



**REPORT ON THE LEGISLATIVE  
AND POLICY FRAMEWORK ON  
HUMAN RIGHTS DEFENDERS IN  
ZIMBABWE**

**REPORT PREPARED FOR THE  
ZIMBABWE HUMAN RIGHTS  
COMMISSION**

**February 2019**

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## Introduction<sup>1</sup>

This report reviews the state of the legislative and policy framework on the human rights defenders in Zimbabwe. The vulnerability of rights, despite the expansive provisions in the Constitution, calls for the need of human rights defenders to challenge openly rights violations and advocate fearlessly for their protection. The need for human rights defenders is in line with the international norms, particularly the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (1998), a multi-level, multi-actor international protection regime for the rights of human rights defenders. Thus, at normative level, the human rights defenders are recognized. It is no doubt that “the recognition of local actors as key agents of change; the importance of promoting and protecting ‘civil society space’; the need to tailor protection interventions to meet the unique and specific needs of individuals, groups and communities; and the necessity of complementing reactive measures with efforts to build a ‘safe and enabling environment’ for the defense of human rights”<sup>2</sup> is fundamental in any society. Human rights defenders generally receive backlash from an authoritarian state for their work.

The term “Human Rights Defender” (HRDs) is used in reference to people who, individually or with others, act to promote or protect human rights.<sup>3</sup> HRDs have play a key role in the advancement of rights in Zimbabwe. In Zimbabwe, a number of organisations [Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs)] and individuals have played and continue to play a key role in the protection and promotion of human rights in the past two decades. Collectively referred to as HRDs, the NGOs and individuals have contributed to the development of the human rights discourse, in both the so-called civil and political rights arena, as well as the economic, social, and cultural rights realm. In the course of doing their work, HRDs have themselves experienced human rights violations that vary from arbitrary arrests, unjustified prosecutions, persecution, and vilification by perpetrators of human rights violations, as well as torture and harassment among other forms of violations.

In most of the countries, HRDs are an ephemeral class of actors, flip-flopping between everyday political activists and the HRDs. Between these groups of people in the political terrain, clear distinctions are needed. HRDs refer to a broad range of individuals and collectives promoting or protecting human rights, including lawyers, journalists, activists, trade unionists, members of community-based organisations, people in social movements and staff of human rights organisations involved in different work in very different contexts. It has also been used to describe protesters, teachers, students, social workers, health care professionals, community workers, sexual minorities, religious minorities and peace builders, amongst others. The term ‘human rights defender’ tends to be invoked when those engaged in rights-related work are threatened or put at risk for what they do – it is a way of legitimising, bringing visibility to and reiterating their right to do this type of work. It confers on defenders recognition and status within the international human rights framework through which they can access support, protection and redress for violations. In addition, many funds, programmes and resources are

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<sup>1</sup> This report was produced for the Zimbabwe Human Rights Commission by the Research and Advocacy Unit (RAU).

<sup>2</sup> Karen Bennett, Danna Ingleton, Alice M. Nah & James Savage (2015) Critical perspectives on the security and protection of human rights defenders, *The International Journal of Human Rights*, 19:7, 883-895, DOI: 10.1080/13642987.2015.1075301

<sup>3</sup> See full and further discussion of the term and role of HRDs at [<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx#ftn1>]

specifically allocated for work related to human rights defenders, and those who want to access these funds use this term in their proposals and activities. Does it then mean that term HRD is a promiscuous mistress? A fortuitous coat at the disposal of any person seeking resources, programmes or protection? Maybe yes, maybe no.

In light of the above, this paper reflects on the operating environment of HRDs, and considers the protection mechanisms available to HRDs, gaps and opportunities to strengthen the protection of rights of HRDs. The paper is guided by the following research questions:

- i) What is the distinction, if any, between Activists and HRD?
- ii) What are their methods of engagement with the authorities?
- iii) What are the problems do these have with the authorities? Are there any distinct manifestation of the problems and responses that qualify a response to be seen as belonging to a HRD, not a political activist?
- iv) Can a political activist be a HRD at the same time?
- v) How has this contributed to suspicious relations with the Zimbabwe authorities?
- vi) Does one needs to declare their interest as a HRD? Is this a permanent interest?

## **Methodology**

This report was based on mixed methods approach. A legal analysis of existing international and national legislation, agreements and covenants was carried out in order to see the applicability of the Human Rights Defenders declaration with the Zimbabwean context. A desk review of existing reports on human rights violations in Zimbabwe, with special reference to examining the distinctions between human rights defenders, activists and victims of human rights violations.

Then key informant interviews were conducted with a range of individuals representing organisations involved in defending human rights.

## **Key objectives and outputs**

Broadly, and answering the questions above, this paper:

- a) Outlines the problematics around distinguishing human rights defenders from other kinds of victims or civil society workers;
- b) Discusses regional and international legal and normative standards for the protection of rights of HRDs;
- c) Considers comparative regional case-studies;
- d) Discusses the current domestic legislative and policy framework and other mechanisms available for HRDs' protection;
- e) Reviews gaps, if any that are in the legislative, policy and administrative framework;
- f) Reflects on the experiences of HRDs in Zimbabwe;

- g) Makes recommendations on the legislative and policy framework to enhance the protection of HRDs in Zimbabwe.

## **Human Rights Defenders in Zimbabwe**

Zimbabwe, and Rhodesia before Independence in 1980, has been characterised by periods of organised violence and torture as well as repression. In the 1970s, the Catholic Commission for Justice and Peace (CCJP) came under severe pressure from the Smith government, and members were deported or forced into exile, and some members were even targeted for violent attacks.<sup>4</sup> At this time, human rights workers, such as those working for CCJP, whilst explicitly working on human rights, were not termed “human rights defenders”, and were targeted by the government as political activists. Human rights workers did not receive any greater acknowledgement after Independence, and those again working for CCJP remained at great risk, especially during the Gukurahundi period (1982-1987).

It should be remembered that for the whole of the 1980s, Zimbabwe was under the influence of Emergency Powers. Whilst there might have been some justification for the retention of these from the pre-Independence period, Zimbabwe was clearly under threat from apartheid South Africa (and existing in a very dangerous neighbourhood), the power of the state to use these powers for arbitrary arrest and detention was inimical to the development of an open human rights culture. This all changed in the 1990s and the changed global political terrain, and thereafter Zimbabwe began to ratify international treaties and conventions. Almost overnight new human rights organisations began to emerge, bolstering the lone role that had been played by CCJP, and, to some extent, the Legal Resources Foundation (LRF) that had been established in 1984.

Throughout the 1990s, and beginning with the formation of the Zimbabwe Human Rights Association (ZimRights), new organisations were formed, each dealing a different aspects of the human rights agenda. The Amani Trust, Zimbabwe Lawyers for Human Rights (ZLHR), Transparency International, the Zimbabwe Women Lawyers Association (ZWLA), and also the growth through the 1980s of a wide range of women’s organisations focused on gender rights. With the period between 1987, and the Unity Accord between ZANU-PF and ZAPU, and the later 1990s, the political climate could be described as “relatively peaceful”, but there were increasing confrontations with the government by the labour movement, students and academics, and the very important release of the LRF and CCJP report on the gross human rights violations during Gukurahundi. The Zimbabwe government came under increasing pressure to make manifest its obligations under the various international treaties and conventions to which it had acceded. It should also not be missed that there was significant political violence during the elections in 1990, 1995 and 1996, but nowhere near the scale of what was to emerge in the 2000s.

As the compact between citizen and state began to break in the 1990s,<sup>5</sup> it seemed inevitable that conflict would emerge, firstly in the struggles between the government and the labour movement, and then, more seriously for human rights, the widespread violence and human

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<sup>4</sup> Auret. D (1992), *Reaching for Justice: The Catholic Commission for Justice and Peace, 1972-1992*, GWERU: MAMBO PRESS.

<sup>5</sup> Mandaza, I (2016), *Introduction*, in I. Mandaza, (2016) *The Political Economy of the State in Zimbabwe: The rise and fall of the Securocrat State*. Harare: Southern African Political Economy Series.

rights violations that accompanied the Food Riots in 1998.<sup>6</sup> The problems became more acute with the launch of the National Constitutional Assembly (NCA) and then the Movement for Democratic Change (MDC). The period following the rejection of the draft constitution in 2000 and the violence that has afflicted the country since then, mostly during elections, but not exclusively so, as was seen in the mass displacements that occurred during *Operation Murambatsvina*.

The marked change from the 1990s to the 2000s was not only in the very large increase in human rights violations, but also in the breadth of the persons that were included in the new term “human rights defender”. One of the major problems that has emerged post-2000 is who can legitimately be termed a “human rights defender” in Zimbabwe, and a reason for trying to clarify this. With the plethora of organisations, and their members or staff, that explicitly espouse human rights work, this is no problem, but the problem emerges with an equally large number of civil society organisations that are involved in public service, advocacy and lobbying. Here the basis of the work can be stretched to be called “human rights work”, but does not fit the narrower definition of human rights covered in the International Covenant on Civil and Political Rights (ICCPR), but fits more conveniently work covered by the International Covenant on Economic, Social and Cultural Rights (ECOSOC).

By way of a simple example, is a polling agent for an opposition political party who is abducted and beaten up a human rights defender, or merely a victim of a gross human rights violation? It would seem the latter would be appropriate, but what of the case of the member of a civil society deployed as an election observer and who receives the same treatment? What about journalists that have experienced organised violence or torture in the course of their work? Are journalists to be considered “human rights defenders” when the focus of their work may be on explicitly political issues, such as corruption or reporting on elections, and not on human rights as more narrowly defined?

**Table 1: Frequency and nature of human rights violations, 2000 to 2009**

[Source: *Monthly Political Violence Reports of the Zimbabwe Human Rights NGO Forum*]

	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total:
Abduction	116	223	52	62	18	11	19	137	16	<b>654</b>
Arrest	670	274	627	389	1286	2611	2766	922	480	<b>10025</b>
Assault	0	86	388	401	530	486	865	1914	60	<b>4730</b>
Attempted murder	0	2	10	8	1	3	0	8	5	<b>37</b>
Death threats	0	12	80	35	9	7	7	51	2	<b>203</b>
Disappearance	0	28	4	0	0	0	0	19	0	<b>51</b>
Displacement	0	11	208	189	609	55	6	629	2	<b>1709</b>
Freedom of expression, etc.	12	39	809	760	1036	1866	3500	2532	203	<b>10757</b>
Murder	34	61	10	3	4	2	3	107	1	<b>225</b>
Political intimidation	194	388	450	514	476	288	980	2787	282	<b>6359</b>
Property violation	356	807	153	132	61	55	16	396	35	<b>2011</b>
Rape	0	7	6	3	4	1	0	6	0	<b>27</b>
Torture	903	1172	497	160	136	366	603	723	6	<b>4566</b>
School closure	0	45	1	0	0	0	0	26	2	<b>74</b>
<b>Total:</b>	<b>2285</b>	<b>3155</b>	<b>3295</b>	<b>2656</b>	<b>4170</b>	<b>5751</b>	<b>8765</b>	<b>10257</b>	<b>1094</b>	<b>41428</b>

<sup>6</sup> Zimbabwe Human Rights NGO Forum (1998), *Human Rights in Troubled Times: An Initial Report on Human Rights Abuses During and After Food Riots in January 1998*. Harare: Zimbabwe Human Rights NGO Forum; Zimbabwe Human Rights NGO Forum (1999), *A Consolidated Report on the Food Riots 19–23 January 1998*, Harare: Zimbabwe Human Rights NGO Forum.

As seen in Table 1, just the reports of the Zimbabwe Human Rights NGO Forum make a compelling case for a high frequency of human rights violations, and some very serious violations at that.

Any detailed examination of the human rights violations since 2000 at least shows that an appreciable number of individuals that would conform explicitly to the definition of a “human rights defender” have experienced human rights violations, and often gross human rights violations, in the course of their work. As far as can be established, no comprehensive analysis has yet been carried out to determine the frequency and nature of violations suffered by human rights defenders, but there have been a number of very high profile cases, and it is evident that despite the reluctance of the state to prosecute in a very high percentage of cases generally, it is clear that there has been very frequent gross human rights violations by state agents since 2000.

In the context of a high frequency of human rights violations and gross human rights violations, the position of HRDs is obviously risky.

This is validated through the decisions of the Zimbabwean courts in most of the civil litigation undertaken by human rights organisations in respect of violations.<sup>7</sup> However, it is also the case that very large number of the victims would not easily conform to the definition, and commercial farmers and farm workers, members of opposition political parties, ordinary members of the public caught up in election violence or civil disturbances, and perhaps even journalists, would not seem to fit the *prima facie* definition. This is, of course, not to assert that they are not *bona fide* victims of human rights violations, nor that they are not entitled to state protect and redress. It is merely the case that, if the definition of a human rights defender” is stretched too far, then the point of the definition disappears.

Thus, it can be seen that, in Zimbabwe, the question of who can be termed a “human rights defender” can be a tricky issue. This is because, as already seen, HRDs cannot exist as a composite category with distinct characteristics. Certainly every victim of state repression or violence cannot be easily described as a “human rights defender”, and, on the other hand, taking a very narrow view of what defending human rights is about may lead to the exclusion of deserving cases.

This report examines the notion of human rights defenders in general and then attempts to understand its relevance for Zimbabwe.

## **Experiences of HRD stakeholders**

To help put the above in context, it was important to assess the experiences of HRD in Zimbabwe, the challenges they come across in pursuing their mandate and the opportunities they feel they could utilise in their work. Key informant interviews were held with various CSO groups who were identified as human rights defenders. These interviews can help us understand the work of HRD from their perspective. Other interviews were carried out with state institutions tasked at enforcing rights. These interviews were important as they also highlighted

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<sup>7</sup> See for example, Zimbabwe Human Rights NGO Forum (2006), *An Analysis of the Zimbabwe Human Rights NGO Forum Legal Cases, 1998–2006*. Published by the Zimbabwe Human Rights NGO Forum. June 2006, Harare: Zimbabwe Human Rights NGO Forum.

how the state is dealing with HRD as a special group especially given the usual suspicion that these are always targeted and violated in their course of duty.

The key issues identified are discussed below with first-hand accounts of their experiences.

### ***Risky nature***

What makes the work of HRD a subject of interest is the risk they have to overcome themselves. Risks can be related to actions taken on behalf of others, such as lawyers representing clients or NGOs providing services to victims. For example, members of Zimbabwe Lawyers for Human Rights (ZLHR) have on occasion been harassed and even assaulted in the course of supporting clients: the case of Tawanda Hondora is illustrative.<sup>8</sup> More recently, the Counselling Services Unit (CSU), an NGO providing medical and psychological assistance to victims of organised violence, and its Director, Dr Frances Lovemore, has come under attack by the government-controlled media.<sup>9</sup>

There are also issues that are risky in themselves due to their political sensitivity and the attitude of the government. Here, for example, journalist may be at particular risk in uncovering stories that place the government in a poor light:

*In Zimbabwe it is always risky depending on the kind of work that you do. For several years now, I have been trying to raise concerns around the issue of Gukurahundi and how people have been quiet about it as if nothing happened. It has not been easy because the government does not want people to talk about it. It is a scary subject to talk about because you are likely to get arrested for talking about it. It is not always a free environment. (Source?)*

The risks can vary from threats to direct bodily harm as in the case of is the abduction, disappearance and torture of Jestina Mukoko for her work in reporting human rights violations.<sup>10</sup> The ultimate risk to HRDs is either death or disappearance. Here it is worth recalling the disappearances of political activist, Itai Dzamara, and human rights defender, Paul Chizuze. These incidents undoubtedly cause fear amongst those that might choose to be HRDs. Another interviewee shared her own experience:

*In 2008 I was abducted with two other colleagues in the organisation. In 2013 the organisation was raided and we were accused of running an unregistered organisation but we are registered as a Trust like a whole lot of other organisations and I think for us, the challenge that we face is being criminalised in the work that we do.*

Targeting and harassment of HRDs has become common with experiences of arrest and raiding of offices frequently reported as the following example illustrates:

*On the first day I started work, there were three people arrested from this place. We were not raided per se, they claimed that they were looking for subversive material and people were arrested. You can imagine being an*

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<sup>8</sup> "Lawyers beaten by Mugabe followers". Special Report: Zimbabwe. The Guardian, 12 April 2001. [<https://www.theguardian.com/world/2001/apr/12/zimbabwe.andrewmeldrum>]

<sup>9</sup> "Shady NGO caught offside on violence". The Sunday Mail. 19 August 2018; [<http://www.sundaymail.co.zw/shady-ngo-caught-offside-on-violence/>]

<sup>10</sup> Jestina Mukoko: 'Mugabe's henchmen came for me before dawn'. The Independent. 17 January 2009. [<https://www.independent.co.uk/news/world/africa/jestina-mukoko-mugabes-henchmen-came-for-me-before-dawn-1418260.html>]

*intern wanting to start work and on my first orientation I see ten central intelligent officers clamping down on this organisation. My first response obviously was if this is a registered NGO then what is going on.*

While for some who work on issues that society does not accept they face greater risk from the community and state. For example, those who work on LGBTQ issues have had to live with the stigma and hate speech. This has special significance as the former President, Robert Mugabe, has been vociferous in his attacks on LGBTI persons, and not merely within Zimbabwe.<sup>11</sup>

### ***Arbitrary arrest and detention***

Arbitrary arrests and detention remain the most frequent problem for most human rights defenders (see Table 1). Here there are continual complaints that the Zimbabwe Republic Police are politically partisan. It seems arrests and detentions have been used as a way to curb the activities of HRDs.

*The police do what they want; sometimes they arrest people and investigate later. People can be arrested for no charges yet the constitution states that you are supposed to be informed of your charges.*

However, for some the arrests are a symbol that their work is being recognised and they are getting somewhere, they are not afraid of the arrests.

*I do not put it in mind; it is the hazards of the game. If you play soccer you know that someone is going to tackle or kick you and you should be prepared to limp for a few days. Dealing with issues to do with human rights is not a honeymoon because you will be doing something someone does not want. You know from the onset that if you talk about something they will be irritated and for me it is fun. The more I get arrested is the more I know they are getting irritated and that is where I derive my motivation from. If I do it for ten years and no one gets irritated it probably means I am doing the wrong thing or it is not an issue. If I get that irritation it means I am poking the elephant in the right places and it is fun.*

The police remain a huge challenge for most human rights defender's activities. Their presence in some instances is an intimidatory mechanism.. For example, one interviewee reported that in some areas, such as Matobo, Gwanda and Esigodini, there is a tacit requirement to obtain police permission to hold meetings and for there to be a police presence during meetings:

*I consider it to be some kind of intimidation. I do not know where the police get the idea that if you want to assemble you have to be guarded. They will be guarding you and writing whatever they want. People will not be able to open up when the cops are around which is why we need to discuss some of these issues in confidence. The people out there do not trust the cops given the history of those provinces. To them, state power is associated with terror.*

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<sup>11</sup> In 1995, government shut down a book exhibition by GALZ at the Harare International Book Fair after which Mugabe declared: "Homosexuals are worse than dogs and pigs; dogs and pigs will never engage in homosexual madness; even insects won't do it." Available at <https://www.theindependent.co.zw/2015/11/27/mugabe-comes-face-to-face-with-gays/>

Sometimes the police choose not to act, allowing their personal prejudices to affect how they undertake their jobs. They ignore certain cases which are against their mandate:

*...same sex workers have been murdered and the police do not take the cases seriously. We have three cases in which sex workers were murdered and the perpetrators were not held accountable. The police are not investigating the cases.*

Unless the cases are not followed up by CSOs they die a silent death because even the family members usually get tired of going to the police station to follow up on the case. They will be thrown from one office to the other and they end up suffering secondary trauma because no one cares that they would have lost a daughter, sister or mother.

*I think our country is lagging behind in terms of following up on cases unless you have connections within the legal framework or if you have money to pay the responsible authorities. If you do not have that your case will just die a natural death and no one cares.*

While sometimes the police do not respond to certain cases:

*Sometimes when we have a challenge at GALZ we call the police but as soon as they hear that it is GALZ they back off saying they will be in trouble with the president. So it is not based on principle to say we will defend everybody and we will respond to all the issues regardless of where they are coming from. That 'all' aspect is qualified I think.*

In such cases, the law does not apply equally almost all citizens, and the politics of the day determines who is a criminal or what kind of case can be tried before the courts. This is contrary to the constitution which provides for adequate protection of all before the law and access for all to the legal system. Human rights organisations provide hard empirical evidence of the use of unlawful arrest and detention through the many cases of civil litigation that are taken to the courts, and judgements given against the police.

### ***The role of HRDs***

Human rights defenders work should be viewed as complimentary to the work that the government does:

*They actually should be celebrating us because from where they are we are able to bring them a picture from places where they cannot go and continually be there. We work in communities and our task is basically to bring in information from the local communities and say partner are you aware that in this particular community, for example women, walk 30km to access water or they walk 30km to access a health centre, but we are then targeted for providing that information. Maybe I have used an example that some people would that say is some comfort zone type of activities but when we talk about political violence and you are saying your supporters have done this in this particular community, they do not want to accept that. I think for a long time as human rights defenders we have struggled with a government that denies the existence of political violence. I am basically looking at prior 2008, they were denying that there was violence but when we then got into the Global Political Agreement; the Agreement then acknowledged the existence of political violence and how the government intended to deal with it.*

The biggest challenge is viewing HRDs as enemies of the state, when the work they do enhances the lives of all Zimbabweans, and how to ensure that this important role is respected and protected by the state. However, the caveat expressed above about the dangers in broadening the definition of HRD's to the extent that the term becomes unworkable.

### ***Experiences of minorities***

Women and children, as well as the LGBTQ communities, find themselves in disadvantaged positions. Human rights are a difficult terrain to navigate in Zimbabwe and even worse if you are in the minority groups. They face many challenges that need to be considered going forward:

*The first thing is that we do not even have detention centres that are gender sensitive. I have been to private detention centres, unknown detention centres, a police cell and Chikurubi Maximum Security Prison. In all those places you just realise that they are not gender sensitive in the sense that when I was detained at the secret detention centre you would expect that if it was gender sensitive I would be able to get sanitary wear in the bathroom but there was nothing like that. The same applies in the police cells and there are no facilities to bath. That is the situation that you get in a lot of the detention centres where the former administration believed that human rights defenders belonged.*

Some felt that when arrested are treated worse than men. Some of them have had to go without undergarments and could not access sanitary wear.

*When you get there it is like you have lost all your rights not just that right. What I would want to see in the policy is strong inroads for women human rights defenders because it is a very specialised form of work.*

Those who work in LGBTQ issues felt that their work had been tainted by the former president's outbursts such that they saw a rise in cases where the state has been the perpetrator of human rights violations.

*When you go into communities people are a bit tolerant and understanding, you go to a local police station and people are understanding and willing to help. The moment you go up the hierarchy, things get tough and you now hear the politics, the president and all the structures are thrown in and it becomes very difficult for LGBTI people to access justice.*

It was also noted that during elections the violence tends to be more pronounced as politicians use their stance against the LGBTQ community to gain political mileage. The more they speak out against the LGBTQ community the more popular they tend to be. The politicians' stance reinforces homophobia and justifies violence perpetrated against the LGBT community. This is a worrying trend for the LGBTQ community as Zimbabwe headed for elections this year.

However, whilst it is evidently important to protect the rights of all groups, as is indicated by the rights guaranteed under the Constitution, it is important once again to distinguish between those that are defending the rights of minorities and disadvantaged groups, it is clear that the term must apply to those that defend their rights, not extended simply to include those whose rights

are being defended. This is difficult where there is not absolute adherence to constitutionalism and the rule of law.

### ***State response***

The state's response to human rights defenders activities has not always been favourable. The human rights defenders interviewed stated that, since the biggest violator of human rights has been the state, therefore it has been difficult to operate.

*I remember in 2008 when I produced a documentary on Gukurahundi there were a lot of issues. I was arrested a number of times for funny charges. There were a lot of searches in my home and my office. I had my footage and archives taken. You are always threatened and intimidated. In 2013 I was arrested for distributing short wave radios and all sorts of funny charges that were in line with that.*

Sometimes personal prejudices are used and perpetrators get away with crimes. For example in a case in Bulawayo, a stakeholder was stabbed in a bar and the case was taken to court. When the judge asked why he was stabbed the perpetrator lied saying that the victim was gay and he was trying to make a move on him. The magistrate ruled that if that was the case then the perpetrator was right to stab him.

However, sometimes the HRDs have approached the courts to get authority to do certain things and have been granted permission. It was stated that sometimes the best recourse for most HRDs activities has come from the courts; however one stated 'we end up celebrating cases that should not have been in the courts in the first places.'

### ***Rule of Law and Constitutionalism***

In spite of the Declaration of Rights in the constitution, there is a serious lack of constitutionalism in Zimbabwe and frequently no rule of law at all. The challenge for most of the HRDs is not the absence of the laws but rather the failure to comply with the existing laws.

Whilst there are some draconian (and unconstitutional) laws which hinder the activities of HRDs, most interviewees felt that most of the organised violence and torture comes from state agents even though they have a duty to protect human rights defenders. There is abundant evidence to this effect in the multiple reports from human rights organisations, both local and international.<sup>12</sup> These older reports are supplemented by many subsequent reports, and a consistent theme around constitutionalism and the rule of the has been the difficulty of obtaining action from the state, particularly from the Zimbabwe Republic Police (ZRP), and the unacceptable recourse to civil litigation. This has been especially the case when the ZRP are identified as the alleged perpetrators.<sup>13</sup> Some interviewees felt the state is not committed to respecting human rights at all:

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<sup>12</sup> See Amnesty International (2000), *Zimbabwe: Terror tactics in the run-up to the parliamentary elections*, June 2000, London: Amnesty International; Amnesty International (2002), *Zimbabwe: The Toll of Impunity*, London: Amnesty International; IRCT (2000), *Organised Violence and Torture in Zimbabwe*, 6th June 2000, Copenhagen and Harare, Copenhagen & Harare: IRCT & AMANI TRUST; IRCT (2001) *Organised Violence and Torture in Zimbabwe*, 24th May 2001, Copenhagen and Harare, Copenhagen & Harare: IRCT & AMANI TRUST. See also Physicians for Human Rights (2002), *Zimbabwe 2002. The Presidential Election: 44 days to go*. Physicians for Human Rights, Denmark, 24 January 2002; Physicians for Human Rights (2002), *Zimbabwe: Post Presidential Election – March to May 2002. "We'll make them run"*. Physicians for Human Rights, Denmark, 21 May 2002; Physicians for Human Rights (2002), *Zimbabwe: Voting ZANU for Food: Rural District Council and Insiza Elections*, Physicians for Human Rights, Denmark, August to October 2002.

<sup>13</sup> Zimbabwe Human Rights NGO Forum (2006), *Who Guards the Guards? Violations by Law Enforcement Agencies in Zimbabwe, 2000 to 2006*, December 2006, Harare: Zimbabwe Human Rights NGO Forum.

*The political administration in Zimbabwe has never been committed to constitutionalism and the rule of law otherwise how constitutional governance threatens the powers that be. For that reason you get to be followed around by the cops to report your presence in some ward so you have the cops, neighbourhood watch committees and all sorts of security services around human rights work...*

Thus, the complaint is not merely the failure to follow the constitution, but an equal lack of compliance with the rule of law, as many of the interviewees pointed out. For example, one interviewee stated:

*In terms of what the law says on paper, we do have freedom of assembly, freedom of association and things like that but the fact that we were denied the right to march when we applied around this time last year shows that we have an excellent constitution with all the right but in practice that is not the case.*

One area of concern here is the failure of the police to comply with legitimate court orders, and the history of the past 18 years is replete with examples. For example, during the Fast Track Land Reform Programme, commercial farmers obtained a total of 139 court orders, but only 37% tried to get the police to enforce these, with a mere 5% claiming that they were successful in doing this.<sup>14</sup> Whilst it cannot be claimed that commercial farmers are HRDs, the point is that the police are unwilling to enforce orders when the case is deemed “political”, and it is “political” cases with which HRDs are involved.

This also applies to organisations wishing to hold public events, such as a protest march. For another example, one organisation stated that they took a case to court, and, after winning it, they notified the police they wanted to march. Rather than immediately comply with the order, the police then demanded that they had to bring a copy of their organisational profile, organisational constitution and the court ruling. They had to get a copy of the court ruling and take it to the police.

Participants emphasized that the constitution as needed to be followed, but some also felt a new piece of legislation alone will be faced with the same contempt as the constitution hence it would not be helpful unless rule of law existed in Zimbabwe.

*Let me give you an example of a case where people were making a lot of noise about the police and the army is literally accepting that there is corruption in the police force. There are several cases where people have taken the police to court about these road blocks and none of our courts have made the point that it gives a resounding judgement on how these police officers should behave. I think our courts are very timid so we are operating in an environment where even those that are supposed to help the public run away from their constitutional duties.*

The point here is that the difficulties faced by HRDs can be greatly alleviated through rigid adherence to the constitution and the law. When victims’ rights are not supported by the law enforcement agencies, and they fail to get protection or redress, then the boundary between

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<sup>14</sup> JAG/RAU (2008), *Reckless Tragedy: Irreversible? A Survey of Human Rights Violations and Losses suffered by Commercial Farmers and Farm Workers from 2000 to 2008*. Report prepared by the Research and Advocacy Unit [RAU]. December 2008. Harare: Justice for Agriculture Trust.

victims and HRDs will inevitably become blurred. This is obviously not a simple problem to solve, but the move internationally to define what is a Human Rights Defender may be of considerable assistance in Zimbabwe.

## **International legal and normative framework**

The respect for human rights is now a well-established and universally accepted norm under international law. The United Nations Charter, adopted in 1945, provides that one of the key principles binding all member states is the respect for human rights and fundamental freedoms.<sup>15</sup> Furthermore, the Universal Declaration of Human Rights (UDHR), adopted in December 1948 by the United Nations General Assembly, specifically enshrines a bill of rights that is now universally accepted to be binding in terms of international customary law.

Since the adoption of the UDHR, the UN member states have adopted a plethora of treaties that expand on the rights that are enshrined in the UDHR.<sup>16</sup> The universality of the UDHR and its acceptance as a global guiding legal framework on human rights is further evidenced by the almost universal domestication of the UDHR provisions into most countries' constitutions and subsidiary laws. Zimbabwe is one such state that has embraced international human rights obligations under the UDHR, as well as regional and international human rights instruments, by domesticating the content into the Constitution and some other domestic laws.

The adoption of these regional and international human rights instruments coincides with the growth in the number of organisations and individuals, commonly referred to as Human Rights Defenders (HRDs), who, individually or collectively, act to promote or protect human rights at a domestic, regional and international level. As a result of the recognition of the challenges faced by the HRDs, relating to the protection of their rights during the course of their work, the UN adopted the UN Declaration on Human Rights Defenders (UDHRD).<sup>17</sup> The Declaration specifically provides for the protection of rights of HRDs during the course of their work, and defines both the rights and protections afforded to HRDs, as well as the duties of states (see Appendix 1).

This Declaration, though not, in itself, a legally binding human rights instrument, enshrines a number of principles and rights that are based on human rights standards enshrined in other legally binding international instruments. Its provisions draw inspiration from other human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR).

The UDHRD was adopted through consensus by the General Assembly. It is reflective of the political willingness and commitment by states to have a global instrument that informs parameters for the adoption of binding domestic legislation to protect HRDs. As will be discussed further below, there is already an emerging trend of countries in Africa that have adopted laws to give stronger legal safeguards to HRDs at domestic level, inspired by the UN declaration on HRDs. Unlike the other global human rights instruments that broadly protect

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<sup>15</sup> Article 1(3) of the United Nations Charter

<sup>16</sup> See for example human rights treaties such as; The International Convention on the Elimination of All Forms of Racial Discrimination; The International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; International Convention for the Protection of All Persons from Enforced Disappearance, Convention on the Rights of Persons with Disabilities

<sup>17</sup> "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms". Resolution Adopted by the General Assembly. United Nations. A/RES/53/144 8 March 1999

substantive rights, the Declaration specifically speaks to the protection of HRDs as a special category of persons who act to protect and promote rights of others.

At the regional level, the African Union (AU) adopted the African Charter on Human and Peoples Rights (ACHPR) in 1981: a regional instrument binding States to domestically guarantee and provide for the protection and promotion of the rights enshrined in the Charter. As part of giving effect to the provisions of the Charter, the African Commission on Human and Peoples Rights<sup>18</sup> has created a number of mechanisms, one being the Special Rapporteur on Human Rights Defenders,<sup>19</sup> and the other being the designation of country-specific Rapporteurs.<sup>20</sup> One of the key mandates of the Special Rapporteur is to develop and recommend effective strategies to better protect human rights defenders, and, in Africa, this has special importance. This is in recognition of the inherent threats to rights of HRDs during the course of their work which include extra-judicial killings, torture, arbitrary arrests, detentions, malicious prosecutions, and inhuman and degrading treatment. The ACHPR has made a number of rulings in respect of violations against HRDs.<sup>21</sup>

Thus, the development and adoption of guidelines, mechanisms and human rights instruments by international and regional human rights bodies to specifically protect rights of the HRDs is in direct response to the inherent threats and risks faced by HRDs.

### **A perspective of other regional jurisdictions**

Zimbabwe has now adopted a Constitution that explicitly protects human rights in accordance with provisions of the African Charter on Human and Peoples Rights and other international human rights instruments. This is provided in the Declaration of Rights, Chapter 4 of the amended Constitution.<sup>22</sup> However, it has not adopted key specific and enabling domestic legislation that protects HRDs, in line with the UN Declaration on HRDs. For example, countries like South Africa, Kenya and Malawi all have Constitutions that have very a strong bill of rights. They too, however, do not have in their Constitutions or subsidiary law or provisions that specifically entrench rights of HRDs

There are three countries in Africa that have taken the bold step of enacting specific domestic legislation that recognises HRDs and entrench legal rights to protect them. Côte d'Ivoire in June, 2014, Burkina Faso (June, 2017), and Mali (December, 2017) all have led the way in Africa by enacting domestic laws, that specifically protect rights of human rights defenders. In all the three countries, the enabling legislation has adopted the formal definition of HRDs as enshrined in the UN Declaration on Human Rights Defenders. The substantive provisions in the laws of the three countries also mirror or largely draw inspiration from provisions in the UN Declaration. The laws contain provisions that directly foster an environment conducive for the work of HRDs. Notable provisions include the inviolability of homes and offices of human rights defenders, the engagement without restriction of human rights defenders with

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<sup>18</sup> The African Commission is established by Article 30 of the Charter with the mandate to protect and promote human rights

<sup>19</sup> Resolution 69 at the 35th Ordinary Session of the ACHPR, 4th June 2004

<sup>20</sup> For example, *Press Release on Post-election Developments in Zimbabwe*. 7<sup>th</sup> August 2018. African Commission on Human and Peoples' Rights. [<http://www.achpr.org/press/2018/08/d416/>]

<sup>21</sup> See, for example, *Gabriel Shumba v Republic of Zimbabwe 288/2004*. African Commission on Human and Peoples' Rights. Done in Banjul, The Gambia, at the 51st Ordinary Session of the African Commission on Human and Peoples' Rights, from 18 April - 2 May 2012.

[[http://www.achpr.org/files/sessions/51st/comunications/288.04/288\\_04\\_gabriel\\_shumba\\_v\\_zimbabwe.pdf](http://www.achpr.org/files/sessions/51st/comunications/288.04/288_04_gabriel_shumba_v_zimbabwe.pdf)]

<sup>22</sup> Constitution of Zimbabwe Amended (No.20) Act, 2013.

international bodies for the protection of human rights and the right to receive funding to carry out their activities.

In accordance with the UN declaration on HRDS, the legislation in these three countries essentially recognise the key role played by HRDs in the promotion and protection of rights and the need to have specific laws to protect the HRDs.

Since Zimbabwe has yet to ratify the UDHRD and hence not developed legislation to give effect to the Declaration, as have Cote d'Ivoire, Burkina Faso or Mali, but there are mechanisms that may nonetheless provide a framework for protecting HRDs.

## **Review of the domestic mechanisms to protect HRDs**

Whilst Zimbabwe subscribes to a number of international and regional human rights instruments that specifically provide for the protection of human rights defenders, there is no domestic legislation that reflects the international commitments. However, in the domestic legislative framework there exist a number of provisions that entrench human rights and implicitly protect rights of human rights defenders.

Under its expansive Declaration of Rights<sup>23</sup>, the Constitution sets out a number of rights that implicitly speak to the entrenchment of rights of HRDs. In the first instance, the Constitution places an overarching obligation on the State and individuals to respect, protect, promote and fulfil the rights and freedoms enshrined in Chapter four of the Constitution.<sup>24</sup> The Constitution, in clear peremptory terms, obliges all the institutions of the state; namely, the executive, legislative and judicial institutions and agencies of government at all levels give effect to the rights enshrined in Chapter Four.<sup>25</sup>

The Constitution affords further procedural safeguards to persons who allege violations of their rights, by granting them standing to approach the courts of law to seek an appropriate remedy.<sup>26</sup>

Beyond the procedural safe guards set out above, the Constitution specifically provides for the protection of a number of substantive rights which contribute towards the protection of rights of HRDs. For purposes of respect of rights of HRDs, a number of key rights should be highlighted. Section 51 of the Constitution guarantees to every person the right to inherent dignity in their private and public life, and the right to have that dignity respected and protected. Section 52 guarantees the right to personal security that includes the right to bodily and psychological integrity. These rights are crucial to HRDs whose dignity and security is always under threat because of the work they do. The Constitution also provides for the freedom from torture or cruel, inhuman or degrading treatment or punishment.<sup>27</sup> This is crucial given the real and potential threats faced by HRDs from state and non-state actors.

Section 58 of the Constitution guarantees a key right - the right to freedom of assembly and association. Given the nature of the work of HRDs of protecting rights of others, it can be argued that this provision is one of the more fundamental provisions of the Constitution to the extent it allows free association and assembly of persons, a key aspect of the work of HRDS.

A key right contained in the Constitution that speaks to the protection of rights of HRDs is Section 59 which entrenches the freedom to demonstrate and petition. Individuals are allowed

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<sup>23</sup> See, generally chapter 4 of the Constitution

<sup>24</sup> Section 44 of the Constitution

<sup>25</sup> Section 45(1) of the Constitution

<sup>26</sup> Section 85 of the Constitution.

<sup>27</sup> Section 53 of the Constitution

to associate, demonstrate and present petitions to appropriate administrative authorities, as long as this is done peacefully. This, again, is a crucial right that is often applicable to the methods and ways of HRDs in demanding accountability in the upholding of human rights by the State.

The aforementioned rights collectively provide legal safeguards to rights of HRDs, and, where such rights are threatened, HRDs are afforded an audience before the domestic courts to seek appropriate remedies and relief.

### ***The Zimbabwe Human Rights Commission (ZHRC)***

The Constitution provides<sup>28</sup> for the establishment of the Zimbabwe Human Rights Commission (ZHRC), an independent body mandated to, among other things, receive and consider complaints of human rights violations.<sup>29</sup> Since its effective operationalization<sup>30</sup> in 2012, the ZHRC has progressively strengthened its internal structures and methods of operations to give effect to the broader mandate provided for by the Constitution. As an independent mechanism, protected by the Constitution the Commission is one of the mechanisms that HRDs can utilise to assert enforcement of rights.

Its expansive mandate that includes promoting human rights awareness, protection of human rights through receiving complaints and monitoring the observance of human rights, makes the Commission one of the main non-judicial mechanisms that contributes toward a strengthened operating environment for the protection of HRDs. The importance of administrative and fiscal support to the ZHRC cannot be stressed sufficiently strongly.

Since its coming into practical assistance, and despite the problems with adequate resources, ZHRC has received increasing critical approval. The Commission increased its workload over the period 2015 to 2016, handling 666 complaints in 2016 as opposed to 482 in 2015.<sup>31</sup> In 2015, 278 of these complaints were from the public, and 162 were complaints about human rights. There was a marked increase in 2016 in complaints from the public, 515 complaints and 245 were concerned with human rights. ZHRC also increased its capacity for prison visiting from 2015 to 2016. In 2015, only four prison inspections took place which was 9% of all possible prison visits. However, in 2016, the Commission visited 21 of the possible 46 prisons, which was 46% of all prisons. The Commission has also undertaken investigations, such as those into the Hurungwe West by-election in 2015, and offered opinions on human rights issues such as the decision on the abuse of schools during elections,<sup>32</sup> and a number of important investigations in other matters involving human rights.<sup>33</sup>

This increased capacity of the ZHRC seems strongly related to resources, as, for example, the doubling of the Commission's income from 2015 to 2016. An even stronger Commission would undoubtedly be a crucial resource in both combating human rights violations and protecting HRDs.

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<sup>28</sup> See broadly, Section 242 of the Constitution

<sup>29</sup> Section 243(1)(d) of the Constitution

<sup>30</sup> The legal framework of the Commission was defined by the adoption of the Zimbabwe Human Rights Commission Act Chapter 10:30 on the 12th of October, 2012.

<sup>31</sup> Source: Annual Reports of the Zimbabwe Human Rights Commission for 2015 and 2016.

<sup>32</sup> Zimbabwe Human Rights Commission, **ZHRC/CI/0069/17**. [<http://www.zhrc.org.zw/download/teachers-unions-of-zimbabwe-vs-1-ministry-of-primary-and-secondary-education-2-zanu-pf/>]

<sup>33</sup> Zimbabwe Human Rights Commission, **ZHRC/CI/0000/18**.

[<http://www.zhrc.org.zw/download/investigative-report-on-headlands-evictions-manicaland-2018/>]

### **Gap analysis**

From the analyses above it is clear that there are a number of broad human rights mechanisms that are available for the protection of human rights more generally. However, the main challenge is that there is no specific protection of HRDs within the legislative and policy framework. It is suggested that there is need for tailor-made legislation for HRDs, as a special category of persons who face peculiar vulnerabilities in the course of their work of protecting and advancing rights of others.

There are also other pieces of legislation that limit enjoyment of rights contained in the Constitution, and, by implication that affect rights of HRDs. In this respect, the Criminal Code and the Public Order and Security Act (POSA) are such laws that potentially limit the enjoyment of rights of HRDs to express, congregate, associate and petition public authorities.

There is also an administrative challenge to the knowledge and awareness of the Constitution and the rights that are enshrined in it. In terms of Section Seven of the Constitution, the Constitution should be taught in schools and should be part of the curricula for the training of members of the security services, the Civil Service and members and employees of public institutions. This is clearly meant to ensure that the culture of constitutionalism is embraced across society. This is not being done. Ensuring that all levels of society are aware of the Constitution and in particular the Declaration of Rights is a *sine qua non* for the respect of human rights.

There are other challenges that are administrative and budgetary in nature that constrain the enjoyment of rights. Institutions that are mandated to protect and promote human rights are often hampered by lack of resources and administrative capacities to effectively carry out their work. Constitutional institutions such as the Zimbabwe Human Rights Commission and the courts and various tribunals are invariably hampered by lack of resources that affects administrative functions. Without administrative and budgetary support to their work, these institutions become constrained in the discharge of their mandate.

It is therefore clear that the challenges that affect protection of rights of HRDs are multiple and diverse requiring a holistic and multi-pronged approach to address them, but it is clear that the constitution can go a long way to ensuring protection is rigidly adhered to.

### **What can be done differently?**

One way that protection of HRDs might be increased according to some interviewees was that Zimbabwe needs to be more accessible to international scrutiny:

*I think for me, in the last few years what we have also seen is that even those mechanisms set up by the United Nations where they have special rapporteurs for human right defenders. Those rapporteurs have been prevented from coming into the country. I think it took a long time for the high commissioner for human rights to be allowed in the country and I think it is such situations that make our work very difficult when we do not allow international organisations that we are party to come and assess the situation. At the end of the day you basically conclude that the country is a state party for reasons of just ticking the boxes but at the end of the day you see a double standard.*

Going forward there must be consequences for police actions against HRDs. If the police know that if they arrest someone without conducting investigations, the case will be an offence, and there will be consequences for doing that, they will behave. The reluctance in the implementation of such laws results in the police making people spend the weekend in the cells only to carry out investigations later. This is unacceptable and there are no consequences for the police in our country. The state will also proceed to prosecute a case which is frivolous whilst wasting resources to deter human rights defenders from effectively doing their work. There is need for change in policing and prosecuting trends.<sup>34</sup>

Furthermore, with effective remedies, HRDs and citizens abused by the police and other state agents will have to continue the expensive and lengthy remedy of civil actions. This has been the main remedy in the past, and has resulted in an enormous number of civil suits against the police and others.<sup>35</sup> The point here is that the civil litigation provides a strong empirical basis for asserting the need for legislation protecting HRDs.

We should be taking strides towards ensuring that there are laws that protect all human rights defenders. There is a problem in the fact that so much noise is made when a prominent person is arrested as compared to someone who is not popular. In such a scenario, human rights become a preserve for the prominent which should not be the case. It is not about who is brave and popular or not. People should be able to defend their rights whether they are prominent or not because there is a law that protects them.

It was also stated that the culture of the police is determined by the leader:

*If the leader tolerates corruption there will be corruption and if they tolerate persecution of citizens by the police then it will be there. If the president decides that the police have to be in the streets fining people as a way of raising funds for elections they will do just that.*

It is clear from the various stakeholders that human rights defenders in Zimbabwe face multiple challenges and risks which they live with every day. Policing and prosecutors waste state resources following up on cases which are frivolous as a way to deter human rights defenders. It is also important for the state to work together with HRDs to better the conditions of Zimbabweans and not to work against one another. It must be stated that HRDs play a critical role in an open democratic society like Zimbabwe and therefore must be given adequate protection.

## **Conclusions and recommendations**

Human rights defenders play an important role in the protection and promotion of rights, and more broadly contribute towards the entrenchment of a democratic and more open society that it protects and promotes the rights of citizens. Zimbabwe has made significant progress in demonstrating its willingness to uphold human rights through ratification of key human rights treaties that include:

- The African Charter on Human and Peoples' Rights;

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<sup>34</sup> See, for example, a report on the abuse of POSA. Solidarity Peace Trust (2005), *Subverting Justice: The role of the Judiciary in denying the will of the Zimbabwe electorate since 2000*. March 2005. Zimbabwe & South Africa: Solidarity Peace Trust.

<sup>35</sup> See Reeler, A.P, Tarisayi, E , & Maguchu, P (2016), *Transitional Justice in Pre-Transitional Times: Are there any lessons for Zimbabwe?* July 2016. Harare: Zimbabwe Human Rights NGO Forum

- The Convention on the Elimination of all Forms of Discrimination against Women;
- The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ECOSOC).

As stated above, the State has also domesticated most of these rights by entrenching them within the Constitution and other subsidiary legislation. This is commendable and represents a significant step towards the protection of rights of human rights defenders.

Having said that, it should be highlighted that there remains a gap in the domestic legislation with regards *the* protection of rights of human rights defenders. It is suggested that the definition and status of human rights defenders fall in a special category requiring specific legislative framework in order to protect the rights of HRDs.

Broadly, it is recommended that Zimbabwe should follow the direction taken by progressive states such as Burkina Faso, Mali and Côte d'Ivoire that have enacted specific domestic legislation to protect rights of HRDs.

The State should consider domesticating the UN Declaration on Human Rights Defenders that gives a good legal framework that strengthens the protection of rights at a domestic level. It is recommended that, in line with the UN guidelines, the law to be in place should protect recognised rights of HRDS (see Appendix 1).

There do remain two important issues.

The first is definitional regarding who is a human rights defender. Any domestic definition in a country such as Zimbabwe that has a high rate of human rights violations must carefully differentiate those defending the rights of others from those that are defending their own rights. Simply put, victims of human rights violations are not necessarily human rights defenders, but obviously must have support to be protected and supported. Human rights defenders are a different species.

The second is do with what rights must be defended. Obviously, human rights are indivisible and must be respected as such, but there is a distinction between civil and political rights on the one hand and economic, social and cultural rights on the other. Frequently the former are given greater importance, and states frequently assert that the latter are not easily enforceable due to obvious constraints. However, defending the rights of minorities or cultural groups can be as hazardous for those defending them as for those defending victims of torture.

## **Appendix 1.**

### **“Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”**

The following excerpts from the Declaration indicate the right of defenders and the obligations of states:

#### **(a) Rights and protections accorded to human rights defenders**

Articles 1, 5, 6, 7, 8, 9, 11, 12 and 13 of the Declaration provide specific protections to human rights defenders, including the rights:

- To seek the protection and realization of human rights at the national and international levels;
- To conduct human rights work individually and in association with others;
- To form associations and non-governmental organizations;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;
- To develop and discuss new human rights ideas and principles and to advocate their acceptance;
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;
- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
- To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
- To unhindered access to and communication with non-governmental and intergovernmental organizations;
- To benefit from an effective remedy;
- To the lawful exercise of the occupation or profession of human rights defender;
- To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;
- To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).

#### **(b) The duties of States**

States have a responsibility to implement and respect all the provisions of the Declaration. However, articles 2, 9, 12, 14 and 15 make particular reference to the role of States and indicate that each State has a responsibility and duty:

- To protect, promote and implement all human rights;

- To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice;
- To adopt such legislative, administrative and other steps as may be necessary to ensure effective implementation of rights and freedoms;
- To provide an effective remedy for persons who claim to have been victims of a human rights violation;
- To conduct prompt and impartial investigations of alleged violations of human rights;
- To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;
- To promote public understanding of civil, political, economic, social and cultural rights;
- To ensure and support the creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions;
- To promote and facilitate the teaching of human rights at all levels of formal education and professional training.