

**INDICATORS OF GOOD FAITH:
SUBMISSIONS ON BEHALF OF THE HUMAN RIGHTS SECTOR
IN ZIMBABWE ON CONSULTATIONS RELATING TO THE PROPOSED
ESTABLISHMENT OF A NATIONAL HUMAN RIGHTS COMMISSION**

Background to the proposed establishment of the Zimbabwe Human Rights Commission

- The proposed establishment of a National Human Rights Commission was announced without notice by the Minister of Justice, Legal & Parliamentary Affairs with no prior consultation amongst stakeholders, especially those in the legal and human rights sector, which have one of the strongest interests in the establishment of such an institution and its proper functioning.
- Minister Chinamasa made several public statements about the proposed Human Rights Commission, including during a presentation at the inaugural session of the UN Human Rights Council, in which he intimated that there was need for such a body to be set up due to the false accusations of state-instigated human rights violations by various human rights organizations working in Zimbabwe.
- Minister Chinamasa has already made it clear at a number of public *fora* in late 2006 that a Human Rights Commission will be set up by way of a further amendment of the Constitution of Zimbabwe and that the drafting of this amendment is already underway.
- The Government of Zimbabwe has also purported to indicate that the establishment of the Human Rights Commission is an implementation of its international obligations; more importantly an implementation of one of the recommendations of the fact-finding mission of the African Commission on Human and Peoples' Rights of 2002 (published in 2005).

Background to the UNDP-brokered consultations between the Government of Zimbabwe and the civil society

- The initial idea of the consultations was conveyed to civil society organizations (CSOs), including those in the legal and human rights sector through the UNDP. Although the programme appeared prescriptive and subject to the desires of the Government, concessions were made and work was undertaken to make the programme more inclusive of civil society and, more broadly, to capture areas of concern. However, the proposal “collapsed” and consultations first in Victoria Falls, and then in Bulawayo, were shelved.
- From there, the situation deteriorated. A date was unilaterally imposed, as agreed between the Government and the UNDP, and without consultation with CSOs. Key sectors and organizations were unable to attend for legitimate reasons, and requested an alternative date, as well as time to work on the programme. However, this request was declined. The meeting regrettably then went ahead in Kariba with a lack of true representation of civil society, and lack of consultation with all stakeholders. For example, the ZCTU, NCA, ZimRights, Law Society of Zimbabwe, women's and children's organizations, amongst others, were not involved as critical stakeholders and did not attend.

- In addition, the programme then unilaterally reverted to the initial programme, where civil society was given limited time during the two-day programme to express concerns and debate the serious issues affecting the people of Zimbabwe today.
- Further, the environment had changed markedly since the time the consultations were initially mooted:
 - The state had clamped down even more repressively on human rights defenders, arresting women human rights defenders, student activists, labour leaders and legitimate opposition political opponents;
 - Serious allegations of torture had been reported, even as the consultations were taking place, by the very officials who are mandated to protect the people of Zimbabwe;
 - Use of torturous methods and cruel, inhuman and degrading treatment had occurred and had been publicly supported by the Executive;
 - Deportations of trade union activists and other supporters of human rights defenders continued unabated;
 - The integrity of the legal profession and its self-regulation was put in the line of fire by government-appointed officials and officials from the office of the Executive through public attacks in the state-controlled media;
 - Forced evictions continued;
 - Court orders continued to be ignored;

The consultations in Kariba

- A report produced after the consultations indicated that:
 - **There was a commitment by the Government and civil society that there should be more dialogue to improve GoZ-CSO relationship and creating an enabling environment for the protection and promotion of human rights;**
 - **Agreement was reached to expand dialogue process between GoZ and CSOs by involving more actors, especially those who are still hesitant to join the process;**
 - **A decision was made for UNDP to facilitate the process, by increasing communication and dialogue with all stakeholders particularly those that are still hesitant about the process;**
 - **CSOs undertook to consult their constituencies on the next step for this process;**
 - **GoZ undertook to bring to the next round of consultations other Government departments, including representatives of the uniformed forces, thus giving them an opportunity to hear first-hand, the concerns of Civil Society**
 - **Participants requested UNDP to continue to facilitate the overall process.**
- Reports from those who attended the consultations, as well as the two-paragraph joint statement made by Government and Civil Society, as purportedly represented by

NANGO, indicate that no substantive undertakings were made on the part of the Government to address issues which had been raised by CSOs present at the consultations. At most, the Government has agreed to “*follow the Paris Principles as the guiding principles or benchmark for the development of the Zimbabwe Human Rights Commission*” which should be done in any event as part of Zimbabwe’s international obligations, and to continue dialogue.

Issues arising subsequent to the consultations with Government

- CSOs, led by NANGO, have agreed that each sector represented by NANGO, including the human rights sector, will prepare a position paper outlining indicators of good faith, which will be presented to the Government for its consideration and action. Until such time as the Government has met these indicators, there will be no further consultations.

The Human Rights Situation at Present

- Regrettably, the human rights situation, especially insofar as it relates to Human Rights Defenders (HRDs) who would naturally have an interest in, and benefit from, the establishment of a national human rights institution, has deteriorated even further, as evidenced by the following, which list is not exhaustive:
 - The number of HRDs who have been arrested, unlawfully detained and some tortured in custody has dramatically increased in the first two months of 2007 when compared to the same period in 2003, 2004, 2005 and 2006.
 - Law enforcement agents have unlawfully disrupted a number of lawful demonstrations by opposition political parties and civil society organizations and their behavior towards peaceful protesters has become increasingly and worryingly violent.
 - Law enforcement agents, on the instructions of state officials, have disregarded a court order allowing a major opposition political rally to proceed at the Zimbabwe Grounds, and remain in contempt of this court order to date. No action has been taken against them by the authorities, either within the police structures, or by the Ministries of Home Affairs, and Justice.
 - The state has since imposed illegal bans on all public demonstrations and rallies within Harare Province, blatantly infringing upon the fundamental rights to freedom of assembly, association and expression as guaranteed under national and international law.
 - Forced evictions have re-commenced in Hatcliffe and Hatcliffe Extension despite court orders barring such action by state institutions and personnel.
 - Personnel from state institutions have been unlawfully depriving members of the public of their personal property in the form of radios in various areas around the country, with the latest report emanating from Murewa on 27 February 2007. This is a violation of the fundamental rights to property, freedom of expression and access to information.
 - Law enforcement agents, including personnel from the CIO, engaged in unlawful acts of violence against teachers on strike in attempts to intimidate them against protesting their meager salaries and in contravention of the Labour Act, the Constitution of Zimbabwe and the international treaties to which Zimbabwe is a State Party.

- The Government has done nothing to address the context in which such a national human rights institution would operate, and in fact has contributed substantially to the increasing human rights violations against the people of Zimbabwe and the breakdown of the rule of law.
- It is clear that, as things stand, the position of the Government remains unchanged. To proceed to further consultations will not achieve anything, as all that has been agreed to is that there will be further “dialogue” but regrettably no concrete and measurable action. What is needed to put civil society at ease and ensure that good faith has been set out below as indicators of good faith.

Indicators of Good Faith

- Minister Patrick Chinamasa must publicly retract his assertion that human rights organizations are falsely reporting the occurrence of human rights violations by the state in Zimbabwe. This assertion is false, and in any event is not the rationale behind establishing a national human rights institution.
- Commissioner Augustine Chihuri must publicly condemn the actions of police who have been indiscriminately arresting, unlawfully detaining and torturing legitimate Human Rights Defenders; send an advisory to his subordinates to comply with the Constitution and laws of Zimbabwe in their treatment of HRDs, and make a public and written undertaking that all such allegations which have been or are brought to the attention of his office will be investigated within a stipulated time period and measures taken to ensure swift justice against the perpetrators through the courts.
- Civil society organizations are united in their criticism of the current Constitution of Zimbabwe and the continued amendment thereof. The establishment of a national human rights institution by way of a constitutional amendment is therefore completely rejected. An undertaking must be made that any establishment will be done by way of statute rather than constitutional amendment, and that representatives chosen by civil society itself will constitute part of the team to draft the Bill and undertake extensive national consultations.
- The banning orders must be withdrawn as an admission of the unconstitutionality of their imposition and acknowledgement that aggrieved and interested parties have a right to be consulted and make representations before any such action is contemplated in future in the unlikely event that this provision of the Public Order and Security Act .
- An undertaking must be made to immediately cease the use of law enforcement agents and members of the CIO in the confiscation of radios and other private property of members of the public for unjustified reasons.
- Whilst certain sectors have lauded this initiative by the Government as a step towards assuring the national and international community of its respect and consideration of Zimbabwe’s international obligations, as well as implementation of recommendations such as those put forward by the African Commission on Human and Peoples’ Rights, it is our considered view that the Government is selectively choosing which obligations and recommendations to take up, and which to discard. This is unacceptable and shows bad faith. Obligations and recommendations to address the context of the debate and the

operating environment within the country have been made time and again, and have been ignored. They include, amongst others:

- Repeal or amendment of repressive legislation
- Reform of the judicial services
- Reform of the law enforcement agencies, including the disbandment of the Law and Order section of the Zimbabwe Republic Police
- Reform of electoral legislation and opening up of the electoral and political environment in Zimbabwe
- Existence of political will by the Executive

None of these issues have been addressed, which will make any human rights commission futile and an illusory remedial institution. There is need for the government to publicly commit to implementation of these recommendations and those outlined in the Tibaijuka Report.

- Agreement must be reached between the Government and civil society on the immediate establishment of a Working Group comprising state representatives and legitimate representatives of civil society to look at reform of repressive legislation, with an undertaking that the recommendations of the Working Group will be implemented within a stipulated period.

It is expected that, once these indicators have been achieved, civil society, more specifically the human rights sector thereof, will be in a position to resume honest consultations with the Government of Zimbabwe in relation to the establishment of a Zimbabwe Human Rights Commission.