

[EMBARGOED FOR: 2 MAY 2003]

Public

amnesty international

Zimbabwe Rights under siege



Police action to end protests over college grants at the university of Zimbabwe left one student dead and at least 28 others injured, Harare, April 2001

©Reuters/popperfoto.com

AI Index: AFR 46/012/2003

Amnesty International

TABLE OF CONTENTS

I.	Introduction.....	1
II.	Clamp-down on dissent	2
III.	Zimbabwe’s obligations under international and national law.....	7
1.	International human rights law	7
2.	National law	12
IV.	The tools of repression - an analysis of current legislation	13
1.	Broadcasting Services Act (BSA).....	13
2.	Public Order and Security Act (POSA)	16
3.	Access to Information and Protection of Privacy Act (AIPPA)	22
4.	Private Voluntary Organizations Act (PVO)	27
5.	Labour Relations Amendment Act (LRAA).....	30
V.	Conclusion and recommendations.....	32
	Appendix I: Excerpts from international human rights standards	36

Zimbabwe

Rights under siege

I. Introduction

Since 2000, the human rights situation in Zimbabwe has undergone a rapid decline. Parliamentary and presidential elections held in 2000 and 2002 respectively were marred by politically motivated violence, intimidation and attacks, largely on the political opposition. The government initiated a controversial land reform program which sparked illegal occupations of commercial farms by so-called war veterans and other illegal settlers, and resulted in, among other things, the forced eviction of hundreds of thousands of farm workers, farmers and their families. State-sponsored intimidation, unlawful arrests and torture perpetrated by the police, ruling party supporters, youth “militia” and other state agents have become commonplace. The main targets for repression have been those most vocal and critical of the government’s human rights record, namely the independent media, the opposition Movement for Democratic Change (MDC) and civil society organizations attempting to protect human rights.

One of the government’s key vehicles for repression has been the introduction and use of an armoury of restrictive legislation designed to suppress dissent and place under siege the rights of freedom of expression, association and peaceful assembly. The most commonly used and repressive pieces of legislation include, in the order in which they were introduced, the Broadcasting Services Act, the Public Order and Security Act, the Access to Information and Protection of Privacy Act, the Private Voluntary Organizations Act and the Labour Relations Amendment Act. Many provisions of these Acts directly contravene Zimbabwe’s national Constitution and international human rights standards which enshrine and guarantee the rights of Zimbabweans to the freedoms of expression, association and assembly.

This report explains the context in which the legislation has been introduced, charting in particular the government’s escalating repression of the political opposition, the independent media and civil society. In light of Zimbabwe’s human rights obligations under the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples’ Rights and other international standards to which Zimbabwe is a party, the report examines how provisions of the Broadcasting Services Act, the Public Order and Security Act, the Access to Information and Protection of Privacy Act, the Private Voluntary Organizations Act and the Labour Relations Amendment Act have been used to suppress and violate internationally

recognized rights to freedom of expression, association and assembly. The report contains recommendations to the Zimbabwean government for action to protect the human rights of all Zimbabweans.

II. Clamp-down on dissent

In February 2000 a referendum was held on whether to accept the government's proposed changes to the Constitution. Following the government's unprecedented defeat, the political climate in Zimbabwe underwent a significant change. The government's defeat was met with surprise and alarm by the ruling party, Zimbabwe African National Union – Patriotic Front (ZANU-PF), as it was the first time it had been defeated in a popular vote since independence. The government's surprise suggested that it was unaware of the extent to which Zimbabweans had grown dissatisfied with its many years of misrule and persistent human rights violations. The government had also underestimated the extent of support for the newly formed MDC, particularly among Zimbabwe's growing urban population, and the increasing strength of civil society, which had gained momentum in response to the drive for a new constitution.

In the run up to the parliamentary elections in June 2000 the government instituted a widespread campaign to crush the opposition and silence dissent against its increasingly unpopular policies.¹ The government's reaction was rooted in its fear of losing power. Since then, the government has mobilized its supporters and state agents, including "war veterans", youth "militia" police, the Central Intelligence Organization (CIO) and the army to wage a sustained campaign against opponents through the use of intimidation, arbitrary arrests, beatings, torture, "disappearances" and extrajudicial executions. In 2002 alone, there were over 1,046 reported cases of torture and at least 58 politically motivated deaths.²

The level and incidence of politically motivated attacks against opposition officials and supporters rose sharply in the run-up to the parliamentary and presidential elections of June 2000 and March 2002 respectively, as well as the local council elections of September 2002. This was witnessed most recently in March 2003 during parliamentary by-elections held in Kuwadzana and Highfield, two high density Harare suburbs, where countless opposition supporters were beaten, arbitrarily

¹ See Amnesty International, *Zimbabwe: Terror tactics in the run-up to parliamentary elections*, June 2000 (AI Index: AFR 46/014/2000).

² Zimbabwe Human Rights NGO Forum, *Political Violence Report: December 2002*.

arrested and reportedly tortured while in police custody, as a way of intimidating and deterring them from voting for the MDC.³ Amid the worsening food crisis, ruling party officials and supporters have also denied people access to food aid based on real or perceived political affiliation.

Through the state-controlled Zimbabwe Broadcasting Corporation the government has launched scathing verbal attacks on the opposition aimed at discrediting them. Several senior opposition officials, including MDC President Morgan Tsvangirai and Vice-President Gibson Sibanda have been arrested on politically motivated charges, a weapon the government has used to put a severe strain on the MDC's resources through lengthy and expensive legal battles.

State repression of the media has never been worse. Prior to independence, the media was strictly controlled by the government of Ian Smith through the use of restrictive legislation to defeat the nationalist movement.⁴ Following independence, restrictive media laws were never fully relaxed. However, the past three years have seen a sharp escalation in the government's hostility towards the independent media and it is taking unparalleled steps to suppress the rights to freedom of expression, association and assembly in Zimbabwe. There has been a significant increase in the incidence of state intimidation, criminal defamation charges, arbitrary arrests and attacks on independent journalists and media houses. In 2002 alone, approximately 44 media workers were arrested and five media workers were physically attacked.⁵ Two media houses were petrol-bombed in 2002, bringing the total number of bomb attacks on the physical infrastructure of the independent press to four since 2001. On 3 May 2002, World Press Freedom Day, the Committee to Protect Journalists (CPJ) named Zimbabwe one of the world's worst places to be a journalist. In March 2003, another international non-governmental media organization which promotes and defends press freedom, Index on Censorship, awarded Jonathan Moyo, Minister of State for Information and Publicity, the Golden Raspberry Award for "services to censorship".

In the face of government attacks, the independent media is struggling to continue shining a spotlight on government human rights violations. At the same time, the level of state control over the content and flow of information within Zimbabwe and outside has increased. Government officials have repeatedly made vociferous public attacks on the independent media. The Minister of State for Information and Publicity has on numerous occasions condemned the independent press and accused it

³ See Amnesty International, *Zimbabwe: Mass arrests signal new and dangerous phase of repression*, 21 March 2003 (AI Index: AFR 46/009/2003).

⁴ Richard Saunders, *Dancing out of tune: a history of the media in Zimbabwe*, Harare, 1999: 39.

⁵ MISA-Zimbabwe, *State of the Media Report, December 2002*.

of supporting the political opposition and Western governments. These attacks have become increasingly hostile and inflammatory. For example, on 18 November 2002, while addressing army officers in Harare, the Minister attacked Zimbabwe's leading independent daily newspaper, the *Daily News*, as "anti-nation" and as a tool used by Western powers to attack the government and Zimbabwe's values and traditions.⁶

As the government's fear of losing its grip on power has apparently increased, its attacks on the independent press have intensified. In February 2002, the Bulawayo offices of the *Daily News* were petrol-bombed, marking the third time in two years that the offices of the independent daily had been bombed. In August 2002, the office of one of Zimbabwe's two independent broadcasting organizations, *Voice of the People (VOP)*, which broadcasts into Zimbabwe via short wave, was petrol-bombed. No one has been arrested in connection with these attacks.

The beating of photographer Philimon Bulawayo

On 19 February 2003, Philimon Bulawayo, a photographer with the independent *Daily News* newspaper, was assaulted by soldiers while preparing to take pictures of a food queue at a Harare supermarket. The soldiers approached him and then proceeded to beat him up. His camera was confiscated and he was handcuffed and taken to the Harare central police station where he was beaten again by police officers. He was released the same day without charge and his camera was returned to him. One month later, on 18 March, Philimon Bulawayo was arrested and assaulted again by police for attempting to cover the mass national stay-away organized by the MDC on 18 and 19 March. He was again released without charge.

In some areas, ruling party supporters have reportedly used threats, intimidation and attacks to prevent people from reading independent newspapers. For example, Shepherd Ngundu, a teacher from the rural area of Mount Darwin, was beaten to death on 5 February 2002 by suspected ZANU-PF supporters, one month before the presidential elections, apparently for possessing a copy of the *Daily News*.⁷ In some urban and rural areas, newspaper vendors selling independent newspapers have been subjected to intimidation and attacks by ZANU-PF supporters. The sale of independent newspapers has been banned altogether in many rural areas. The government's *de facto* monopoly on radio broadcasting has enabled total government

⁶ Media Institute of Southern Africa, "Information Minister attacks private media", 19 November 2002.

⁷ Zimbabwe Human Rights NGO Forum, *Political Violence Report, 1-16 February 2002*; "School teacher killed in Zimbabwe political violence", *Agence France Presse*, 7 February 2002.

control of the form of communication most commonly used in Zimbabwe's rural areas, where the majority of the population lives.

Since 2000, the government has also begun to specifically target individuals and organizations perceived to be supportive of the opposition or working to expose human rights violations committed by the government and its agents.⁸ Human rights activists, trade unions, students, teachers, lawyers and court officials are some of those who have been singled out for attack.

Labour activists have been among the government's main targets. Since the presidential elections in 2002, it has become increasingly difficult for workers in Zimbabwe to associate without police interference largely due to the government's perception that labour activists from the Zimbabwe Congress of Trade Unions (ZCTU) and other unions have been working with the MDC to overthrow the government. In-house meetings of the ZCTU, such as general council meetings, have been monitored and sometimes disrupted by the police. ZCTU officials and members have been subject to arbitrary arrest.

Teachers' and students' unions face similar intimidation and harassment. Officials and members of the Progressive Teachers Union of Zimbabwe (PTUZ) who participated in a national teachers' strike in October 2002 were arbitrarily arrested and beaten by police. Raymond Majongwe, the PTUZ Secretary General, was reportedly tortured in police custody following his arrest on 16 October 2002. Over 600 teachers were subsequently dismissed by the government in response to the strike. Protests by students were also dispersed with excessive force by police, and student leaders from the Zimbabwe National Students Union (ZINASU) have encountered repeated harassment, arrests and police brutality.

Lawyers who represent opposition members, and judges, magistrates and prosecutors who are perceived to be supportive of the opposition also experience threats, attacks and arrests.⁹ Several independent judges have been forced to resign or take early retirement. Others receive threats if they do not render decisions favourable to the government.

Politically motivated arrest of High Court Justice Benjamin Paradza

On 17 February 2003, High Court Justice Benjamin Paradza was arrested on

⁸ Amnesty International, *Zimbabwe: Government steps up harassment of human rights defenders*, 16 November 2002 (AI Index: AFR 46/048/2002).

⁹ Amnesty International, *Zimbabwe: The toll of impunity*, June 2002 (AI Index: AFR 46/034/2002).

charges of attempting to obstruct the course of justice and contravening the Prevention of Corruption Act in connection with a case allegedly involving his French business partner. However, Judge Paradza's arrest was more likely to have been politically motivated and signals ongoing efforts on the part of the Zimbabwean authorities to harass, intimidate and force out judges who have handed down judgements which are perceived to be in support of the political opposition. For example, in January 2003, Judge Paradza ordered that the Executive Mayor of Harare, Elias Mudzuri, a member of the MDC, be released from custody after he was arrested for holding a meeting with ratepayers allegedly without police clearance. In August 2002, he ruled that eviction orders served on approximately 54 commercial farmers were illegal. On 19 February, Judge Paradza was released on bail after spending two days in custody and is scheduled to stand trial beginning on 7 July. He is the second judge to be arrested in Zimbabwe after retired High Court Judge, Fergus Blackie, was arrested in September 2002, also on allegations of obstructing the course of justice. Judge Blackie was released on bail and is still awaiting trial.

Civil society organizations and human rights activists have also been targets of state intimidation and harassment. Many have been forced to work in increasingly restrictive and oppressive conditions, facing threats, disruption of meetings by the police, ongoing surveillance by state security agents and arbitrary arrests. In November 2002 the Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, published a list of NGOs which he claimed were a threat to peace and security in Zimbabwe. Among those on the list was Amani Trust, a Zimbabwean human rights NGO which provides support to torture victims.¹⁰ The ongoing verbal attacks against human rights defenders signal the government's desire to single out specific organizations which have been active in exposing human rights violations and providing support to victims of politically-motivated violence, including torture.

As part of its continuing clampdown on dissenting voices, the government has introduced and selectively used legislation to severely restrict the rights of the majority of Zimbabweans to freely associate, assemble and express themselves – rights which are internationally recognized and are cornerstones of any democratic society. These rights are no longer protected or guaranteed in Zimbabwe. Yet Zimbabwe is a party to many international and regional human rights standards which recognize and guarantee the enjoyment of these rights by its citizens. These rights are also guaranteed in Zimbabwe's Constitution. The most controversial pieces of legislation include: the Broadcasting Services Act, the Public Order and Security Act, the Access to Information and Protection of Privacy Act, the Private Voluntary

¹⁰ "Amani Trust illegal" *The Herald*, 14 November 2002.

Organizations Act, and the recently enacted Labour Relations Amendment Act. Specific provisions of this legislation have been used by the government to narrow the space for open public debate, silence those perceived to be critical of its policies, and shield itself from domestic and international scrutiny.

III. Zimbabwe's obligations under international and national law

The rights to freedom of expression, association and assembly are vital to every democratic society. These rights are not only enshrined in international human rights standards ratified by Zimbabwe but are also enshrined in the Constitution. Despite this, the Zimbabwean government has failed to ensure the enjoyment of these rights by the majority of Zimbabweans.

1. International human rights law

The rights to freedom of expression, association and assembly are enshrined in international and regional human rights treaties including the International Covenant on Civil and Political Rights (ICCPR) under Articles 19, 21 and 22 and the African Charter on Human and Peoples' Rights under Articles 9, 10 and 11.¹¹ Although Zimbabwe ratified the ICCPR in 1991, and the African Charter in 1986, the Government has promulgated an array of national legislation to suppress and violate these rights.

The right to freedom of expression is a cornerstone upon which the very existence of a democratic society rests, and it is indispensable for the formation of public opinion. The absence of the freedom of expression is a factor which contributes to a country's failure to respect other human rights. In its Concluding Observations on the initial report on Zimbabwe in March 1998, the United Nations (UN) Human Rights Committee, charged with monitoring member state compliance of the ICCPR, noted:

“...that not all of the rights in the Covenant have been made part of domestic law and cannot be invoked directly before domestic courts. Notwithstanding

¹¹ See Appendix I for the full text of these provisions. These rights are also guaranteed in the 1948 *Universal Declaration of Human Rights (UDHR)* under Articles 19 and 20.

the State party's stated policy of thorough legislative review in order to ensure compatibility of domestic legislation with the Covenant, the Committee notes the absence of effective institutional mechanisms to ensure systematic implementation and monitoring of its provisions. The Committee is concerned about the increasing trend to enact Parliamentary legislation and constitutional amendments to frustrate decisions of the Supreme Court that uphold rights protected under the Covenant and overturn certain laws incompatible with it."¹²

In particular, the Committee expressed concern about the restrictions placed on freedom of expression and the press. While these observations predated the introduction of the Broadcasting Services Act, the Access to Information and Protection of Privacy Act and the Public Order and Security Act, they illustrated Zimbabwe's restrictive media environment even in the late 1990s. Similarly, the Committee in its General Comment 10 states that the right to hold opinions without interference permits no exception or restriction. The Committee also states that the right to freedom of expression includes not only freedom to impart information and ideas, but also the freedom to seek and receive them. According to the Committee, "effective measures are necessary to prevent such control of the media as would interfere with the right of everyone to freedom of expression in a way that is not provided for under the Covenant."¹³

The Committee has also stated that the right to freedom of expression carries with it special duties and responsibilities, and certain restrictions which may relate either to the interests of other persons or to those of the community as a whole. However, any restrictions that may be imposed must be provided by law, and justified as being necessary for respect of the rights or reputations of others or for the protection of national security or public order.¹⁴ Such restrictions must be compatible with internationally recognized standards and must be strictly construed in order to advance the promotion and protection of the right, not to diminish or jeopardize it.

The African Commission's Declaration of Principles on Freedom of Expression in Africa¹⁵ was adopted at the 32nd Session of the African Commission held in October 2002 in Banjul, Gambia and was endorsed by all member states, including Zimbabwe. The Declaration reaffirms the fundamental importance of freedom of expression and access to information as a means of ensuring respect for all human rights. Despite this,

¹² UN Human Rights Committee, *Initial Report on Zimbabwe* (CCPR/C/SR. 1664), paragraph 4.

¹³ UN Human Rights Committee, Article 19, 29 June 1983, General Comment 10.

¹⁴ *Ibid.*

¹⁵ See Appendix for selected provisions.

the government has proceeded to enact and enforce legislation which has the opposite effect.

With regards to the right to freedom of expression, there exist three important declarations which were established in Southern Africa. Although not legally binding, the declarations contain important standards for protecting and promoting freedom of expression. The Windhoek Declaration on Promoting an Independent and Pluralistic African Press was adopted at a seminar held in Windhoek, Namibia, in 1991 on African media independence and pluralism, and is credited with encouraging increased liberalization of the media throughout Africa. The Declaration states that “[t]he national media and labour relations laws of African countries should be drafted in such a way as to ensure that such representative associations can exist and fulfil their important tasks in defence of press freedom.”¹⁶

The Johannesburg Principles on National Security, Freedom of Expression and Access to Information were adopted in Johannesburg, South Africa in 1995 by a group of experts in international law, national security, and human rights. Principle 1 of the Johannesburg Principles reaffirms protection of the right to freedom of expression as guaranteed by the ICCPR and the African Charter.

On the 10th anniversary of the Windhoek Declaration on Promoting an Independent and Pluralistic African Press, the Windhoek Charter on Broadcasting in Africa was established, which stresses the importance of developing democratic and localized broadcasting environments. According to the Charter: “[t]he legal framework for broadcasting should include a clear statement of the principles underpinning broadcast regulation, including promoting respect for freedom of expression, diversity, and the free flow of information and ideas...”¹⁷

Freedom of association and freedom of assembly are twin rights which are separately guaranteed by the African Charter on Human and Peoples’ Rights in Articles 10 and 11 respectively. In 2002 the African Commission on Human and Peoples’ Rights adopted a resolution on the freedom of association to the effect that:

“The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the Constitution and international human rights standards. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of the

¹⁶ Windhoek Declaration on Promoting an Independent and Pluralistic African Press 1991, para 13.

¹⁷ Windhoek Charter on African Broadcasting, 2001: Part One, para 1.

freedom; and the regulation of the exercise of the right of freedom of association should be consistent with the states' obligations under the African Charter on Human and Peoples' Rights."¹⁸

The African Commission has identified four levels of duties for a state party to the African Charter, namely the duty to respect, protect, promote and fulfil the rights guaranteed under the Charter, including the rights to freedom of expression, association and assembly. At a primary level, the obligation to respect entails that the state should refrain from interfering in the enjoyment of these rights; it should respect right-holders, their freedoms and liberty of action. At a secondary level, the state is obliged to protect right-holders against other subjects by legislation and provision of effective remedies. This obligation requires the state to take measures to protect beneficiaries of the protected rights against political, economic and social interferences. Protection generally entails the creation and maintenance of an atmosphere or framework by an effective interplay of laws and regulations so that individuals will be able to freely realize their rights and freedoms. This obligation is intertwined with the tertiary obligation of the state to promote the enjoyment of all human rights, including the rights to freedom of expression, association and assembly. The state should make sure that individuals are able to exercise these rights, for example, by promoting tolerance.¹⁹

The last level of obligation requires the state to fulfil the rights to freedom of expression, association and assembly it freely undertook under the African Charter. According to the African Commission, "it is more of a positive expectation on the part of the state to move its machinery towards the actual realization of the rights."²⁰ Through the use of legislation curtailing the rights to freedom of expression, association and assembly, the Zimbabwean government has violated the provisions of the African Charter on Human and Peoples' Rights under which these rights are guaranteed.

The Right to Organize and Collective Bargaining Convention 1949 (No.98) of the International Labour Organization (ILO) protects against anti-union discrimination and encourages collective bargaining, and, in so doing, protects the rights of workers to freely associate and assemble. Article 1 of the Convention states that "[w]orkers shall enjoy adequate protection against acts of anti-union discrimination in respect of

¹⁸ African Commission on Human and Peoples' Rights, Resolution on the Right to Freedom of Association, Gambia, December 2002.

¹⁹ African Commission on Human and Peoples' Rights, Case 155/96, The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria.

²⁰ *Ibid.*

their employment.”²¹ Zimbabwe ratified this Convention in August 1998. In March 2002, the ILO Committee on Freedom of Association recommended that the Zimbabwean government amend the Labour Relations Act (1985) in line with freedom of association principles.²² In November 2002, the Committee cited Zimbabwe for serious infringements of the principle of freedom of association and violations of trade union rights, and asked the government to ensure that the principles of non-interference by the authorities in the meetings and internal affairs of trade unions are respected.²³

The Freedom of Association and Protection of the Right to Organize Convention 1948 (No.87) establishes the right of all workers and employers to join organizations and provides a series of guarantees for the free functioning of organizations without interference from public authorities. In June 1998, the ILO adopted the Declaration on Fundamental Principles and Rights at Work which committed ILO members to uphold the eight core conventions of the ILO regardless of whether or not they had actually ratified them individually. These conventions also include those safeguarding freedom of association and expression, which Zimbabwe has not ratified. The obligation to respect the principles of freedom of association is taken to be a necessary requirement of membership of the ILO. Thus, even countries that have not ratified these instruments are required, by virtue of their membership, to respect the guarantees they enshrine. Zimbabwe is therefore obliged to ensure that its workers have the right to freedom of association as expressed in the Freedom of Association and Protection of the Right to Organize Convention.

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 (henceforth referred to as the Declaration on Human Rights Defenders) was adopted by the UN General Assembly in 1998. While not legally binding, the Declaration recognizes the right of people to participate in activities individually or in association with others for the promotion and protection of human rights.²⁴

²¹ International Labour Organization, *Convention (No.98) concerning the Application of the Principles of the Right to Organize and to Bargain Collectively*.

²² International Labour Organization, *329th Report of the Committee on Freedom of Association*, GB.285/9, Part I, paragraph 156.

²³ International Labour Organization, “Latest report of ILO Committee on Freedom of Association cites Belarus, Colombia, Zimbabwe, others”, 21 November 2002 (ILO/02/51).

²⁴ See Appendix for selected provisions.

In Zimbabwe, international treaties which have been ratified are not automatically incorporated into national legislation. According to Section 111b of the Zimbabwean Constitution,²⁵ international conventions, treaties and agreements which have been ratified are subject to the approval of Parliament and only form part of Zimbabwean law once an Act of Parliament has been passed. However, under international law, international treaties that are voluntarily undertaken must be observed in good faith. In this sense, states are obliged to repeal or amend domestic laws to ensure that they are not inconsistent with international treaties.

2. National law

Zimbabwe's own national Constitution, the Lancaster House Constitution, was established at independence in 1980 and was the product of negotiations between the British government, the Smith government and nationalist politicians from the liberation movements. Many amendments have since been made to the Constitution which have led to calls from civil society for the drafting of a new constitution, hence the constitutional referendum of February 2000. Following the defeat of the government's proposed constitution, no attempts have since been made to draft a new constitution. The Lancaster House Constitution contains provisions which specifically guarantee the right to freedom of expression, association and assembly in its Declaration of Rights contained in chapter three. The right to freedom of expression is provided for in Section 20 which states:

“Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.”

Section 21 explicitly guarantees freedom of association and assembly:

“Except with his own consent or by way of parental discipline, no person shall be hindered in his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to political parties or trade unions or other associations for the protection of his interests.”

²⁵ The Constitution of Zimbabwe (As amended to No.16 of 20 April 2000).

As the next section will show, despite Zimbabwe's legal obligations under international law and the Constitution, legislation recently introduced, amended and enforced is in direct violation of these legal standards as they violate the rights to freedom of expression, association and assembly of all Zimbabweans.

IV. The tools of repression - an analysis of current legislation

As previously stated, the pieces of legislation used most frequently to repress and violate human rights include: the Broadcasting Services Act (2001), the Public Order and Security Act (2002), the Access to Information and Protection of Privacy Act (2002), the Private Voluntary Organizations Act (2002) and the Labour Relations Amendment Act (2003). Specific provisions of these pieces of legislation are being used by the government as a pretext to systematically silence its opponents and critics. Although introduced under the guise of protecting national security or facilitating access to information, the introduction of each piece of legislation and successive amendments have been used by the authorities to target constituencies of dissent and narrow all space for open political debate in Zimbabwe.

The following is a brief analysis of each piece of legislation, the context in which it was introduced and the implications it has had for the rights to freedoms of expression, assembly and association in Zimbabwe.

1. Broadcasting Services Act (BSA)

Broadcasting has always been organized and operated as a state monopoly in Zimbabwe. Up to 2000, under the Broadcasting Act, the state-controlled *Zimbabwe Broadcasting Corporation (ZBC)* had the sole right to broadcast on radio and television in Zimbabwe. In controlling all forms of electronic broadcasting, especially radio, the government had a monopoly over information disseminated to the majority of the population. Retaining control over the broadcasting sector has therefore been central to the government's efforts to secure support in Zimbabwe's rural areas, the ruling party's traditional support base, and explains its vigorous efforts to restrict the access of its perceived opponents to the broadcasting sector.

In September 2000, a private radio station, *Capital Radio*, filed a suit with the Supreme Court against Section 27 of the Broadcasting Act which prohibits the unauthorised possession, establishment and operation of signal transmitting stations, arguing that it contravenes Section 20 of Zimbabwe's Constitution which guarantees freedom of expression and information. That same month, the Supreme Court ruled in favour of *Capital Radio*, enabling it to begin broadcasting as a radio station. In response, the government promulgated the Presidential Powers (Temporary Measures) (Broadcasting) Regulations²⁶ in October 2000, arguing that the Supreme Court decision created a regulatory vacuum.²⁷

Among other things, the Regulations, valid only for a six month period, temporarily deferred the Supreme Court judgement, established the Broadcasting Authority of Zimbabwe (BAZ) as a regulatory body, and gave the Minister of State for Information and Publicity the authority to issue licences for new broadcasters. Independent radio stations, were subsequently declared illegal and switched off, and their broadcasting equipment was confiscated. *Capital Radio* was only able to broadcast for eight days before it was closed down and its transmitter seized. As the Regulations were temporary, new legislation was urgently required. Hence the fast-tracking through Parliament of the Broadcasting Services Act (BSA), which was enacted on 4 April 2001 and based largely on the contents of the Regulations.

The BSA has since been widely condemned by both media and civil society organizations, which argue that it gives the Minister of State for Information and Publicity excessive powers over the broadcasting sector. For example, Section 7 requires the licensing of broadcasting services, while Sections 6, 11 and 15 provide the Minister with the authority to determine who gets a broadcasting licence and under what circumstances. According to the Windhoek Charter on African Broadcasting, "[l]icensing processes for the allocation of specific frequencies to individual broadcasters should be fair and transparent, and based on clear criteria which include promoting media diversity in ownership and content."²⁸

Section 4 of the BSA establishes the BAZ as a regulatory body consisting of members who are all appointed by the Minister, and which is tasked with issuing licences. On the surface the BSA appears to be in compliance with the Supreme Court ruling ending *ZBC's* monopoly over the broadcasting sector. However, in actual practice, the establishment of a Board run by Ministerial appointees and tasked with

²⁶ Regulations made under the Presidential Powers (Temporary Measures) are valid for six months after which they lapse unless they are passed into law by Parliament.

²⁷ Tawanda Hondora, MISA-Zimbabwe, *The Broadcasting Services Act: An Analysis*, 2002.

²⁸ Windhoek Charter on African Broadcasting, 2001: Part One, paragraph 5.

the authority to issue licences has in effect returned control to the government. Amnesty International believes that providing the Minister with the authority to decide on licensing jeopardizes the impartiality and independence of the process and is clearly being used by the government to maintain control over the broadcasting sector. This is once again inconsistent with internationally recognized standards and declarations.

Section 24 of the BSA gives the Minister the authority to interfere with the content of broadcasting programming and the right to ban any broadcaster deemed to be a threat to national security. The Act includes a provision requiring that programming include at least 75 per cent local content²⁹ and Section 8 bars foreign ownership.

According to Section 18, it is illegal for the *ZBC* to lease a television channel to any other station. Section 18 reads:

“No licensee shall assign, cede, pledge, transfer or sell his license to any other person or surrender his programming duties to another entity outside his establishment. Any such assignment, cession, pledge, transfer, sale or surrender shall be void.”

Shutting down of private television station *Joy TV*

Prior to 31 May 2002, Zimbabwe had one private television station, known as *Joy Television (Joy TV)* which leased a channel from the *ZBC*. On 23 April 2002, the Government informed *Joy TV* that it would not extend its lease beyond 31 May 2002 as according to Section 18 of the BSA, it is illegal for the *ZBC* to lease a channel to any other station. Two weeks after this announcement, the government instructed *Joy TV* to stop broadcasting *British Broadcasting Corporation (BBC)* news programs. *Joy TV* was then informed that it needed to apply to the Broadcasting Authority of Zimbabwe for a licence to operate its own channel. Since the cancellation of *Joy TV's* lease, the *ZBC* remains the only television broadcaster in Zimbabwe as no other station has been licensed to date.

According to the African Commission's Declaration of Principles on Freedom of Expression in Africa, “States shall encourage a diverse, independent private broadcasting sector. A State monopoly over broadcasting is not compatible with the

²⁹ Broadcasting Services Act, 2001, Third Schedule, Provisions applicable to Broadcasting Authority of Zimbabwe Board.

right to freedom of expression.”³⁰ However, Section 27 of the BSA provides that private broadcasters cannot operate without the permission of the BAZ. As ZBC remains Zimbabwe’s sole broadcaster three years after the Broadcasting Act was replaced, it is apparent that instead of liberalizing the broadcasting sector, as per the Supreme Court ruling, the Act ensures continued state control.

Responding in March 2003 to why the Ministry of Information and Publicity had not licensed any broadcasters thus far, Minister Jonathan Moyo reportedly stated that the government had realized that most applicants were foreigners and did not have “Zimbabwean interests at heart”.³¹

As the BSA places tight restrictions on the nature, quality and quantity of information broadcast through radio and television, it violates Section 20 of Zimbabwe’s Constitution which guarantees the right to freedom of expression and to impart information. It also violates international and regional human rights treaties, including the ICCPR and the African Charter which Zimbabwe has ratified.

Following its successful challenge of the Broadcasting Act in 2000, *Capital Radio* launched a suit against the BSA in May 2002 on the basis that specific provisions of the BSA contravene the rights to freedoms of expression and information. The courts however, have repeatedly delayed *Capital Radio*’s challenge of the constitutionality of the BSA, due to reported delays from government departments.

An amendment to the BSA, the Broadcasting Services Amendment Bill, is presently before the Parliamentary Legal Committee.³² The Amendment Bill seeks to amend the BSA by incorporating provisions on the licensing of listeners, receivers and dealers. The amendment is not expected to ease restrictions on the broadcasting sector.

2. Public Order and Security Act (POSA)

The Law and Order Maintenance Act (LOMA) was enacted in 1955 by the Rhodesian authorities to severely restrict freedom of expression, assembly and movement. It

³⁰ African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression in Africa, 32nd Session, 17-23 October, 2002: Banjul, Gambia: Section V(1).

³¹ “Government to amend law to allow community broadcasting”, *Financial Gazette*, 13 March 2003.

³² The Parliamentary Legal Committee is a standing committee of Parliament established under the Zimbabwean Constitution and tasked with reporting on whether legislation contravenes the Declaration of Rights or any other provision of Zimbabwe’s Constitution.

remained in place after independence. However, over the years, the Supreme Court has removed several unconstitutional clauses.

LOMA was replaced by the Public Order and Security Act (POSA) which was fast-tracked through Parliament in December 2001, apparently to enable the government to hamper the campaigning activities of the MDC in the run-up to the March 2002 presidential elections. The intention was also to tighten restrictions on the independent media and give the police sweeping powers. Earlier, in 1997, a Public Order and Security Bill (POSB) had been introduced to replace LOMA.³³ In January 2002, the Special Representative of the UN Secretary General on Human Rights Defenders, Hina Jilani, sent an urgent appeal to the Zimbabwean authorities regarding the passage through Parliament of the POSB in relation to concerns that the Bill would restrict the fundamental rights to freedom of expression, association and assembly.³⁴

Since its enactment in 2002, POSA has been used by the authorities to target opposition supporters, independent media and human rights activists and specifically restrict their rights to: freely assemble; criticize the government and President; and engage in, advocate or organize acts of peaceful civil disobedience. The police have used POSA to arbitrarily arrest hundreds of Zimbabweans, mainly opposition supporters, since its enactment. Many have had the charges against them dropped or dismissed in court due to lack of evidence. However, the legislation has provided the police with a pretext to intimidate, harass and brutally torture real or perceived supporters and members of the opposition.

The government contends that the restrictive elements of POSA are necessary for enabling the police to deal with alleged threats to public safety, including “terrorist” threats following the attacks of 11 September 2001 in the USA. According to Patrick Chinamasa, Minister of Justice, Legal and Parliamentary Affairs, the legislation ensures that Zimbabweans “...move about peacefully, they enjoy their freedoms, without any fear that those freedoms may be threatened.”³⁵

³³ Several delays occurred to the enactment of the POSB. It was passed by Parliament in 1999 but was vetoed by President Robert Mugabe, reportedly on the basis that it was too ambiguous and not sufficiently tough on the media.

³⁴ 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

³⁵ Patrick Chinamasa, Minister of Justice, Legal and Parliamentary Affairs – text of interview by Zimbabwean TV on 21 November 2001.

Section 5 of POSA criminalizes the establishment of an organization to overthrow the government by unconstitutional means; usurp the functions of government; or coerce the government (including through physical force, boycotts and civil disobedience). Under Section 5, this is punishable by up to 20 years in prison. Amnesty International is concerned that this provision is being abused by the government authorities to target its opponents.

Politically motivated arrests of opposition officials

On 31 March 2003, Gibson Sibanda, Vice-President of the MDC, was arrested for allegedly trying to overthrow the government by inciting people to join the national mass stay-away organized by the MDC on 18 and 19 March 2003. He has been charged under Section 5 of POSA which carries a punishment of 20 years' imprisonment. After spending eight days in police custody, he was released on bail and asked to report to the police twice a week. If convicted, Amnesty International would consider Gibson Sibanda to be a prisoner of conscience.

In January 2003, Job Sikhala, MDC Member of Parliament (MP) for St. Mary's constituency in Harare; Gabriel Shumba, a lawyer with the Zimbabwe Human Rights NGO Forum, and three other MDC members were arrested and charged under Section 5 of POSA. All five were apparently tortured while in police custody, and medical examinations indicated that both Job Sikhala and Gabriel Shumba had electric shocks applied to their genitals, mouths and feet. Job Sikhala and Gabriel Shumba were forced to drink urine. The charges against all five were subsequently dismissed due to lack of evidence.

Several provisions of POSA apply specifically to the rights to freedom of expression and freedom to impart information. For example, Section 12 makes it a criminal offence to do or say anything which may cause "disaffection among the Police Force and Defence Forces", punishable by imprisonment for up to two years. In January 2003, Kenneth Gwabalanda-Mathe, an MDC official was arrested and charged under Section 12 for making a statement in the *Daily News* about reported harassment and attacks on citizens perpetrated by police and army officers following the murder of an Australian tourist in Victoria Falls that month. He was released on bail pending his trial which is scheduled for May 2003.

According to Section 15, it is an offence punishable by up to five years in prison to publish statements which incite or promote public disorder or public violence; adversely affect the defence or economic interests of the country; undermine

public confidence in the police, prison or defence forces; or interfere with any essential service. Section 16 makes it an offence to insult the Office of the President, punishable by up to one year in prison.

Taken together, Amnesty International believes that Sections 12, 15 and 16 are being used by the government to target individuals and organizations whose views differ from those of the government. The authorities may use these provisions to target the independent media and human rights activists who document and expose human rights violations perpetrated by the government and its agents, as these activities could now fall into the category of undermining public confidence in the security forces or undermining the authority of the President.³⁶

According to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, the right to freedom of expression should not be considered a threat to national security or be subject to restrictions or penalties. In particular, the Johannesburg Principles specify that expression which does not constitute a threat to national security includes expression that: advocates non-violent change of government policy or the government itself; constitutes criticism of the government, its agencies or public officials; and involves communicating information about alleged violations of international human rights standards or international humanitarian law.³⁷

According to Section 17 and 19 of POSA, individuals who disturb the peace, or say or do anything which is considered obscene or insulting can be imprisoned for up to 10 years. These provisions may be used as an excuse by the authorities to target individuals and organizations which engage in, advocate or organize peaceful acts of civil disobedience.

Section 21 of POSA makes acts or statements which engender feelings of hostility towards police officers an offence punishable by up to two years in prison. In February 2003, deputy news editor of the *Daily News*, Pedzisayi Ruhanya, and freelance journalist, Ishmael Mafundikwa, were arrested for allegedly obstructing police duties at the opening of the treason trial of Morgan Tsvangirai, President of the MDC. They were subsequently charged under Section 21, although they were later released after the Attorney General refused to prosecute them.

³⁶ Lawyers Committee for Human Rights, *Background statement on the Public Order and Security Bill before the Zimbabwean Parliament*, 19 December 2001.

³⁷ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1995.

Sections 23-31 regulate the organization and conduct of public gatherings and provide the police with extensive powers to control them. For example, Section 24 requires that police are given four days' advance notice for the holding of public gatherings or meetings. In practice, police are using this provision to refuse permission to hold public gatherings and meetings. Sections 25 and 26 grant the police wide powers to break up and even prevent public gatherings altogether if they are deemed to endanger public order. Since POSA's enactment, the police have actively used these provisions to strictly police peaceful meetings and have, to some degree, made Zimbabwe a police state where democratic activity is tightly controlled and supervised, and where repression of internationally recognized human rights is the commonplace.

Police disrupt peaceful women's marches

On 8 March 2003, International Women's Day, Bulawayo police detained 15 women and reportedly beat several others who were participating in a peaceful march. Among those detained were three MDC MPs and the wife of the MDC Vice-President. The 15 women were held in police custody for four hours, apparently in connection with holding a march without police clearance, and were released without charge.

On 14 February 2003, police reportedly arrested 73 people for participating in a march to mark Valentine's Day which was organized by Women of Zimbabwe Arise (WOZA). WOZA continued with the march after police denied them permission to hold it. 48 women were held for four hours and released without charge, while another 15 were released the following day without charge.

The government has used provisions of POSA to specifically target the MDC and hamper their ability to campaign and mobilize support, particularly in the run-up to elections. For example, in July 2002, Innocent Gonese, the MDC MP for Mutare Central in Manicaland province, was prevented from addressing a meeting in Beitbridge on the basis that the "political environment was hostile". More recently, Nelson Chamisa, the winning MDC candidate in the March 2003 parliamentary by-election in Kuwadzana was detained by police in the run-up to the election, along with 10 others, while canvassing door-to-door. Police alleged they were holding an unauthorized meeting. They were released the same day but were prevented from canvassing any further.

In February 2002, Munyaradzi Gwisai, former MDC MP for Highfield and 10 members of the National Constitutional Assembly (NCA), were arrested and charged under Sections 24 and 26 of POSA for taking part in an NCA-led protest march. They maintain that the arrests were unlawful as the provisions of POSA under which they were charged are unconstitutional. In May 2002, they filed a petition with the Supreme Court seeking the nullification of Sections 24 and 26 of POSA.



A riot police officer arrests a woman protester during NCA march in Harare on 15 Feb. 2002. The march was held to press the government to accept need for a new constitution and to hold free and fair elections the next month. 12 people were arrested during the march © AP

Under Section 32 of POSA, the police have been granted the power to demand identity documents from anyone above the age of 16 when in a public place. If unable to produce them immediately, the documents must be produced at a police station within seven days. Amnesty International is concerned that in the context of escalating involvement of police officials in perpetrating human rights violations, this provision may be misused by the police to intimidate and discourage people from attending political gatherings and rallies, thereby restricting their freedom of movement, assembly and association. It is reminiscent of the pass laws under the apartheid system in South Africa and restrictions on movement enforced by the Rhodesian authorities under colonial rule.

The provisions of POSA cited above place severe restrictions on the rights of Zimbabweans to freedom of association, assembly and expression, all of which are guaranteed under Zimbabwe's Constitution, as well as the ICCPR and the African Charter. Of particular concern is the way in which the police have interpreted POSA as a justification for excessive use of force and to deter those with dissenting voices from holding public rallies and demonstrations.

3. Access to Information and Protection of Privacy Act (AIPPA)

The Access to Information and Protection of Privacy Act (AIPPA) was enacted in March 2002, in advance of the presidential elections, possibly in a bid by the government to strictly control the flow and content of national and international media coverage. The delays in the passage of the Access to Information and Protection of Privacy Bill, due to delays in parliamentary debate and adverse reports issued by the Parliamentary Legal Committee, reflected in part the level of dissent within ZANU-PF regarding the Bill's restrictions on the right to freedom of expression. Dr. Eddison Zvobgo, ZANU-PF Chair of the Parliamentary Legal Committee, described the Bill in its original form as "the most calculated and determined assault on our liberties guaranteed by the Constitution."³⁸

³⁸ Media Monitoring Project Zimbabwe, *Submission to the African Commission on Human and Peoples' Rights*, June 2002.



A group of Zimbabwean journalists demonstrating outside Parliament to protest against proposed media legislation, 30 Jan. 2002
©AP Photo/Rob Cooper

The UN Special Rapporteur on Freedom of Opinion and Expression, Abid Hussain, expressed deep concern about the Bill in January 2002, three months prior to its enactment. He appealed to the Zimbabwean authorities to reconsider the provisions of the Bill and not to proceed to pass it into law.³⁹ His appeal was not heeded by the government. The Minister of State for Information and Publicity publicly stated that laws such as AIPPA are needed to enable the government to defend Zimbabwe's sovereignty, and that AIPPA has brought "sanity" to Zimbabwe's media industry.⁴⁰

Since its enactment in March 2002, AIPPA has been used by the government to silence independent journalists and media workers. At least 21 journalists, all from the independent media, have been arrested and charged under AIPPA, many more than once. The courts have dismissed many of these cases due to lack of evidence.

³⁹ In September 2001, the Special Rapporteur requested to undertake an official mission to Zimbabwe but has not received a positive response from the Government.

⁴⁰ MISA/International Freedom of Expression Exchange (IFEX), Alert: Information minister verbally attacks private media, 20 November 2002.

An amendment bill, the Access to Information and Protection of Privacy Amendment Bill, is presently being reviewed by the Parliamentary Legal Committee. Information and Publicity Minister Jonathan Moyo has claimed that the amendment is the result of domestic and international pressure to ease restrictions on the media.⁴¹ However, if the Amendment Bill is passed in its present form, it is expected to further tighten restrictions on independent media.

Contrary to its name, AIPPA is not about improving access to information or protecting privacy, but protecting the government from scrutiny by restricting access to information held by public bodies and penalizing public and media inquiry of its actions.

Sections 38-42 of AIPPA provide for the establishment of the Media and Information Commission (henceforth referred to as the Commission), a body with a wide range of regulatory powers over the media. For example, under Section 39, the Commission has the power to register the mass media, accredit journalists, enforce professional and ethical standards in the media and monitor content. Clause 7 of the amendment Bill provides that the Commission will be governed by a Board whose members are all appointed by the Minister of Information, after consultation with the President.

Many international bodies have stressed the need for the independence of bodies with regulatory powers, to protect against political interference in relation to media and information. As the Commission consists only of government appointees with no representation from media professionals, journalists are denied the right to choose their own leaders, regulate their own affairs and enjoy professional independence.⁴² Furthermore, Amnesty International is concerned that the Minister who has control over the Commission has repeatedly demonstrated his contempt for the independent media through ongoing verbal attacks and threats.

Section 66 provides that all bodies which disseminate mass media products, including electronic communication, must register with the Commission, regardless of size or frequency of publication. This applies, for example, to internet service providers, small NGO publications and shops which rent videos and sell newspapers. It is clear that AIPPA's intent is to specifically control the independent media as no similar requirements have been placed on the *ZBC*, the government-controlled media house, to register under this legislation.

⁴¹ *BBC*, "Minister slams US sanctions, announces changes to media laws", 13 March 2003.

⁴² Irene Petras for MISA-Zimbabwe, "The legal implications of accreditation or non-accreditation of journalists under the Access to Information and Protection of Privacy Act", October 2002.

Section 79 makes accreditation mandatory for all journalists. This Section also states that non-Zimbabweans or individuals without permanent residency, are not permitted to work as journalists. If an unaccredited journalist or a media house operates without being registered, they are liable to up to two years in prison. Registration for journalists is renewable after one year and for media houses, after two years, but is subject to cancellation on various grounds.

Most countries require media registration in some form. Accreditation of journalists is also generally held to be necessary, but in most countries it is handled by the journalists' own professional body, who take responsibility for ensuring that accredited journalists meet professional standards. However, in the case of Zimbabwe, Amnesty International is concerned accreditation is being used as a vehicle for censorship, as journalists are accredited by a government-controlled Commission and can easily have their accreditation revoked should they report in a way which is perceived to be critical of government policies and practices.

The foreign press has also been targeted through AIPPA and its amendment which tighten restrictions on foreign media operations and foreign journalists. Section 90 prohibits the establishment of foreign press offices in Zimbabwe without the permission of the Commission. Section 79 prohibits foreign journalists from working in Zimbabwe unless for restricted periods and with the permission of the Commission. As per Clause 19 of the amendment Bill, this will be restricted to a maximum of 30 days. Amnesty International believes that the government is using this provision to deny accreditation to foreign journalists. Prior to the enactment of AIPPA, several journalists were denied accreditation in early 2002 to cover the presidential elections. Since AIPPA's enactment, more foreign journalists have been forced to leave the country as a result of registration prohibitions. For example, in October and November 2002, two journalists with *Agence France Presse (AFP)* were denied extensions on their work permits and ordered to leave Zimbabwe by the Ministry of Information and Publicity.

In many countries, laws which are commonly used against journalists and the media tend to relate to the issue of defamation. While defamation can be both a civil and a criminal matter, it is generally regarded as a civil offence. Section 80 of AIPPA and Sections 12, 15 and 16 of POSA effectively criminalize defamation. The authorities have used AIPPA to impose tight restrictions on the ability and right of journalists to report on the activities of the government, and the ability of the media to publish information that it believes to be accurate and true. One of the most commonly used provisions of AIPPA is Section 80 which makes it a criminal offence to falsify information and publish falsehoods and is punishable by up to two years'

imprisonment. Since AIPPA was enacted in March 2002, over a dozen journalists and editors from the independent media have been arrested and charged under Section 80.

Arrest and acquittal of American journalist Andrew Meldrum

In June 2002, Andrew Meldrum, a US national and journalist with the United Kingdom-based newspaper *The Guardian*, was the first journalist to be charged and tried under Section 80 of AIPPA with “abusing journalistic privilege by publishing a falsehood” in connection with a report regarding the alleged beheading of a woman by ZANU-PF supporters. Although he was acquitted, within hours of the ruling he was served with a deportation order by the Ministry of Home Affairs. Following a High Court application, his deportation was suspended and the matter was referred to the Supreme Court. No date has been set for his Supreme Court hearing.

Under Section 85, accredited journalists are obliged to observe a code of conduct to be developed by the Commission. Amnesty International is concerned that as the code of conduct has not yet been prepared, journalists are required to agree in advance to a document which contains rights and duties which they are unaware of and which may be contrary to their right to freedom of expression.⁴³

Independent Journalists Association of Zimbabwe challenges AIPPA

In August 2002, the Independent Journalists Association of Zimbabwe (IJAZ), through Abel Mutsakani (President of IJAZ, news editor of the *Financial Gazette* newspaper) and Vincent Kahiya (news editor of the *Zimbabwe Independent* newspaper), filed an application with the Supreme Court to challenge the constitutionality of Sections 79, 80, 83 and 85 of AIPPA. When read together, these sections compel journalists to register with the Commission, and prevent individuals from exercising the right to inquire, gather, receive and disseminate information or visit public bodies with the express purpose of carrying out duties as a journalist, unless accredited by the Commission. IJAZ contends that these Sections violate Section 20(1) of Zimbabwe’s Constitution which guarantees freedom of expression. Previously, accreditation was entirely voluntary for the purpose of enhancing easier identification of journalists and was therefore within Section 20(1) of the Constitution. No date has yet been set for the Supreme Court ruling.

⁴³ Ibid.

The rationale for the introduction of the Amendment is largely viewed as an attempt by the government to pre-empt further constitutional challenges to AIPPA. Thus far, three constitutional cases have been filed against AIPPA: Geoff Nyarota, former *Daily News* editor and journalist Lloyd Mudiwa, are challenging Section 80, as are IJAZ which is also challenging Sections 79, 83 and 85. The Associated Newspapers Group (ANZ), publishers of the *Daily News*, are challenging several Sections, including Section 65 which provides for “restrictions in the ownership of and holding of shares in a mass media service”. No Supreme Court rulings on these cases have been made to date. However in October 2002, the government admitted that Section 80 is unconstitutional.⁴⁴ Among other changes, the Amendment Bill proposes to amend the provision which stipulates that a journalist can be charged with a criminal offence for contravening Section 80 of the AIPPA. If the Bill is passed in its present form, it will in future be necessary to prove that someone’s “reputation, freedoms or rights have been directly threatened by the publication of a falsehood or fabrication”.

4. Private Voluntary Organizations (PVO) Act

The Private Voluntary Organizations (PVO) Act was enacted in 1967 under colonial rule. It provides for the registration of private voluntary organizations and controls the collection of contributions to such organizations. It has been amended several times since its enactment, most recently in 2001.

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 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.” The notice warned that NGOs which continue to operate without being registered risk prosecution and arrest. Section 6 of the PVO Act therefore prohibits the operation of bodies, institutions or associations which are not registered, while Section 25 makes non-registration a criminal offence, punishable by up to two months in prison. The registration process as set out in Section 9 is cumbersome and possibly quite lengthy. The requirement that organizations must

⁴⁴ MISA, Alert Update: Government admits Section 80 of media bill is unconstitutional, 31 October 2002.

cease operations if they are not registered under the PVO Act contradicts existing Zimbabwean law, under which it is legal to register and operate as a Trust with the Registrar of Deeds without having to register with the High Court. Furthermore, it seems that the High Court does not have a legal mechanism to undertake such a registration.

The notice did not amend the PVO Act. It is, however, the first attempt by the government to enforce the PVO Act in recent years.⁴⁵ Despite its enactment in 1967, these provisions of the PVO Act had not previously been fully enforced. The September 2002 notice is therefore a reassertion of the provisions of the PVO Act concerning the registration of NGOs.

On the surface, the government's publication of the notice appears to be motivated by the intent to regulate. However, at a deeper level, there are fears that once registered, certain organizations perceived to be critical of the government will be de-registered, or will be strictly controlled and supervised by the government. These moves correspond with the likely desire of the government to control and silence organizations which are perceived to be supporting the opposition; investigating human rights violations; or providing assistance to victims of torture, displaced farm workers and other disadvantaged groups.⁴⁶ Of further concern are indications that the government intends to introduce new legislation which may further curtail the activities of NGOs, possibly through a total prohibition on the receipt of foreign funding by local NGOs, along with harsher penalties for breaches of the PVO Act.

State harassment of Amani Trust

In October 2002, President Mugabe announced that the Government would scrutinize NGOs and review the laws governing them.⁴⁷ In November 2002, Amani Trust, a Zimbabwean human rights NGO which provides support to torture victims, was singled out for public attack by the government which accused it of supporting the MDC and trying to destabilize the country. That same month, the Minister of Public Service, Labour and Social Welfare, July Moyo, stated in Parliament that Amani Trust was not properly registered because it had only registered its Constitution with the Registrar of Deeds, and its registration was therefore not in accordance with the PVO Act. Amani Trust

⁴⁵ Brian Kagoro, Coordinator, Crisis in Zimbabwe Coalition. 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.

⁴⁶ Ibid.

⁴⁷ "Amani Trust illegal" *The Herald*, 14 November 2002.

did attempt to register with the High Court but was told that no legal mechanism exists for the High Court to undertake such a registration. In response to repeated harassment and threats of arrest, the Trust closed its offices in November 2002 and has not since re-opened. In January 2003, Amani Trust staff received threats that their offices would be petrol-bombed.

Amnesty International is concerned that Section 6 of the PVO Act which criminalizes the non-registration of NGOs violates Section 21 of Zimbabwe's Constitution which provides for the right to freedom of association.⁴⁸ The provisions of the PVO Act which prevent individuals from forming and running organizations free from state control also contravene Article 21 of the ICCPR and Article 10 of the African Charter which guarantee the right of an association to operate effectively and independently.⁴⁹ In doing so, these two international human right standards also oblige the government of Zimbabwe to protect the rights of human rights defenders.

In October 2002, the Special Representative of the UN Secretary General on Human Rights Defenders, Hina Jilani, expressed her concern regarding violent attacks reportedly suffered by Zimbabwean human rights defenders and that these attacks appear to be part of a policy of repression.⁵⁰ The government's harassment, verbal attacks and enforcement of the PVO Act is inconsistent with the UN Declaration on Human Rights Defenders which recognizes the crucial role played by human rights organizations and activists, and requires that they be free to work in an environment free from intimidation and attack. Article 6 of the Declaration on Human Rights Defenders provides that everyone has the right, individually and in association with others "to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters." Hina Jilani reported in October 2002 that she will continue to monitor the situation and seek the cooperation of the Government for the implementation of the Declaration on Human Rights Defenders.

⁴⁸ Pearson Nherere, Opinion: Private Voluntary Organizations Act, 8 October 2002.

⁴⁹ Lawyers Committee for Human Rights, "Zimbabwean Non-Governmental Organizations under increasing pressure from restrictive legislation and government threats", 20 November 2002.

⁵⁰ 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

5. Labour Relations Amendment Act (LRAA)

Historically, Zimbabwe has had a multi-tiered system of labour law with several pieces of legislation governing different categories of employees. Private sector workers were covered by the Labour Relations Act (1985). Public servants were covered by the Public Servants Act and a series of public service regulations and directives, while employees working in Export Processing Zones fall under the Export Processing Zones Act. As a result, the conditions of employment differed for workers depending on the legislation which governed them.

While the Labour Relations Act recognized the right of workers to form and join trade unions without prior authorization, public servants, such as teachers and nurses, were not permitted to form their own trade unions. They were able to join associations, but could not bargain collectively or strike.⁵¹ To address these disparities, the labour movement has repeatedly called on the government to harmonize these laws and standardize the conditions of employment for all workers.

On 7 March 2003, the government enacted the LRAA, which aimed at, among other things, harmonizing the Labour Relations Act and the Public Servants Act. Of particular concern are the provisions under the LRAA which tighten restrictions on the ability of unions to organize strikes and demonstrations, effectively denying workers their right to strike. Opposition MPs reportedly attempted to prevent the passage of the LRAA Bill through parliament, but were outnumbered when the vote was taken.

The government maintains that the amendment to the Labour Relations Act is intended to ensure that Zimbabwe's labour legislation conforms to recommendations of the ILO as part of on-going democratic reforms of the labour market.⁵² Controversially, in 2002, the government reportedly turned down an ILO proposal to send a mission to Zimbabwe to assist with the development of amendments to the Labour Relations Act to ensure conformity with international standards. The ILO also sought to encourage the restoration of guarantees for the right to freedom of association for trade unions. In turning down the proposed ILO mission, the Minister of Public Service, Labour and Social Welfare, July Moyo, maintained that the correct procedure would be for the ILO to task a Committee of Experts with the duty of

⁵¹ International Confederation of Free Trade Unions (ICFTU), *Annual Survey of Violations of Trade Union Rights (2002): Zimbabwe*.

⁵² Colleen Gwari, "Labour relations bill passed" *Daily News*, 10 January 2003.

monitoring the application of international labour standards in Zimbabwe and then liaise with the government.⁵³

The LRAA does not protect the right of workers to freedom of association. For example, the Amendment contains controversial provisions which curtail the right to engage in collective job action. Section 37 provides that collective job action requires: 14 days notice; needs the approval of the relevant union or employers' organization or a secret ballot; and that all measures laid down for internal resolution of disputes have been exhausted. Section 34 stipulates that collective job action is prohibited if the parties have agreed to go to arbitration, otherwise it is punishable by up to two years in prison.

According to Section 37, only workers in non-essential services are permitted to strike. Those workers who are classified under the "essential services" category are not permitted to take part in any collective job action. Under Section 36, the definition of what constitutes essential service has been strategically broadened and now means services "the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public." Previously under the Labour Relations Act, "essential services" included services related to fire prevention, emergency health care and water and electricity supply. Amnesty International is concerned that in expanding the definition of "essential services", a wider number of workers whose rights to engage in collective job action are now restricted.

According to Section 40 of the Amendment Act, employees or their representative bodies found guilty of any form of involvement in unlawful collective action will be punished by up to five years' imprisonment. Peaceful picketing is permitted under Section 38, but requires approval from an industrial agreement to be inside work premises and even then must not affect production.

The Sections of the LRAA which curtail the right to engage in collective job action contravene Section 21 of Zimbabwe's Constitution which expressly guarantees the right to "belong to political parties or trade unions". They also violate Article 22 of the ICCPR and Article 10 of the African Charter which guarantee the right to freedoms of association. Provisions of the LRAA contravene Article 3 of the Right to Organize and Collective Bargaining Convention which states that "[m]achinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as defined in the preceding articles."

⁵³ Mthulisi Mathuthu, "Government bars ILO mission" *Zimbabwe Independent*, 28 June 2002.

V. Conclusion and recommendations

Amnesty International is deeply concerned that the Government of Zimbabwe is using provisions of national legislation to silence dissent, perpetrate human rights violations and effectively place the rights of Zimbabweans under siege.

Since 2000, state-sponsored intimidation, arbitrary arrest, torture and attacks on the political opposition, independent media and human rights organizations have escalated sharply. The government has used its supporters as well as state agents, namely so-called war veterans, youth “militia”, police, state security agents and the army to wage a targeted campaign of repression in a bid to retain control.

In particular, new laws have been introduced and existing laws amended to shield the government from mounting domestic and international scrutiny and to clamp-down on its perceived opponents by restricting their rights to freedom of expression, association and assembly. Opposition officials and supporters, journalists, human rights activists, trade unions, students, teachers, lawyers and court officials are some of those who have been singled out for attack. Although the legislation is specifically aimed at silencing the government’s growing constituencies of dissent, it has widespread implications for the rights of all Zimbabweans to publicly voice concerns and actively participate in the democratic governance of their country.

Zimbabwe has ratified the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples’ Rights and other international human rights standards which guarantee the rights to freedom of expression, association and assembly. Despite this, the authorities have used provisions of the Broadcasting Services Act, the Public Order and Security Act, the Access to Information and Protection of Privacy Act, the Private Voluntary Organizations Act and the Labour Relations Amendment Act to suppress these internationally recognized rights.

The international community has a vital role to play in publicly condemning the government of Zimbabwe for the country’s spiralling human rights crisis. African governments in particular should make a concerted effort directly and through the auspices of the Commission of the African Union, the Southern African Development Community (SADC) and the Commonwealth to signal to the Zimbabwean authorities that state-sponsored attacks on the political opposition, independent media and human rights activists contravene international human rights standards.

In order to halt the deteriorating human rights situation in Zimbabwe, Amnesty International is calling on the Zimbabwean government to:

1. Immediately cease all intimidation, arbitrary arrests and torture of the political opposition, independent media and human rights activists.

The government must end all intimidation, arbitrary arrests and torture of political and human rights activists and media workers, and allow all Zimbabweans full and free exercise of their rights to freedom of expression, association and assembly. Court decisions which respect and protect the rights to freedom of expression, association and assembly must be upheld.

2. Repeal or amend legislation which violates internationally recognized rights to freedom of expression, association and assembly and which contravenes international and national law

All national legislation which is incompatible with the principles and provisions of the ICCPR, African Charter on Human and Peoples' Rights and ILO Labour conventions must be immediately repealed or amended. The government must specifically amend or repeal repressive provisions of the Broadcasting Services Act, the Public Order and Security Act, the Access to Information and Protection of Privacy Act, the Private Voluntary Organizations Act and the Labour Relations Amendment Act. These Zimbabwean laws contain draconian provisions which deny fundamental human rights and facilitate the political misuse of the police.

3. Incorporate international human rights standards under which the government of Zimbabwe has legal obligations into national law

As Zimbabwe has ratified the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples' Rights and International Labour Organization Convention 98 on the Right to Organize and Collective Bargaining, national legislation must be brought into line with the fundamental rights and freedoms contained in these legal standards, recognizing and impartially enforcing them. The principles articulated in the UN Declaration on Human Rights Defenders should also be fully incorporated into national law.

4. Ratify international human rights standards which guarantee the rights to freedom of expression, association and assembly and respect these provisions

The following international standards should immediately be ratified by the Zimbabwean government:

- International Labour Organization Freedom of Association and Protection of the Right to Organize Convention 1948 (No.87)
- two Optional Protocols to the International Covenant on Civil and Political Rights allowing the right of individual communication to the UN Human Rights Committee and abolishing the death penalty respectively
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Protocol to the African Charter establishing the African Court on Human and Peoples' Rights.

5. End the political misuse of the police and ensure that police officers abide by the highest standards of professionalism and respect for human rights

Restrictive legislation such as the Public Order and Security Act has been used by the police to harass, arbitrarily arrest and torture Zimbabweans with impunity. The Zimbabwean government should cease to use Zimbabwe Republic Police officials for political purposes, including for the suppression of peaceful, non-violent public assemblies and the persecution of opposition parties, independent media workers and human rights activists. The authorities must take effective action to discipline state officials who abuse the criminal process to the detriment of members of human rights organizations with the intention of harassing them or curtailing their legitimate activities for the defence of human rights and fundamental freedoms.

6. Investigate all cases of police brutality, torture, unlawful arrest and detention and bring to justice the suspected perpetrators

It is vital that the authorities take effective measures to investigate all allegations of human rights violations promptly, thoroughly and impartially. The authorities should also make it publicly clear that human rights violations by the police will not be tolerated under any circumstances and that the need to investigate crime or deal with public disorder can never be used as a justification for human rights violations.

7. Issue invitations to the UN Special Rapporteurs on Freedom of Opinion and Expression and on Torture, and the Special Representative of the UN Secretary General on Human Rights Defenders

The Government of Zimbabwe should issue invitations for fact-finding visits to Zimbabwe by the UN thematic mechanisms, in particular the Special Rapporteurs on Freedom of Opinion and Expression and on Torture, and the Special Representative of the UN Secretary General on Human Rights Defenders.

Appendix I: Excerpts from international human rights standards

Article 19 of the ICCPR

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Article 21 of the ICCPR

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22 of the ICCPR

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

Article 9 of the African Charter on Human and Peoples' Rights

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10 of the African Charter on Human and Peoples' Rights

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.

Article 11 of the African Charter on Human and Peoples' Rights

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

African Commission Declaration of Principles on Freedom of Expression in Africa

Article II on Interference with Freedom of Expression states:

1. No one shall be subject to arbitrary interference with his or her freedom of expression

Article V on Private Broadcasting states:

1. States shall encourage a diverse, independent private broadcasting sector. A state monopoly

over broadcasting is not compatible with the right to freedom of expression.

Article VII on Regulatory Bodies for Broadcast and Telecommunications

1. Any public authority that exercises powers in the areas of broadcast or telecommunications regulation should be independent and adequately protected against interference, particularly of a political or economic nature.

Article VIII on Print Media

1. Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.
2. Any print media published by a public authority should be protected adequately against undue political interference.

Article XI on Attacks on Media Practitioners

1. Attacks such as the murder, kidnapping, intimidation of and threats to media practitioners and others exercising their right to freedom of expression, as well as the material destruction of communications facilities, undermines independent journalism, freedom of expression and the free flow of information to the public.
2. States are under an obligation to take effective measures to prevent such attacks and, when they do occur, to investigate them, to punish perpetrators and to ensure that victims have access to effective remedies.

Article 12 of the UN Declaration on Human Rights Defenders

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.