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Zimbabwe

Human rights defenders under siege

1. Introduction

Amnesty International is deeply concerned by the repression of human rights defenders in Zimbabwe. The government, in an effort to conceal human rights violations and prevent public protest and criticism of its actions, has become increasingly intolerant of the work of human rights defenders and is actively seeking to silence them.

The repression of human rights defenders takes many forms. In recent years the government has used the law to violate defenders' rights to freedom of expression, association and assembly, preventing them from freely forming organizations, meeting together and criticizing government policy. Individual defenders are arbitrarily arrested and detained, assaulted and harassed by state agents. Some have been subjected to torture and inhuman or degrading treatment. Human rights organizations are also subject to intrusive and unwarranted state surveillance of their operations.

In 2004 the government introduced legislation that, if enforced, would ban international human rights organizations from operating in Zimbabwe and could be used to close down or severely restrict the work of national human rights organizations. Despite criticism from human rights groups worldwide, the Non-Governmental Organizations (NGO) Bill was passed by Zimbabwe's Parliament on 9 December 2004.¹ However, it was not signed into law before Parliamentary elections on 31 March 2005, and its future is now unclear. Amnesty International believes that the NGO Bill was introduced in order to intimidate human rights organizations through the threat of closure.

Since the Parliamentary elections Amnesty International has noted, with growing concern, the government's continuing repression of human rights defenders, including numerous arbitrary arrests, serious assaults and intimidation.

This report documents the Zimbabwe government's escalating repression of civil society, and looks in particular at how organizations and individuals that are critical of the government's human rights record or that mobilize peaceful public demonstrations have become key targets of this repression. The report contains recommendations to the Zimbabwean government for action to protect human rights defenders. Specifically, Amnesty International is calling for the repeal of all legislation that violates internationally recognized human rights and undermines the work of human rights defenders, and an end to state harassment of human rights defenders.

¹ For a human rights critique of the proposed NGO Act see, amongst others: Amnesty International, "NGO Act is a gross violation of human rights", 10 December 2004, AI Index: AFR 46/039/2004; International Bar Association, "Analysis of the Zimbabwe Non-governmental Organizations Bill, 2004", 24 August 2004; Human Rights Watch, "Proposed law on NGOs would violate basic rights", 4 September 2004; Zimbabwe Lawyers for Human Rights, "Zim NGO Bill: Dangerous for human rights defenders", July 2004; Parliament of Zimbabwe, "Parliamentary Legal Committee adverse report on the NGO Bill [H.B. 13, 2004]", 9 November 2004.

2. Zimbabwe's human rights obligations under international and national law

Zimbabwe's human rights obligations include both the commitments contained in the Constitutional Bill of Rights and the international treaties to which it is a State Party. Zimbabwe is State Party to, amongst others, the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (African Charter).²

Under Zimbabwe's legal system, international treaties which have been acceded to or otherwise ratified are not automatically incorporated into national legislation. According to Section 111b of the Zimbabwean Constitution,³ international conventions, treaties and agreements which have been acceded to, concluded or executed only form part of Zimbabwean law once an Act of Parliament has been passed. Neither the ICCPR nor the African Charter has been incorporated into Zimbabwe's domestic laws.

However, under international law, international treaties must be observed in good faith by those States which have ratified or acceded to them. Furthermore, a State Party may not invoke the provisions of its national law as justification for its failure to implement a treaty.⁴ In this sense, States Parties are obliged to repeal or amend domestic laws to ensure that they are consistent with international treaties as well as to adopt measures to ensure the implementation of the obligations contained in the treaties to which they are party.

Freedom of expression, association and assembly

The rights to freedom of expression, association and assembly are fundamental to the work of human rights defenders. These rights are enshrined in the Constitution of Zimbabwe (sections 20 and 21), the ICCPR (Articles 19, 21 and 22) and the African Charter (Articles 9, 10 and 11).

While the rights to freedom of expression, association and assembly are not unlimited, international human rights law prevents governments from arbitrarily restricting these rights. In respect of rights contained in the ICCPR the UN Human Rights Committee has stated:

“States Parties must refrain from violation of the rights recognized by the Covenant and any restrictions on any of those rights must be permissible under the relevant provisions of the Covenant. Where such restrictions are made, States must

² Zimbabwe acceded to the ICCPR in 1991 and ratified the African Charter in 1986.

³The Constitution of Zimbabwe (As amended to No.16 of 20 April 2000).

⁴ See articles 26 and 27 of the Vienna Convention on the Law of Treaties (1969). Although Zimbabwe is not a party to the Vienna Convention on the Law of Treaties, Article 26, which refers to the principle of *pacta sunt servanda* stating that “Every treaty in force is binding upon the parties to it and must be performed by them in good faith”, is recognized as a rule of customary international law. Further to Zimbabwe's accession to the ICCPR in 1991, Article 49.2 of the ICCPR states that “[f]or each State ratifying the present Covenant or acceding to it ... the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.”

demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights. In no case may the restrictions be applied or invoked in a manner that would impair the essence of a Covenant right.”⁵

The African Commission on Human and Peoples’ Rights (African Commission) has repeatedly affirmed the rights to freedom of expression, association and assembly. The African Commission’s Declaration of Principles on Freedom of Expression in Africa, adopted at the 32nd Session of the African Commission held in October 2002 in Gambia, reaffirms the fundamental importance of freedom of expression as a means of ensuring respect for all human rights, stating that freedom of expression is a fundamental human right and an indispensable component of democracy.⁶ The declaration makes clear that any restrictions on freedom of expression should be prescribed by law, serve a legitimate interest and be necessary and in a democratic society. This echoes the language of the ICCPR which states:

“No restrictions may be placed on the exercise of [the right to freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”⁷

The African Commission Resolution on the Right to Freedom of Association also makes specific reference to the limits of any restriction on the right to freedom of association:

1. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards; 2. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom; 3. The regulation of the exercise of the right to freedom of association should be consistent with State’s obligations under the African Charter on Human and Peoples’ Rights.”⁸

International human rights standards and human rights defenders

In clear recognition of the important work of human rights defenders, the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (referred to as the UN Declaration on Human Rights Defenders) was adopted by the UN General Assembly in

⁵ General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.1, para. 6.

⁶ African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa, I(1), October 2002, Gambia.

⁷ ICCPR, Article 22 (2).

⁸ African Commission on Human and Peoples’ Rights, Resolution on the Right to Freedom of Association, Tunis, March, 1992.

1999.⁹ This Declaration sets down a series of principles and standards aimed at ensuring that states fully support the efforts of human rights defenders and ensure that they are free to conduct their activities for the promotion, protection and effective realization of human rights without hindrance or fear of reprisals.

Key articles in the Declaration include the right to be informed about fundamental rights and freedoms, and to meet and assemble peacefully for the purpose of promoting universally recognized human rights. The Declaration also confirms the right to criticize government policy and action in relation to human rights, and the right to adequate protection and an effective remedy when an individual's rights are violated as a result of efforts to promote fundamental rights and freedoms.

Articles of the Declaration also deal specifically with the practical work of human rights defenders, such as funding and resources for their work. Human rights defenders cannot rely on being paid for the services they provide; the victims of human rights violations and the other people represented or assisted by defenders are often poor. The UN Declaration on Human Rights Defenders guarantees to everyone the right to "solicit, receive and utilize resources for the express purpose of promoting and protecting human rights through peaceful means".¹⁰

The Declaration further states that human rights defenders, whether individuals or organizations, should be subject only to such limitations as are in accordance with applicable international obligations.¹¹

The African Union (and the Organization of African Unity before it) has repeatedly affirmed the importance of human rights defenders and the UN Declaration on Human Rights Defenders. At the first Organization of African Unity (OAU) Ministerial Conference on Human Rights at Grand Bay, Mauritius in April 1999, the OAU called "on African governments to take appropriate steps to implement the Declaration in Africa".¹²

In 2004 the African Commission on Human and Peoples' Rights appointed a Special Rapporteur for Human Rights Defenders in Africa. In its resolution, the African Commission called upon member states:

*"to promote and give full effect to the UN Declaration on Human Rights Defenders, to take all necessary measures to ensure the protection of human rights defenders and to include information on measures taken to protect human rights defenders in their periodic reports".*¹³

⁹ A/RES/53/144, 8 March 1999.

¹⁰ UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Article 13.

¹¹ *Ibid.*, Article 17.

¹² Organization of African Unity, Grand Bay (Mauritius) Declaration and Plan Of Action, adopted at Grand Bay, Mauritius on 16 April 1999, para 19.

¹³ African Commission, Resolution on Protection of Human Rights Defenders in Africa, 35th Ordinary Session, Banjul, the Gambia, June 2004. See also, Amnesty International, "Towards the Promotion and Protection of the Rights of Human Rights Defenders in Africa. Amnesty International's recommendations to the Focal Point on

The African Commission on Human and Peoples' Rights: fact-finding mission to Zimbabwe

In 2002 the African Commission on Human and Peoples' Rights sent a fact-finding mission to Zimbabwe. The mission took place in the context of Zimbabwe's obligations under the African Charter on Human and Peoples' Rights. Although the report of the fact-finding mission was adopted by the African Commission in November 2003, in accordance with the Rules of Procedure of the African Commission, it was not officially made public until it had been considered by the African Union in January 2005.¹⁴ In the report, the African Commission makes a number of findings and recommendations that are relevant to the work of human rights defenders in Zimbabwe.

The African Commission found that "the government had failed to chart a path that signalled a commitment to the rule of law" and in its recommendations stated that "the independence of the judiciary should be assured and that court orders should be obeyed".

The Commission found that the government had introduced laws which undermined freedom of expression and recommended that such laws be amended to meet international standards for freedom of expression.

The Commission further stated that: "Legislation that prohibits the public participation of NGOs in public education and human rights counselling must be reviewed. The Private Voluntary Organizations Act should be repealed."

3. The tools and tactics of repression

Despite these international laws and standards Amnesty International has found that human rights defenders in Zimbabwe are under siege. Human rights defenders have played a vital role in exposing the human rights violations that have taken place in Zimbabwe, particularly over the last five years. They have also been instrumental in organizing peaceful public displays of protest about human rights issues. In response, the government has attempted to undermine and curtail their work by subjecting them to serious violations of their human rights.

Human Rights Defenders of the African Commission on Human and Peoples' Rights", 19 March 2004, AI Index: IOR 63/004/2004.

¹⁴ The report of the mission, containing its findings and recommendations to the government, was adopted by the African Commission at its 34th Ordinary Session in November 2003. See: Final Communiqué of the 34th Ordinary Session of the African Commission on Human and Peoples' Rights, para 16, Gambia, 20 November 2003; In accordance with its Rules of Procedure the African Commission forwards its final mission reports to the governments concerned for comments. The report and the government's comments – if any – are then submitted to the African Union (AU) Assembly of Heads of State and Government. The African Charter on Human and Peoples' Rights (African Charter) provides that all measures taken within the provisions of the Charter remain confidential until the AU Assembly decides otherwise. Following consideration by the AU Assembly, the Commission's Annual Activity Reports, which include reports on missions and other activities, shall be made public. See: Article 59 of the African Charter on Human and Peoples' Rights.

Additionally, because they are critical of the government, human rights defenders are viewed as political players and supporters of the political opposition, the Movement for Democratic Change (MDC). The Government of Zimbabwe has repeatedly expressed the view that the MDC and certain human rights organizations are being used by foreign governments to oust the Zimbabwe African National Union-Patriotic Front (ZANU-PF) from power and effect “regime change”.¹⁵ Human rights defenders have been branded as “subversive”, “foreign-controlled” and “racist”.

The following sections of this report examine the specific tools and tactics which the Government of Zimbabwe has used in recent years in its attempt to silence human rights defenders and thereby prevent exposure of and accountability for human rights violations.

The law as a tool of repression¹⁶

Since 2002 the Government of Zimbabwe has introduced or revived several pieces of legislation which restrict freedom of expression, association and assembly, rights which – as noted above – are fundamental to the work of human rights defenders. The authorities have used provisions in such legislation in a discriminatory manner, applying the restrictive provisions to critics of the government, but rarely to government supporters.

Laws which have most severely constrained the work of human rights defenders in Zimbabwe include the Public Order and Security Act, the Access to Information and Protection of Privacy Act, the Private Voluntary Organizations Act and the Miscellaneous Offences Act. Many provisions of these Acts directly contravene international human rights law and standards.

The Public Order and Security Act

In January 2002, the Special Representative of the UN Secretary General on Human Rights Defenders sent an urgent communication to the Zimbabwean authorities raising concerns that the Public Order and Security Bill, if enacted, would restrict the rights to freedom of expression, association and assembly.¹⁷ The Public Order and Security Act (POSA) became law on 22 January 2002. Amnesty International believes that POSA fails to comply with international law on the rights to freedom of expression, association and assembly, in particular because it places unreasonable limitations on the enjoyment of these freedoms.

Since its introduction POSA has been used by the authorities in Zimbabwe to arbitrarily arrest hundreds of opposition supporters, independent media workers and human rights defenders. This targeted use of POSA has resulted in violations of Zimbabwean’s rights to freely

¹⁵ See for example: Comments by the Government of Zimbabwe on the Report of the Fact Finding Mission of the African Commission on Human and Peoples’ Rights; Response by the delegation of the Government of Zimbabwe to statements by Non-governmental organizations. *The Herald* (Zimbabwe) “NGOs have failed to effect regime change”, 30 July 2004

¹⁶ This section draws on Amnesty International’s research on repressive legislation presented in “Zimbabwe: Rights under siege”, May 2003, AI Index AFR 46/012/2003

¹⁷ Special Representative of the Secretary General on Human Rights Defenders, Report to the 59th Session of the UN Commission on Human Rights, February 2003, E/CN.4/2003/104/Add.1, para. 513

assemble, criticize the government and President, and engage in, advocate or organize acts of peaceful civil disobedience.

Under POSA the police must be notified four days in advance of any public meeting or demonstration. In practice the police have interpreted the requirement to “notify” as meaning that police permission is needed before a public event can take place. The Act allows the police to prohibit public events if they believe such events will result in public disorder. Amnesty International believes this provision has been misused to prevent civic groups and the political opposition from holding public meetings. Furthermore, in practice the police have used arbitrary criteria to distinguish between “private” and “public” gatherings, and have used POSA to arrest people for meeting in their own homes or places of business.

Many human rights defenders arrested under POSA for allegedly participating in “illegal” meetings or demonstrations have had the charges against them dropped or dismissed in court due to lack of evidence.¹⁸ Others have been arrested under POSA only to have the charges changed to those of “conduct likely to cause a breach of the peace”, an offence under the Miscellaneous Offences Act (MOA). According to Arnold Tsunga, Director of Zimbabwe Lawyers for Human Rights, MOA is being used in conjunction with POSA to “create a minefield for human rights activists”, as virtually any conduct can be deemed to be behavior likely to cause a breach of the peace.

“Zimbabwe Lawyers for Human Rights’ experience has been that in the majority of cases where human rights activists have been targeted for persecution, the state initially charges them with violation of POSA and if they meet with resistance, they normally downgrade the charges to violation of a section of the MOA.”¹⁹

Amnesty International is also concerned by the way in which the Zimbabwe Republic Police use MOA to regularize arbitrary arrests. When human rights defenders are arrested they are frequently offered the option to pay fines under MOA - effectively an admission of guilt - in order to be released from custody. Police have reportedly told detainees that if they do not pay a fine then they will be detained for 48 hours or more and could face more serious charges.²⁰ Squalid conditions in police holding cells and fear of physical harassment force many defenders to pay fines for offences they have not committed. This practice, which means police avoid a judicial review of the legal grounds for the arrest, constitutes an abuse of police power and establishes an environment in which the practice of arbitrary arrest can flourish.

The Access to Information and Protection of Privacy Act

In many countries the media is a powerful tool for exposing human rights abuses and holding governments to account. As a consequence media is often severely restricted in countries where governments seek to commit abuses with impunity. Over the past three years

¹⁸ See Amnesty International, “Zimbabwe: Rights under siege”, May 2003, AI Index AFR 46/012/2003; Zimbabwe Lawyers for Human Rights, “Human Rights Defenders Emergency Fund, Programmatic Report”, 2004.

¹⁹ Tsunga, A., “An overview of the human rights situation in Zimbabwe, with specific reference to repressive legislation, impunity, the state of the administration of justice and selective application of the law”, 20 February, 2004.

²⁰ See for example the case study on Women of Zimbabwe Arise, page 16 of this report.

Zimbabwe's independent media has come under sustained attack. The government has attempted to legalize this repression - introducing the Access to Information and Protection of Privacy Act (AIPPA) in March 2002. Amnesty International believes AIPPA is inconsistent with international law and standards on freedom of expression. The African Commission has described AIPPA as likely to have a "‘chilling effect’ on freedom of expression and introduce a cloud of fear in media circles" and has recommended that the law should be amended to meet international standards for freedom of expression.²¹

Since its enactment AIPPA has been used to close down independent media, arrest scores of journalists and prevent foreign journalists from working in Zimbabwe. In 2003 this legislation was used to close down Zimbabwe's only independent daily newspaper, the *Daily News*, and the weekly *Daily News on Sunday*. It was also used to shut down the *Daily Tribune*, in 2004, and the *Weekly Times* of Bulawayo in February 2005.

The case of the *Daily News*

The *Daily News*, Zimbabwe's only independent daily newspaper, was closed on 12 September 2003. Prior to its closure the paper, founded in 1999, was strongly critical of the government's human rights record and regularly published information on human rights abuses by state agents. The newspaper was the target of repeated verbal attacks by government officials.

The *Daily News* was closed the day after the Supreme Court had ruled that the newspaper was publishing illegally because it had not registered with the state-controlled Media and Information Commission (MIC). Registration with the MIC is a requirement of AIPPA. Amnesty International and other human rights groups have criticized the MIC as a biased body which has severely curtailed the independent media in Zimbabwe.

The *Daily News* had initially refused to apply for registration with the MIC, considering the requirement to be unconstitutional. However, following the 12 September Supreme Court ruling, the publishers applied for registration. The MIC refused to register the paper. The *Daily News* challenged the MIC's refusal to grant registration and, on 24 October 2003, the Administrative Court ordered that the *Daily News* be issued with a certificate of registration. The MIC appealed this decision.²² The day after this court ruling the police took up occupation of the *Daily News* offices and refused to allow the staff to resume work. On 19 December the Administrative Court upheld the 24 October ruling. The authorities again failed to obey this court order.²³ The two Administrative Court judges, who handed down the rulings of 24 October and 19 December respectively, were subjected to unfounded allegations of bias in the state newspaper, *The Herald*, and threats to their safety.²⁴ On Friday 9 January 2004 the

²¹ African Commission on Human and Peoples' Rights, 17th Annual Activity Report, Annex II, Executive summary of the report of the fact-finding mission to Zimbabwe 24th to 28th June 2002.

²² The MIC appealed to the Supreme Court. The appeal was noted on 31 October 2003, case No. SC-320-03.

²³ In a Supreme Court ruling in March 2005 the court held that the noting of the appeal by the MIC by the Supreme Court suspended the order of the Administrative Court. See: Judgement No. SC. 111/04.

²⁴ Tsunga, A., "The legal profession and the judiciary as human rights defenders in Zimbabwe in 2003. Separation or consolidation of powers on behalf of the state?", July 2004.

High Court ordered the police to vacate the *Daily News* premises. The police initially failed to comply with the court order.²⁵

The police finally left the offices of the *Daily News* on 21 January 2004. However, in February the paper was forced to close again after the Supreme Court ruled on a constitutional challenge to sections of AIPPA, brought by the Independent Journalists Association of Zimbabwe (IJAZ). The Supreme Court ruling found that sections of AIPPA relating to registration of journalists, which IJAZ challenged as unconstitutional, were in fact constitutional. This left unregistered journalists open to prosecution.²⁶

Despite the 24 October 2003 Administrative Court ruling, detailed above, the MIC has consistently refused to register the *Daily News* or journalists working for the paper.²⁷ On 14 March 2005 Zimbabwe's Supreme Court once again ruled that AIPPA was constitutional, this time in response to a challenge brought by Associated Newspapers of Zimbabwe, publishers of the *Daily News*, but also ordered that the MIC should reconsider the newspaper's application for registration.²⁸

At the time of writing (April 2005) no decision on registration of the *Daily News* had been announced. Whether or not the *Daily News* is finally registered there remains an urgent need for the repeal or amendment of the law which was used to close the paper in the first place. Failing this the possibility remains of future de-registration, as well as further persecution of independent newspapers and journalists in Zimbabwe.

The Private Voluntary Organizations Act, the NGO Bill and government repression of human rights organizations

Non-governmental organizations (NGOs) – through which many of Zimbabwe's human rights defenders work – have become a major target of government repression in Zimbabwe. While organizations working on human rights, democracy and governance have often been singled-out as targets, many other organizations, including those engaged in humanitarian and development work, have also been subjected to government attempts to curtail their activities.²⁹

Once again the government has sought to use the law to legitimize its attempts to place unreasonable restrictions on the work of human rights defenders. In 2002 it revived the Private Voluntary Organizations (PVO) Act,³⁰ a repressive law introduced under white minority rule. In September 2002, the Ministry of Public Service, Labour and Social Welfare published a notice in the government newspaper, *The Herald*, advising NGOs to register with

²⁵ Amnesty International press release, "Zimbabwe: Unlawful suppression of independent media", 13 January 2004, AI Index: AFR 46/001/2004.

²⁶ SC 136/02

²⁷ Media Institute of Southern Africa Media Alert, "No Accreditation for ANZ journalists", 10 February 2004

²⁸ Judgement No. SC. 111/04

²⁹ Amnesty International, "Zimbabwe: Power and hunger – violations of the right to food", October 2004, AI Index 46/026/2004, section 6.2

³⁰ The PVO was enacted in 1967. For an analysis of the PVO see Amnesty International, "Zimbabwe: Rights under siege", May 2003, AI Index AFR 46/012/2003.

the Ministry through the High Court in accordance with Section 6 of the PVO Act. Section 6 reads: "[n]o private voluntary organization shall commence or continue to carry on its activities; or seek financial assistance from any source unless it has been registered in respect of the particular object or objects in furtherance of which it is being conducted." Section 25 of the PVO Act makes non-registration a criminal offence, punishable by up to two months in prison. The notice warned that NGOs that continued to operate without being registered risked prosecution and arrest. The attempt to enforce this repressive legislation was seen by civic groups as an attempt to control and silence organizations perceived to be supporting the political opposition and those investigating and exposing human rights violations.³¹

The PVO Act has been widely condemned. The African Commission on Human and Peoples' Rights has recommended that it be repealed.³² The Special Representative of the UN Secretary General on Human Rights Defenders expressed her concern that repressive provisions contained in national legislation, including the PVO Act, were being used to prevent human rights defenders and NGOs from carrying out their work. She stated that many NGOs that had been performing human rights activities for a long time had been rendered vulnerable by such overly restrictive legislation.³³

In July 2004, the government introduced the NGO Bill, to replace the PVO Act. The NGO legislation retains many of the PVO Act's more repressive provisions, but also includes new provisions which further undermine the work of human rights defenders. It makes specific reference to organizations that "promote and protect human rights" and places added restrictions on the operation and funding of such organizations. International human rights organizations are barred from operating in Zimbabwe and national human rights organizations are prohibited from receiving "foreign" funding.³⁴ Under the NGO Bill all NGOs must register with a government-appointed NGO Council, which is given very broad powers to regulate NGO activities. It is a criminal offence, punishable by up to five months in prison, for any person to be involved in the management or running of an NGO that is not registered. Amnesty International believes that the NGO Council - like the Media Information Commission provided for under AIPPA, does not offer the necessary guarantees of independence and impartiality and could be used to prevent the registration of any organization perceived to be critical of the government, or to interfere unduly with the activities of such organizations.³⁵ As with POSA, AIPPA and the PVO Act, the NGO Bill is the subject of widespread criticism, from both inside and outside Zimbabwe.

³¹ Kagoro, B. Legal opinion on the notice to all PVOs not registered with the Ministry of Public Service, Labour and Social Welfare in terms of section 9 of the PVO Act [Chapter 12:04], 24 September 2002.

³² African Commission on Human and Peoples' Rights, 17th Annual Activity Report, Annex II, Executive summary of the report of the fact-finding mission to Zimbabwe 24th to 28th June 2002.

³³ Promotion and protection of human rights defenders, Report submitted by Hina Jilani, Special Representative of the Secretary-General on the situation of human rights defenders, E/CN.4/2004/94/Add.3.

³⁴ In the draft Bill the definition of "foreign funding" is any funding or donation made by a person who is not a permanent resident of citizen of Zimbabwe domiciled in Zimbabwe, any company that is not incorporated and operational in Zimbabwe or any group or association of people that does not consist exclusively of persons who permanent residents of citizens of Zimbabwe domiciled in Zimbabwe.

³⁵ For a full analysis of the implications of the NGO Bill for human rights defenders see Annex 1 of this report.

For example, in November 2004 Zimbabwe's Parliamentary Legal Committee, which comprises members of both main political parties, ZANU-PF and MDC, submitted an adverse report on the NGO Bill to Parliament which stated:

“the Bill, when read as a whole constitutes a determined and pervasive attempt to curtail and extinguish the fundamental freedoms of the people of Zimbabwe enshrined in the constitution...this bill is a cynical and comprehensive attack on the rights of the people to organise themselves in the promotion, protection, defense and advancement of their freedoms and liberties...rather than seek to address the human rights situation as recorded and reported by these NGOs, the government has, instead, chosen to kill the messenger by seeking to control and close down NGOs...”³⁶

Amnesty International believes the NGO law is inconsistent with international law and standards on, *inter alia*, the rights to freedom of expression, association, assembly. Amnesty International's concerns about the Bill's implications for human rights and human rights defenders were conveyed to the Government of Zimbabwe by members of the movement in late 2004.

Despite such criticism, on 9 December 2004 the Parliament of Zimbabwe passed the NGO Act. However, President Mugabe did not sign the Act into law before the dissolution of Parliament on 30 March 2005 ahead of the Parliamentary elections.³⁷ The future of the legislation is now unclear, but it may be revived by the new Parliament. Amnesty International believes that if the NGO legislation is revived it could be selectively implemented to target critics of the government.

However, even as a Bill, the NGO legislation has had a significant negative impact on NGOs in Zimbabwe, and particularly on human rights organizations. Since its introduction in July 2004 directors and staff of NGOs have been forced to divert time and resources away from core human rights work and into challenging the proposed law and trying to predict and manage its possible impacts on their work. NGOs have engaged in counter-advocacy and contingency planning, and participated in NGO and government-run consultations on the legislation. Despite the government's consultation process, almost none of the recommendations made by NGOs were incorporated into the legislation that was finally passed by Parliament on 9 December 2004.³⁸ Moreover, the uncertainty surrounding the future of the legislation and the possibility that it could be revived by Parliament, without any

³⁶ Report of the Parliamentary Legal Committee in the Non-Governmental Organizations Bill, [H.B. 13, 2004].

³⁷ The President has 21 days after receipt of legislation passed by Parliament to sign such legislation into law. It is unclear when the NGO Bill was sent to the President's office. Amnesty International has been informed that the legislation was delivered to the President's office in late January. According to Section 51 (3a) of Zimbabwe's Constitution “Where the President withholds his assent to a Bill, the Bill shall be returned to Parliament, and subject to the provisions of subsection (3b), the Bill shall not again be presented for assent. Subsection (3b) reads “If within six months after a Bill has been returned to Parliament in terms of subsection (3a), Parliament resolves upon a motion supported by the votes of not less than two-thirds of all members of Parliament that the Bill should again be presented to the President for assent, the Bill shall be so presented and, on such presentation, the President shall assent to the Bill within twenty-one days of the presentation, unless he sooner dissolves Parliament.”

³⁸ National Association of Non-Governmental Organisations, “The NGO Bill process, as a matter of record”, 16 December, 2004.

attempt to address human rights concerns, is in itself a source of considerable concern and contributes to a highly insecure and tense working environment for NGOs.

The insecurity surrounding the future of human rights NGOs has affected funding for their work with some funders unwilling to disburse funds until the situation becomes clearer. This has obvious knock-on impacts on NGO work and programmes. Several NGOs have reported to Amnesty International that they have suspended or restricted some aspects of their human rights work in the last six months.

Many human rights organizations believe that the timing of the introduction of the NGO legislation – in the months leading up to the 31 March elections – may have been a deliberate attempt to restrict monitoring and documentation human rights abuses and limit criticism of the government at election time.

Since the elections the government has reverted to using the PVO Act. Under its provisions the Minister of Public Service Labour and Social Welfare is reported to have established a team of investigating officers, which has been investigating NGOs in respect of various aspects of their operations.³⁹ The government “probe team”, as it is known, reportedly includes intelligence officers. Zimbabwe’s National Association of Non-Governmental Organizations (NANGO) has stated that the probe team has been paying unannounced visits to NGOs, and demanding to see documents relating to activities and funding. NANGO has expressed concern that these “raids” may be carried out for political rather than regulatory purposes.⁴⁰ The investigation process is reported to be intimidating and intrusive. The Zimbabwe Human Rights Association, one of the organizations reportedly subjected to investigation, has described the process as compounding “the climate of fear and harassment of human rights defenders” in Zimbabwe.⁴¹

The UN Declaration on Human Rights Defenders states that human rights defenders, whether individuals or organizations, “shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.⁴² Amnesty International believes that the PVO Act and the NGO Bill are wholly inconsistent with this provision and are being used by the Government of Zimbabwe as tools to intimidate and harass those organizations that are critical of government.

Amnesty International strongly supports the recommendation of the African Commission on Human and Peoples’ Rights that the PVO Act be repealed. Amnesty International further believes that any law governing the operations of NGO and the work of human rights defenders must be fully in line with Zimbabwe’s human rights obligations. The NGO Bill and the PVO Act both limit basic freedoms in a way that is unnecessary and unlawful under

³⁹ IRIN, “Govt. confirms probe into NGO activities, funding”, Johannesburg, 2 May 2005.

⁴⁰ National Association of Non-Governmental Organizations, April 2005.

⁴¹ Zimbabwe Human Rights Association, “Situation of Human Rights in Africa. Statement by ZimRights at the 37th Ordinary Session of the ACHPR”, April 2005.

⁴² Article 17 of the UN Declaration on Human Rights Defenders.

international human rights law and impose unacceptable restrictions on the activities of human rights defenders.

Violating the human rights of individual defenders

Individual human rights defenders in Zimbabwe have increasingly become the victims of human rights violations. Since 2000 hundreds of human rights defenders, including media workers, lawyers, judges and NGO staff, have been subjected to intimidation, arbitrary arrest, assault and torture, targeted because of their work to uphold and defend human rights. Many of these abuses are carried out by state agents; in the majority of cases those responsible have acted with impunity.

Arrest of Dr Frances Lovemore and harassment of Amani Trust

Amani Trust is a Zimbabwean human rights organization dedicated to assisting victims of torture and organized violence. Many of the staff of Amani Trust are medical professionals. The organization has consistently produced detailed reports of human rights violations in Zimbabwe. Since 2002 Amani Trust has been subject to a continuous campaign of harassment by the authorities, which Amnesty International believes is directly related to the organization's exposition of human rights violations. In August 2002, Dr Frances Lovemore, Medical Director of Amani Trust, was arrested and charged with "publishing or communicating false statements prejudicial to the state". The charges against Dr Lovemore apparently stemmed from press reports which referred to Amani Trust's work with victims of torture and politically-motivated rape in Zimbabwe. The offices of Amani Trust were raided and searched by police. Dr Lovemore was released the day after her arrest and all charges against her were dropped due to insufficient evidence.⁴³

Torture of Gabriel Shumba and four others

On 15 January 2003 police arrested Gabriel Shumba, then a lawyer with the Zimbabwe Human Rights NGO Forum, together with an MDC Member of Parliament, Job Sikhala, and MDC supporters Bishop Shumba, Taurai Magaya and Charles Mutama. All five men were reportedly tortured in police custody. Medical examinations later revealed that Job Sikhala and Gabriel Shumba had injuries consistent with electric shocks to their genitals, mouth and feet. Both had reportedly been forced to drink urine. In February, charges of treason against the five men were dismissed by the Harare High Court for lack of evidence.⁴⁴ No investigation into the alleged torture of Gabriel Shumba, Job Sikala and those arrested with them is known to have taken place. No-one has ever been charged in connection with the alleged torture. Gabriel Shumba's case is now before the African Commission on Human and Peoples' Rights.

⁴³ Amnesty International, "Zimbabwe: Government authorities intensify their campaign to silence dissent", 2 September 2002, AI Index: AFR 46/041/2002.

⁴⁴ Amnesty International Report 2004, AI Index: POL 10/004/2004.

Serious assault on Dr Lovemore Madhuku, Chairman of the National Constitutional Assembly

On 4 February 2004 Dr Lovemore Madhuku, Chairman of the National Constitutional Assembly (NCA), an organization campaigning for constitutional reform in Zimbabwe, was severely beaten when police officers broke up a peaceful NCA demonstration outside Parliament. More than 100 NCA demonstrators were arrested by police who reportedly used tear gas, dogs and batons against them. Many sustained injuries. They were all released the same day, on payment of fines under MOA. Dr Madhuku was taken from the site of the demonstration to another location in Harare where police severely beat him before dumping him on the outskirts of the city.⁴⁵ Dr Madhuku was hospitalized for several days. As far as Amnesty International is aware no investigation into the assault was ever conducted, nor has anyone been charged in connection with the assault on Dr Madhuku.

Brutal assault on youth activist, Tinashe Chimedza

On 22 April 2004 police in Harare brutally assaulted youth activist Tinashe Chimedza when he arrived to speak at an education forum. The police reportedly detained him at the venue and assaulted him with batons, booted feet and open palms. The police subsequently arrested him, charged him with assaulting a police officer, and took him to Marlborough Police Station. At the police station lawyers representing Tinashe Chimedza were verbally abused by the police and one lawyer was briefly detained, without charge. Tinashe Chimedza was later taken to hospital for treatment. He remained in hospital for almost a week.⁴⁶ No investigation is known to have been conducted into the assault on Tinashe Chimedza and no-one has ever been charged in connection with the incident. This was not the first time Tinashe Chimedza had been assaulted by the police. In 2002 Amnesty International reported on the assault of Tinashe Chimedza by police at Harare Central Police Station. Since 2001, Tinashe Chimedza has been arrested at least eight times in his capacity as a student and youth activist.

Arrest of defenders Obert Chinhamo and Masawuko Maruwacha

On 2 September 2004 Obert Chinhamo of Amnesty International's Zimbabwe section and Masawuko Maruwacha, then an employee with human rights organization Non-violent Action and Strategies for Social Change, went to investigate reports that police were forcibly evicting people from Porta Farm - an informal settlement on the outskirts of Harare - in defiance of a court order. When they arrived on the scene they were immediately arrested. Although both men requested to know the grounds for their arrest police refused to tell them. They were held overnight and charged the following day with "inciting public violence", an offence under POSA. Following more than five months on remand and repeated court appearances, in February 2005, their lawyer applied to the court for a refusal of further remand on the basis

⁴⁵ Zimbabwe Lawyers for Human Rights, Human Rights Defenders Emergency Fund Programmatic Report 2004.

⁴⁶ Amnesty International interview with Tinashe Chimedza, May 2004.

that the prosecutor had failed to try the two human rights defenders within a reasonable period of time as required by the Constitution. The prosecutor was apparently unable to produce witnesses in support of the charge of inciting public violence. The court granted the application and on 21 February Obert Chinhamo and Masawuko Maruwacha were taken off remand and no further action has been taken against them.⁴⁷ The pattern of repeated court appearances but failure by the state to mount a prosecution has become commonplace in Zimbabwe, and is a significant drain on the time and resources of human rights defenders.

A combination of politicization of the police force, repressive legislation and subversion of the rule of law has encouraged widespread abuse of the power of arrest in Zimbabwe, with human rights defenders a major target. Arbitrary arrest and detention, sometimes followed by the misuse of the law to prosecute human rights defenders, is one of the most frequently reported violations instigated against defenders to deter them from carrying out human rights work. The use of the law or legal procedures as instruments to harass defenders rather than to protect them was recently highlighted by the UN Special Representative on Human Rights Defenders in her report of October 2004 to the UN General Assembly.⁴⁸ Such abuse is exemplified in the case of the group Women of Zimbabwe Arise (WOZA).

Case study: the repeated arrest, detention and physical abuse of Women of Zimbabwe Arise (WOZA)⁴⁹

Since February 2003 WOZA activists have repeatedly been arrested by the Zimbabwe police while taking part in peaceful demonstrations to protest the worsening social, economic and human rights situation in the country. The treatment of WOZA illustrates the government's increasing intolerance of peaceful public demonstrations expressing criticism of government policies. It also highlights the way in which the law, particularly the combination of POSA and MOA, is being used to effect arbitrary arrest and detention and facilitate a range of other human rights violations by the police.

WOZA activists have been verbally and physically abused in police custody and denied access to lawyers, food and water. Babies and young children have been detained with their mothers, sometimes overnight in police cells.

The repeated pattern of arrest and detention (invariably in poor conditions) has not deterred WOZA from organizing peaceful protests. WOZA activists know and accept the risks

⁴⁷ Amnesty International interviews with Obert Chinhamo and Masawuko Maruwacha in January and February 2005 and with human rights lawyer Alec Muchadehama in April 2005.

⁴⁸ UN doc. A/59/401 Report by the Special Representative of the Secretary General on Human Rights Defenders, 1 October 2004.

⁴⁹ The information contained in this case study is based on Amnesty International interviews with individual WOZA members who have been arrested and with interviews with human rights lawyers who have acted for WOZA.

attached to their activism. Between February 2003 and March 2005 hundreds of WOZA members were arrested and dozens assaulted by police officers.

For example, on 16 June 2004, 43 WOZA activists were arbitrarily arrested while attending a private meeting in Bulawayo. Seven of the women had small babies or children who were taken into custody with them. At Western Commonage Police Station, a number of the activists were reportedly verbally abused and assaulted by the police. Winnie Muzhanje was forced to kneel and was hit with a sjambok (whip) on the soles of her feet while another policeman slapped her. Nancy Malabwe and Patricia Mahole were also hit on the soles of their feet and verbally abused by police officers. The officers allegedly told the detainees that if they asked for a lawyer, they would be held for several days. A human rights lawyer was initially denied access to the activists. After further intervention by the lawyer, 39 of the activists were released without charge on the same day. The four remaining activists were charged under Section 24 of POSA, with failing to notify the authorities of a public meeting, and detained overnight. However, when they went to court the following day the prosecutor refused to press charges.

Arrested for participating in a sponsored walk and for “praying in public”...

On 19 September 2004 more than 30 WOZA activists began a 440 km sponsored walk from Bulawayo to the capital, Harare, to protest the NGO Bill and to raise funds for women’s rights work. Other activists joined the walk at different stages. On 28 September police arrested 48 WOZA activists, together with 4 men who were assisting them on the walk, some 60 km from Harare. The police claimed the walkers had contravened POSA. Another woman, Sipiwe Maseko, was arbitrarily detained the same day when she attempted to deliver food to those in custody; she was released the following day without charge. The rest of the group was held in custody until 1 October, when a magistrate ruled that they had no case to answer. All were released.

On 29 September WOZA activists who had not been arrested the previous day finished the walk, gathered at Africa Unity Square in Harare and held a brief prayer service for those in detention. As they began to disperse, nine activists were arrested by police, who reportedly claimed that they had contravened Section 19 of POSA by “praying in public”. Section 19 of POSA refers to “gatherings conducive to riot, disorder or intolerance”. The group was detained at Harare Central Police Station where three of the women were allegedly assaulted by a plain-clothes officer during interrogation. All of the activists were released on bail on 1 October. When they appeared in court on 13 October, no charge sheets were presented and all were released.

Arrests in 2005

In the first three months of 2005 when Amnesty International was researching this report no less than 300 WOZA activists were arrested or detained by police on four separate occasions.

On 17 January 2005 more than 20 women were arbitrarily arrested in Harare after a WOZA demonstration to protest falling education standards. The WOZA activists had dispersed when police officers arrived and began forcing women they believed to be WOZA into police trucks. Several women were assaulted by police with baton sticks while getting into trucks and inside

the trucks. A child being carried on her mother's back was hit by a police officer who was assaulting the women. At the police station the assaults continued. A 57-year-old woman was reportedly kicked in the lower back. Several older women were taken to a room where they saw what appeared to be blood on the floor and were reportedly told that "people die here – you will die here". The women were subsequently released on payment of fines under MOA.

On 12 February 2005 some 53 women were arrested after a WOZA demonstration in Bulawayo to mark Valentine's Day. The activists marched with banners proclaiming "The Power of Love can conquer the Love of Power" and handed out roses to the public. At least three of the women arrested were reported to be bystanders, not involved in the WOZA action. None of the women were taken to court to face any charges. The prosecutor reportedly refused to take court action under POSA. The activists were released over the following three days on payment of "admission of guilt" fines under MOA.

On 8 March 2005 approximately 24 WOZA activists were detained by police in Bulawayo when they attempted to stage a demonstration to mark International Women's Day. Several of the women reported that they were taken to their homes which police officers then searched. The police officers did not produce search warrants. All of the activists were released later the same day without charge.

On the evening of 31 March, the day of Zimbabwe's Parliamentary elections, police arrested approximately 260 women, some carrying babies, when WOZA attempted to hold a peaceful post-election prayer vigil at Africa Unity Square in Harare.⁵⁰ During and after the arrests, several of the WOZA activists were badly beaten. Some were forced to lie on the ground and were beaten on the buttocks by police officers. Amongst those beaten by police was a 74 year-old woman, who reports that she was told to "pray because you are going to die". Others were beaten while trying to get out of police vehicles. Several of the women were seriously injured and subsequently hospitalized. None were given access to adequate medical treatment during their detention.

The women and children were detained overnight in an open-air courtyard, under armed guard. The detainees were initially denied access to lawyers. Police reportedly told the women that they could pay a fine if they pleaded guilty to minor offences under MOA, and would be released.⁵¹ However if they did not pay the fine, they were told they would remain in detention over the weekend until 4 April when the courts re-opened, to face charges under POSA. Over the course of 1 April all of the women – several of whom were elderly, injured or with their children – elected to pay fines rather than spend the weekend in the cells, during which time they could be subjected to further harassment, threats and poor conditions. Once again MOA was used to elicit "admissions" of guilt. Amnesty International believes that in this case the "admissions" of guilt were elicited under duress and constitute an abuse of due process and the rule of law. Human rights lawyers acting for WOZA now plan to challenge the forced payment of fines in this case.

⁵⁰ Some activists were arrested after they began to gather in Africa Unity Square. However, police also arrested women in the vicinity of the Square and women at a railway station believed to be members of WOZA.

⁵¹ Initially the women were reportedly told they could plead guilty to road traffic offences, although there is no traffic in Africa Unity Square. The police subsequently referred to MOA.

Undermining the justice system

A well-functioning justice system is vital to virtually all efforts to improve respect for human rights. Zimbabwe's human rights defenders have worked for truth, justice and reparation on behalf of the victims of human rights violations and have consistently insisted on the independence and impartiality of the judiciary as the cornerstone of human rights protection.

The Zimbabwean judiciary has members who have rigorously handed down decisions that reflect their impartiality and independence. However, since 2000 several of these judges have been subjected to harassment and threats by state agents and state-sponsored agents – targeted precisely because of their neutrality and independence.⁵²

For example, in November 2003 Justice Michael Majuru, the Administrative Court judge who presided over the *Daily News* appeal against the MIC's refusal to register the paper (see page 8, above) and who ordered that the paper be registered, was forced to step down from the case after he was accused of bias by the government-controlled newspaper, *The Herald*. While hearing the *Daily News* case Justice Majuru was reportedly put under severe pressure by senior ZANU-PF political figures not to allow the *Daily News* to resume publishing. Justice Majuru subsequently left Zimbabwe, following repeated threats to his safety.⁵³

Undermining the effectiveness and independence of the judiciary has contributed to a culture of impunity for politically-motivated human rights violations in Zimbabwe.

The legal profession has also come under attack in Zimbabwe. Lawyers, particularly human rights lawyers and those who represent members of the political opposition, the Movement for Democratic Change (MDC), have been subject to intimidation, arrest and physical abuse.⁵⁴

- On 18 March 2003 human rights defender and lawyer Gugulethu Moyo was assaulted by the wife of an army commander when she went to a police station to represent a detained photographer from the independent newspaper, the *Daily News*. The woman apparently attacked Ms Moyo when she discovered she worked for the *Daily News*. When another lawyer, Alec Muchadehama, tried to come to her aid, he too was assaulted. Reports indicate that up to 60 police officers witnessed the assault on Ms Moyo, but made no effort to intervene. Both Gugulethu Moyo and Alec Muchadehama were then taken to Harare Central Police Station. In the truck used to transport them Gugulethu Moyo was again assaulted, this time by police officers reportedly acting on the orders of the wife of the army commander.⁵⁵ She was beaten with baton sticks and kicked with booted feet. Gugulethu Moyo was kept in police

⁵² Amnesty International reports 2001, 2002, 2003 and 2004.

⁵³ See: Amnesty International Report 2004, AI Index: POL/004/2004.

⁵⁴ Zimbabwe Lawyers for Human Rights have reported on numerous incidents of lawyers being denied access to clients, detained and assaulted by police. See for example, "Arrest and detention of Bulawayo lawyers and civic leaders", 6 June 2003; "ZLHR laments the brutal attack on a leading human rights lawyer", 16 October 2003.

⁵⁵ Amnesty International believes that the serious assault on Ms Moyo underlines the deeply compromised nature of the police in Zimbabwe – not only did police officers fail to prevent the assault, they allegedly acted on the instructions of the wife of an army commander – a person with no authority within the Zimbabwe Republic Police command structures.

custody, without charge, until 20 March.⁵⁶ No-one has ever been charged in connection with the assault on Gugulethu Moyo, and indeed police subsequently charged Ms Moyo with ‘inciting public violence’, based on allegations made by the wife of the army commander.⁵⁷

- On 12 October 2003 human rights lawyer Beatrice Mtetwa was severely beaten by a police officer when she called for assistance after thieves tried to break into her car. She was reportedly punched and kicked all over her body, sustaining severe bruising and cuts to her face, throat, arms and legs. Other police officers reportedly witnessed the assault but did not intervene. Beatrice Mtetwa has represented fellow human rights defenders, opposition politicians and the *Daily News*.⁵⁸

Lawyers are also frequently frustrated in their work - denied access to clients and even to court buildings. Lawyers working with Zimbabwe Lawyers for Human Rights, an organization that, amongst other things, provides legal assistance to other human rights defenders who are arrested, report that they are regularly prevented from accessing clients in police custody and verbally abused by police officers.

The UN Special Rapporteur on the Independence of Judges and Lawyers, Mr Param Cumaraswamy⁵⁹, has repeatedly expressed very grave concerns over the deterioration of the rule of law in Zimbabwe, and what he has described as “systematic attacks on the independence of judges and lawyers by the Government and its agencies”.⁶⁰

State media as a tool of repression

Zimbabwe’s government-controlled media has become a powerful tool for intimidating human rights defenders. State newspapers, television and radio have been used to vilify both human rights organizations and individual human rights defenders. These attacks attempt to portray human rights defenders as involved in criminal or subversive activities, or as unpatriotic and undermining the image of the nation. The Special Representative of the UN Secretary General on the situation of human rights defenders has repeatedly expressed

⁵⁶ Tsunga, A., “The legal profession and the judiciary as human rights defenders in Zimbabwe in 2003. Separation or consolidation of powers on behalf of the state?”, July 2004.

⁵⁷ On 30 June 2003, the police charged Gugulethu Moyo with ‘inciting public violence’ an offence under section 19 of POSA. This alleged crime was supposed to have taken place at the time on 18 March 2003, when she alleges she was being assaulted by the police. According to police officials in Zimbabwe’s Law and Order Department, the alleged crime had been reported to them by wife of the army commander – the person Ms Moyo alleges assaulted her. This charge has not been pursued in the courts.

⁵⁸ Amnesty International report 2004, AI Index: POL 10/004/2004.

⁵⁹ Mr Cumaraswamy finished his term as Special Rapporteur in July 2003 and was succeeded by Mr Leandro Despouy.

⁶⁰ Report of the Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39, E/CN.4/2002/72, 11 February 2002 and Report of the Special Rapporteur on the independence of judges and lawyers, Dato’ Param Cumaraswamy, submitted in accordance with Commission on Human Rights Resolution 2002/43*, E/CN.4/2003/65 10 January 2003.

concern that defenders in Zimbabwe have been subjected to defamation campaigns in government-run media.⁶¹

For example in January 2002 the government-controlled newspaper, *The Herald*, alleged that Amani Trust had been "funding covert operations against Zimbabwe African National Union - Patriotic Front (ZANU-PF)".⁶² On 9 May 2002 the *Chronicle* newspaper named Amnesty International, ZimRights, the Legal Resources Foundation as "three organizations known to be on an anti-Zimbabwe and anti-government crusade".⁶³ In a series of articles in July and August 2003 the *Sunday Mail* accused the Zimbabwe Association of Doctors for Human Rights of "having a political agenda to demonize the Zimbabwe government" and of being a creation of Britain that "was allegedly formed to prepare a dossier meant to document false accusations of human rights abuses".⁶⁴ On 29 November 2003 *The Herald* newspaper described Zimbabwe Lawyers for Human Rights as "a phoney non governmental organization which in fact does the bidding of foreign governments, and sees rights of all those that are not white farmers or members of the MDC as non-human rights".⁶⁵

In mid-2004 several human rights organizations were subjected to attacks in the government-controlled media in connection with a report on Zimbabwe produced by the African Commission on Human and Peoples' Rights. Although the report was not officially made public until 2005, the content, which is critical of the human rights situation in Zimbabwe, was widely leaked at the time of the African Union Assembly of Heads of State and Government in July 2004.

The state-controlled media printed several stories naming and vilifying human rights organizations, and individuals who work for those organizations, claiming that they "wrote" the African Commission report or gave misleading or false information to the fact-finding mission. Amongst those subjected to written or verbal attacks, including by government ministers, were Amani Trust and the Zimbabwe Association of Doctors for Human Rights.⁶⁶

For example *The Herald*, a state-controlled newspaper, wrote on 6 July 2004:

⁶¹ Report submitted by Hina Jilani, the Special Representative of the UN Secretary General on the situation of human rights defenders, E/CN.4/2004/94, 15 January 2004.

⁶² Amnesty International press release, "Zimbabwe: Baseless allegations against civil society are an open invitation to attack them", 21 January 2002, AI Index AFR 46/003/2002. See also: Statement by Mashonaland Trustees of Amani, 28 January, 2002.

⁶³ *The Chronicle*, "Crusade to demonize Zimbabwe", 9 May 2002 quoted from, Zimbabwe Human Right Association (ZimRights), "Onslaught against Human Rights Defenders in Zimbabwe - 2002 Report", 31 December 2002

⁶⁴ Quoted from Media Monitoring Project Zimbabwe, Monday August 18th – Sunday August 24th 2003, Media weekly update 2003-33. See also: *Sunday Mail*, "Doctors implicated in human rights scam", 20 July 2003; *Sunday Mail*, "Uproar over attempts by UK to politicize doctors' association", *Sunday Mail* 17 August and "Suspicious doctors' group pushed out", 24 August 2003

⁶⁵ See: Tsunga, A., "The legal profession and the judiciary as human rights defenders in Zimbabwe in 2003. Separation or consolidation of powers on behalf of the state?", July 2004.

⁶⁶ *The Herald*, "AU rejects damning report on Zimbabwe", 6 July 2004; *Sunday Mail*, 'Obscure political doctors group renews efforts to join Zima', 11 July 2004.

“According to the sources, the (African Commission) report was similar to reports produced by the British-funded Amani Trust, which is well-known for its anti-Zimbabwe stance and falsifying the situation in the country”.

On 11 July 2004 an article in the state-controlled *Sunday Mail* accused the Zimbabwe Association of Doctors for Human Rights of being a political group and a vehicle through which “forces are trying to spread malicious reports about the human rights situation in the country”.

An editorial in the *Sunday Mail* on 11 July stated:

“Reading through the [African Commission’s] report one detects the hand of a known Zimbabwean lawyer and the Amani racists.”⁶⁷

Rather than engage with the findings and recommendations of the African Commission, the Government has sought to discredit its report and further undermine national human rights organizations.

Amnesty International believes that such unsubstantiated accusations are intended to divert attention away from the abuses that human rights defenders report and create a climate of fear within the human rights community in Zimbabwe. They can also be seen as the state condoning attacks on human rights defenders.

4. Conclusions and Recommendations

Amnesty International has repeatedly expressed serious concern about government harassment and intimidation of human rights defenders and the misuse of national legislation to suppress freedoms of expression, association and assembly and silence dissent in Zimbabwe. Amnesty International believes that this campaign of repression is aimed at curtailing the activities of human rights defenders and preventing the investigation, documentation and reporting of human rights violations. Amnesty International has noted with concern the unrelenting nature of the government’s repression of human rights defenders, including numerous recent incidents arbitrary arrests, serious assaults and intimidation.

Human rights defenders are entitled to enjoy the rights and freedoms recognized in the Universal Declaration on Human Rights, the ICCPR and the African Charter, and the protection of the national law. They should be free to carry out their human rights activities, without interference. Their work must be protected and supported, rather than restricted, because of the vital contribution they make to any community, at any stage of social or political development.

⁶⁷ Quoted from Tsunga, A. and Mugabe, T., Zimbabwe Lawyers for Human Rights “Zim NGO Bill: dangerous for human rights defenders - Betrays High Degree of Gvt Paranoia and Contempt For the Regional and International Community”, July 28, 2004.

The organization therefore makes the following recommendations to the Government of Zimbabwe.

Recommendations to the Government of Zimbabwe:

- 1. Repeal or amend all national legislation which is incompatible with international human rights law and standards including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.**

In particular, the government must amend or repeal repressive provisions of the Public Order and Security Act, the Access to Information and Protection of Privacy Act and the Private Voluntary Organizations Act. Any law that replaces the Private Voluntary Organizations Act should be fully in line with Zimbabwe's human rights obligations and international standards in respect of human rights defenders.

- 2. Ensure that the principles contained in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms are incorporated into national law and fully implemented.**

Authorities at all levels of government should explicitly commit themselves to promoting respect, protection and fulfilment for human rights, and to the protection of human rights defenders.

- 3. Fully implement the recommendations contained in the report of the African Commission fact-finding mission to Zimbabwe.**

Amnesty International urges the Government of Zimbabwe not to undermine the African Commission on Human and Peoples' Rights in its efforts to discharge its mandate under the African Charter, to which Zimbabwe is a state party.

- 4. Incorporate international human rights law and standards into national law and ensure all provisions are fully implemented.**

As Zimbabwe has ratified, *inter alia*, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights, national legislation must be brought into line with the fundamental rights and freedoms contained in these legal standards, recognizing and impartially enforcing them.

- 5. Issue invitations to the following: the UN Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, the promotion and protection of the right to freedom of opinion and expression, the independence of judges and lawyers and the Special Representative of the UN Secretary General on the situation of human rights defenders and the African Commission Special Rapporteur on Human Rights Defenders.**

- 6. End the human rights violations by the police and other law enforcement officials and ensure that police officers abide by the highest standards of professionalism and respect for human rights.**

The Government of Zimbabwe must cease to use the police and other law enforcement officials for political purposes, including for the suppression of peaceful public assemblies and the persecution of opposition parties, independent media workers and human rights defenders.

- 7. Protect the right of all Zimbabweans to an effective remedy, including access to justice, restitution, compensation and rehabilitation, by respecting the judgments of the courts of Zimbabwe (without prejudice to the right of appeal) and enforcing judicial remedies.**
- 8. Protect the independence and impartiality of the judiciary as the cornerstone of a State committed to upholding its human rights obligations. Measures should be put in place to ensure that the independence of the judiciary is safeguarded in line with the UN Basic Principles on the Independence of the Judiciary.**
- 9. Investigate all cases of torture, ill-treatment, unlawful arrest and detention and, if sufficient evidence is gathered, prosecute the suspected perpetrators.**

Ensure that prompt, thorough and impartial investigations are conducted into all human rights violations, including those committed against human rights defenders. If sufficient evidence is gathered, the suspected perpetrators should be prosecuted and the victims or their relatives provided with full reparation. The results of such investigations should be made public.

- 10. Ensure that human rights defenders have equal access to the law and that judicial investigations and proceedings against them are conducted in accordance with international law and standards for fair trial.**

Recommendations to the international community

Recommendations to all members of the African Union:

- 1. Publicly state that human rights violations in Zimbabwe are unacceptable.**
- 2. Publicly call on the Government of Zimbabwe to fully implement the recommendations made by the African Commission in the report of its 2002 fact-finding mission to Zimbabwe.**

African Union (AU) members should provide assistance to Zimbabwe – consistent with the mandate of the AU – to implement these recommendations.

Annex 1: An analysis of human rights concerns in Zimbabwe's NGO Bill

In the NGO Bill the definition of an NGO has been broadened, now covering almost every category of civic organization. All NGOs must register with a government-appointed Non-Governmental Organizations Council and NGOs must reapply for registration under the legislation each year. It is a criminal offence, punishable by up to five months in prison, for any person to be involved in the management or running of an NGO that is not registered.

The NGO Council provided for in the Bill consists of six representatives of NGOs and nine representatives of the government. The government's representatives must hold at least the rank of under-secretary, and will be drawn from various government ministries. All members of the Council will be appointed by the Minister for Public Service, Labour and Social Welfare. While NGOs can nominate their NGO representatives, the Minister has the power to accept or reject any nominee, and to appoint an alternative representative who does not have the backing of the NGO community. Quorum for the Council is eight – which means that the Council can carry out its activities with only government representatives present.

The Council will have very broad powers to regulate all activities of NGOs. For example, the Council can reject an application for registration “if it appears to the Council that the organization is not operating bona fide in furtherance of the objectives stated in its application for registration”. The Council can also issue a certificate of registration subject to “such conditions as the Council may impose”, and can cancel certificates of registration at any time. Zimbabwe's Parliamentary Legal Committee described the registration process prescribed in the NGO Bill as “inconsistent with sections 17, 19, 20 and 21 of the Constitution”⁶⁸, which respectively uphold the rights to privacy, conscience, freedom of expression, association and assembly.

The Council is empowered to investigate any NGO if “maladministration” is discovered. “Maladministration” is very broadly defined and includes “any contravention of any provision of a code of conduct as may be prescribed”. The Code of Conduct does not exist and will be formulated by the Council. Given the composition and rules of the Council, the Code of Conduct will need to be scrutinized in respect of human rights protection.

Amnesty International believes that the NGO Council - like the Media and Information Commission provided for under AIPPA, which has overseen the severe repression of independent media in Zimbabwe - does not offer necessary guarantees of independence and impartiality and it is likely to prevent the registration of any organization perceived to be critical of the government, or to interfere unduly with the activities of such organizations. In its analysis of the NGO Bill the International Bar Association described the NGO Council as having “virtually open-ended powers to control the fate and activities of NGOs when compared to [the PVO Act].”⁶⁹

⁶⁸ Report of the Parliamentary Legal Committee in the Non-Governmental Organizations Bill, [H.B. 13, 2004].

⁶⁹ International Bar Association, An analysis of the Zimbabwean Non-governmental Organizations Bill, 2004, 24 August 2004.

An issue of particular concern for human rights is that the NGO Bill contains specific references to NGOs that work on human rights, stating that “no foreign non-governmental organization shall be registered if its sole or principle objectives involve or include issues of governance.” The Bill defines “issues of governance” as including “the promotion and protection of human rights”. A “foreign” NGO is defined as any NGO that “does not consist exclusively of permanent residents or citizens of Zimbabwe”.

Such provisions mean that several human rights organizations will no longer be able to legally operate in Zimbabwe. Amnesty International views these restrictions on NGO operations as a violation of the right to freedom of association and contrary to the UN Declaration on Human Rights Defenders, which affirms the right of everyone to, individually and in association with others, promote and strive for the protection and realization of human rights at the national and international levels.

The legislation prohibits national NGOs from receiving “foreign funding or donations to carry out activities involved in or including issues of governance” (again activities defined as including the promotion and protection of human rights). This provision has several grave implications for human rights defenders and for victims of human rights violations in Zimbabwe. The funding which NGOs need to operate legal and medical programs cannot be found in Zimbabwe, particularly in the current economic climate which is characterized by severe contraction of the economy, unemployment and high inflation.⁷⁰ Several human rights organizations are heavily dependent upon “foreign” donations. Amnesty International believes that this provision of the proposed legislation is inconsistent with Article 13 of the UN Declaration on Human Rights Defenders which guarantees everyone the right to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights through peaceful means. This provision is also detrimental to victims of human rights violations, who are often poor.

⁷⁰ Zimbabwe’s economy has contracted by 30% over the past five years. Poverty has doubled since 1995 (source: IMF, 2004).