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ZIMBABWE

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2011

In 2010-2011, impunity and lack of justice for past abuses remained of serious concern, the media remained gagged and journalists exposed to severe acts of reprisal. In that context, two years after the entry into force of a power-sharing Government (the Government of National Unity) between the former ruling party, President Mugabe's Zimbabwe African National Union – Patriotic Front (ZANU-PF), and the former opposition party, Prime Minister Tsvangirai's Movement for Democratic Change (MDC), human rights defenders involved in the reconciliation process continued to be harassed. In addition, several human rights defenders who organised or participated in peaceful protests on human right issues were arrested in a context where the notorious Public Order and Security Act (POSA) remained in force. Defenders of sexual minorities and journalists denouncing corruption also continued to be privileged targets of repression.

Political context

Two years after the entry into force of a power-sharing Government (the Government of National Unity) between the former ruling party, President Mugabe's Zimbabwe African National Union – Patriotic Front (ZANU-PF), and the former opposition party, Prime Minister Tsvangirai's Movement for Democratic Change (MDC), political violence, lack of respect for the rule of law and human rights violations remained of serious concerns in Zimbabwe. MDC members and supporters, as well as journalists and human rights defenders, were intimidated and arrested as part of an increased harassment campaign against the Prime Minister's party, and by extension any dissenting voice, in the run-up to the possible presidential election in 2011.

Indeed, President Mugabe, who continued to show his willingness to exert close control over the country by unilaterally appointing several officials at key political and administrative positions including Ambassadors, Provincial Governors and Judges, pushed for the elections to be held in 2011, before a referendum on a new Constitution, arguing that the Government of National Unity was not working well¹. On the other hand, MDC continuously disagreed to participate in elections until the reforms

1/ However, according to the Global Political Agreement (GPA) signed in 2008, future elections should be organised after the establishment of a new Constitution, adopted by referendum, likely to guarantee the holding of free and fair elections.

stipulated in the GPA were in place². On February 15, 2011, due to the absence of a favourable environment for elections, the European Union (EU) decided to extend sanctions for another year³.

Impunity and lack of justice for past abuses also remained of serious concern. In particular, the authorities have failed to discipline, remove from their posts or charge with criminal offences leaders of the security forces who were involved in serious human rights violations during the 2008 elections as well as those who abducted and tortured over forty MDC officials and human rights defenders in November and December 2008, despite court rulings that recognised that acts of torture were committed, and despite the identification of some of the responsible by the victims.

Furthermore, the media remained gagged and journalists exposed to severe acts of reprisal. Although on May 26, 2010 the Zimbabwe Media Council (ZMC) – the new autonomous entity replacing the Media and Information Commission – announced its decision to issue for the first time licences to three independent dailies⁴, allowing them to restart publishing after a seven-year ban, privately-owned newspapers continued not to operate in a favourable climate. The legislation remained repressive allowing close surveillance of journalists and constant control of the media. The Government confirmed the unwillingness to reverse this tendency on October 22, 2010, through the proposal of a General Law Amendment Bill, which includes a clause allowing the authorities to block public access to official documents including judicial decisions, new legislation and public records⁵.

Harassment of human rights defenders involved in the reconciliation process

In 2010-2011, human rights defenders involved in activities related to awareness raising on political violence and civic education were systematically harassed. For example, on February 16, 2010, Mr. **Okay Machisa**, Executive Director of the Zimbabwe Human Rights Association

2/ The detention of the co-Chairman of the Parliamentary Committee supervising the process of drafting a new Constitution, as well as a MDC parliamentarian, from February 15 to March 11, 2011 also set within this conflicting political framework.

3/ See European Union Council Decision 2011/101/CFSP concerning restrictive measures against Zimbabwe, February 15, 2011.

4/ *The Daily News*, *NewsDay* and *The Daily Gazette*.

5/ This bill intends, among other issues, to subject such public information to copyright protection, which means that no one will be able to publish or disseminate an official document without permission from the Government. On March 15, 2011, the Parliament Legal Committee and the Minister of Justice reached a compromise over the Bill and the copyright clause will be withdrawn.

(ZimRights), an organisation that carries out intensive civic education in the communities and campaigns on the right of people to be involved in the drafting of the new Constitution, received by e-mail an anonymous message warning him to be careful with his work. On February 25, 2010, he received another threatening message suggesting him to stay out of the country. The same day, Messrs. **Nunurai Jena**, **Netsai Kaitano** and **Jabilusa Tshuma**, respectively Regional Chairperson for Mashonaland West, Regional Chairperson for Chitungwiza and Treasurer of ZimRights, also received different anonymous messages on their cell phones ordering them to put an end to their work on the Constitution making process and threatening them with death. Additionally, the message asked them about their motives to work within the association. On March 2, 2010, ZimRights filed a police report but no investigation was carried out and no protection measures granted. However, the threats stopped after the report was filed. In addition, on March 23, 2010, Mr. Okay Machisa, who was preparing in Harare a photo exhibition authorised by the Harare High Court as part of a programme to incite reflections on the 2008 political violence and scheduled for the following day, was arrested by a group of twenty officers of the Zimbabwe Republic Police (ZRP), who also removed, without any warrant, 65 pictures showing the use of violence to disperse demonstrations. Mr. Machisa was brought to the Harare central police station, until his release a few hours later following the intervention of the Zimbabwe Lawyers for Human Rights (ZLHR). The officer commanding Harare central district informed him that he had “not approved” the exhibition and gave Mr. Machisa seven days to provide “letters of consent from individuals and organisations” appearing in the photographs. He threatened to launch unspecified criminal charges against Mr. Machisa if he failed to provide those documents. On March 24, 2010, the police returned the photos to ZimRights following an order of the High Court issued on the same day. Again, on April 26, 2010, a group of police officers arrested Mr. **Joel Hita**, Ms. **Olivia Gumbo**, Ms. **Cynthia Manjoro** and Ms. **Lio Chamahwinya**, respectively Regional Chairperson in Masvingo, National Programme Manager and members of ZimRights, while they were preparing the launch of the same photo exhibition in Masvingo. Once more, the police confiscated all the pictures and took the defenders to the Masvingo police station. Everyone was released a few hours later, except Mr. Hita who was released on April 27, 2010. On April 28, he appeared before the Masvingo Magistrate Court on the charge of “holding a public meeting without notifying the authorities”. On August 5, 2010, the Attorney General’s office also decided to prosecute ZimRights itself as an organisation for the same charges within the same criminal case. At the end of April 2011, the trial was still ongoing and the next hearing was scheduled on July 18, 2011. On March 8, 2011, Messrs. **Bamusi**

Kasembe, Focal Point in the Maramba community for ZimRights, and his assistant known as **Tongai, Dzikamai Bere** from the Zimbabwe Human Rights NGO Forum (the Forum), **Admire Munava**, a ZimRights member, and nine other researchers were stopped in the Mashonaland east province by supposed ZANU-PF militants who were armed with stones, canes and logs, and questioned the group of human rights activists about their motives and threatened them that they will take action if they misbehave. The thirteen defenders, who were working on a research in Mashonaland east province on the national healing and reconciliation process and civic education, finally managed to escape from the scene using a different route. Similarly, Mr. **Abel Chikomo**, Executive Director of the Zimbabwe Human Rights NGO Forum (the Forum), was interrogated and asked to report to the police on several occasions in November 2010, February and March 2011 in relation to his activities, and in particular the Forum's public campaign against torture. On March 30, 2011, he was formally charged with "managing and controlling the operations of an illegal Private Voluntary Organisation (PVO)", under Section 6(3) as read with subsection 1 of the PVO Act. At the end of April 2011, Mr. Chikomo had not received any notification to appear before a court and remained free.

Obstacles to peaceful assembly

In 2010-2011, several human rights defenders who organised or participated in peaceful protests on human right issues were arrested in a context where the notorious Public Order and Security Act (POSA), a widely used law to ban public meetings or rallies by those opposed to President Mugabe and his party, remained in force. In particular, demonstrations organised by Women of Zimbabwe Arise (WOZA) led to systematic arrests by the police. For example, on January 18, 2010, Ms. **Thabita Taona**, a WOZA member, was arrested by the riot police armed with baton sticks, while she was participating in one of three peaceful demonstrations organised in Harare by WOZA to protest about the state of education in Zimbabwe. Ms. Taona was detained until the next day at the Harare central police station for interrogation about other participants in the demonstration, before being released without charge or explanation⁶. Likewise, on April 15, 2010, 65 WOZA members were arrested by police officers from the Harare central police station while participating in a peaceful procession in Harare, outside the Zimbabwe Electricity Supply Authority (ZESA) headquarters, asking for a more efficient electricity service delivery and an appropriate and fair billing system. After four hours, 61 WOZA members were released without charge. However, the

6/ See WOZA.

WOZA National Coordinator Ms. **Jennifer Williams** and three other members, Ms. **Magodonga Mahlangu**, Ms. **Clara Manjengwa** and Ms. **Celina Madukani**, spent five nights in police custody, subjected to bad conditions of detention, before being released without charge on April 20, 2010. On September 20, 2010, while commemorating the International Peace Day, 83 WOZA members who were participating in a peaceful protest on crime prevention safety were arrested and accused of “criminal nuisance”. On September 22, they were all granted bail without surety and remanded out of custody until October 6. Ms. Jennifer Williams, who attended the hearing, was arrested outside the courthouse when speaking with the group of released defenders. She was accused of “addressing a gathering” and pressured to sign a caution admitting to as such, before being released the same day. On January 3, 2011, the Harare Magistrate’s Court removed all 83 human rights defenders from further remand out of custody. At the end of April 2011, the trial was still ongoing⁷. WOZA members were not the only ones to face judicial harassment. On February 19, 2011, a few days after the Defence Minister Emmerson Munangagwa threatened to crack down on any dissent inspired by the North Africa street protests, 45 people including union leaders, students and human rights activists, were arrested by the police as they were attending a meeting to discuss the social protest movements in Egypt and Tunisia and their impact for these countries. All people were charged either with “treason”, which carries a penalty of life imprisonment or death, or with “attempting to overthrow the Government by unconstitutional means”, punishable by a penalty of up to twenty years in prison. On March 7, 2011, 39 activists were released after a magistrate court in Harare dismissed the charges against them. However, labour activists Messrs. **Munyaradzi Gwisai**, **Antonetar Choto**, **Tatenda Mombeyarara**, **Edison Chakuma**, **Hopewell Gumbo** and **Welcome Zimuto** remained in custody until March 16, 2011, due to their link with the International Socialist Organisation, which convened the meeting, or because they intervened as speakers. They were released on a 2,000 US dollars (about 1,370 euros) bail each, with condition to report three times a week to the police by the High Court, and then relaxed in April to once a week⁸. On March 12, 2011, Mr. **MacDonald Lewanika**, Director of the Crisis in Zimbabwe Coalition (CZC), was arrested in Zengeza as he was on his way to a concert and brought to the police station where he was detained for several hours, before being released. On March 14, he was informed that he was charged with “behaving in a way

7/ *Idem*.

8/ On March 20, the State dropped the charge of “treason” for the lesser charge of “attempting to subvert a constitutionally elected Government” punishable of up to twenty years imprisonment, and indicated that the trial would be held before a regional magistrate court on July 18, 2011. See ZimRights.

that can disrupt peace” under the Criminal Law Codification Act, after some t-shirts bearing the slogan “Abasha Posa” (“Down with POSA”) were found in his car. He was accused of attempting to turn a concert into a political gathering. The day after, four police officers from Harare central police station, in possession of a search warrant, visited his organisation’s offices in order to search any possible subversive material, such as t-shirts, documents and flyers. They confiscated several copies of CZC’s reports and manuals. As of the end of April 2011, the preliminary investigation was still ongoing and the material was not yet returned⁹.

Harassment against human rights defenders of sexual minorities

During 2010–2011, human rights defenders working on sexual orientation were systematically persecuted and subjected to interrogations led by the Central Intelligence Organisation (CIO) of the ZRP. For example, on May 21, 2010, nine police officers from this division arrested Ms. **Ellen Chademana** and Mr. **Ignatius Muhambi**, respectively receptionist and accountant of the organisation Gays and Lesbians of Zimbabwe (GALZ), which defends the rights of sexual minorities in the country. The police entered GALZ offices in Harare, with a warrant to search for dangerous drugs and pornographic material. They confiscated computers, records and banners, and they claimed to have seized pornographic material as evidence for the case. On May 22, 2010, GALZ employees were denied access to their lawyers and, on May 24, 2010, they were formally accused of “possessing pornographic material” and “undermining the office of the President”. This second charge was reportedly added after the police noticed, in GALZ office, a plaque of former San Francisco Mayor Willie Lewis Brown in which he denounced the alleged President Robert Mugabe’s homophobia against gays and lesbians. On May 27, 2010, Ms. Ellen Chademana and Mr. Ignatius Muhambi were released on bail with the obligation to report at the police station every Monday and Friday, and to stay in Harare until their next hearing scheduled on June 10, 2010. The charges against Mr. Muhambi were dropped in July 2010, while Ms. Chademana was acquitted on December 16, 2010. Meanwhile, on May 26, 2010, the house of Mr. **Chesterfield Samba**, Director of GALZ, was searched by police officers, who confiscated his birth certificate, his passport picture, his magazines and personal business cards. Mr. Samba was not present during the raid, but the family members who were at home reported that the police asked Mr. Samba’s location and when he was expected to be back. Despite several requests, at the end of April 2011, the documents had still not been returned to Mr. Samba. In February 2011, Ms. Chademana

9/ See CZC.

was followed on several occasions from her home by four unidentified men in a car.

Judicial harassment of a human rights defender who denounced human rights violations in the context of diamond mining

In 2010, a human rights defender who denounced human rights violations in the context of diamond mining faced judicial harassment. On June 3, 2010, Mr. Farai Maguwu, Director of the Centre for Research and Development (CRD), an organisation that carries out research and advocacy work on human rights issues, particularly with respect to diamond mining and violations or abuses committed by State security forces, was arrested in Mutare on charges of “communicating and publishing falsehoods against the State with the intention to cause prejudice to the security or economic interests of the country”, subjected to a penalty of up to twenty years’ imprisonment pursuant to Section 31 of the Criminal Law (Codification and Reform) Act. Mr. Maguwu was accused of having handed over to the Kimberley Process Monitor¹⁰ a CRD report on human rights violations in the diamond-mining area of Chiadzwa, Marange region in Mutare west during a meeting held on May 25, 2010¹¹. He was released on July 12 by the Harare High Court, which granted him bail on condition that he pays a 1,500 US dollars (about 1,060 euros) bail deposit, daily reports to the Mutare central police station, resides in his home in Mutare and refrains from travelling more than 40 km away from Mutare, except for the purpose of court hearing in Harare. During his detention, Mr. Maguwu encountered several obstacles to obtain access to medical treatment and was subjected to ill-treatments. On August 6, 2010, bail conditions were eased. On October 21, 2010, charges were dropped by the Rotten Row Courts pursuant to instructions from the Attorney’s General office. Mr. Maguwu was then released from all bail conditions.

Harassment of journalists denouncing corruption

Independent newspapers reporting on corruption cases regularly faced judicial harassment and intimidation along 2010–2011. For example, on November 17, 2010, Mr. Nqobani Ndlovu, reporter for the independent weekly *The Standard*, was arrested in Bulawayo. On November 14, 2010, the weekly had published an article signed by Mr. Ndlovu about the

10/ The Kimberley Process (KP) is a joint Government, industry and civil society initiative to stem the flow of diamonds used by rebel movements to finance wars against legitimate Governments. On July 19, 2010, the KP agreed to renew Zimbabwe’s diamond-exporting licence. According to this agreement, the country was allowed to carry out two supervised exports of rough diamond from the Marange production.

11/ The report includes cases of unlawful arrests and detentions, torture and extrajudicial executions allegedly perpetrated by the police, the army and security agents, in connection with diamond mining, whether legal or not.

recruiting by the police of war veterans loyal to the ZANU-PF to take over senior posts ahead of next presidential elections¹². On November 19, a Bulawayo magistrate ordered his release on a bail of 100 US dollars (about 69 euros). Yet, the police asked the extension of his period of custody by seven days. On November 26, 2010, he was finally released from Khambi prison by Judge Nicholas Mathonsi, who rejected the police's new appeal. On November 30, 2010, Mr. **Nevanji Madanhire**, Editor of *The Standard*, was arrested by members of the law and order section of the Criminal Investigation Department at the Rhodesville police station in Harare. He was detained for 24 hours and then released on a bail of 100 US dollars. Harare Magistrate Don Ndirowei, who allowed his release on bail, also ordered an investigation into power abuses committed by the police forces that tended to make arbitrary arrests. Messrs. Ndlovu and Madanhire were charged with "publishing and communicating false statements prejudicial to the State" under Section 31 of the Criminal Law (Codification and Reform) Act, for having allegedly defamed the Police Chief General Augustine Chihuri and the police force in general. On February 28, 2011, Magistrate Don Ndirowei removed them from remand and granted the defendants' application for the case to be referred to the Supreme Court since they are contesting the constitutionality of the above-mentioned section of the Criminal Law (Codification and Reform) Act, which has been widely used to arrest media practitioners. He further ruled that the case would proceed by way of summons¹³.

Urgent Interventions issued by The Observatory from January 2010 to April 2011

Names	Violations / Follow-up	Reference	Date of Issuance
Mr. Okay Machisa	Threats	Urgent Appeal ZWE 001/0210/OBS 023	February 19, 2010
Messrs. Okay Machisa, Nunurai Jena, Netsai Kaitano and Jabilusa Tshuma	Death threats/Continued intimidation	Urgent Appeal ZWE 001/0210/OBS 023.1	March 2, 2010
Mr. Okay Machisa and Ms. Olivia Gumbo	Arbitrary arrest / Release / Confiscation of property / Threats and intimidation	Urgent Appeal ZWE 001/0210/OBS 023.2	March 24, 2010
Mr. Joel Hita, Ms. Lio Chamahwinya, Ms. Olivia Gumbo and Ms. Cynthia Manjoro	Arbitrary arrest / Confiscation of property / Judicial harassment	Urgent Appeal ZWE 001/0210/OBS 023.3	April 27, 2010

12/ In the article, he said the police had cancelled the annual promotion process and instead recruited war veterans and retired police officers, allegedly to help President Mugabe's party win elections in 2011.

13/ See ZimRights.

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Names	Violations / Follow-up	Reference	Date of Issuance
Women of Zimbabwe Arise (WOZA) / Ms. Jennifer Williams, Ms. Magodonga Mahlangu, Ms. Clara Manjengwa and Ms. Celina Madukani	Arbitrary arrest / Release/Harassment	Urgent Appeal ZWE 002/0410/OBS 050	April 23, 2010
Ms. Ellen Chademana and Messrs. Ignatius Muhambi and Chesterfield Samba	Arbitrary arrest / Release on bail / Judicial harassment / Confiscation of property	Urgent Appeal ZWE 003/0510/OBS 066	May 28, 2010
Mr. Farai Maguwu	Arbitrary detention / Judicial harassment / Ill-treatment	Urgent Appeal ZWE 004/0610/OBS 079	June 22, 2010
		Urgent Appeal ZWE 004/0610/OBS 079.1	July 5, 2010
	Release on bail / Judicial harassment	Urgent Appeal ZWE 004/0610/OBS 079.2	July 15, 2010
	Acquittal	Urgent Appeal ZWE 004/0610/OBS 079.3	October 28, 2010
Mr. Abel Chikomo	Intimidation / Harassment	Urgent Appeal ZWE 001/0311/OBS 035	March 15, 2011
	Judicial harassment	Urgent Appeal ZWE 001/0311/OBS 035.1	March 31, 2011
13 human rights defenders, including Messrs. Bamusi Kasembe, Dzikamai Bere, Admire Munava and "Tongai"	Acts of intimidation / Death threats	Urgent Appeal ZWE 002/0311/OBS 046	March 24, 2011