

EUROPEAN PARLIAMENT

Committee on Development

Meeting

Tuesday, 21 June 2005, from 11.00 a.m. to 12.00 noon

Meeting Room : ASP 1G2

BRUSSELS

The Human Rights Situation in Zimbabwe

Exchange of views presented by Margrete Auken, MEP

invited speakers :

- H.E. Mr Gift Punungwe, Ambassador of the Republic of Zimbabwe
- H.E. Mr Sutiawan Gunessee, Ambassador of the Republic of Mauritius and representative of the Presidency of SADC
- H.E. Mr Jerry Matjila, Ambassador of the Republic of South Africa and representative of the Chair of the Organ of Politics, Defence and Security of SADC
- Mrs Grace Kwinjeh, representative of the Movement for Democratic change in Belgium
- Mr Derek Matyszak, Chairman of the Amani Trust
- Mr Reginald Machaba-Hove, Chairman of the Zimbabwe Election Support Network

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EUROPEAN PARLIAMENT



DIRECTORATE GENERAL - EXTERNAL POLICIES
Development Committee
THE HUMAN RIGHTS GROUP

BACKGROUND NOTE
ON THE HUMAN RIGHTS SITUATION
IN ZIMBABWE

21 JUNE 2005

1. PRESENTATION OF THE COUNTRY

A – Map of Zimbabwe



B – Facts on Zimbabwe

| Land | |
|---|---|
| Area | 390,580 sq. km |
| People | |
| Population (est. 2005) | 12,746,990 |
| Human development index value | 2002: 0.491 (147 th country out of 177) 2000: 0.551 (128 th country out of 173) 1998: 0.555 (130 th country out of 174) |
| Population below poverty line (2002) | 70% |
| Life expectancy at birth | 33.1 years (this figures takes into account the ravages of aid) |
| HIV/AIDS - adult prevalence rate (2004) | 33% |
| Urban population (2002) | 34.5% of total |
| Population under age 15 (2002) | 43.1% |
| Ethnic groups | African: 98% (Shona: 82%, Ndebele: 14%, other: 2%) Mixed and Asian: 1% White less than: 1% |
| Religions | Syncretic (part Christian, part indigenous beliefs): 50 % Christian: 25% Indigenous beliefs: 24% Muslim and other: 1% |
| State | |
| Head of state | Executive President Robert MUGABE (since 31 December 1987) |
| Head of government | Prime Minister Robert MUGABE (from 1980 to 1987) President executive Robert MUGABE (since 31 December 1987) - the president is both the head of state and head of government |
| Legislative branch | Unicameral House of Assembly (150 seats - 120 elected by popular vote for five-year terms, 12 nominated by the president, 10 occupied by traditional chiefs chosen by their peers, and 8 occupied by provincial governors appointed by the president) |
| Legislative elections | Last held 31 March 2005 (next to be held in 2010) |
| Elections results | ZANU-PF: 59.6% (78 seats) MDC: 39.5% (41 seats) Other: 0.9% (1 Independent seat) |
| Economy | |
| GDP - real growth rate (2004 est.) | - 8.2% |
| GDP - per capita (purchasing power parity, 2004 est.) | \$1,900 |
| Inflation rate (consumer prices, 2004 est.) | 133% |
| Unemployment rate (2002 est.) | 70% |
| GDP - composition by sector (2004 est.) | Agriculture: 18.1% Industry: 24.3% Services: 57.7% |
| Labor force - by occupation | Agriculture: 66% Industry: 10% Services: 24% |
| International Human Rights Commitments | |
| Death penalty | Maintained (and used) |
| Main UN human rights treaties (ICCPR, ICESCR, CAT, CRC, CEDAW, CERD) | All ratified except the Convention Against Torture (not signed) |
| International Criminal Court | Rome Statute signed |

Sources : European Commission, PNUD, CIA, Amnesty International

2. RECENT DEVELOPMENTS

A – Elections in Zimbabwe

Background

| | |
|-------------------|--|
| 1980 | Pro-independence leader Robert Mugabe and his Zanu party win British-supervised independence elections. Independence on 18 April is internationally recognised. |
| 1987 | Mugabe changes constitution, becomes executive president. |
| 1999 | Formation of opposition Movement for Democratic Change (MDC). |
| 2000 Feb. | Mugabe suffers defeat in referendum on draft constitution. |
| 2000 June | Parliamentary elections: Zanu-PF narrowly fights off a challenge from the opposition MDC led by Morgan Tsvangirai, but loses its power to change the constitution. |
| 2002 March | Mugabe re-elected in presidential elections condemned as seriously flawed by the opposition and foreign observers. |
| 2003 June | MDC leader Morgan Tsvangirai is arrested twice and charged with treason. |
| 2004 Oct. | Opposition leader Morgan Tsvangirai is acquitted of treason charges relating to an alleged plot to kill President Mugabe. He faces a separate treason charge. |
| 2005 Feb. | Information Minister Jonathan Moyo sacked amid succession struggle within the ruling party. |
| 2005 March | Ruling Zanu-PF party wins two-thirds of the votes in parliamentary polls. |

- Parliamentary elections in Zimbabwe were held on Thursday 31 March 2005. The opposition Movement for Democratic Change (MDC), which initially planned to boycott the elections, finally decided in February 2005 to participate in it and stand against Robert Mugabe's ruling Zanu-PF party. Zanu-PF (Mugabe's party) won 78 out of 120 seats while the MDC got 41 seats, 16 less than in the last election.
- Only election observers from countries and institutions that did not criticise the previous elections were present. 45 foreign state groups and over 800 local observers were present - less than on previous occasions, and even these invitations were only sent out in February 2005. The European Union, the Commonwealth and the US were not invited; nor were the Electoral Institute of Southern Africa and South Africa's trade union body, COSATU.
- The US, EU and UK criticised the results, pointing to the election not having been free and fair. In its Declaration on behalf of the European Union on the conduct of the elections in Zimbabwe (5 April 2005), the EU Presidency indicated that the EU "is concerned by a number of serious shortcomings found in the Zimbabwean electoral system".
- SADC (South African Development Community) was invited to observe the election, but the SADC Parliamentary Forum, an autonomous institution within SADC, was absent. Although SADC members agreed that all elections in the region should feature political tolerance, freedom of association, equal access to state media and an independent judiciary and electoral institutions, SADC observers have described the election as "peaceful, credible and well organised [...] reflecting the will of the people". This is despite their concerns regarding many people reportedly being sent away from polling stations for not being properly registered.
- South African government observers also spoke positively of Mugabe's victory. Nomfanelo Kota, spokesperson for a South African led mission of election observers, was however reported as saying there were "major queries" at 32 constituencies. South African President Thabo Mbeki had meanwhile called the elections free and fair well before their taking place. It was reported that observers from the African Union (AU) also endorsed the poll although the head of the African Union Observer Team, Dr Kwado Afari-Gyan, was quoted as saying that allegations of electoral fraud should be investigated.

B – Mass forced evictions and its impact on the humanitarian situation

Background

| | |
|-------------------|---|
| 1998 | Economic crisis accompanied by riots and strikes. |
| 2000 Feb. | Squatters seize hundreds of white-owned farms in an ongoing and violent campaign to reclaim what they say was stolen by settlers. |
| 2001 July | Finance Minister publicly acknowledges economic crisis, warning the country faces serious food shortages. Most donors have cut aid because of Mugabe's land seizure programme. |
| 2002 April | State of disaster declared as worsening food shortages threaten famine. Government blames drought, the UN World Food Programme says disruption to agriculture is a contributing factor. |
| 2002 May | Land-acquisition law passed. |
| 2005 May | Thousands of shanty dwellings and illegal street stalls are destroyed as part of a "clean-up" programme. |

Mass Forced evictions - Operation "Clean Sweep" or "Restore Order"

- In the last four months of 2004 the police and army forcibly evicted thousands of people from farms where they had settled between 2000 and 2002. Homes and belongings were destroyed and families left destitute. Human rights lawyers subsequently obtained court orders, which allowed people to return to the farms, but some families reported that government officials and state agents continued to harass them and threaten them with removal.
- Since 18 May 2005, many thousands of people have been forcibly removed from informal market areas in Harare by the police, in a crackdown called "Operation Murambatsvina" ("*Restore Order*"). Similar police actions have taken place in across the country in Bulawayo, Mutare, Chitungwiza, Rusape, Murehwa, Gweru, Masvingo and Kadoma. Although the government has claimed that the traders are unlicensed, lawyers have said that many of those arrested had licences. The traders have been given no notice and their goods have been destroyed or confiscated. Many traders are alleged to have been beaten during the operation.
- In a CFSP Declaration on behalf of the European Union on 7 June 2005, the EU Presidency condemned the actions undertaken by the Zimbabwean Government in the framework of the "Operation Murambatsvina". It called the authorities to put an immediate end to the operation, and urged the Zimbabwean Government to respect human rights and the rule of law. It states that "the brutal actions which have led to over 20 000 arrests and to the massive and arbitrary destruction of the dwellings and means of existence of the neediest urban populations are a blatant proof of the Zimbabwean Government's lack of concern for the well-being of the civilian population, especially in urban areas. Thousands of families have been left without shelter in the heart of winter, thereby further worsening the critical situation in Zimbabwe. These operations have resulted in the internal displacement of hundreds of thousands of people, while Zimbabweans are already suffering food shortages and the country is in the throes of a deep economic crisis".
- The UN demanded that Zimbabwean authorities stop the eviction operation. The UN Human Rights Commission estimates that up to 200,000 people may have been made homeless by the operation.

Humanitarian situation

- 70 % of the Zimbabwean population, some 9 million people, are now living below the poverty line. Still, food aid is halted and used by Zanu-PF as a political weapon.
- In May 2004 the government announced that Zimbabwe had had a "bumper" harvest and no longer needed international food aid. By June most food aid distribution had stopped although some programmes aimed at very vulnerable populations continued. The government's claims about the size of the 2004 harvest were widely discredited, and by the end of the year there was mounting evidence of hunger and food shortages in many areas of Zimbabwe. There were also reports that Zanu-PF party cards were being demanded in some areas before people could access state-controlled grain. The government-controlled Grain Marketing Board has an almost total monopoly on the import of and trade in maize and a history of discriminatory allocation of the food it controls.
- The situation is critical and may lead to general humanitarian emergency. In its Annual Report on Human Rights in the World 2004 and the EU's policy on the matter adopted on 5 April 2005 the EP noted "with concern the substantial drop in food production in recent times and the difficulties that NGOs are experiencing in accessing those in need of aid".

3. EFFORTS OF THE INTERNATIONAL COMMUNITY AND SANCTIONS

EU sanctions and human rights

- Due to Zimbabwe political crisis and violations of HR, the relations between the EU and Zimbabwe have rapidly deteriorated over the last years, culminating in the suspension of EU cooperation with Zimbabwe on 18 February 2002. Following this, the Country Strategy Paper was never discussed but the EU MS in the framework of the European Development Committee. No further progress in implementing the 9th EDF Programme has been possible in the current circumstances.
- Sanctions have been imposed both under CFSP and pursuant to Cotonou Agreement's procedures (under articles 96/97 and 366a), which means after consultations' attempts.
 - CFSP sanctions : visa-ban and freezing of assets valid. Since then, the list of officials of the Mugabe regime on whom sanctions are imposed has been extended. The persons on the list and their families' assets are frozen and they are not allowed to travel to EU countries. The smart sanctions also include an arms embargo.
 - Cooperation suspension under Cotonou : Suspension of EDF 7 and 8 budget support and of all projects except in direct support to the population; Reorientation of financing in direct support of population in social sectors, democratisation, respect for human rights, rule of law ; NIP signature suspended ; art. 12 of Annex 2 of Cotonou Agreement suspended ; regional projects to be evaluated case by case; humanitarian operations continue. These measures have been extended every year (last time on 17 Feb. 2005, for another year).
- However, the European Commission assistance to Zimbabwe since the beginning of the crisis continues to be very important. Main development projects include focal sectors such as health, education and rural development. Human rights aspects are also dealt with within the European Initiative for Democracy and Human Rights (EIDHR). Zimbabwe is an eligible country for micro-projects under Campaign 2 "Fostering a culture of human rights" and both for micro- and macro-projects under Campaign 3 aimed at "Promoting the democratic process".
- Zimbabwe was chosen as a focus country due to the EU's concern for the political and human rights situation. HR issues were also the subject of discussion with the Zimbabwean government throughout 2001 in the context of the Article 8 dialogue and Article 96 consultations under the Cotonou Agreement. The EU also considers that EIDHR activities can be effective in Zimbabwe due to the presence of robust, independent actors in the Parliament, the judiciary, the press and a local civil society committed to the promotion and protection of human rights. The strong interest of the international human rights NGOs' community in the situation in Zimbabwe is also an important factor.
- The European Union has been highly critical of the Mugabe regime and the increasing brutality used by the leadership to suppress opposition, particularly since the March 2002 presidential elections. For instance, in February 2003 the EU cancelled a summit with African leaders planned for April 2003 when most EU Member States said they would not attend if President Mugabe was present, while African countries stated they would not attend if Mugabe was not there. However, despite the existence of an EU black list of people who are to be refused visas, Members of the Zimbabwean Government, as well as president Mugabe himself, have managed to enter the EU territory, this no later than for the late Pope John-Paul II's funeral on 2 April 2005. On this occasion Robert Mugabe deliberately flew to the Vatican, regardless of EU sanctions.

EP Resolutions

- Annual EP resolutions on the EU's priorities and recommendations for the 61st session of the UN Commission on Human Rights in Geneva, as well as Annual EP Report on Human Rights in the World 2004 and the EU's policy on the matter, have systematically expressed EP concerns over the human rights situation in Zimbabwe during the last years.
- Resolutions specifically focused on Zimbabwe have been adopted by the EP on numerous occasions (14 resolution since April 2000), most recently on 16.12.2004.

African Union

- When the 53 members of the Council of the African Union (AU) adopted in July 2004 a report critical of the Zimbabwean authorities for "the arrests and alleged torture of opposition party members and human rights lawyers, the harassment of journalists, the stifling of freedom of expression and the abuse of civil liberties" it was considered by Human Rights activists as a first step towards an African criticism on the country's regime. However, the euphoria only lasted a few days, as the report was not adopted at the annual meeting of the heads of state of the AU. This example is a significant indication of the attitude of African countries towards repression by the Zimbabwean State. Open criticism on the country's internal policy is very rare if not non-existent.
- Nevertheless there seem to be some slight changes in the position of certain countries. This is largely due to the lobbying of the Zimbabwean opposition, and to the magnitude of Zimbabwe's economic crisis. The government of neighbouring Botswana has been the most outspoken in its criticism in recent years. Also Malawi and Kenya have voted against Zimbabwe at the Commonwealth summit. The Nigerian President Olusegun Obasanjo, who is the current chairman of the AU, has in recent months become increasingly active in pressing the Zimbabwean government for dialogue with the main opposition party.

Role of South Africa

- South Africa has attempted to solve the crisis in Zimbabwe through "quiet diplomacy", but critics say the country has merely been legitimising the regime. South Africa has been careful not to criticise M. Mugabe's regime, but it is generally held that President Thabo Mbeki has the power and influence to bring Mugabe to the negotiating table. Both South Africa and Nigeria have repeatedly stated that they favour quiet diplomacy and constructive engagement rather than more robust policies against Mugabe. South Africa, for instance, did not support the decision to continue the suspension of Zimbabwe in the Commonwealth.
- President Mbeki recently declared that he was prepared for "greater and regular engagement" with both parties. After hosting an MDC delegation in Pretoria for talks, he met Mugabe at the UN headquarters.

United Nations

- The United Nations has also been extremely critical of the Mugabe regime and the human rights abuses it continues to carry out on Zimbabweans. However, in 2005 Zimbabwe escaped UN censure over its human rights record after a draft resolution, put forward by EU countries urging Zimbabwe to allow UN human rights experts into the country, was blocked by African states.
- The UN World Food Programme has also been critical of Zimbabwe stating the Zimbabwe government is largely responsible for the humanitarian crisis and that it could easily have been avoided.

United States

- On 14 February 2002, pursuant to the Zimbabwe Democracy and Economic Recovery Act, the US authorities announced that they were imposing 'smart sanctions' on President Mugabe and some of his close associates. In March 2003 the US imposed economic sanctions on President Mugabe and 76 government officials. These sanctions freeze the assets of those listed and bar Americans from having any financial dealings with them. In the same month the US also demanded that Zimbabwe cease its campaign of violent repression. One year later the US decided to strengthen its attitude towards the Zimbabwean government by imposing sanctions on additional businesses owned by the country's ruling officials.

Commonwealth

- The outcome of the March 2002 presidential election results and the resulting crackdown on any form of political or public opposition to the Mugabe regime has brought condemnation from the international community. On 19 March 2002 the Commonwealth suspended Zimbabwe from the organisation for 12 months. As no reforms were implemented by the Mugabe regime, the Commonwealth countries decided to renew Zimbabwe's suspension from the organisation at its summit in Abuja, Nigeria in December 2003. A number of Southern African states voted against the renewal and that the South African government had insisted that the Nigerian President invite Zimbabwe to the summit. In a reaction to the prolonged suspension, President Mugabe announced Zimbabwe's withdrawal from the organisation on 7 of December 2003.

Zimbabwe

European Parliament resolution on Zimbabwe adopted on 16 December 2004

The European Parliament,

- having regard to its previous resolutions on the situation in Zimbabwe, most recently that of 15 January 2004¹,
 - having regard to Rule 115(5) of its Rules of Procedure,
- A. whereas 75% of the Zimbabwean population, some 9 million people, are now living below the poverty line, and the World Food Programme has only been able to provide food aid for 1.6 million people in December 2004, owing to interference from the Mugabe regime,
- B. whereas the Mugabe regime is intensifying its political oppression under the Public Order and Security Act and other such measures, as well as through additional repressive legislation, for example the Non-Governmental Organisations Act, which infringes fundamental human rights such as freedom of association,
- C. whereas a case of particular and urgent concern is that of opposition MP Roy Bennett, who, in the five years since his election, has been the subject of a vicious campaign of persecution by the Mugabe regime; whereas Roy Bennett MP was sentenced to twelve months' imprisonment with hard labour on 28 October 2004 on spurious charges and is now being held in appalling conditions in Mutoko,
- D. whereas a general election is scheduled to take place in Zimbabwe in March 2005, but whereas the regime's Zimbabwe Electoral Commission Bill and Electoral Bill fall short of the required Southern Africa Development Community (SADC) standards for free and fair elections,
- E. whereas the main opposition party, the Movement for Democratic Change (MDC), is reluctant to confirm participation in the March 2005 elections until the basic conditions for free and fair elections have been guaranteed,
- F. whereas the MDC leader Morgan Tsvangirai, who has been subject to constant intimidation by the Zimbabwean authorities, was again subject to harassment on his recent return to Zimbabwe from visits to the European Parliament and European and African capitals,
- G. whereas deep splits have recently emerged in Zimbabwe's ruling party, the Zimbabwe African National Union - Patriotic Front (Zanu-PF),

¹ Texts Adopted, P5_TA(2004)0033.

1. Insists that all political interference in the distribution of international food aid be halted without delay, to prevent the Zanu-PF government from using food as a political weapon;
2. Insists that repressive legislation such as the Public Order and Security Act be repealed and that the forthcoming elections in Zimbabwe be held in accordance with the SADC principles and guidelines governing democratic elections, including those agreed in Mauritius on 17 August 2004, with unimpeded access for international observers and an end to intimidation of opposition supporters;
3. Demands the immediate release of Roy Bennett MP and the cessation of all violence and intimidation towards his family and employees;
4. Calls upon Zimbabwe's neighbours, and in particular President Thabo Mbeki of South Africa, who recently addressed the European Parliament, to undertake on behalf of the people of Zimbabwe to bring about change for the better and ensure that the Zimbabwean Government fully cooperates with the SADC and the wider international community to guarantee free and fair elections and a robust and timely international monitoring presence;
5. Welcomes the steps taken by the African Commission on Human and People's Rights to report on abuses in Zimbabwe, and stresses that the African Union must continue to monitor, and also act in regard to, the human rights, civil rights and political situation in Zimbabwe and to keep up this process of peer review throughout Africa;
6. Reiterates its demand to the Council and the Commission that loopholes in the EU's targeted sanctions against the Mugabe regime be closed, and that the sanctions be rigorously enforced; also requests that the Council and the Commission provide maximum support for international efforts to ensure free and fair elections in Zimbabwe, and in particular technical support to local, regional and international observer missions;
7. Instructs its President to forward this resolution to the Council, the Commission, the Governments of the Member States, the Government and Parliament of Zimbabwe, the Government and Parliament of South Africa, the UN Secretary-General, the Chairpersons of the Commission and Executive Council of the African Union and the Secretary-General of the SADC.

Résolution du Parlement européen sur le Zimbabwe (16 décembre 2004)

Le Parlement européen,

— vu ses résolutions précédentes sur la situation au Zimbabwe, dont la plus récente, du 15 janvier 2004⁽¹⁾,

— vu l'article 115, paragraphe 5, de son règlement,

A. considérant que 75 % de la population zimbabwéenne, à savoir quelque 9 millions de personnes, vivent actuellement sous le seuil de pauvreté et que le Programme alimentaire mondial n'a été en mesure de fournir une aide alimentaire que pour 1,6 millions de personnes en décembre 2004, du fait des actes d'ingérence du régime Mugabe,

B. considérant que ce même régime Mugabe s'abrite derrière la loi sur l'ordre public et la sécurité et d'autres mesures du même type et utilise d'autres dispositions législatives, répressives, telles que la loi sur les organisations non gouvernementales, qui viole les droits fondamentaux, comme la liberté d'association, pour renforcer son oppression politique,

C. considérant que l'un des cas qui suscitent une préoccupation toute particulière et exige des mesures d'urgence est celui du député de l'opposition Roy Bennett qui, pendant les cinq années qui ont suivi son élection, a été la cible d'une véritable campagne, haineuse, de persécutions de la part du régime Mugabe; considérant que Roy Bennett a été condamné le 28 octobre 2004 à douze mois d'emprisonnement et de travaux forcés sous de fausses inculpations et qu'il est pour l'instant détenu dans des conditions effroyables à Mutoko,

D. considérant que des élections générales sont prévues au Zimbabwe en mars 2005, mais que les projets de loi sur la commission électorale et sur les élections au Zimbabwe élaborés par le régime ne répondent pas aux normes requises de la Communauté de développement d'Afrique australe (CDA) régissant des élections libres et équitables,

E. considérant que le principal parti d'opposition, à savoir le MDC, ou Mouvement for Democratic Change (mouvement du changement démocratique), manifeste de la réticence à confirmer sa participation aux élections de mars 2005, tant que les conditions essentielles ne sont pas réunies pour garantir des élections libres et équitables,

F. considérant que le leader du MDC, Morgan Tsvangirai, qui a été victime d'actes d'intimidation systématiques des autorités zimbabwéennes, a fait de nouveau l'objet de tracasseries, lors de son retour récent au Zimbabwe de visites au Parlement européen et dans des capitales européennes et africaines,

G. considérant que des dissensions profondes se sont récemment fait jour au sein du parti au pouvoir, l'Union nationale africaine du Zimbabwe - Front patriotique (Zanu-PF),

1. insiste pour qu'il soit mis fin sans délai à toute ingérence politique dans la distribution de l'aide alimentaire internationale pour empêcher le gouvernement Zanu-PF de se servir de l'aide alimentaire comme d'une arme politique;

2. insiste sur la nécessité d'abroger une législation aussi répressive que la loi sur l'ordre public et la sécurité et de tenir les prochaines élections au Zimbabwe conformément aux principes et aux instructions de la CDA régissant des élections démocratiques, y compris ceux adoptés à l'île Maurice le 17 août 2004, qui établissaient le libre accès des observateurs internationaux et bannissaient les mesures d'intimidation contre les militants de l'opposition;

3. exige que le député Roy Bennett soit libéré sur le champ et qu'il soit mis fin à tous les actes de violence et d'intimidation perpétrés contre sa famille et ses employés;

4. invite les voisins du Zimbabwe, et en particulier le président d'Afrique du Sud Thabo Mbeki, qui s'est adressé récemment au Parlement européen, à s'engager, au nom du peuple du Zimbabwe, à obtenir des changements positifs et à garantir que le gouvernement du Zimbabwe coopérera pleinement avec la CDA et la communauté internationale plus large pour garantir des élections libres et équitables et une forte présence à ces élections, au moment voulu, d'observateurs internationaux;

5. se félicite des mesures prises par la Commission africaine des droits de l'homme et des peuples pour dénoncer les abus commis au Zimbabwe, et insiste pour que l'Union africaine continue à surveiller la situation qui règne au Zimbabwe, et à agir également, dans le domaine des droits de l'homme, des droits civils et de la politique menée, et poursuive ce processus de surveillance par les pairs dans toute l'Afrique;
6. demande à nouveau au Conseil et à la Commission de combler les lacunes qui entachent encore les sanctions ciblées imposées par l'Union européenne au régime Mugabe et de veiller à une mise en oeuvre stricte de ces sanctions; invite également le Conseil et la Commission à soutenir au maximum les efforts consentis au niveau international pour assurer la tenue d'élections libres et équitables au Zimbabwe, et en particulier à fournir une assistance technique pour les missions des observateurs locaux, régionaux et internationaux;
7. charge son Président de transmettre la présente résolution au Conseil, à la Commission, aux gouvernements des États membres, au gouvernement et au Parlement du Zimbabwe, au gouvernement et au Parlement d'Afrique du Sud, au secrétaire général des Nations unies, aux présidents de la Commission et du Conseil exécutif de l'Union africaine et au secrétaire général de la CDAA.

(1) Textes adoptés de cette date, P5_TA(2004)0033.

CFSP Statement

Declaration by the Presidency on behalf of the European Union concerning the recent events in Zimbabwe

Date of release : 07-06-2005

Policy area : General Affairs and External Relations

The European Union condemns the actions undertaken by the Zimbabwean Government in the framework of Operations Clean Sweep and Restore Order.

The brutal actions which have led to over 20 000 arrests and to the massive and arbitrary destruction of the dwellings and means of existence of the neediest urban populations are a blatant proof of the Zimbabwean Government's lack of concern for the well-being of the civilian population, especially in urban areas. Thousands of families have been left without shelter in the heart of winter, thereby further worsening the critical humanitarian situation in Zimbabwe.

These operations have resulted in the internal displacement of hundreds of thousands of people, while Zimbabweans are already suffering food shortages and the country is in the throes of a deep economic crisis.

The European Union appeals to the Zimbabwean Government to put an immediate end to this operation.

The European Union also urges the Zimbabwean Government to respect human rights and the rule of law and to implement policies aimed at easing the situation of the populations that are most in need.

CFSP Statement

Declaration by the Presidency on behalf of the European Union on the parliamentary elections held in Zimbabwe

Date of release : 04-04-2005

Policy area : General Affairs and External Relations

The European Union takes note of the parliamentary elections held in Zimbabwe on 31 March 2005. The European Union notes that it was not invited to observe the elections.

The European Union has duly noted Zimbabwe's commitment to complying with the SADC principles and guidelines governing democratic elections, as well as SADC's engagement in this context.

There were some improvements in the conduct of the elections compared with previous polls, and Zimbabwe has made some technical adjustments to the electoral framework in order to observe SADC's principles and guidelines.

However, the European Union is concerned by a number of serious shortcomings found in the Zimbabwean electoral system. It also expresses reservations about the environment in which the voting took place. These are in addition to more general and more worrying findings concerning the human rights situation.

This assessment and an examination of the application of international electoral practices and standards do not allow the European Union to conclude that the elections were free and fair.

The restoration of democracy and the rule of law, respect for human rights and the adoption of measures to deal with the urgent humanitarian needs of the population thus continue to be fundamental requirements in Zimbabwe.

The Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey and Croatia*, the Countries of the Stabilisation and Association Process and potential candidates Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro, and the EFTA countries Iceland, Liechtenstein and Norway, members of the European Economic Area, align themselves with this declaration".

* Croatia continues to be part of the Stabilisation and Association Process

Statement by the Luxembourg Presidency on behalf of the European Union regarding the Human Rights situation in Zimbabwe

Date of release : 23-03-2005

Policy area : General Affairs and External Relations

During its intervention, on 23 March 2005, under item 9 (country situations) of the agenda of Commission on Human Rights 61, the Luxembourg Presidency, on behalf of the European Union, made the following statement regarding the Human Rights situation in Zimbabwe :

"The European Union is greatly concerned by the serious human rights violations in Zimbabwe. Repressive legislation and its arbitrary enforcement have been used systematically to intimidate the people of Zimbabwe. Torture, arbitrary detention and violence are still very widespread. We urge the Government of Zimbabwe to re-instate democracy, to respect the rights of its citizens, to reform this repressive legislation, to stop using the militia, the army and the police to intimidate civilians and to abide by its international human rights commitments. We also call on the Government of Zimbabwe to ensure that parliamentary elections are held with due regard for international standards."

Déclaration PESC

Déclaration de la Présidence au nom de l'Union européenne concernant les récents événements au Zimbabwe

Date : le 7 juin 2005

L'Union européenne condamne les actions menées par le gouvernement zimbabwéen dans le cadre des opérations Clean Sweep et Restore Order.

Les interventions brutales qui ont entraîné plus de 20.000 arrestations ainsi que la destruction massive et arbitraire de logements et de moyens d'existence des populations urbaines les plus démunies constituent une preuve flagrante du manque de préoccupation du gouvernement zimbabwéen pour le bien-être de la population civile, en particulier en milieu urbain. Des milliers de familles se sont retrouvées sans abri en plein hiver, rendant encore plus dramatique la situation humanitaire critique au Zimbabwe.

Ces opérations ont entraîné le déplacement de centaines de milliers de personnes à l'intérieur du pays, tandis que le peuple zimbabwéen souffre déjà de pénuries alimentaires et d'une crise économique profonde.

L'Union européenne lance un appel au gouvernement zimbabwéen de mettre fin immédiatement à cette opération.

L'Union européenne exhorte également le gouvernement zimbabwéen à respecter les droits de l'homme et l'Etat de droit et à mettre en oeuvre des politiques visant à alléger la situation des populations les plus démunies.

Déclaration PESC

Déclaration de la Présidence au nom de l'Union sur le déroulement des élections au Zimbabwe

Date : le 5 avril 2005

L'Union européenne prend note des élections législatives qui se sont tenues au Zimbabwe le 31 mars 2005. L'Union européenne constate qu'elle n'a pas été invitée à observer les élections.

L'Union européenne a pris bonne note de l'engagement du Zimbabwe de se conformer aux principes et lignes directrices de la SADC sur les élections et de l'engagement de la SADC dans ce contexte.

Il y a eu, d'un côté, certaines améliorations dans le déroulement des élections par rapport aux scrutins précédents et le Zimbabwe a effectué un certain nombre de modifications techniques du cadre électoral afin de respecter les principes et lignes directrices de la SADC.

Néanmoins, l'Union européenne est préoccupée par une série de manquements graves constatés au niveau du système électoral zimbabwéen. L'Union européenne exprime en outre des réserves en ce qui concerne l'environnement dans lequel le scrutin s'est déroulé. Ces constats s'ajoutent à ceux plus généraux et plus préoccupants concernant la situation des droits de l'homme.

Cette évaluation et l'examen de l'application des normes et standards internationaux en la matière ne permettent pas à l'UE de conclure que les élections aient été libres et démocratiques.

Le rétablissement de la démocratie et de l'Etat de droit, le respect des droits de l'homme, et l'adoption de mesures répondant aux besoins humanitaires urgents de la population restent donc des exigences primordiales au Zimbabwe.

La Bulgarie et la Roumanie, pays adhérents, la Turquie et la Croatie*, pays candidats, l'Albanie, l'ancienne République yougoslave de Macédoine, la Bosnie-Herzégovine, et la Serbie-Monténégro, pays du processus de stabilisation et d'association et candidats potentiels, ainsi que l'Islande, le Liechtenstein et la Norvège, pays de l'AELE membres de l'Espace économique européen, se rallient à la présente déclaration.

* La Croatie continue à participer au processus de stabilisation et d'association.

Déclaration PESC

Déclaration de la Présidence au nom de l'Union européenne sur la situation des Droits de l'Homme au Zimbabwe

Date : le 24 mars 2005

Durant son intervention, le 23 mars 2005, sous le point 9 (situation par pays de l'ordre du jour de la CDH 61 à Genève, la Présidence luxembourgeoise, s'exprimant au nom de l'Union européenne, a fait la déclaration suivante s'agissant de la situation des Droits de l'Homme au Zimbabwe :

« L'Union européenne se montre fortement préoccupée par les violations graves des droits de l'homme au Zimbabwe. Une législation répressive et son application arbitraire ont été utilisées systématiquement comme moyens d'intimidation contre la population du Zimbabwe. La pratique de la torture, les détentions arbitraires et la violence restent très répandues. Nous demandons instamment au gouvernement du Zimbabwe de rétablir la démocratie, de respecter les droits de ses citoyens, de réformer cette législation répressive, d'arrêter l'utilisation des milices, de l'armée et de la police pour intimider les civils et de respecter ses obligations internationales en matière de droits de l'homme. Nous demandons également au gouvernement du Zimbabwe d'assurer que les élections parlementaires se déroulent en plein respect des standards internationaux. »

(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL COMMON POSITION 2004/161/CFSP
of 19 February 2004
renewing restrictive measures against Zimbabwe

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Whereas:

- (1) Pursuant to Common Position 2002/145/CFSP⁽¹⁾ the Council imposed a prohibition on the supply of arms and related materiel, on the provision of related technical training or assistance and on the supply of equipment that might be used for internal repression to Zimbabwe.
- (2) Pursuant to Common Position 2002/145/CFSP the Council also imposed a travel ban and a freezing of funds on the Government of Zimbabwe and persons who bear a wide responsibility for serious violations of human rights and of the freedom of opinion, of association and of peaceful assembly.
- (3) Common Position 2002/145/CFSP was amended by Common Position 2002/600/CFSP⁽²⁾ by extending these restrictive measures to further persons who bear a wide responsibility for such violations.
- (4) The list of persons subject to the restrictive measures annexed to Common Position 2002/145/CFSP was updated and replaced by Council Decision 2002/754/CFSP⁽³⁾ following a government reshuffle in Zimbabwe.
- (5) Common Position 2002/145/CFSP was further amended and extended by Common Position 2003/115/CFSP⁽⁴⁾, which expires on 20 February 2004.
- (6) In view of the continued deterioration in the human rights situation in Zimbabwe, the restrictive measures adopted by the European Union should be renewed for a further 12 months.
- (7) The objective of these restrictive measures is to encourage the persons targeted to reject policies that lead to the suppression of human rights, of the freedom of expression and of good governance.

- (8) The list of persons subject to restrictive measures annexed to Common Position 2002/145/CFSP, as amended and replaced, should be updated.
- (9) Action by the Community is needed in order to implement certain measures,

HAS ADOPTED THIS COMMON POSITION:

Article 1

For the purposes of this Common Position, the term 'technical assistance' shall mean any technical support related to repairs, development, manufacture, assembly, testing, maintenance or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance includes verbal forms of assistance.

Article 2

1. The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, to Zimbabwe by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories.

2. It shall be prohibited:

- (a) to grant, sell, supply or transfer technical assistance, brokering services and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, directly or indirectly to any person, entity or body in or for use in Zimbabwe;

⁽¹⁾ OJ L 50, 21.2.2002, p. 1.

⁽²⁾ OJ L 195, 24.7.2002, p. 1.

⁽³⁾ OJ L 247, 14.9.2002, p. 56.

⁽⁴⁾ OJ L 46, 20.2.2003, p. 30.

- (b) to provide financing or financial assistance related to military activities, including, in particular, grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, as well as equipment which might be used for internal repression, directly or indirectly to any person, entity or body in or for use in Zimbabwe.

Article 3

1. Article 2 shall not apply to:

- (a) the sale, supply, transfer or export of non-lethal military equipment or of equipment which might be used for internal repression, intended solely for humanitarian or protective use, or for institution-building programmes of the UN, the EU and the Community, or of materiel intended for EU and UN crisis-management operations;
- (b) the provision of financing and financial assistance related to such equipment;
- (c) the provision of technical assistance related to such equipment,

on condition that such exports have been approved in advance by the relevant competent authority.

2. Article 2 shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Zimbabwe by United Nations personnel, personnel of the EU, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only.

Article 4

1. Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the natural persons listed in the Annex, who are engaged in activities that seriously undermine democracy, respect for human rights and the rule of law in Zimbabwe.

2. Paragraph 1 will not oblige a Member State to refuse its own nationals entry into its territory.

3. Paragraph 1 shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:

- (a) as a host country of an international intergovernmental organisation;
- (b) as a host country to an international conference convened by, or under the auspices of, the United Nations; or
- (c) under a multilateral agreement conferring privileges and immunities.

The Council shall be duly informed in each of these cases.

4. Paragraph 3 shall be considered as applying also in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).

5. Member States may grant exemptions from the measures imposed in paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings, including those promoted by the European Union, where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in Zimbabwe.

6. A Member State wishing to grant exemptions referred to in paragraph 5 shall notify the Council in writing. The exemption will be deemed to be granted unless one or more of the Council Members raises an objection in writing within 48 hours of receiving notification of the proposed exemption. In the event that one or more of the Council members raises an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.

7. In cases where, pursuant to paragraphs 3, 4, 5 and 6, a Member State authorises the entry into, or transit through, its territory of persons listed in the Annex, the authorisation shall be limited to the purpose for which it is given and to the persons concerned thereby.

Article 5

1. All funds and economic resources belonging to individual members of the Government of Zimbabwe and to any natural or legal persons, entities or bodies associated with them as listed in the Annex shall be frozen.

2. No funds or economic resources shall be made available directly or indirectly to or for the benefit of natural or legal persons, entities or bodies listed in the Annex.

3. Exemptions may be made for funds or economic resources which are:

- (a) necessary for basic expenses, including payments for food-stuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums and public utility charges;
- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services;
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources;
- (d) necessary for extraordinary expenses.

4. Paragraph 2 shall not apply to the addition to frozen accounts of:

- (a) interest or other earnings on those accounts; or
- (b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to restrictive measures,

provided that any such interest, other earnings and payments continue to be subject to paragraph 1.

Article 6

The Council, acting upon a proposal by a Member State or the Commission, shall adopt modifications of the list contained in the Annex as required by political developments in Zimbabwe.

Article 7

In order to maximise the impact of the abovementioned measures, the European Union shall encourage third States to adopt restrictive measures similar to those contained in this Common Position.

Article 8

This Common Position shall take effect on the date of its adoption.

It shall apply as from 21 February 2004.

Article 9

This Common Position shall apply for a 12-month period. It shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.

Article 10

This Common Position shall be published in the *Official Journal of the European Union*.

Done at Brussels, 19 February 2004.

For the Council
The President
M. McDOWELL

(Actes adoptés en application du titre V du traité sur l'Union européenne)

**POSITION COMMUNE 2004/161/PESC DU CONSEIL
du 19 février 2004
renouvelant les mesures restrictives à l'encontre du Zimbabwe**

LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité sur l'Union européenne, et notamment son article 15,

considérant ce qui suit:

- (1) Par sa position commune 2002/145/PESC ⁽¹⁾, le Conseil a interdit la fourniture au Zimbabwe d'armements et de matériels connexes, d'une formation ou d'une assistance technique connexe et de tout équipement susceptible d'être utilisé pour des actions de répression interne.
- (2) Par sa position commune 2002/145/PESC, le Conseil a également imposé une interdiction de voyage et une mesure de gel des avoirs à l'encontre du gouvernement du Zimbabwe et de ceux qui sont largement responsables de graves atteintes aux droits de l'homme et à la liberté d'expression et d'association, ainsi qu'à la liberté de réunion pacifique.
- (3) La position commune 2002/145/PESC a été modifiée par la position commune 2002/600/PESC ⁽²⁾ qui étend ces mesures restrictives à d'autres personnes qui sont largement responsables de ces violations.
- (4) La liste des personnes faisant l'objet des mesures restrictives, qui figure à l'annexe de la position commune 2002/145/PESC, a été actualisée et remplacée par la décision 2002/754/PESC du Conseil ⁽³⁾ à la suite d'un remaniement gouvernemental intervenu au Zimbabwe.
- (5) La position commune 2002/145/PESC a été de nouveau modifiée et prorogée par la position commune 2003/115/PESC ⁽⁴⁾ qui vient à expiration le 20 février 2004.
- (6) Eu égard à la dégradation persistante de la situation des droits de l'homme au Zimbabwe, il convient de reconduire les mesures restrictives adoptées par l'Union européenne pour une nouvelle période de douze mois.
- (7) Ces mesures restrictives visent à encourager les personnes qui en font l'objet à rejeter les politiques qui ont pour effet d'étouffer les droits de l'homme et la liberté d'expression et d'entraver la bonne gestion des affaires publiques.
- (8) Il convient d'actualiser la liste des personnes faisant l'objet de mesures restrictives qui figure à l'annexe de la position commune 2002/145/PESC, telle que modifiée et remplacée.
- (9) Une action de la Communauté est nécessaire afin de mettre en œuvre certaines mesures,

A ADOPTÉ LA PRÉSENTE POSITION COMMUNE:

Article premier

Aux fins de la présente position commune, on entend par «assistance technique», toute assistance technique en liaison avec la réparation, le développement, la fabrication, le montage, les essais, l'entretien ou tout autre service technique, et qui peut prendre les formes suivantes: instruction, conseils, formation, transmission des connaissances ou qualifications opérationnelles ou services de conseils; l'assistance technique inclut l'assistance par voie orale.

Article 2

1. Sont interdites la vente et la fourniture au Zimbabwe ainsi que le transfert et l'exportation à destination de ce pays, par les ressortissants des États membres ou depuis le territoire des États membres, ou au moyen de navires ou d'aéronefs de leur pavillon, d'armements et de matériels connexes de quelque type que ce soit, y compris des armes et des munitions, des véhicules et des équipements militaires, des équipements paramilitaires et des pièces détachées pour les susdits, ainsi que des équipements susceptibles d'être utilisés à des fins de répression à l'intérieur du pays, qu'ils proviennent ou non de leur territoire.
2. Il est interdit:
 - a) d'octroyer, de vendre, de fournir ou de transférer une assistance technique, des services de courtage et autres services liés aux activités militaires et à la livraison, la fabrication, l'entretien et l'utilisation d'armements et de matériels connexes de quelque type que ce soit, y compris les armes et les munitions, les véhicules et les équipements militaires, les équipements paramilitaires et les pièces détachées pour les susdits, ainsi que des équipements susceptibles d'être utilisés à des fins de répression à l'intérieur du pays, directement ou indirectement, à toute personne, entité ou organisme se trouvant sur le territoire du Zimbabwe ou aux fins d'une utilisation dans ce pays;

⁽¹⁾ JO L 50 du 21.2.2002, p. 1.

⁽²⁾ JO L 195 du 24.7.2002, p. 1.

⁽³⁾ JO L 247 du 14.9.2002, p. 56.

⁽⁴⁾ JO L 46 du 20.2.2003, p. 30.

- b) de fournir un financement ou une aide financière en rapport avec des activités militaires, en particulier des subventions, des prêts ou une assurance-crédit à l'exportation, à l'occasion de toute vente, toute fourniture, tout transfert ou toute exportation d'armes et de matériels connexes, ainsi que des équipements susceptibles d'être utilisés à des fins de répression à l'intérieur du pays, directement ou indirectement, à toute personne, toute entité ou tout organisme au Zimbabwe ou aux fins d'une utilisation dans ce pays.

Article 3

1. L'article 2 ne s'applique pas:

- a) à la vente, à la fourniture, au transfert ou à l'exportation de matériel militaire non létal, ainsi que des équipements susceptibles d'être utilisés à des fins de répression à l'intérieur du pays, destiné à des fins humanitaires ou de protection exclusivement, ou à des programmes des Nations unies, de l'Union européenne et de la Communauté concernant la mise en place des institutions, ou de matériel destiné aux opérations de gestion de crise de l'Union européenne et des Nations unies;
- b) à la fourniture d'un financement ou d'une aide financière en rapport avec ce matériel;
- c) à la fourniture d'une assistance technique en rapport avec ce matériel,

à condition que ces exportations aient été préalablement approuvées par l'autorité compétente concernée.

2. L'article 2 ne s'applique pas aux vêtements de protection, y compris les gilets pare-balles et les casques militaires, temporairement exportés au Zimbabwe pour leur usage personnel exclusivement, par le personnel des Nations unies, le personnel de l'Union européenne, de la Communauté ou de ses États membres, les représentants des médias, le personnel humanitaire, le personnel d'aide au développement et le personnel associé.

Article 4

1. Les États membres prennent les mesures nécessaires pour empêcher l'entrée ou le passage en transit sur leur territoire des personnes physiques énumérées à l'annexe dont les activités portent gravement atteinte à la démocratie, au respect des droits de l'homme et à l'État de droit au Zimbabwe.

2. Un État membre n'est pas tenu, aux termes du paragraphe 1, de refuser à ses propres ressortissants l'accès à son territoire.

3. Le paragraphe 1 s'applique sans préjudice des cas où un État membre est lié par une obligation de droit international, à savoir:

- a) en tant que pays hôte d'une organisation internationale intergouvernementale;
- b) en tant que pays hôte d'une conférence internationale convoquée par les Nations unies ou tenue sous leurs auspices;
- c) en vertu d'un accord multilatéral conférant des privilèges et immunités.

Le Conseil est dûment informé dans chacun de ces cas.

4. Le paragraphe 3 est considéré comme applicable également aux cas où un État membre est pays hôte de l'Organisation pour la sécurité et la coopération en Europe (OSCE).

5. Les États membres peuvent déroger aux mesures visées au paragraphe 1 lorsque le déplacement d'une personne se justifie pour des raisons humanitaires urgentes, ou lorsque la personne se déplace pour assister à des réunions intergouvernementales, y compris à des réunions dont l'initiative a été prise par l'Union européenne, lorsqu'il y est mené un dialogue politique visant directement à promouvoir la démocratie, les droits de l'homme et l'État de droit au Zimbabwe.

6. Tout État membre souhaitant accorder des dérogations au sens du paragraphe 5 en informe le Conseil par écrit. La dérogation est réputée accordée sauf si un ou plusieurs membres du Conseil s'y opposent par écrit dans les 48 heures qui suivent la réception de la communication en question. Si un ou plusieurs membres du Conseil s'y opposent, le Conseil, statuant à la majorité qualifiée, peut décider d'accorder la dérogation proposée.

7. Lorsque, en application des paragraphes 3, 4, 5 et 6, un État membre autorise des personnes visées à l'annexe à entrer ou à passer en transit sur son territoire, cette autorisation est limitée à l'objectif pour lequel elle est accordée et aux personnes qu'elle concerne.

Article 5

1. Tous les capitaux et ressources économiques appartenant à des membres du gouvernement du Zimbabwe et à toute personne physique ou morale, entité ou organisme qui leur sont associés et dont la liste figure à l'annexe sont gelés.

2. Nuls capitaux ou ressources économiques ne seront mis à disposition directement ou indirectement ou au profit de personnes physiques ou morales, ou d'entités ou d'organismes dont la liste figure à l'annexe.

3. Des dérogations peuvent être accordées pour les fonds ou les ressources économiques qui sont:

- a) nécessaires à des dépenses de base, y compris celles qui sont consacrées à des vivres, des loyers ou des remboursements de prêts hypothécaires, des médicaments et des frais médicaux, des impôts, des primes d'assurance et des services collectifs;
- b) destinés exclusivement au paiement d'honoraires professionnels raisonnables et au remboursement de dépenses correspondant à des services juridiques;
- c) destinés exclusivement au paiement de charges ou frais correspondant à la garde ou à la gestion courantes de fonds ou de ressources économiques gelés;
- d) nécessaires pour dépenses extraordinaires.

4. Le paragraphe 2 ne s'applique pas au versement, sur les comptes gelés:

- a) d'intérêts ou d'autres sommes dues au titre de ces comptes, ou
- b) de paiements dus au titre de contrats, accords ou obligations conclus ou contractés avant la date à laquelle ces comptes ont été soumis aux mesures restrictives,

à condition que ces intérêts, autres revenus et paiements continuent d'être soumis aux dispositions du paragraphe 1.

Article 6

Le Conseil, statuant sur proposition d'un État membre ou de la Commission, modifie la liste figurant à l'annexe si l'évolution de la situation politique au Zimbabwe le justifie.

Article 7

Pour que les mesures susmentionnées aient le plus grand impact possible, l'Union européenne encourage les États tiers à adopter des mesures restrictives analogues à celles qui sont exposées dans la présente position commune.

Article 8

La présente position commune prend effet le jour de son adoption.

Elle est applicable à compter du 21 février 2004.

Article 9

La présente position commune s'applique pour une période de douze mois. Elle est constamment réexaminée. Elle est renouvelée, ou modifiée le cas échéant, si le Conseil estime que ses objectifs n'ont pas été atteints.

Article 10

La présente position commune est publiée au *Journal officiel de l'Union européenne*.

Fait à Bruxelles, le 19 février 2004.

Par le Conseil

Le président

M. McDOWELL

SADC Election Observer Mission Preliminary Statement

Language versions: English Portugués

Posted by: Maclaud Mafaiti

SADC Election Observer Mission Preliminary Statement By The Hon. Phumzile Mlambo Ngcuka
On The Zimbabwe Parliamentary Elections Held On 31 March 2005

At the invitation of the government of the Republic of Zimbabwe, the Southern African Development Community (SADC) Elections Observers Mission (SOEM), observed the 6th Parliamentary Elections of the Republic of Zimbabwe from 15th March to 2nd April 2005. As provided for in the SADC Principles and Guidelines Governing Democratic Elections, it is my singular honor and privilege to seize this opportunity to announce to this august gathering the SADC's preliminary views on the outcome of its observation mission. A detailed report addressing specific items of the Terms of Reference (TORs) for the Mission shall be released within the next 30 (thirty) days.

Let me at the outset begin by extending on behalf of SADC and, indeed on my own behalf, congratulations to the people of Zimbabwe following the holding of a peaceful, credible, well managed and transparent elections. The people of the Zimbabwe have expressed their will in an impressively instructive manner that will go a long way in contributing to the consolidation of democracy and political stability not only in Zimbabwe but also in the region as whole. SADC wishes therefore, to commend the people of Zimbabwe for high levels of political tolerance and maturity displayed. This, in SADC's view, bodes well for nurturing a culture that tolerates multipartyism, as an essential building block for democracy.

The Mission was officially launched on 15 of March 2005 on the arrival of the leader of the Mission and the Executive Secretary of SADC. However, SADC had pre-election observers constituted by the Diplomatic Missions accredited to Zimbabwe. The following Member States were represented in the Mission: Angola, Botswana, DRC, Lesotho, Namibia, Malawi, Mozambique, United Republic of Tanzania, South Africa and Zambia.

The Mission set up an Operations Room staffed by professionals from the Office of the Chairperson of the Organ on Politics, Defence and Security Cooperation and the SADC Secretariat to coordinate the activities of the members deployed across the country.

Guided by the SADC Principles and Guidelines as its terms of reference, fifty-five observers were deployed throughout the length and breadth of Zimbabwe in both rural and urban areas to observe the elections. Field teams supported by a fleet of 16 all terrain vehicles, were deployed to Mashonaland West, Mashonaland East, Mashonaland Central, Bulawayo, Midlands, Matebeleland North, Matebeleland South, Masvingo, Manicaland and Harare from the 23rd March to 1st April 2005. The ongoing work of the SADC Ambassadors accredited in Harare laid the foundation for the election observer mission.

The Mission traveled extensively in the rural areas covering 95 percent of the total national constituencies and attended over 2000 meetings and political rallies organized by political parties and independent candidates. The leader of the Mission traveled to all corners of the country by road and by air visiting rural areas such as Mutoko in Mashonaland East, Shamva in Mashonaland Central, Odzi in Manicaland, Grate Zimbabwe in Masvingo and Gwanda in Matebeleland South. In general the pre-election phase was characterized by peace, tolerance and political vigor of the party leaders and candidates. No violence was observed countrywide except for few incidences, which were followed up and reported to police.

With regard to the polling process, it is SADC's overall view that the elections were conducted in an open, transparent and professional manner. The polling stations opened and closed at the appointed times and SADC was impressed by the orderliness and patience of voters, who we believe, were able to express their franchise peacefully, freely and unhindered. The picture that emerged at the close of poll was an election day, which was peaceful. This confirmed the determination of the people of Zimbabwe to do their best to implement the SADC Principle and Guidelines Governing democratic elections in the region.

The vote counting process was conducted meticulously and lawfully. It is worth noting that all stakeholders from party agents, monitors, presiding officers and local observers performed their duty as expected and no one could leave the room before the counting was finalized.

In the discharge of its duties the SADC Mission interacted with political parties and independent candidates. It also met with the African Union, the Election Commissions Forum of SADC Member States, national delegations, Civil Society organizations and opinion-makers, members of the media from within and beyond the region. These interactions served to gain an insight of the political environment and to compare notes on various aspects of the election process. SADC was humbled by compliments extended by the people of Zimbabwe wherever its members were present. SADC would like to thank all those who, in one way have been of assistance to the members of the Mission.

During the deployment, SADC Mission observed:

- High level of political maturity;
- Peaceful atmosphere in which supporters of different parties were sharing transport, interacted and joked at each other;
- Most members of the police were helpful;
- The use of Shona, Ndebele and English languages in the instructions for voting posted inside the voting booth ensured an informed decision;
- The use of translucent ballot boxes was a step forward in ensuring transparent voting process;
- SADC presence inspired confidence in the voters’
- Cooperation of election authorities and other institutions in providing clarifications for complaints;
- Learning and familiarization with the spirit and the letter of the SADC Principles and Guidelines;
- The police apprehended unlawful members of all political parties;

It is SADC’s greatest hope that the spirit of co-operation and political tolerance and responsible role of political parties, which prevailed thus far will continue to thrive amongst all parties and role players in the post election phase as part of reenergizing the momentum for nation building and reconciliation.

However, SADC Mission noted issues and areas that will require recasting and or improvement. These include:

- Improvement of equitable access to the state media by all political parties;
- The need to simplify the procedure and to ensure that authorizations for voters education are provided easily and timeously by the relevant institutions;
- The need for wide publication of updating and verification of voter’s roll;
- Need to ensure that all police and presiding officers are informed of the role and rights of observers; and
- Ensure that complaints are backed by sound and verifiable facts to facilitate follow up and fast decision-making;

SADC Mission was concerned with about the number of people who were turned away form polling stations. After consultations with ZEC and Registrar of Voters, the Mission was informed that most of them turned away because they did not have valid IDs, they did not check the voters roll within the stipulated period, did not register, or had gone to wrong constituencies. Notwithstanding these reasons it is the Mission’s view that the voters’ registration process requires improvement.

The Mission received 10 complaints from the opposition party alleging covert intimidations, use of food as political tool, delays in authorizing rallies, access to state media, lack of compliance with the SADC Guidelines, inflation voters roll and unlawful arrests. The mission followed up all the allegations with the relevant institutions and feedback was given to the complainant. It is a strongly recommended that, once all the facts have been gathered, they should be presented to the Electoral Court for determination. However, these complaints and allegations do not compromise the will of the people of Zimbabwe.

It is also the Mission’s view that, although there were efforts to ensure equitable access to the public media, there is still much to be done in this area to improve the access to the state media by the opposition. There were also concerns expressed by the opposition regarding the indelible ink and it is right that these should be examined by the relevant electoral authorities. An allegation of particular concern to the Mission was the reference to the use of food as an electoral tool, which the Mission was not in the position to confirm. This should be investigated further by the relevant authorities.

The Electoral Authorities of Zimbabwe displayed not only a professional discharge of duty but also a high sense of gender equity and youth representation in the election process. This effort deserves commendation and Zimbabwe should be encouraged to stay steadfast in this path.

Once again, SADC Mission congratulates the people of Zimbabwe for peaceful, transparent, credible, well-mannered elections, which reflects the will of the people. In line with the SADC Principles and Guidelines, Mission would like to urge all political parties and candidates to respect the will of the people and, any complaint should be pursued with the Electoral Court.

We would line to reiterate SADC’s commitment to continue supporting the people of Zimbabwe in National reconstruction and development efforts.

2nd April 2005

Issued on 3rd April

amnesty international

Zimbabwe

An assessment of human rights violations in the run-up to the March 2005 parliamentary elections

15 March 2005

Summary

AI Index: AFR 46/003/2005

Amnesty International has been monitoring the human rights environment in Zimbabwe as the country approaches the March parliamentary elections. The organization has observed persistent and systematic violations of human rights, perpetrated largely by the state and supporters of the ruling party against members and supporters of the political opposition. Amnesty International is concerned that these violations are compromising people's ability to participate freely in the forthcoming election.

The ability to exercise the rights to freedom of expression, association and assembly is fundamental to creating a climate in which all citizens can exercise their right to take part in the conduct of public affairs freely and without fear. Amnesty International believes that the Government of Zimbabwe is systematically violating these human rights. The Zimbabwe Republic Police are using the repressive Public Order and Security Act and arbitrary arrests to intimidate opposition supporters and, in the context of the current election campaign, to disrupt opposition campaigning activities. People's right to food is also being manipulated for political ends. Amnesty International has received numerous credible reports that members and supporters of the political opposition are being denied access to government-controlled grain in several areas of the country.

Although there have been significantly fewer reports of politically-motivated violence in the run-up to the March elections than was the case with past elections, Amnesty International is concerned by the pervasive climate of fear and threat that currently exists in Zimbabwe linked to the elections. Numerous human rights monitors and victims of past violence have expressed the view that the current reduction in violence is part of a government strategy to ensure the elections are free from overt political violence, while using implicit threats and non-violent tactics to intimidate opposition supporters.

The atmosphere of fear and intimidation is fuelled by a history of impunity for state and state-sponsored perpetrators of human rights violations. Over the past five years thousands of people have been victimised because of their support for the main political opposition party, the Movement for Democratic Change (MDC). Following elections in 2000 and 2002 people believed to have voted for the MDC were subjected to acts of reprisal, including eviction,

assault and denial of access to food. In the majority of cases that Amnesty International has investigated victims have been unable to access justice or gain relief. Such impunity sends a clear message to perpetrators and victims alike: that the state sanctions human rights violations against opposition supporters.

As a consequence of persistent, long-term and systematic violations of human rights and the government's repeated and deliberate failure to bring to justice those who commit serious human rights violations, Amnesty International does not believe that all Zimbabweans are currently able to participate in the election process freely and without fear.

This briefing paper is being sent to election monitors for information, and contains recommendations for monitoring the human rights environment before, during and after the elections.

This report summarizes a nine-page document (3,409 words), Zimbabwe: An assessment of human rights violations in the run-up to the 31 March 2005 parliamentary elections (AI Index: AFR 46/003/2005) issued by Amnesty International in March 2005. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email: http://www.amnesty.org/email/email_updates.html

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM



UNITED NATIONS

Press Release

XXXXXXXXXXXX **ALLEGED MASS FORCED EVICTIONS IN ZIMBABWE** XXXXXXXXXXXX
COULD CONSTITUTE GROSS RIGHTS VIOLATION,
HUMAN RIGHTS EXPERT SAYS

3 June 2005

The following statement was issued today by Miloon Kothari, Special Rapporteur of the United Nations Commission on Human Rights on the right to adequate housing as a component of the right to an adequate standard of living:

The Special Rapporteur on adequate housing today addressed an urgent appeal to the Minister of Foreign Affairs of Zimbabwe urging the Government to immediately halt the mass forced evictions reportedly taking place in the country.

The Special Rapporteur reminded the Zimbabwean authorities of their obligations under the International Covenant on Economic, Social and Cultural Rights, which the country ratified in 1991.

He drew attention in particular to General Comments no. 4 (1991) and no. 7 (1997) of the United Nations Committee on Economic, Social and Cultural Rights, which state that "forced evictions are *prima facie* incompatible with the provisions of the Covenant and can only be carried out under specific circumstances", imposing certain requirements which State parties to the Covenant must respect, including the need for States to take the following steps:

- First, States must ensure, prior to carrying out any eviction, that all feasible alternatives are explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force;
- Second, legal remedies or procedures should be provided to those who are affected by eviction orders, along with adequate compensation for any property affected, both personal and real;
- Third, in those cases where evictions are considered justified, they should be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with the general principles of reasonableness and proportionality.
- Additionally, evictions should never result in rendering individuals homeless or vulnerable to the violations of other human rights. Governments must therefore ensure that adequate alternative housing or resettlement is available for all those affected before executing an eviction order.

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The Special Rapporteur further reminded the Government of Zimbabwe that United Nations Commission on Human Rights resolutions (for example, unanimously adopted resolution 1993/77) have clearly stated that "the practice of forced eviction constitutes a gross violation of human rights". Zimbabwe is a member of the Commission.

The Special Rapporteur urged the Government to reply to his appeal on an urgent basis, providing detailed information on the events and on the measures taken to ensure compliance with Zimbabwe's international law obligations under the human rights instruments it has ratified.

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POST-ELECTION ZIMBABWE: WHAT NEXT?

EXECUTIVE SUMMARY AND RECOMMENDATIONS

The 31 March 2005 parliamentary elections that confirmed the full control of President Robert Mugabe and his ZANU-PF government were neither free nor fair and disappointed those who hoped they might mark a turn away from the crisis that has dominated Zimbabwe's political life for the past five years. The post-election situation looks deceptively familiar. In fact, Mugabe's era is coming to an end, both the ruling party and the opposition Movement for Democratic Change (MDC) face existential challenges, and the international community needs to urgently rethink strategies and find new ways to maintain pressure for a peaceful democratic transition.

Mugabe and the ZANU-PF party used more sophisticated methods than previously but they manipulated the electoral process through a range of legal and extra-legal means to ensure that the election was basically decided well before the first voters reached the polls. With the addition of the 30 representatives Mugabe has the right to appoint, his party now holds 108 of the 150 parliamentary seats, comfortably above the two-thirds majority required to amend the constitution at will. ZANU-PF is expected to use that power to prepare a safe and honourable retirement for its 81-year-old leader, who has said he does not want to stand for re-election in 2008.

However, ZANU-PF is beset with factionalism, spurred by the desire of powerful figures to position themselves for the succession fight. A taste of the blood-letting was provided by a bitter party congress in December 2004, but the fact that the main factions substantially represent still unreconciled ethnic interests suggests that holding the party together may be difficult.

In the wake of another stolen election, the MDC must decide fundamental questions, including whether to adopt a more confrontational and extra-parliamentary opposition despite the prospect that any street action risks calling down the full repressive power of the security services. Leadership and party program issues are as much under review as tactics, and some old supporters are asking whether the party can and should survive in its present form.

The "quiet diplomacy" of South Africa, the single state with potentially the greatest influence on Zimbabwe, has failed, at least to the extent it sought to mediate a compromise end to the political stalemate, and the Zimbabwe opposition has indicated it no longer accepts Pretoria as an honest broker. The U.S. and the EU have not hesitated to speak frankly about the quality of the election -- unlike the African states and organisations that have praised it out of apparent reluctance to break solidarity with a one-time revolutionary hero -- but they are no nearer to finding a way to do more than symbolically protest the situation.

The one point on which broad consensus may be possible is that Mugabe needs to go, and quickly, in the interests of his country. That is probably the single most important step, though far from a sufficient one, that can begin to create conditions for a peaceful transition back to democracy

and a functioning economy. He cannot be taken at his word that he will leave in 2008, and that is a very long time to wait for a country suffering as much as Zimbabwe is. Regional and other international actors should push for a credible earlier date.

Mugabe's would-be successors within ZANU-PF know their country cannot afford indefinite isolation. In particular, the U.S., the EU and the international financial institutions should make it clear that there will be no end to targeted sanctions, no prospect of substantial aid, and no resumption of normal relations unless there are real changes, not only in the names at the top of government structures but in governance. Indeed, they should signal that in the absence of such changes, ZANU-PF leaders run the risk of stronger measures that may grow out of closer investigation of such policies as their misuse of food aid for political purposes and the general looting of the economy.

ZANU-PF is calling the just concluded election a fresh beginning. It is not. Economic meltdown, food insecurity, political repression and tensions over land and ethnicity are all ongoing facts of life that the election has not changed for the better in any way. But Zimbabwe's crisis is not frozen. In recent weeks, the government has arrested more than 30,000 small, informal traders in the major cities, allegedly to fight the black market but probably at least as much to head off a growing risk of spontaneous protests against economic privation. The ageing of the old and the conflicting ambitions of the would-be new ZANU-PF chieftains, as well as the growing frustration of what until now has been a remarkably non-violent opposition, ensure that change of some kind is coming soon. Unless Zimbabwe's friends get busy and get together, it is all too possible it will be violent and chaotic.

RECOMMENDATIONS

To the Zimbabwe Government and ZANU-PF:

- Issue an immediate appeal for food aid, and allow the unhindered delivery of humanitarian assistance, including by NGOs, with transparent distribution mechanisms.
- Set a date for the president's retirement before 2008 and initiate discussions with the international community and the opposition as to the parameters of an orderly transition, including the holding of new and joint presidential and parliamentary elections monitored by the UN.
- Demonstrate restraint in the exercise of the two-thirds parliamentary majority and the concomitant power to amend the constitution without regard to opposition views and launch a process of legislative revision or repeal designed to dismantle the restrictions on fundamental freedoms contained in such laws as the Public Order and Security Act (POSA), the Access to Information and Protection of Privacy Act (AIPPA), and the Private Voluntary Organisations Act (PVO).
- Conduct a comprehensive review of the electoral law in light of the experiences of the recent parliamentary election and specifically initiate a series of confidence building measures, including:
 - elimination of the presidential power to appoint 30 non-elected parliamentarians;
 - wider and fairer use of absentee ballots; and
 - clarification of responsibilities and removal of overlaps with respect to such bodies as the Zimbabwe Electoral Commission and the Election Supervisory Commission.
- Withdraw the NGO bill from parliamentary consideration in its current form.

To the MDC:

- Establish a clear party position on next steps and the best way to exert pressure on the government to speed a political transition, and specifically:

- revitalise strategic alliances and partnerships with civil society and other stakeholders;
- hold party elections in order to refresh leadership and renew party structures;
- concentrate on developing practical alternative programs on crucial issues affecting the daily lives of Zimbabweans including the deteriorating economy, food insecurity and human rights abuses; and
- rebuild external relations, especially with Southern African governments and the African Union.

To the South African Government:

- Acknowledge the insufficiency of its existing policy toward Zimbabwe and conduct a comprehensive review that:
 - takes into account diverse views from the left, right and centre inside South Africa;
 - includes clear estimates of the overall costs of the Zimbabwe situation to South Africa's economy and regional stature and democracy in the region; and
 - is directed at finding a more effective way to resolve Zimbabwe's political crisis and counteract its economic implosion.
- Give particular consideration in the course of this policy review to the following not mutually exclusive options:
 - working with the Commonwealth, especially its secretariat and office of the chairperson (currently held by Nigeria's President Obasanjo) to support comprehensive democratic reforms and to assess progress on governance and restoration of the rule of law; and
 - encouraging the G8 member countries to use their 6-8 July 2005 summit to send a clear message to Zimbabwe that neither major donors nor international financial organisations will give funds unless there is evident progress in re-instituting a regime based on the rule of law, good governance and respect for human rights.
- Use the chairmanships of the African Union's Peace and Security Council and the Southern African Development Community (SADC) organ on politics, defense and security to press President Mugabe to set a date for his early retirement, and the Zimbabwe government to undertake credible measures to ease the political crisis and facilitate economic recovery.

To the Southern African Development Community (SADC):

- Review its principles and guidelines governing democratic elections so that observation teams are independent, depoliticised and empowered to study all the elements required to ensure a free and fair election, including the absence of control of the media, selective and politically motivated prosecutions and law enforcement, intimidation, corruption, gerrymandering and control of voter rolls.
- Reach out to democratic forces in the region, including the opposition in Zimbabwe.

To the Nigerian Government:

- Use the chairmanships of the Commonwealth and the African Union to intensify pressure on the Zimbabwe government to embark on democratic reform and economic recovery.

To the African Union:

- Pursue implementation of the January 2005 Report of the Executive Council of the African Commission on Human and People's Rights calling for Zimbabwe to restore an impartial

judiciary and security forces, cease arbitrary arrests of political opponents and revise restrictive media and security legislation.

To the Wider International Community, Especially the United Nations, European Union and the United States:

- Seek unrestricted access for humanitarian aid in Zimbabwe and examine in a coordinated fashion whether the continued use of food as a political weapon in that country is sufficiently systematic, widespread, and focused on opposition supporters to warrant referral to the UN Security Council.
- Press President Mugabe to set a date for his retirement sooner than 2008 and initiate discussions with MDC and ZANU-PF officials about a credible transition process and the contours of a post-Mugabe government.
- Expand assistance to the democratic forces in Zimbabwe looking to promote a peaceful and speedy transition, and explore expanding the scope of targeted sanctions against senior individuals in and around the Zimbabwe government and ZANU-PF and the numbers and categories of persons affected.

Pretoria/Brussels, 7 June 2005



**TORTURE IN ZIMBABWE,
PAST AND PRESENT**

PREVENTION, PUNISHMENT, REPARATION?

A SURVEY OF LAW AND PRACTICE

JUNE 2005

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FOREWORD

The Redress Trust (REDRESS) is an international human rights organisation with a mandate to assist torture survivors to seek justice and other forms of reparation for the harm they have suffered. Its' national and international programmes are aimed at ensuring that the rights of torture survivors, whoever they are, and wherever they are located, are realised in practice. Over the past few years, we have produced a number of reports on the prevalence of torture in Zimbabwe and the prospects for Zimbabwean victims to obtain redress nationally and internationally. This Report is written to draw attention to the ongoing difficulties such victims face, given the impunity which perpetrators continue to enjoy. It is an update of a report produced by REDRESS in March 2003 as part of a survey of law and practice in thirty-one selected states and published on our website as the *Zimbabwe Country Report* along with the other countries surveyed. We believe it is important that all interested parties at the international, regional and national level be kept as fully informed as possible both of the reality of torture in Zimbabwe and the problems with which torture survivors and those working with them, especially human rights lawyers and other human rights defenders, have to deal. It is also a contribution to keeping the conscience of the world alive to the issues at stake in that troubled country.

It is in this context that this revised report draws attention to the manifold legal and institutional obstacles and problems which continue to face local, regional and international organisations and individuals, as well as governments, concerned about torture in Zimbabwe and the need for justice and reparations for its victims. Torture has been practiced in Zimbabwe for decades, both before and since independence in 1980, and remains an ever-present reality in Zimbabwe, as does the culture of impunity for perpetrators.

The crackdown on civil society continues unabated, manifested in the persecution of human rights defenders by an increasingly partisan police force. For survivors of gross and systematic human rights violations in Zimbabwe, including those who have been tortured, the future remains bleak. We believe, however, that the rights of all such survivors to justice and other forms of reparations must be upheld and championed, as must the fundamental right not to be tortured, and the fight against torture itself.

ACKNOWLEDGEMENTS AND COMMEMORATION

June 26th is the United Nations International Day in Support of Victims of Torture. This Survey acknowledges and commemorates victims of torture in Zimbabwe, keeping hope alive for reparation for their suffering, punishment for the perpetrators and the prevention of torture in Zimbabwe.

This Survey was researched and written by Kevin Laue and edited by Carla Ferstman and Rob Monro.

REDRESS is grateful to Amani Trust of Zimbabwe for its collaboration and support in the production of this Survey.

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the defendant is a resident (an *incola*) and the plaintiff is a non-resident (a *perigrinus*) the defendant can apply for an order that the plaintiff furnishes security for costs. Where the plaintiff is a resident and the defendant is not, and the cause of action arose within Zimbabwe, the High Court will have jurisdiction if there has been an attachment of the defendant's property or person to found jurisdiction. If both parties are non-residents (*perigrini*) there would need to be an additional jurisdictional fact as well.²¹⁶

B. Legal Action Against a Foreign State

The general rule is that foreign States are immune from the jurisdiction of Zimbabwe courts, but this is restrictive or partial immunity and not absolute immunity, that is, it does not apply to commercial matters or where the immunity has been waived.²¹⁷

C. Practice

No case is known in which a claim has been brought in Zimbabwe against an individual or a foreign State for damages in relation to torture or ill treatment committed outside of the country.

VII. CONCLUSION

For the last few years Zimbabwe civil society and international NGOs have played a central role in documenting and publicising nationally and internationally the ongoing gross and systematic human rights violations. They have also analysed the reasons for the violations and the fundamental structural and other weaknesses in the legal system, the body politic and the institutions of Government and administration generally, and they have proposed solutions and reforms. The current crisis itself in part grew out of civil society's efforts to galvanize Zimbabweans into challenging Zanu-PF's abuse of the Constitution.²¹⁸

While the current political impasse continues there appears to be little prospect of breaking the cycle of human rights violations, and even when it is eventually broken, there will be an urgent need for radical reforms in many areas. One institution which requires specific attention is the Zimbabwe Republic Police (ZRP). More will be needed than rebuilding the professionalism and reversing the 'Zanunisation' of the ZRP. The fact is that the ZRP, as did the pre-Independence police force from which it developed, has always routinely resorted to brutality and torture to a greater or lesser extent in the course of ordinary policing, and not only during the maintenance of 'law and order' at critical political stages in the country's history, such as at present. Until and unless this problem is acknowledged and resolutely challenged, the scourge of torture and other violations at the hands of

²¹⁶ In delict it might be that medical expenses were incurred in Zimbabwe, or future loss of earnings, even though the cause of action arose outside of the country. As to which system of private international law (choice of law) would be applied it would probably be *lex loci delicti*. CF Forsyth, *Private International Law*, 3rd Ed., Juta & Co 1996, p. 316.

²¹⁷ *Barker McCormac v Government of Kenya* 1983 (2) ZLR 72 (S).

²¹⁸ From the mid-90s civil society organisations began to work with the Zimbabwe Congress of Trade Unions (ZCTU) to campaign for a new Constitution which would entrench human rights and curtail presidential power. Out of this alliance grew the National Constitutional Assembly (NCA), to oppose the Government's Constitutional Referendum, and later the MDC itself.

TORTURE IN ZIMBABWE, PAST AND PRESENT

state officials will continue. In this Zimbabwe is not unique. Other countries have faced this issue of how to police the police, and how to safeguard those in custody from unlawful abuse.

One of the basic problems is the inherent difficulty in relying on any institution to monitor itself, and the tendency in a service organisation (be it the police, the army or the prison service) to close ranks and to cover-up violations. But this tendency is not restricted to service organizations, and is particularly prevalent in hierarchical bodies where it is difficult for junior ranks to challenge the conduct of their seniors without themselves being victimized, along with a culture of patronage and the avoidance of responsibility which leads seniors to condone or even encourage the criminal behaviour of their juniors. In addition to extensive efforts to properly train police officers not only in policing skills but in human rights norms, what is needed is an *independent* authority to investigate and deal with allegations of unlawful activity, including torture and 'police brutality.' Any such organ, as with a Truth, Justice and Reconciliation Commission, will only be effective if it is genuinely independent, properly staffed and adequately financed. Creating such a body on paper and through legislation is one thing, but making it work is another, and requires the political will and support of the Government of the day.

As with the ZRP, so with the Zimbabwe Prison Service and the treatment of prisoners generally. The jails are the scenes of on-going serious human rights abuses.²¹⁹ There are appalling conditions of gross overcrowding, lack of proper food, medical care and hygiene, and overall neglect, which singly and combined constitute cruel, inhuman and degrading treatment. Part of the reason lies in Zimbabwe's catastrophic economic decline and endemic corruption: prisoners are entirely marginalized and at the mercy of their custodians, and in the current political climate they are subject to even greater degrees of brutality, extortion and abuse than 'normal.' Even at the best of times Zimbabwe's prisons barely comply with minimum international standards. In the past some local NGOs have attempted to work with the authorities to inculcate prison officers with at least a basic understanding of human rights norms, as well as trying to inform prisoners of their (theoretical) legal rights. These modest attempts have long since been abandoned given Zanu-PF's concerted and consistent attacks on all aspects of civil society, and the bridges will have to be re-built. However, more needs to be done, and again an *independent* authority should be established to concentrate on protecting prisoners from gross ill treatment.

A Human Rights Commission (HRC) could be an important instrument to protect citizens against future violations, and was proposed in the 1999 draft Constitution prepared by the National Constitutional Assembly (NCA). Once more, whether a HRC will actually achieve the worthy aims which it undoubtedly ought to will depend

²¹⁹ See for example the report posted on the ZWNEWS website on 6 February 2004: <http://www.zwnews.com/issuefull.cfm?ArticleID=8581> Under the heading "Overcrowding leads to prison crisis," it chronicled how jails designed for 16,600 have overshot that figure by more than 8,000 according to justice ministry officials. Prisoners take turns to sleep. The sheer number of deaths from infectious diseases has lead prison authorities to introduce a daily five-minute programme on national radio appealing for relatives to collect the bodies of the deceased. Critical food shortages mean inmates get maize porridge seasoned with salt for breakfast, and boiled cabbage for lunch and supper. The brutality of prison officers was revealed in a recent report presented to the justice ministry by a parliamentary committee. The large number of MDC leaders arrested and detained for various lengths of time in recent years has also revealed eye-witness accounts of appalling conditions for those awaiting trial, or who are incarcerated pending bail hearings.

not only on the clarity and width of its remit but on the commitment of the Government to genuinely support such an organ. Creating such a body (and other human rights organs) through legislation should not be particularly irksome or even controversial, but if they then become sinecures for political cronies, they will be nothing but a waste of money. This is what has happened with the office of the Ombudsman which, if it is not abolished altogether, needs to be entirely overhauled. In addition, to be effective and impartial such institutions must have the political and financial support and cooperation of the Government without political interference from it. In a democracy these independent bodies are accountable to parliament and not to the executive.

The future protection of human rights and in particular the implementation of effective remedies for victims of violations, will necessitate the creation of new bodies as well as the strengthening and rebuilding of existing machinery. The country's economic collapse, widespread corruption, emigration of skilled officials, public service demoralization, and the abandonment of the rule of law, have all gravely undermined the administration of justice in recent years. This has created tremendous practical problems which will need to be tackled in parallel with the introduction of new innovative mechanisms such as a HRC, police complaints body and so on. The role of civil society should be to participate vigorously in all the necessary processes of assessment and consultation preceding the creation of these, and to keep them firmly on the agenda. A lot can be learned from regional and international developments in regard to institutional safeguards to help prevent the recurrence of human rights violations.

Some scholars in the field of reparation for victims of gross and systematic human rights violations have argued that judicial fora and the law ought not to necessarily dominate discussions for reparation in the context of political transition. The widely-used term 'transitional justice' is so clearly part of actual political processes that reparation can be considered partly as a matter of politics,²²⁰ and calls are made for a more socio-political approach to the problem of finding measures to deal with large numbers of victims – measures which other countries have found do not simply or easily fit into traditional court procedures. Dealing with past abuses undoubtedly requires multi-faceted, combined, holistic or hybrid solutions, some of which this paper has sought to examine. While recognizing, therefore, that law reform in itself is only *part* of what will be needed, it should still be of particular concern to civil society. An obvious issue is the startling lack of confluence between aspects of Zimbabwe's domestic law and developments in the international arena. To a considerable extent this specialized topic calls for input from both local and outside experts.

A stark example is that one of the most widespread of human rights abuses, namely torture, is not even a criminal offence *per se* in Zimbabwe. For years civil society has been calling upon the Zanu-PF Government to sign and ratify the 1984 UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its refusal to do so for over two decades speaks volumes on the nature of the Mugabe regime in general and its successive Ministers of Justice in particular. Civil society must make it an urgent priority for Government not only to make Zimbabwe a party to the Convention but thereafter to speedily bring domestic

²²⁰ A helpful publication which develops these ideas is the *Expert Seminar on Reparation for Victims of Gross and Systematic Human Rights Violations in the Context of Political Transitions* (Universiteit Antwerpen and Katholieke Universiteit Leuven, 2002).

TORTURE IN ZIMBABWE, PAST AND PRESENT

legislation into line with it. Torture must be made a specific statutory crime in Zimbabwe with appropriately severe punishment for convicted perpetrators, and the numerous other legislative and administrative reforms required under the Convention must be implemented.

This is but one of a number of fundamental international human rights treaties, and their Optional Protocols, which the present Government has completely and deliberately ignored since Independence in 1980. Even where treaties have been entered into their monitoring and reporting requirements which the Government is obligated to comply with have more often than not been neglected, distorted or dealt with years too late.

It is also apparent how limited the 'traditional' remedy of civil damages is to the problems arising from gross and systematic violations. This is not to say of course that individual civil proceedings are irrelevant – their potential must be included in any reparation programme – but even at the best of times it is a slow and expensive route. When one is dealing with large numbers of victims and many perpetrators, all the 'ordinary' hazards of litigation are multiplied a hundredfold, including the problems caused by statutes of limitations or prescription. Judicially-based compensation is important, but inherently problematic. In periods of economic chaos and hyper-inflation such as presently being suffered in Zimbabwe the claiming and payment of civil damages can become an almost meaningless exercise. Another issue which has been mentioned already and which relates to the weakness of litigation damages is the difficulty in suing perpetrators when the state has taken deliberate steps to disguise its identity.

Zimbabwe human rights defenders face a dangerous and difficult task in challenging and criticising the Zimbabwe Government over its human rights record. Many have been, and continue to be, intimidated and persecuted, including imprisonment, assault and torture. It says much for their courage and resilience that they continue to document, defend and heal to the best of their abilities, and remain steadfast in their pursuit of justice and peace.

Item 7 on the agenda of the African Commission on Human and Peoples' Rights 37th Ordinary Session.

Statements by NGOs on the Situation of Human Rights in Africa with reference to Zimbabwe

by the Zimbabwe Human Rights NGO Forum which has observer status

We thank Madame Chair and the Commission for this opportunity. We note and welcome the adoption of the Report of the Fact-Finding Mission to Zimbabwe in 2002. In its report the Commission raised a number of issues and recommendations to the Zimbabwean government which are pertinent. We regret that these have neither been recognized nor realized by the State. In particular:

1. Creating an environment conducive to democracy and human rights

Government has failed to repeal repressive legislation as recommended by the Commission. Instead the legislature has passed additional laws which are inimical to fundamental rights and freedoms, including the Non-Governmental Organisations Act, which seeks to criminalize the activities of human rights organisations. Statutes such as the Access to Information and Protection of Privacy Act and the Public Order and Security Act remain in force and continue to be selectively applied, specifically targeting human rights defenders. Although the President has not signed the NGO Bill, it has been referred back to Parliament and we have noted an increasing enforcement of the largely dormant Private Voluntary Organisations Act, which is very similar in content and pervasive in its effect to the NGO Bill. The Commission had noticed this threat and recommended that the PVO Act be repealed, but regrettably the government has ignored this recommendation. Thus NGOs continue to face persecution and harassment.

2. Independent National Institutions

The government has failed to reform and strengthen the Office of the Ombudsman. It therefore remains ineffective. The Zimbabwe Electoral Commission was set up in February 2005, purporting to be an independent body in conformity with AU and SADC Principles governing democratic elections. However its activities compete with those of the Electoral Supervisory Commission and the provisions of its enabling legislation allow for undue interference by the President and the Minister of Justice and therefore the issue of its impartiality remains a concern.

3. The Independence of the Judiciary

Government continues to interfere with the functions of the judiciary through executive manipulation, unwarranted attacks on judicial officers who deliver judgments which are perceived to be contrary to state policies, and deliberate non-enforcement of court orders. Examples include the Associated Newspapers of Zimbabwe case, and eight court orders in favour of a former opposition Member of Parliament. The judiciary itself has contributed to a view of partiality by delaying the setting down of sensitive matters as well as the delivery of judgments. Politicisation of the judiciary has been perpetuated with the appointment of judges perceived to be advancing the interests of government in the newly-established Electoral Court.

4. A Professional Police Service

The Commission recommended that certain unlawful activities of the Law and Order Section of the Zimbabwe Republic Police, which acts under political instructions, be disbanded. We regret that this has been ignored and the force continues to unfairly target human rights defenders and members of the opposition, restricting their lawful activities. Likewise, the youth training camps and militias continue to operate and act as tools of the ruling party, especially during pre-election periods.

5. The Media

We regret that repressive media legislation continues to be enforced to the detriment of the media profession and society at large. Since September 2003 the State has closed down four privately-owned newspapers. It has failed to free the airwaves to alternative voices. This has

impacted negatively on the availability of alternative information for the public, and has had a particularly adverse effect on the electorate in the run-up to the 2005 parliamentary elections.

6. Reporting Obligations to the African Commission

The Commission recommended that the government abide by its reporting obligations as required under Article 62 of the Charter. We would be encouraged if the government could provide information as to the steps taken to implement this recommendation of the Commission, as these are not at present apparent.

Conclusion

The previous elections were held under these conditions and the outcome did not reflect international norms and standards that are contained in the Charter and the relevant pronouncements by this Commission, in particular the Resolution on Electoral Process and Participatory Governance adopted by the Commission at its 19th Ordinary Session in Ouagadougou. That the government went on to hold the current elections without materially addressing the issues that were raised by the Commission indicates a lack of commitment to improving the human rights situation in Zimbabwe, and has materially affected the validity of the electoral process.

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The African Union should denounce serious human rights violations

http://www.fidh.org/article.php?id_article=2471
ZIMRIGHTS / FIDH

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The International Federation for Human Rights (FIDH) and its affiliate in Zimbabwe, the Zimbabwe Human Rights Association (Zimrights) condemn strongly the large-scale forced evictions and repression under "Operation Restore Order", conducted by Zimbabwean government, under the pretext of "cleaning up the country", for the past three weeks.

It is reported that more than 200,000 people have been forcibly evicted from their allegedly illegal homes in a violent crackdown on shanty towns throughout the country. It is also reported that evictions have been carried out unlawfully and with excessive force. This operation has resulted in the loss of livelihoods for hundreds of thousands who are already face a deep economic crisis and food shortage. Furthermore, more than 24,000 people have been arbitrarily arrested during the operation.

These actions constitute blatant violations of several human rights instruments ratified by Zimbabwe, including the International Covenant on Economic, Social and Cultural Rights which prohibits forced evictions (Article 11), and the African Charter on Human and People's Rights. The FIDH and Zimrights consider that this operation amounts to inhuman and degrading treatment which is prohibited by the International Covenant on Civil and Political Rights.

In that respect, the FIDH and Zimrights are concerned about the decision of the High court of Zimbabwe ruling that the evictions were justified by the fact that the residents had breached their lease agreements and had failed to construct structures with City Council approval. Regrettably, the Court did not address the fulfilment of the requirements of a spoliation order. This decision has now given judicial permission to the patently illegal conduct of the government by refusing to offer judicial protection to the victims of the forced evictions. Both organisations are therefore supporting the appeal lodged with the Supreme Court by the Zimbabwe Lawyers Human Rights notably raising the violation of rights as protected in the Declaration of Rights in the Constitution of Zimbabwe.

The FIDH and Zimrights have been denouncing for years the repression of political opponents and human rights defenders in Zimbabwe, as well as violations of economic and social rights directly resulting from the Zimbabwean government's policies.

The FIDH and Zimrights welcome the declaration of the Special Rapporteur on Housing Rights of June 3, as well as the Declaration of the European Union on June 6, 2005 condemning the actions undertaken by the Zimbabwean government.

Furthermore, the FIDH and Zimrights call on the African Union to condemn the Human Rights violations taking place in Zimbabwe and urge the Zimbabwean government to immediately halt the unlawful arrests and destruction and to provide assistance and legal protection to those displaced.

The FIDH and Zimrights are calling on the African Commission on Human and People's Rights not to hold its upcoming session in Zimbabwe.

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