

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	69
Land:	Zimbabwe
Kilde:	Observatory for the Protection of Human Rights Defenders
Titel:	Annual Report 2010
Udgivet:	13. september 2010
Optaget på baggrundsmaterialet:	11. januar 2011

ZIMBABWE

OBSERVATORY FOR THE PROTECTION OF HUMAN RIGHTS DEFENDERS
ANNUAL REPORT 2010

Political context

Due to ministerial differences between their respective political parties, the power-sharing agreement reached in September 2008 between Mr. Robert Mugabe, who has been President for 29 years, and opposition leader Mr. Morgan Tsvangirai, in which Mr. Mugabe remained President and Mr. Tsvangirai became Prime Minister, was not implemented until February 13, 2009. Despite this political achievement, there was little progress in 2009 in instituting any of the promised human rights reforms, in demonstrating respect for the rule of law and in charting a new political direction for the country. In addition, the first year of the power-sharing was greatly affected by the dispute over the arrest and prosecution of Mr. Roy Bennett, Deputy Minister of Agriculture who was appointed on February 10, 2009 by Mr. Tsvangirai¹. The inaction of the new Government was due to an absence of political will as President Mugabe's Zimbabwe African National Union – Patriotic Front (ZANU-PF) retained control of all senior ministries including the Ministries of Defence, Justice, State Security and Foreign Affairs; and it co-chaired Home Affairs. The party therefore wielded significantly more power than Mr. Tsvangirai's Movement for Democratic Change (MDC) in the Government, and was unwilling to institute human rights and governance reforms. Although the MDC has formal control of some ministries, President Mugabe unilaterally appointed permanent secretaries to all ministries, ensuring that ZANU-PF maintains control of them. Lacking real political power to effect reforms, the MDC was unable to push for human rights reforms and appeared to be giving ground to ZANU-PF in order to ensure the survival of the power-sharing Government. One year after the signing of the Global Political Agreement (GPA) in Zimbabwe, ZANU-PF supporters continued to commit abuses against their perceived political opponents. Indeed, political discrimina-

1/ Mr. Bennett was charged with "treason" in February 2009. Charges were later replaced with "conspiring to acquire arms with a view to disrupting essential services". When a magistrate ordered Mr. Bennett's release, the magistrate himself was arrested because "he has passed a judgment that is not popular with the State". Mr. Bennett was released from remand on March 12, 2009, but was ordered back on October 14, 2009. On October 16, 2009, Judge Hungwe instructed the prison to release him on his old bail conditions. On October 26, 2009, Mr. Tsvangirai announced that he suspended all contacts with Mr. Mugabe after Mr. Bennett was remanded into custody and indicted on terrorism charges on October 13, 2009. The trial opened on November 9, 2009 and was ongoing at the end of 2009. See Zimbabwe Human Rights Association (ZIMRIGHTS).

tion, intimidation and victimisation remained a major concern as violence across the political divide continued. MDC supporters and human rights activists remained exposed to the abuses by Government agents to protect the interests of the ruling elite². The deportation on October 28-29, 2009 of Mr. Manfred Nowak, UN Special Rapporteur on Torture, as he was on his way to conduct a fact-finding mission from October 28 to November 4, 2009 is another example of this lack of political will³.

Access to information and freedoms of expression and assembly remained heavily restricted in 2009. Senior members of the Government and State-run media continued to use disparaging language to describe the MDC and civil society, although several MDC members and civil society activists who were prosecuted were acquitted at the end of the year, which restored a sense of confidence in the administration of justice and denoted some steps were taken towards the independence of the judiciary. 2009 also saw an intense harassment of legal practitioners by the police and Government, notably the Attorney General⁴, which later subsided after a demonstration on May 16, 2009 and the presentation of a petition to the Ministry of Justice on the same day⁵.

Judicial harassment of several defenders and their lawyers in the post-electoral context

In 2009, several human rights defenders who had been abducted and detained incommunicado in 2008 in the aftermath of the results of the March 29, 2008 general elections after they had denounced political violence were prosecuted in 2009 for “terrorism” and “sabotage” charges. Lawyers who were involved in their defence also came under pressure. The most emblematic case was that of Ms. **Jestina Mukoko**, Executive Director of the Zimbabwe Peace Project (ZPP) and Board Member of the Zimbabwe Human Rights NGO Forum, and her colleagues, Messrs. **Broderick Takawira**, ZPP Provincial Coordinator, and **Pascal Gonzo**, ZPP driver, and Mr. **Andrisson Manyere**, a freelance journalist, who were abducted in December 2008 together with MDC activists and only

2/ For instance, on October 27, 2009, Mr. Pasco Gwezere, MDC Transport Manager, was abducted by armed men from his home and detained at Marimba police station. He alleged that he was tortured since the time of his abduction and displayed serious injuries on his head, wrist, mouth, ear, feet, leg, buttocks back and genitals.

3/ See Press Release of the UN Special Rapporteur on Torture, Mr. Manfred Nowak, October 29, 2009.

4/ The latest victim was Mr. Mordekai Mahlangu, a lawyer who was arrested for representing Mr. Peter Hitchman, a witness in the trial of Mr. Roy Bennet, who through Mr. Mahlangu had written an affidavit that was sent to the Attorney General stating that he had no intention to testify as a State witness as he had no evidence to adduce which could assist the State case. See ZIMRIGHTS.

5/ See ZIMRIGHTS.

re-appeared on December 24, 2008 after weeks of incommunicado detention. During her detention, Ms. Mukoko was subjected to simulated drowning, locked in a freezer and beaten as the security forces tried to make her confess to plotting to overthrow Mr. Mugabe. On February 6 and 26, March 2 and April 9 respectively, Mr. Pascal Gonzo, Mr. Broderick Tarawira, Ms. Jestina Mukoko and Mr. Andrisson Manyere were released on bail⁶. On May 4, Magistrate Catherine Chimwanda granted the State leave to indict Ms. Mukoko, Mr. Takawira, Mr. Manyere as well as 12 MDC political activists for “terrorism and sabotage” and remanded the accused in custody. The indictment was opposed on the basis that there was an appeal pending before the Constitutional Court, in which Ms. Mukoko alleged a breach of her constitutional right to be afforded the full protection of the law. On May 6, the Court granted some activists, including Ms. Mukoko and Mr. Takawira, bail of 600 USD under the condition that they surrender their passports and report to police once a week. On September 28, 2009, the Constitutional Court decided to grant a permanent stay of prosecution in favour of Ms. Jestina Mukoko due to the violation of several of her fundamental rights by State agents. All charges pending against her were therefore withdrawn. As Ms. Mukoko was the sole applicant in the Constitutional Court case, other ex-abductees did not benefit from the stay of prosecution and were still facing criminal charges as of the end of 2009. They therefore lodged constitutional applications with the Supreme Court alleging the same violations of their rights as Ms. Mukoko and seeking permanent stays of their trials. At the end of 2009, the matter was still to be heard by the Supreme Court. Moreover, on May 6, 2009, Mr. **Alec Muchadehama**, who represented several victims of State-sponsored abduction and torture, including Ms. Mukoko and Mr. Manyere, was arrested by officers of the Law and Order Section of the police at the Rotten Row Magistrates Court and accused of “contempt of court”, after having reportedly secured the “unlawful release” on bail of Mr. Manyere and two MDC officials who had been granted bail by High Court Judge Justice Charles Hungwe on April 9, 2009⁷. On May 15, 2009, he was released on bail after payment of 100 USD (approximately 69,66 euros). Throughout the proceedings, the trial was adjourned, postponed and restarted several times. On December 10, 2009, Mr. Muchadehama was finally acquitted by the Harare Rotten Row Magistrates

6/ Subsequently, Mr. Gonzo was not charged of any offense.

7/ The State alleged that Mr. Muchadehama “unlawfully and intentionally impaired the dignity, reputation or authority of a court or realising that there was real risk or possibility of impairing the dignity, reputation or authority of a court” by causing the release of the three ex-abductees while he was aware of Justice Bhunu’s judgment in which he granted the State leave to appeal against an earlier bail order by Justice Charles Hungwe.

Court, as the prosecutors failed to prove the essential elements of the crime, notably as the State did not file its appeal against Justice Hungwe's order granting bail to Mr. Manyere and the two MDC officials⁸.

Ongoing obstacles to peaceful assembly and the holding of meetings

In 2009, several human rights activists, including trade unionists, who participated in peaceful protests were again arrested and charged either under the notorious Public Order and Security Act (POSA) – despite a High Court ruling prohibiting the use of POSA against trade unions and despite numerous calls by NGOs to repeal the POSA; under Sections 37 (1a) and 37 (1b) of the Criminal Law (Codification and Reform) Act – which relates to “any person [who] [...] in any place or at any meeting performs any action, utters any words or distributes or displays any writing, sign or other visible representation that is obscene, threatening, abusive or insulting, intending thereby to provoke a breach of the peace or realising that there is a risk or possibility that a breach of the peace may be provoked” – or Section 13 (1a) of the Act related to disturbing the peace; or under Section 46 (2) (v) of the Third Schedule to the Criminal Law (Codification and Reform) Act – which relates to anybody who “employs any means whatsoever which are likely materially to interfere with the ordinary comfort, convenience, peace or quiet of the public or any section of the public, or does any act which is likely to create a nuisance or obstruction”.

In particular, peaceful demonstrations that were organised throughout the year by Women of Zimbabwe Arise (WOZA) and Men of Zimbabwe Arise (MOZA) led to systematic violence and arrests by the police. For example, on February 10, 2009, approximately 600 members of WOZA and MOZA took part in a peaceful demonstration outside the Parliament building in Harare in order to call upon Zimbabweans to keep demanding social justice. On the same day, Ms. **Nelia Hambarume**, Ms. **Clara Bongwe**, Ms. **Auxilia Tarumbwa**, Ms. **Gracy Mutambachirimo**, Ms. **Linda Moyo**, Ms. **Keure Chikomo**, Ms. **Edina Saidi** and Ms. **Kundai Mupfukudzwa**, all of them WOZA members, as well as of Ms. **Roselyn Hanzi** and Mr. **Tawanda Zhuwarara**, two lawyers and members of Zimbabwe Lawyers for Human Rights (ZLHR), were arrested by the Zimbabwe Republic Police (ZRP). The group remained in custody over night without being told what the reason of their arrest was. Three of the women were beaten in police custody. On February 11, 2009, they were all subjected to interrogation and were finally allowed access to ZLHR lawyers. On February 12, 2009, they

were all released on free bail but remained charged with “causing a breach of peace”, an offence under the POSA. On February 14 and June 17, 2009, the police also violently repressed peaceful protests organised by WOZA respectively in Harare to deliver a petition to the Minister of Education urging “to put children’s education first”, and six peaceful protests organised in Harare and four in Bulawayo held to commemorate International Refugee Day⁹. Ms. **Jennifer Williams**, WOZA National Coordinator, and her Deputy, Ms. **Magodonga Mahlangu**, also faced intensive judicial harassment throughout the year following their participation in a peaceful march organised by WOZA on October 16, 2008 to denounce the alarming economic and social situation. They had been arrested on the same day, charged for allegedly “disturbing the peace, security or order of the public” and released on bail on November 6, 2008. Ms. Williams and Ms. Mahlangu had to appear in court on remand 21 times for these charges. On December 21, 2009, the Bulawayo Magistrate’s Court refused their request to remove them off remand, and they were further remanded to February 24, 2010. Furthermore, on October 25, 2009, Ms. **Dadirai Chikwengo**, Board Chairperson of the National Association of Non Governmental Organisations (NANGO), and Mr. **Cephus Zinhumwe**, NANGO Chief Executive Officer, were arrested at the airport of Victoria Falls by members of the ZRP and the Central Intelligence Organisation after participating in the Annual NGO Directors Summer School¹⁰ in this resort town, allegedly for contravening Section 25(1)(b) of the POSA by holding a “public and/or political meeting without police clearance”¹¹. On October 27, 2009, Ms. Chikwengo and Mr. Zinhumwe were remanded out of custody on a USD 100 (approximately 69,66 euros) bail each, following decision of the Victoria Falls Court who ruled that the State had failed to clarify what regulation they had violated under POSA. On November 25, 2009, Ms. Chikwengo and Mr. Zinhumwe were summoned to appear before the Victoria Falls Magistrates Court and were acquitted on all charges¹². On October 28, 2009, Messrs. **Thulani Ndhlovu** and **Ndodana Ndhlovu**, Zimbabwe Election Support Network (ZESN)¹³ staff

9/ See WOZA.

10/ The Directors’ Summer School is an annual event organised by NANGO and bringing together directors from NGOs in Zimbabwe to reflect on their work, discuss the way forward for civil society, and issue statements targeted at the development of Zimbabwe. In 2009, the Summer School was officially opened by the Minister of Public Service and Social Welfare.

11/ The charges against Ms. Chikwengo and Mr. Zinhumwe would be linked to the statement issued by 120 NGO leaders at the close of the Summer School, in which they called for the intervention of Southern African Development Community (SADC) and the African Union (AU) to ensure that the GPA between Zimbabwe’s ruling coalition parties was honoured.

12/ See ZLHR.

13/ ZESN is a coalition of NGOs formed to co-ordinate activities pertaining to elections in Zimbabwe. ZESN promotes free and fair elections as well as democratic processes in general.

members in Hwange, were arrested in Dete, Hwange, for conducting a public outreach workshop on election education and constitutional reform, allegedly without police clearance. They were arrested after the workshop despite the fact that police had been present throughout. Mr. Ndodana Ndhlovu was released later on the same day while Mr. Thulani Ndhlovu remained in custody until he was released on bail on October 30, 2009. Mr. Thulani Ndhlovu was charged under Section 24 of the POSA¹⁴ and was due to appear again in court on November 26, 2009, when he was further remanded to February 4, 2010, and then to March 30¹⁵.

Trade unions were not spared by this repression. For instance, on November 8, 2009, Mr. **Lovemore Matombo**, President of the Zimbabwe Congress of Trade Unions (ZCTU), and four members of his staff, Messrs. **Michael Kandukutu**, **Dumisani Ncube**, **Nawu Ndlovu** and **Percy Mcijo**, were arrested in Victoria Falls by officers from the Criminal Investigations Department (CID) whilst Mr. Matombo was addressing members of the ZCTU Victoria Falls District Executive, purportedly for failing to comply with POSA under which the police has to be informed of any public meeting. Mr. Matombo and his four colleagues remained in police custody at Victoria Falls police station beyond the prescribed 48-hour period, after police issued a warrant of further detention without notice to the five men or their lawyers. The ZCTU leaders were finally brought before Victoria Falls Magistrates Court on November 10, 2009, but only after their lawyers of ZLHR had filed an Urgent Chamber Application in the High Court in Harare on November 9, 2009 seeking the immediate release of the trade unionists. The lawyers also wanted the arrest and detention of the ZCTU leaders to be declared unlawful and the warrant of further detention to be declared invalid and set aside. On November 12, 2009, the Court finally held that the meeting convened by the ZCTU in Victoria Falls was a bona fide meeting of the labour union and that the police must carefully read the laws before arresting individuals. In throwing out the charges, the Court criticised the police for their over-zealous behaviour and stipulated that the POSA does not apply to trade unions. The five human rights defenders were released on the same day¹⁶.

Harassment of journalists denouncing human rights violations

In 2009, journalists covering sensitive issues remained subject to harassment. For instance, on October 8, 2009 freelance photo-journalist **Annie**

14 / Section 24 of POSA stipulates that an organiser shall notify the regulatory authority of intention to hold a public gathering.

15 / See ZESN.

16 / See ZLHR.

Mpalume was arrested in Manicaland province on allegations of unlawfully entering a protected area without a pass in violation of the Protected Areas Act, as she was filming and taking photographs in Chiadzwa diamond fields where the Zimbabwe army and police are facing accusations of mass murder in a crackdown on illegal diamond mining. On October 12, 2009, she was granted a USD 30 (approximately 21 euros) bail and on October 26, 2009, she was further remanded out of custody to December 14, 2009. However, at the end of 2009, she remained prosecuted¹⁷.

Urgent Interventions issued by The Observatory in 2009

Names	Violations / Follow-up	Reference	Date of Issuance
Ms. Jestina Mukoko, and Messrs. Broderick Takawira and Pascal Gonzo	Arbitrary detention / Torture / Ill-treatments / Judicial harassment	Urgent Appeal ZWE 008/1208/OBS 206.2	January 6, 2009
	Release on bail	Urgent Appeal ZWE 008/1208/OBS 206.3	March 9, 2009
Ms. Jestina Mukoko, and Messrs. Broderick Takawira and Andrisson Manyere	Re-arrest / Indictment / Release on bail	Urgent Appeal ZWE 008/1208/OBS 206.4	May 6, 2009
	Stay of prosecution / Judicial harassment / Ill-treatments	Urgent Appeal ZWE 008/1208/OBS 206.5	September 30, 2009
Women of Zimbabwe Arise (WOZA) / Ms. Nelia Hambarume, Ms. Clara Bongwe, Ms. Auxilia Tarumbwa, Ms. Gracy Mutambachirimo, Ms. Linda Moyo, Ms. Keure Chikomo, Ms. Edina Saidi, Ms. Kundai Mupfukudzwa, Ms. Roselyn Hanzi, and Mr. Tawanda Zhuwarara	Arbitrary detention / Ill-treatments / Release on bail / Judicial proceedings	Urgent Appeal ZWE 001/0209/OBS 024	February 13, 2009
Mr. Alec Muchadehema and Ms. Jestina Mukoko	Judicial harassment	Urgent Appeal ZWE 002/1009/OBS 147	October 13, 2009
Ms. Dadirai Chikwengo and Mr. Cephus Zinhumwe	Arbitrary arrest / Judicial harassment / Release on bail	Urgent Appeal ZWE 003/1009/OBS 156	October 28, 2009

17/ See Media Institute of Southern Africa (MISA).