

ACCESS TO JUSTICE SERIES

IN DEFENCE OF THE RIGHT TO ORGANISE: TRADE UNIONS AS HRDS  
IN ZIMBABWE

PICTURE

Otto Saki 11/24/06 6:26 PM

**Comment:** One picture for the cover design

A PUBLICATION BY

ZIMBABWE LAWYERS FOR HUMAN RIGHT  
AND

ZIMBABWE CONGRESS OF TRADE UNIONS

Otto Saki 11/24/06 6:24 PM

**Comment:** Your views are appreciated on whether to do a joint publication with ZCTU or we can do it alone

## **About ZLHR**

Zimbabwe Lawyers for Human Rights (ZLHR) is a not for profit membership organisation of lawyers and law students whose core objective is to foster a culture of human rights in Zimbabwe as well as to encourage the growth and strengthening of human rights at all levels of society through observance of the rule of law. ZLHR is committed to upholding respect for the rule of law and the unimpeded administration of justice, free and fair elections, the free flow of information and the protection of constitutional rights and freedoms in Zimbabwe and the surrounding region. It keeps these values central in its programming activities.

ZLHR's vision is to see a just and democratic society in Zimbabwe with a culture of respect of the rights of women, men and children. With a mission to promote and protect human rights through a sustainable programme of litigation, unique legal support services, education and strengthened participation by key stakeholders, influencing a culture of respect for human dignity and rights tolerance and democracy in Zimbabwe. To achieve the organisation's vision and mission, ZLHR has established among other projects the Human Rights Defenders Project (HRDP), which encapsulates the provision of emergency legal aid and support services, sensitization and capacity building of Human Rights Defenders (HRDs), strategic public interest litigation, documentation and publication.

Human Rights Defenders are individuals or groups collectively working towards the promotion and/or protection of fundamental rights and freedoms as provided in the Constitution of Zimbabwe, the International Bill of Rights, and the 1998 United Nations Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (commonly known as the UN Declaration on Human Rights Defenders).

### **Programme Objectives**

- To provide emergency legal support services to HRDs in distress throughout Zimbabwe,
- To provide a consistent follow-up legal support in strategic cases in an effort to combat impunity,
- To facilitate the development of a published record of violations against HRDs and practices that diminishes the operating space of HRDs,
- To build capacity of human rights defenders towards the protection and promotion of human rights within communities and training of fellow HRDs

The HRDP has various components to it, namely: Emergency Legal Response, Anti-Impunity Litigation, Training and Capacity Building and Documentation and Publication

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#### **About ZCTU<sup>1</sup>**

At the time of independence in 1980, there were as many as 6 national trade union centres, namely, the African Trade Union Congress (ATUC), the National African Trade Union Congress (NATUC), the Trade Union Congress of Zimbabwe (TUCZ), the United Trade Unions of Zimbabwe (UTUZ), the Zimbabwe Federation of Labour (ZFL) and the Zimbabwe Trade Union Congress (ZTUC). The first historic event after independence was the bringing together of the 52 existing unions to a Congress on February 28, 1981 where the Zimbabwe Congress of Trade Unions (ZCTU) was formed. At this Congress, unionists that were closely associated with the ruling party, ZANU (PF) took over the reigns of the labour movement. Thus, during the first 5 years of independence, the relationship between ZANU (PF) and by extension, government and the ZCTU was largely paternalistic. It was only after the collapse of the corruption-ridden executive of the ZCTU, and its second Congress held in 1985 that a more independent leadership, largely drawn from the larger and more professionally run unions that the relationship between the ruling party and the ZCTU was reduced to arms-length.

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<sup>1</sup> Brief History of the Union Movement in Zimbabwe by Godfrey Kanyenze and Blessing Chiripanura, September 2001 extracted from the ZCTU website [www.zctu.co.zw](http://www.zctu.co.zw) last visited 16 September 2006

Thereafter, the ZCTU steered a more independent and increasingly confrontational position. The divide between the ZCTU and government widened when the former opposed attempts by the latter to introduce a one-party state in Zimbabwe in the late 1980s following the merger between the two major parties, ZANU (PF) and ZAPU in 1987. The relationship was particularly strained following the introduction of the Economic Structural Adjustment Programme (ESAP) in 1991. As the hardships arising from the market-based reforms deepened, government increasingly resorted to draconian measures to shore up its waning political support.

### **ZCTU's Aims and Objectives**

In terms of the enabling constitution of ZCTU, its objectives as covered under Article 5 of the Constitution include but not limited to the following

- to organise, develop and maintain a powerful, effective democratic independent and united trade union movement in Zimbabwe.
- to promote, safeguard and win trade union rights and privileges; to generally strive for the improvement of working conditions and employment benefit for all workers in Zimbabwe and to secure full recognition and advancement of the rights, interests and dignity of labour.
- to protect and advance full social and economic rights and development of all workers in Zimbabwe within and beyond the trade unions, particularly those of vulnerable groups such as female and child labour
- to protect and defend workers against all forms of discrimination, exploitation and abuse.
- to advance educational, political and economic knowledge within trade unions in order to build their capacity to effectively defend their interests.
- to discourage and oppose the formation of splinter trade unions in Zimbabwe, or any other forms of worker disunity.

ZCTU's mission statement is promote, advance and safeguard the economic, social and constitutional freedoms of workers by securing legal, political, democratic and good governance framework in Zimbabwe through strengthening its capacity and independence and those of its affiliates. In all their activities and programmes these founding values have remained central within every generation of leadership and secretariat at ZCTU.

**Zimbabwe Congress of Trade Unions**

**Chester House**

**Harare**

Otto Saki 11/24/06 6:28 PM

**Comment:** Subject to it being a joint publication or at least some collaboration

**“It’s the work of one overzealous police officer”-  
President R Mugabe at United Nations New York,**

**“If you want an excuse for being killed, be my guest go into the streets  
and demonstrate.”**

**"Police were right in dealing sternly with Zimbabwe Congress of Trade  
Unions (ZCTU) leaders during their demonstration ... because the trade  
unionists want to become a law unto themselves,"**

**We cannot have a situation where people decide to sit in places not  
allowed and when the police remove them, they say no. We can't have  
that, that is a revolt to the system. Vamwe vaakuchema kuti takarohwa,  
ehe unodashurwa. When the police say move, move. If you don't move,  
you invite the police to use force,"**

**President R Mugabe at Zimbabwe Mission in Cairo Egypt**

## **About the Access to Justice Series**

This is the third publication under **Access to Justice Series under ZLHR Human Rights Defenders Project and the Public Interest Litigation Project**, having published on Freedom of Expression in Zimbabwe: The ANZ Saga; NGO Bill and Human Rights Defenders in Zimbabwe, ZLHR intends to further produce thematic and sector specific publications and materials.

This publication seeks to inform on the reality of the violence, harassment, arrest and torture faced by the trade union activists at the hands of the state and law enforcement agents. The publication seeks to expose the stark reality of the hazards faced by human rights defenders and lawyers. The publication will highlight some of the international and regional laws that Zimbabwe is party to and the rights as enshrined therein and their actual realization, enforcement, protection, promotion and respect.

### **Introduction**

The 13<sup>th</sup> of September 2006 attack on Zimbabwe Congress of Trade Unions (ZCTU) leaders and activists while in police custody demonstrated the levels of police brutality and the clear lack of respect of fundamental freedoms of assembly and association, the right to protection of the law and above all the right to protection from inhuman treatment in Zimbabwe. The attacks mirror the levels of impunity and state sanctioned torture which has gone unredressed for ages. Reported cases of torture have been on the increase and it has become a widespread phenomenon practiced with the tacit and explicit consent and acquiescence of the political and state leadership. Acts of torture in many instances have been compounded by the failure and negligence of law enforcement agents to carry out investigations and follow through prosecutions.

### **Operating Environment for Trade Union Rights Activists**

Attacks on legitimate human rights defenders and organisations has been on the increase since 2000, these attacks have been through different means, including but not limited to media and public attacks, malicious investigations

and prosecution, arrests, detention, torture, surveillance, formation of surrogate organisations, office and house break ins. ZCTU as an organisation and individuals have suffered at the hands of state appointed and established entities such as officers from the Ministry of Labour and Social Welfare, the Criminal Investigation Department, Zimbabwe Federation of Trade Unions (ZFTU) and various law enforcement and intelligence agencies such instances are detailed below.

### **Arrests**

- **2 June 2003 arrest of ZCTU official<sup>2</sup> Masvingo**

An active leader of the ZCTU in Masvingo received a message that he was required to present himself at the Law and Order section, Masvingo Central police station. A lawyer was deployed to ascertain the nature of the police enquiries. The lawyer was informed that the police had been given a list of people involved in organising the May Day celebrations and had been ordered to arrest such individuals (Sergeant Moyo, Inspector Mutambara and Superintendent Mudzimu admitted this to the lawyer). The individual concerned was then picked up at his place of employment on 3 June 2003 and was subjected to severe beatings on the way to the police station. He was not informed of the reasons for his arrest. He was assaulted further in the Central Intelligence Unit office at Masvingo Central police station. He was ordered to remove all his clothes before he was beaten and was forced to eat his own stool. He was denied food during his detention, and was only brought to court on 5 June 2003. A bail application was made and the detainee was released follow up anti impunity litigation is still underway.

- **18 November 2003 Nation wide protests**

The ZCTU supported by civil society engaged in a peaceful expression of discontent at the failure by the government to deal with the multi layered crisis bedeviling the country. These activists gathered at various centres in the country preparing to march. The police arbitrarily arrested and detained ZCTU

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<sup>2</sup> Name of the Official withheld

leadership, labour activists and several other civil society leaders who had peacefully assembled. The arrests were as follows

- In Harare 58 people were arrested. These included the ZCTU leadership Lovemore Matombo (President), Wellington Chibebe (Secretary General) Tabitha Khumalo (V/President/ NCA activist), Mrs Lucia Matibenga (General Council member ZCTU), and civil society leaders Brian Raftopolous (Crisis Coalition Chair), Dr John Makumbe (Crisis Coordinator and Chair of Transparency International-Zimbabwe), Dr Lovemore Madhuku (Chair of NCA), Andrew Moyse (Media Monitoring Project Zimbabwe), Mike Davies (Chair Harare Combined Ratepayers Association), Jana Ncube (Chair of Women's Coalition), Raymond Manjongwe ( The Secretary General of the Progressive Teachers Union)and Amanda Atwell ( Crisis Secretariat). The detainees were released by the court after having languished in detention for two days.
- In Mutare 122 people were arrested with the ZCTU regional leader a Mr. Mwandipe being part of them. They were given an option of being detained or paying an admission of guilt fine for c/s(c/s) 7(b) of the Miscellaneous Offences Act (MOA). They chose to pay the fine as a way of buying their freedom.
- In Bulawayo, 14 people were arrested including 9 ZCTU activists Gideon Shoko, Adias Ncube, Henry Vushe, Japhet Ndhlovu, Clever Manjoro, Liberty Nyathi, Dodoma Mavinde (who was badly beaten by a police dog set against him) Ian Tembo and Ration Moyo, 2 women from Woman of Zimbabwe Arise (WOZA) Jenni Williams and Ma Tshabalala, other bystanders including shop from Edgars and Wilsgrrove. Jenny Williams and Ma Tshabalala were released on the same day after being subjected to severe assault. The 9 ZCTU activists were detained and only released on \$5 000.00 bail facing charges of c/s 17 (1)(a) of the Public Order and Security Act (POSA).
- In Chinhoyi 5 people were arrested for c/s 17(1) of POSA, they were released on \$5000 bail each.

Initially the detainees in Harare had been charged for c/s 19(1) (a) of POSA. The Office of the Attorney General declined to as the charges were unsustainable. In a move suggesting ulterior motive and possible malice the police refused to release the detainees but filed new charges against 4 members of the ZCTU leadership Lovemore Matombo, Wellington Chibebe, Lucia Matibenga and Thabita Khumalo under section 26 of POSA which criminalizes the holding of a demonstration after the regulating authority has refused permission. The other 54 detainees were given an option to pay a fine in terms of a downgraded charge under MOA or be further detained. The human rights defenders refused to pay the \$5000 fines as they genuinely and rightly so, held that no offence had been committed. They were detained overnight to appear in court on the 20th of November 2003 for c/s 7(b) MOA or alternatively the Road Traffic Act (RTA). On 20 November 2003 the police were showing no desire to take the detainees to Court or to release them. This resulted in lawyers lodging an urgent High Court application for the detainees to be taken to court or be released. Compelled to bring the accused to Court, the police yet again altered the charges that the other 54 detainees were facing and upgraded the charges to violating c/s 17(1) POSA.<sup>3</sup> The state later withdraw the charges.

- **5 August 2005, Gweru Wellington Chibhebhe and 3 Others (ZCTU)**

Wellington Chibhebhe, Timothy Kondo, Lucia Matibenga and Samuel Machinda were arrested at Gweru Theatre where they were conducting a workshop for ZCTU members. The four were charged with c/s 19(1) (b) of POSA for participating in a gathering conducting to riot, disorder, or intolerance. The four were detained until the 7<sup>th</sup> of August 2005, when they appeared in court and granted \$200 000.00 bail each and remanded out of custody to the 8<sup>th</sup> of September 2004. They were later acquitted of the charges.

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<sup>3</sup> See press statement by Zimbabwe Lawyers for Human Rights [http://www.zlhr.org.zw/media/releases/nov\\_20\\_03.htm](http://www.zlhr.org.zw/media/releases/nov_20_03.htm) last accessed on the 13 November 2006.

- **21 February 2005, Tavakunda Marembo, Communication and Allied Services Workers Union of Zimbabwe**

The Communications and Allied Services Workers of Zimbabwe (CASWUZ) had been engaged in a protracted legal battle with Tel One and Net One after they had unprocedurally laid off over 1200 workers. CASWUZ, armed with a decision of the Labour Court which had ordered the immediate reinstatement of the workers, proceeded to occupy their various posts and work stations at the Net One premises, as direct enforcement of the decision of the court. Tavakunda Marembo and 53 other Net One employees congregated at the 16<sup>th</sup> floor of the Net-One headquarters and sought audience with management. In an attempt to evade the obligation arising from the court order, the management led by Reward Kangai the Managing Director, instructed the workers to vacate the premises as management was not prepared to enter into any form of negotiations with them. The management immediately summoned the anti- riot police and over 30 armed police officers descended onto the premises. Without an understanding of the situation, the police randomly assaulted everyone in their wake. Tavakunda Marembo suffered major bruises and deep cuts all over the body. As a result the police arrested and detained him allegedly for c/s 7(b) of MOA. This was obviously meant to buy time for Tavakunda's wounds to heal.

On 22 February 2005, the police took a warned and cautioned statement from the accused in the presence of his lawyer. On attending at court, the office of Attorney General declined to prosecute for want and ordered the immediate release of the accused person. Arrangements were made for medical examination to be conducted, so that anti-impunity suits be instituted against the police.

- **8 November 2005, Mutare**

ZCTU had called for a nationwide demonstration; in Mutare the police arrested 37 trade unionists activists. Lawyers attended to Mutare Police station where efforts to interview the activists were frustrated by the Officer in Charge who indicated that Officer Commanding Mutare was interested in the matter and could not allow lawyers access to their clients without prior

consultation with his superior, Dispol Mutare. The lawyers approached Dispol Mutare who was very cooperative and directed the lawyers to the Officer in charge Law and Order Section, Detective Assistant Inspector Gatura. There was however constant seeking of clearance from the Officer Commanding Law and Order Section Manicaland Province, one Chikwanda. Around 1630hours, the lawyers had not succeeded in gaining access to the clients and were informed that the activists would be taken to court the following day. Food was arranged for the 37 activists.

On the 9<sup>th</sup> of November, lawyers arranged that accused persons appear in court. The police were heavily incapacitated to deal with such numbers and could not prepare the warned and cautioned statements so as to facilitate appearance in court the same day. Lawyers offered to prepare the warned and cautioned statements. Around 11:15 hours the investigating officer was ready for court however could not leave without clearance from his superior who at the time was not present. After almost 4 hours of waiting, the lawyers were informed that it was unlikely that they would appear in court the same day as the superiors insisted on going to court the following day.

On the 10<sup>th</sup> of November, the 37 appeared in court on charges of c/s 19(1) of POSA, and they paid bail of \$500 000, with the chairperson of ZCTU Manicaland being asked to pay ZW\$1 000 000.00 and remanded to 2<sup>nd</sup> December 2005. An application for refusal of further remand was to be made on the return date.

On the 2<sup>nd</sup> of December 2005, it was established by the lawyers that the leadership of ZCTU, in particular Eria Mwandipe, was facing 2 charges under s24 (1) wherein it was alleged that as the organizer he failed to abide by the Prohibition Order which had been issued by the police and further that he participated in the gathering and demonstration thereby c/s 19(1) of POSA. After protracted negotiations with the office of the Area Prosecutor, it was finally agreed that the charges be withdrawn before plea and the police would proceed by way of summons.

- **8-11 November 2005, Harare**

ZCTU had called for a nationwide protest agitating for major economic and political reforms. Around 1300hours the police rounded up 119 activists who had gathered at Construction House. They were detained at Harare Central Police station. Because of the numbers some of the activists were held in the police backyard and surrounded by armed riot police officers. During the melee, 2 activists, a journalist and one of the staff of ZCTU were 'arrested' by the military for allegedly taking pictures of soldiers who were with the police at the scene of the demonstration were later handed over to the police. The officer in charge upon interacting with the lawyers indicated that they had no clue of the charges being faced by the activists and as the matter was being handled by Law and Order Section. After much interrogation in the presence of the lawyers they were released without charge, meanwhile the police were facilitating the movement of the other detainees to Makoni Police Station almost 25 kms from Harare, where they were to spend the coming 3 nights.

The first day of detention the police prepared the warned and cautioned statements for the 119, for c/s 19(1) of POSA. Lawyers advised the activists of the charges being preferred against them and a standard response denying the charges was drafted. The police were taking longer than necessary to complete the preliminary documentation for purposes of attending to court that same day. To quicken the process, communication was established with the Office of the Attorney General who professed ignorance about the facts of the case. Noting the lack of willingness by the police to take the trade unionists to court that same day, an urgent court application was lodged with the High Court. The investigating officers on one Mukwaira and Rangwani were determined further detain the activists. Food for overnight was arranged, some of the detainees complained of stomach related illness and diarrhea in the holding cells. There were about 11 detainees who were on ART, and one on daily observation treatment for Tuberculosis. Medication was arranged for the chronically ill detained activists. Initially there had been resistance to providing them with medication, but upon indicating the severity and complications which were likely to arise due to non-administering of medication, the police officers acceded.

On the second day of detention, (10<sup>th</sup> of November 2005), the police were still reluctant to take the accused persons to court. An urgent application was filed and immediately served on the AG's Office who made an undertaking that the accused persons would appear in court the following day (11 November 2005), failure of which they would be released.

On 11 November 2005, the Chief Law Officer at the AG's Office, one Mr. Muronda, eventually advised the police to proceed by way of summons. The urgent application had been set down before Justice Makarau at 1600hours that very same day. The AG and the police were categorically informed that if the accused persons were not released before the time set down for the hearing, the lawyers would proceed with the application. The Officer in Charge, Law and Order Section, after much consultation ordered the release the accused persons<sup>4</sup>.

- **15 August 2006, Wellington Chibebe**

Wellington Chibebe secretary general of ZCTU was arrested while driving into Harare from Masvingo at a roadblock near Waterfalls. Chibebe was detained at Waterfalls Police Station where he was charged with common assault for allegedly assaulting a police officer. The police wanted to search his car supposedly to look for cash, but Chibebe informed them that what they were doing was illegal. The police did not take kindly to Chibebe's words and one police officer tried to forcibly remove him from his car while his seat belt was still buckled on without success. The police officer then vigorously clapped Chibebe twice and accusing him of resisting to be searched, this was done in front of Chibebe's family. As if that was not enough the Police refused to release Chibebe as instructions from a senior police officer were to keep him in custody until he appears in court to answer to charges of common assault. Chibebe appeared in court on the 18<sup>th</sup> of August 2006 in the company of his lawyer. The criminal matter is still before the courts and civil suits have been issued against the individual police.

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<sup>4</sup> [http://www.fidh.org/article.php?id\\_article=2841](http://www.fidh.org/article.php?id_article=2841)

## Investigation of Operations, Malicious Accusations and Criminal Prosecution

In 2000 ZCTU filed a communication with the **Committee of Freedom of Association**<sup>5</sup> under the **International Labour Organisations (ILO)**<sup>6</sup> on allegations of interference with the operations of ZCTU through investigations and prohibition to hold meetings with members among other issues. To give a clear background into the history of the investigations excerpts of the report are as follows:

### A. ZCTU's allegations

558. In its complaint dated 30 March 2000, the ZCTU alleges that the Government has violated freedom of association principles by interfering in the running of the affairs of the ZCTU. In this regard, it points out that the Labour Relations Act gives the Government, through the Minister of Labour, sweeping autocratic powers to interfere in the running of the affairs of trade unions. Apart from registration and deregistration powers (sections 27-57), the Minister can also forcefully cause investigations to be carried out in the running of the affairs of trade unions (section 120(2)). Indeed, the Act is littered with provisions that empower the Minister to administer trade unions and, in some cases, employers' organizations.

559. More specifically, the ZCTU asserts that in February 2000 the Government appointed an investigator in terms of section 120(2) of the Labour Relations Act in the belief that the ZCTU's funds and property "are being misappropriated or misapplied and the federation's affairs are being conducted in a manner that is detrimental to the interests of its members" (a copy of the Minister's letter is attached

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<sup>5</sup> Report No. 323 (*Vol. LXXXIII, 2000, Series B, No. 3*) Zimbabwe (Case No. 2081) <http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=1107&FILE=2081&hdroff=1&DISPLAY=CONCLUSION,INTRODUCTION,BACKGROUND,RECOMMENDATION#RECOMMENDATION> see also similar complaints that were filed during the leadership of Morgen Tsvangirai as the secretary general of ZCTU <http://webfusion.ilo.org/public/db/standards/normes/libsynd/LSGetParasByCase.cfm?PARA=1013&FILE=2027&hdroff=1&DISPLAY=RECOMMENDATION,BACKGROUND> accessed 13 November 2006, where cases of assault on ZCT leadership, burning of ZCTU Western Region offices and alleged investigations and prosecution of the assailants and arsonists in the cases by the government of Zimbabwe

<sup>6</sup> Zimbabwe has ratified the several of the ILO Conventions including the following Conventions, 1930 Convention on Forced Labour (1998) which is incorporated under Section 4 of the Labour Act; 1948 Freedom of Association and Protection of the Right to Organize (2003); 1949 Right to Organise and Collective Bargain (1998); 1951 Equal Remuneration (1989); 1957 Abolition of Forced Labour (1998); Discrimination (Employment and Occupation) (1999); 1973 Minimum Age (2000); Worst Form of Child Labour (2000); 1921 Weekly Rest (Industry) (1980); 1928 Minimum Wage and Fixing Machines (1993); 1947 Labour Inspection (1993); 1969 Labour Inspection (Agriculture)(1969); Workers Representative (1998); 1974 Paid Education and Leave (1998). It also pertinent to note that of these conventions that Zimbabwe has ratified certain provisions have been incorporated into the Labour Act.

to the complaint and appears as Annex I to this case). Despite the ZCTU's protests in writing (the text of the ZCTU's letter is attached to the complaint and appears as Annex II to this case), the ZCTU indicates that the Government has insisted on carrying out the investigations.

560. The ZCTU has challenged the constitutionality of these investigations in the courts, since article 21 of the Constitution of Zimbabwe relating to freedom of association protects the independent administration of the affairs of trade unions. In these circumstances, the ZCTU strongly objects to the law and practice of government interference in trade union business, as evidenced by the existence of autocratic laws (Labour Relations Act, as quoted) and the implementation by the Government of these enabling provisions. Convention No. 87 is very clear on these issues and, in the ZCTU's opinion; the Labour Relations Act is grossly in violation of Convention No. 87.

561. Although the ZCTU is seeking legal redress through the courts, it urgently appeals to the Committee to examine the complaint with a view to assisting the ZCTU to: (a) have the compulsory investigations stopped; and (b) have section 120(2) of the Labour Relations Act amended to bring it in line with freedom of association principles.

#### **B. The Government's reply**

562. In a communication dated 27 April 2000, the Government indicates that it is true that the Minister of Labour appointed an investigator to look into the financial affairs of the ZCTU in terms of section 120(2) of the Labour Relations Act (Chapter 28:01). The Government points out that the section in question ensures that the Minister responsible for labour administration protects workers' funds and properties from being used for non-worker activities.

563. The Government further explains that sections 27-57 of the said Act (which the ZCTU alleges gives too much power to the Minister regarding registration and deregistration of trade unions, employers' organizations and their federations) are about regulating the manner in which these organizations can be formed and the circumstances in which they can be done away with in the national interest. This type of requirement is the standard norm in pieces of labour legislation worldwide. These are public organizations funded by special groups of the public, i.e. workers and employers.

564. With regard to the ZCTU's specific complaint of investigation into its financial affairs by the Ministry, the Government contends that it all started with the ZCTU's formation of a political party - the Movement for Democratic Change (MDC) - a move which was resented by some of the trade unions affiliated to it. According to the Government, this objection is based on the freedom to freely associate with political parties of an individual's choice. When the ZCTU sponsored the launch of the MDC, some trade union organizations affiliated to it and opposed to the use of the federation's funds for political purposes called the Ministry to intervene. The Ministry had even before the launch of the MDC sought legal opinion from the Attorney-General's Office about the need to safeguard workers' funds and property.

565. In any event, when the investigator commenced the investigation on 28 February 2000, the MDC was still using the ZCTU's offices and facilities. The Government emphasizes that it was against this background that the Minister invoked the provision of section 120 of the said Act. It is not that the Government is against the involvement of trade unionists in political matters.

#### **The Committee's conclusions**

566. The Committee notes that the allegations in this case are of both a legislative and factual nature in respect of the issue of government interference in internal trade union affairs.

567. As regards the legislative aspect of the case, the complainant alleges that, while the Constitution of Zimbabwe protects the independent administration of trade union affairs, subsection (2) of section 120 of the Labour Relations Act of 1985 gives sweeping powers to the Government to interfere in the running of the affairs of trade unions (section 120 is reproduced in full in Annex III to this case). The Government maintains that the provision in question protects workers' funds and properties from being used for non-worker activities. The Committee, for its part, notes that subsection (1) of section 120 stipulates that the Minister may order that any trade union or federation be investigated if the Minister has reasonable cause to believe that the property or funds of any trade union, or federation are being misappropriated or misapplied, or that the affairs of any trade union, or federation are being conducted in a manner that is detrimental to the interests of its members as a whole. The Committee further notes that, under the terms of subsection (2), the Minister can appoint an investigator who shall at all reasonable times and without prior notice, enter any premises (paragraph (a)); question any person employed on the premises (paragraph (b)); and inspect and make copies of and take extracts from any books, records or other documents on the premises (paragraph (c)).

568. The Committee considers that the abovementioned provisions give rise to two different sets of problems from the standpoint of freedom of association. As regards paragraphs (a) and (b) of subsection (2) of section 120, the Committee has emphasized on previous occasions that the right of the inviolability of trade union premises necessarily implies that the public authorities may not insist on entering such premises without prior authorization or without having obtained a legal warrant to do so and any search of trade union premises, or of unionists' homes, without a court order constitutes an extremely serious infringement of freedom of association (see Digest of decisions and principles of the Freedom of Association Committee, 4th edition, 1996, paras. 175 and 177). Moreover, searches of trade union premises should be made only following the issue of a warrant by the ordinary judicial authority where that authority is satisfied that there are reasonable grounds for supposing that evidence exists on the premises material to a prosecution for a penal offence and on condition that the search be restricted to the purpose in respect of which the warrant was issued (see Digest, *op. cit.*, para. 180). The Committee is of the view that paragraphs (a) and (b) of subsection (2), which authorize an investigator appointed by the Minister to enter trade union premises and question any person employed there at all reasonable times and without prior notice, clearly do not respect the principles enunciated above.

569. Secondly, as regards paragraph (c) of subsection (2), which authorizes an investigator, at all reasonable times and without prior notice, to inspect and make copies and take extracts from any books, records or other documents on trade union premises, the Committee has previously held that the control exercised by the public authorities over trade union finances should not normally exceed the obligation to submit periodic reports. The discretionary right of the authorities to carry out inspections and request information at any time entails a danger of interference in the internal administration of trade unions. Moreover, as regards certain measures of administrative control over trade union assets, such as financial audits and investigations, the Committee has considered that these should be applied only in exceptional cases, when justified by grave circumstances (for instance, presumed irregularities in the annual statement or irregularities reported by members of the organization), in order to avoid any discrimination between one trade union and another and to preclude the danger of excessive intervention by the authorities which might hamper a union's exercise of the right to organize its administration freely, and also to avoid harmful and perhaps unjustified publicity or the disclosure of information which might be confidential (see Digest, *op. cit.*, paras. 443 and 444). The Committee considers, consequently, that the powers of supervision contained in paragraph (c) of subsection (2) are not limited to exceptional cases; rather this provision gives excessive powers of inquiry to the administrative authorities into the financial

management of trade unions, thereby violating the right of workers' (and employers') organizations to organize their administration without interference by the public authorities.

570. For all the abovementioned reasons, the Committee would request the Government to take the necessary measures to ensure that subsection (2) of section 120 of the Labour Relations Act is amended in line with freedom of association principles enunciated in the preceding paragraphs. The Committee further requests the Government to keep it informed of any progress made in this regard.

571. As regards the factual aspects of this case, the Committee notes that the complainant asserts that, in February 2000, the Government appointed an investigator under section 120(2) of the Labour Relations Act to look into the ZCTU's funds and property over the ZCTU's objections in writing thereto. The Committee notes that the Government does not refute this allegation but rather justifies the appointment of an investigator by the Minister responsible for labour administration in order to protect workers' funds and properties from being used for non-worker activities. According to the Government, it was obliged to appoint an investigator because when the ZCTU sponsored the launch of a political party - the Movement for Democratic Change (MDC) - some trade union organizations affiliated to the ZCTU were opposed to the use of the federation's fund for political purposes and called on the Ministry of Labour to intervene. The Government adds that, when the investigator commenced the investigation on 28 February 2000, the MDC was still using the ZCTU's offices and facilities.

572. In this regard, the Committee would recall that it has reaffirmed the principle expressed by the International Labour Conference in the resolution concerning the independence of the trade union movement that governments should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the formal functions of a trade union movement because of its freely established relationship with a political party (emphasis added). Furthermore, provisions imposing a general prohibition on political activities by trade unions for the promotion of their specific objectives are contrary to the principles of freedom of association (see Digest, op. cit., paras. 451 and 452). In the situation at hand, it would appear to the Committee that the Government has practically resorted to banning the ZCTU from resorting to such political activities since, in the Government's own words, it invoked section 120(2) of the Labour Relations Act and initiated the investigation into the ZCTU's financial affairs because the federation sponsored the launch of an opposition political party, the Movement for Democratic Change (MDC).

573. The Committee also notes the Government's statement that, when the ZCTU sponsored the launch of the MDC, some trade union organizations affiliated to the ZCTU who were opposed to the use of the federation's funds for political purposes called on the Ministry of Labour to intervene. As the Committee pointed out in a preceding paragraph, measures of supervision over trade union assets, such as investigations, should be applied only in exceptional cases, for example in order to investigate a complaint or irregularities reported by members of the organization. Hence, measures of supervision over the administration of trade unions may be useful if they are employed only to prevent abuses and to protect the members of the trade union themselves against mismanagement of their funds. However, it would seem that measures of this kind may, in certain cases, entail a danger of interference by the public authorities in the administration of trade unions and that this interference may be of such a nature as to restrict the rights of organizations or impede the lawful exercise thereof, contrary to the principles of freedom of association. It may be considered, however, to some extent, that a guarantee exists against such interference where the official appointed to exercise supervision enjoys some degree of independence of the administrative authorities and where that official is subject to the control of the judicial authorities (see Digest, op. cit., para. 442).

574. The Committee notes, however, that the investigator responsible for carrying out the investigations into the ZCTU's financial affairs is appointed by the Minister (subsection (2) of section 120) and therefore enjoys no degree of independence of the administrative authorities. In the concrete case at hand, the Committee notes that the investigator is the Under Secretary of Administration and Finance of the Ministry of Public Service, Labour and Social Welfare. Moreover, the Committee notes with concern that the investigator is not subject to the control of the judicial authorities since, under the terms of subsection (3) of section 120, the investigator is obliged to report the results of his investigation solely to the Minister and, in so doing, may recommend, in the case of a registered federation, that such federation be deregistered and wound up or be administered in terms of subsection (7) (subparagraphs (i) and (ii) of paragraph (b) of subsection (3)). In these circumstances, the Committee urges the Government to take the necessary measures to stop forthwith the ongoing investigations into the ZCTU's financial affairs. It requests it to keep it informed of developments in this regard. It also requests the Government to ensure in future that measures of supervision over the administration of trade unions are exercised by an official who is independent of the administrative authorities and who is subject to the control of the judicial authorities.

#### **The Committee's recommendations**

575. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee requests the Government to take the necessary measures to ensure that section 120(2) of the Labour Relations Act of 1985 is amended in line with freedom of association principles, including those enunciated in its conclusions. The Committee further requests the Government to keep it informed of any progress made in this regard.

(b) The Committee urges the Government to take the necessary measures to stop forthwith the ongoing investigations by a government-appointed investigator into the financial affairs of the Zimbabwe Congress of Trade Unions (ZCTU); it requests the Government to keep it informed of developments in this regard.

(c) The Committee requests the Government to ensure in future that measures of supervision over the administration of trade unions are exercised by an official who is independent of the administrative authorities and who is subject to the control of the judicial authorities.

The recommendations of the Committee have not been fully implemented and the investigations on ZCTU's activities have continued as will be indicated below.

On the 13<sup>th</sup> of May 2005, ZCTU offices were raided by members of the Criminal Investigation Department (CID) on allegations of illegally dealing in foreign currency. On the 29<sup>th</sup> of August 2005, Vimbayi Mushoniwa and Elijah Muteneri, from the Finance Department of ZCTU were arrested on charges of contravening the Foreign Exchange Act, which charges they pleaded not guilty and were released on ZWD\$ 1 million bail each and remanded to the 13<sup>th</sup> of September 2005.

Towards the end of 2005, the Minister of Labour and Social Welfare was threatened to appoint investigators to undertake a forensic investigation at the ZCTU offices. The Minister of Labour deployed Tendai Chatsauka from the Minister of Labour to investigate the financial affairs of the labour body. On the 3<sup>rd</sup> January 2006 such investigators raided ZCTU offices, plummeted

through financial files, documents, computer filed data and request for proof of all banking transactions. The investigations were supposed to last for two months with a presentation of a report to the Minister for possible prosecution. Less than a week after the investigations started<sup>7</sup> armed police raided ZCTU offices seizing documents, files and computer diskettes, as evidence of illegal dealings in foreign currency.

On other occasions following massive demonstrations in Harare which then resulted in the destruction of private individual's property, the government incited the institution of criminal claims<sup>8</sup> for damages suffered by the individuals under some of the laws in a bid to de-legitimize the trade union in the eyes of the general public.

### **Deportation of Trade Unionists**

Trade unionists world wide have enjoyed support from similar minded organisations and ZCTU is no exception to such. Trade unions within the region such as from South Africa and Zambia have on been invited to attend and observe ZCTU meetings. Delegations from South Africa have been denied entry into Zimbabwe on more than 2 occasions, unjustified deportations upon arrival and without prior or existing court orders for such. Individuals who belong to such unions or have a working relationship with ZCTU have also been arbitrarily denied entry into Zimbabwe<sup>9</sup>.

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<sup>7</sup> <http://zimdaily.com/news2/article.php/2006011013195934.html> Wednesday 11th January 2006

<sup>8</sup> POSA makes individuals criminally liable for damage arising from acts stemming from demonstrations or activities that will not have received "police authority". It should be noted however from this instance that the activities of trade unions are not regulated in terms of POSA excluded from the ambit of the Act by virtue of paragraph (j) of the Schedule, which excludes a public gathering: held by a registered trade union for bona fide trade union purposes for the conduct of business in accordance with the Labour Relations Act [*Chapter 28:01*]. It is therefore very interesting to note that on several occasions the leadership and membership of ZCTU has been arrested on allegations of having either failed to notify the police of their meeting, which in the ordinary reading of the Act should not be a criminal offence. The High Court of Zimbabwe in the case of **ZCTU v Officer Commanding Police, Harare District & Anor HH 56-02**

See Democratic space and State security: Zimbabwe's Public Order and Security Act<sup>8</sup> by Derek Matyszak ruled that trade union meetings were exempt from the notification requirements contained in article 24 of POSA and that such meetings are not to be considered "public" in terms within the terms of the Act

<sup>9</sup> COSATU condemns Zimbabwe deportation <http://www.cosatu.org.za/press/2006/mar/press2.htm>

- On the 2<sup>nd</sup> of February 2005, a delegation from the Congress of Southern African Trade Unions (COSATU) was deported upon arrival from South Africa on unspecified reasons without adhering to due process or principles of natural and administrative justice.
- On the 9<sup>th</sup> of February 2005, two South African-based trade union educationists, Bobby Marie and Vihemina Prout were asked by Immigration Officers to produce security clearance letters from the Ministry of Labour. When they failed to produce such they were returned onto the next flight back to South Africa. Marie and Prout were visiting Zimbabwe on the instruction of the Southern Africa Trade Union Coordination Council (SATUCC) to discuss with the ZCTU on the establishment of a trade union school in Zimbabwe that is supposed to start in May 2005<sup>10</sup>.
- 13<sup>th</sup> of February 2006, a 15 member delegation from COSATU was deported from Zimbabwe, upon arriving at Harare International Airport; they were detained for several hours. They were later bundled onto a bus and driven all the way to Beitbridge Border Post almost 600 kilometres from Harare.
- Pat Horn a Coordinator with Street Net from South Africa was deported on the 1<sup>st</sup> of March 2006 after arriving at the Harare International Airport by immigration officials. Pat was scheduled to facilitate at a ZCTU Silver Jubilee School at the Management Training Bureau in Harare. No reasons were given for the deportation. Police details had tried to stop the Silver School from commencing on the first day as they said they had some information that the ZCTU was hosting visitors from COSATU, the meeting later proceeded.
- Two consultants were detained upon arrival at the Harare International Airport on the 21<sup>st</sup> of March 2006, and eventually deported the same day. Bagani Ngeleza and Jeff Handmaker, were visiting ZCTU to evaluate a technical partnership programme. No reasons were given for their deportation.
- Nina Mjoberg a representative of LO Norway was denied entry into Zimbabwe at the Harare International Airport on the 17<sup>th</sup> of May 2006,

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<sup>10</sup> [www.kubatana.net](http://www.kubatana.net), [www.zctu.co.zw](http://www.zctu.co.zw)

Nina was scheduled to attend the ZCTU Congress from the 19<sup>th</sup> -20<sup>th</sup> May 2006.

- A Zambian consultant, Alice Siame, Jan Mahlangu, from South Africa and Wiep Basie from Holland who were invited to attend the ZCTU Congress, were deported for unspecified reasons.
- On the 19<sup>th</sup> of May 2006, General Secretary of COSATU Zwelinzima Vavi was turned back on arrival in Harare; where he was due to attend a ZCTU meeting. An urgent application was filed to interdict the deportation process with little success<sup>11</sup>.

### **Formation of Surrogate Unions**

In a spirited bid to undermine the work of ZCTU, the government supported the formation of a splinter union tilted Zimbabwe Federation of Trade Unions (ZFTU). ZFTU, in attempt to get affiliates has resorted to coercive measures, threats and invasions. Despite its illegitimacy the ZFTU has managed to achieve massive and positive coverage in the state controlled media, while the ZCTU<sup>12</sup> gained either negative coverage or none at all. It also noteworthy that the leadership of ZFTU were among the self styled farm invaders and are well known ruling party supporters and office bearers. Interestingly and notably, it has never occurred to the current government that ZFTU is not only meddling in politics but is actively involved in partisan politics<sup>13</sup>.

### **Media Blitz**

With the absence of a reputable daily independent paper, activists and legitimate political opponents have been subjected to serialized attacks in the

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<sup>11</sup> By the time of going to print the matter had not been finalized in the High Court. High Court judge Felicitas Chatukuta gave state authorities a week from the 13<sup>th</sup> of October 2006, to present opposing arguments in opposition in an application by ZCTU challenging the deportation and banning from Zimbabwe of South African trade unionist, Zwelinzima Vavi. The ZCTU wants the court to declare null and void a decision by Home Affairs Minister Kembo Mohadi and Chief Immigration Officer Elasto Mugwadi to declare Vavi persona non grata.

<http://www.zimonline.co.za/Article.aspx?ArticleId=273>

<sup>12</sup> Secretary General of the ZCTU, Wellington Chibebhe said “We are very worried that the ZFTU is trying to outmaneuver our organisation with support from the government .We can not easily understand how the government in any way can use a union organisation which is not officially recognized as a political instrument.”

<sup>13</sup> Some of the critics who have written about the work of Chinotimba  
<http://www.thestandard.co.zw/viewinfo.cfm?id=590&siteid=1&archive=1>

government controlled papers. Senior government ministers, politicians and the Head of State have been quoted and reported on numerous occasions maligning trade unionists in particular ZCTU and its affiliates.

### **Burglary and Office Break Ins**

A break was reported at the ZCTU<sup>14</sup> offices at Chester House in Harare. The burglars stole communication equipment including a fax machine and handset, leaving behind some of the new computers which were stored in the same office. This questions the motive of the burglars and their identity. Such acts, if viewed in the broader attacks and threats on ZCTU can be indicative of the level of paranoia and intentions of obtaining as much information of trade union activities even through criminal and unorthodox tactics such as theft and office break ins.

### **Wednesday 13 September 2006: Summer of Discontent**

#### **Emergency Response: Lawyers Account, Harare**

The lawyers received information that ZCTU activists and leadership including Lovemore Matombo, Wellington Chibebe, Raymond Majongwe, Kerry Kay<sup>15</sup>, Grace Kwinje and Mike Saburi a journalist had been arrested. Fifteen of the arrested were taken to Matapi Police Station and thirteen others were taken to Harare Central Police Station.

At 13:36 lawyers (Mr. Muchadehama and Mr. Makoni) on their way to Harare Central Police Station received a text message from Lucia Matibenga that the activists were now being separated. It was then that the lawyers decided to proceed to Matapi Police where they arrived at 14:10 hours. The officer in charge confirmed that they were detaining fifteen accused persons and were under interrogation. Lawyers identified members of Police Internal Security Intelligence milling around the Police Station and the presence of senior

<sup>14</sup> On the 29<sup>th</sup> of September 2006, <http://www.thestandard.co.zw/viewinfo.cfm?id=4660&siteid=1&archive=1> The Standard of the 1<sup>st</sup> of October 2006

<sup>15</sup> Kerry Kay narrated her personal account of the beatings which can be accessed from [http://kubatana.net/html/archive/opin/060924kk.asp?sector=LAB&year=0&range\\_start=1](http://kubatana.net/html/archive/opin/060924kk.asp?sector=LAB&year=0&range_start=1) accessed 24 November 2006

police officers such as Superintendent (Supt) Tenderere among other high ranking officers. Supt Tenderere, as he was aware of the lawyers' mission, sent a junior officer to advise the lawyers for authorisation to see their clients they should get be cleared by Officer Commanding Harare District Chief Superintendent Murwira at Harare Central Police Station. Little did they know that this was a decoy, so as not to establish the beatings and injuries sustained by the activists.

Lawyers proceeded to Harare Central Police Station checking on those who had been taken to Harare Central Police Station and could not locate them at the police backyard. Mr Muchadehama checked in the cells and confirmed that Raymond Majongwe and others were detained in the cells. They were denied access to their clients and referred the lawyers to the Officer in Charge who professed ignorance of the matter. On encountering that hurdle the two lawyers proceeded to the offices of Dispol Harare linking up with colleagues Sarudzayi Njerere, Tafadzwa Mugabe and Lewis Uriri. The District Clerk advised them that he was still monitoring the situation in the city centre and they were told to come back later.

After an eternal wait around 17:15 hours the lawyers where ushered into a meeting with Chief Superintendent Murwira the outgoing Dispol, Chief Superintendent Tayengwa, the Dispol Designate and Superintendent Tenderere. The lawyers demanded immediate access to their clients and asked that their clients be provided with food. The three senior police officers said they had the right to interrogate arrested people without interference by lawyers. The police were informed that they had a wrong understanding of the law, at which point the police insisted that they were yet to question those arrested and would not allow the accused persons' legal representatives access. It was then confirmed that 28 people had been arrested and were likely to face charges of c/s37 of the **Criminal Law (Codification and Reform) Act (Chapter 9:23)**<sup>16</sup>. Arrangements were made at both police

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<sup>16</sup> The Code was aimed at harmonizing the criminal law and repeal other several Acts of Parliament, it however introduces stiffer penalties for statutory offences under the various laws, it further purports to amend the Constitution and the application of Roman Dutch Law as part of the common law of

stations to allow the lawyers to provide food to their clients and it was emphasized that the officers manning the cells should not allow the lawyers audience with their clients but only facilitate provision of food.

The lawyers also put across the issue of detention of their clients at Matapi holding cells which had been condemned by the Supreme Court. To which the police retorted that even Harare Central holding cells had been condemned and the government had no money to revamp the cells and will continue to detain accused persons. Lawyers also raised concern over reports of assault which the Dispol professed ignorance and insisted the use of minimum force in arresting the suspects if necessary.

After providing food to those at Harare Central, the lawyers proceeded to Matapi to do the same. The entrance was manned by riot Police who refused them entry. They spelt out their mission that they wanted to provide food to their clients and that Dispol Harare had authorized them. Sergeant Mwandiyambira confirmed talking to the Dispol Harare but said that Matapi fell under Dispol Mbare and he could thus not take orders from Dispol Harare. The lawyers had to call Dispol Harare and give the phone to the Sergeant to have him reconfirm his instructions. After a long wait they were allowed to provide the food, with a rider that they do not speak to their clients.

The Police brought Lucia Matibenga to the Charge Office. She was limping and appeared to be in great pain. Without probing, she said that she had been badly assaulted and needed urgent attention and medication. She said she was feeling dizzy and had a severe headache. She also indicated that her colleagues in the cells had also been severely assaulted and in particular Mr. Matombo and Mr. Chibebe were in a bad state.

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Zimbabwe as it states under Section 3 (1) The non-statutory Roman-Dutch criminal law in force in the Colony of the Cape of Good Hope on the 10th June, 1891, as subsequently modified in Zimbabwe, shall no longer apply within Zimbabwe to the extent that this Code expressly or impliedly enacts, re-enacts, amends, modifies or repeals that law. (2) Subsection (1) shall not prevent a court, when interpreting any provision of this Code, from obtaining guidance from judicial decisions and legal writings on relevant aspects of—(a) the criminal law referred to in subsection (1); or (b) the criminal law that is or was in force in any country other than Zimbabwe.

The lawyers looked around for some pain killers in the shops which were still open and bought enough for the 15. They however learnt that apart from Mrs. Matibenga, the Police did not give the pain killers to the other detainees that night. They only did so the following morning. They also provided them with food which they took right into the cells as the other 14 detainees failed to walk to the Charge Office where there was light, given the serious injuries they had suffered.

When the cells were opened and with the help of a torch, the lawyers observed that Mr. Matombo was lying on his back and unable to wake up. He asked for assistance to wake up to get food as he could not do that on his own. Tonderai Todini called out that all of them had been thoroughly assaulted. Mr. Chibebe was said to be lying on one of the corners of the cell barely conscious and his condition was reported to be very serious. He could not eat anything that night. It was also observed that Ian Makone, Shonhe and others were all in serious pain and required medical attention. Police realized their mistake in allowing the lawyers to see our clients in the state they were and they were quickly chucked out of the cells, having noted at least that those detained at Matapi were heavily assaulted and required urgent medical attention.

The lawyers then informed Sergeant Mwandiyambira that their clients needed urgent medical attention. He advised them to liaise with Dispol Mbare. The lawyers then proceeded to Mbare Police Station. Dispol Mbare was not present. He was said to be attending a church prayer. They also called the Officer in Charge Matapi, Chief Inspector Mukuze. If one recalls, he is the one who was instrumental in the arrest of Mr. Chibebe recently at a Road Block on allegations of resisting a search and assaulting a Police Officer. The lawyers informed him that Mr. Chibebe & others had been seriously assaulted and needed urgent medical attention. He said he was not in charge of the detained persons and referred them to Dispol Harare. The lawyers insisted that he was in charge as the detainees were in his custody. He then said he would see what he could do before breaking off the line.

Makoni then called Dispol Harare Chief Superintendent Murwira, who said that he had no information on any injuries to any detainee. He wondered how the lawyers became aware of the injuries when he had instructed his offices not to give them access. He started accusing the lawyers of interference. It became clear the Police were aware of what had happened and were not co-operating. They were desperate to keep the accused in custody long enough to see the injuries heal.

The lawyers realized that the Police were not going to move until they make an application to Court compelling the Police to give them access and also allow their clients medical attention. The two lawyers Makoni and Muchadehama then retired and left for the night. Mr. Muchadehama was to draft an Urgent Chamber Application that night for issuance at Court on the 14<sup>th</sup> of September 2006.

The following morning they fine tuned the application and had it issued and served on the interested parties. Upon service of the papers the Police suddenly had a change of heart. They indicated that they were allowing the lawyers access. They also said they were taking those at Matapi to Law and Order at Harare Central Police. The lawyers were also allowed to give the detained food. They proceeded to Law and Order and were allowed access by the Officer in Charge. It was apparent that those detained at Matapi were seriously injured and had difficulty in walking.

The lawyers took instructions from them, Lovemore Matombo, Wellington Chibebe, Mr. Ngondo and a number of others were lying on the floor in room 93 unable to sit. The activists informed the lawyers that they were arrested just as they had gathered near Construction House and were about to commence their march. The Police had cordoned off all the roads leading to the proposed meeting place for the march. Police bundled 15 of them into a Mazda B 1800 truck and took them to Matapi, while the remainder were taken to Harare Central Police. Moses Ngondo, Chiwara and Wellington Chibebe had difficulties in fitting into the cramped van. The Police had to use their button sticks on their legs to force them to fit in. The Police tried to drag

Chibebe out of the vehicle with little success as Mr. Chibebe's colleagues pulled him back into the car fearing that he would be assaulted should he be isolated. Little did they know that horror was in store for them?

At Matapi Police Station, the Police were taking them two at a time and force-marching them into the cells. In the cells were five people in Police uniform, covering their faces with Police Caps. The five would then attack our clients two at a time with truncheons, heavy boots and open hands.

### **INDIVIDUAL ACTIVISTS' ORDEAL**

The activists then narrated their individual ordeal and treatment to the lawyers during the taking of instructions and consultations as follows. It was evident while the lawyers were taking instructions that the Police were not willing to be hurried.

### **LOVEMORE MATOMBO**

Five "Police Officers" setup-on him in the cells and started hitting him with truncheons on his shoulders, back, chest, buttocks, hands, legs and all over the body. The assaults took 20 – 30 minutes. The assailants were alleging that he and others wanted to overthrow the government. They stated that if their mission was to rule Zimbabwe, then blood will first be shed and people would die. Matombo fell unconscious during the assault. After the severe assault, he could not wake-up, sit or walk. He was unable to sleep due to pain. He started feeling better after drinking water brought by lawyers later in the night. A medical report later compiled confirmed that Matombo had sustained fractured fingers during the assault among other injuries.

### **LUCIA MATIBENGA**

She was assaulted by the five with truncheons. They also pushed her violently from one wall of the cell to another hitting her head against the walls in the process. Matibenga stated that she passed out for some time. She was then assisted out to give way for a new team of two who were waiting for their turn to be assaulted. She only regained consciousness when she was

put in the Charge Office. She could not be detained together with others who were all male. She was assaulted by one Oripa a member of the notorious ZANU PF Chipangano in the charge office and in full view of the Police. At the time of the interview, Matibenga said she was having difficulties breathing and walking. She was feeling dizzy and wanted to be referred to the hospital. She was in pain all over her body. A medical report was later compiled and it is suspected that she may have ruptured her eardrum during the assault over and above other injuries. We understand she is awaiting a specialist's report on the extent of the injuries to his ear.

### **WELLINGTON CHIBEBE**

He says he was forced into the cells together with Denis Chiwara. He was hit with truncheons all over his body until he could not feel pain anymore. Blows to the hand caused fractures which were later medically confirmed. There were two deep cuts on Chibebe's head. His face and clothes were soaked in blood. His body was swollen all over. He was lying down and had difficulty in talking. He was evidently in unbearable pain. Chibebe said during the assaults, he was being touted, insulted and threatened. They were repeating what they had told Matombo. They were also saying they wanted to teach him a lesson for allegedly assaulting a cop. His assailants were also asking whether this was not the Chibebe who had assaulted them at a Police road block a few weeks before. They said they were now taking their revenge.

Chibebe said that the assaults on him were so vicious that he passed out and only regained consciousness the following day. A medical report compiled later confirmed a fracture of the left hand and two fingers, the 2<sup>nd</sup> and 3<sup>rd</sup> ones. It also confirmed that Mr. Chibebe would have to be operated on. We understand he was operated at the Avenues Clinic on the 19<sup>th</sup> of September 2006. When we visited him in hospital he indicated that the operation was successful. He is still in hospital seven (7) days after the torture.

### **MOSES NGONDO**

He states that he was severely assaulted all over his body with truncheons. His left arm was in pain and appeared broken – he could not move his fingers.

A medical report compiled later confirmed a fracture of the tibia. Moses was also complaining of a cramp in the neck, legs, right ankle and other parts of the body. After his release, he visited the Avenues Clinic where it was discovered that his ankle had a fracture. Some metal object was inserted in his ankle to support it. He was still detained in hospital as at 20 September, 2006.

#### **IAN MAKONE**

He was assaulted all over his body. His companion when he was being assaulted was Matibenga. His back had bruises all over, swollen and with some blisters. He was stamped upon the neck. As a result of the assault, he also sustained a deep cut on the leg and blood was still oozing out of the wound when instructions were taken. His trousers were stained with blood. He could barely walk. A medical report confirms these injuries.

#### **TOINDEPI SHONHE**

He was assaulted by about 4 people with truncheons. As a result he sustained a deep cut on the right leg and was walking with a limp. His back and hands were painful and swollen. A medical report compiled later confirmed the brutal attack.

#### **RWATIPEDZA CHIGWAGWA**

He was assaulted all over his body and was experiencing pain on his left hand, which he suspected could have been fractured. His whole body was in pain and the back and thighs were swollen. A medical report confirmed the fracture.

#### **TONDERAI TODINI**

Tonderai was assaulted all over the body and sustained a fractured right and middle finger which was confirmed upon medial examination. He had serious difficulties in seating or walking

#### **NQOBIZITHA KHUMALO**

He was assaulted by five Police Officers who were using truncheons. Booted feet and open hands all over his body particularly at the back, chest, hands and buttocks. He had some lacerations at the back and his fingers were numb. He was experiencing difficulties in breathing and passed blood stained urine. He also complained of having been assaulted by a ZANU PF Chipangano activist now also a Police Constabulary member, known as Oripa in the charge office who accused him and others of plotting to topple the government. Those who assaulted him in the cells were saying that they were trained to kill and not to write dockets. A medical report confirms the injuries sustained.

#### **GEORGE NKIWANE**

He was beaten up on his back, buttocks and thighs. He sustained swellings on his buttocks and thighs and could not sit. A medical report confirms the injuries.

#### **JAMES GUMBI**

He received severe beatings on his thighs and buttocks and generally all over the body. He was experiencing some pains on the ribs and had blisters on his back and some body fluids were flowing from the blisters. He is still recovering at a nursing home as at 20 September 2006. A medical affidavit confirms the injuries.

#### **STEPHENE MUTSIPA MUTASA**

He was assaulted on his back and buttocks with truncheons, open hands and booted feet. Oripa also stamped on his fingers in the Charge Office. She was also poking others with a button stick. He sustained injuries on his back, buttocks and thighs. These injuries are confirmed by a medical report.

#### **TICHAONA BASIKITI**

He was assaulted all over his body with button sticks, truncheons and open hands. He sustained injuries on his right hand, and suspected that the hand had dislocated. He was experiencing excruciating pain in his ribs and had

difficulties in breathing. The injuries were confirmed following a medical examination.

### **DENNIS CHIWARA**

His partner on the journey to the torture chamber was Wellington Chibebe. He was also severely assaulted all over his body with truncheons. One blow hit the portion of his body which had been operated on and was evidently in unbearable pain. He said his operation was opening up and needed urgent medical attention. We could see the 'threads' to the operation were loosening. All his legs were swollen and his buttocks too. His trousers were torn and he was semi – naked. A medical report confirms the injuries.

### **TONDERAI NYAHUNZI**

He was also assaulted all over the body by the same people and with the same weapons. He sustained swollen hands, back and thighs. He had blisters on his back and his fingers were numb. He was unusually quite for those who know him, an indication that he was in serious pain. His injuries were confirmed following a medical examination.

### **Summary Injuries<sup>17</sup>**

	<b>Name</b>	<b>Fractures</b>	<b>Soft Tissue Injuries</b>
1	Nqobizithi Khumalo	Sustained a fracture on the left hand, 5th finger.	Extensive bruising on back and buttocks due to blunt object.
2	George Nkiwane	No fractures	Soft Tissue haematomata. Multiple linear marks on thighs and buttocks.
3	Wellington Chibhebhe	Fractured Radius, Ulnar and Phalanx due to blunt object.	Lacerations on the head, as well as bruises all over the body from a blunt object..
4	Lucia Matibenga	No fractures	Extensive bruising on the back, buttocks, legs, thighs and chest wall.
5	Toendepi Shonhe	Fractured finger on the left hand.	Extensive bruises on both sides of the body, left fore-arm and below the knee.

<sup>17</sup> Extracted from the Zimbabwe Human Rights NGO Forum September 2006 Political Violence Report summary of injuries sustained by those arrested in greater Harare

6	Tererai Todini	Fractured finger on the right hand.	Extensive bruising on the back and fore arm due to blunt object.
7	Lovemore Matombo	Linear fracture of right small finger.	Extensive bruising on the back, buttocks, upper and lower limbs.
8	Tonderai Nyahunzvi	No fractures	Soft Tissue Bruising
9	Rwatipedza Chigwagwa	Fractured radius and ulna	Multiple erythematous lesions on the back, buttocks and upper limbs.
10	Steven Mutera	NO INFORMATION AVAILABLE AS OF YET.	NO INFORMATION AVAILABLE AS OF YET.
11	Tichaona Basket	No fractures	Multiple bruises and swelling on the back and right wrist.
12	James Gumbi	No fractures	Septic traumatic wounds of the buttocks and erythematous lesions of the back and thighs.
13	Ian Nakone	No fractures	Multiple erythematous lesions on face, back, buttocks, shoulders, and legs. Abrasion on left leg.
14	Denis Chiwara	Fractured left fibula and crushed injury of left foot.	Extensive bruising of thighs, back and buttocks. Tenderness of the right elbow joint and left ankle
15	Moses Ngondo	Fracture of left ulna and ankle	Right shoulder and leg has swelling and tenderness.

The Law and Order police officers took the personal details of all the accused persons and charged them for c/s37 of the Code. The lawyers asked the Officer in Charge and his superiors to see for themselves the injuries sustained by their clients so that they were urgently attended to. Having seen the seriousness of the injuries Law and Order department washed their hands in the typical Pontius Pilate fashion, not willing to be associated with the assaults. They referred the detainees back to Matapi “where the assaults happened” and indicated that they were handing over the docket to the investigations section of the Police, as they did not want to be associated in any way with the brutal assaults.

Meanwhile, the lawyers were advised that the Urgent Application had been placed before Justice Uchena. On their way they contacted the Director of Civil Division in the Office of the Attorney General apprising them of the situation and the need to standby as lawyers intended to have the matter heard that night. Justice Uchena had retired to his home and had no fuel to attend court. Justice Uchena indicated that he could only hear the matter at 8:30 am the next morning and advised the lawyers to seek audience with the duty Judge, Justice Makoni. The lawyers had audience with Justice Makoni who also said she was already at her home and could not attend court. She asked the clerk to read through the Certificate of Urgency and Draft Order. Upon hearing of the relief sought she referred the lawyers to Justice Gowora who was within the court premises. Justice Gowora browsed through the papers and referred the lawyers back to Justice Makoni.

Realizing that the continued referral from one judge to the other lawyers then settled for having the matter heard the following day at 8:30am. Arrangements were made with direct liaison with the police and the AG's office for their clients to access medication and food. Eventually at about 1930 hours, a high powered delegation of the police in the company of riot police whisked away our clients to Harare Central Police Station, where after several hours they eventually took them to hospital. The lawyers also went to Parirenyatwa Hospital to make sure their clients were examined and treated.

At Parirenyatwa they met yet another hurdle, a Doctor with a DRC accent was in charge at the casualty section. His name is Doctor Mulenga. He referred them to some notices on the board advising that those requiring Medical affidavits could only be attended to between 0800 hours and 1400 hrs. They told him we were not asking for medical affidavits but for urgent medical treatment. The doctor insisted that he did not want to break the law and in any event he was only to attend to emergencies and not assaults which had occurred more than 24 hours earlier. A young doctor of Zimbabwean origin suggested to Dr. Mulenga that they could examine the patients and ascertain whether their case could be considered emergencies. Dr. Mulenga agreed. Upon examination, they were shocked with what they saw and started to

attend to all the 15 patients<sup>18</sup>. The following day the lawyers woke up to the news from Dr. Lovemore that all the detainees had been confirmed to have been seriously injured and had to be bed-ridden, but the Police had smuggled out all but three back to Harare Central Without the knowledge and consent of the hospital authorities.

The lawyers rushed to the High Court where the Urgent Chamber Application was to be heard and with the consent of the Respondents the Provisional Order was granted with amendments. The lawyers served the Order on the Police which directed them among other things to take the accused to court before 1600 hours on 14 September 2006. The police started rushing against time to prepare their papers. Their clients were taken to Court just before 1600 hours where the matter was heard.

Initially, bail was opposed but eventually the State consented. In Court, the lawyers stated their clients' complaints against the Police in detail and asked the Court, presided by Ms. Mariga not to routinely order the state to investigate but to ask the Officer in Charge Matapi Police Station through the State to submit a report at the next remand date on the complaints. They also asked that the Court orders that before that date the perpetrators be brought to book, sadly the Magistrate only ordered, routinely, that the State investigates the complaints.

On bail, the state had asked for \$10 000, 00 bail coupled with stringent reporting conditions and other conditions including surrendering of passports. The lawyers implored the Court to consider that the matter was not a serious one and attracted a fine of ZWD\$2000, 00 only. We asked her to release our clients on their own recognizance's or at the very least on \$2000,00 bail. Sadly again the court imposed bail in the sum of \$2000,00 coupled with reporting and other conditions.

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<sup>18</sup> We would like to specially thank Dr. Reginald Matchaba Hove and Dr. Lovemore for their assistance on the evening. The lawyers left their clients in the hand of Dr. Reginald Matchaba Hove and retired home to prepare for the morning events

After making arrangements to pay for bail the lawyers then, left for Parirenyatwa Hospital where Mr. Chibebe was detained, to try and secure his release since the time stipulated in the High Court Order had elapsed. They made several unsuccessful calls to the Police to no avail. The police detail guarding Chibebe retorted that he had no powers and instructions to comply with the order. Having found no joy, the lawyers retired at about 21:30 hours, resolving to make further efforts the following day.

On 15 September 2006, they were advised that the Court intended to sit at Parirenyatwa Hospital to remand Chibebe. They proceeded to Parirenyatwa Hospital where the remand proceedings were presided over by Mr. Mufunda. We made similar submissions. To his credit Mr. Mufunda ordered the Police to investigate the assault and provide a report at the next remand hearing. He also ordered that the assailants be brought to book before the said date. In addition he released Mr. Chibebe on free bail and attached no conditions, notwithstanding the State's submission that he be released on the same conditions as the other activists remanded the previous day. All the previously detained including Mr. Chibebe was remanded to the 3<sup>rd</sup> of October 2006, for trial.

#### **Medical Response: A Doctors Account**

"I first saw the ZCTU activists on Thursday evening [Sept 14]...I got to Parirenyatwa hospital around 8 pm. The ZCTU activists pitched up at 9 pm. They came in 2 cars. There were many of them,[ the police], some in riot gear. There appeared to be one of each for the 15 and one or two senior commanders. ZCTU Secretary General Chibebe was in a bad way. His arm was obviously fractured. He was holding it against his chest. They [the activists] were in obvious pain. They were shuffling, which to me was an indication that they had been shackled at some point in time Chibebe's shirt was covered in blood. I overheard one the medical casualty officers at the hospital say that "these are prisoners. It is not urgent. We will treat them tomorrow". I had to speak to him and eventually he agreed to check them. He was quite shocked by what he saw. X-rays were carried out and they revealed that most of them had fractures. I was there at the hospital until 3:30 am.

I was really shocked and taken aback by what I saw. To me the injuries showed me that they were trying to protect themselves. They were trying to protect their heads using their raised arms. They had fractures to their arms, wrists and fingers. They all had defensive injuries. The blows were coming to their heads. Chibebe had cuts to his head. Most of them had severe bruises. They were black and blue and swollen all over their bodies-on the buttocks, everywhere. Even those without fractures were limping and in pain. There were severe soft tissue injuries in all of them. Chibebe has a shattered fracture. It is not a clean fracture, which shows that extreme force caused it. I have never seen anything like this before....They were denied medical access for more than 24 hours. The beating was so callous and hard<sup>19</sup>.

### **Other Incidences and Arrest September 13, 2006**

#### **Gweru**

Omega Vongai Chikamba and 14 others were arrested for engaging in a ZCTU organised demonstration. Lawyers attended to them as they were detained at Gweru Central Police Station. Initially the police had preferred to charge the accused persons under section 46 (f) of the Schedule to the Codification Act in that they had blocked the passage of others on the pavement due to the gathering. The activists were detained until the 15<sup>th</sup> of September 2006, when the police conceded that the evidence could not sustain the charges as preferred and had to release the accused persons. Notices of intention to sue are being prepared for the illegal detention.

#### **Victoria Falls**

On the 13<sup>th</sup> of September 2006, the Vice Chairperson of ZCTU Victoria Falls branch, Mrs. Everjoice Magama was arrested at her homestead, Paul Chiliwede, Chairperson of ZCTU Victoria Falls branch and Vusa Dube were also arrested around 12 pm the same night and taken to Victoria Falls Central Police Station. Upon attending to the police station, lawyers established that

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<sup>19</sup>Zimbabwe “ You Will Be Thoroughly Beaten” The Brutal Suppression of Dissent in Zimbabwe October 2006, Human Rights Watch interview with Dr Reginald Matchaba Hove,

three other ZCTU activists had already been arrested namely; Tsimi Kaseke, Stanley Dube and Gift Mabheba. Upon attending at the police station the lawyers were informed by one Inspector Gapudza that access will only be granted by the officer commanding Victoria Falls District Chief Superintendent Chipato. After several requests with little success to have audience with the Officer Commanding, lawyers then managed to speak to her over the phone but she refused the lawyers access again and referred them to Makwarimba at Hwange Law and Order Section. Officer Makwarimba was unequivocally uncompromising. The Officer Commanding Victoria Falls indicated that lawyers return at 1600hrs to have audience with the details who had been dispatched from Hwange. As agreed lawyers attended to the police station and by now had prepared contacting relatives to provide food as it was more than obvious that the police had decided to detain them for the night. Lawyers only left the police station after 1800hours with no joy.

The morning of the 15<sup>th</sup>, lawyers reported to the police station at 0830hours only to find that their clients had been taken to the magistrates' court in their absence. They immediately drove to the courts where the police and 3 prosecutors were in discussions on the matter, in the presence of the prosecutors, lawyers requested audience with their clients and this was flatly turned down with the prosecution mute. The police attempted to have the activists charged for contravening an unspecified section of POSA, of which the prosecution was advised that trade unions are not considered to be political organisations. The police returned to the station with the lawyers in pursuit whereat the police indicated that they wanted to have audience with the accused person in the absence of lawyers for a few minutes this was protested as the police had been holding the accused persons for more than 24 hours and should have attained considerable ground in their investigations and completion of paper work "without interference from the lawyers". It later emerged that the police had opted to have the accused placed under remand on charges of c/s 37(1)(a) of the Codification and Reform Act and intended to oppose bail. On appearing in court the prosecutor indicated that state was opposing bail, after submissions the court adjourned. On return, the state prosecutor indicated that he had consulted with superiors in Harare and they

should not have opposed bail and apologized for the conduct of the police which had been raised and put on record. The accused persons were then released on bail and remanded to the 29<sup>th</sup> of September 2006. At the next remand the court decided not to place the accused on remand and instructed the police to proceed by way of summons.

### **Chitungwiza**

At about 1400hrs, Inspector Chitsungo and several other police officers proceeded to arrest 15 ZCTU activists for an unspecified offence, alleged to have been committed in Unit C and K. The accused persons were detained overnight, on the 14<sup>th</sup> September 2006, lawyers attended and as the previous day were denied access to the activists and were not able to determine the charges they were facing. One of the police officers who refused to identify him, indicated that the case was under Harare Central Law and Order and was working on the transfer of the activists to Harare. Upon checking in the detention book it was established that no offence had been entered for the accused persons which is by its nature un-procedural of the police. Complaints had been received from family members that some of the activists had been beaten during the arrests and were in need of medical attention, sanitary pads and were detained in inhumane and degrading conditions. Based on the information at hand lawyers immediately drafted an urgent application HC5849/06<sup>20</sup>.

### **Summary of Injuries Chitungwiza<sup>21</sup>**

	<b>Name</b>	<b>Soft Tissue Injury</b>
1	Sarah Mutandiro	Swelling and tender on the abdomen and left leg.
2	Irene Manoti Zinyemba	Blisters on soles of feet.

<sup>20</sup> Whilst the lawyers were attending to the court application at the High Court in Harare the police released the detainees after coercing them to pay ZWD\$250 fine for allegedly contravening the Miscellaneous Offences Act, the activists had also sustained several severe injuries and could not spend another night of beating, harassment and all forms of torture.

<sup>21</sup> Extracted from the Zimbabwe Human Rights NGO Forum September 2006 Political Violence Report Summary of Injuries sustained by ZCTU members in Chitungwiza

3	Moreblessing Ali	Bruising and tenderness on back, feet, forearm.
4	Auxillia Madudza	Tender shoulders
5	Pauline Genti	Swollen and tender feet
6	Brighton Mapunzire	Bruising on feet and left knee
7	Prince Nyamuzinga	Bruising on left foot, fore-arm near the elbow and both shoulders.
8	Oscar Muntandavaire	Bruising on feet and shoulders.
9	Barbara Travesa	Extensive bruises on the front calves and pain in the back and shoulders.
10	Margaret Mutsawi	Painful chest and back.
11	Gertrude Dube	Bruises on the soles of the feet and back ache.
12	Ellen Rutanhira	Swollen left knee and bruises on the soles of the feet.
13	Sylvia Sisimaji	Back and shoulder pain.
14	Edith Shonhiwa	Back and right thigh pain.
15	Newton Nyasango	Swelling of the left shoulder blade

### Chinhoyi

As a preventative and preemptive strike the police arrested and detained 7 ZCTU leaders in Chinhoyi. Lawyers attended to them and were informed that the activists will be charged under for c/s 27(5) of POSA which criminalizes organizing a public demonstration which is not cleared by the police. On the 13<sup>th</sup> the police agreed to release them into the custody of the lawyers. On the very same day 11 other activists were arrested. The 11 activists were then charged for c/s 37(1) (a) of the Criminal Law (Codification and Reform) Act, that is partly a gathering with intent or realizing that there is a real risk or possibility of disturbing peace and security". They were detained until the 16<sup>th</sup>,

when the police then brought them before the courts, several complaints were raised with courts and unfortunately no investigations were ordered despite the fact that lawyers raised the complaints in court. An intelligence operative identified as Muleya carried out the assaults in the presence of police officers with baton sticks and booted feet. On appearing in court they were admitted on bail on the conditions that each pays ZW\$1000 and to report to the police once every week and to reside at their given addresses. The matter was remanded to the 29<sup>th</sup> of September 2006.

## **Rusape**

Tafadzwa Check if this correct spelling Mr Masumuse the chairperson of ZCTU Rusape district was arrested at his work place around 5 pm, immediately lawyers responded to the call. Upon attending to the police stations in Rusape, the lawyers could not locate the activists; and later informed by other ZCTU activists that he had been taken by one CIO operative identified as Gango. Interestingly, Gango then established contact with lawyers after being informed of the fact that lawyers intended to have access to their client. Whilst the lawyers were attempting to establish contact with arresting details the activists was undergoing ill treatment and harassment of all forms. Masumuse he was asked by Gango to remove his shoes and directed to bath since he was very dirt, an unidentified white substance was poured on his head by Gango and instructed to wash it off. Gango remarked that he had arrested the activist, in connection with the planned protests which were to held on the 13<sup>th</sup> of September 2006. Lawyers questioned the enabling act or statute of his arresting powers. As the ZCTU chairperson Mr Masumuse had notified the police of their intention to demonstrate and had been provided leave to proceed with the march. In the company of the police Mr. Masumuse then proceeded to provide all the materials which was meant for the demonstration and handed them over the police and the Gango. The police officers and CIO operative indicated that they will pick Mr. Masumuse if there is any demonstration again; he was also advised to join ZFTU, a suggestion which the lawyers asked Mr. Masumuse not to take seriously as he was entitled to join an association and union of his choice.

## **Kwekwe**

On the 13<sup>th</sup> of September 2006, Maxwell Munangagwa was arrested for intending to hold a demonstration lawyers were deployed to attend. At Kwekwe Police Station, police officers indicated that they had not arrested such an individual. Lawyers then attended to the Kwekwe Rural police station where the accused person was detained and in discussion with the Community Relations Officer who advised that the Munangagwa was called to be warned and cautioned before being released. The police then released him, without charge.

## **Hwange**

Charles Ncube a member of ZCTU in Hwange was arrested a day before the demonstration and was released on the same night after interrogation on the intended action. This was a preventive strike by the police intelligence.

Otto Saki 11/24/06 5:32 PM

**Comment:** Tafadzwa can you add some of the cases you handled in Highfields, Betibridge case and also have a tabulation of the arrests for this event only

## **State Preparedness and Response**

Prior to the holding of the demonstration by ZCTU several statements were issued from the state controlled media by senior political and ministers threatening to use maximum force in response to the demonstration. Predictions and assertions from senior police officers anticipated violent protests allegedly the police had learnt from previous experiences<sup>22</sup>. Prior to the carrying out of the planned demonstration, the police and ZANU PF militia wearing party regalia roamed in the central business district and industrial sites intimidating workers, and condoned some of the roads in Harare.

The **Minister of State Security, Didymus Mutasa** was quoted as saying

"The various arms of the State responsible for security are ready for them....They should not blame us because they are provoking us as well as the country's wrath. They are entitled to

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<sup>22</sup> Police Spokesperson Assistant Commissioner Wayne Bvudzijena on the 12<sup>th</sup> of September 2006,

their mistakes and the planned demonstrations are theirs. However, they should not blame us because they are provoking us as well as the country's wrath."<sup>23</sup>

Equally the law enforcement agents through **the Assistant Commissioner Wayne Bvudzijena indicated their preparedness and response,**

"We are not aware of any approaches they have made and this, therefore, means the planned action would be unlawful. Like the police have since warned, we will not hesitate to deal with cases of unlawfulness. Although I cannot divulge details of the strategies we have put in place, people should be rest assured that we are ready for the protests,"<sup>24</sup>

### **Civil Society and Trade Unions Response**

Several local and international organisations condemned the attacks and beatings on the ZCTU leadership and activists under the guise of responding to demonstration which in the view of the authorities posed a threat to peace, security and order.

The **Zimbabwe Human Rights NGO Forum (NGO Forum)** a coalition of human rights organisations<sup>25</sup> issued a press statement condemning the arrests and torture of ZCTU activists<sup>26</sup>. The NGO Forum reiterated that "since the ZCTU and other groups announced that they would protest the economic mismanagement of the country there have been intemperate and unwarranted statements by the Zimbabwe Government that any dissent would be met with force. These statements have been made against explicit undertakings by the ZCTU and other groups that all protests would be peaceful and constitutional.

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<sup>23</sup> <http://www1.sundaymail.co.zw/inside.aspx?sectid=1776&cat=12&livedate=9/10/2006>

<sup>24</sup> <http://www1.sundaymail.co.zw/inside.aspx?sectid=1776&cat=12&livedate=9/10/2006>

<sup>25</sup> Counseling Services Unit, Amnesty International (Zimbabwe) (AI (Z)), Catholic Commission for Justice and Peace, Gays and Lesbians of Zimbabwe (GALZ), Legal Resources Foundation, Transparency International (Zimbabwe) (TI (Z)), University of Zimbabwe Legal Aid and Advice Scheme, Zimbabwe Association for Crime Prevention and the Rehabilitation of the Offender (ZACRO) Zimbabwe Civic Education Trust (ZIMCET), Zimbabwe Human Rights Association (ZimRights) Zimbabwe Lawyers for Human Rights (ZLHR), Zimbabwe Women Lawyers Association (ZWLA), Human Rights Trust of Southern Africa (SAHRIT), Nonviolent Action and Strategies for Social Change (NOVASC), Zimbabwe Peace Project (ZPP), Zimbabwe Association of Doctors for Human Rights (ZADHR)

<sup>26</sup> [http://www.hrforumzim.com/press/statement\\_on\\_the\\_unlawful\\_arrest\\_and\\_illtreatment\\_of\\_the\\_ZCTU.htm](http://www.hrforumzim.com/press/statement_on_the_unlawful_arrest_and_illtreatment_of_the_ZCTU.htm)

Statements threatening force have the effect of encouraging the use of force by the security agencies, and are out of keeping with responsive governance. The **NGO Forum** has issued numerous statements condemning the violent behavior of government agencies and the Zimbabwe Republic Police in particular, as well as pointing out that it is out of keeping with responsible government for members of government to make statements threatening violence. It is clear from the evidence before the Human Rights Forum that torture is rampant within the ZRP and that persons in detention are at significantly greater risk of being tortured. The Human Rights Forum recently issued a report to this effect and an abbreviated copy was carried by The Standard on 13 August 2006. The NGO Forum sought to bring the matter of police ill-treatment and torture to the attention of the authorities through the release of this report. As the Human Rights Forum has previously pointed out, torture in Zimbabwe is both widespread and systemic, demanding both a national and an international response. The NGO Forum demands the release of all the detained members of the ZCTU, the immediate investigation of all allegations of torture, and the prosecution of all those guilty of torture”.

**Zimbabwe Association of Doctors for Human Rights (ZADHR)** in its press statement<sup>27</sup> highlighted and confirmed medically and documented pattern of injuries sustained by the Harare and Chitungwiza members who were arrested on 13 September 2006 and detained in police custody until 15 September 2006 is consistent with the testimony given by the ZCTU members themselves. The said were injuries consistent with beatings with blunt objects, heavy enough to cause fractures (9 fractures in 7 individuals) to hands and arms and severe and multiple soft tissue injuries to the backs of the head, shoulders, arms, buttocks and thighs (29 individuals). Soft tissue injuries to the soles of the feet (8 individuals), are also consistent with beatings, and correspond to the torture method called *Falanga*, which can leave a torture victim having difficulty with normal walking for the rest of his or her life. The Medical examinations of the arrested ZCTU members showed **no** skin abrasions. Abrasions would necessarily result from the shearing forces associated with falling from a moving vehicle.

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<sup>27</sup> October 4 2006

**COSATU** whose delegations and leadership have been deported on dozen times from Zimbabwe, issued a statement outraged at the comments of President Robert Mugabe in which he condoned and applauded the Zimbabwean police for using violence against trade unionists. His statement that "Police were right in dealing sternly with Zimbabwe Congress of Trade Unions (ZCTU) leaders during their demonstration... because the trade unionists want to become a law unto themselves". COSATU highlighted that such statements are nothing less than a justification of brutality and torture against workers who were legally and peacefully exercising their basic right to demonstrate. Mugabe's statement confirms COSATU's view that the Zimbabwe government has nothing but contempt for human rights and the trade union movement.<sup>28</sup>

The **International Bar Association (IBA)**<sup>29</sup> which on the September 26, 2006 urged the United Nations and African Union to take decisive and immediate action to end impunity for serious violations of international law in Zimbabwe.

The **Swedish Confederation of Professional Employees (SCPE)**<sup>30</sup> wrote to President Robert Mugabe protesting the Zimbabwe Republic Police's strong-arm tactics in dealing with labour leaders behind this month's anti-government strike. In a letter dated 15 September 2006, the Swedish worker body accused the Zimbabwean authorities of using heavy-handed tactics to break up the ZCTU-organised protests and of politicizing "what was a purely a trade union event". The Swedish confederation said it was preparing to lodge a formal complaint to the International Labour Organisation (ILO) against the Harare authorities for violating ILO conventions recognizing the right of workers to organise and engage in collective bargaining for better pay and working conditions.

The **United Nations Country Team (UNCT)** in Zimbabwe also issued a statement condemning the attacks of ZCTU and the acts of torture

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<sup>28</sup> <http://www.cosatu.org.za/press/2006/sept/press35.htm> ,

<http://www.cosatu.org.za/press/2006/sept/press24.htm>

<sup>29</sup> <http://www.ibanet.org/iba/article.cfm?article=95>, the statement can also be obtained from [www.kubatana.net](http://www.kubatana.net)

<sup>30</sup> [http://www.tco.se/Templates/Page2\\_2319.aspx](http://www.tco.se/Templates/Page2_2319.aspx)

perpetrated on the trade unionist. The UNCT said it had noted "with a profound sense of dismay" statements by the Zimbabwean authorities "which might be interpreted as condoning the use of force and torture to deal with peaceful demonstrations by its citizens". The UNCT further called upon the government, and specifically the country's uniformed forces, to exercise restraint in their handling of such demonstrations, and to create an atmosphere in which Zimbabweans may freely exercise their constitutionally enshrined freedoms<sup>31</sup>.

The **International Confederation of Trade Unions** (ICFTU) General Secretary Guy Ryder remarked that "These latest reports of brutality must be condemned by the entire international community, and the world trade union movement will do everything within its power to mobilise international pressure to put a stop this reign of terror...History has shown time and time again, that such brutal treatment of people trying to exercise their democratic rights will simply backfire. With each act of repression the Mugabe regime is further isolating itself from the international community and those who continue to pay the price are the Zimbabwean people." The ICFTU also dispatched a letter to Harare and the Embassy of Zimbabwe based in Brussels<sup>32</sup>. The ICFTU represents 155 million workers in 241 affiliated organizations in 156 countries and territories.

The **Malawi Concerned Civil Society**<sup>33</sup> a grouping of major human rights organisations and activists including the **Centre for Human Rights and Rehabilitation** (CHRR), **Centre for Youth and Children Affairs** (CEYCA), **Civil Liberties Committee** (CILIC), **Institute of Policy Interaction** (IPI), **Christian Agency for Responsible Democracy, Development and National Unity** and **Amnesty International Malawi** sent a letter of appeal on the 19<sup>th</sup> of September 2006, to the President of Zimbabwe in which they called among other things for the initiating of genuine Political Tolerance and Reconciliation with all political actors; fostering and restoring the respect for

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<sup>31</sup> UN Criticizes Zim comments on protest assaults

[http://www.mg.co.za/articlePage.aspx?articleid=285282&area=/breaking\\_news/breaking\\_news\\_\\_africa](http://www.mg.co.za/articlePage.aspx?articleid=285282&area=/breaking_news/breaking_news__africa)

<sup>32</sup> <http://www.icftu.org/displaydocument.asp?Index=991225019&Language=EN>

<sup>33</sup> [http://www.kubatana.net/html/archive/hr/060919mccs.asp?orgcode=kub001&year=0&range\\_start=1](http://www.kubatana.net/html/archive/hr/060919mccs.asp?orgcode=kub001&year=0&range_start=1)

human right, freedom of association, assembly, speech, expression, movement for all Zimbabweans; repeal of all repressive laws i.e. Interception of Communications Bill, Access to Information and Protection of Privacy Act, Miscellaneous Offences Act, Public Order and Security Act and many others; to stop persecution of Human Rights Defenders, Media Practitioners, political activists and all those fighting for democratic values in Zimbabwe; restoration of the rule of law and order for good of Zimbabweans and the restoration of the country respect towards constitutionalism and constitutional order.

Several other statements were issued from the diplomatic community as well imploring the brutality and continued attacks on fundamental rights and freedoms<sup>34</sup>.

### **Zimbabwe's obligations under national and international law**

- **Freedom of Assembly and Association**

Freedom of assembly and association are universally recognised and enshrined in several instruments and also provided for in terms of national laws. The interdependence of rights and their interconnectedness is brought about by the fact that failure to recognize that individuals can assemble and congregate around issues of concern will directly undermine the enjoyment of the right to participate in the governance of one's country. Association and assembly are critical in the establishment or existence of institutions that act as watchdogs and monitors of state excesses.

### **The Constitution of Zimbabwe**

Section 21 of the Constitutions of Zimbabwe (Constitution) protects the right to freely assemble and associate, it furthers recognizes the formation of political parties and trade unions as vehicles for the enjoyment of such rights<sup>35</sup>. The limitations that are provided for the enjoyment of this right only

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<sup>34</sup> More of the statements can be obtained from [www.kubatana.net](http://www.kubatana.net)

<sup>35</sup> It particularly states that 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. (2) The freedom referred to in subsection (1) shall include the right not to be compelled to belong to an association. (3) Nothing contained in or done

hinges on the obstruction of traffic, thoroughfare among others which are supposed to be reasonably justified in a democracy. It is noteworthy that on several occasions that trade unionists have been arrested the authorities have attempted to use Acts of Parliament which criminalizes such as inspired by Section 21 of the Constitution such as the MOA and RTA.

## Declarations

Whilst the **Universal Declaration of Human Rights** (UDHR) is not a binding legal instrument, over years it has acquired the status of *customary international law*<sup>36</sup> through use and practice. Freedom of assembly and association are provided for under Article 20 and 23 of UDHR<sup>37</sup>. The United Nations also unanimously adopted the **Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms on the 9<sup>th</sup> of December 1998 (Declaration on Human Rights Defenders)** which also reiterates on these fundamental rights<sup>38</sup> and more specifically on the need to create a conducive operating environment for human rights defenders<sup>39</sup>.

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under the authority of any law shall be held to be in contravention of subsection (1) to the extent that the law in question makes provision—(a) in the interests of defence, public safety, public order, public morality or public health; (b) for the purpose of protecting the rights or freedom of other persons; (c) for the registration of companies, partnerships, societies or other associations of persons, other than political parties, trade unions or employers' organisations; or (d) that imposes restrictions upon public officers; except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society. (4) The provisions of subsection (1) shall not be held to confer on any person a right to exercise his freedom of assembly or association in or on any road, street, lane, path, pavement, side-walk, thoroughfare or similar place which exists for the free passage of persons or vehicles.

<sup>36</sup>Compilation of International and Regional Instruments for the Protection of Human Rights Defenders International Service for Human Rights (ISHR) Legal Introduction The most important declaration is the Universal Declaration of Human Rights, which was unanimously adopted by the UN General Assembly in 1948. The Universal Declaration was a recommendation of the General Assembly and was not intended to be a legally binding document. During the course of more than half a century some of the rights enshrined in the Declaration have become '*ius cogens*', or imperative norms of international law. Respect for human rights has now become part of international customary law. Support for this can be found in the fact that no government challenges the Declaration. <http://www.ishr.ch/about%20ISHR/HRDO/Publications/Compilation/Compilation-LegalIntroduction.pdf> accessed 15 November 2006

<sup>37</sup> Article 20 everyone has the right to freedom of peaceful assembly and association and No one may be compelled to belong to an association. Article 23

<sup>38</sup> Article 5 (a), For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) to meet or assemble peacefully; (...)

<sup>39</sup> The Declaration is part of the report as Annexure I

## Treaties and Conventions

Zimbabwe ratified the **International Covenant on Civil and Political Rights**<sup>40</sup> (ICCPR) but is however yet to ratify the optional protocols on the abolition of the death penalty<sup>41</sup> as well as the accepting jurisdiction of the **Human Rights Committee (HRC)**<sup>42</sup>.

The **International Covenant on Economic, Social and Cultural Rights**<sup>43</sup> (ICESCR) provides for similar rights. In terms of the **Vienna Convention on the Law of Treaties** state parties are not allowed to implement national legislation which goes contrary to their commitments under international human rights law and treaties and cannot plead the national law over international law. Simply put the domestic laws should be in conformity with the international and regional laws. Several other international instruments which Zimbabwe is party also emphatically state the importance of freedom of association<sup>44</sup> and assembly<sup>45</sup>.

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<sup>40</sup> Zimbabwe ratified the ICCPR 13 May 1991 Article 22 of the ICCPR states that 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. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights of freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would.

<sup>41</sup> Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

<sup>42</sup> Optional Protocol to the International Covenant on Civil and Political Rights which Article 1 states that "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

<sup>43</sup> Zimbabwe ratified the ICESCR 13 May 1991, Article 8

<sup>44</sup> Article 5(d)ix International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (e) (ii), International Convention on the Elimination of All Forms of Racial Discrimination, Article 15, The Convention on the Rights of the Child

<sup>45</sup> Article 21 of ICCPR; the right to peaceful assembly shall be recognised. 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 interest of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

The Organisation of African Union (now the African Union) steered the development of human rights instruments with the region, with much assistance and support from civil society, similar minded intergovernmental organisations among others. This led to the enactment of the **African Charter on Human and Peoples Rights (African Charter)** which only came into force in 1986 after the required ratifications. Zimbabwe has ratified the African Charter<sup>46</sup> and recently submitted its second report<sup>47</sup> to the **African Commission on Human and Peoples Rights (African Commission)**. The African Charter as compared with other international instruments incorporates civil, political, social, economic, and cultural and most interesting what are termed “people’s rights”, which include duties and responsibilities of citizens towards their government and nation at large.

On the right to freedom of association and assembly the African Charter provides under Article 10 and 11<sup>48</sup> respectively that;

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

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.

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<sup>46</sup> 30 May 1986

<sup>47</sup> This second report combines the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> reports from 1996 to 2006, the first report was submitted 1992, and a period report up to 1996.

<sup>48</sup> It is interesting to note some of the cases which the African Commission has decided on freedom of association and assembly and the interpretation of the claw back clauses. The African Commission has ruled that restrictions such as within the law, abide by the law entails observance of the law as provided in terms of the African Charter, so restrictions by state parties should be allowed in terms of the African Charter. **Communications 105/93,128/94,130/94,152/96 Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project vs. Nigeria** “According to Article 9(2) of the Charter dissemination of opinions may be restricted by law. This does not mean that national law can set aside the right to express and disseminate ones opinions; this would make the protection of the right to express one’s opinion ineffective. To allow national law to have precedence over international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter....The reasons for possible limitations must be founded in a legitimate state of interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained. Even more important, all limitation may never have as a consequence that the right itself becomes illusory”

The African Commission has also issued a resolution on **Freedom of Association in Africa** which reiterates the importance of such a right and also recalls the various international human rights instruments which inspires the human rights discourse in Africa<sup>49</sup>. It further calls on the state parties not to implement laws that undermine the enjoyment of the right.

### **International Labour Conventions**

Zimbabwe has ratified and acceded to several ILO Conventions<sup>50</sup> and in particular the **Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention on Freedom of Association)**. The Convention on Freedom of Association is divided into three sections; Freedom of Association; Right to Organise and Miscellaneous Provisions. Workers have the right to form or establish and join trade unions without authorization; this right should be exercised freely and voluntarily without coercion<sup>51</sup>. All member states are mandated to implement the provisions of the Convention on Freedom of Association without exception, some of the rights as provided in the Convention on Freedom of Association are as follows;

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<sup>49</sup> ACHPR /Res.5(XI)92: **Resolution on the Right to Freedom of Association (1992) The African Commission on Human and Peoples' Rights**, meeting in its Eleventh Ordinary Session, in Tunis Tunisia, from 2 to 9 March 1992; Taking into consideration all rights stipulated in the Universal Declaration of Human Rights, with special reference to articles 20, 23 guaranteeing the right to freedom of peaceful assembly and association; Recalling article 22 of the international Covenant on Civil and Political Rights, and article 8 of the International Covenant on Economic, Social and Cultural Rights assuring that everyone shall have the right to freedom of association with others; Highly evaluating the UN Sub-Commission on the Prevention of Discrimination, Resolution No. 13 (XXXIII) on the 11th of September 1980 which adopted the right to freedom of association; Taking into consideration the provisions of the African Charter on Human and Peoples' Rights, in particular article 10(1), guaranteeing every individual the right to free association provided that he abides by the law; CONSIDERS THAT: 1. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standards; 2. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom; 3. The regulation of the exercise of the right to freedom of association should be consistent with State's obligations under the African Charter on Human and Peoples' Rights.

<sup>50</sup> Supra 5

<sup>51</sup> Attempts to force individual workers or trade related unions to join umbrella unions without giving them a choice is obviously a violation of this provision. Surrogate unions which have been formed have attempted to use this as a mechanism of getting membership.

Article 2; Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3; Workers' and employers organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 5; Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 11; Each member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

Workers are allowed to organise and collective bargain for improved working conditions, salaries, wages. The process of exercising the freedom of association and assembly can only be through effective organisation which takes different dimensions and forms such as protests, demonstrations, job actions, strikes by the workers. The **Convention on the Right to Organise and Collective Bargaining Convention of 1949** provides inter alia that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment<sup>52</sup>; workers union representatives should be harassed on the basis of their leadership<sup>53</sup>.

### **Protection from Cruel Inhuman and Degrading Treatment**

Human beings are protected from any form of cruel, inhuman and degrading treatment. Torture has now attracted the status of a crime with universal jurisdiction. Torture as defined in Article 1 of the **Convention against Torture**<sup>54</sup> states

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<sup>52</sup> Article 1

<sup>53</sup> Article 2

<sup>54</sup> Zimbabwe is not a state party to the Convention Against Torture

means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions

Domestic laws also provide that torture should not be practiced and is outlawed as enshrined under section 15 (1) of the Constitution<sup>55</sup> states that

“No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment”

The UDHR in Article 5 states that

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment

Article 7 of the ICCPR states that

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

The **HRC** as a monitoring organ for the implementation of the ICCPR has also passed general comments to assist state parties in the attainment of the rights as provided under the ICCPR and arguably under similarly worded instruments. Of particular importance and note to the furthering of Article 7 of the ICCPR include General Comment 8, 9, 20, and 29.

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<sup>55</sup>Several cases have been adjudicated in the Supreme Court of Zimbabwe decisions rendered guaranteeing the right not to be subjected to torture and cruel inhumane and degrading treatment such as *S vs Sviswa* 1986(1) ZLR 9, *S vs Ncube and others* 1987(2)ZLR 246, *Kona and others vs AG* 1986(1)ZLR 187, *S vs Chipere* 1992(2)ZLR 276, *S vs Nkomo* 1989 (3)ZLR 117, *S vs Woods and others* 1993(2) 258, *Blanchard and others vs. Ministry of Justice* 1999(2)ZLR 24

Individuals that are deprived of their liberty whether through lawful processes are entitled to humane treatment whilst in custody, article 10 of the ICCPR and General Comment 9 from the HRC states among other things that

“...The humane treatment and the respect for the dignity of all persons deprived of their liberty is a basic standard of universal application which cannot depend entirely on material resources. While the Committee is aware that in other respects the modalities and conditions of detention may vary with the available resources, they must always be applied without discrimination, as required by article 2 (1). Ultimate responsibility for the observance of this principle rests with the State as regards all institutions where persons are lawfully held against their will, not only in prisons but also, for example, hospitals, detention camps or correctional institutions...”

General Comment 20 replaces General Comment 7 expounds on Article 7 of the ICCPR. Paragraph 11 of General Comment 20 states that

“...In addition to describing steps to provide the general protection against acts prohibited under article 7 to which anyone is entitled, the State party should provide detailed information on safeguards for the special protection of particularly vulnerable persons. It should be noted that keeping under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment is an effective means of preventing cases of torture and ill-treatment. To guarantee the effective protection of detained persons, provisions should be made for detainees to be held in places officially recognized as places of detention and for their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends. To the same effect, the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings. Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members”

It should be noted that general practices of amnesty for individuals who have been involved in such acts of torture is prohibited under international human rights law<sup>56</sup>.

General Comment 29 refers to state of emergency and instances where rights can be derogated. They are exceptional circumstances which in this instance where never raised by the state of Zimbabwe neither can the events and incidences which have been recorded in Zimbabwe around human rights defenders can be classified as states of emergency. However for purpose of elaborating the Zimbabwe's obligations under the multiplicity human rights instruments and in particular the ICCPR, its worth quoting the General Comment 29 wherein it is stated that

"Article 4, paragraph 2, of the Covenant explicitly prescribes that no derogation from the following articles may be made: article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion). The rights enshrined in these provisions are non-derogable..."<sup>57</sup>

Article 5 of the African Charter states that

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

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<sup>56</sup> Zimbabwe passed a general amnesty to individuals who have been involved in acts of political violence. A presidential amnesty issued on 6 October 2000 granted immunity for politically motivated crimes committed during the period 1 January 2000 to 31 July 2000. Although the order made exceptions for some grave crimes, it protected perpetrators of human rights abuses by exempting from prosecution those alleged to have committed acts including grievous bodily harm (torture), common assaults, kidnapping and abductions. See Zimbabwe Human Rights NGO Forum December 2001 Political Violence Report, Amnesty International Zimbabwe: Impunity enables ever more human rights violations

<sup>57</sup> Paragraph 7 of the General Comment 29

The African Commission has prepared **Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines)**<sup>58</sup> and has established a working group on the implementation of the Robben Island Guidelines. In its protective mandate the African Commission has had the occasion of deciding of complaints against state parties and on allegations of torture<sup>59</sup>.

The United Nations has also passed resolutions and declarations on the operations of law enforcement agents who are more often than not in the positions of authority which inevitable leads to the abuse of power and positions resulting in the use of torture as tool for the extraction of information, confessions and disclosure or acceptance of self incriminatory evidence. Human rights defenders, in particular trade unions have been tortured to induce fear and discourage them from peaceful disobedience. These declarations while not binding as other conventions and treaties have become accepted at international law as persuasive instruments and they further expound on laws and issues which have generated universal acclamation.

**The Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment** under principle 6<sup>60</sup> outlaws any form of ill-treatment of persons in detention. Principle 5, **Code of Conduct for Law**

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<sup>58</sup> The African Commission at its 32<sup>nd</sup> Ordinary Session, held in Banjul, The Gambia, from 17th to 23rd October 2002

<sup>59</sup> See case of International Pen, Constitutional Rights, Interights on Behalf of Ken Saro-Wiwa Jr and Civil Liberties Organisation vs Nigeria Communications 137/94,154/96,139/94 in particular the African Commission held that alleged victim was kept in leg irons and handcuffs and subjected to ill-treatment including beatings and being held in cells which were airless and dirty, the denied medical attention, during the first days of his arrest and since there was no evidence of any violent action on his part or escape attempts that would justify holding him in irons". In the case of Krishna Achutan vs Malawi, Amnesty International vs Malawi Communication 64/92, 68/92,78/92 the Commission held that "the conditions of overcrowding and acts of beating and torture that took place in prisons in Malawi contravened Article 5 of the African Charter as did the certain aspects of the treatment of the victims such as excessive solitary confinement, shackling within a cell, extremely poor quality food and denial of access to medical care"

<sup>60</sup> No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.

**Enforcement Officials** also prescribes against the use of torture by law enforcement agents<sup>61</sup>.

### **Protection of the Law and fair trial**

Every individual is entitled to equal protection of the law in all circumstances and this is a non derogable right in terms of international human rights law. Equality before the law is inextricably linked with the notion of justice.

Section 18(1) of the Constitution unequivocally protects right to protection of the law.

Subject to the provisions of this Constitution, every person is entitled to the protection of the law.

The Constitution further elaborates instances that need peculiar attention to such right in circumstances where an individual has been deprived of his liberty, facing criminal charges, the right to be brought before a court of law within a reasonable period of time, to be presumed innocent until proved guilty by a competent court of law, right to access legal representation of one's choice<sup>62</sup>. This provisions of the Constitution in essences undertakes to provid

- In several of the cases that activist are arrested a trend of failure to have them brought before the courts within a reasonable period has emerged, with the police

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<sup>61</sup> No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

<sup>62</sup> (2) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. (3) Every person who is charged with a criminal offence— (a) shall be presumed to be innocent until he is proved or has pleaded guilty; (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence charged; (c) shall be given adequate time and facilities for the preparation of his defence; (d) shall be permitted to defend himself in person or, save in proceedings before a local court, at his own expense by a legal representative of his own choice; (e) shall be afforded facilities to examine in person or, save in proceedings before a local court, by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution; and (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge;

coming up with several excuses of inadequate administrative facilities to process papers for many accused persons; absence and non-availability of fuel to transport the accused persons to court, the reluctance by some judicial officers to adjudicate on matters that are perceived to be political; failure to comply with judicial orders to investigate allegations of torture in custody by the police officers.

- Trade unionists have been denied access to legal representation on several of the cases of arrests

Zimbabwe is not without obligations under international in this respect of this right; the UDHR in Article 9, 10 and 11 respectively provides that

No one shall be subjected to arbitrary arrest or detention or exile.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

Under the ICCPR, Article 14 emphasizes and highlights all issue relevant to the right to fair trial **and** the HRC further explained on this right under General Comment 13<sup>63</sup>. Article 14 of the ICCPR states that;

All persons shall be equal before the courts and tribunal. In the determination of any criminal charge against him, or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordure public) or national security in a democratic society, or when the interest of the private lives of the Parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public (except

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<sup>63</sup> The Committee notes that article 14 of the Covenant is of a complex nature and that different aspects of its provisions will need specific comments. All of these provisions are aimed at ensuring the proper administration of justice, and to this end uphold a series of individual rights such as equality before the courts and tribunals and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law. Not all reports provided details on the legislative or other measures adopted specifically to implement each of the provisions of article 14

where the interest of juvenile persons otherwise requires of the proceedings concern matrimonial disputes of the guardianship of children).

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) ...

(g) Not to be compelled to testify against himself or to confess guilt.

Article 26 of the ICCPR also outlaws any form of discrimination before the law and therefore every individual is entitled to equal protection regardless of their status.

The African Commission has interpreted the provision of the African Charter that relate to the right to fair trial in particular Article 7 and 26 of the African Charter which should be read isolation. Article 7 is that substantive content of the right, whilst Article 26 focuses on institutions that are mandated with the enforcement of Article 7 and article state respectively that

Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the

right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

#### While Article 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

The African Commission has resolved<sup>64</sup> on different occasions on the right to a fair trial and has established principles and guidelines detailing the right to a fair trial and legal aid and or assistance in Africa. This was necessitated by the absence of an in depth understanding of the right, its importance and centrality in the addressing of human rights violations in any setting.

#### **Recommendations and Plan of Action**

- **Civil suits within the national courts**

A case within the national courts should be filed to sue the state for damages suffered, torture, assault, pain, suffering and disfigurement. Under this action individual police officers who were identified will be sued in their individual capacity to increase and induce individual accountability. Further statements uttered by several of the political and law enforcement agents leadership will be used to deduce command responsibility.

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<sup>64</sup> ACHPR /Res.4(XI)92: Resolution on the Right to Recourse and Fair Trial (1992), ACHPR /Res.21(XIX)96: Resolution on the Respect and the Strengthening on the Independence of the Judiciary (1996), ACHPR /Res.22(XIX)96: Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Enhancement of the Commission's work in National and sub-Regional systems (1996),

- **Contempt of Court Proceedings**

The Supreme Court in the case of **Wellington Chibebe, Nancy Kachingwe and Zimbabwe Lawyers for Human Rights vs. Minister of Home Affairs and the Commissioner of Police 145/05**, condemned the continued detention of suspects at Matapi police station and directed that certain renovations be made before the cells are habitable. From affidavits deposed to by the group that was detained at Matapi the conditions have not improved or changed, the police failed to even provide the detainees with clean sanitary facilities.

- **Constitutional Challenge**

The protection of the Bill of Rights as provided in the Constitution of Zimbabwe under Article 11 to 23 remains solely within the mandate of the Supreme Court sitting as a constitutional court, a separate action seeking to declare the arrest and torture of the ZCTU activists unlawful and in contravention of sections 15, 18, 19 and 20 of the Constitution will be filed with the Supreme Court. Several issues will be raised within the constitutional application including the following, conditions of detention, procedural issues on arrest such as recording of detention books, access to legal representation, access to medical assistance, person living with HIV and Aids and other illness which require regular medication food, special and specific needs of women detainees among other issues. The objective of having a holistic application is to get an order which virtually covers issues around arrest, court appearance, and conditions of detention.

- **Conditions of Detention**

The Supreme Court in the cases of **Nancy Kachingwe and Others vs Minister of Home Affairs and Commissioner of Police** refused to grant a blanket order that applied to all conditions of detention whose standards were below the minimal acceptable standards and having not been directly

mentioned in the application to abide by the order. As result specific applications will be brought either before the High Court seeking declarators on the various holding cells around the country which were used during the September 13, 2006 arrests.

- **Parliamentarian Portfolios and Committees**

Whilst the majority of international and regional human rights instruments have been ratified by Zimbabwe it remains critical to explore means and ways of getting the legislative arm of government to domestic these treaties<sup>65</sup>. Of interest however is the fact that in terms of the Labour Act, international standards in respect of labour conventions under the **International Labour Organisation** have become part of the domestic law<sup>66</sup>. Of major importance is the failure or neglect by the government of Zimbabwe to ratify the Convention Against Torture (CAT), there is need to lobby for the ratification of such and to highlight the importance of such in particular the investigative mechanisms, the complaints procedure as well as the state party reporting. Work of already established committees around labour and human rights related issues should be strengthened and improved.

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<sup>65</sup> Section 111B of the Constitution of Zimbabwe **Effect of international conventions, etc.** (1) Except as otherwise provided by this Constitution or by or under an Act of Parliament, any convention, treaty or agreement acceded to, concluded or executed by or under the authority of the President with one or more foreign states or governments or international organizations— (a) shall be subject to approval by Parliament; and (b) shall not form part of the law of Zimbabwe unless it has been incorporated into the law by or under an Act of Parliament. (2) Except as otherwise provided by or under an Act of Parliament, any agreement— (a) which has been concluded or executed by or under the authority of the President with one or more foreign organizations, corporations or entities, other than a foreign State or government or an international organization; and (b) which imposes fiscal obligations upon Zimbabwe; shall be subject to approval by Parliament. (3) Except as otherwise provided by this Constitution or by or under an Act of Parliament, the provisions of subsection (1)(a) shall not apply to— CONSTITUTION OF ZIMBABWE as amended by Amendment No. 17 Consolidation 73 1st October, 2005 (a) any convention, treaty or agreement, or any class thereof, which Parliament has by resolution declared shall not require approval in terms of subsection (1)(a); or (b) any convention, treaty or agreement the subject-matter of which falls within the scope of the prerogative powers of the President referred to in section 31H(3) in the sphere of international relations; unless the application or operation of the convention, treaty or agreement requires—(i) the withdrawal or appropriation of moneys from the Consolidated Revenue Fund; or (ii) any modification of the law of Zimbabwe.

<sup>66</sup> The introduction of the Act states that “AN ACT to declare and define the fundamental rights of employees; to give effect to the international obligations of the Republic of Zimbabwe as a member state of the International Labour Organisation and as a member of or party to any other international organisation or agreement governing conditions of employment which Zimbabwe would have ratified”; in Section 2A of the Act, and Part II of the Act FUNDAMENTAL RIGHTS OF EMPLOYEES

- **International and Regional Mechanisms**

Whilst Zimbabwe is already party to many of the international instruments such as the **International Convention on Civil and Political Rights** (ICCPR), the issue remains with the adoption of optional protocols accepting the jurisdiction of the Human Rights Committee, however they are mechanisms which can be used to highlight and address the practice of torture such as the special rapporteurs, the confidential procedure 1503 among others. It will also be critical to make use of the regional complaints mechanisms that already have jurisdiction over Zimbabwe such as the Committees established under the **ILO Conventions**, the African Commission and their related special mechanisms. The State should be further called upon to re-affirm its commitment to the rule of law and to guarantee people's freedoms as enshrined national laws and as intended obligations under various supra national laws.

## **Conclusion**

There is no doubt that Zimbabwe's obligations in terms of international and regional human rights law have been abrogated by the incessant acts of harassment, arrest, torture of trade unionists as human rights defenders. The national laws of Zimbabwe are still at great variance with its obligations arising from voluntary accession to human rights instruments under the African Union and the United Nations. Strategies for the incorporation of such into domestic law should become a priority for civil society and the legislative organs of the state. While this might be a long term objective, the less resource constraining reforms should be advocated for such as the opening of the democratic space and the operating environs of human rights defenders through the observance of fundamental rights.

## **Annexure I**

**Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**

*The General Assembly,*

*Reaffirming* the importance of the observance of the purposes and principles of the Charter of the United Nations for the promotion and protection of all human rights and fundamental freedoms for all persons in all countries of the world,

*Reaffirming also* the importance of the Universal Declaration of Human Rights<sup>2</sup> and the International Covenants on Human Rights Resolution 2200 A (XXI), annex. as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level,

*Stressing* that all members of the international community shall fulfil, jointly and separately, their solemn obligation to promote and encourage respect for human rights and fundamental freedoms for all without distinction of any kind, including distinctions based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and reaffirming the particular importance of achieving international cooperation to fulfil this obligation according to the Charter,

*Acknowledging* the important role of international cooperation for, and the valuable work of individuals, groups and associations in contributing to, the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals, including in relation to mass, flagrant or systematic violations such as those resulting from apartheid, all forms of racial discrimination, colonialism, foreign domination or occupation, aggression or threats to national sovereignty, national unity or territorial integrity and from the refusal to recognize the right of peoples to self-determination and the right of every people to exercise full sovereignty over its wealth and natural resources,

*Recognizing* the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms, and mindful that the absence of international peace and security does not excuse non-compliance,

*Reiterating* that all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated and should be promoted and implemented in a fair and equitable manner, without prejudice to the implementation of each of those rights and

freedoms,

*Stressing* that the prime responsibility and duty to promote and protect human rights and fundamental freedoms lie with the State,

*Recognizing* the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels,

*Declares:*

*Article 1*

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

*Article 2*

1. Each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

2. Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

*Article 3*

Domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

*Article 4*

Nothing in the present Declaration shall be construed as impairing or contradicting the purposes and principles of the Charter of the United Nations or as restricting or derogating from the provisions of the Universal Declaration of Human Rights,<sup>2</sup> the International Covenants on Human Rights<sup>3</sup> and other international instruments and commitments applicable in this field.

*Article 5*

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;
- (c) To communicate with non-governmental or intergovernmental organizations.

*Article 6*

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) 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.

*Article 7*

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

#### Article 8

1. Everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

2. This includes, *inter alia*, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

#### Article 9

1. In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

2. To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

3. To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

4. To the same end, and in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

5. The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

#### *Article 10*

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

#### *Article 11*

Everyone has the right, individually and in association with others, to the lawful exercise of his or her occupation or profession. Everyone who, as a result of his or her profession, can affect the human dignity, human rights and fundamental freedoms of others should respect those rights and freedoms and comply with relevant national and international standards of occupational and professional conduct or ethics.

#### *Article 12*

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.

*Article 13*

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

*Article 14*

1. The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.

2. Such measures shall include, *inter alia*:

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.

3. The State shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

*Article 15*

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

*Article 16*

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human

rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, *inter alia*, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

*Article 17*

In the exercise of the rights and freedoms referred to in the present Declaration, everyone, acting individually and in association with others, shall be subject only to such limitations as are in accordance with applicable international obligations and are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

*Article 18*

1. Everyone has duties towards and within the community, in which alone the free and full development of his or her personality is possible.
2. Individuals, groups, institutions and non-governmental organizations have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes.
3. Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.

*Article 19*

Nothing in the present Declaration shall be interpreted as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms referred to in the present Declaration.

*Article 20*

Nothing in the present Declaration shall be interpreted as permitting States to support and

promote activities of individuals, groups of individuals, institutions or non-governmental organizations contrary to the provisions of the Charter of the United Nations.