

Annex II

*Executive Summary of the Report of the
Fact-finding Mission to Zimbabwe⁵
24th to 28th June 2002*

INTRODUCTION

Following widespread reports of human rights violations in Zimbabwe, the African Commission on Human and Peoples' Rights (African Commission) at its 29th Ordinary Session held in Tripoli from 23rd April to 7th May 2001 decided to undertake a fact-finding mission to the Republic of Zimbabwe from 24th to 28th June 2002.

The stated purpose of the Mission was to gather information on the state of human rights in Zimbabwe. In order to do so, the Mission sought to meet with representatives of the Government of the Republic of Zimbabwe, law-enforcement agencies, the judiciary, political parties and with organised civil society organisations especially those engaged in human rights advocacy. The method of the fact-finding team was to listen and observe the situation in the country from various angles, listen to statements and testimony of the many actors in the country and conduct dialogue with government and other public agencies.

FINDINGS

1. The Mission observed that Zimbabwean society is highly polarised. It is a divided society with deeply entrenched positions. The land question is not in itself the cause of division. It appears that at heart is a society in search of the means for change and divided about how best to achieve change after two decades of dominance by a political party that carried the hopes and aspirations of the people of Zimbabwe through the liberation struggle into independence.
2. There is no doubt that from the perspective of the fact-finding team, the land question is critical and that Zimbabweans, sooner or later, needed to address it. The team has consistently maintained that from a human rights perspective, land reform has to be the prerogative of the government of Zimbabwe. The Mission noted that Article 14 of the African Charter states "The right to property shall be guaranteed. *It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws*". It appears to the Mission that the Government of Zimbabwe has managed to bring this policy matter under the legal and constitutional system of the country. It now means that land reform and land distribution can now take place in a lawful and orderly fashion.
3. There was enough evidence placed before the Mission to suggest that, at the very least during the period under review, human rights violations occurred in Zimbabwe. The Mission was presented with testimony from witnesses who were victims of political violence and others victims of torture while in police custody. There was evidence that the system of arbitrary arrests took place. Especially alarming was the arrest of the President of the Law Society of Zimbabwe and journalists including Peta Thorncroft, Geoffrey Nyarota, among many others, the arrests and torture of opposition members of parliament and human rights lawyers like Gabriel Shumba.
4. There were allegations that the human rights violations that occurred were in many instances at the hands of ZANU PF party activists. The Mission is however not able to find definitively that this was part of an orchestrated policy of the government of the Republic of Zimbabwe. There were enough assurances from the Head of State, Cabinet Ministers and the leadership of the ruling party that there has never been any plan or policy of violence, disruption or any form of human rights violations, orchestrated by the State. There was also an acknowledgement that excesses did occur.

5. The Mission is prepared and able to rule, that the Government cannot wash its hands from responsibility for all these happenings. It is evident that a highly charged atmosphere has been prevailing, many land activists undertook their illegal actions in the expectation that government was understanding and that police would not act against them – many of them, the War Veterans, purported to act as party veterans and activists. Some of the political leaders denounced the opposition activists and expressed understanding for some of the actions of ZANU (PF) loyalists. Government did not act soon enough and firmly enough against those guilty of gross criminal acts. By its statements and political rhetoric, and by its failure at critical moments to uphold the rule of law, the government failed to chart a path that signalled a commitment to the rule of law.
6. There has been a flurry of new legislation and the revival of the old laws used under the Smith Rhodesian regime to control, manipulate public opinion and that limited civil liberties. Among these, the Mission's attention was drawn to the Public Order and Security Act, 2002 and the Access to Information and Protection of Privacy Act, 2002. These have been used to require registration of journalists and for prosecution of journalists for publishing "false information". All these, of course, would have a "chilling effect" on freedom of expression and introduce a cloud of fear in media circles. The Private Voluntary Organisations Act has been revived to legislate for the registration of NGOs and for the disclosure of their activities and funding sources.
7. There is no institution in Zimbabwe, except the Office of the Attorney General, entrusted with the responsibility of oversight over unlawful actions of the police, or to receive complaints against the police. The Office of the Ombudsman is an independent institution whose mandate was recently extended to include human rights protection and promotion. It was evident to the Mission that the office was inadequately provided for such a task and that the prevailing mindset especially of the Ombudsman herself was not one which engendered the confidence of the public. The Office was only about the time we visited, publishing an annual report five years after it was due. The Ombudsman claimed that her office had not received any reports of human rights violations. That did not surprise the Mission seeing that in her press statement following our visit, and without undertaking any investigations into allegations levelled against them, the Ombudsman was defensive of allegations against the youth militia. If the Office of the Ombudsman is to serve effectively as an office that carries the trust of the public, it will have to be independent and the Ombudsman will have to earn the trust of the public. Its mandate will have to be extended, its independence guaranteed and accountability structures clarified.
8. The Mission was privileged to meet with the Chief Justice and the President of the High Court. The Mission Team also met with the Attorney General and Senior Officers in his office. The Mission was struck by the observation that the judiciary had been tainted and even under the new dispensation bears the distrust that comes from the prevailing political conditions. The Mission was pleased to note that the Chief Justice was conscious of the responsibility to rebuild public trust. In that regard, he advised that a code of conduct for the judiciary was under consideration. The Office of the Attorney General has an important role to play in the defence and protection of human rights. In order to discharge that task effectively, the Office of the Attorney General must be able to enforce its orders and that the orders of the courts must be obeyed by the police and ultimately that the professional judgement of the Attorney General must be respected.

9. The Mission noted with appreciation the dynamic and diverse civil society formations in Zimbabwe. Civil society is very engaged in the developmental issues in society and enjoys a critical relationship with government. The Mission sincerely believes that civil society is essential for the upholding of a responsible society and for holding government accountable. A healthy though critical relationship between government and civil society is essential for good governance and democracy.

RECOMMENDATIONS

In the light of the above findings, the African Commission offers the following recommendations -:

On National Dialogue and Reconciliation

Further to the observations about the breakdown in trust between government and some civil society organisations especially those engaged in human rights advocacy, and noting the fact that Zimbabwe is a divided society, and noting further, however, that there is insignificant fundamental policy difference in relation to issues like land and national identity, Zimbabwe needs assistance to withdraw from the precipice. The country is in need of mediators and reconcilers who are dedicated to promoting dialogue and better understanding. Religious organisations are best placed to serve this function and the media needs to be freed from the shackles of control to voice opinions and reflect societal beliefs freely.

Creating an Environment Conducive to Democracy and Human Rights

The African Commission believes that as a mark of goodwill, government should abide by the judgements of the Supreme Court and repeal sections of the Access to Information Act calculated to freeze the free expression of public opinion. The Public Order Act must also be reviewed. Legislation that inhibits public participation by NGOs in public education, human rights counselling must be reviewed. The Private Voluntary Organisations Act should be repealed.

Independent National Institutions

Government is urged to establish independent and credible national institutions that monitor and prevent human rights violations, corruptions and maladministration. The Office of the Ombudsman should be reviewed and legislation which accords it the powers envisaged by the Paris Principles adopted. An independent office to receive and investigate complaints against the police should be considered unless the Ombudsman is given additional powers to investigate complaints against the police. Also important is an Independent Electoral Commission. Suspicions are rife that the Electoral Supervisory Commission has been severely compromised. Legislation granting it greater autonomy would add to its prestige and generate public confidence.

The Independence of the Judiciary

The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure; appointments to the bench could be done in such a way that they could be insulated from the stigma of political patronage. Security at Magistrates' and High Court should ensure the protection of presiding officers. The independence of the judiciary should be assured in practice and judicial orders must be obeyed. Government and the media have a responsibility to ensure the high regard and esteem due to members of the judiciary by refraining from political

attacks or the use of inciting language against judges and magistrates. A Code of Conduct for Judges could be adopted and administered by the judges themselves. The African Commission commends to the Government of the Republic of Zimbabwe for serious consideration and application of the *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa* adopted by the African Commission at its 33rd Ordinary Session in Niamey, Niger in May 2003.

A Professional Police Service

Every effort must be made to avoid any further politicisation of the police service. The police service must attract all Zimbabweans from whatever political persuasion or none to give service to the country with pride. The police should never be at the service of any political party but must at all times seek to abide by the values of the Constitution and enforce the law without any fear or favour. Recruitment to the service, conditions of service and in-service training must ensure the highest standards of professionalism in the service. Equally, there should be an independent mechanism for receiving complaints about police conduct. Activities of units within the ZRP like the law and order unit which seems to operate under political instructions and without accountability to the ZRP command structures should be disbanded. There were also reports that elements of the CIO were engaged in activities contrary to international practice of intelligence organisations. These should be brought under control. The activities of the youth militia trained in the youth camps have been brought to our attention. Reports suggest that these youth serve as party militia engaged in political violence. The African Commission proposes that these youth camps be closed down and training centres be established under the ordinary education and employment system of the country. The African Commission commends for study and implementation the *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa* (otherwise known as The Robben Island Guidelines) adopted by the African Commission at its 32nd Ordinary Session held in Banjul, The Gambia in October 2002.

The Media

A robust and critical media is essential for democracy. The government has expressed outrage at some unethical practices by journalists, and the Access to Information Act was passed in order to deal with some of these practices. The Media and Ethics Commission that has been established could do a great deal to advance journalistic practices, and assist with the professionalisation of media practitioners. The Media and Ethics Commission suffers from the mistrust on the part of those with whom it is intended to work. The Zimbabwe Union of Journalists could have a consultative status in the Media and Ethics Commission. Efforts should be made to create a climate conducive to freedom of expression in Zimbabwe. The POSA and Access to Information Act should be amended to meet international standards for freedom of expression. Any legislation that requires registration of journalists, or any mechanism that regulates access to broadcast media by an authority that is not independent and accountable to the public, creates a system of control and political patronage. The African Commission commends the consideration and application of the *Declaration on the Principles on Freedom of Expression in Africa* adopted by the 32nd Ordinary Session of the African Commission in Banjul, October 2002.

Reporting Obligations to the African Commission

The African Commission notes that the Republic of Zimbabwe now has three overdue reports in order to fulfil its obligations in terms of Article 62 of the African Charter. Article 1 of the African Charter states that State Parties to the Charter shall "recognise the rights, duties and freedoms enshrined in the Charter and *shall undertake to adopt*

legislative or other measures to give effect to them." Article 62 of the African Charter provides that each State Party shall undertake to submit every two years "a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter." The African Commission therefore reminds the Government of the Republic of Zimbabwe of this obligation and urges the government to take urgent steps to meet its reporting obligations. More pertinently, the African Commission hereby invites the Government of the Republic of Zimbabwe to report on the extent to which these recommendations have been considered and implemented.