



Zimbabwe

Amnesty International submission to the UN Universal Periodic Review

12th session of the UPR Working Group, October 2011

B. Normative and institutional framework of the State

The Constitution in force in Zimbabwe is that of 1979 as amended in 2009. Chapter III of the Constitution provides for fundamental rights and freedoms of the individual placing some limitations on the enjoyment of these “not to prejudice the public interest or the rights and freedoms of other persons”. The Constitution provides for a number of specific rights, including to life, personal liberty, protection from torture or inhuman or degrading treatment or punishment, protection of the law, and freedoms of expression, assembly, association and movement. The country is currently undergoing a constitutional review process which should lead to a new constitution before the end of 2011.

National Human Rights Commission

Section 100R of the Constitution provides for a national human rights commission, the Zimbabwe Human Rights Commission, mandated to investigate any violation of the human rights enshrined in the Declaration of Rights under the Constitution. Its functions are also to promote awareness of and respect for human rights and to monitor and assess their observance. However, despite the 19th Amendment of the Constitution in 2009 the enabling act is still to be introduced in Parliament which effectively means the Commission is not functional.

C. Promotion and protection of human rights on the ground

Suppression of the work of human rights defenders

Since 2000, Amnesty International has documented systematic harassment and intimidation of human rights defenders by the government. Specifically, the rights to freedoms of expression, association and peaceful assembly have been curtailed, including through the use of repressive legislation, mainly the Public Order and Security Act (POSA). Using the POSA, police have unlawfully blocked meetings by perceived critics of President Mugabe’s ZANU-PF party and used excessive force to break up peaceful demonstrations. Human rights defenders have been arbitrarily arrested and unlawfully detained for prolonged periods beyond the 48 hours prescribed by law. Others have been charged under the POSA or the Criminal Codification Reform Act for engaging in peaceful protest. While in police custody some of them report having been subjected to torture, inhuman or degrading treatment. Human rights defenders are often held in overcrowded cells and denied access to lawyers and to food. Those injured as a result of police beatings during arrest and/or while in custody, are also denied access to medical care.

Amnesty International has documented numerous human rights violations by the Law and Order Section of the Zimbabwe Republic Police at Harare Central and Bulawayo Central police stations. The organization is concerned that the Law and Order Section operates in a partisan manner and that it is responsible for most of the violations against human rights defenders in custody.

Police have gone even beyond the provisions of the POSA to suppress the work of defenders. On 20 February 2007, police purporting to be acting under Section 27 of the POSA imposed a three-month ban on public demonstrations and rallies in certain areas of Harare. However, the ban was in violation of Section 27(1) of the POSA which restricts such bans to a period not exceeding one month.

Violations against human rights defenders in police custody often have specific gender manifestations and a gender specific impact on women defenders. Amnesty International has documented several cases of women defenders, including members of the activist organization, Women of Zimbabwe Arise (WOZA), who were brutalized by police during arrest and/or while in police custody and subjected to humiliation and sexist verbal attacks. Pregnant women and mothers with babies have also been detained after engaging in peaceful protest.

Amnesty International is also concerned about the targeting by state security agents of human rights defenders involved in documentation of human rights violations and campaigning for accountability for past human rights violations:

- The director of the Zimbabwe Peace Project, Jestina Mukoko, and two colleagues were abducted in early December 2008 together with Movement for Democratic Change (MDC) party activists, and held in incommunicado detention for nearly three weeks. Mukoko was only released from custody on 2 March 2009. On 28 September 2009, the Supreme Court of Zimbabwe granted her a permanent stay of criminal prosecution, ruling that the State, through its agents, had violated her rights under Sections 13(1) [protection from unlawful deprivation of personal liberty], 15(1) [protection from torture, inhuman and degrading punishment] and 18(1) [protection of the law]. However, despite this positive ruling, no sanction has been brought against the state security agents responsible for these violations.
- Okay Machisa, director of the Zimbabwe Human Rights Association, was forced to temporarily leave the country in March 2010 after he was arrested for hosting an exhibition of photographs depicting the state-sponsored violations that engulfed Zimbabwe in the run up to the second round of the Presidential elections in June 2008.
- In March 2010, Owen Maseko, a Bulawayo-based artist, was arrested, detained for four days and charged under the POSA for holding an exhibition depicting the atrocities committed by government forces in the 1980s in Matabeleland and parts of the Midlands province where thousands of people were killed by security forces.

Amnesty International has also witnessed and documented incidents of unwarranted surveillance of the activities of human rights defenders by police and intelligence services. The presence of state security agents at meetings organized by human rights activists often intimidates participants and restricts freedom of expression.

Despite the creation of the Government of National Unity (GNU) in 2009, human rights violations against perceived opponents of President Mugabe's ZANU-PF party persist. Although under the Global Political

Agreement, which created the GNU, the Ministry of Home Affairs is co-chaired by ZANU-PF and the MDC-T, the police and other security organizations are effectively under the control of ZANU-PF and have continued to perform their duties in a partisan manner.

Forced evictions and failure to provide effective remedies

Since 2005, Amnesty International has documented and monitored government efforts to address human rights violations resulting from Operation Murambatsvina, a government programme of mass forced evictions in 2005 that affected an estimated 700,000 people whose homes and livelihoods were destroyed. Although the government set up Operation Garikai/Hlalani Kuhle, ostensibly to re-house the victims of Operation Murambatsvina, only a small proportion of the victims benefited. Of these, the majority got only a bare piece of unserviced land, and as of March 2011 most were living in plastic shacks. A few got a government-built house; however, the structures were not habitable as they lacked floors, windows, sewer, water and sanitation. Operation Garikai settlements also lack access to basic services such as maternal health care and formal schools. In 2010, Amnesty International recorded high incidents of newborn deaths at Hopley, a settlement created by the government in Harare for victims of Operation Murambatsvina. The deaths were attributed to the lack of maternal and newborn healthcare services in the settlement. Pregnant women and girls are forced to deliver in shacks because of barriers to accessing care, including affordability and lack of transports to the nearest maternity clinic especially when women go into labour at night.

Amnesty International is concerned that the government has failed to provide access to education services in the settlements thereby seriously compromising children's right to education. Many children dropped out of school during Operation Murambatsvina in 2005 and no efforts have been made by the government to ensure that the children affected were able to continue their education. Some girls were forced by the situation to abandon their education and to enter into early marriages. By the beginning of 2011, community responses to the lack of education in Operation Garikai settlements continued to face many obstacles, including the government's refusal to register them as satellite schools – a status that would have ensured them access to government support, quality control and public examinations.

Amnesty International is also concerned about ongoing forced evictions some of which affect the victims of the 2005 evictions. On 25 August 2010, about 250 people living in an informal settlement in Harare's affluent suburb of Gunhill were forcibly evicted by police without prior notice. Armed police with dogs arrived at the settlement at midnight and ordered the residents out of their shacks. Police gave the residents only 10 minutes to gather up their belongings before setting the shacks on fire. Police arrested 55 people, including five children, and detained them at Harare Central police station. They were later released without charge and are now back in the settlement.

In June 2010, about 3,000 leaseholders and their families, an estimated 15,000-20,000 people, at Hatcliffe Extension settlement were threatened with eviction by the Ministry of Local Government, Urban and Rural Development if they failed to renew their leases by 30 September 2010. Most of them could not afford the renewal fees which in some instances amounted to USD 140. The threat of eviction was only reversed after mass international appeals and legal action by some of the affected people.

Impunity for human rights violations by security forces

Amnesty International is concerned about the lack of accountability by members of the security forces for human rights violations against human rights defenders and perceived opponents of President Mugabe's ZANU-PF party. The organization has documented numerous cases where the police were unable or unwilling to arrest and bring the perpetrators to justice.

Amnesty International has also documented unlawful killings, torture and other ill-treatment of human rights defenders and political activists affiliated to the MDC in the run up to the second round of the presidential election between March and July 2008. Most of the victims were reportedly attacked by security agents and/or ZANU-PF supporters for having voted “wrongly” in the elections. The perpetrators of these violations remain free and continue to harass and intimidate victims and their families. Amnesty International is concerned that despite having undertaken to reform state institutions, including the security organizations, under Article 13 of the Global Political Agreement, no such measures have been taken more than two years after the GNU was formed.

D. Recommendations for action by the State under review

Amnesty International calls on the government of Zimbabwe:

Human rights violations against human rights defenders

- To repeal or amend sections of the Public Order and Security Act and other laws that place unnecessary restrictions on human rights defenders exercising their rights to freedom of association and peaceful assembly. Such national laws should be compatible with international treaties to which Zimbabwe is a party, including the African Charter on Human and Peoples’ Rights, the International Covenant on Civil and Political Rights and 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;
- To amend existing rules for the security forces when policing peaceful demonstrations and other assemblies, to bring them into full compliance with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The government should ensure that all incidents where force is used against peaceful assemblies are promptly and thoroughly investigated, and prompt sanctions effected on police and security officials found to have breached such rules;
- To invest in the training of police officials to build skills in mediation and negotiation with a view to limiting the use of force and firearms in line with Principle 20 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- Where injury is caused by the use of force, to instruct police to ensure that assistance and medical aid are rendered to those injured or affected at the earliest possible moment, in accordance with Principle 5 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- To ensure that police allow all detainees, including human rights defenders, access to their lawyers, medical care, food and other needs;
- To ensure police officers operate on the basis of a general presumption against the arrest and detention of women who are pregnant, mothers and carers of children (including single mothers). In case of arrest and detention, the authorities must ensure that women who are pregnant, mothers (in particular those who are breast feeding) and carers of children are identified and considered for immediate release.

Torture, inhuman or degrading treatment of human rights defenders and other detainees

- To immediately ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and to reflect the provisions in national legislation.

- To invite the UN Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture to visit Zimbabwe.
- To investigate the state security agents responsible for the abduction of Jestina Mukoko and others with the view of bringing them to justice for the human rights violations committed as established by the Supreme Court ruling.

Impunity for human rights violations by the security forces

- To establish an independent commission of inquiry into all human rights violations since 2000, in particular the suppression of the right to freedom of expression, association and peaceful assembly, with terms of reference and membership determined on the basis of broad consultation with all sectors of society, including victims.
- To undertake prompt, thorough, independent and impartial investigations of human rights violations and to ensure that those responsible are brought to justice. Members of the security forces found to be responsible for human rights violations should be removed from their posts according to procedures which comply with the requirements of due process.
- To ensure non-recurrence of human rights violations by undertaking a programme of institutional and other reform to ensure respect for the rule of law and to foster a culture of respect for human rights. To particularly prioritize reform of the Law and Order section and the anti-riot unit of the Zimbabwe Republic Police, to ensure that these units are not used to perpetrate human rights violations. The reform agenda should be developed through a process of broad public consultations, including with victims and other sectors of civil society.

Forced evictions

- To end all forced evictions, including through enforcing a clear prohibition on forced evictions and developing and implementing guidelines for evictions which comply with international human rights law. Pending such steps, a moratorium on mass evictions should be issued;
- To ensure that all victims of forced evictions have access to minimum essential levels of shelter, clean water, sanitation, health services and education, including through the provision of humanitarian assistance where necessary;
- To ensure a minimum degree of security of tenure to provide legal protection to all persons against forced eviction, harassment and other threats.
- To undertake a comprehensive review of Operation Garikai/Hlalani Kuhle to bring it in line with Zimbabwe's human rights obligations.
- To develop, in genuine consultation with affected communities, a comprehensive human rights-based housing programme to address the housing needs of all victims of Operation Murambatsvina. While allocating resources under the programme, the government should give priority to the most marginalized and vulnerable groups and ensure that it is implemented in a non-discriminatory manner;
- To fully implement the recommendations contained in the 2005 Report of the UN Special Envoy on Human Settlement Issues in Zimbabwe.¹

¹ Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe, 22 July 2005.