

Onslaught against Human Rights Defenders in Zimbabwe - 2002 Report
Zimbabwe Human Right Association (ZimRights)
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Presented by the Observatory for the Protection of Human Rights Defenders

ONSLAUGHT AGAINST HUMAN RIGHTS DEFENDERS IN ZIMBABWE

1. THE NGOs AS HUMAN RIGHTS DEFENDERS

“For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:
(a) To meet or assemble peacefully;
(b) To form, join and participate in non-governmental organizations, associations or groups”;

Article 5 of the United Nations Declaration on human rights defenders

INTRODUCTION AND BACKGROUND

Since the year 2000 after the outcome of the Constitutional referendum results, which the government lost, the government has expressed dissatisfaction with the operations and activities of NGOs especially those in the human rights field. Those that have been specifically targeted and mentioned by name by government officials include Amani Trust, National Constitutional Assembly (NCA), Crisis Coalition, ZimRights, Zimbabwe Election Support Network (ZESN) Catholic Commission For Justice and Peace (CCJP), Legal Resources Foundation (LRF)- all those that are calling for executive accountability.

The leadership of NCA in particular Dr Lovemore Madhuku, has been repeatedly arbitrarily arrested and detained. In the year 2002 he was detained four times; three times detained for forty eight hours and released. He has spent quite some time dodging surveillance of state agents who seem quite keen to disrupt his life as much as possible. Dr Francis Lovemore of Amani Trust was also arrested and detained before being granted bail. Tony Reeler, a director of Amani Trust, is now in exile. A number of ordinary members of the human rights organizations have also been arbitrarily arrested and detained and subsequently released in a number of cases without being charged. Where charges were preferred the state has often failed to carry out a prosecution and charges are often withdrawn before trial. A ready example is the over 100 ZESN election observers who were arrested in Manicaland during the 2002 Presidential elections. Not a single case was successfully prosecuted and the majority of the cases have been concluded through withdrawal of charges before trial.

The human rights NGOs have also been banned from carrying out such tasks as civic education especially voter education. They have been banned from election monitoring through legislation. The government has also attacked civil society in the state-owned media as shown by the following examples;

31/03/02 The Sunday Mail published a story attacking Amani Trust and alleging that Zimrights was investigating Amani Trust for misuse of funds and links with the opposition. The paper, which is a government mouthpiece, stated that “chaotic accounting systems at Amani Trust, a Non-governmental organization that works hand in hand with the Movement for Democratic Change, are suspected to have led to the misappropriation of millions of dollars ... Amani Trust has been accused of moving away from its original brief of providing medical and social service to victims of political violence by assisting MDC activists only (who) would then allegedly go on nocturnal missions of terror against ZANU PF members”.

09/05/02 The Government controlled newspaper The Chronicle in its headline news titled “Crusade to demonize Zimbabwe” wrote that three human rights organizations

are reportedly on a “crusade to demonize Zimbabwe by presenting unsubstantiated allegations of human rights abuses.” The paper further singled out Amnesty International, ZimRights, the Legal Resources Foundation as “three organisations known to be on an anti-Zimbabwe and anti-government crusade”. Quoting Mr. Dzairo who is Zimbabwe’s Consul General to South Africa, the government paper alleged that the three human rights organizations had become unwitting tools for those with a destructive agenda over Zimbabwe. Finally Mr. Dzairo is quoted as having said “we are too aware of foreign elements acting in cahoots with Zimbabwean citizens, political parties and organizations who are bent on exploiting loopholes in Zimbabwean law to this end”.

- 13/09/02 The government issued a notice in the Herald Newspaper in terms of the Private Voluntary Organizations Act threatening to arrest leaders of unregistered NGOs.
- 11/10/02 The President made a threat reported in The Herald to invoke the law (Private Voluntary Organization (PVO) Act) to prevent NGOs from receiving foreign funding. The PVO Act forbids unregistered NGOs from raising funds from any source. The President singled out the CCJP as one undesirable organization that had to be dealt with since its employees had contested and won in the September 2002 rural district elections.

THE PRIVATE VOLUNTARY ORGANISATIONS ACT AND NGOS

A notice was published in the Herald Newspaper of 13th September 2002. The notice was issued by the Legal Advisor to the Ministry of Public Service, Labour and Social Welfare. It states as follows in its essential parts:

"Any body or Association of persons, corporate or un-incorporate or any institution whose objects include one or more of those stipulated in section 2 of the Private Voluntary Organizations Act [Chapter 17:05], excluding those excepted under the same section, is a Private Voluntary Organization and should be registered in terms of the Private Voluntary Organizations Act, aforesaid.

Section 6 of the PVO Act, prohibits such a body, institution or association to operate without being registered. Section 25 of the same Act, makes it a criminal offence to operate without being so registered.

May all such bodies as are not registered urgently stop their operations until they have regularized their registration in terms of section 9. Failure to adhere to the Law will result in arrests being made..."

The Observatory for the protection of human rights defenders reacted strongly against this notice and issued an urgent appeal to the Zimbabwe government¹.

ZIMRIGHTS came across a commentary on the above notice from a source that could not be immediately identified but ZIMRIGHTS agrees with the substance of the commentary, which is paraphrased below.

The Meaning of the Notice.

The Notice appears to be a re-assertion of the provisions of the 1966 PVO Act as amended, regarding registration of private voluntary organizations and in particular section 2(2) from which the spirit of the notice has been extracted. It does not seek to create any new category of PVO's nor does it expand the existing one. The Notice also does not alter the range of exceptions set-

¹ See in Annex the urgent appeal of the Observatory for the protection of the human rights defenders.

out in the Act in section 2. What the Notice constitutes is the first attempt to enforce the PVO Act since independence.

Section 2 of the PVO Act defines a PVO as an association of persons, corporate or unincorporated, or any institution with any one or more of the following objects:

- The provision of all or any of the material, mental, physical or social needs of persons or families;
- Rendering of charity to persons or families in distress;
- The prevention of social distress or destitution of persons or families;
- The provision of assistance in, or promotion of, activities aimed at uplifting the standard of living of persons or families;
- The provision of funds for legal aid;
- The collection of contributions for any of the foregoing.

This definition excludes the following entities:

- a) The Zimbabwe Red Cross Society;
- b) Any political organization in respect of their political activities;
- c) Registered hospitals and nursing homes and work done for their benefit;
- d) Registered health institutions under the Medical, Dental and Allied Professions Act [Chapter 27:08];
- e) Any entity whose activities are for the sole benefits of its members;
- f) Any Trust established directly by any enactment or registered with the High Court;
- g) Any educational trust approved by the Minister;
- h) Any institution or service maintained and controlled by the State or a local authority; and
- i) Any religious body in respect of activities confined to religious work

The sting in this notice, therefore, is really in the requirement that all non registered bodies and associations of persons (corporate or otherwise), any of whose objects fall within the Act should cease operations forthwith or risk prosecution.

This prohibition will cover many common law associations founded only in terms of their constitutions as well as temporary networks (political or otherwise) currently set-up to respond to the food crisis and those Trusts registered with the Registrar of Deeds and not the High Court. In other words, the notice covers attempts by political parties and several trusts to assist displaced farm workers and other disadvantaged communities. The exact ramifications of this Notice for organizations dealing with Aids orphans and widows, street children and the unemployed should be fully investigated. The writer's suspicion is that the greater number of groups working in this area are not registered in terms of the PVO Act. The requirement that temporary entities set-up to respond to the prevailing national crisis should be registered under the PVO Act defies logic. It is tantamount to saying that -faced with the incapacity of the State and registered PVO's to respond to the current food crisis due to its magnitude - all other bona fide attempts to assist are criminal.

The process of registration set out in section 9 of the Act is too cumbersome and experience suggests that it may at times take several months if not years. In the result, the requirement that those already operating as unincorporated entities or who, for any other reason fail to comply with the Act should cease operations forthwith, is grossly unreasonable. Particularly because it is perfectly legal in our law to register and operate a trust without having to register with the High Court. This should also be understood in the context of section 11 of the PVO Act which prohibits

registered PVO's from carrying on their activities, seeking financial assistance from any source or collecting contributions from the public 'under a name other than the name under which it is registered'. Section 23 of the Act makes it a criminal offence to collect or even attempt to collect contributions on behalf of an un-registered PVO.

As intimated above, the Notice is not contrary to the PVO Act and is therefore, at law, intra-vires the Act. Aggrieved parties must, therefore, look elsewhere for relief especially considering that the expectation at law is that prior to requiring affected parties to cease operations, they should have been afforded an opportunity to be heard in terms of section 18(9) of the Constitution of Zimbabwe and the requirements of the principles of natural justice met. Primarily because the effect of the Notice goes to the root of their existence as associations under the law, the constitution requires that they be granted a fair and impartial hearing.

Conclusion

The notice by the government in terms of the PVO Act is a culmination of the apparent intention of the government to control the activities of NGOs as part of the overall strategy to limit the democratic space and increase totalitarianism. The government is creating a basis and justification for the clamping down on NGOs and the arbitrary arrests of NGO leaders. There is also a clear underlying intention to prevent foreign funding of the NGOs so as to render them ineffectual in their quest to ensure that the country creates a satisfactory culture of human rights. The PVO Act is therefore being used as a means to attack and undermine NGOs as human rights defenders.

2. JOURNALISTS AS HUMAN RIGHTS DEFENDERS

“Everyone has the right, individually and in association with others:
a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems”;
b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;

Article 6 of the United Nations Declaration on human rights defenders

The government of Zimbabwe passed 2 extremely repressive pieces of legislation, the Public Order and security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) in January and March 2002 respectively. These two pieces of legislation were among the most significant assaults on the basic fundamental freedoms especially, the right to freedom of assembly and association, the right to freedom of movement, the right to freedom of expression and to receive and disseminate information. The legislation also created a mine field for journalists as numerous journalists were arrested arbitrarily in the year 2002. A list of some of the journalists who were arrested all from the independent media is as follows;

1.	Geoffrey Nyarota	Editor in Chief	Daily News
2.	Andrew Meldrum.	Journalist	Guardian
3.	Bornwell Chakaodza	Editor	The Standard
4.	Farai Mutsaka	Reporter	The Standard
5.	Basildon Peta	Journalist & Correspondent for many papers.	The Financial Gazette
6.	Brian Mangwende	Reporter	Daily News
7.	Peta Thornicroft	Correspondent	Daily Telegraph
8.	Lloyd Mudiwa	Reporter	Daily News
9.	John Gambanga	Editor	Daily News
10.	Tich Mbanga	Director	Daily News

A number of the journalists listed above like Geoffrey Nyarota were arrested on many occasions using AIPPA or POSA or a combination of the pieces of legislation.

Very few cases have come up for trial, the notable one being the case of Andrew Meldrum who was acquitted in July 2002. Meldrum was arrested and tried for allegedly repeating a story in the Guardian Newspaper that had earlier been published in the Daily News which story later proved to be inaccurate. However, no sooner had he been acquitted than the government immediately cancelled Mr Meldrum's permanent residence permit and issued a deportation order. The government's deplorable action in this case resulted in the Zimbabwe Lawyers For Human Rights commenting as follows;

“It is ironic that the executive has found it necessary to resort to tactics used by the Rhodesian government against nationalists such as those currently serving in office. The use of Executive decree to suppress plurality of opinion and to silence the independent media is particularly deplorable. The deportation order was issued despite the fact that Mr. Meldrum had been acquitted by a competent court, and in violation of basic principles of equity and justice; the government has failed both to satisfy any of the statutory requirements for the cancellation of his permit and to provide reasons for his deportation.

This is in keeping with the executive's *modus operandi* whereby officials continue to act as though they are above the law. The members were once again encouraged to witness the upholding of Mr. Meldrum's rights by the Honourable Justice Matika in the High Court who referred the matter to the Supreme Court for a determination of Mr. Meldrum's constitutional rights, thus suspending the deportation order."

The journalists easily fall in the category of a section of human rights defenders who are at serious risk of being constantly arbitrarily arrested and detained owing to intolerance and immaturity on the part of government. POSA and AIPPA also easily fall into the category of the most repressive pieces of legislation in the history of Zimbabwe both before and after independence. Such legislation is not reasonably justifiable in a democratic society. Unfortunately, the catalogue of oppression of journalists and each one's individual predicament has not been fully explored due to constraints primarily absence of a budget to interview individual journalists.

3. LABOUR MOVEMENT AS HUMAN RIGHTS DEFENDERS

“1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms”.

Article 12 of the United Nations Declaration on human rights defenders

ZIMBABWE CONGRESS OF TRADE UNIONS (ZCTU)

Introduction and background

Zimbabwe had only one umbrella body representing labor unions up to the year 1998 being the ZCTU. The then secretary general of the ZCTU, MR Morgan Tsvangirayi is the leader of the opposition Movement For Democratic Change while his deputy in MDC Mr. Gibson Sibanda was the chairman of the ZCTU before the formation of MDC, in 1999. The government therefore perceived the ZCTU as aligned to the opposition and therefore a major threat to the continued dominance of ZANU (PF) in the political life of Zimbabwe. It is not surprising that the ZCTU became an immediate target of attack by the government after the June 2000 parliamentary elections. The government assault on the ZCTU took both overt and covert means and included the following among others;

- the creation and registration of another union, the government and ZANU (PF) sponsored union called Zimbabwe Federation of Trade Unions (ZFTU) in 1999 which immediately caused mayhem on farms and in industry and commerce through demands against employers that were viewed as bordering on extortion, arbitrary arrests and detention of the ZCTU leadership from time to time
- heavy handedness on the part of the police in dealing with any collective action on the part of ZCTU while turning a blind eye to aggressive activities of the ZFTU against employers. For example ZFTU inspired violent action resulted in Eastern Highlands Plantations suffering losses of over \$34 million in November 2001. Claremont Orchards in Manicaland had a work stoppage of over 3 months at the instance of ZFTU. The sugar plantations in the southern part of the country had work stoppage for over a month just before the Presidential elections as a result of unrealistic demands at the instigation of the ZFTU.
- use of POSA to deny the ZCTU the right to associate, assembly and to demonstrate. At one point the ZCTU had to get a High Court order to prevent the police from forcing themselves onto ZCTU board meetings.
- creating an atmosphere of general fear through threats, the presence of heavily armed police and security agents presence at ZCTU organized events and arbitrary arrests.

Specific events

On 9 December 2002 ZCTU leaders (Mr. Wellington Chibebe, Mr. Tambaoga Nyazika, Mr. Timothy Kondo, Mr. Settlement Chikwinya, Mr. David Shambare, Ms. Patience Mandozana, Mr. Thomas Nyamanza, Mr. Gideon Shoko and Mr. Hwinya Matambo) were arrested by the police, while holding a legitimate union meeting at Adelaide Acres. Around the time of their arrest there was general rumor that the ZCTU was organizing a collective job action for its membership. Those arrested were taken into custody and held at various police stations until lawyers secured their release on December 11. On that day, a judge rejected a request by state prosecutors to charge the nine detainees under the Public Order and Security Act (POSA). Their arrest was therefore a pre-emptive move on the part of the government. Trumped up charges are always laid in such an event to try to give public justification to arbitrary and unlawful conduct on the part of

the state. The arrest of the ZCTU leadership is once again an attack by the state on human rights defenders².

With regard to public service labour movements the classic case is that of the Secretary General of the Progressive Teachers Union of Zimbabwe (PTUZ), Mr. Raymond Majongwe, who was arrested and detained in October 2002 for organizing a collective job action by members (teachers) of his labour movement. He appeared in court for remand in October 2002 and was granted bail in the sum of \$5 000.00. The state had been insisting on bail of \$50 000.00 but the magistrate Mr. W Mandinde stipulated a lesser figure. This made the state unhappy resulting in Mr. Majongwe being re-arrested and taken to another magistrate who ruled that there was no basis to place him on bail again in the same matter. Meanwhile Mr. Majongwe complained of being tortured by State agents during his detention. He was having evident walking difficulties in televised footage of his court appearance before being granted bail. Mr. Majongwe is facing charges of contravening a section of the notorious Public Order and Security Act for organising the collective job action and the matter awaits trial.

² In reacting to such arbitrariness the Human Rights lawyers Committee stressed upon the fact that the use of the Public Order and Security Act to prevent or disrupt such demonstrations constitutes violations of freedom of expression, association and assembly, protected by Zimbabwe's Constitution and international human rights law. Moreover, the prevention of legitimate trade union activity is contrary to fundamental ILO Conventions on the right to organize and collective bargaining.

4. PRESIDENTIAL ELECTIONS AND HUMAN RIGHTS DEFENDERS

“Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels”;

Preamble to the United Nations Declaration on Human Rights Defenders

The Presidential elections in Zimbabwe were held in March 2002. They produced a disputed result and left the nation divided and severely polarised.

The elections were marred by violence and intimidation. NGOs as human rights defenders were specifically targeted by the government. NGOs wanted to participate in the electoral process mainly through an umbrella body called the Zimbabwe Election Support Network (ZESN). Traditionally NGOs have collaborated with the government and in the process provided voter and general civil education. They also traditionally supplied the election monitors for all electoral processes. The following are instances and events which lead to the conclusion that NGOs and other civil society organisations were specifically targeted by the government during the run up to the Presidential elections;

a. human rights defenders and Voter education

The government promulgated The General Laws Amendment Act in 2001 which forbade NGOs and civil society from conducting voter and civic education during the run up to the elections. Although the Act was at first declared unconstitutional by the Supreme Court of Zimbabwe in January 2002, the legislation was re-introduced through the backdoor by the President and Minister of Justice via the Presidential Powers (Temporary Measures) Act and the Electoral Act respectively. Given this legislative backing the partisan police, over enthusiastic militias and veterans had a field day making it virtually impossible for any meaningful voter and civic education to be carried out by NGOs and other human rights defenders. Any attempts at voter and civic education meant that the respective NGOs or human rights defenders were taking severe personal risks. In the result there was no meaningful voter education before the Presidential election.

b. human rights defenders; election monitoring and observing.

The General Laws Amendment Act banned election monitoring by NGOs and civil society and left this to the civil servants. This is contrary to the Southern African Development Community (SADC) norms and was an attack on civil society to weaken its capacity to defend human rights.

Thus, General Laws Amendment Act relegated civil society to merely providing local observers to the electoral process subject to the invitation of the Minister of Justice. In what appeared to be a clear and deliberate omission of his duty the Minister invited only some 420 local observers to accredit out of 12 500 names submitted by ZESN in order to have at least 2 observers per polling station. The observation process was therefore largely ineffectual. This was another subtle attack by the government on the effectiveness of human rights defenders.

c. human rights defenders and election days.

From the second day of election the police and other militias went on a spree of arbitrary arrests and detention of local ZESN observers and unaccredited local ZESN observers who were observing the election from a distance of more than 100 meters. A number of them were

subsequently released without charge while others were taken to court for remand. They were all remanded out of custody. Not a single case has been successfully pursued by the state, tending to confirm the view that the arrest of local observers was part of the planned institutional harassment of human rights defenders to weaken their capacity to be effective in election observing. The following is a list of the ZESN observers who were arrested and the status of their respective cases at the date of this report. Please note that all the arrests took place between 10 and 11 March 2002:

1.L Mphadzula, ZESN driver; arrested on 10 March 2002 in Mutare South Constituency. Taken to court, Court ref CRB 1130-1/02. Charges have since been withdrawn before trial on 14 November 2002.

2.M Matimbe, ZESN local observer; arrested on 10 March 2002 and taken to court on ref CRB 1130-1/02. Charges have since been withdrawn before trial on 14 November 2002.

3.Christina Bindura, ZESN observer; arrested on 10 March 2002 and taken to court. Charges have since been withdrawn before trial on 14 November 2002.

4.William Chaterera, ZESN local observer; arrested on 10 March 2002 and taken to court on CRB 1128-9/02. Charges were withdrawn before trial on 8 October 2002.

5.Godknows Mhere, ZESN local observer; arrested and taken to court on ref CRB 1128-9. Charges were withdrawn before trial on 8 October 2002.

6.Julias Kafesu, ZESN local observer; arrested and taken to court on reference no. CRB 1134/02. Charges were withdrawn before trial on 8 October 2002.

7.Ebba Tinani, ZESN local observer; arrested on 10 March 2002 and taken to Court on reference CRB 1082/02. State is failing to pursue case despite demand by accused to have matter finalised.

8.Muchaonani Nhachi, ZESN local observer; arrested and taken to court on CRB 1080/02. State is failing to prosecute matter with speed despite the accused's demand to finalise case.

9.Maxwell Musiyabako, ZESN local observer; arrested and taken to court on reference CRB1088-90/02. Matter still pending.

10.Eunice Nenzema, ZESN local observer; arrested and taken to court on reference CRB 1088-90. Matter still pending.

11.Knowledge Gudyanga, ZESN local observer; arrested and taken to court on reference CRB1081/02. Matter still pending.

12.Muguta Manziwi, ZESN observer; arrested and taken to court on reference CRB 1088-90/02. Matter still pending.

13.Brenda shamiso Dzvifu, ZESN observer; arrested and taken to court on reference CRB 1078/02. Charges withdrawn on 21 May 2002 after it could not be established who had arrested her.

14.Hamunyari Magoronga, ZESN observer; arrested and taken to court on reference CRB1077/02. Charges against him withdrawn before trial on 21 May 2002.

15.Winnet Chipepera, ZESN observer; arrested and taken to court on reference CRB1079/02. Charges withdrawn before trial on 21 May 2002.

16. Agnes Gopito, ZESN observer; arrested and taken to court on reference CRB 1085-87/02. Matter still pending.

17. Rosemary Makufa, ZESN observer; arrested and taken to court on reference CRB1085-87/02. Matter still pending.

18. Esma Mafunda, ZESN observer; arrested and taken to court on reference CRB 1088-90/02. Matter still pending.

19. Charity Chigota, ZESN observer; arrested and taken to court on reference CRB 1085-87/02. Matter still pending.

20. Phelistas Wazulu, ZESN observer; arrested and taken to court on reference CRB 1085-87/02. Matter still pending.

21. Fannie Mapungwana, ZESN observer; arrested and taken to court on reference H109/02. Charges withdrawn before trial.

d. Abduction and detention of Arnold Tsunga and other observers

During the presidential election of March 2002, Arnold Tsunga was the Manicaland provincial coordinator of the Zimbabwe Election Support Network. On 8 March 2002, he and other election observers namely Kumbirai Mafunda, Mr. Zimunya, Rev. Tsvamunhu (ZESN Provincial Chairman for Manicaland) went to Honde Valley to investigate a reported case of electoral violations which *inter alia* included arbitrary arrest and detention and torture of the honourable MDC member of Parliament for Mutasa constituency, Evelyn Masaiti, and over 150 polling agents of the MDC. At Ruda they were surrounded by some twenty armed soldiers and marched at gun point to a military camp at Ruda Police Station. During the abduction process they were assaulted by the armed soldiers using open hands, clenched fists, booted feet and gun butts. The soldiers threatened to shoot and kill them. This, despite the fact that they had identified themselves as election observers under Mr. Tsunga, a registered lawyer. They were detained for about three hours and released without charge after being intimidated and severely traumatized.

The arrest of local observers was largely vindictive and designed to frustrate the human rights defenders. There was no valid legal basis to arrest and detain. The police conduct was arbitrary, deliberately obstructive and heavy handed.

5. INTERFERENCE IN THE JUDICIARY

“1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights”.

Article 9 of the United Nations Declaration on Human Rights Defenders

INTRODUCTION AND BACKGROUND

Since the year 2000 there has been substantial interference with the activities of the judiciary by the executive to the point that presently there has been a substantial loss of trust and confidence on the part of the public in the justice delivery system.

A number of judges including the Chief Justice, magistrates and prosecutors have resigned or been forced to resign from their positions by reason of political interference at the instance of or with the collusion of the executive. The following judges of the Supreme Court and High Court have been forced to resign between 2001 and 2002 namely; Chief Justice Gubbay, Justices McNally, Ebrahim, Chatikobo, Devittee, Gillspie, Blackie. New judges whose credentials are questionable and who are viewed as being “politically correct” have been appointed to both the Supreme Court and the High Court bench resulting in the perception that the superior courts are being packed with partisan judges.

The perception is therefore that the judiciary is no longer independent. Lawyers, magistrates and public prosecutors have also been harassed politically. In some instances politically motivated demonstrations have been organized against magistrates as has happened at Rusape, Chinhoyi, Chipinge and Gokwe. In other instances, magistrates and lawyers have been abducted, beaten up and arbitrarily detained. A legal firm was raided by armed police, ransacked and searched using and under pretext of dubious search warrants.

SPECIFIC EXAMPLES

a. Assault on Chipinge Magistrate Courts after a ruling that was unfavorable to ZANU PF:

On 16 August 2002, a mob singing ZANU PF revolutionary songs and holding placards assaulted the resident magistrate of Chipinge Mr. Khumalo and another magistrate Mr. Walter Chikwanha. They also assaulted other court officials including one security guard, Cecilia Sithole, Mrs Kadirire and Miss Muhala. The mob was using sticks, open hands and clenched fists to beat up the court officials. They dragged Mr. Walter Chikwanha out of the court buildings, force-marched him from the court complex to the government offices complex where he was forced to chant ZANU PF slogans. Mr. Walter Chikwanha suffered a fractured rib, stiff neck, swollen shoulder and general swelling on the head as a result of the assaults. The magistrate’s distress calls to the police were not responded to. The magistrates state that at all material times there were three police officers, armed with rifles who escorted the assailants and made no effort to stop the assaults. Two of the police officers were identified as Inspector Sibanda and Sgt. Mambara. The government complex to which the Magistrate Chikwanha was taken and publicly humiliated by war veterans, identified as Mrs. Mlambo, Mr. Muzamana, Mr. Masuka, Mr. Chindove, Fungai Rice, Mrs. Matutsa, Mr. Nhachi and Mr. Mavhuro, houses the police and the state security agents.

ZIMRIGHTS is concerned that no arrests of the known assailants have been made to date. What is even more worrisome is that the Minister of Justice never issued a public condemnation of the assaults of magistrates and court officers but instead transferred the victim, Magistrate Chikwanha, out of Chipinge thereby confirming the substitution of the rule of law with the rule of the mob.

b. Arbitrary search at a legal firm, Gonese and Ndhlovu

Gonese and Ndhlovu, a Legal firm based at Mutare had its offices raided and searched by heavily armed police in front of terrified clients at the end of May 2002. Innocent Gonese is the member of Parliament for the opposition MDC for Mutare Central constituency and the opposition's chief whip in Parliament. The search warrant was to the effect that the police had reason to suspect that the firm had arms of war and other offensive weapons. Clients' files were read, scattered and strewn onto the floor in the presence of shocked clients. The search was conducted by about 18 armed policeman and lasted over 30 minutes. Sadly this was about the third time during the year that state agents subjected the firm to this type of conduct, according to Mr. Ndhlovu a partner in the practice. ZIMRIGHTS strongly condemns this unwarranted and unjustified conduct on the part of the police and other state agents which interferes with the smooth running of a legal firm and violates the privilege and confidentiality between lawyers and clients.

c. Demonstrations at Rusape Magistrate Court

It was reported in the Daily News in January 2002 that a senior ZANU PF member in Makoni West, Didymus Mutasa had organized a demonstration against a magistrate of Rusape Magistrate's Court for having refused to grant bail to ZANU PF youths. According to information made available to ZIMRIGHTS some ZANU (PF) party members were arrested at Rusape in a case of politically motivated violence and taken to court. Rusape and Makoni district became quite notorious for politically motivated violence in the run up to the presidential election in March 2002. Sadly a senior ZANU(PF) member, Didymus Mutasa, was implicated in most reports received by ZIMRIGHTS and other human rights organisations. When the magistrate refused to grant the suspects bail, a demonstration was conducted against him and he was denounced as supporting the opposition. Luckily he escaped assault but the process terrified court officials and gravely interfered with the justice delivery system.

**d. Law Society of Zimbabwe; Sternford Moyo and Wilbert Mapombere's case
(adapted with minor changes from a ZLHR statement)**

ZIMRIGHTS agrees with the observations of Zimbabwe Lawyers for Human Rights (ZLHR) on the facts and the law surrounding the arrest and detention of the Law Society President and Secretary and therefore substantially reproduces the ZLHR report in so far as it relates to human rights defenders.

On the 3rd of June 2002, the President and Secretary of the Law Society were arrested and detained by members of the Zimbabwe Republic Police. The offices of the Law Society, the Secretary's law practice and the private residences of both the President, Sternford Moyo and the Secretary, Wilbert Mapombere, were subjected to search and official Law Society documents were seized. The two were charged with contravening section 5(2)(b)(1) of the Public Order and Security Act.

ZLHR viewed this conduct as an attempt to compromise the independence, effectiveness and integrity of the Law Society of Zimbabwe, and as a personal attack on its Secretary and President. The arrest of the President and Secretary came as part of a governmental campaign to silence criticism of the government.

Based on the charges and the submissions of the state representative at the hearing of an application for the release of Messrs Moyo and Mapombere ZLHR considered that the charges were palpably false, unfounded and apparently malicious for the following reasons:

There is no section 5 (2)(b)(1) in the Public Order and Security Act; It was alleged that the President of the Law Society of Zimbabwe organised a meeting on the 4th of March 2002 to plan “peaceful” “mass action” in support of the MDC at which meeting it was agreed that the MDC would cease reconciliation talks with ZANU PF. It is an undisputable fact that on the 4th of March 2002, the Presidential election had not yet taken place. The MDC had not engaged ZANU PF in any reconciliation talks and there had been no talk of mass action; In light of the accused persons’ denials; the highly questionable authenticity of the semi-literate letters supposedly written by the accused and the impossibility of the facts of the offence alleged, no “reasonable suspicion” of an offence having been committed could remotely have arisen. In any event, the right to peacefully demonstrate, assuming the letters are authentic, is protected under Sections 20 and 21 of the Constitution which guarantee the right of freedom of expression and freedom of association and assembly; Further, the whole of Section 5 of the Public Order and Security Act is arguably unconstitutional as it severely restricts the exercise of the right to freedom of expression.

The apparent persecution of the Law Society of Zimbabwe and its secretariat came after vitriolic and unfounded attacks on the person of the President of the Law Society by the government through its Minister of State for Information and Publicity in the President’s Office Jonathan Moyo, as reported in the Herald of 18 April 2002.

Sternford Moyo and Wilbert Mapombere are currently out of custody on bail awaiting trial. Their trial date has not yet been set but it will not surprise ZIMRIGHTS if this case is withdrawn before trial as is typical with most politically motivated cases where the state is in a hurry to arrest but runs out of steam when it comes to prosecuting the accused persons due to absence of evidence. During their detention, they were deprived of access to their lawyers and adequate food and clothing. Their detention cells were also crowded. As part of efforts to frustrate their constitutional rights to access lawyers, they were shuttled from one police station to another and taken to some of the most notorious cells.

e. Justice Blackie’s case

Background

In July 2002 Justice Blackie, then a judge of the High Court of Zimbabwe, found the Minister of Justice Patrick Chinamasa guilty of contempt of court and passed a sentence of imprisonment against him. This immediately caused a reaction by another minister, Jonathan Moyo, the Minister of State for Information and Publicity which reaction was quoted in the Government newspaper and mouthpiece, The Herald of 18 July 2002 in an article entitled ‘Judgment against minister sinister’. Minister Moyo was quoted as commenting without full knowledge of the precise details of the matter.

Minister Moyo argued that contempt charges should never have been laid against Minister Chinamasa. Moyo completely disregarded a Supreme Court directive to the contrary. He erroneously argued further that Minister Chinamasa was not given an opportunity to present his case before a decision was made. Minister Moyo insinuated that the Honorable Justice Blackie had been handing down ‘racist’ judgments since the Rhodesian days. Justice Blackie was appointed to the Bench after Independence by the current President of Zimbabwe. The Minister’s statement was not only defamatory but also designed to mislead the public and incite hatred against the judge. Meanwhile the police failed to execute the warrant of arrest against Minister Chinamasa despite the passage of several weeks and despite the fact that the minister had not timeously sought cancellation of the warrant.

Meanwhile Minister Chinamasa was also quoted in early July 2002 in the Herald, the government controlled newspaper, as having threatened to cause the Chief Justice, G Chidyausiku, to set up

a tribunal to investigate Justice Blackie for issuing the warrant of arrest. Justice Blackie resigned from the bench at the end of July 2002.

This is the relevant background that underlies the subsequent harassment of Justice Blackie after he left the bench.

Justice Blackie's arrest

Former High Court Justice Blackie was arrested on 13 September 2002.

The arrest and detention of former Justice Blackie appeared to be arbitrary and passed for outright retribution by the government for his judgment against the Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, in which the minister was sentenced to a three-month term of imprisonment and a fine for two instances of contempt of court. The judgment was subsequently nullified in a procedurally questionable manner by the High Court in Harare. Although the police were obliged to imprison Mr Chinamasa by order of court, he was not arrested, yet former Justice Blackie was arrested and detained on unsubstantiated and seemingly unreasonable suspicion of having committed an offence.

Justice Blackie like most individuals seemingly critical of the government was arrested on a Friday, and detained over the weekend in deplorable conditions in various police holding cells without proof of commission of an offence. He was denied food, warm clothing and essential medication (something which happens with frightening regularity to individuals detained on suspicion of committing an offence). The former judge's legal practitioners initially advised that his whereabouts were not revealed to them and that a court order had to be sought for his safe production on Saturday morning.

Subsequent to his being released on bail Justice Blackie successfully applied for a relaxation of his bail conditions to allow him to make a trip to South Africa. The magistrate who granted the application Mr Wilbert Mandinde was immediately publicly condemned by the Attorney General in The Herald of 15 November 2002 and was accused of abusing judicial discretion in that his judgment was predetermined. Further he was sued in the High Court in his personal capacity by the Attorney General for his decision in the Blackie matter. Soon thereafter he was suddenly transferred to Victoria Falls from Harare and he has subsequently resigned from the bench for fear of further persecution.

Justice Blackie still awaits trial. He is facing allegations of corruption in that he is being accused of passing judgment in an irregular manner in a matter over which he presided as a judge of appeal.

The above examples are not exhaustive. It has not been possible to attend to every report of attacks on the legal profession owing to the non existence of an institutional programming budget at ZIMRIGHTS to facilitate the monitoring of the plight of human rights defenders on a more consistent and systematic basis.

GENERAL CONCLUSION

It is quite clear from the above summary that indeed human rights defenders in Zimbabwe are on the frontline. There is overt and covert pressure being brought to bear upon human rights defenders by the authorities and like minded militias. The deteriorating human rights situation in Zimbabwe calls for specific ongoing attention to be given to the plight of human rights defenders as the country can not afford to have them go underground. ZIMRIGHTS therefore calls for greater networking and collaboration among human rights defenders and offers itself available for strategic alliances with institutions of like mind which have the necessary material resources but which are thin on human resources so that particular, careful and continuous attention can be given to the needs and plight of human rights defenders in Zimbabwe. Given the undisputed appetite and capacity of the Zimbabwe government to systematically sustain general repression, it is submitted that international attention as well as that of the appropriate organs of the United

Nations must continue to focus on the plight of human rights defenders in Zimbabwe as the prediction is that their situation is likely to deteriorate further in 2003.

Arnold Tsunga
National Chairperson
ZIMRIGHTS 31/12/ 02

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