

# L'OBSERVATOIRE

pour la Protection des Défenseurs des Droits de l'Homme

## THE OBSERVATORY

for the Protection  
of Human Rights Defenders

## EL OBSERVATORIO

para la Protección  
de los Defensores de Derechos Humanos

### Open Letter

To: Mr Robert Mugabe  
President of the Republic of Zimbabwe

LA LIGNE D'URGENCE

THE EMERGENCY LINE

LA LINEA DE URGENCIA

Paris-Geneva, August 13, 2004

Dear Mr. President,

The International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), in the framework of their joint program, the Observatory for the Protection of Human Rights Defenders, express their concern with regard to a new non-governmental organization (NGO) Bill in Zimbabwe, which, if passed by Parliament, would impose serious restrictions on the freedom of association and expression in Zimbabwe.

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According to the information received from the Zimbabwe Human Rights Association (ZimRights) the draft bill called "Non-governmental organizations Bill 2004" was issued by the government and brought before the Parliament for discussion and adoption before the next parliamentary elections in September 2005. This new bill expansively defines NGOs, and includes in its definition, "*any institution, the objects of which includes or are the promotion and protection of human rights and good governance*".

The Observatory is very concerned about the potential negative implications of this bill for Zimbabwe's civil society. Indeed, far from improving the environment for the operations of NGOs in Zimbabwe, the bill's provisions are designed to control, criminalize and appropriate the assets of NGOs, threatening the very existence of a truly independent NGO sector as well as the enjoyment of the right to freedom of association and expression. The Observatory will confine its comments in this letter to its concerns regarding the draft bill's potential effects on human rights defenders.

- **Control over NGOs' activities**

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The Observatory is concerned that the NGO Bill, through measures bringing human rights defenders under the heightened control of the government, is designed to eliminate the very independence and freedom that forms the core of the value, existence, and work of human rights defenders.

The NGO Bill requires the registration of all NGOs with the government, stipulating in section 9 that *“no non-governmental organisation shall commence or continue to carry on its activities or seek financial assistance from any source, unless it has been registered in respect of the particular object or objects in furtherance of which it is constituted”*.

NGOs have to apply for registration before the Registrar of the NGO Council, who works under the Minister of Social Welfare. To apply for registration, the director of an NGO must provide *“the names, nationality and addresses of its promoters; its sources of funding; its plan of action or projected activities for the next three years...”* (section 10).

Moreover, the modalities of registration are arbitrary, since the criteria for refusing registration are not defined, and everything is left to the discretion of the NGO Council, whose independence may be called into question (see below). Finally, the appeal process is also vitiated, since *“any NGO which is aggrieved by any decision of the Council [...] may appeal against that decision to the Minister [of Social Welfare]”*. One can safely assume that the Minister would rarely, if ever, go against the Council.

Another means of controlling human rights defenders proposed by the law is indeed the creation of an NGO Council, which seems to serve as a governmental instrument to better control and investigate NGOs activities: the Council will be composed of five civil society representatives and nine government representatives, all appointed by the Executive (sections 3 to 8). It will *“determine every application for registration [...], conduct investigations into the administration and activities of NGOs [...], take disciplinary actions...”*.

The Observatory fears that these provisions would, if passed into law, unnecessarily and arbitrarily intrude on the work of human rights defenders and paralyse their activities.

- **Criminalizing human rights defenders**

The criminalization of the activities of human rights defenders is the second particularly worrying aspect of the NGO Bill. Alarmingly, if the bill were passed, human rights defenders could be criminally sanctioned for not registering with the government. Section 9 of the bill stipulates that *“no person shall in any manner take part in management or control of an NGO, knowing that the organisation is contravening subsection (1)”* and prescribes personal criminal sanctions of up to six months imprisonment against the board members of an NGO that is not registered. Furthermore, the NGO Bill makes it a crime for human rights defender organizations to receive funding from abroad. According to

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Section 17 of the Bill, local NGOs will not be allowed to receive foreign funding or donations “*to carry out activities involving or including issues of governance*”. This prohibition directly targets human rights defenders as issues of governance are defined in section 2 as including the “*promotion and protection of human rights and political governance issues*”.

- **Appropriating NGOs' assets**

The NGO Bill not only allows the government to ban all foreign funding for human rights NGOs, but it also permits the government to repatriate the money back to the funding partner, or take possession of the money, securities and property of the organisation (section 28). Furthermore, after the dissolution of an NGO, section 30 provides that the government may appropriate all NGO property.

The aforementioned provisions that attempt to control and criminalize NGOs, specifically human rights defenders, in Zimbabwe blatantly contravene the Declaration on Human Rights Defenders, adopted by the United Nations General Assembly on 9 December 1998, and especially article 5b, which provides that “*everyone has the right, individually or in association with others, to form, join and participate in non-governmental organizations, associations or groups,*” and article 6c, which provides that “*everyone has the right, individually or in association with others to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, though these and other appropriate means, to draw public attention to those matters*”.

These provisions also violate article 22(2) of the International Covenant on Civil and Political Rights, which provides that “*No restrictions may be placed on the exercise of [the right to freedom of association] other than those [...] which are necessary in a democratic society in the interest of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedom of others*”.

The provisions of the NGO law criminalizing foreign donations and allowing the state to appropriate NGO assets violate article 13 of the Declaration on Human Rights Defenders, which provides that “*everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means...*”.

According to the information received by the Observatory, the new NGO bill may be related to the publication of a report by the African Commission on Human and People's Rights (ACHPR) during its last session in May 2004, which was very critical of the situation of human rights in Zimbabwe. The

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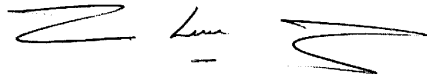
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Observatory fears the Bill was drafted to sanction NGOs, accused of having brought information for the report to the African Commission.

The Observatory is concerned that this Bill is proposed in a context of increased restrictions of fundamental liberties in Zimbabwe. The Observatory recalls that it follows the adoption of very repressive laws, such as the "Broadcasting Services Act" (BSA) in 2001, the "Access to Information and Protection of Privacy Act" (AIPPA), and the "Public Order and Security Act" (POSA), and the amendments brought to the "Private Voluntary Organizations Act" in 2002.

The Observatory urges the Zimbabwean government to take the necessary measures to withdraw this draft bill from consideration in the Parliament and to ensure the full respect of the freedom of association and expression, in accordance with the Declaration on Human Rights Defenders and with international and regional human rights instruments binding Zimbabwe, such as the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights.

In the hope you will take these considerations and requests into account, we remain,



Sidiki KABA  
President of the FIDH



Eric SOTTAS  
Director of the OMCT

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