

Petition on Zimbabwe from NGOs in Botswana

We the undersigned non-governmental organisations, civil society institutions and representatives of the sectors of the Botswana Council of NGOs (BOCONGO):

RECOGNISING that peace and stability is integral to development in the SADC region;

ACKNOWLEDGING that human rights is a key component of such peace and stability in the region;

RECALLING the UN and AU human rights instruments to which Zimbabwe has committed itself, as well as the principles of SADC enshrined in the Treaty which include the respect for human rights, democracy and the rule of law;

GREATLY CONCERNED about the human rights situation in Zimbabwe as reflected during the Zimbabwe Focus Seminar hosted by DITSHWANELO – The Botswana Centre for Human Rights on 4 August 2005; in particular, the violation of the rights to property, housing, freedom of movement, freedom of information, speech and expression and the freedom of the press and the erosion of democracy and the rule of law;

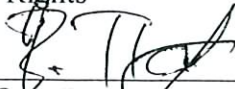
PETITION the SADC Heads of States and Governments to voice their opposition to the increasing violations of human rights and erosion of rule of law in Zimbabwe. In particular we call upon the SADC Heads of State and Government to address the following concerns:

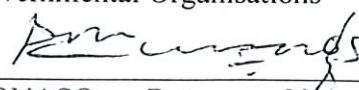
1. The pending Constitution of Zimbabwe Amendment (No. 17) Bill, 2005 which seeks to:
  - a. undermine democratic governance in Zimbabwe by removal of the no confidence vote, reorganisation of the Parliament of Zimbabwe and restriction on Parliament's ability to propose bills; and
  - b. unduly hamper the freedom of movement and property rights of Zimbabweans;
2. The Rule of Law in Zimbabwe which continues to be curtailed by a clear lack of judicial independence and by repressive legislation like POSA and AIPPA which place severe limitations on the freedom of information, speech, expression, assembly and movement and which places particularly harsh sanctions on the media; and
3. The repression of human rights defenders by use of unwarranted surveillance, intimidation, violence and torture by the Government of Zimbabwe in an effort to silence them.

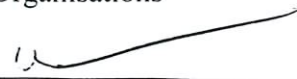
Please see attached details of the above-mentioned concerns.

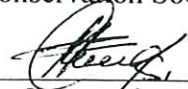
Gaborone, 12 August 2005

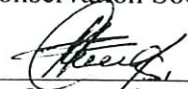
  
DITSHWANELO – The Botswana Centre  
for Human Rights

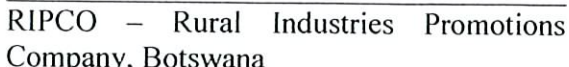
  
BOCONGO – Botswana Council of Non-  
governmental Organisations

  
BONASO – Botswana Network of AIDS  
Service Organisations

  
BONEPWA – Botswana Network for  
People with AIDS

  
Kalahari Conservation Society

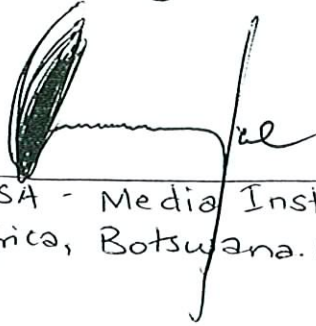
  
CORDE – Cooperation for Research and  
Development Education

  
RIPCO – Rural Industries Promotions  
Company, Botswana



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BOFESETE - Botswana Federation  
of Secondary School Teachers



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MISA - Media Institute of Southern  
Africa, Botswana Chapter

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WOMEN'S NGO COALITION

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BOTSWANA COUNCIL OF CHURCHES

## RECOMMENDATIONS FOR ACTION ON ZIMBABWE

### I. INTRODUCTION

DITSHWANELO – The Botswana Centre for Human Rights convened a Focus Seminar on Zimbabwe on 4 August 2005, which provided members of Zimbabwe’s civil society and churches with an opportunity to inform the meeting about their experiences in Zimbabwe and their views on the human rights situation in the country. The Seminar was attended by representatives of the Botswana Government, Diplomatic Missions to Botswana, Botswana civil society, churches and the media. The Focus Seminar raised many issues regarding human rights and the rule of law in Zimbabwe.

The ensuing discussion and the insights given by those with first hand experiences of the current crisis, have formed the basis of these recommendations. We note with concern the continuing breaches of human rights and the Zimbabwean government’s attempts to undermine the right to peaceful protest.

We, the undersigned Non-Governmental Organisations and Civil Society Institutions, wish to draw the attention of the leaders of the SADC Governments to their stated objectives for the SADC region. According to its own profile, the SADC countries have adopted a framework of cooperation based on the objectives of ‘democracy and good governance, respect for the rule of law, the guarantee of human rights, popular participation and the alleviation of poverty’ amongst others. Further, Article 2(2)(g) of the SADC Protocol on Politics, Defence and Security Cooperation sets out the objective of it’s members to ‘promote the development of democratic institutions and practices within the territories of State Parties and encourage the observance of Human Rights as provided for in the Charters and Conventions of the Organisation of African Unity and the United Nations’.

The following set out Zimbabwe’s grave violations of these SADC objectives and we urge the leaders of the SADC region to voice their opposition to their increasing violation by the Government.

### II. CONSTITUTION OF ZIMBABWE AMENDMENT (NO. 17) BILL, 2005

We the undersigned Non-Governmental Organisations and Civil Society Institutions call on all SADC leaders to condemn the Constitution of Zimbabwe Amendment (No. 17) Bill, 2005, which was passed by Parliament on 15 July 2005 and urge President Robert Mugabe not to sign it into law. This Bill calls for changes in the Constitution of Zimbabwe which violate the African Charter and the SADC Principles and Guidelines Governing Democratic Elections. This is perhaps one of the greatest challenges to the rule of law and the fundamental rights that the citizens of Zimbabwe have faced to date. It is a direct attack on the rights of the people and ignores the principle of popular

sovereignty. The objectionable provisions which the SADC leaders should be most concerned with include the following:-

**A. Removal of the Fundamental Rights to Property**  
(the Addition of Section 16B to the Constitution)

The proposed Section 16B to the Constitution of Zimbabwe provides that once the Government has identified any agricultural land it wishes to acquire for redistribution or “other purposes,” title to that land will vest in the Government 30 days after notice of its identification as such is published in the Government Gazette. Such land will revert to the Government without any compensation (except for improvements to the land) to the current titleholder. Any such seizure of land by the State under this provision cannot be reviewed by any court. This effectively prevents the judiciary from acting as a necessary check on actions of the Executive and again undermines the Rule of Law.

Confiscation of land without compensation by any Government violates all acceptable international standards regarding the deprivation of property and a lack of property security also threatens the spirit of the SADC Treaty, which seeks to promote economic development in the region.

**B. Restriction on the Freedom of Movement**  
(the Amendment of section 22 of the Constitution)

The Bill provides for the amendment of section 22 of the Constitution concerning the protection of the freedom of movement. The amendment would allow the Government to restrict the freedom of movement of persons who intend to depart Zimbabwe for the purpose of engaging in ‘terrorist’ training abroad. While the prevention of terrorism is a laudable goal, there is no definition of ‘terrorism’ in the Bill. As a result, the practical application of this provision could easily provide the Government of Zimbabwe with a way to keep critics of the Government from foreign travel. Even those who wish to train on human rights, transparency, or good governance activities could be prevented from doing so by a declaration from the State that these activities are in fact ‘terrorist’ training.

This amendment to the constitution does not accord with the provisions of the SADC Treaty, Article 5(2)(d), which sets out as an objective the development of policies aimed at “the progressive elimination of obstacles to the free movement of... all the people of the region generally among Member States.”

**C. Removal of the No Confidence Vote**  
(Amendment of section 31F of the Constitution)

This portion of the amendment Bill would remove the section of the Constitution that allows for Parliament to pass a vote of no confidence in the Government, thereby eliminating one of the crucial checks which the legislature has on Zimbabwe’s Executive.

This again is a grave violation of the SADC stated objective to promote democracy and good governance in the Southern African region.

**D. Reorganisation of the Parliament of Zimbabwe**

(Amendment to insert a new Section 34 (which was repealed in 1989) of the Constitution)

The Bill provides for the addition of a new Section 34(1)(d) to the Constitution, which grants the President the right to appoint six Senators. This is a flagrant infringement of the democratic principle that a Government derives its authority to govern directly from the people as demonstrated through elections that are conducted on the basis of universal suffrage via a secret ballot.

This is also a direct violation of the SADC Principles and Guidelines governing Democratic Elections, and the provisions of the African Charter to which Zimbabwe has bound itself.

**E. Restrictions on Parliament's Ability to Propose Bills**

(Amendments to "Schedule 4" Sections 40B and 51 of the Constitution)

This provision prohibits Parliament from "proceeding on" any Bill, motion, or amendment which includes provisions for imposing or increasing taxes, making or authorizing loans, or imposing or increasing any charges on public funds, unless recommended by a Vice-President, Minister, or Deputy Minister. This effectively removes all financial responsibilities from the Parliament, which is the direct representative of the people, and places them in the hands of the Executive Branch, once again undermining all basic democratic principles.

**III. THE RULE OF LAW IN ZIMBABWE**

We the undersigned Non-Governmental Organisations and Civil Society Institutions urge the Leaders of the SADC countries to further condemn violations of the rule of law which are currently occurring in Zimbabwe and insist that the Government of Zimbabwe respect the integrity, independence, and authority of the judiciary.

SADC countries have endorsed through their own stated objectives that the Rule of Law is to be respected and encouraged throughout the region.

**A. Respect for Court Orders**

In a country where the Government respects the rule of law, when a court produces an order, officials of that country are duty-bound to follow that court order. If the Government disagrees with the order, the Government is free to appeal to the proper

judicial authorities; it cannot ever disregard a court order out of hand. Unfortunately, there are increasing instances of the officials from the Government of Zimbabwe, usually police or other security officials, ignoring or contravening court orders often in direct collusion with the Executive Branch of Government. The following are but a few examples:

1. Operation Restore Order: The Porta Farm Case

Following the March 2005 elections, the Government of Zimbabwe began what it calls Operation Restore Order, in conjunction with Operation Murambatsvina (Clear the Rubbish), in which thousands of homes and business deemed to be 'illegal' have been demolished. In some instances these demolitions are occurring despite direct court orders that certain communities should not be touched. One such community, Porta Farm, about 45km outside Harare, was established as a Government-sanctioned residential camp. In 2004, Zimbabwe's High Court ruled that the residents of Porta Farm could not be evicted unless or until Government provided them with alternative housing. Despite this order, bulldozers began tearing down homes in Porta Farm on 29 June 2005. Lawyers for the residents were on site with copies of the court order. However, security officials are quoted as saying "we are not here to read court orders, we are here to enforce the law." Consequently, the entire community was razed to the ground.

Regardless of the merits of this programme, it is vital that the Zimbabwean Government and security forces conduct themselves in accordance with the law. At present, the law requires that occupants of homes set to be demolished are to be given 30 days notice prior to the actual demolition. Yet in most cases there is no notice at all. When it is given, notice is usually much less than the required 30 days.

SADC Governments are called upon to press the Government of Zimbabwe to respect the rule of law and the role of the judiciary, specifically with regard to "Operation Restore Order" after which hundreds of thousands of people have been left homeless. Such a state-run programme of destruction cannot reflect the SADC spirit of encouraging social and economic development.

2. Farm Invasions

The Zimbabwe Government's policy of land reform has also run foul of the judicial system and the rule of law. The following examples from the controversial programme illustrate how the Government continually ignores court orders in its attempt to redistribute farm land. The Government's systematic disregard of the judicial system is a blatant assault on the Constitution of Zimbabwe and the rules of natural justice. No matter how well-intentioned the Government's attempts to reallocate land in an attempt to redress the injustices of the colonial era may be, the methods that it has been using are abhorrent to the ideals of democratic governance.

a. The Roy Bennett Case

Beginning on 10 May 2000, during the initial stages of the Government's land reform program, supporters of the ruling party continually invaded the farm of opposition member of parliament Roy Bennett. In January 2002, the High Court issued the first of what would be seven court orders that either barred the State or state supporters from seizing Bennett's Charleswood Estate. Repeated harassment and invasions of the farm, often at the hands of police, occurred over the next two years. Ultimately, the Zimbabwean National Army and Police invaded the estate on 9 April 2004 forcibly evicting Bennett's family and the estate management.

b. Taking of Indigenous Land

Following the invasion of white-owned farms in Zimbabwe from 2000-2004, many of the people who had been squatting on these lands were granted certificates granting them Government permission to stay on the land. Despite this official permission, many of the Black Africans residing on these plots have also seen their homes destroyed under Operation Restore Order. Additionally, there are increasing reports that Black-owned farms are also being seized, usually those owned by people believed to not support the ruling party. If the policy of the land redistribution programme is to ensure that land unfairly taken by the colonial government is returned to Black Africans, this seems to contradict that programme.

**B. The Criminal Code**

Recent changes to the Criminal Code in Zimbabwe have also created situations that violate all notions of a fair system. Often, the fundamental freedoms of Zimbabweans have been set aside in the name of public safety, in order to deflect criticism of the Government.

We call upon the leaders of SADC Governments to endorse their stated SADC objectives which encourage democratic institutions, practices and human rights and then condemn their violation under the following laws of Zimbabwe:

1. Public Order and Security Act ("POSA")

The Public Order and Security Act places severe limitations on the rights and freedoms of speech, expression, assembly, and movement. It provides that "every person who or organisation or association which executes or assists in executing the arrangements for or promotes the holding of the public gathering," among other things, must have Government permission before holding a public gathering. Permission may be denied based on a "reasonable grounds for believing" that the gathering will result in public disorder, a breach of the peace, or and obstruction of any thoroughfare. This is effectively a prior restraint on public gatherings; people are being prevented from

exercising their freedoms of speech, expression, assembly, and movement based on what they *may* do, not what they have done. Furthermore, under section 26(3)(c) of the Act, the expression of the denial of permission for a public gathering may be “made orally” by a police officer at the gathering. This kind of subjective and arbitrary pronouncement of who may or may not be allowed to gather in public is, in effect, devoid of any kind of review or monitoring by a judicial authority.

Section 27 of the Act also allows Police districts to ban all public gatherings, at their discretion, for periods not to exceed three months, but gives no indication how often such a ban can be made.

Section 31 of the Act states that “Any person who, at a public gathering ... uses threatening, abusive, or insulting words” (emphasis added) intended to obstruct the “transaction of business for which the demonstration was called” is liable for a fine not to exceed \$50,000, a prison term not to exceed two years, or both. The fact that an ‘insult’ can deprive a person of his or her liberty for up to two years, coupled with the fact that Act does not specify who will deem whether or not the words were insulting, affords security forces undue powers of intimidation. As a result, virtually anyone who speaks at a public gathering runs the risk of being imprisoned, as anyone can claim to be insulted by his or her words. Moreover, Section 21 of the Act provides for imprisonment of up to two years for doing anything that risks opening a police officer to public ridicule. In practice, persons who make hand gestures, faces, or other bodily movements may find themselves in prison if they are deemed to be mocking the authorities.

## 2. The Access to Information and Protection of Privacy Act (“AIPPA”)

Clearly, in order to have a functioning democracy and a fair electoral process, there must be freedom of political expression. The electorate must have free access to information. The following examples demonstrate how the Government of Zimbabwe has stifled all political discourse by enforcing absolute control over the media in gross violation of all democratic principles.

Since its introduction in 2002, AIPPA has given the Government the ability to effectively close down the independent media, as demonstrated below:

### Restrictions on the Media

#### a) Compulsory registration of journalists.

Journalists must register with the Media and Information Commission, a state-run body, in order to obtain a licence. There is no transparency during this process and the granting of licences to journalists is therefore entirely controlled by the Government. As a result, no licences are ever granted to independent non-state journalists (including those from the international media) in Zimbabwe.



b) State control of Television, Radio and Newspapers

There is only one state-run television channel and radio station. All others have been banned. At least 5 newspapers have been closed down by the Government invoking the provisions of AIPPA and the offices of The Daily News and The Voice, have both been bombed. The opposition must request permission to use the Government's media and this is always refused.

c) Restriction of Freedom of Expression

To 'defame' a Government official is to risk imprisonment and a great many journalists have been arrested under the provisions of AIPPA. This effectively renders any political criticism or debate, a criminal activity thereby making the democratic process impossible.

#### **IV. REPRESSION OF HUMAN RIGHTS DEFENDERS**

We the undersigned Non-Governmental Organisations and Civil Society Institutions urge the leaders of the SADC countries to condemn the increasing use of unwarranted surveillance, intimidation, violence and torture by the Zimbabwean Government. This is being done to silence Human Rights Defenders in Zimbabwe. We demand an end to all such harassment and brutality.

We reiterate that under the SADC Treaty, member countries are to encourage the observance of Human Rights as provided for in the Charters and Conventions of the Organization of African Unity and the United Nations.

##### **A The use of repressive laws to legitimize harassment**

Freedom of expression, association and assembly are essential to those who seek to protect human rights.

- Amendments to the Criminal Code, such as POSA, and the Miscellaneous Offences Act have criminalized such freedoms in breach of Zimbabwe's own constitution, international human rights law and the African Charter on Human and Peoples' Rights.
- The Private Voluntary Organizations Act ("PVOA") is used as a tool of surveillance by the State and allows the State to be intrusive into the operations of non-governmental organisations. Since such organizations have become the target of much repression by the government and are increasingly unable to operate, this legislation has become a vehicle of governmental harassment and victimization.

- The Non-Governmental Organization Bill (“NGO Bill”) was introduced in 2004 and although passed by parliament, has yet to be made law. It would replace PVOA and would introduce specific provisions to curtail and criminalize the activities of Human Rights Defenders.
- The Government has attempted to introduce regulations to force telecommunications companies to channel all calls through Government systems in order to monitor them. This has been resisted successfully so far, but it is a further attempt to increase unwarranted surveillance by the Government and is a further violation of internationally accepted notions of human rights.

## **B The use of intimidation**

There are numerous instances of intimidation and harassment of Human Rights Defenders within Zimbabwe, and even outside the country when they attend and speak out at international Focus Seminars. Participants at the Focus Seminar convened by DITSHWANELO on the 4 August expressed concern for safety of the Zimbabwean panellists upon their return to Zimbabwe.

Arbitrary arrests of members of Human Rights groups are now commonplace following the enactment of POSA. Often those arrested are forced to remain in jail, without access to legal representation and are forced to pay fines to ensure their release. One such organization adversely affected by these repressive laws is ‘Women of Zimbabwe Arise’ (“WOZA”). Many members endure frequent arrests simply for attending peaceful public prayer meetings or demonstrations which criticize the Government, have been labeled ‘terrorists’ and are forced to live in constant fear of repression.

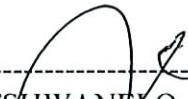
## **C The use of violence and torture**

There is a persistent and blatant climate of impunity for those who use violence and torture to punish and intimidate those who speak out against the Zimbabwean government. For example, on the 31 March 2005, the day of Zimbabwe’s parliamentary elections, 260 members of WOZA were arrested during a peaceful prayer vigil. Many had babies with them and were detained overnight. They were refused food and water and many were badly beaten. They were initially denied legal representation and none received medical treatment for their injuries.

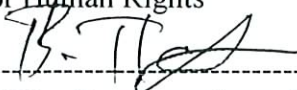
Amnesty International has monitored and documented numerous such cases of torture and has repeatedly reported gross violations of human rights by state agents in Zimbabwe. Such cases are rarely, if ever, investigated.

We now ask that you, the Leaders of the SADC region, take this opportunity to call upon the Zimbabwean government to be accountable to SADC for their flagrant and increasing Human Rights abuses, its insidious efforts to stifle democratic opposition and its persistent attempts to dismantle and persecute Zimbabwean civil society.

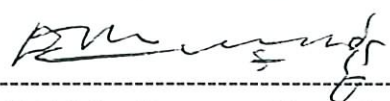
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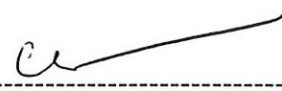
  
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