



Submission by: Front Line Defenders – The International Foundation for the Protection of Human Rights Defenders

Related to: Zimbabwe

UPR Session: 26th session of the UPR – October/November 2016

Submitted on: 24 March 2016

Front Line Defenders (www.frontlinedefenders.org) is an international NGO based in Ireland with special consultative status with the Economic and Social Council of the United Nations (ECOSOC). Founded in 2001, Front Line Defenders has particular expertise on the issue of security and protection of human rights defenders and works to promote the implementation of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders) adopted by General Assembly resolution 53/144 of 9 December 1998

The following submission has been prepared by Front Line Defenders based on research carried out by this organisation and information received from independent human rights defenders in Zimbabwe.

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Introduction and key concerns

1. This submission focuses on the situation for human rights defenders in Zimbabwe and covers developments in the years 2012-2015.
2. Human rights defenders and those working to denounce corruption and human rights violations perpetrated by police, military and other government agents have been targeted and subjected to judicial harassment and arbitrary detention. There were also reports of threats, enforced disappearance and physical attacks, although these incidents occurred less frequently. Human rights organisations have also been targeted through bans and lawsuits supported by the extensive restrictive legislation currently in force in the country.
3. In the period under review, Front Line Defenders supported in 37 cases of human rights defenders at risk in Zimbabwe, some of which concerned multiple HRDs or multiple violations. Many of them were cases of judicial harassment. Of concern is the targeting of human rights defenders working on issues related to democracy, good governance and public accountability, those working on LGBTI rights and on women's rights, those working on freedom of speech, documenting human rights abuses, and advocating for transparency in the country's extractive industries.
4. In the period under review, key concerns are the following:
 - (a) Independent human rights organisations and human rights defenders operate under a restrictive legal framework;
 - (b) Human rights defenders are subjected to police and judicial harassment, including arbitrary arrest and detention, the use of summons for questioning, and trumped-up charges;
 - (c) Politically motivated violence against human rights defenders working on corruption, good governance and accountability of state actors.

Development since the previous UPR Cycle

5. In the last UPR cycle, in October 2011, Zimbabwe received seven recommendations specifically related to human rights defenders – none of them was accepted by the government. Most of the recommendations addressed judicial harassment against human rights defenders and restrictions to their rights of freedom of expression, assembly and association.
6. Several other recommendations called for the repeal or revision of the restrictive legislation that has directed affected human rights defenders, particularly the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA) and the Private Voluntary Organisation Act (PVOA). None of these recommendations were accepted by the Zimbabwean government. However, the provisions of the AIPPA that were most often used against HRDs were successfully challenged in court and eventually repealed.
7. Four years on and despite some positive measures such as the adoption of the National Gender Policy and the amendments to the Access to Information and Protection of Privacy Act, the impact of the restrictive legislative framework remains unaltered.

A restrictive legal framework

8. Human rights defenders operate under a restrictive legal framework. One of the restrictive laws which remains in force is the **Private Voluntary Organization Act (PVOA)**. Associations must register with the Social Welfare Department under the Ministry of Public Service, Labour and Social Welfare through a cumbersome process. The Ministry decides whether to grant registration, and can deny it on vaguely defined grounds. While the law does not include a time limit for a decision, it may take up to one year for applications to be processed.

9. Section 6(3) of the law prohibits Private Voluntary Organizations (PVO) to commence or continue to carry on their activities without registration, in violation of international standards on freedom of association which require that organisations be allowed to operate without registration. Under Section 2(1), the law defines PVOs as “any body or association of persons” working towards an extensive list of possible objectives, which includes the provision of material, mental, physical or social needs of persons or families, of funds for legal assistance, the rendering of charity to persons or families in distress, and “such other objects as may be prescribed”. As a result of such a broad definition, a number of human rights defenders and NGOs deemed by the authorities to be too critical of government policies have faced judicial harassment and threats of forcible closure even when registered as different legal entities such as trusts or common law *universitas*.

10. On 23 August 2012, Ms Martha Tholanah, chairperson of Gays and Lesbians of Zimbabwe (GALZ), was charged with running an unregistered organisation after officers from Harare Central Police Station executed a search warrant at the GALZ offices. The charges were eventually quashed in February 2014.

11. Previously, in March 2013, the offices of Zimbabwe Peace Project (ZPP), a human rights organisation led by prominent human rights defender Ms Jestina Mukoko, were raided. Ms Mukoko was subsequently charged with operating an unregistered organization in violation of the PVOA. This was in spite of ZPP being properly registered as a trust.

12. On 1 July 2013, Mr Abel Chikomo, Executive Director of the Zimbabwe Human Rights NGO Forum (NGO Forum), was summoned under similar charges. The NGO Forum had been operating as a common law *universitas* entity and was thus not required to register as a PVO. While Mr Chikomo was eventually acquitted in November 2013, he declared that the acquittal was “not a victory worth celebrating” as the system to oppress civil society remained intact.

13. The **Public Order and Security Act (POSA)** has also been used as a tool against human rights defenders, to prevent them from carrying out peaceful demonstrations and public gatherings. The Act requires police permission for public meetings and demonstrations and gives broad discretionary powers to the police to determine which gatherings are lawful. POSA has often been enforced in a partisan manner, and its controversial provisions have frequently been invoked to justify the violent disruption of peaceful protests and the arbitrary arrest of protesters and human rights defenders.

14. Members of the Masvingo Residents Trust (MRT), a human rights organisation campaigning for public accountability and adequate service delivery in Masvingo, have been subjected to judicial harassment under POSA. MRT coordinator Mr Prosper Tiringindi and the co-chairpersons Mr Ephraim Mutombeni and Ms Elizabeth Manavira were charged in September 2015 with public gathering intended to promote public violence under POSA's provisions. The charges were brought following a protest organised the previous month to demand transparency and accountability in the use of development funds by the local city council.

15. The work of human rights defenders and their right to freedom of expression have also been curtailed through the use of the **Criminal Law (Codification Reform) Act (CLCRA)**. The most controversial provision of this act is Section 31, which criminalises 'communicating or publishing false statements'. The vague wording of Section 31 has been invoked to justify state harassment of independent journalists and their agencies.

16. Dozens of journalists, mainly those affiliated with **private media**, have been charged with publishing falsehoods under this section and a number of media outlets have had their offices raided under the Act.

- In January 2016, the deputy editor and a reporter of NewsDay, an independent daily newspaper, were arrested and charged under Section 31 of CLCRA in connection with a published story that alleged payment of large sums of money to officials of the Central

- Intelligence Organisation (CIO), the country's intelligence agency.
- In November 2015, the editor and a journalist of the Sunday Mail, a state-owned newspaper, were arrested under the same provision after publishing a story on the illegal killing of elephants in Hwange National Park.
- In April 2014, the editor of NewsDay was charged with violating the CLCRA after alleging police responsibility in an incident that involved the death of a child.
- In May 2013, Mr Dumisani Muleya and Mr Owen Gagare, respectively editor and chief reporter of the weekly newspaper Zimbabwe Independent, were arrested in Harare under Section 31 after writing about a meeting between the then prime-minister and senior military officers.

17. Finally, the very broad provisions of the 1970 **Official Secrets Act** have been used to threaten prosecution against journalists, and constitute an obstacle in the efforts aimed at ending impunity for perpetrators of abuses against human rights defenders. The Act does not define what may be prejudicial to the interest of the State and effectively shield state officials from scrutiny with regard to offences they may have committed while on duty. In March 2016, the former Minister for State Security declared that he was prepared to name those who were involved in the December 2008 abduction of leading human rights defender Ms Jestina Mukoko if it was not for the Official Secrets Act which would most likely be used against him.

Police and judicial harassment

18. As the examples above show, the judicial system is one of the main tools used to silence human rights defenders. Charges used against them are often linked to the restrictive pieces of legislation listed above: publishing false information, illegal public gathering or public gathering intended to promote violence, running 'unregistered' organisations, or other public order offences. **Other charges** that have been used against HRDs include malicious damage of property, insulting the authorities, and undermining the prestige of the State.

19. In January 2013, several members of the Zimbabwe Human Rights Association (ZimRights), one of the most active human rights organisations in the country, faced arbitrary detention and judicial harassment based on trumped-up charges of forgery, fraud and publishing false information. Those targeted included Mr Okay Machisa, the organisation's executive director. The incident occurred just a few weeks after ZimRights denounced increasing police brutality across Zimbabwe and called for urgent action by the authorities to address these human rights concerns.

20. For many years, members of Women of Zimbabwe Arise (WOZA), a women's rights organisation based in Bulawayo, have repeatedly been subjected to police brutality and judicial harassment, often in connection with their peaceful street protests. Some of the cases against the leaders of WOZA have dragged on for years, diverting their time and resources away from their human rights work. According to WOZA's records, the latest of these repeated arrests and court proceedings occurred in September 2015, when a magistrate released a member of WOZA who had been arrested in connection with a protest near the Bulawayo Mayor's office, after ruling that the warrant against the defendant had been improperly issued.

Intimidation by the Central Intelligence Organisation (CIO)

21. A number of human rights defenders have indicated being subject to intimidation and harassment by members of the CIO, in the form of summons and **interrogations** or through **surveillance**. Such acts appear to target mostly human rights defenders advocating on issues of corruption, public accountability and democratic governance.

22. In October 2015, six members of Community, Tolerance, Reconciliation and Development Trust (COTRAD), were summoned and questioned for several hours by CIO officials. This occurred after the organisation, active mostly in rural areas, opened a number of 'information kiosks' as tools of

grassroots mobilisation. The organisation has also reported several instances where their members organised peaceful protests and these were violently disrupted for no apparent reason.

23. Also in 2015, Mr Nkosilathi Moyo, director of Zimbabwe Organization For The Youth In Politics (ZOYP), a youth organization based in Kwekwe, was forced to go into hiding soon after publishing three documents denouncing government oppression. He and his colleagues have in the past reported incidents of state surveillance and harassment, which pushed them to move their office to a secret location.

Human rights defenders working on elections

24. Human rights defenders and NGOs working on issues related to elections and good governance faced increased repression in 2013, in connection with the March 2013 referendum on a new Constitution – which was eventually approved – and the general elections of July 2013. Several of the cases mentioned in previous sections occurred in the first half of 2013 and form part of the same pattern of repression (see paragraphs 11, 12, 16, 19).

25. On 17 July 2013, Harare-based think tank Research and Advocacy Unit (RAU) was banned by the High Court from launching a report with its analysis of the voters' roll following an urgent application by the Registrar-General, which argued that by publishing its report RAU was attempting to exercise functions attributed by the Constitution to the Registrar-General office and that it intended to cause 'chaos and anarchy'.

26. In February 2013, Zimbabwe Election Support Network (ZESN), a coalition of 31 NGOs promoting democratic processes and free and fair elections, had its office in Harare raided once and its office in Masvingo raided twice in the space of four days. While the raids in Masvingo were by unknown individuals, the Harare office was raided by seven police officers who proceeded to confiscate several documents, including details of ZESN plans to observe the Constitutional referendum.

Enforced disappearance

27. The unsolved case of abduction and subsequent disappearance of Mr Itai Dzamara contributes to spreading fear about the safety of human rights defenders in Zimbabwe. Mr Dzamara, a journalist and peaceful pro-democracy activist, disappeared in March 2015 after clashing on a number of occasions with state security officials over his 'Occupy Africa Unity Square movement'. His fate and whereabouts remain unknown at the time of writing. Prior to his disappearance, Mr Dzamara had been targeted by state security agents: beaten, unlawfully detained and even abducted by them. For this reason, suspicions are high that the state may have played a role in the disappearance.

Recommendations

28. Front Line Defenders calls upon the member states of the UN Human Rights Council to urge the Zimbabwean authorities to prioritise the protection of human rights defenders and in doing so to:

- (a) Guarantee in all circumstances that all human rights defenders in Zimbabwe are able to carry out their legitimate human rights activities without fear of reprisals and free of all restrictions including judicial harassment, and ensure full respect for the UN Declaration on Human Rights Defenders;
- (b) Publicly recognise the positive and legitimate role played by human rights defenders in Zimbabwe;
- (c) Accept and fully implement the UPR recommendations on human rights defenders in a

transparent and participatory manner with full involvement of human rights defenders at all levels;

- (d) Take measures to strengthen the independence of the judiciary and ensure that the judicial system is not used to restrict the legitimate and peaceful work of human rights defenders;
- (e) Take urgent measures to put an end to the arrest and detention as well as judicial harassment against human rights defenders;
- (f) Combat impunity by ensuring the prompt, thorough and impartial investigation of all violations against HRDs, the prosecution of perpetrators, and access to effective remedies for victims;
- (g) Review the Private Voluntary Organisations Act (PVOA) to ensure its compliance with international standards on freedom of association and ensure the free and independent establishment and operation of civil society organisations;
- (h) Repeal or amend any legislation used to limit the legitimate work of human rights defenders with a view to ensure its compliance with international human rights standards, in particular the Public Order and Security Act (POSA) and the Criminal Law (Codification Reform) Act (CLCRA);
- (i) Take all necessary measures to establish the fate and whereabouts of journalist and pro-democracy activist, Mr Itai Dzamara; including the formation of an independent commission of inquiry focusing on his case.