AFR 46/012/2003).

Amnesty International, Zimbabwe: Terror tactics in the run-up to parliamentary elections, June 2000 (AI Index: AFR 46/014/2000).

Basildon, Peta, "Zim introduces apartheid-style laws" The Star, February 17 2004 at 04:07AM

Crisis in Zimbabwe Coalition, "Defiance vs Repression: critical Reflections on the "final push" June 2-6, (18th June 2003)

Crisis in Zimbabwe Coalition, "Talks about Talks? Or a mere waste of time?"(July 2003)

Crisis in Zimbabwe Coalition; Zimbabwe and SADC: Setting the Record Straight (April 15, 2003)

Daily News, *ZCTU blasts Government,* 23rd June 2003

Dlamini-Zuma is clearly ignorant, or blind Sunday Times, February 15th 2004

Foundation for Human Rights Initiative, The Bi-Annual Human Rights Reporter (January-June), (2003)

Hondora T Essential Media Laws (An Analysis of Zimbabwean Laws that Infringe

Hondora, T, MISA-Zimbabwe, The Broadcasting Services Act: An Analysis, 2002.

Justice Resources, "Beyond Workshops, Challenges and Strategies in Human Rights Interventions in Uganda" (2003)

Justice Resources, "Protection of Human Rights in Uganda" (2003)

Kagoro B; Crisis Coalition, Professional Audit of the Public Order and Security Act (2002)

Kameri-Mbote P; IELC; The Operational Environment and Constraints for NGOs in Kenya: Strategies for Good Policy and Practice IELC Working Paper No. 2000-2

Kiapi S, "Press Freedom and Constitutionalism. A Comparative analysis of Uganda's Experience of the Laws Limiting Press Freedom with other Common Law Jurisdictions. (2002)

Lawyers Committee for Human Rights, (2002) "Zimbabwean Non-Governmental Organizations under increasing pressure from restrictive legislation and government threats".

Makara, Sabiti, "NGOs In Uganda: Their Typologies, Roles and Functions in Governance" Centre for Basic Research Kampala, Uganda, (http://www.ids.ac.uk/ids/civsoc/final/uganda/Uga6.doc)

Meredith, Martin, Jonathan Ball, Robert Mugabe Power, Plunder and Tyranny in Zimbabwe (2002).

Nairobi Law Monthly Publications Issues No. 24, 37, 54, 55, 60 and 64.

Ndirangu, Gichinga "Kenya's long walk begins with step. Citizens force minimum reforms but cry out for more" (http://fxi.org.za/Medialaw/kenya.htm 2nd March 2003)

Reporters Without Borders, Uganda - 2003 Annual Report, (2004)

Riddell Roger, Gariyo Zie and Mwesigye Hope, "Review of National Policy on NGO for Uganda" Kampala August 1998

The Herald, February 18th 2004

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1995.

The Monitor, 'Nsibambi takes swipe at Clergy' Thursday 14th August 2003

The New Vision, 'Museveni warns civil bodies on politics' Wednesday 13th August 2003

Uganda Human Rights Commission Annual Report (January 2001 – September 2002)

US Department of State, Kenya: Country reports on Human Rights Practices 2003. Released by the Bureau of Democracy, Human Rights, and Labor, (February 25, 2004) (http://www.state.gov/g/drl/rls/hrrpt/2003/27733.htm)

US Department of State, South Africa: Country Reports on Human Rights Practices - 2003. Released by the Bureau of Democracy, Human Rights, and Labor (February 25, 2004) (http://www.state.gov/g/drl/rls/hrrpt/2003/27752.htm)

US Department of State, Uganda: Country Reports on Human Rights Practices - 2003 Released by the Bureau of Democracy, Human Rights, and Labor (February 25, 2004) (http://www.state.gov/g/drl/rls/hrrpt/2003/27758.htm).

US Department of State, Zimbabwe: Country Reports on Human Rights Practices - 2003 Released by the Bureau of Democracy, Human Rights, and Labor (February 25, 2004) (http://www.state.gov/g/drl/rls/hrrpt/2003/27760.htm).

Wamae, Paul, Nairobi Law Monthly, Issue No. 60, (January 1996)

Windhoek Charter on African Broadcasting 2001.

Windhoek Declaration on Promoting an Independent and Pluralistic African Press 1991.

Zimbabwe Human Rights NGO Forum: Political Violence Reports (2002-2003).

Zimbabwe NGO Forum, "Political Violence Report December 2003" (28th January 2004)

Zimbabwe NGO Forum, "Political Violence Report July 2003" August 2003

Newspapers

The Chronicle
The Daily Nation

The Daily News

The East African
The Herald
The Monitor
The New Vision
Zimbabwe Independent

Legislation

Zimbabwe

Zimbabwe Constitution (1996)
Access to Information and Protection of Privacy Act (2002)
Broadcasting Services Act (2001)
The Law and Order Maintenance Act (1995)
Presidential Powers (Temporary Measures) (Broadcasting) Regulations, October 2000
Private Voluntary Organisations Act (2002)
Public Order and Security Act (2002)

Kenya

The Books and Newspapers Act Cap 111 Laws of Kenya)
The Chiefs Authority Act, (Chapter 128 Laws of Kenya)
The Constitution of Kenya (1998)
The Non Government Organisations Coordination Act (1990)
The Penal Code Act (Chapter 63 of the Law of Kenya)
The Preservation of Public Security Act, (Chapter 57 Laws of Kenya)
Public Order Act, (Chapter 56 Laws of Kenya)
The Societies Act (Chapter 108 Laws of Kenya)
The Statute Law (Repeals and Miscellaneous Amendments) Act, 1997
The Vagrancy Act (Chapter 58 of the Laws of Kenya)

Uganda

The Anti Terrorism Act, (2002)
The Constitution of the Republic of Uganda (1995)
The Electronic Media Statute, (1996)
The Non-Governmental Organisations Registration Act, Cap. 113
The Non-Governmental Organisations Regulations 1990 No. 9 of 1990
The Penal Code Act, (Chapter 106)
The Political Parties and Organisations, Act (2002)
The Press and Journalists Statute (1995)
The Referendum Act, 1999
The Referendum and Other Provisions Act 2000

South Africa

The Constitution of the Republic of South Africa (Act 108, 1996)
The Fundraising Act (1978)
The Non-Profit Organisations Act (1997)
The Welfare, National Welfare Act (1978)