KENYA, TANZANIA, UGANDA, ZAMBIA AND ZIMBABWE

@Attacks on human rights through the misuse of criminal charges

INTRODUCTION

There is a developing pattern of human rights violations in parts of Africa in which governments publicly committed to political pluralism adopt methods of curbing domestic opposition and criticism which are designed to minimise the likelihood of international disapproval and to keep their democratic credentials intact.[1] Certain types of legal charge are proving increasingly attractive to governments seeking to criminalise peaceful political activity or dissent in this new context. These charges include sedition, contempt of court, subversion, defamation, possession of classified documents, and holding meetings or demonstrations without an official permit. The use by the authorities of such charges against non-violent opponents or critics for political ends is a serious violation of international human rights standards. Indeed, the very way in which these charges are defined in national law is usually sufficient to bring them into conflict with international standards. For example, the definition of "sedition" in African legal systems tends to be based on outdated colonial law, embracing non-violent dissent when international judicial opinion today is widely agreed that "sedition", if it must apply at all, should apply only to direct incitement to violence.

This report gives examples of the misuse of these criminal charges against government opponents and critics in recent years by ostensibly pluralistic governments in five east and central African states: Kenya, Tanzania, Uganda, Zambia and Zimbabwe. They have been taken together because of their geographical proximity and because their legal systems have much in common, shaped as they were by British colonial rule. However, it is not only in east and central Africa that criminal charges have been brought against peaceful government opponents and critics. For example, the same phenomenon was noted in Ethiopia and Cote d'Ivoire during 1994.

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[1] Political pluralism as used here does not simply mean multi-partyism. The phrase should be understood as referring to the rights of individuals and groups to enjoy freedom of thought, conscience and religion, freedom of expression and association, and the right of peaceful assembly.

Certain types of "high-profile" human rights violation (for example, prolonged administrative detention without charge or trial) are now likely to provoke greater domestic and international scrutiny than has been the case in the past. Domestic human rights movements are increasingly organized and assertive while the international community has in some cases reduced its aid and development assistance to governments whose human rights record is clearly a poor one. The examples of Kenya, Tanzania, Uganda, Zambia and Zimbabwe illustrate how the criminal charges discussed in this report, some of them potentially carrying long prison sentences, have become valuable "low intensity" methods through which troublesome opponents and critics can be harassed. The use of such charges is often as much about restriction and intimidation as prosecution and actual imprisonment. Indeed, the mere existence on the statute book of such charges, backed by periodic threats to use them, can be enough to restrict and intimidate critics. These charges are often held for prolonged periods over the heads of individuals who have been granted bail after being briefly detained. A significant proportion of these charges are eventually dropped without ever coming to trial. When they do come to trial, the courts, if sufficiently independent, sometimes acquit the accused. But there remain instances where individuals have in the end been found guilty and imprisoned.

The examples of Kenya, Tanzania, Uganda, Zambia and Zimbabwe also demonstrate how those at the receiving end of these charges are often individuals and groups at the heart of efforts to build strong civil societies founded on respect for human rights, for example, journalists, lawyers, human rights activists, academics, members of opposition political parties and other peaceful political activists. The victims of such human rights violations are in many cases prisoners of conscience. Amnesty International is concerned to ensure that human rights violations of the character described here are not forgotten amidst the public focus upon human rights crises elsewhere in Africa. The report urges the governments of Kenya, Tanzania, Zambia and Zimbabwe to end the use of criminal charges for political reasons and to initiate urgent reviews of their respective national laws and procedures with the aim of bringing them fully into line with international human rights standards.[2]

[2] The overall human rights situation in these states is described in the *Amnesty International Report* and in other documents available from Amnesty International Sections.

1. Kenya

Kenyan politics have been dominated since independence in 1963 by the Kenyan African National Union (KANU). After several years of fierce resistance to calls to bring to an end the official one-party state, President Daniel Arap Moi agreed to do so in late-1991. This change of heart came shortly after Kenya's main donors suspended all aid to the country. Multi-party elections in late December 1992, which were marred by electoral irregularities, returned to power President Moi and KANU, but opposition parties won almost half the seats in parliament.

Since 1992 the authorities appear to have preferred, where possible, to use less overtly political charges against peaceful protestors, human rights activists and government critics, so as to better camouflage human rights violations. However, the pattern of harassment has continued, particularly against those who have been attempting to investigate or report incidents of political violence in the Rift Valley and other parts of Kenya. Government involvement has been alleged in the "ethnic violence" which has killed around 1,500 people and displaced more than 300,000 since it began in late-1991.

Although opposition political parties operate openly and freely, opposition members of parliament, human rights activists, journalists and other government critics have been arrested in connection with peaceful demonstrations, speeches, publications or investigations into human rights abuses. Whole editions of newspapers and publications critical of government policies have been impounded and printing presses have been put out of action. Since January 1994 over twenty journalists have been intimidated, harassed, arrested, fined or imprisoned. In July one foreign journalist was deported after being held incommunicado for eight hours. The majority of those who have been arrested have been prisoners of conscience. They have either been held for a short period and then released without charge or charged with sedition or related offenses such as subversion and released on bail after a few days or weeks. Charges have then been dropped after some months. Sedition carries a penalty of up to ten years' imprisonment. Subversion carries a penalty of up to three years' imprisonment.

Amongst recent cases, four journalists working for *The Standard* newspaper, including managing editor Kamau Kanyanga, were arrested in March 1994 and charged with subversion in connection with an article alleging renewed political violence in Molo, 200km north-west of Nairobi. The journalists were held for over two weeks, having initially been denied bail, and were then required to attend court regularly for "mention" in Nakuru, at a considerable cost and interruption to their work. In June the charges of subversion against the four journalists were dropped and replaced with charges of sedition under the Kenya Penal Code. These charges too were later dropped.

However, there has been one case where those charged were brought to trial. Two Kenyan journalists, Bedan Mbugua, chief editor of *The People*, and one of its reporters, David

Makali, were imprisoned in June 1994 for four and five months respectively for contempt of court, following the publication of an article critical of the Kenyan judiciary. In March 1994, David Makali, writing in *The People,* quoted from an article by a prominent human rights lawyer, GBM Kariuki, in *Society* magazine, which stated that the recent dismissal by the Court of Appeal of an application by members of the unregistered University Academic Staff Union seeking orders to restrain the university administration from evicting them from University housing was the result of political interference. Kariuki, Makali and Mbugua, together with the publishing company of *The People*, were each charged with contempt of court. The case was heard by the Court of Appeal which has powers to hear any matter related to contempt of court. The Court of Appeal found the parties guilty and ordered them to pay a heavy fine and publicly apologise or go to prison. While Kariuki and the publishing company of *The People* complied, Mbugua and Makali refused. They were arrested on 14 June 1994 and had to serve their sentences of five and four months imprisonment respectively.

In a new and disturbing development, the government has now decided to use capital criminal charges (which are not bailable) against people whose only offence is that they are non-violent critics of the Kenyan government. In April 1994 the trial began of four prisoners of conscience, Koigi Wamwere, his brother, Charles Kuria Wamwere, his cousin, James Maigwa and G.G. Njuguna Ngengi, a local councillor. All four have been charged with attempted robbery with violence following an alleged raid on Bahati Police Station near Nakuru 150km north-west of Nairobi in November 1993. If convicted they face mandatory death sentences. All four men have been detained since November 1993. Amnesty International believes that the charges against them have been fabricated.[3] Similar charges have been used to detain Josephine Nyawira Ngengi, the sister of G.G. Njuguna Ngengi, and Geoffrey Kuria Kariuki since May and July 1994 respectively. Both of them are reported to have been badly tortured. Amnesty International is concerned that the charges against them have also been fabricated.

The misuse of criminal charges by the Kenyan authorities has been so widespread in recent years that official claims that the country has entered a new pluralist era since 1992 must be viewed with scepticism. Amnesty International calls upon the Kenyan government immediately to end the use of criminal charges for political reasons and to initiate a comprehensive and urgent review of its national laws and procedures so as to bring them fully into line with international human rights standards.

[3] See Amnesty International's report, *Kenya: Abusive use of the law: Koigi wa Wamwere and three other prisoners of conscience on trial for their lives* (AI Index: AFR 32/15/94).

2. Tanzania

Tanzania has effectively been ruled since independence in 1964 by same political party, known since 1977 as *Chama Cha Mapinduzi* (Party of the Revolution) and led today by President Ali Hassan Mwinyi. However, since independence there have been tensions within Tanzania over the constitutional relationship between the two parts of Tanzania, mainland Tanganyika and Zanzibar. Zanzibar had been an independent country before independence. Today it has its own parliament and control over its internal affairs. The main opposition party in Zanzibar is the Civic United Front (CUF), which believes in greater autonomy for Zanzibar. Along with other political figures on the mainland, it also campaigned for the introduction of a multi-party political system in Tanzania from 1989 onwards. Government opponents were arrested and detained by the authorities on charges such as possession of government documents and sedition.

In 1992, Tanzania amended its constitution to end the one-party state and legalise opposition parties. Multi-party elections are due in 1995. But there does not yet appear to have been a complete change in the official attitude to peaceful political opposition or criticism. This seems particularly to be the case in Zanzibar. In September 1993, 10 people, including Huwena Hamad, wife of Seif Sherif Hamad, Vice-Chairman of the CUF, were briefly detained and charged with organizing an illegal assembly and insulting Dr Salmin Amour, the President of Zanzibar. The charges were eventually dropped in 1994.

During 1994 repression by the Zanzibar government has focussed less on high-profile opposition leaders and more on rank-and-file opposition supporters and on obstructing the political activities of the opposition. At least 15 CUF supporters are reported to have been charged with possession of seditious material in the form of audio or video-cassette recordings of CUF public meetings. Bosa Haji, aged 27, of Tumbatu island, along with another man whose identity is not known, are reported to have received a three month sentence from Mkokotoni primary court in July 1994 for possession of one such audio-cassette. These charges must be understood in the context of the repeated refusal of the Zanzibar authorities to allow the CUF to hold public meetings in the north of Zanzibar, including Tumbatu island. The strategy adopted in 1994 is evidently likely to attract less international attention than targetting opposition leaders. In March 1994, the Zanzibar government issued a circular permitting the authorities to bar journalists with "questionable qualifications" from working in Zanzibar. How effectively this has been enforced is unclear, but it demonstrates that the Zanzibar government has sought to ensure that its harassment of opponents takes place without the glare of publicity.

There are also allegations that, on at least one occasion, the Zanzibar authorities have been willing to use a charge whose basis in law is unclear in order to harrass their opponents. It is claimed that in August 1994, 52-year-old Zubeir Haji Tandu appeared in court on a charge of obstructing the presidential motorcade at Kitopi, 18 kilometres north of Zanzibar Town. It is also claimed that the charge was brought against him by the police at Mahonda station when

they learnt that he was a supporter of the CUF. He was allegedly beaten up while in detention. He was released on bail after two days. His trial has not yet taken place.

Relations between the Tanzanian government and independent journalists have been troubled over the past year. In March 1994, two journalists, Paschal Shija, editor of *The Express* newspaper and Riaz Gulamani, its publisher, were arrested after an editorial was published accusing the Union government of incompetence. They were released on bail after 10 hours but were again briefly detained soon after and charged with sedition before being granted bail once more. Their lawyer is challenging the constitutionality of the charge of sedition, arguing that the 1976 Newspapers Act, under which it has been brought, is inconsistent with the Constitution as amended in 1992 to legalise private ownership within the media.

Although ordinary legislation was passed in Tanzania in 1993 to legalise private radio, television and newspapers, in the same year the Broadcasting Services Law was passed, which gave a government-appointed Broadcasting Commission powers to discipline and ban journalists and media outlets within the electronic media in "the public interest" or in the interests of "national security". An attempt to impose parallel restrictions on the print media was defeated in 1994 due to public opposition. However, the 1976 Newspapers Act continues to be in force and, as is shown by the above case of the journalists on the *Express*, gives the government extensive powers to interfere in the operation of the print media should it be so inclined.

In its 1992 report, the Presidential Commission on the Party System in Tanzania, whose chairman was the Chief Justice, Francis Nyalali, stated that if the Constitution was amended to allow for multi-partyism, many ordinary laws currently on the statute-book would need to be either repealed or amended so as to ensure that they did not violate the Constitution. A number of laws have been ruled as unconstitutional by the High Court of Tanzania, for example, those relating to the death penalty, corporal punishment, sedition, the right to stand as an independent candidate in elections and, finally, the law which requiremes that official permits must be sought before a political rally or demonstration can be held.[4] Amnesty International believes that Tanzania needs to undertake a comprehensive review of its national laws and procedures if it is to meet the challenge posed by the Nyalali Commission.

[4] The Union government is appealing against all of these High Court rulings, with the exception of that relating to the need to obtain an official permit before holding a meeting or demonstration. Although the Union government originally said that it would also appeal against this ruling, in November 1994 the Tanzanian National Assembly approved a government-sponsored amendment to the law so as to require only that in future the authorities be given notice of such a meeting or demonstration. The police appear to retain powers to stop meetings or demonstrations where they clash with other meetings or demonstrations, where they threaten to cause breach of the peace or prejudice public safety, or where they are called by an unregistered political party. It is as yet unclear whether the Zanzibar authorities have undertaken to abide by these new procedures.

3. Uganda

The National Resistance Movement (NRM), led by the current Ugandan president, Yoweri Museveni, took power in 1986. There had been gross and systematic human rights violations in Uganda under a series of governments since independence in 1962. Although an undoubted improvement upon its immediate predecessor, the NRM's human rights record was mixed between 1986 and 1992. Soldiers were reported to have killed hundreds of prisoners and civilians as armed insurgencies were countered, torture remained common and the law was misused to imprison critics. Killers and torturers in the army were rarely brought to justice. On the political front, the NRM banned political activity by political parties although it allowed them to exist. However, there was a relatively tolerant attitude towards the press. In recent years, the level of armed insurgency against the government has fallen markedly and the issue of whether to return to multi-partyism is again at the top of the political agenda. There have been important improvements in the human rights situation since 1992.

However, official harassment and obstruction of peaceful political activity or criticism resurfaces periodically and charges such sedition, defamation, the illegal possession of government documents, publishing false news and holding meetings without permission have been employed in this regard.

Henry Kayondo, a lawyer involved in defending detainees charged with treason, was briefly detained and charged with illegal possession of government documents in April 1992. The documents were to have been used as evidence in a treason trial taking place at the time and this seemed a blatant attempt to intimidate the defence. The charges against Henry Kayondo were dropped in 1993.

Journalists have been prominent targets of politically-motivated criminal charges. Hussein Musa Njuki, editor-in-chief of *The Shariat* newspaper, and Haruna Kanabi, a sub-editor on the paper, were held for 11 days and nearly three weeks respectively in October 1993 before being bailed on sedition charges after *The Shariat* carried an article critical of the government and accusing a government minister of double standards. No further official action is known to have been taken, although the charges have not been dropped. The Editor-in-Chief of *The Monitor*, Wafula Oguttu, was arrested on three charges of defamation and one charge of "publishing false statements likely to cause alarm" in October 1994 after publishing a story claiming that President Museveni had strongly criticized government ministers at a meeting three months earlier. He was detained overnight and taken to court the next morning, at which point the charges were withdrawn by the authorities. No minister would admit to having any involvement in Oguttu's arrest and detention.

In March 1994, two leading representatives of the Uganda People's Congress, Haji Badru Kendo Wegulo and Patrick Rubaihayo, were briefly detained and charged with sedition on the grounds that they were responsible for claims in a party manifesto that Uganda was being ruled by Tutsi of Rwandese origin. This was viewed by the authorities as having the intention of discrediting and inciting opposition to President Yoweri Museveni and the ruling NRM. However, in September 1994, after the case had been adjourned in court several times because the prosecution claimed that it had not finished its investigations, the Chief Magistrate of Kampala threatened to dismissed the case on the grounds that evidence had not been presented to him to sustain the charges in a court of law. There have been no further court hearings since then.

The police have on numerous occasions in recent years ordered the cancellation of public meetings and rallies in Kampala, the capital of Uganda. For example, in August 1994, a rally by the Crusade for Constitutional Governance was dispersed by the police. In September 1994, the Sheraton Hotel informed a group called *Abaana ba Buganda* (Children of Buganda) that it had rescinded its agreement for a meeting of the group to be held there that day on the advice of the police. Finally, in December 1994, a rally by the Democratic Party Mobilizers Group in Kampala was dispersed by about 100 armed policemen on the grounds that official permission had not been sought by the organizers. A rally organized by the same group in 1993 had met the same fate.

Uganda is currently in the process of drawing up a new constitution. Amnesty International sought to contribute to the public debate in Uganda over the new constitution through a report, *Uganda: Recommendations for safeguarding human rights in the new constitution* (AI Index: AFR 59/03/94). Whatever the outcome of the constitution-making process, a priority for Ugandans should be to undertake a review of national laws and procedures so that both are brought fully into line with international human rights standards. Amnesty International hopes that this consideration will also be borne in mind by Ugandan parliamentarians when they come once again to debate the Mass Media and Journalists Bill. If passed in the form in which it was tabled in 1994, it would impose restrictions upon freedom of expression which would be in violation of international human rights standards.

4. Zambia

Multi-party politics was re-introduced in Zambia in 1990. By the end of 1991, the United National Independence Party (UNIP) and President Kenneth Kaunda, the rulers of Zambia since independence in 1964, had been defeated in elections by the Movement for Multiparty Democracy (MMD), led by Frederick Chiluba. Chiluba and the MMD promised a new era in human rights. However, this promise has been only partially delivered. As levels of political opposition and criticism have grown since 1991, the authorities have increasingly resorted to

charges such as sedition, defamation, possession of confidential documents and publication of false stories likely to cause public alarm.

In March 1993 at least 27 government opponents were detained without charge or trial under a state of emergency declared by President Chiluba on the grounds that a document, entitled *Zero Option*, outlined plans by the United National Independence Party (UNIP) to overthrow the government. UNIP claimed that the document was not party policy and contained options which had been rejected. The emergency was lifted in May 1993. However, a number of those originally detained were rearrested on charges including sedition and possession of classified documents. In October 1993, Bweendo Mulengela, a senior member of UNIP, was sentenced to nine months' imprisonment for possession of the *Zero Option* document. His appeal is due to be heard in January 1995. In September 1994, Wezi Kaunda, son of the former president Kenneth Kaunda, was given a three-month suspended sentence for possession of the same document.

During 1994, the government has been particularly angered by criticism from the bi-weekly newspaper, *The Post,* which has made a series of allegations of incompetence and corruption. In April 1994, Fred M'membe, Managing Director of *The Post*, and reporter Bright Mwape were arrested by the police and charged with defaming President Chiluba by publishing an article which quoted an insulting description of the President by a former minister. Section 69 of the Penal Code makes it illegal to insult the President. In May the case was sent to the High Court for it to consider the constitutionality of the charge. The High Court has not yet given a ruling. If found guilty the two journalists could face up to three years imprisonment.

Then in May 1994, M'membe was summoned for questioning over an article in *The Post* about government housing policy which it was alleged contravened the Official Secrets Act. M'membe refused to attend for questioning. In August, M'membe ignored a summons to give evidence in the trial of Ludwig Sondashi, a former Health Minister, himself on a defamation charge after making allegations against the President. M'membe was warned by the police that he and other journalists on the newspaper could themselves face charges of defamation for having reported Sondashi's allegations. He was also warned that he and other journalists on the newspaper could face charges of "publishing information which is likely to cause public alarm". This charge was based on an article which reported that the United Nations had accused Zambia and Zaire of violating sanctions against the Angolan rebel movement, the *União Nacional para a Independência Total de Angola* (UNITA).

On 23 August 1994, Fred M'membe, Bright Mwape and two other journalists on *The Post* were arrested and charged with a variety of offences. They were released after several hours in custody. On 25 August, five more journalists on the newspaper, Masauto Phiri, Dingi Chirwa, Jowrie Mwinga, Magayo Mambo and Peter Chilambwe were arrested and charged with a variety of offences. The charges against the nine *Post* journalists included five counts of

defamation of the Press Attache to the President, Richard Sakala, one count of defamation of the President himself, two counts for having been in possession of and having printed classified documents and one count for having "published false information likely to cause public alarm". Fred M'membe was charged with all of the above counts. An initial hearing took place on 26 August 1994, but the cases have not to date been heard.

All nine journalists were granted bail promptly. None of them were detained for a prolonged period on these charges. But there can be little doubt that this welter of charges at the journalists of *The Post* has the aim of harassing and even silencing perhaps the most effective source of criticism of the government in Zambia today. In recent months the MMD-dominated National Assembly has added a clause to the Leadership Code of Ethics Bill which was already before it. This clause provides for the establishment of a special tribunal, chaired by the Chief Justice, with which Ministers and parliamentarians could lodge a complaint whenever a they believed that they had been wrongly accused or unjustly maligned by the press. The tribunal could compel journalists to appear before it within 45 days of a complaint being lodged and has powers to order that they reveal their sources. The bill currently awaits Presidential assent. In December 1994, police raided the offices of *The Post* in Lusaka and *Printpak* in Ndola, where the newspaper is printed, taking away a number of unused stories which it was believed might potentially embarrass the government. They also searched the offices of *The Post* for confidential state documents.

After the MMD came to power in 1991, a new Constitution was promulgated. The Constitution is again being reviewed by a Commission established by the President. The time has come for the Zambian government to show similar commitment to pluralism and human rights in its national laws and procedures by initiating a thorough review of both with the aim of bringing them fully into line with international human rights standards.

5. Zimbabwe

Unlike the other states covered by this report, Zimbabwe has never been a de jure one-party state. Many within the Zimbabwean African National Union (ZANU), which has ruled Zimbabwe since independence in 1980, called for an official one-party state in the late-1980s. President Robert Mugabe was one of those who did so. These calls came just as the one-party state was in retreat elsewhere. The campaign for it within ZANU eventually ended. This has not prevented ZANU from maintaining its political dominance. Political opponents and critics have been subject in recent years to official harassment which has impeded their ability to campaign and has sometimes led to serious human rights violations, particularly at the time of national elections.

There is no doubt that Zimbabwe's overall human rights record has improved markedly since the mid-1980s, when security forces engaged in widescale detention, torture and political killings as part of their campaign against "dissidents" in Matabeleland. The authorities have consistently failed to take action to bring to justice those guilty of such human rights violations. Despite this improvement, intolerance of opposition or criticism remains considerable. This is demonstrated by the use in recent years of charges against political opponents and journalists such as organizing an illegal assembly, possession of classified documents and failure to reveal sources.

In June 1992 six members of the Zimbabwe Congress of Trade Unions (ZCTU), David Munhumeso, Temba Goremucheche Chihwai, Eliot Muzvimwe, Phillip Matumba, Joseph Mutombwa and Ashlet Fataar, were arrested by police during a ZCTU demonstration and charged with contravening section 6(6) of the Law and Order (Maintenance) Act, which states that all public assemblies must be granted official permission. The ZCTU had earlier been refused permission. The demonstration was organized as a protest against aspects of proposed industrial relations legislation.

The Law and Order (Maintenance) Act was first introduced during the colonial period. Its requirement that official permission be sought before a meeting can be held is a clear violation of the right to freedom of peaceful assembly. The lawyers of the six men challenged the constitutionality of the charges arguing that section 6 (6) of the Law and Order (Maintenance) Act was an infringement of the rights to freedom of expression and assembly as guaranteed in the Zimbabwean Constitution. In March 1994 the Supreme Court ruled that the section of the Act was indeed a violation of sections 20 and 21 of the Constitution and stated that its use could not be justified in a democratic society either in the interests of public safety or public order. However, Dumiso Dabengwa, Minister of Home Affairs, has responded by stating that, while the Law and Order (Maintenance) Act will now be repealed, he will seek an constitutionally-acceptable methods of controlling public meetings in order to "protect the security of the public not involved in them". It is not yet clear exactly what methods this will involve.

The Official Secrets Act and the Parliamentary Privileges and Immunities Act have been frequently used to threaten journalists in Zimbabwe and generally to curb freedom of expression. In particular, journalists investigating government corruption scandals have been threatened with prosecution under these two Acts if they refuse to reveal their sources. For example, on 2 March 1994, *Daily Gazette* journalist, Basildon Peta, was detained by police in connection with a story he had written alleging a tax evasion racket by two companies owned by the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) and a third company under the direct control of the Zimbabwean government. He was released after a few hours but over the next three days was regularly re-detained and interrogated together with the editor of the *Daily Gazette*, Brian Latham. On 3 March 1994 police raided the offices of the *Daily Gazette* and

confiscated documents and other materials. Having refused to comply with the police demand, both Basildon Peta and Brian Latham were charged with receiving and publishing classified documents. They were never formally arraigned however and the charges appear to have been dropped.

The Parliamentary Privileges and Immunities Act has also been used in an attempt to cover up corruption scandals. In September 1992 the editor of the weekly *Financial Gazette*, Trevor Ncube, and a reporter from the newspaper, were ordered to appear before a Parliamentary Select Committee to reveal their sources on a story published about a parliamentary investigation into an alleged banking scandal. After being threatened with imprisonment they eventually complied. However, in June 1994, the High Court upheld the right of Geoffrey Nyarota, former editor of the daily newspaper, the *Chronicle*, to protect his sources in relation to his exposure of the Willowvale scandal in 1988. The High Court stated that the courts would be guilty of a disservice to Zimbabwe and to the principles of democracy if they failed to protect journalists who were uncovering corruption.

There have been a series of laws whose provisions have been challenged in Zimbabwe in recent years on the grounds of unconstitutionality. Where courts have upheld these challenges, the Zimbabwean government has in the past simply sought to amend the Constitution to suit its original preference. This was the case in 1993, when the Supreme Court ruled that a long period of waiting on death row constituted inhuman and degrading punishment and so violated the Constitution. As a result 37 death sentences were commuted to life imprisonment. Parliament amended the Constitution to prevent future death sentences being challenged on such grounds. But the announcement that the March 1994 ruling on Section 6(6) of the Law and Order (Maintenance) Act will not be challenged raises hopes that a new precedent may have been set. But a piece-meal approach is not enough. Amnesty International believes that a thorough review of national laws and procedures is urgently required to bring both fully into line with international human rights standards.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

Amnesty International's recommendations to the authorities in Kenya, Tanzania, Uganda, Zambia and Zimbabwe are as follows:

1. The authorities should as a matter of urgency end the use of charges such as sedition, contempt of court, defamation, possession of classified documents, subversion and holding meetings without a permit to criminalise and punish peaceful political activity or dissent.

2 A comprehensive review of national laws and procedures should be promptly initiated so as to ensure that both are brought fully into line with key international and regional human rights instruments. These instruments are:
! The International Covenant on Civil and Political Rights (ICCPR)
(in particular Articles 9, 14, 18, 19, 21, 22;
! The African Charter on Human and Peoples' Rights (ACHPR)
(in particular Articles 6-11).

All these countries are parties to the ACHPR. All except Uganda are parties to the ICCPR. Amnesty International understands that Uganda intends to sign the ICCPR in 1995.

3 In addition to the ICCPR and the ACHPR, the review should also bring national laws and procedures fully into line with other international human rights standards. These include:
! The UN Code of Conduct for Law Enforcement Officials (Resolution 34/169 of the General Assembly of 17 December 1979); the UN Basic Principles on the Independence of the Judiciary (Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985); and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Resolution 43/173 of the General Assembly of 9 December 1988).

For example, the review would need to ensure that in future:

a) no arrests take place without sufficient evidence to establish a clear case against the accused based on a recognizably criminal offence;
b) that individuals brought before a court of law on a recognizably criminal offence are not denied bail gratuitously and that there are fair and prompt trials in all cases;
c) that the independence of law enforcement officials and the judiciary from political interference in the conduct of their duties is effectively safeguarded.

4 Any conflict between national laws and procedures, as revised, and existing constitutional provisions should also be promptly resolved.

5 Where it does not yet exist, an independent and impartial forum for leading a review of national laws and procedures should be established. This could take the form of a properly constituted and adequately resourced Law Reform Commission.

CONCLUSION

It is not surprising that there should be confusions and contradictions within the legal systems of countries in Africa seeking to build political pluralism and enhance human rights. Past histories of conflict, intolerance or repression cannot be simply shrugged off. Nevertheless, the resort by the governments of Kenya, Tanzania, Uganda, Zambia and Zimbabwe to the harassment and obstruction of critics and opponents through the use of the type of charges described in this report raises serious doubts as to the depth of their commitment to political pluralism and human rights. In doing so, they violate fundamental human rights such as the right to freedom of thought, conscience and religion, the right of peaceful assembly and the rights to freedom of expression and association. Each of these rights should be at the heart of the political pluralism which these governments today claim to espouse. It is to be hoped the new government in Malawi, led by President Bakili Muluzi, which has also publicly committed itself to the promotion and enhancement of human rights, can resist the temptation to which the governments of these countries have periodically succumbed.

Given the gross and systematic violations of human rights which continue to occur in parts of Africa today, it might seem misplaced to focus upon an issue like the use of charges such as sedition, defamation, subversion, contempt of court and organizing illegal meetings against peaceful political opponents and critics. Amnesty International believes that it is vital to protect and promote human rights in all circumstances, not solely in situations of protracted "human rights crisis". And "low intensity" violations are often linked to graver human rights violations elsewhere, as the case of Kenya confirms.

Furthermore, where foundations have been laid for the development and enhancement of human rights in Africa, it is vital that they should be deepened and strengthened further. This is also the best support which can be given to those human rights workers in Africa who have struggled so hard to lay those foundations. This is why Amnesty International is now urging the governments of Kenya, Tanzania, Uganda, Zambia and Zimbabwe to end their use of these charges to harass and obstruct peaceful political activity and criticism.