

# **An Assessment of Human Rights Defender initiatives in Southern Africa**

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## **1 Introduction**

The role of Human Rights Defenders (HRD) in the protection and promotion of human rights has increasingly become an important focus of the international human rights movement and multilateral agencies such as the United Nations (UN) and African Union (AU). Indeed, the role of those who actively champion and protect human rights, and the need to make specific provision to protect their interests is now recognized as a critical component of the human rights matrix. But, what has been achieved as a result of these developments, and to what extent have these efforts contributed to the protection and promotion of human rights, both for HRDs themselves, as well as the general populace?

This assessment reviews the evolution of ‘organised’ Human Rights Defender activities in the Southern African region, with a specific focus on their developments since the late 1990s when Amnesty International (AI) initiated a series of conferences around the world to promote an agenda that recognizes the importance and legitimacy of the work of HRDs, as well as their need for better protection.

In late 1998, the culmination of the AI process coincided with the adoption by the UN of 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*, which provides explicit recognition and support for the work of Human Rights Defenders.

Since then there have been a number of developments, internationally and regionally, relating to issues of both policy and practical implementation, and involving state and non-state actors. This report focuses on what has transpired in the Southern Africa region and assesses what progress has been made, with a particular focus on Angola, Zimbabwe and South Africa.

The objective of this assessment is to provide a series of preliminary findings and recommendations that can form the basis of a programme intervention to be developed by the Netherlands Institute for Southern Africa (NiZA).

### **1.1 Methodology**

The research involved a review of secondary resource materials relating to HRD issues, including documents from multi-lateral institutions and the non-governmental sector. In-depth interviews were conducted with individual HRDs and representatives from human rights institutions in the three focus countries. Permission to obtain a visa for Angola was refused, so interviews were conducted telephonically. Interviews in South Africa and Zimbabwe were carried out in the respective countries.

The report is divided into four interrelated parts;

- The first section provides an overview of some the contextual issues affecting the deepening of a human rights and democratic culture in the Southern African region.

- The second section looks at specific developments in the region, as they relate to the Amnesty International, *'Defending the Defenders'* programme, and subsequent initiatives.
- The third section provides an analysis of HRD initiatives in the Southern African context, with a particular focus on Zimbabwe.
- The fourth section examines some of the key lessons that have been learnt from these experiences, and contains a series of recommendations and identified priorities for solidarity and advocacy.

## **2 The Southern African Context**

This section provides an overview of the Southern African context, outlining some of the key obstacles facing the development of democracy and a human rights culture. This includes an assessment of some of the contemporary dangers that are faced by human rights defenders in the region, as well as an overview of some legal / policy protections available to human rights defenders.

### **2.1 Building a culture of democracy and human rights**

The Southern African region has gone through a remarkable transition over the last 15 years, with the final steps of decolonisation, an end to devastating civil wars and internal conflicts in Mozambique and Angola, and perhaps most significantly the transition from apartheid to majority rule in South Africa.

This has resulted in a significant decrease in levels of violence. It is evident that each country situation presents a unique set of circumstances, both in terms of historical trajectories and their accompanying obstacles and opportunities. Although one must be cautious about generalizations, it is important to recognise that some positive generic developments relating to the development of a human rights culture are evident.

During the last fifteen years, almost all governments in the Southern African Development Community (SADC) region have publicly committed themselves to building and deepening democratic culture within their countries. This is evidenced in a number of countries by a perceptible shift from undemocratic, authoritarian and repressive modes of governance (as in Angola and South Africa), to at least a rhetorical commitment to notions of democratic accountability, and the holding of multiparty elections. South Africa's transition has been the most remarkable in this regard and has moved from an undemocratic pariah state to a powerful democratic force, with an acclaimed constitution.

Domestic legislative and regulatory frameworks provide, with varying degrees, a basis for implementing a range of civil, political, social and economic rights and commitments as set out in international, continental and sub-continental standards. In Africa and the southern African region, the African Union (AU) and SADC, respectively have provided the institutional basis for these developments. With respect to governance issues, the adoption in 2004 in Mauritius of the 'SADC Principles and Guidelines governing democratic elections' by SADC heads of state represents one of the latest developments in this regard.

Southern African leaders posit these developments within the broader context of continent-wide developments, as evidenced by the commitments to deepening democratic governance contained in the AU's Constitutive Act, as well as the establishment of the African Court on Human and People's Rights, the African Court of Justice, and the Pan African Parliament.

Despite these clearly positive developments, the process of democratization and the building a sustainable human rights culture remains in its infancy throughout the region. Although the interdependence between democracy and an adherence to human rights is widely accepted, there remains a considerable gap between rhetoric and reality, policy and implementation, commitment and capacity. Massive socio-economic deficits and challenges are compounded by inherited and contemporary structural inequalities, as well as a host of development challenges. Advancements in a number of areas are juxtaposed by stagnation and deterioration elsewhere. Knowledge of rights and access to effective remedies remain limited, and in some areas human rights considerations have become contested terrain between the state and civil society.

Attitudes towards human rights have hardened in some areas, and on some issues have become points of contestation and obfuscation, particularly in the context of uneasy 'north-south' relations. The responses are by no means coherent or uniform, but have raised unsettled concerns about some western nations' double standards around human rights standards, which in turn have fuelled allegations that human rights considerations have been used to promote political agendas designed to undermine national sovereignty. As a result of this, both international and domestic human rights organisations that raise these issues have been accused of promoting these agendas.

The politicization of human rights, whilst not unexpected, has stimulated a powerful, yet undefined challenge to notions of their universality. Assertions that human rights are some form of 'western' imposition have gained political currency in some areas. Interestingly, this debate and related interventions have focused largely on the arena of civil and political rights, and to a large extent social and economic rights and their interface with civil and political considerations have been largely insulated from scrutiny. This has been reflected in the contested notions of democracy played out in processes of legitimating and de-legitimizing around elections and reactions to these elections in the region.

In a context of massive poverty and underdevelopment, social and economic considerations are primary for most of Africa's peoples. In terms of a human rights 'discourse', these issues often receive less attention than civil and political considerations. The development of a human rights culture therefore remains very much a work in progress (as it does across the globe). Civil society in many countries has struggled to promote a holistic approach to mainstreaming a broad-based human rights agenda. Indeed, human rights issues have often been adopted selectively in terms of lobbying and advocacy, as well as related policy and implementation processes.

South Africa, for example, which has the most comprehensive official human rights agenda and commitments, has yet to seriously take forward its own National Action Plan for the Promotion and Protection of Human Rights. Despite many positive and distinct human rights developments, these often appear essentially isolated from broader governance and policy considerations. A much hailed Constitution and Bill of Rights, have, however, allowed civil society engagement on a range of issues, often focusing on specific marginalized groupings, such as children or refugees. Even here though, the social and economic human rights discourse remains largely formative, and the preserve of an elitist few.

In Angola, the situation is radically different. Human rights have and remain a politically sensitive issue, and the country remains deeply influenced by its authoritarian and violent past, with much of civil society remaining muted and partisan. Consequently, there is a limited domestic capacity to promote a broad-based human rights agenda, and actions have remained restricted, both conceptually and practically.

On balance, however, there has clearly been some important progress in the SADC region, although persistent challenges in many countries, and the corrosion of democratic space particularly in Zimbabwe, raises pertinent questions about the political will of the region's leaders to uphold their commitments to building democratic culture. Increasing poverty and the HIV/AIDS pandemic compound and frustrate the situation further. This set of factors highlights the fragility of the democratic project, and the importance of the role that is or could be played by a cross section of democracy activists and human rights defenders.

### **2.2 Obstacles to deepening democracy**

The commitment to democracy and the holding of elections has not resulted in a corresponding growth of liberty and freedom in many countries. Indeed, Southern Africa's path to deepening democracy continues to be confronted by a range of inter-related issues and obstacles, the most important of which related to peace and security, social and economic development, corruption and good governance considerations, and respect (or a lack thereof) for human rights.

#### **Peace and Security**

Violence, repression and a range of other civil and political human rights violations (i.e. linked to freedom of expression, freedom of assembly etc) have characterized the experiences of many countries in the region. Peace and security considerations have been used and manipulated by both colonial and post-colonial government to legitimize authoritarian, repressive and unaccountable modes of governance. This was evident, for example, throughout the 27-year civil war in Angola, as well as in Zimbabwe during the suppression of opposition elements in the 1980s; and more recently in the aftermath of the formation of the Movement for Democratic Change, which the government consistently accuses of being an illegitimate British proxy.

Over the last ten years, there has been an appreciable reduction in levels of violence and repression in many countries in the region. The end of the civil war in Angola in 2002 is most significant in this regard. The situations in the Democratic Republic of the Congo (DRC), and Zimbabwe stand out as clear exceptions in this regard. Quantitatively, the DRC remains the most violent country in the region, with millions internally displaced, and widespread gross human rights violations perpetrated across the country, especially in the eastern provinces<sup>1</sup>.

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<sup>1</sup> Although the DRC technically falls within the SADC countries, it is regarded by AI and others as part of the 'central African' region. Consequently, this assessment has not focused on the situation there.

Across the region, however, human rights monitoring agencies have shown that important aspects of the past (both in terms of policy and practice) continue to pervade current realities<sup>2</sup>. This is reflected in the wholesale impunity for historical and, in some countries, contemporary human rights violations and its implications for building accountability and an equitable justice system. It is also reflected in a continuing reliance by many governments on ubiquitous security and intelligence elements.

In Angola, for example, both police and military elements remain accused of perpetrating gross human rights violations in the post-war dispensation. Elsewhere, such as Mozambique, in spite of police reform efforts, allegations of torture and excessive use of force and firearms continue to be made. Similar allegations have been made in relation to Namibia's police service and the paramilitary Special Field Forces, as well as against South Africa's police and prison services. In Swaziland, the rights of freedom of association, assembly and expression remain restricted, and security forces are alleged to use excessive force to disperse demonstrations.

There are few reports of human rights violations in some of the Southern African countries, such as Botswana and Lesotho, although anecdotal evidence suggests that there is considerable 'under-reporting' not only in these places, but across the region. Indigenous groups in Botswana for example, have not been represented in the HRD discussion until now. To some degree, this reflects the difficulty that civil society has had to develop and maintain a coherent human rights role in the post-liberation era. The extent of this problem varies, and so to its implications for HRDs.

In several countries, in particular Angola, and the DRC, there is limited information about the conditions of HRDs or their response to widespread violence. This contrasts, for example, with Zimbabwe, where there has been extensive attention given to certain types of violations relating to the repression. Elsewhere in the region, specific problems have also been identified. In Malawi, Namibia and Zambia during 2003, for example, journalists perceived to be critical of the government were assaulted, threatened and arrested.

With the exception of South Africa, not one country has attempted to meaningfully address past violations in either colonial or independence eras. This situation feeds a culture of impunity, which is reflected in ongoing allegations of security force abuses in most of the region. These reminders of the past, and a failure to engage with a meaningful justice and accountability agenda, has left a considerable amount of 'unfinished business', which continues to temper citizen-state relations in a number of countries, and fundamentally undermines efforts to realize the objectives of the democratic project. The need to build effective and credible criminal justice systems that are supported by the general population in a context where justice and accountability for violations is largely absent present considerable challenges.

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<sup>2</sup> See, for example, 'country reports' from Amnesty International, Human Rights Watch, International Crisis Group



### **Socio-economic concerns**

There is widespread consensus amongst experts and practitioners regarding the structural linkages between development and democracy, and that poverty is the single biggest obstacle to addressing a range of ‘democracy deficits.’ The key impact of poverty is disempowerment, and building a culture of democracy and human rights depends largely on the ability of ordinary people to engage, claim and protect their rights. Southern Africa remains one of the poorest regions in the world, with most countries facing massive socio-economic challenges, which cannot be effectively addressed by weak economic infrastructures, limited human and financial resources, crippling debt and little prospect of much needed investment. The highest HIV/AIDS prevalence rates in the world, a range of other health challenges, and very high levels of illiteracy further compound this situation. The gap between rich and poor, most acutely observed in the South African context, is also starkly apparent in almost every country of the region, and is often reinforced by discriminatory and corrupt practices.

### **Corruption and Good Governance**

The synergy between economic and political influences in many Southern African countries continues to present fundamental challenge to the evolution and preservation of good governance. Political connectivity in many countries such as Angola and Mozambique, for example, is critical for economic opportunity and advancement. The situation is further compounded by the ‘politics of patronage’ including nepotistic practices that remain apparent in many of the region’s polities. So too, are an array of ethnic and racial discriminatory practices<sup>3</sup> that continue to permeate the politics of the region.

Corruption poses a particular risk to HRDs in the region and must be considered as a central human rights concern, especially as it relates to the failure of states and civil society to protect and realise other fundamental human rights. Most governments in the regions, again with some notable exceptions (such as South Africa) have not taken meaningful efforts to clamp down and remove corrupt elements. This has undermined states’ capacity to deliver, and raised the stakes for those who seek to challenge these practices. Those who expose corruption, especially by powerful persons in Government, risk their lives and those of their families. Journalists in Angola (Ricardo de Mello) and Mozambique (Carlos Cardoso) have been murdered, and others have been harassed and intimidated for exposing corrupt practices (i.e. prominent Women’s Rights activists, journalists from the *Africa Eye News Service* in Mpumalanga, South Africa).

The politicisation of anti-corruption campaigns has also undermined meaningful efforts to curb the problem. In Zimbabwe, for example, the government’s anti-corruption programme has been selectively employed to convince the public that it is serious about curbing malpractice in both the state and private sector. The government has also used

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<sup>3</sup> Southern Africa is racially and ethnically diverse, and sometimes manifest in division and discrimination. Racial discrimination in South Africa and Zimbabwe was formally codified before both countries respective transitions to majority / democratic rule. Nevertheless, the legacy of discrimination continues to influence practices at a social, economic and political level. In Zimbabwe, ethnic divisions between Shona and Ndebele, as well as within elements of the Shona clans continue to have divisive implications.

this issue to introduce legislative amendments that bypass important due process considerations<sup>4</sup>.

The corruption debate must also address the lack of democracy and good governance within civil society organisations as well as the state. Just as in politics, CSOs are often built around individual personalities and power is concentrated in the hands of a single individual. Information crucial to the functioning of the organisation including contacts with donors and sources of funding are often not shared with others in the organisation or is shared on a need-to-know basis. The lack of democracy and transparency within organisations not only makes them prone to criticisms that they do not practice what they preach, but also creates an environment that is conducive to corruption and mismanagement.

### **Dominant political parties**

Despite a commitment to multi-party politics, single political parties dominate a number of the individual polities. There are some notable exceptions to this, such as Mozambique and Zimbabwe where opposition parties have been able to command sizeable support. Elsewhere (i.e. Malawi, Zambia), political parties are weak and fragmented, and seemingly unable to present a credible alternative for the electorate. Dominant parties also maintain power, especially in rural areas, often through traditional structures such as chiefs or indunas who are responsible for decisions that affect the lives of people living under their jurisdiction.

There are many reasons for the weakness of opposition political parties: some are tainted by their past role in supporting or participating in a racist government; being supported by an elitist part of the electorate, which often constitute a minority; failing to address issues that are of concern to the majority indigent population; leadership struggles within political parties; poor leadership and lack of public confidence in the competence of the party to rule the country; a failure to articulate attractive and realistic alternatives to the policies of the ruling party. Human rights considerations, if raised at all, are done so obliquely, largely in relation to government's failure to deliver.

### **2.3 Friend or Foe? Civil Society, Human Rights and Foreign funding**

In a number of countries, the weakness of opposition political parties has meant that it is civil society organisations that fill the political vacuum of raising issues on a range of (sometimes controversial) subjects with the government, sometimes confrontationally. This leads to HRDs defenders being demonised, especially in situations where human rights are often highly politicised.

The obstacles outlined above and related human rights violations are neither absolute nor consistently manifested. In their various and evolving guises, however, they present significant hurdles and aberrations to the democratisation processes underway, and by

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<sup>4</sup> Recently introduced regulations allow for effective 'detention' without trial (and access to legal representatives) for up to 21 days in cases involving allegations of corruption and economic sabotage.

definition to the protection and realisation of many fundamental human rights. This in turn has resulted in a number of initiatives, largely reactive and on the whole limited in terms of scope and capacity, to address these concerns. By and large there has been no coherent or integrated response to these challenges. Indeed, the opposite has been largely the case, and the response from CSOs and groupings across the region has not been consistent, and has elicited a variety of responses, ranging from avoidance and denial to various forms of lobbying and advocacy, ‘constructive engagement’, protest and demonstration.

Many NGOs have deliberately avoided a politicised approach in order to avoid confrontation and its oft-associated violations. In Zimbabwe, for example, the bulk of NGOs have sought to avoid openly criticising the government, even in the face of draconian legislation. Most recently, they have visibly distanced themselves from the handful of human rights organisations that are likely to be targeted by the state.

The civil war in Angola and the consequent deprivation of the people, as well as the civil strife in Zimbabwe, for example, has instead placed an emphasis on humanitarian assistance. While humanitarian agencies including UNICEF, UNDP, Save the Children and others espouse a human rights-based approach to their humanitarian work, much of it remains rhetorical and unevenly embraced. As such, notions such as the interdependency of rights are avoided, and the relationship between humanitarian support and civil and political or social and economic rights not understood or addressed. Somewhat ironically, the Zimbabwean government chose to ‘attack’ several humanitarian NGOs in the run-up to the March 2005 Parliamentary elections. Despite this, prospects for a united response to government hostility from the NGO sector remains unlikely.

In many instances, ‘generalist’ human rights organisations have not adequately engaged (if at all) with a number of human rights issues, particularly those relating to social and economic rights violations. Whilst relevant, their primary focus on civil and political conditions often ignore conditions that resonate much more closely with the day-to-day realities and priorities of the broader community. As a result, some communities are questioning the relevance of the work of some HRDs who focus exclusively on civil and political rights in circumstances of dire poverty. This has weakened their credibility, and with it prospects of securing a broader ‘buy-in’ and support from the community.

Not surprisingly, certain human rights issues have become contested terrain in several countries in the region. A number of governments equate human rights advocacy, particularly those dealing with civil and political rights, with disloyalty, opposition politics and nefarious external agendas. Zimbabwe is the most obvious example of this at present, but even in South Africa, where the government had shown great openness to contributions from NGOs towards its reform efforts, political leadership has not welcomed aspects of their critical engagement. President Mandela, in an address to the African National Congress’ December 1997 conference, for example, accused NGOs of becoming “instruments of foreign governments and institutions” who funded them “to promote their own political agenda”. Although Mandela has also repeatedly acknowledged the critical role CSOs play, his criticism was a direct challenge to western powers and institutions to examine their own agendas and responsibilities. It also placed

domestic human rights organisations that are beneficiaries of foreign funding in an invidious position, as the pertinent issues they advocate and lobby around become subsumed and masked by broader political machinations and distortions.

A core challenge for HRDs in ‘organised’ civil society, therefore, is to reduce their dependency on foreign funding and to inculcate philanthropy for human rights work within their own countries. Options in this regard, however, are acutely limited, especially where most potential funding sources (i.e. business) are likely to want to maintain a cooperative relationship with the government of the day, and would not want to be seen supporting elements that might be construed as ‘oppositional’.

The dilemma of foreign funding, and by implication the subtext of foreign agendas, continues to present HRDs with considerable difficulties in some countries. Mandela’s concerns are precisely the rationale that the ZANU-PF government in Zimbabwe has recently used in legislation it introduced to prohibit human rights NGOs from receiving external funding and support. Despite this being one of the most dangerous and regressive developments in recent years, the infamous NGO Act has been greeted with conspicuous silence by the region’s political leadership<sup>5</sup>. To a certain extent, this absence of criticism reflects an habitual failure to criticise and engage with the domestic affairs of neighbouring states. At another level, it also reflects concerns (cogent and unconvincing) regarding unwelcome external influences. Human rights considerations are traded away for the development and intensification of ‘southern’ solidarity against the north.<sup>6</sup>

These recent developments in Zimbabwe have been roundly condemned by a range of civil society actors in the region and beyond. They appear, however, to have had little effect on political leaderships and other policy decision makers. Indeed, weak civil society and ineffective political opposition have not provided an effective countervailing force to many of the elements that contribute to these ‘democracy deficits’ across the region. Their critiques are routinely ignored and viewed in government circles with a high degree of suspicion, if not hostility.

It could be argued that this not only reflects a lack of tolerance towards the pluralistic norms of critiquing and related notions of accountability, but importantly, also an unwillingness to concede that governments’ retain the monopoly on what is right or wrong. In this regard, it is important to remember that the political parties that formed many of the regional governments, including our three focus countries, were the progenitors or major players in each of their liberation struggles for independence. Despite evidence of authoritarian and repressive behaviour during each of these struggles (not to mention subsequent repression in post-colonial Zimbabwe and Angola), the objectives of many liberation movements are equated (explicitly or implicitly) with the end of oppression and the attainment of fundamental human rights. The apparent

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<sup>5</sup> Although the NGO Act was passed through Parliament in late 2004, it has not been assented to by President Mugabe and has therefore not become law. The government’s intentions have, however, created a considerable uncertainty for many NGOs and their donors, who are hesitant to make commitments to action / funding in a context where further negative actions by the Zimbabwean government against CSOs is expected.

<sup>6</sup> Over the last three years, a number of ‘southern’ countries, led by South Africa, have repeatedly blocked attempts at various United Nations fora to discuss and pass resolutions regarding the deteriorating human rights situation in Zimbabwe.

contradiction between the stated ideological objectives of liberation and the realities of contemporaneous repression has been studiously avoided. Yet, strategically and tactically this remains a critical area of engagement, although how, and by whom is moot.

Governments' censure of foreign-funded NGO activity may be selective (in that they rarely criticise support for humanitarian civil society work) and often unsubstantiated. Nevertheless, it does raise an important contextual question as to "who" sets the human rights agenda? In this regard, the role of donor community and its methods of engagement come under the spotlight.

Almost all human rights and related HRD activity in the region would not be possible without donor support. There are very real concerns in some quarters that the donor community has failed to adequately coordinate its activities with the 'best interests' of target beneficiaries in mind. Donors regularly change their priorities, seemingly driven by their own interests rather than the prevailing needs of HRDs or the particular countries' human rights priorities. Indeed, direct support for the establishment and development of HRD activities is somewhat limited. In Angola, few external countries actively trading are also engaged in human right work. In South Africa, donors have supported a range of human rights endeavours, but have increasingly pared back their engagement, preferring to divert their resources to more needy constituencies. The extent to which donors set the agenda is debatable, and requires a more nuanced appreciation of their influence over who receives what support and why. In some respects, HRDs have become money chasers instead of responding to the identified needs of the communities they serve. They also create expectations by initiating projects that they are unable to sustain, which in turn damages and undermines their credibility.

### **2.4 Human rights protections for Human Rights Defenders**

#### **The UN Declaration and Secretary General's Special Representatives for HRDs**

A matrix of domestic, regional and international legal protections and mechanisms provide a theoretical regulatory framework of obligations and remedies for human rights defenders. At the urging of human rights organisations worldwide, led by Amnesty International, the UN Commission on Human Rights adopted a Declaration on human rights defenders in March 1998<sup>7</sup>. This Declaration was then referred to the General Assembly whose members (including representatives from Southern Africa) formally adopted the resolution at the 50<sup>th</sup> anniversary of the UN in December 1998.

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<sup>7</sup> *'United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms'* UNGA Resolution, 53/144, 8 March 1998.

The UN Declaration constitutes the first international human rights standard that recognises the role of human rights defenders and places an obligation on States to provide them with protection. The Declaration also requires States to adopt legislative and other measures to give effect to the rights and freedoms in the Declaration. However, as the Declaration is not a treaty it does not create any legally binding obligations on States. On the other hand, the Declaration does constitute “soft law”, a legal text on which there is international consensus and which could be used as a benchmark to measure behaviour of States towards human rights defenders. It provides human rights defenders with a very important tool for advocating for their own rights, freedoms and protection. In the Southern African region, South Africa was one of a few countries that (since 1996) had publicly called for the adoption of the UN Declaration.

Following the submission of a report by the UN Commission on Human Rights on the implementation of the Declaration, this Commission adopted a resolution in April 2000 in which it expressed concern at the threats and harm faced by human rights defenders. The UNHCHR urged states to implement the Declaration and requested the Secretary-General to appoint a Special Representative to report on the situation of human rights defenders throughout the world. The UN Secretary-General subsequently appointed Ms Hina Jilani, a well-known and dedicated Pakistani human rights activist to this post during 2000. The broad mandate of the Special Representative is to seek, receive and respond to information on the situation of HRDs; to establish cooperation and conduct dialogue with Governments; and to recommend effect strategies for the better protection of human rights defenders. Her mandate was renewed in 2003 for a further three years.

### **Protection for HRDs in Africa**

Although all countries in the region have ratified a range of human rights treaties, including the African Charter on Human and Peoples’ Rights, very few, if any, of these international standards have been translated into domestic legislation. In fact, there are many instances where domestic legislation, especially security laws, contains provisions that are contrary to obligations undertaken by these states under human rights treaties. South Africa, Angola and Zimbabwe are all party to the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women. South Africa, once again, stands out from many neighbouring countries with the introduction of a gamut of legislation designed to address core considerations contained within these conventions (i.e. addressing issues discrimination, the needs of vulnerable groups etc) South Africa has also demonstrated its commitment to the development of an international justice and accountability mechanisms with the adoption of the Implementation of the Rome Statute on the International Criminal Court Act 2002.

As in the rest of the region, our three focus countries all have constitutional provisions relating to human rights such as right to life, freedom of expression, freedom of association, prohibition of torture and arbitrary detention that in theory at least should provide adequate protection to human rights defenders. In Angola, a draft Constitution that will replace the 1992 ‘Constitutional Law’ has been in the process of development for several years, but there has been little engagement with broader civil society in terms of developing sections relating to fundamental rights. In Zimbabwe, constitutional reform remains a site of political contestation and manipulation, with the ruling party seemingly

disinterested in the adoption of significant reforms designed to empower its citizenry, but rather as an instrument for reinforcing its won political hegemony.

In many instances, the existence or adoption of retrogressive legislation and practices (that effectively limit these rights), and the failure of the authorities to act in accordance with their constitutional obligations (and obligations assumed under international law) pose serious threats to human rights defenders. The legal infrastructure in most of the region remains weak and access to it is generally limited. With the apparent exception of South Africa, the judiciary and magistracy is at times subject to political interference and manipulation.

In several of countries in the region, government sponsored human rights commissions and other remedial mechanisms (i.e. Ombudsmen) have been established. For the most part, these structures have proved to be a disappointment and have had little appreciable impact on the development of a human rights culture, which may reflect problems of both commitment and capacity. In Malawi and Zambia, for example, Human Rights 'Commissions' have only one dedicated person to fulfil their mandates; clearly an impossible task. Indeed, several remedial structures were created with flawed mandates that limit their ability to monitor, document and investigate effectively; others are unwilling to make public statements that might court negative political reactions. Once again, it is really only the South African Human rights Commission and its version of the Ombudsman (known as the Public Protector) that have shown any indication of 'teeth' and capacity, and even these bodies are subject to warranted criticism. South Africa also has various other specialist statutory bodies, including a Commission for Gender Equality and an Independent Complaints Directorate that is tasked with investigations into allegations of police misconduct. All of these bodies have a mandate to protect and promote the fundamental rights of human rights defenders, which in turn makes South Africa the best equipped country in the region in this regard. To date, however, the issue of HRDs has been largely absent from their agendas, reflecting both a conceptual and practical lack of engagement around these considerations.

### **The African Commission & Special Rapporteur**

At the continental level, the African Commission on Human and Peoples' Rights has until recently dealt with the issue of HRDs indirectly, through the adoption of resolutions on the human rights situation in a particular country. In May 2001, however the Commission adopted a resolution specifically on the situation of HRDs in Tunisia, in which it made reference to the UN Declaration and expressed concern at the suspension by the authorities of the activities of a human rights NGO.

African and international NGOs (i.e. Amnesty International) lobbied the African Commission to take up HRDs as a thematic issue and, at its session in November 2003 the Commission appointed Commissioner Jainaba Johm as the Focal Point on Human Rights Defenders, while it continued to evaluate the appointment of Special Rapporteurs. At the urging of NGOs, the Commission arranged a meeting on HRDs in Banjul in March 2004. At its subsequent 35<sup>th</sup> session in June 2004 the Commission appointed Commissioner Johm as Special Rapporteur on Human Rights Defenders. In its resolution the Commission set out the mandate of the Special Rapporteur as follows:

- a. *To seek, receive, examine and to act upon information on the situation of human rights defenders in Africa;*
- b. *To submit reports at every ordinary session of the African Commission on the situation of human rights defenders in Africa;*
- c. *To cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders;*
- d. *To develop and recommend effective strategies to better protect human rights defenders and to follow up on his/her recommendations;*
- e. *To raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa*

*The Commission also called upon States to give full effect to the UN Declaration, to ensure the protection of human rights defenders and to include in their periodic reports information on measures taken to protect human rights defenders.*

For the Special Rapporteur to be effective in raising the profile of the HRD issue on the continent she will need considerable support from NGOs and the donor community. The dearth of resources at the Commission, both human and financial, is well known. Furthermore, the support of NGOs is imperative in providing information on a regular basis, as well as assisting the Special Rapporteur in the undertaking of country visits and the formulation of recommendations.

Despite this array of regulatory protections and remedial mechanisms designed to protect and promote a human rights and democratic agenda, there is only a thin veneer of capacity to implement this agenda, and in many instances virtually none at all. As such, the problem is often not so much a matter of whether constitutionally protected rights exist, but rather the lack of mechanisms for the effective protection of these rights, as well as a lack of respect for those rights within state structures. Poor levels of knowledge amongst the general population about their rights and how to access them further compound the situation.



### 3 Past activities and key players

Since 1998, efforts to promote an HRD agenda in the region have been instituted by a select grouping of non-governmental organisations, often spearheaded by Amnesty International (AI). This section examines these initiatives and those that have been involved.

#### 3.1 Human Rights Defenders in Southern Africa– the Amnesty International process and beyond

During 1998, under the rubric of AI's *Defending the Defenders Project*, four sub-regional workshops on human rights defenders were convened across the African continent. These workshops were followed by an 'All-Africa' HRD conference in late 1998, and formed part of Amnesty International's celebration of the 50th anniversary of the Universal Declaration of Human Rights, which in turn fed into the Paris Summit on Human Rights Defenders that took place between 8 and 11 of December 1998 that was co-hosted by AI, Fédération Internationale des Ligues des Droits de l'Homme (FIDH), France Libertés and Aide à Toute Détresse (ATD Quart Monde).

##### **Southern Africa Human Rights Defender Workshop- March 1998, Harare<sup>8</sup>**

The Southern African workshop was held in Harare in March 1998 and brought together participants from Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe<sup>9</sup>.

The 3-day Harare workshop provided practical inputs on monitoring and documentation and how to address a range of violations that occur in rural areas. Participants also assessed the challenges and responses to the harassment of HRDs, and in this regard developed country-specific profiles (with the exception of Mozambique).

The workshop then addressed the issue of 'best practices' as they relate to:

- (i) Lobbying, campaigning and publicity,
- (ii) Legal mechanisms and public education,
- (iii) Networking and monitoring.

Country representatives were then asked to draft country action plans, which would include activities at a local, regional and international level. Practicalities, including organisational responsibilities for tasks and related timelines were also outlined.

The participants drafted a set of recommendations for securing and enhancing the security of HRDs. These focused on national campaigns around:

- (i) Civic education and campaigning,
- (ii) Media and information,
- (iii) NGO solidarity and networking,

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<sup>8</sup> Report of the '*Southern Africa Human Rights Defender Workshop – Defending the Defenders*', 26-28 March 1998, Amnesty International.

<sup>9</sup> A full list of participants is contained in the workshop report.

- (iv) Training,
- (v) Petitioning and lobbying, and
- (vi) Constitutional and legal reform.

In addition, a series of recommendations were made for action at the regional (i.e. Southern African) and international levels.

### **The All-Africa Human Rights Defenders' Conference - November 1998, Johannesburg**

The All-Africa Human Rights Defenders' Conference<sup>10</sup>, convened by Amnesty International in Johannesburg drew together around 130 human rights defenders from over 40 countries in Eastern, Southern, Western, Central, and Northern regions of Africa. Participants came from many different professions ranging from NGO workers to journalists and lawyers, as well as from development field workers to trade unionists.

The focus of the All-Africa Conference was on international and continent-wide solutions, and sought specifically to:

- (i) Devise mechanisms for the protection of HRDs in Africa
- (ii) Plan activities that will push for the protection of HRDs in Africa (with a focus on the roles of AI, sub-regional NGO networks and African INGOs), and
- (iii) Publicize the plight of HRDs at risk in Africa and highlight and recognise the legitimacy and importance of their role.

The conference examined (a) participants' expectations in relation to the establishment of HRD protection mechanisms, establishing and developing networking, and (b) the specific challenges and problems facing the continent with respect to HRDs.

The conference discussed the outcomes of the sub-regional workshops, before breaking into 'theme working groups' that examined the peculiarities of particular contexts facing individual HRDs and human rights NGOs in the course of their work.

(A) The first group examined the situation of HRDs working under threat, and focused specifically on; (i) repressive legislation/measures, (ii) physical threats, (iii) psychological threats, and (iv) economic threats.

(B) The second group looked at the situation of HRDs working in situations of armed conflict, focusing specifically at; (i) security considerations, (ii) difficulties in information sharing / dissemination, and (iii) difficulties of ensuring conflicting parties accept HRDs as impartial.

(C) The third group examined the situation of HRDs working in divided societies.

Having examined the problems and challenges, the conference moved on to the issue of protection, making a series of recommendations in terms of:

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<sup>10</sup> Report of the 'All-Africa Human Rights Defenders' Conference' – 2-4 November 1998, Amnesty International.

- (i) immediate protection needs,
- (ii) medium-term strategies for capacity building and networking,
- (iii) long-term strategies to achieve legal and policy reform.

The conference then focused on four specific interest groups, namely Women's Rights Activists; Journalists; Lawyers; and AI Members, and made a number of recommendations for improving their protection, and it was undertaken to submit these to their professional associations. It is not clear whether this was done and what subsequent action, if any, was taken.

Finally the conference adopted and released a declaration<sup>11</sup> and drew up the "Johannesburg Plan of Action" (JPOA), which set out a detailed continent-wide list of strategies and actions that needed to be taken by human rights defenders:

- (i) in terms of their own work,
- (ii) in relation to domestic Governments, and;
- (iii) in relation to foreign governments and intergovernmental organisations

### **Post-Johannesburg developments**

*Continuation Committee, June 1999, Dakar*

A Continuation Committee of 10 human rights defenders was elected from amongst the All-Africa conference participants, and mandated to monitor the implementation of the Plan of Action. Representatives from Southern Africa came from the Zambian organisation, African Network for Human Rights and Development (AFRONET) and the Namibian organisation, the Legal Advice Centre (LAC). Neither organisation had participated in the Harare workshop.<sup>12</sup> This Committee met in Dakar, Senegal between 28-30 June 1999 to review and evaluate the implementation of the JPOA, as well as develop strategies and action plans for further implementation and operationalising the plan<sup>13</sup>. The Committee agreed that;

1. to implement the JPOA it was unnecessary to create a new organisation or duplicate the work of existing organisations and networks,
2. Implementation of the JPOA will be done through existing organisations and networks, and that this should be integrated into their existing work and activities,
3. Persons participating in the implementation of the JPOA would do so on the basis of organisational mandates, and would be accountable to their respective organisations.
4. Implementation of the JPOA shall be inclusive of all organisations and networks that wish to participate in it and make a contribution to its success.
5. Organisations participating in the implementation of the JPOA shall commit themselves to making personnel, resources and infrastructural facilities available, to the extent possible.

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<sup>11</sup> See, the 'Johannesburg Declaration'.

<sup>12</sup> In fact there had been no representation at all from Namibia at this workshop.

<sup>13</sup> See 'Report of the All-Africa Human Rights Defender Continuation Committee meeting, Dakar, Senegal, 28-30 June 1999'

6. Ownership of the project and fundraising for the implementation of the JPOA shall be on a collective basis, but one organisation may be mandated to act on behalf of all participating organisations at a sub-regional level.
7. Implementation of the JPOA will be devolved to sub-regional level, with the elected members of the Continuation Committee taking primary responsibility in the sub-region where they are located.

The Continuation Committee members agreed to continue overseeing the implementation of the JPOA at a sub-regional level, where they will function as Working Group co-ordinating activities in their respective sub-regions. Regional representatives then agreed to a particular set of actions. In terms of Southern Africa, AFRONET and LAC undertook to initiate discussions with the existing human rights networks and other potential participants from the region.

In addition, Amnesty International agreed that it would establish and manage a Placement Programme aimed at protecting HRDs forced to leave their countries, and be responsible for maintaining contact with all sub-regional Working Group and will act as a clearinghouse.

This appears to be the first and last time the Continuation Committee came together as one grouping. Although the Committee had tasked sub-regional groupings to take the process forward, it was 22 months before the first sub-regional grouping from West Africa met in April 2001. At this meeting HRDs from that region launched their regional plan of action in collaboration with the UN Special Representative on HRDs.

It is not clear what actions, if any, were taken by the Southern African Continuation Committee representatives following the June 1999 meeting. Although AFRONET was the host organisation of the newly established Southern African Regional Human Rights Network, SAHRINGON, and organisationally worked closely with Amnesty International with respect to issues of training and documentation concerns, no apparent focus was ever given by SAHRINGON (or AFRONET) to Human Rights Defender issues. No meetings were convened and no further information disseminated about (actual or possible) developments<sup>14</sup>.

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<sup>14</sup> The assessment did not undertake a 'forensic' examination of responsibilities. Efforts were made to elicit some insights from AFRONET, but no explanation was forthcoming. SAHRINGON was theoretically the most appropriate vehicle to further the HRD agenda as the primary human rights network in the region. Clarification was also sought from a former SAHRINGON executive member, who was also (at the time) the Director of the Zimbabwe Human Rights Association, which had participated in both Harare and Johannesburg processes. He rationalised the absence of an HRD focus on the fact that it "wasn't a priority".

### *NGO Forum Consultation, November 2002, Tshwane*

In November 2002, human rights defenders from nine Zimbabwean, South African, Namibian and Botswana organisations<sup>15</sup> met in Tshwane, South Africa with members of Amnesty International from the United Kingdom, Uganda and South Africa to discuss the need to devise a joint strategy and working protocols on support and protection of HRDs.<sup>16</sup>

The meeting did not review why there had been no progress in the sub-region, but focused understandably on the practical challenges presented by the deteriorating Zimbabwean situation; including:

- (i) A set of general principles, which included a principled recognition that the protection of HRDs should be integrated in initiatives by society for retrospective justice and accountability, truth and reconciliation,
- (ii) A focus on collaboration with local NGOs and networks in Zimbabwe (in the context of the unfolding crisis)
- (iii) Collaboration with sub regional NGOs, with a particular reference developing referral and hosting mechanisms and capacity amongst the network members.
- (iv) Collaboration at international and African Regional levels, with specific reference to Amnesty International's role, including the development of a 'Rapid Respond Mechanism', lobbying, fundraising (for the network to implement joint strategies) etc
- (v) Preparation for long-term plans at regional level, including the hosting of a Human Rights Defender Forum to address HRD issues in the Central and Southern African sub-regions.

### *Human Rights Defender Forum for Central and Southern Africa, June 2003, Durban*

Amnesty International (AI), the International Service for Human Rights (ISHR), and HIVOS co-sponsored a regional forum in Durban, South Africa to;

- (i) examine the regional challenges faced by HRDs,
- (ii) provide training on international instruments for protection, and
- (iii) establish regional plans of actions.

Amnesty International Africa Regional Office together with the Solidarity Peace Trust, the local partner in South Africa, co-hosted the Forum<sup>17</sup>.

Attending delegates came from DRC, Burundi, Rwanda, Cameroon, Central Africa Republic, Chad, South Africa, Botswana, Mozambique and Zimbabwe. Participants

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<sup>15</sup> The organisations represented were (a) South Africa- Centre for the Study of Violence and Reconciliation, Institute for Democracy in Southern Africa, Network of Independent Monitors (whose representative subsequently works on HRD issues for the Solidarity Peace Trust), Lawyers for Human Rights, and the Centre for Conflict Resolution, and (b) Zimbabwe - Amani Trust and the Crisis in Zimbabwe Coalition. Representatives from Botswana (i.e. Ditshwanelo), and Namibia (i.e. Legal Advice Centre) were unable to attend the meeting.

<sup>16</sup> 'Draft Report of the Consultative Meeting of NGOs in Tshwane (Pretoria), South Africa held from 7 to 8 November 2002'.

<sup>17</sup> 'Durban Final draft report on the 2003 HRD FORUM', Durban 28 June – 2 July 2003.

included the regional representative from the Office of the High Commissioner for Human Rights (OHCHR), the Special Representative of the SG of the UN on HRDs, Desk Officer for the UN HRD Mandate, Representative of the Inter –American Commission on Human Rights, Asia Forum Coordinator, Frontline for the Protection of HRDs, HIVOS, Peace Brigade International, World Organisation Against Torture, International Service for Human Rights and Article 19<sup>18</sup>.

A number of presentations from organisations working with thematic issues (i.e. media) and HRD coordination efforts in other parts of the world (Americas, Asia) were presented, as well as ‘training’ inputs on available mechanisms and procedures at the UN and African Union.

The 1998 Johannesburg Plan of Action was reviewed by Forum delegates, who concluded that it was too broad to implement and proposed the need for a revised and updated action plan. The failure of the Continuation Committee was also examined, and delegates concluded that the Committee lacked logistics and a practical implementation strategy, and suffered because of the difficulties faced by individual committee members. Consequently, most of the issues raised in 1998 and 1999 had not been taken forward in any structured or organised manner

The Forum divided into three groups with regional focuses (southern, eastern and central Africa) to review the JPOA and tailor it to their own sub-regional priorities and realities. In this regard, a series of recommendations were developed. With regards to the core recommendations from Southern Africa:

- (a) The group calls on the Special Representative of SG of the UN on HRDs to visit Africa’s problem areas.
- (b) The group will target SADC, the African Commission and the AU in their work on human rights defenders.
- (c) The group will be meeting to finalize a joint fundraising proposal to fund rapid response action.
- (d) The group should support Zimbabwe HRDs; they have set up a rapid response action, which has both legal and medical support components.
- (e) The AI Regional Coordinator should meet with the UNHCR in Pretoria to raise fundamental issues on protection of HRDs in the region.

A number of generic practical issues and options were also discussed, including;

- (i) the possibilities and limitations of the role of the Special Representative of the UN Secretary General on HRDs, with a specific focus on site / country visits.
- (ii) The possible deployment of Peace Brigade International in African contexts, and the provision of security training for NGOs to develop their coping and protection mechanisms.

In addition, the Forum focused on the situation of women human rights defenders in Africa, including their ‘shared risks and vulnerabilities’, and ‘gender-specific violations’. The Forum urged HRDs to put “gender” at the heart of human rights work.

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<sup>18</sup> Full list of participants is available on request.

Although a considerable amount of good work was undertaken, and a sidebar meeting was convened to look at driving the process forward in Southern Africa, including agreement on the establishment of a coordination committee and action to be taken on key priorities<sup>19</sup>, to date no such subsequent steps have been taken. Suggestions to utilise an ‘African Civil Society Consultation’ convened in Botswana (and organised by ‘Human Rights First’<sup>20</sup> and Ditswanelo<sup>21</sup>) during August 2003 as a platform to take forward discussions on the HRD agenda were not followed through. This consultation did, however, focus on the situation in Zimbabwe and issued a statement that utilised the UN Declaration on HRDs as its key point of reference<sup>22</sup>. These groupings also issued a subsequent statement in December the same year urging SADC leaders, and particularly South Africa’s president, Thabo Mbeki to take appropriate action to address the deteriorating human rights situation in Zimbabwe<sup>23</sup>.

Some of the latest HRD ‘developments’ in the Southern African region were captured in the 2004 annual report from OMCT and FIDH<sup>24</sup>. It should be pointed out, however, that their ‘Observatory for the Protection of HRDs’ has direct links with only three countries – 2 organisations in Zimbabwe, 11 in the DRC and the regional organisation AFRONET, based in Zambia. As such, the Observatory’s overview of the human rights situation in the region and the position of HRDs are generally uneven.

During 2004, the UN’s Special Representative for HRDs was able to visit Angola between 16 and 24 August and a report on her visit is pending. Several attempts by Ms Jilani to solicit an invitation to visit Zimbabwe were unsuccessful, as the Special Representative has simply received no response from the Zimbabwean government.

### *HRD Workshop, 31 January – 1 February 2005, Tshwane*

Amnesty International has maintained a specific focus on the development of HRD work across Africa in general, and in Zimbabwe in particular. At the end of January 2005, AI convened a further meeting in Tshwane, with a select group of HRDs from Zimbabwe, South Africa and Botswana. The meeting again focused on the Zimbabwean situation and recent past experiences, with a view to taking forward the consolidation of processes that would specifically strengthen HRD relocation efforts. It was agreed that the newly established Zimbabwe Torture Victims Project (ZTVP), an IDASA project based at the Trauma Clinic in Centre for the Study of Violence and Reconciliation in Johannesburg, would act as a focal point for relocation issues in South Africa. Although a summary report on these discussions remains embargoed, key areas of discussion focused on a range of practical challenges;

- (i) Problems of identification – who qualifies for HRD relocation?
- (ii) Linkages between internal and external relocation options

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<sup>19</sup> ‘Durban Sub regional HRD NETWORK draft action plan’, undated.

<sup>20</sup> Formerly Lawyers Committee for Human Rights.

<sup>21</sup> Botswana’s premier human rights organisations.

<sup>22</sup> See, ‘Concluding Statement of the African Civil Society Consultation on Zimbabwe’, August 6 2003.

<sup>23</sup> See, ‘African Civil Society Consultation on Zimbabwe – End of Year Statement’, December 23 2003.

<sup>24</sup> See, *Human Rights Defenders on the Frontline – Annual Report 2004*, Observatory for the Protection of HRDs, FIDH & OMCT.

- (iii) The introduction of standardised protocol into different stages of ‘relocation’ / ‘export.’
- (iv) Obstacles and opportunities for temporary and permanent relocation options
- (v) Communication and security / integrity considerations
- (vi) Post-relocation support and funding
- (vii) Advocacy

These technical, political/strategic and ethical considerations will continue to influence how relocations are operationalised, in terms of specific constraints and / or opportunities that are presented in specific sets of circumstances.

In April 2005, the ZTVP engaged a HRD ‘case worker’ who works closely with the project and is in the process of receiving relevant training and orientation. Efforts are underway to secure dedicated funding for the ‘case worker’, as well as funds to underwrite expected future relocation costs.



## 4 Analysis of HRD initiatives in the Southern African Context

To what extent, therefore, have the development of these frameworks, recommendations and action plans resulted in concrete actions? Organised HRD initiatives in the wake of the above-mentioned processes have been limited, and ad-hoc, focusing primarily on Zimbabwe. Although the escalating crisis in Zimbabwe presents a critical challenge, it is certainly not the only country in the region where attention is required. Human rights challenges continue to pervade the region, and HRDs continue to face an uphill battle to develop an effective engagement on a range of fronts. Even if urgent and direct interventions (such as relocations), as required in Zimbabwe (see detail below) are not as needed in other countries in the region, a range of other actions can and should be undertaken.

### 4.1 Problems of implementation

The Amnesty International-sponsored processes identified five key areas of attention:

- Networking/mutual support
- Monitoring and evaluation
- Lobbying & Advocacy
- Protection (Remedial mechanisms).
- Skills development and training

These processes resulted in a series of ‘Declarations’ and ‘Action Plans’, but did not result in the development of effective implementation strategies, with the result that many important and relevant undertakings were not followed through. Consequently, each of the identified priorities still requires urgent attention.

As such, and in spite of the extremely useful products and by-products that have been generated from these processes, it is possible to draw some preliminary findings:

1. The coordination of the processes has been largely ad hoc, with very little follow-up. As such the process has broken down into a series of ‘events’, with little continuity between the processes and personalities / organisations involved.
2. These efforts have not as yet produced sustained local ownership, nor focused on extending participation to a wide cross-section of other civil society interest groups (i.e. trade unions, media, churches, legal profession – including paralegals etc). This extends beyond a narrow definition of organisational ownership, and also includes notions of broader public ownership and support for HRDs.
3. Inadequate attention has been given to the planning and development of a long-term vision, and the development of realistic strategies for implementation. In this regard, HRD issues have remained somewhat isolated from other human rights and related considerations. Linking HRD issues to broader human rights challenges in the region is essential.

4. Ownership and popularising HRD issues are divorced from a mobilisation agenda, and have tended towards an exclusionary focus on lobbying and advocacy. This has tended to manifest in an 'elite' engagement, and whilst based on sound principles and values, the issues promoted are not rooted in a broad-based foundation of support and understanding. This has serious implications for local remedial and protection options. This concern highlights the importance of extending organised HRD participation to grassroots HRD workers. How this is achieved remains a critical challenge.

Obviously, a number of human rights initiatives have been undertaken in several Southern African countries. These have related to the generic concerns of networking, lobbying, advocacy, skills development and training<sup>25</sup>. In South Africa, these initiatives have been quite extensive and largely sectoral, focusing on a broad range issues (thematic and target group specific) both civil and political as well as social and economic. There has, however, been little attention given to inter-sectoral or holistic approaches to rights development within civil society or government (despite the development of a National Action Plan for the Promotion and Protection of Human Rights in December 1998). In Angola, initiatives have been generally limited, focused on issues relating to the media, land rights, HIV, penal reform and more recently constitutional reform.

In most instances, such initiatives have not used the HRD processes and framework as a point of reference. Perhaps the biggest problem in this regard has been the failure of existing networks in the region, and in particular, SAHRINGON, to take 'ownership' of this process in order to ensure coordination, expand participation and maintain momentum in developing HR.

Despite these shortcomings, several important initiatives have been undertaken in the Southern African region, almost exclusively focused on the crisis in Zimbabwe. Although these have been developed broadly and implicitly within the framework of the AI "*Defending the Defenders*" focus, they have been largely ad hoc, relying on the active engagement of some key NGOs and individuals from Zimbabwe, as well as the region. Our particular focus is on protection measures / options that have been developed relating to this crisis.

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<sup>25</sup> In terms of specific HRD education and training, the researchers have only come across one programme in the region, which is run by Zimbabwe Lawyers for Human Rights and is focused exclusively in Zimbabwe. This programme, which provides training to targeted CBOs and NGOs across the country, has also provided specialist training for lawyers and doctors.

## 4.2 HRD activities in Zimbabwe

### Protection measures inside Zimbabwe

In Zimbabwe, over and above improved networking, documentation and dissemination strategies that have been spearheaded by the Zimbabwe Human Rights NGO Forum<sup>26</sup>, there have been a number of initiatives involving several key human rights organisations (primarily from within the NGO Forum) to enhance protections of HRDs and others. The Zimbabwean human rights ‘community’ is small, and the following ‘options’ are relatively well-known amongst active HRDs, including elements from within sectoral groupings, such as the trade unions, the media, students, political parties and so on.

There is, admittedly, considerable room for expanding this knowledge base, although this needs to be balanced against fundamental considerations of (a) resource limitations and (b) the importance of retaining confidentiality and the integrity of the available process options. In addition, it was suggested that capacities could be enhanced by a more structured sectoral approach (i.e. unions, churches etc). To a certain extent these linkages have already been established, but considerably more could be done to develop and capitalise on them. This, in turn, raises the necessity of training and capacity building for these sectors to ensure a common understanding of the protection framework.

#### *Internal ‘relocation’/ assistance*

In the wake of massive displacements around Zimbabwe’s ‘fast-track’ land reform process, and associated violations, the Zimbabwe Community Development Trust (ZCDT) became actively involved in the provision of basic assistance (food, clothes and shelter), and at one stage ran 12 centres across the country. The ZCDT referred pressing ‘protection’ cases, where there were medical, legal &/or relocation needs to the Amani Trust, and / or human rights legal service providers.

The Amani Trust has been involved in several relocations inside Zimbabwe, primarily dealing with individuals, but also some entire families. This is essentially a short-term option, which anticipates that people will be able to return to their home areas. In some cases, this results in external relocation (discussed below). Internal relocation remains, however, a limited option and is essentially Harare-based. In the context of current resource restrictions (both financial and human), it is not practical to extend this to other regions.

In the experience of the Amani Trust, most of the HRDs they have assisted in this way have little intention of leaving the country and every effort is made to facilitate their return to their home areas.

In a context of resource constraints, it is important to ensure that the process is not abused. In this regard, there have been several attempts to secure assistance when the ‘applicant’s’

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<sup>26</sup> The Zimbabwe Human Rights NGO Forum was established in January 1998, when 9 non-governmental organisations working in the field of human rights joined together to provide legal and psychosocial assistance to victims of the 1998 food riots. The Forum now consists of 13 core members and operations a ‘Research and Documentation Unit’ and offers legal services through the Public Interest Unit of the Legal Resources Foundation. The Forum runs a central office in Harare and a liaison office in London.

problem is essentially an economic one. In terms of ‘relocation’ considerations, the Amani Trust conducts a ‘threat assessment’ regarding the person needing assistance, which involves checking facts and versions with its extensive network of contacts and documentation sources.

The Amani Trust has also able to provide ‘in-house’ psychosocial support, and if necessary referral to medical and legal remedial options. Capacity for the physical provision of safe houses and basic support, however, remains very limited.

In addition to Amani’s work in this area, there are also several other informal initiatives by church groupings to provide assistance, relief and even ‘safe houses’, but in this regard, available information remains (understandably) on a need to know basis.

This kind of assistance is fundamentally threatened by the introduction of new NGO legislation designed to close down a select group of human rights NGOs that have remained consistently critical of the government.

### *Medical Support*

Since 1998, in the wake of the January food riots, the Amani Trust has developed a national network designed to provide emergence medical relief for victims of organised violence and torture (including HRDs). This work has expanded exponentially, especially since 2001. Although much of the work has been focused in Harare and Bulawayo, the Trust works with a network of doctors (often members of Zimbabwe Doctors for Human Rights) and NGOs and CBOs across the country who act as conduit to the programme. Access to the programme is also provided through the church and political parties (almost exclusively the MDC).

In addition, and where required, the Amani Trust provides psychosocial support in the form of counselling, both in terms of orthodox psychotherapy, as well as alternative healing through the ‘Tree of Life’ programme. To date, the organisation estimates it has assisted over 5000 people.

### *The Human Rights Defenders Emergency Fund (HRDEF)*

The increasing manipulation of the criminal justice system to promote the government’s unwritten policy of intimidation and harassment is well recorded in Zimbabwe<sup>27</sup>. The introduction of draconian legislation has provided the authorities with an effective tool to stymie political and civil society actors that are trying to address widespread human rights violations.

A legal human rights defender programme was also introduced in late 2002 (officially launched in March 2003) to deal with the arrest, detention and accompanying physical violations meted out against a cross-section of civil society actors. The HRDEF is a ‘network fund’ of the Zimbabwe Human Rights NGO Forum, with the Legal Resources Foundation acting as financial administrators and Zimbabwe Lawyers for Human Rights as the implementing agent.

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<sup>27</sup> See for example, ‘Disturbing the Peace – An overview of civilian arrests in Zimbabwe: February 2003 – January 2004’, Solidarity Peace Trust, July 2004, [www.spt.org.za](http://www.spt.org.za)

In the event of an arrest of an individual (or individuals), approval from one of the Funds five board members must be secured before approval can be given to deploy a lawyer.

The fund will, “in an emergency situation where rapid reaction is required and there is an inability by the individual to cover the legal fees, cover any human rights defender who falls within the following agreed definition ... ‘*any person who actively champions the promotion and protection of any of the constitutionally guaranteed rights and in the process becomes the subject of attack by any organised group including but not exclusively state agents and other functionaries*’ ... To this end the project will assist human rights defenders who:

- (a) Are arrested, detained or otherwise impeded by State agents in the exercise of their human or constitutional rights, or
- (b) Have become a target of attack by the State as a result of the exercise of their human or constitutional rights, or
- (c) Are attempting to assist others in the exercise of their human or constitutional rights, or
- (d) Are innocent bystanders to the above.”<sup>28</sup>

Zimbabwe Lawyers for Human Rights (ZLHR) members are appointed to represent arrested and detained persons, and are expected to submit a report that provides narrative details of the case. ZLHR have consequently developed a HRDF database, which contains details relating to over 75 ‘incidents’ between January 2003 and August 2004 involving over 1000 human right defenders.

The legal fund has worked well in a context of increasing anomalies in the current Zimbabwean legal system. It is difficult to gauge the extent to which the rapid deployment of lawyers has prevented incidents of further abuse, although it is evident that it does have preventative benefits in this regard. There has, for example, been a perceptible reduction in physical violations that invariably accompanies arrest. (It should be noted that such violations do still occur). The rapid deployment of lawyers has also significantly reduced the amount of time that HRDs are spending in detention.

It is extremely significant that the state has not secured a single successful prosecution of any of the HRDs that have been provided with assistance under the project. It has not, however, prevented other violations taking place, and in the words of one HRD, provides at best a “holding strategy” and does not resolve the problems that have resulted in the manipulation of the criminal justice system for political ends.<sup>29</sup>

### **AI sponsored relocations**

Amnesty International in London continues to run a specific HRD programme for Africa and has continued to work closely with human rights organisations in Zimbabwe. AI

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<sup>28</sup> Taken from an unpublished document, ‘*The Human Rights Defenders Emergency Fund Administrative Aspects*’.

<sup>29</sup> An evaluation of the Emergency Fund, which includes an assessment of the Fund’s key performance areas, was recently conducted, and efforts should be made to access the relevant sections of the report.

Reports and urgent actions around a range of violations both of the general public and HRDs have been produced on an ongoing basis.

In 2002, in the context of violence and repression around the Presidential elections, AI facilitated and underwrote the relocation of a dozen or so individuals from Zimbabwe, to Botswana and South Africa with the assistance of host organisations in these countries (i.e. Ditshwanelo and AI-South Africa). This process worked closely with other HRDs in Zimbabwe, primarily the Amani Trust, who provided some basis for vetting of 'applicants' and assisted most of these people to get out of the Zimbabwe. Most of these people fell within the broad definition of HRD, but some were evidently 'witnesses' to violations, as opposed to people actively working on HRD issues. In the host countries, these people were provided with accommodation and a stipend to cover their living expenses. In most instances, support was provided for between three to six months and most of those who were relocated were able to subsequently return to Zimbabwe when it was assessed that the immediate threat had subsided. A detailed categorisation and review of these cases has yet to be undertaken.

This process was largely ad hoc and reactive, resulting in Amnesty International's subsequent efforts to develop a more coherent strategy and infrastructure to facilitate protection options in Zimbabwe. This was evident in their involvement in the Tshwane and Durban meetings held in November 2002 and June 2003 respectively. A Zimbabwe Human Rights Defender Project was subsequently set up in early 2004 with a view to facilitating and resourcing a more effective protection plan both in Zimbabwe and neighbouring host countries. This process has also secured an agreement from AI-South Africa to play a more proactive role in terms of facilitating assistance to those being relocated in South Africa. In addition the Project has secured funds to support HRD Training in Zimbabwe (and the region), as well as the provision of limited resources to facilitate monitoring and documentation of ongoing violations.

AI has pursued this course of action in the expectation that relocation needs will become more pressing in Zimbabwe during 2005, in the run-up and aftermath of the forthcoming March 2005 elections. Capacity and funding is limited, but based on their 2002 experiences resources to relocate as many as 20 people outside of the country have been secured.

As indicated above, AI has brought relevant parties from Zimbabwe, South Africa and Botswana together in early 2005, and it is hoped a more coordinated and consolidated approach to relocations can now be developed in the event of an anticipated increase in demand for relocation.

### **External relocation**

Initiatives to explore external relocation options relating to the Zimbabwean crisis began in 2001 at a time when AI was looking at mechanisms of getting people out of the country. Existing options were limited and did not provide a holistic response, especially in terms of psychosocial, legal and socio-economic needs. Initial expectations that there would be some sort of external process to drive and provide relocation options were quickly dashed, and from 2002, Zimbabweans (with the assistance of certain key groupings) have managed to develop their own processes.

In the context of the 2002 post-election mayhem, with literally hundreds of people on the run, the Amani Trust began exploring regional relocation options in Botswana and South Africa. At the time there was a massive demand for help and Amani staff and others were literally helping get people to the border of Zambia and Botswana and giving them a lump sum of money (approximately R250) to help them on the other side. It was also at this time that AI-London approached Amani for assistance with their 'own list' of people needing relocation. The Botswana authorities were receptive but were nervous about perceptions that might be created that they were sponsoring dissent. An attempt was made to develop a 3-month relocation internship for HRDs at Ditshwanelo (Botswana's leading human rights organisation), but this organisation never had the capacity to sustain this kind of support.

The Amani Trust has also developed a good 'working relationship' with the South African High Commission in Harare, and this office has helped by expediting the visas of high-risk clients. This has not yet been translated into an effective linkage with the South African asylum seeking process (see below).

Amani staff was also under threat. Its director was arrested in August 2002, and options of relocating the office and staff to IDASA in South Africa were explored. It was at this time in late 2002, that the Tshwane HRD meeting in South Africa was convened (see above). At the time, the former Amani Director was in South Africa and created a linkage to Themba le Sizwe (TLS), a national network of NGO and CBO trauma service providers that was keen to provide support for regional work<sup>30</sup>. Themba le Sizwe and the Amani Trust jointly designed a project proposal to provide assistance and safety to a range of human rights activists and defenders who have been tortured or threatened. Funding was subsequently secured to:

- Provide safety for those relocated out of Zimbabwe
- Provide adequate and relevant psychosocial to those relocated out of Zimbabwe To place the principal client with a South African organisation as part of psychosocial rehabilitation process and to enhance skills and information exchange.
- Gather information and document the current human rights violations in Zimbabwe in order to raise awareness in SA and elsewhere.

The first tranche of funding to the TLS project has now finished and further funding is currently in the pipeline, although this is likely to be routed through the Zimbabwe Torture Victims Project. Although the TLS connection provided a more structured approach to relocation in South Africa, and once properly assessed could provide important lessons for similar programmes elsewhere, it is evident on the basis of anecdotal evidence that the processes could be considerably enhanced to meet its potential.

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<sup>30</sup> This was to prove a useful connection, as evidenced by Themba le Sizwe's subsequent involvement in the 'Justice and Civil Society' symposium, which brought together 70 Zimbabwean NGOs in Johannesburg in August 2003.

The support offered is in most instances not a long-term, and is available to only limited numbers. It is estimated that less than 50 people have benefited since initiatives began in 2002.

In practice, it was necessary to look beyond even the broad definition of HRDs, as there were other important cases that required this assistance. Indeed, the first relocations involved witnesses from a pre-2000 murder case. Somewhat ironically, this involved two high profile ZANU-PF families. Even though they were clearly not HRDs, they faced extreme risk. This situation also presented itself in relation to several members of the Zimbabwean military and police who have also been assisted to leave the country.

Those who have left the country, have either been assisted to go directly to the UK, or to South Africa and Botswana (where efforts have been made to help them with further relocation for asylum further a field.) Getting people out of the country is a last resort, and only considered when all other options have been exhausted. As we have heard, the Amani Trust worked closely with AI to facilitate a number of relocations around the 2002 elections. In general, it is mainly 'high profile' cases that have taken this route.

The process was reactive and essentially ad hoc. At one level this provided a much needed flexibility, in terms of responsiveness and so on. At another level, it became extremely difficult to ensure the integrity of the process remained in tact. Because only a handful of people were involved and the process was extremely cumbersome and time consuming, it also diverted key HRD workers in Zimbabwe from their primary work responsibilities.

Vetting processes were not as stringent as participants would have liked, and in several cases, 'applicants' were given the benefit of the doubt. Those involved also had to manage competing claims for priority, from victims groups and political parties. These additional stresses also had repercussions in terms of organisational dynamics inside the Amani Trust.

As with internal relocations, the objective is to try and ensure that the person leaving does so temporarily. In some cases, however, this has not been possible, and efforts have been made to (in some cases successfully) facilitate access to 'asylum-seeking' processes, in Europe, North America and Australasia.

Although many of those who leave the country see themselves as 'exiles', they are not officially recognised as such, and if they are to remain legal, must adhere to local immigration processes. This means they must have the correct documentation. There have been innumerable problems for Zimbabweans trying to access the asylum process in South Africa<sup>31</sup>, and to date of the 9000 that have managed to get their foot in the door, fewer than 40 cases have been granted refugee status.

In response to problems relating to accessing South African immigration and other required serviced, the Zimbabwe Torture Victims Project has been established. This project will facilitate access to counselling and medical services, but will also tie into existing refugee remedial options, and work closely with other Zimbabwean

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<sup>31</sup> See *'No War in Zimbabwe – An account of the exodus of a nation's people'* – Solidarity Peace Trust, November 2004, [www.spt.org.za](http://www.spt.org.za)



organisations based in South Africa (i.e. Crisis in Zimbabwe Coalition, the Heal Zimbabwe Trust) to further the Zimbabwean advocacy agenda. This focus is particularly pertinent in the context of the South Africa's political environment which has to date avoided any official acknowledgment of the extent of the Zimbabwean problem.

In late 2004, AI's Zimbabwe country manager was relocated to South Africa in the wake of threats from state agents 'responding' to AI's exposure of violations relating to forced displacements.

Several other external 'relocation' initiatives have been undertaken, involving the trade unions, and the Solidarity Peace Trust. These initiatives have been largely 'low-key' and have involved both short and long-term relocations. Further information about what these initiatives have undertaken and what can be learnt from them should be considered.

### 4.3 General Comments

HRD work in Southern Africa remains largely isolated, both conceptually but also institutionally from many other areas of human rights work development. It also lacks clear political support, despite international State commitments. This reflects a general lack of awareness and knowledge about who are HRDs, the expansive nature of who qualifies under the UN's definition, and the reasoning behind the specific focus given to their protection. It also reflects an implicit limitation of the very worthwhile efforts that have been taken to develop an HRD focus and agenda in the region and beyond.

In terms of our focus, one obvious gap in the HRD work that has been undertaken thus far has been the effective exclusion of Angola from any of the HRD activities internationally, continentally and in the sub-region of Southern Africa<sup>32</sup>. Angolan human rights organisations, which are limited in number and scope, remain in the process of "finding their feet" in the recent context of comparative openness that has evolved since the end of the war in 2002. Most NGOs have avoided dealing with politically sensitive issues relating to human rights considerations, with some notable exceptions, such as those dealing with prison issues and those engaged with the small independent media. Most international NGOs have remained involved in the (relatively) political neutral territory of humanitarian assistance.

Constraints on CSO assertiveness remain daunting: lack of human and financial capacity; major dependency on external funding; limited access to the state media; restrictive legislation; political dependency of the judicial system; limited democratic space either in public or private sector; weak private media circumscribed to Luanda; fragmentation of CSOs still unable to operate efficiently in national or even less in regional networks; a still present culture of fear and intimidation<sup>33</sup>.

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<sup>32</sup> With the exception of the visit to Angola in August 2004 by the UN's Special Representative, Hina Jilani.

<sup>33</sup> See '*Angola Human Rights Defender Assessment Country Profile*', Nuno Vidal, unpublished November 2004 – Appendix '12'.

In South Africa, HRD activities in relation to ‘organised’ HRD processes have been exclusively related to ‘hosting activities’, as outlined in the above section. Quite clearly the situation in South Africa is qualitatively distinct from most countries in the region, and for many involved in human rights issues (both civil and political, social and economic) HRD issues in terms of recognitions and protection concerns not seen as particularly relevant. HRDs are not under direct threat, and there are evidently more subtle ways of ostracising and demonising those that take on government around human rights considerations, especially as they relate to socio-economic concerns around service delivery (i.e. social movements, such as the Treatment Action Campaign and the more radical Social Movements Indaba). These grassroots initiatives have developed varying degrees of broad-based support from within a number of communities, which in turn have been an important basis for legitimacy and protection issues.

### **Who are the ‘main players’?**

In terms of the major HRD players in Southern African Civil Society, Amnesty International have remained the most active of the core grouping of international NGOs (i.e. OMCT, FIDH, Human Rights Watch, ISHR, Rights First and Frontline) and have remained engaged albeit with various degrees of intensity throughout the period under review. AI has driven the 1998 HRD workshop process, as well as facilitating subsequent sub-regional initiatives including the June 2003 Durban conference. ‘Rights First’ (formally known as Lawyers Committee for Human Rights) has also been involved in supporting conferences, including the 2003 Gaborone civil society consultation. AI, in conjunction with OMCT, FIDH and ISHR has actively and successfully lobbied the African Commission to develop a mechanism to address issues relating to Human Rights Defenders in Africa<sup>34</sup>. All of these groupings have a number of ‘formal’ and ‘unofficial’ partners and contacts that provide the basis for their own engagement in the region.

In the region, there have been a small core grouping of NGOs and individual HRDs, especially those from Zimbabwe, that have kept these issues alive, primarily out of necessity to ensure that some level of protection is available for their beleaguered human rights community and others that have been subjected to state sponsored violence and terror. In this regard, the following organisations should be mentioned; the Amani Trust, ZLHR, and The Zimbabwe Human Rights NGO Forum. Other organisations in the region that have actively participated in supporting or facilitating HRD work are TLS, the Solidarity Peace Trust and IDASA (in South Africa) and Ditshwanelo in Botswana<sup>35</sup>.

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<sup>34</sup> See ‘Draft Proposal to support initiatives of the African Commission on the development of a mechanism to address issues relating to Human Rights Defenders in Africa’, Submitted by AI, OMCT, IFHR and ISHR, Annexure ‘13’

<sup>35</sup> A full listing of participants from the various workshops and conferences should be collated. At present we have listings of those that participated in the Harare and Durban Conferences.

## 5 Lessons learnt and recommended actions

This section outlines some of the key ‘lessons learnt’ and provides a framework of related ‘recommended actions’ that will help to focus NiZA in its engagement with the multiple challenges that remain in terms of developing appropriate responses to HRD needs and related considerations in the region. What follows is by no means exhaustive or prescriptive, and does not follow any particular order of priority. It does, however provide a template for engagement.

A number of thematic issues have arisen that provide a general framework for examining the specific and distinct nature of conditions and variables within each country in the Southern African region. These include:

### 5.1 HRD invisibility

HRD issues lack any real profile in much of the Southern African region and have not been linked to the broad range of human rights or democratisation issues that have received some attention. Where they have been raised (i.e. in the case of Zimbabwe) their focus has been exclusively around civil and political rights. Nevertheless, HRD activities continue across the region in broad cross-section of arenas even if they are not seen as such. In this regard, issues relating to social and economic rights, and accompanying humanitarian considerations have remained largely outside of the debate.

Recommended action: ‘state party’ responsibilities and obligations pertaining to HRD issues should be profiled amongst regional CSOs, and in particular ‘sectors’ that have traditionally remained outside ‘mainstream’ human rights activities (i.e. humanitarian groupings, trade unions etc). In addition, specific attention should be given to profiling HRD issues with relevant government agencies, as well as independent remedial mechanisms (i.e. human rights commissions, ombudsmen etc). This should be accompanied by targeted efforts to elicit (additional) specific commitments to HRD undertakings. In addition, efforts should be made to engage the UNHCR around these issues, as there is a close correlation between HRD relocation stimuli and refugee considerations.

### 5.2 The level and nature of the risk faced by HRDs

This varies considerably from threats to life, torture, arrest and detention, to more subtle forms of risk, including intimidation, public criticism, insults and demonisation. This cross-section of risks is evident in South Africa, Angola and Zimbabwe, which all present very different situations and risks for HRDs. These risks are neither immutable nor static and adapt and change in relation to a matrix of determining factors – contextual and otherwise.

Recommended action: Develop a ‘regional approach’ that incorporates a more nuanced and responsive understanding of the nature of the threats in each country, in terms of (a) operational context and, (b) state responses / attitudes towards particular HRD activities. This requires the development of a detailed regional ‘profile’ of HRD-related concerns.

At present such a profile does not exist (nb – see recommendation below for the development of a Regional Observatory). This profile should include a broad range of groupings dealing with different human rights issues that extend beyond ‘traditional’ human rights NGOs and beyond a focus on civil and political rights. This should include trade unions, professional groupings, as well as grass roots and community based organisations and initiatives. In addition, human rights challenges from other quarters other than the state should be considered. The position of business and other private sector interests should be assessed where possible in terms of their role in relation to the violation and protection of human rights.

This profiling will inform what actions can and should be taken and avoids utilizing a ‘one-size fits all’ approach, which would be neither strategic nor cost effective. This identification process will also help to identify ‘drivers’ – i.e. specific organizations prepared to specifically promote a broad-based and inclusive HRD agenda – that can help develop local ownership and direction.

Any profile development should take into consideration insights and experiences of international NGOs, as well as the offices of the UN Special Representative and African Commission’s Special Rapporteur.

### **5.3 The conditions of civil society**

This situation varies considerably from state to state across the sub-region and also informs what actions are necessary and practicable in terms of HRD work. In Angola, civil society is weak, networking (domestically and internationally) and coalition building is not a common phenomenon. Acute physical and financial constraints have limited many organizational jurisdictions to select urban communities, and inadequate attention has been given to most rural constituencies.

Similarly in Zimbabwe, despite the existence of a plethora of organisations dealing with human rights issues, networking and coalition building has been narrow and confined. Although networks do exist and have been both productive and successful in their own right (i.e. Zimbabwe Human Rights NGO Forum, Zimbabwe Electoral Support Network, Food Security Network), communication and linkages between these groupings remain limited, and the potential synergy of a cooperative approach not realized. The Crisis in Zimbabwe Coalition has and continues to provide a potential platform for such development, but has struggled to play this facilitation role.

Networking and coalition building is very much part of the organisational culture in South Africa, although, in the post-apartheid era, civil society has weakened considerably in terms of capacity, focus and structure as evidenced by the demise of civic structures and other community based organisations that provided important social capital at the local level. In some respects, this has been replaced by other groupings engaged in poverty alleviation and general development and humanitarian work.

Whilst human rights are implicit in much of the work undertaken, opportunities for strategic engagement around human rights have been lacking. The ongoing precarious

situation of many advice offices around the SA continues to bear testimony to this. The emergence of social movements that have actively taken on a range of basic needs issues has begun the process of building local capacity to facilitate broader public participation. Coalition building around important social issues, such as the Basic Income Grant, is also evident. Some processes, however, are not adequately rooted in the communities and have struggled to gain broad support and consequently momentum for their particular cause.

Recommended action: NiZA should try to ensure that any HRD initiative it undertakes taps into existing initiatives. In this regard, a specific focus on the situation of women and organizations / structures addressing women and gender-related concerns should be considered. This may also require an initial focus on awareness raising within these structures.

In circumstances where civil society is weak and fragmented (which includes most countries in the Southern African region), a NiZA supported HRD initiative should initially focus on building local organisational capacity, in terms of communication, reporting and networking skills, which will in turn help to build the confidence of existing organizations. In addition, specific attention should be given to the development of strategic and tactical capacities (i.e. getting each organisation to understand what is possible within existing parameters, and what might be done to influence those parameters). The focus in South Africa should be to support the development of HRD-related processes that are rooted in community realities and / or to encourage partners (in all sectors of NiZA's work) to ensure that this methodological approach is engaged with.

A number of important HRD discussion processes have been undertaken in the region. These have been important investments both in terms of identifying generic and specific challenges and options, as well as providing a potential basis for more emphatic regional networking.

### **5.4 Taking the Process Forward**

AI has played the primary role in promoting the development of an HRD agenda in the region. Regrettably, this has not been complemented by dedicated local participation and engagement. Indeed, the HRD conferences and workshops outlined above have left the mainstreaming of HRD-related action largely to a small grouping of individual participating organisations and individuals. This has resulted in an uneven and inconsistent implementation of agreed actions, with some countries and organisations simply making no follow up and taking no actions, and others – particularly those facing problems (i.e. Zimbabwe) being left to unilaterally develop their own responses.

Follow-up to the various conferences, in terms of implementation of HRD programmes of action, was dependent on participating organisations to implement in addition to their other work, and more often than not without additional resources. The priority for these organisations was understandably to concentrate on the work that was already funded, and little if any effort (at least in the Southern African region, with the exception of several Zimbabwean organisations) was made by participating organisations to

proactively incorporate the HRD agenda (and seek the requisite funding) into their programmes. The absence of a dedicated unit / structure to ‘drive’ HRD issues has clearly reduced the potential impact of these initiatives.

The absence of follow-through on agreed programmes of action has resulted in a lack of institutional memory around HRD issues in many participating organisations. This situation is compounded by high turnover of staff in organisations, which often means that the issues and processes are not passed on.

Recommended action: NiZA does not need to ‘re-invent’ the wheel in terms of identifying HRD issues and priorities as a considerable amount of work has already been done through the AI and post-98 discussion processes. As such, a range of HRD related generic considerations were identified and recommendations made, relating to;

- Civic education and campaigning,
- Media and information,
- NGO solidarity and networking,
- Training,
- Petitioning and lobbying, and
- Constitutional and legal reform.

A further set of core recommendations were developed from discussions at Durban in 2003 (see Section 3.1.5), although (as with the Johannesburg Programme of Action) these were not taken forward, largely because of the absence of a local ‘driver’. The identification, development and resourcing of local ‘drivers’ therefore remains a key imperative. In this regard, it is important to work with those organisations that have already had some engagement with these issues, although it should not be assumed that they are the best equipped to advance the HRD agenda.

NiZA must identify and work through willing partners from selected countries who would be prepared to give a dedicated focus to HRD initiatives. NiZA can help facilitate the development of dedicated capacities in this regard, and the required networking and coalition building. NiZA should start with a core grouping of CSOs, which can provide a foundation for further engagement with other relevant CSOs. In this regard, a number of human rights organisations in the region have already been engaged in past processes, but need to be ‘reactivated’.

### **5.5 Ownership of HRD issues in the region**

HRD issues have not been integrated into the overall focus of civil society in the region, let alone by the bulk of those organisations that have participated in the various HRD conferences and workshops that have been convened. In addition, there has been an absence of consultation and engagement with a wider grouping of stakeholders, and as such, HRD issues remain isolated from a range of broader initiatives on the human rights, democracy and development fronts.

Processes imposed &/or directed from the outside without local ownership rarely result in the effective implementation of what are otherwise important and principled processes. It is evident that (with the exception of certain Zimbabwean organisations) local organisations in Southern Africa have effectively ‘dropped the ball’ on many of these issues, and should acknowledge and take responsibility for this. The main international players driving HRD issues have an opportunity to be more strategic in their engagement and should focus on transferring and building local ownership and capacity to ensure implementation. Ultimately, the role of these agencies should be in terms of providing support and facilitation. The common goal (for local and internationals) must be for HRD issues to be profiled and driven by organisations and HRDs from the region. This should not be an exclusive NGO role (as is currently the case in Zimbabwe), but should draw in all relevant civil society sectors.

Expanding local ownership of HRD processes to other civil society sectors is particularly important. HRD protection programmes are extremely resource intensive (especially in terms of relocation options) and an inclusive definition of HRDs means that a single organisation would have serious difficulties in running a broad-based inclusive protection programme.

As we can see, existing capacity in the Zimbabwean context is limited, especially in relation to relocation. A broader sector approach would be one way of alleviating this, and in this regard a decentralised programme may have a better chance of succeeding both practically and politically. Trade Unions have a particularly important role in this regard. In Zimbabwe, for example, trade unions have engaged in HRD protection, not programmatically, but in an ad hoc fashion. There are several cases where Zimbabwean trade unionists under threat have been ‘exported’ by partner trade unions from the region and Europe. A number of methods have been used, such as emergency invitations to conferences, and partner unions have also liaised with their embassies to facilitate visas and so on.

Rooting HRD issues within communities and constituencies impacts on their legitimacy. This underscores the importance of consultation, communication and raising awareness. Legitimacy considerations can underpin successful HRD protection options, especially ‘frontline’ protection which relates to protection offered by the general public and local communities. Ultimately human rights awareness and protection issues are two sides of the same coin.

Recommended action: NiZA can promote awareness-raising activities around HRD issues and should give particular attention to exploring options for expanded sectoral engagement with HRD plans and programme. Trade unions in the region play a very important political role and are often primary actors on a range of social issues. They are also viewed with considerable suspicion by many governments because of their potential to challenge governments (i.e. Zambia, Zimbabwe). As such, they are also subject to considerable pressure, intimidation and harassment. Their inclusion in and HRD programme is vital, strategic and forward-looking. Churches are another grouping that should be given more consideration in terms of HRD work, and often have access to other resources both in terms of finance and affiliated structures that can facilitate the movement and protection of people.

Both of these groupings could benefit enormously from awareness raising and orientation around HRD issues, as well as technical detail regarding. Neither are homogenous entities, nor are their constituent elements necessarily progressive. Consequently, some may be unwilling to accommodate HRD related considerations, and may even be hostile to them. As such, efforts should be made to identify relevant groupings and individuals within these structures.

### 5.6 Moving beyond ‘Declarations’

Most of the HRD workshops and conference processes have resulted in some sort of ‘declaration’ issued by the participants. This has been an evident pattern since 1998. In November 2004, another consultative workshop on Women Human Rights Defenders was held in West Africa. The outcome of that process was another declaration and it remains to be seen whether and how these undertakings are translated into actions.

Despite the symbolic importance of such statements, it is important to ask what impact these declarations are having and how they contribute to the reality faced by HRDs under siege. The ability to develop and adopt declarations and resolutions that identify problems and call for compliance is well established. The real challenge is how these declarations and resolutions are subsequently translated into the implementation of strategies on the ground and, how they impact on the situation faced by HRDs. In this regard, a fundamental challenge is to build organisational, individual and community capacities that will enable people to effectively challenge human rights violations.

The current HRD workshop initiatives have provided training that has focused primarily on a technical approach to HRD issues. Participants are not trained in how to navigate in a particular political context or when faced with a particular challenges. Interestingly, strategy and tactics were not identified as issues requiring urgent attention, either in terms of the identification of relevant options or in terms of communication, messaging and other practical actions and interventions etc.

Recommended action: Future HRD conferences and workshops should also seek to focus on building the organisational capacity of participants beyond the utilisation of formal mechanisms (i.e. how to lodge a complaint with UN or African Union mechanisms). In particular, there should be a focus on developing strategic analytical and planning skills, as well as mobilising and organising capabilities within the constraints of particular settings.

NiZA could facilitate ‘in-country’ training for relevant organisations, as well as the development / collation of relevant materials that would help develop institutional memory within specific organisations. In this regard, NiZA should undertake a process of identifying relevant experiences from other parts of the world, and possible ‘best practices’, and should liaise with relevant international HRD organisations to facilitate this.

### 5.7 HRD Protections– who qualifies?



The all-encompassing definition of a Human Rights Defender theoretically caters for all sectors of society if the individual / organisation is involved in the promotion and / or protection of human rights issues. Such inclusiveness raises potential problems in relation to organisational capacities, and also raises concerns that too broad a definition might result in losing the essence of what and who is defined as a HRD. Consideration must also be given to related protection issues, and whether others who might best be described as ‘witnesses’ (which can also include perpetrators of gross human rights violations) should qualify under the HRD programme, or whether it is necessary to have a separate witness protection programme.

The need to link humanitarian assistance to the overall human rights agenda has been raised on several occasions in this report. Often, humanitarian aid organisations avoid publicly raising human rights concerns even though their work deals with the effects of such violations. How does this apparent disjuncture relate to the emerging consensus within and amongst international bodies like the United Nations and European Union on a commitment to a ‘rights based development approach’? Zimbabwe is a case in point, aid agencies are reluctant to support the mainstream Human Rights NGO’s in their challenge of the Zimbabwean governments efforts to regulate the NGO sector. Such self-censorship is not, however, uniform. In Angola, for example, during periods of ‘peace’ and relative openness (i.e. between ‘91-’92 and ’94 – ’98) humanitarian work provided a legitimate platform to raise human rights issues.

Recommended action: NiZA in conjunction with other international organizations focusing on this issue (i.e. AI, OMCT, FIDH, HIVOS) should help develop a clearer understanding of exactly what constitutes a HRD, and explore possibility of developing a series of ‘sub-categories’ for HRDs, that would provide generic typologies of those who would / could qualify under the UN definition. Specific attention should be given to HRDs working around issues of social and economic rights (i.e. food, water etc).

Recommended action: It is important to ensure that social and economic rights are incorporated as a core HRD focus, since they are the most immediate and key issues in the region (in terms of poverty, health, housing, education etc). They also provide an immediate basis on which to mobilise communities. In this context, awareness raising, where civil and political rights are raised in the context of the current social and economic situation would garner more general support.

### **5.8 Lobbying & Advocacy**

Securing political support for HRD activities remains a core objective for lobbying and advocacy. The current HRD ‘main players’ in the NGO field are often viewed by regional governments in Southern Africa with suspicion, and their findings and recommendations are often ignored or simply denied.

Part of the lobbying and advocacy strategic objectives of the key ‘northern’ NGOs working on HRDs issues should be a focus on exploring options for transferring ownership of these issues, processes and their implementation to ‘southern’ civil society partners. This can be done in a number of ways, in terms of broader capacity building

objectives, as well as in relation to specific processes. For example, a southern focused campaign supported by northern based NGOs to lobby the African Union to adopt the resolution by the African Commission on Human and Peoples Rights for an appointment of a Special Rapporteur on Human Rights Defenders is likely to have more impact than an exclusive ‘northern’ campaign.

Recommended actions: NiZA has a very specific role to play in this regard. None of the main players have any relationship with the governments in the region. NIZA, however, due to its history as a former solidarity movement that shared relationships with the previous liberation movements that have now formed governments in the region, it is in a unique position to open the space for engagement with government, where the other main players are unable to. While this potential should not be overstated, it has an opportunity to pioneer a very different approach to how human rights issues are raised with domestic governments.

The development of tailored approaches to any of these processes will generally vary within, as well as between the different countries. In order to facilitate this, it would also be necessary to develop a nuanced understanding of relationships between the various countries in the region, as they relate to the specific issues that are the target of particular lobbying campaigns. This exercise should identify weak points and fault-lines for lobbying. For example, with regards to Zimbabwe, some national governments are more supportive of the regime than others. Consequently, in South Africa, specific lobbying and advocacy work has focused on the ruling party’s alliance partners who have been more open to engagement on these issues. Civil societies engagement plan must be based on a strategic and tactical understanding of contemporary situation and the pragmatic opportunities for developing particular agendas.

### **Developing a participatory approach to lobbying and advocacy**

It appears that a number of international NGOs focus their lobbying and advocacy initiatives bilaterally, without an adequate appreciation that governments in the Southern African region are more responsive to a lobbying strategy that is coupled with mass mobilisation and public participation. In South Africa, for example, the Anti-Privatisation Forum and the Treatment Action Campaign are good examples of how participatory advocacy can produce better results. Despite the fact that both these organisations have been publicly condemned by the state, their methods have enabled a write-off of massive arrears owed to the electricity supplier, and an undertaking by the state to rollout an extensive anti-retroviral to persons infected with HIV respectively.

Understandably, most NGOs are not mass-based in terms of their constituencies. One way of addressing this deficit would be to enter to broad masses alliances and coalitions with mass based movements. (e.g. The Basic Income Grant lobby in SA- coalition members include the Trade Union Federation, the Council of Churches, Political parties like the SACP, academic institutions – University of the Western Cape and NGO’s like Black Sash and SANGOCO)- This campaign facilitated mass involvement in the issue and enabled NGOs and academic institutions to play a vital role in a mass based campaign.

Recommended action: NIZA should explore options for developing participatory lobbying and advocacy around HRD issues that could include Social Movements (i.e.

SMI in South Africa), Trade Unions (i.e. ZCTU in Zimbabwe) and Church organisations / networks (i.e. COIEPA in Angola). This should be done in conjunction with efforts to enhance domestic protection capacity. A broader organisational base will make it more difficult for the authorities to act with impunity. This underscores the importance of developing networking capacities towards the strategic objectives of coalition building. The development of coalitions provides an important opportunity for the cross-pollination of ideas and experiences.

### 5.9 Developing a Regional Observatory

Consideration should be given to the establishment and development of a Southern African Regional Observatory, (along the lines of the OMCT/FIDH Observatory) that would be responsible for monitoring & evaluation, data collection, as well as the development of protection and support options and remedial mechanisms. Emphasis would be given to actively supporting interventions and proactively engaging with civil society and governments on HRD related concerns.

The development of such an initiative would be dependent on local capacities to access, collate and disseminate information around the human rights situation in particular countries. In addition, protection and support interventions would be dependent on the organisational capacity of local infrastructures and their ability to access relevant funds and skills.

Developing a regional focus and protection role, must be seen within a broader empowerment perspectives, as well as providing an opportunity to develop solutions based on an African perspective and experience. (Protection mechanisms were core to the liberation movements planning).

The observatory should focus on enabling local ownership of the HRD issue; secure commitments from civil society as regards sharing of information, networking and delivering on their mandates. Sustainability will be a major aspect of the focus of the observatory. The observatory should also look to developing local protection and relocation options. Another task of the observatory would be to assess the implementation and impact of the EU guidelines amongst member states present in the region.

The observatory can be developed from existing regional human rights organisations, with a focus on ensuring participation. The initial primary focus of the observatory would be to build capacity, and to develop and implement an effective networking strategy, resource mobilisation. In addition, the observatory would act as a driving force to expand awareness and ‘ownership’, and would play a ‘point role’ in the development and implementation of a regional civil society response to human rights violations and the situation of Human Rights Defenders.

Recommended action: NiZA should undertake a feasibility study to assess the practicalities (obstacles and opportunities) for establishing and sustaining a Regional Observatory engaged in one or more of the core functions outlined above. This should

explore a range of options, including whether it would be possible to develop this capacity within an existing institution / infrastructure, country capacities etc.

### 5.10 Further Recommendations for NiZA

(a) Support and encourage awareness raising of the HRD issues through partner network in Southern Africa. In addition, NiZA should engage other relevant organisations to offer its support as a resource in relation to planned activities in the region and Europe.

(b) Support / facilitate the capacity building of civil society organisations, not only in terms of organisational capacity, but also in terms of developing strategic and tactical options, campaigning, communications, mobilisation and organising. In this regard, NiZA and its partners can draw on experiences from elsewhere, and should draw in international NGOs and others that have been engaged in programmatic training and development (i.e. Zimbabwe Lawyers for Human Rights' HRD Training Programme).

(c) Consider facilitating the development of an annual human rights environmental scan as they relate to HRD issues, utilising existing secondary sources, as well as contributions from all its partners and associates as part of the Human Rights programme activities. This scan should be made available to organisations in the north and south.

(d) Support the development of country and regional specific HRD resources lists, as well as a resource listing for the Netherlands and Europe. This might, for example, include identifying willing organisations that would accept the placement of relocated HRDs, availability of legal, medical and psycho social services, advocacy and lobbying focal points etc. This kind of information exchange will be essential for boosting referral and remedial capacities.

(e) The NiZA Human Rights programme in conjunction with the NiZA Media programme should introduce HRD issues to media partners in the region, and assist in building links and contacts between media and journalists with civil society organisations working on HRD issues in the north and south. NiZA could help develop a contact / dissemination listing that human rights organisations could disseminate information to regarding HRD related concerns.

(f) The NiZA Human Rights programme in conjunction with other international NGOs working around HRD issues, should explore the possibilities of developing an HRD Assistance Fund for specific HRD related activities (i.e. monitoring, training, relocation costs etc). In this regard, the NiZA could raise the issue of assistance to HRDs with multi-national companies and explore what kind of support they could provide.

(g) NiZA can support the development and consolidation of a Southern African regional voice by acting as a platform in Europe to facilitate access for that regional voice. The focus should be on the African partners with NiZA playing a supportive role. The key objective of the platform would be to articulate the synergy between African standards and the relationship to the Universal instruments. For example, how the European Union guidelines relate to the African Charter. In this regard, NiZA would assist in the

development of greater coherence and consistency between African and EU guidelines and standards.

(h) NiZA can lobby the Dutch government to pursue a consistent application of the EU guidelines principles and for the Dutch government to influence other EU members to act similarly. In this regard, NiZA should engage with and support the work of AI's Dutch section and HIVOS, both of whom have been leading the lobby around HRD developments in the Netherlands.

(i) NiZA through selected partner organisations should monitor the implementation / utilisation of EU guidelines by embassies and delegations in third countries. NiZA to be part of the training on EU guidelines as they relate to Southern African conditions to diplomats in the Netherlands.

(j) NiZA can play an important role in conjunction with its partners in popularising the EU Declaration and concomitant responsibilities. This might, for example, include bringing together representatives from EU missions and delegations, with relevant CSOs.

## Appendix I: Acronyms

AFRONET	African Network for Human Rights and Development
AI	Amnesty International
AU	African Union
COIEPA	Inter-Church Committee for Peace in Angola
CSO	Civil Society Organisations
DRC	Democratic Republic of the Congo
FIDH	International Federation for Human Rights
HRD	Human Rights Defender
HRDEF	Human Rights Defender Emergency Fund
INGO	International Non Governmental Organisations
IDASA	Institute for Democracy in South Africa
ISHR	International Service for Human Rights
JPOA	Johannesburg Plan of Action
LAC	Legal Advice Centre
NGO	Non Governmental Organisation
NiZA	Netherlands Institute for Southern Africa
OHCHR	Office of the High Commissioner for Human Rights
OMCT	The World Organisation Against Torture
SADC	Southern African Development Community
SAHRINGON	Southern African Regional Human Regional Human Rights Network
SANGOCO	South African NGO Coalition
TLS	Themba le Sizwe
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNHCHR	United Nations High Commissioner for Human Rights
UNICEF	United Nations Childrens' Emergency Fund
ZCDT	Zimbabwe Community Development Trust
ZCTU	Zimbabwe Congress of Trade Unions
ZLHR	Zimbabwe Lawyers for Human Rights
ZTVP	Zimbabwe Torture Victims Project

## Appendix II: Country Profile Angola

Human Rights in Angola have always been a politically sensitive issue. A long lasting civil war, an authoritarian one-party regime, an entrenched culture of fear, repression and intimidation and a political manipulation of the state-media and mass organizations, all hampered the emergence of an autonomous civil society capable to stand for human rights. Despite this lack of democratic tradition, civil society emerged as soon as it was given a chance with the implementation of a multiparty system in 1991 and mainly during the short periods of peace of 1991-92, 1994-98 and from 2002 onwards. This paper argues that civil society (CS) and its human rights agenda although facing daunting constraints are slowly managing to assert themselves. Some fragile successes can be found as shown in this paper. Nonetheless, international community support is crucial to make this process sustainable in the long-term. A lot of hope is placed on international community leverage by CS organizations and opposition parties, especially in the forthcoming electoral period leading to the 2006 elections.

From colonial days to the present Angolans have been almost permanently under authoritarian rule. The nationalist war against the Portuguese (1961-1975), promised freedom, but the 1975 independence was marked by a civil war with major foreign involvement right from the beginning. With a few interruptions, the war lasted for almost 27 years - from 1975 to February 2002, when the rebel leader of UNITA, Jonas Savimbi, was killed in action.

Between 1975 and 1977, there was a period of relative freedom in Angola. However, in 1977 an aborted coup resulted in a major purge with massive killings all over the country. An authoritarian and repressive one-party regime was put in place by the Popular Movement for the Liberation of Angola (MPLA), ruling the country since its independence. A fearful State security came in charge of surveillance and political repression. Non-state media were closed and the right to association was limited to party mass organizations such as the labour union of Angolan workers (UNTA), organization of Angolan Women (OMA) and MPLA's Youth (JMPLA), all politically manipulated by the MPLA<sup>36</sup>.

The judicial system became 'militarised', juxtaposing civilian and military courts with the ability to impose heavy penalties, including death penalty (mainly for political and security crimes) and functioning under a vague and almost limitless revolutionary legitimacy. This system was politically dependent, being under direct influence of the party and ultimately of the President. A culture of fear, intimidation and repression became entrenched.

In a country with a weak sense of nationhood at the time of independence, the civil war became a main factor of further social and economic fragmentation. Resources became more and more absorbed by the war effort. The economy became almost exclusively dependent on the oil revenue; agriculture and industrial production were severely

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<sup>36</sup> Vidal, Nuno, 'The genesis and development of the Angolan political and administrative system from 1975 to the present', in Kyle, Steve (org.) *Intersections between social sciences* (Cornell NY: Institute for African Development of Cornell University, 2004) pp. 1-16.

damaged. The conflict gained increasing ethnic overtone and accentuated the urban-rural divide, the developmental gap between Luanda and the provinces, as well as between the coast, centre and centre-south, and the north, east and south-east regions. In early eighties, the majority of the population was already facing extreme poverty aggravated by the disruption of the health and educational systems.

The political, economic and social framework presented above severely constrained the space CS to emerge as an autonomous force capable of civil rights demands. Violations of human rights by both sides of the conflict became regular as well as impunity for perpetrators of those crimes, as reported by several international organisations throughout the whole war<sup>37</sup>. The priority given to defence and internal order above any other policy impeded the emergence of any kind of 'democratic institutions' or any sense of transparency and accountability<sup>38</sup>.

In 1991, UNITA and the government came to a peace agreement - Bicesse - setting the pace to the first multiparty elections in the country's history. Legal reforms after 1991, namely the new Constitution (law 12/91) the laws of association (law 14/91), freedom of the press (law 25/91), strike (law 23/91) and independent radio broadcasting (law 16/92), opened the space for the emergence of opposition political parties and civil society - church organisations, private media, independent labour and professional unions and NGO's.

The MPLA tried to influence some of the new emerging NGOs (e.g. AAD) and the private media, especially the new private commercial radios, which started broadcasting in 1992. All the new radio stations, without exception, were controlled by the MPLA - LAC (Luanda), Rádio 2000 (Lubango), Rádio Morena (Benguela) and Rádio Commercial (Cabinda).

However, it soon became clear that it was not possible to control each and every new organization and that the old days of monopolistic control over society organizations was over. The number of NGO's increased steadily requiring a Forum for its articulation and coordination - FONGA - the same happened with international NGOs, which became organized under CONGA. By then CS was timidly but steadily emerging.

After the September 1992 elections, UNITA refused to accept electoral results and war resumed. The space opened to civil society contracted, but did not close completely. A major lesson could be drawn - once the regime started to allow some room to public and political demand it was very difficult to go back to the initial point, shutting it down completely.

In 1994 a new peace protocol came to be signed in Lusaka and again civil society gained in strength and space. There was a boom in private newspapers (e.g. *Folha 8*, *Actual Fax*, *Agora*, *Comércio & Actualidade*, *O Independente* and *Angolense*, joining *Imparcial Fax*, which existed since 1991).

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<sup>37</sup> Human Rights Watch, *Angola: Arms Trade and Violations of the Laws of War Since the 1992 Elections* (HRW, 1994)

<sup>38</sup> Human Rights Watch, *Angola unravels: the rise and fall of the Lusaka peace process* (New York: HRW, 1999).



A labour union federation emerged in 1996 (General Centre of Independent and Free Labour Unions of Angola - CGSILA), ending the monopolistic status of the MPLA's federation (UNTA), allowing representation of other independent labour unions (e.g. teachers -SINPROF; Journalists - SJA). The State monopoly on radio broadcast also came to an end in 1997 with the re-opening of the Catholic Church's radio Eclésia in Luanda (closed in 1977).

A strong criticism against the government began to be voiced out by the new media: denouncement of situations of extreme poverty, lack of water and electricity, disruption of the education, health and judicial systems, thriving corruption throughout the whole State organizations, violence of the police and army against civilians, etc.

Unused to such aggressive and politically damaging criticism, the government reacted sometimes violently with intimidation and arrest of journalists and creating in 1996 an extension of the state security services - system of information (SINFO). In suspicious circumstances, offices of newspapers burnt out and/or were pillaged (e.g. *Agora* and *Comércio & Actualidade* in 1998). Shocking murders of journalists occurred in these years, such as Ricardo de Mello in 1995 (working for Imparcial Fax and researching on top State corruption) and António Casimiro in 1996, a state-television reporter correspondent in Cabinda.

Besides violence, the government/presidency/party (these structures remain blurred until today) have also reacted through the creation of a 'parallel civil society', comprising organisations such as the President's foundation (Eduardo dos Santos Foundation - FESA) in 1996 and the Lwini Social Solidarity Fund of the first lady Ana Paula dos Santos. Both organisations work to rehabilitate the political image of the President, delivering services that were supposed to be delivered by the State, using social bonus funds from oil and other international companies. The strategy of a parallel CS was to continue up to nowadays with organizations such as AJAPRZ (NGO of Angolan youth returned from Zambia); Children Hope (*Crianças Esperança*, directed by the chief of security Miala) and Friends of Rangel, among a few others.

Throughout the nineties until the end of the war, national and international NGO's, together with Church organizations became the main providers of basic healthcare and humanitarian assistance in face of the State's self-demise of service delivery to poor populations. This role gave them increasing legitimacy to stand for human rights in face of serious abuses and violations testified by them throughout the whole country. Angolan private media and international media became very helpful echoing these demands. The Angolan opposition political parties became more involved with Civil Society organizations on the defence of human rights, although not in a regular and systematic basis; there seems to be a problem of protagonism between both with CS organizations usually having more initiative in this area.

By the end of 1998, UNITA's systematic non-compliance with the Lusaka agreement led to a resumption of war. Once again the regime tried to contract CS space, but this time faced a much stronger reaction. The end of the war in 2002 brought a renewed opportunity for growth and CS is struggling to make the most out of it.

Unable to provide here an exhaustive study of the Angolan CS organizations and its actions in the defence of human rights, we choose four case studies, which exemplify the crosscutting fight for several of those rights: freedom of expression; right to fair and impartial judgement by tribunal; the right to equal treatment and protection by the law, against arbitrary arrest and detention; freedom of movement and residence inside the country; freedom of association, political demand and participation; the right to life, liberty and security. These cases will be analysed in turn:

- 1) The rejection of the new draft law for the media in 2000 and the fight for the freedom of expression;
- 2) The work and progress of some justice, advocacy and human rights national organisations from 2000 onwards - *Mãos Livres, Associação Justiça Paz e Democracia/AJPD, SOS HABITAT*;
- 3) The emergence of a broad Peace Movement, demanding a negotiated settlement for the conflict and respect for human rights;
- 4) Political demand for elections and the negotiation process for a new constitution.

### **1) The rejection of a new draft law for the media and the fight for the freedom of expression.**

In 1999, a few months after resumption of military conflict, the government issued a news ban on war coverage and began with a fierce repression campaign on journalists, which led the international Committee to Protect Journalists (CPJ) to rank the Angolan President among the ten worst enemies of the press in May 2000. Under domestic and international pressure, in July 2000 the government allowed public discussion on the draft law prior to approval. The reaction could not be worse from the Angolan Journalists Labour Union, CPJ, *Mãos Livres*, *Centro Cultural Mosaico* (Angolan NGO) and the national representative of Open Society - Rafael Marques - a journalist himself, who had been arrested for labelling the President a dictator in a private newspaper<sup>39</sup>. All considered the law disastrous for being extremely restrictive and repressive, not allowing freedom of information and increasing the criminal penalties for political defamation.

Reacting to that strong criticism the Government suspended the drafting process and withdrew the draft law. Later, in August 2001, it was announced the formation of a committee consisting of both government and non-government representatives to revise the media law. The committee appointed by the President was expected to release a draft law for new public comment in January 2003, but up to the present nothing came out.

The whole process can be seen as a first significant victory of CS, which was capable to articulate its demands domestically and internationally, blocking the government's intention.

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<sup>39</sup> See Amnesty International, *Angola: Freedom of expression under threat* (AI: November 1, 1999); Amnesty International, *Angola: unfair trial of Rafael Marques* (AI: March 31, 2000).

The climate of tension and repression over the private media became a little better after the end of the war in 2002. However, freedom of expression is still far from being achieved. All private newspapers are weekly publications in the low thousands with circulation limited to Luanda, without distribution in the provinces. The majority of the media is still state-run and is clearly manipulated for political purposes of the MPLA; harassment of independent media diminished after the end of the war in 2002, but has not completely disappeared; the government uses its control of the media to influence local and international public opinion and continues to intimidate journalists into practicing self-censorship while buying-off some and co-opting others to the state media.<sup>40</sup> Television is still a monopoly of the State and so far the Catholic church is losing the battle to extend Radio Eclésia to the provinces; the project was funded by international donors but blocked by the government and is expected to remain that way at least until after 2006 elections.

### **2) The work of some national organisations dealing with justice, advocacy and human rights.**

In 2000, two advocacy justice organizations emerged - *Mãos Livres* and *Associação Justiça Paz e Democracia/AJPD*, both supported by foreign partners. *Mãos Livres* was backed by the UN Human Rights Department and AJPD by the Open Society. *Mãos Livres* was founded by a group of journalists and lawyers and offers legal assistance free of charge. The association is now expanding to the provinces, where it is most needed: - there is an enormous deficit of lawyers in the whole country but especially in the provinces (e.g. the whole province of Malange has only one lawyer); - provincial administrations are known for authoritarian rule and arbitrariness with all mighty provincial governors; - police forces are the major human rights offender with routinely arbitrary arrests and detentions, beatings, extra-judicial killings, extortion and torture; coming out of these crimes with impunity<sup>41</sup>.

The association also had a prominent role in the 2001 conflicts in Boavista neighbourhood in Luanda, where the Government evicted 5,500 families from their homes as a part of an urban renewal project; a number of persons were killed, injured, or arrested during the confrontation between police and residents. *Mãos Livres*, the Angolan branch of Open Society and the President of the Front for Democracy (opposition party), were the first to support the land rights of the urban poor; soon gathering the attention of the national and international media and other civil society organizations, as well as opposition parties. The combined pressures of these organizations resulted in governmental promises for proper compensation and resettling of those evicted, although several of these promises are still to be fulfilled.

Similar cases of demolitions and forced evictions without proper compensation carried out by police forces usually resorting to violence, continued to occur in the following

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<sup>40</sup> On this issue see also, Human Rights Watch report, *Unfinished democracy: media and political freedoms in Angola* (July 14, 2004).

<sup>41</sup> *Angola. Country Reports on Human Rights Practices - 2002* (Released by the Bureau of Democracy, Human Rights, and Labour, March 31, 2003)

years<sup>42</sup>. *Mãos Livres* has taken a few demolition cases to court and a new grass-root NGO emerged in 2002 in Benfica neighbourhood to deal specifically with these cases - SOS Habitat. This is one of the few genuine grass-root/community-based organizations in Angola, fighting for human rights and full citizenship of the urban poor; it has been growing and encompasses 8 *muceques* (shanty towns) with approximately 24.000 inhabitants. Its strategy is based upon participatory base organization disseminating knowledge of legal mechanisms to protect the rights of the urban poor along with pacific resistance to evictions. Direct confrontation with provincial and local authorities on a regular basis revealed a major obstacle for donors' funding (several of them unwilling to displease the government due to its own business interests in the oil industry). Nevertheless, the organisation has successfully delayed demolitions while demanding for negotiations with provincial and local authorities. So far the strategy seems to have had some effectiveness although several interviewees argued that this might be only a temporary halt by the government, involved in a pre-electoral campaign since the MPLA's Fifth congress of December 2003.

New conflicts on land issues are expected with the recent approval of the land law (July 2005), which according to several interviewees basically serves the interests of the ruling elites eager to appropriate the best plots of agricultural land, often owned by rural communities in a traditional communal regime. As soon as the new law is published, fights for land possession and legalization are expected to extend to the whole country and the efforts of CS organizations to stand for the rights of rural communities will be crucial. So far there are already reports of land conflicts in the provinces of Huambo and Huíla.

The second advocacy organization that emerged in 2000 - AJPD - was the initiative of a few young Catholics concerned with constitutional reform, HIV legislation and the improvement of the penal system. So far, their main achievement was to call domestic and international attention to prison conditions, which constituted a serious threat to the health and lives of prisoners. The Government and the National Assembly Committee on Human Rights acknowledged that conditions were inhuman with overcrowded cells and lack of basic sanitary facilities. The prison system holds approximately five times the number of prisoners it was built to hold. Some local NGO's reported cases of prisoners who died of malnutrition and disease.

Usually suspicious of local associations receiving international support, the government blocked the registration of AJPD. *Mãos Livres* was able to register, probably due to a better relationship of its founder - David Mendes - with the State structures, being former vice-minister of foreign affairs.

Although the constitution provides for the right of association, the complementary legislation allows the government to deny registration to private associations on security grounds. So far, most applications, including for political parties, have been approved but the Ministry of Justice continued deny the registration of AJPD by not taking action on its application originally filed in 2000. The association appealed to the Supreme Court but without much success.

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<sup>42</sup> See Amnesty International, *Mass Forced Evictions in Luanda – A Call for a Human Rights-Based Housing Policy* (2003).

Human rights advocacy organizations, NGOs, the private media in Angola, the international media and some opposition parties, are playing an important role assisting and defending the rights of the poor. A major handicap to this work is funding. The inexistence of an autonomous economic activity in Angola (the private sector is completely dependent and dominated by the party and the presidency) renders CS organizations extremely dependent on international funding and consequently on international donors agendas, which are usually driven by short-term goals (according to several interviewees) and 'fashions' according to different periods (e.g. multiparty democracy and structural adjustment in late 80's early nineties; CS and HIV in mid-90's, good governance, transparency and accountability in late nineties and early 2000s and more recently, support to free and fair electoral processes). Without external funding, these organizations hardly survive and several of them usually become more concerned with project design that pleases donors 'fashions' rather than the specific needs of the people they were supposed to serve and with whom they were supposed to work on a regular and sustainable basis. Long-term projects of a participatory development type are usually not adequate to such donor attitude. Moreover, in the specific case of Angola, an oil producer, there is also an added problem of major international economic interests that usually give some leverage to the Angolan government over the international community<sup>43</sup>. NGO's openly confronting the State such as SOS Habitat have an extreme difficulty to access external funding and according to its main representative, Luís Araújo, donors often refuse to fund the organization directly and even using an indirect approach (through international NGOs) they usually request secrecy.

Insofar as there is no private sector independent from the party and State structures<sup>44</sup>, there is no alternative for CS organizations but to depend on external funding and even so, it is still difficult to survive without any form of cooperation with the State structures. The biggest Angolan NGO - ADRA - had to resort to several forms of cooperation with State structures in order to acquire its current dimension - so-called 'constructive engagement' - also diversifying its external funding as much as possible.

CS organizations' dependency on external funding is also at the basis of a somehow contradictory phenomenon: on the one hand, the desperate search for survival through external funding often led to competition between NGOs, with each donor having their own preferred organizations to fund and therefore contributing to fragmentation rather than integration of CS; on the other hand, in 2001/2002, those same donors and international organizations, following a new international tendency, started to promote a new strategy for CS coordination and cooperation - the networks. Accordingly, several networks began to emerge; e.g. the Peace Network (*cf. infra*), the Women Network, Children Network and more recently the Land Network (to discuss the draft of the new land law) and the Electoral Network.

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<sup>43</sup> See for instance Global Witness Report, *A Crude Awakening* (GW: 1999), also Global Witness Report, *All the Presidents Men* (GW: 2002)

<sup>44</sup> The privatisation process in early nineties mainly benefited the nomenclature, see Ferreira, Manuel Ennes, 'La reconversion économique de la nomenclature pétrolière', in *Politique Africaine*, 57 (1995), pp.11-26.

Networks are still in its early stages in Angola; usually hampered by personality clashes and struggles for leadership within these new types of functioning. However, there are a few progresses. The main problem remains the linkage to foreign CS organizations and networks, be it regional, continental or international. Angolan CS organizations are usually not linked to regional networks dealing with human rights; from those interviewed, only the representative of AJPD had been in Zambia for the SAHRINGON meeting but as a result of a personal invitation (not representing AJPD). No one seemed to know much about the Milenium Development Goals or the UN Human Rights Defenders declaration; SOS Habitat had a rough idea of HRD because the UN coordinator of the programme had been in Angola recently, but that was all we could get from our interviewees.

When asked about the reasons for the weak relationship with regional networks, we were told that had to do with: a), the language problem - although Mozambique is also a Portuguese speaking country it was, for historical and geographic reasons, much closer to English speaking countries than Angola; b), the military conflict that ended very recently and during which, human rights was considered a very sensitive political issue; c), lack of resources to fund the participation on regional networks' events; they usually go only when they are invited.

There are some organizations trying to establish a regular working relationship with organizations of the SADC region such as *Mãos Livres*, in search of cooperation with similar organizations, specially in terms of getting support and knowledge sharing to its para-legal programme; Angola 2000 and ANDA, related to regional organizations dealing with peace-building programmes<sup>45</sup>.

### 3) Churches/Civil Society organizations and the Peace Movement

The inexistence of independent CS organizations during the Socialist regime (up to 1991) made churches the isolated voices standing for peace and human rights respect throughout that period. The Catholic conference of bishops from Sao Tome and Angola (CEAST) usually expressed its views in pastoral letters and the protestant churches had their major event when the Council of Christian Churches of Angola (CICA), issued a Memorandum in 1984, analysing the causes of the war and appealing to an internal settlement to the conflict.

Churches calls for peace grew progressively stronger during the war periods of 1992-1994 and 1998-2002 and at this last stage of the civil war they were helped in their initiatives by other CS organizations, in a clear sign that these organizations had grown stronger during the openness of 1994-98.<sup>46</sup>

In 1999 a group of personalities from CS and church organizations - Reverend N'Toni N'Zinga (Quakers), Rafael Marques (Open Society), Francisco Tunga Alberto (Forum of

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<sup>45</sup> *Maos Livres* and ANDA are financially supported by the NiZA Human Rights Peace Building Program. Also *Rede Muhler*, which participates in a regional gender network.

<sup>46</sup> On the role of churches in last stage of the Angolan war see Messiant, Christine, 'Les églises et la dernière guerre en Angola (198-2002). Les voies difficiles de l'engagement pour un pays juste', in *Le fait Missionnaire - War, peace and religion*, n°13, October 2003, pp.75-117.

Angolan NGOs/FONGA), Carlinhos Zassala (academic), Filomeno Vieira Lopes (Front for Democracy/opposition party), published an open letter in the private media standing for 'Peace through dialogue' and denominating themselves as Angolan Group Reflecting for Peace (GARP). In July of that same year they issued a Peace Manifesto arguing for the need of a sustainable peace, the right to citizenship, good governance and social justice and were supported by a broad range of personalities from the media, NGO's, opposition parties and churches.

Later, in December 1999, it was the time for the Catholic Church to launch the Movement *ProPaz*, appealing to the joint mobilization of churches and CS organizations in favour of peace. GARP soon felt in internal scissions due to personality clashes and lack of an organizing structure but Catholic and protestant churches managed to create the ecumenical Inter-Church Committee for Peace in Angola (COIEPA) in 2000, which was an alliance of CEAST, CICA and AEA (Angolan Evangelical Alliance, also an umbrella for protestant churches on pair with CICA). The Catholic Archbishop Dom Zacarias Kamuenho became president of COIEPA and Rev. N'Toni N'Zinga its secretary general. The new alliance progressively achieved international projection and Dom Zacarias was awarded with the EU Sakharov prize for human rights defenders.

The CEAST initiative also resulted in a Pro Pace congress in July 2000, gathering several churches, NGO's, members of the donor community, political parties and ... members of the government. Despite the bitter criticism of the state media towards the event, the government did not want to be seen as renouncing the peace through dialogue, although that possibility was about to be officially ruled out in favour of a military option.

Peace efforts proceeded with a Programme for Peace Building (PCP), implemented in 2000, emerging out of a Development Workshop initiative with several church organizations and NGOs (steering committee including CEAST, CICA, AEA, IECA, FONGA, MOSAICO and DW among others) and with a 2001 COIEPA's project of a Peace Network relating churches, CS organizations and traditional authorities.

Despite a few setbacks such as the disappearance of GARP and the lack of a unified structure to encompass a common strategy to all these projects, programmes and initiatives, and the fact that these were initiatives basically limited to Luanda, the peace movement was alive, growing and dynamic. The main argument was that peace could only be reached through negotiation mediated by CS organisations.

With the sudden death of Savimbi, killed in action on the 22nd February 2002, that major argument of CS became devoid of meaning - a military solution had been achieved. Despite all their previous efforts, churches, CS organizations and opposition parties were all excluded from the Luena cease-fire memorandum of April 2002, as they had been from the Bicesse peace agreement of 1991, as well as from the Lusaka protocol of 1994.

Nevertheless, the peace movement cannot be considered a failure: it opened space for CS legitimate discussion on a sensitive issue such as peace during the war; it brought together churches and a wide group of CS organizations; it was able to pass the message for national reconciliation that came to be officially adopted by the President and the government. Moreover, the dynamics created did not die, CEAST's Justice and Peace

Commissions remain active in the whole country, fighting for human rights and advocating for the creation of free and fair conditions in view of elections and a second *ProPaz* congress on democracy and elections is being prepared for 2005. COIEPA, although very much limited to Luanda is still demanding the disarmament of the civil population and the dissolution of the Organization for Civil Defence (a MPLA's paramilitary force very active in the neighbourhoods) and has been organizing several events with CEAST, such as conferences and seminars on elections and the constitution. The DW Programme for Peace Building is now on its second phase of implementation and the role of the Catholic Church together with Rafael Marques (Open Society) was extremely important to denounce and stop serious human rights abuses in Cabinda, taking place in 2002 and 2003 in consequence of major counterinsurgency operations of the Angolan Armed forces against the Front for the Liberation of the Enclave of Cabinda (FLEC-FAC)<sup>47</sup>.

Obviously the government reacted in several occasions, not only with the aforementioned blockage of radio *Eclesia* expansion to the provinces, but also awarding State recognition to a massive number of new protestant churches in late nineties until today; probably intending to fragment the ecumenical movement - there are almost 90 churches recognized by the state. Another important government reaction directly related to the increasingly articulated involvement of Churches and NGO's in politically sensitive issues such as the question of Cabinda, was the approval of the new NGO bill in 2002, prohibiting NGOs from any political and partisan activities (Art. 21 b). It is left for the government and to the judicial system controlled by the government to judge on the political nature of NGO's activities. This is a major coup to an emerging CS and to the alliances that could be forged around specific issues between NGOs, political parties and Churches.

CS relies in a great extent on NGO's organization ability and capacity to access external funding for a myriad of projects touching sensitive political issues such as elections to give but one recent example. At the moment there are over 120 registered NGOs operating in the country, of which approximately 45 are domestic NGOs. Several international organizations have a permanent presence in the country including the ICRC, and the human rights division of MONUA<sup>48</sup>. It will now be interesting to see how the NGO bill will be applied in practice as the electoral process evolves towards 2006 and a lot of NGOs projects and donors funding is being directed towards the electoral process, including capacity building of opposition political parties.

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<sup>47</sup> See Amnesty International, *Arbitrary detention/Fear for safety/Fear of torture/Incommunicado detention* (AI, 133 December 2002).

<sup>48</sup> The MONUA human rights division, established in 1997 to conduct human rights training for U.N. forces and investigate individual cases of human rights abuses



#### **4) Political demand for elections and the negotiation process for a new constitution**

Elections are a major demand from opposition parties, CS organizations, churches and the international community. Although the Constitution provides all adult citizens with the right to choose the President of the Republic and deputies in the 223-seat National Assembly in direct multiparty elections, in practice citizens have no effective means to change their government. Due to war resumption in 1992, the second round of the 1992 presidential elections was cancelled and new presidential and legislative elections postponed throughout the nineties. With the end of the war in 2002, demands for new elections increased. After twelve years without elections neither the parliament nor the President have any democratic legitimacy whatsoever.

Replicating the 1992 electoral strategy, the MPLA is now and once again trying to approve a major set of laws within the legislation framework before elections (e.g. land law, oil law and constitution). Its simple majority at the parliament allows it to approve almost every single piece of legislation as it pleases and according to its best interests except for the constitution to which a two-thirds majority is required. Negotiations between the MPLA and opposition to a new constitution started in 1997, when for the first time UNITA's deputies took up their parliamentary seats but was soon suspended in late 1998, when the war resumed.

In 1997/1998, the national assembly was boiling with political activity broadcasted live by the national radio and television. Negotiations and alliances between parties were on top of the agenda and a real multiparty political life was starting to emerge. The constitutional revision was the main concern; UNITA, FNLA and PRS had already agreed to gather their votes (forming 1/3 of the total) in order to oblige the MPLA to negotiate. By then UNITA had some leverage, Savimbi was still alive and holding large swathes of territory, and the MPLA was accepting some significant political concessions to the opposition while negotiating the new constitution.

Discussions on what Angola should be in terms of political/administrative model spread through the whole society, from the media to NGO's workshops to academic conferences and day-to-day street conversation. Life coverage of parliamentary sessions was clearly becoming an important mechanism for the construction of a public opinion around major political issues as never before in Angola. Opposition parties, NGO's, Churches, private media and part of the international community were all exerting pressure on the government for an effective democratisation. Frightened with such a phenomenon, the MPLA decided to suspend state-media coverage of parliamentary sessions and from then on the public discussion around major political issues cooled down. Nevertheless, the context remained unfavourable to the MPLA.

With the sudden suspension of the Lusaka protocol in late 1998, the abandon of UNITA's deputies from the parliament, the renewed war and the military and political defeat of UNITA, everything changed. The new constitutional project was bi-laterally negotiated between the MPLA and UNITA (under general Gato's leadership) and approved on January 2003 (Alvalade agreement), basically consecrating the MPLA's project and interests and expected to be approved by the constitutional commission (responsible for the final draft to be presented for approval at the National Assembly). All the other

opposition parties criticized the deal for excluding them and denounced the strategy of the MPLA, imposing its will upon a defeated counter-party. The announcement of an electoral calendar remained postponed, with the MPLA implicitly conditioning new elections to a prior approval of the new constitution.

Unhappy with the Alvalade agreement the new elected president of UNITA, Isaiás Samakuva, tried to postpone the constitution approval to the next legislature, allying itself to smaller opposition parties for this purpose. Accordingly, in May 2004 all opposition parties withdrew from the constitutional commission, accusing the MPLA of manipulating the commission and holding elections hostage of the constitution approval.

The opposition is expects a more favourable balance of power within the national assembly after 2006 elections and will then push for a more favourable deal in terms of power sharing between President, parliament and executive. Considering the reactions from CS organizations and opposition to the draft constitution leaked out from the constitutional commission, the major problem lays in the executive power division between the President and the Parliament and also between central and local administration; a model still consecrating an extreme concentration and centralization of powers in the Presidency. No one raised any objection on the fundamental rights section, be it national or international organizations, which, according to one of the most prominent Angolan jurists directly related to the draft constitution, proves the progressiveness of the constitution in that area - a section that fed upon several Western constitutions considered the most advanced in terms of fundamental rights. Nonetheless, we must stress that the problem with human rights in Angola since 1992, is not so much a matter of constitutionally recognized fundamental rights but the lack of mechanisms for its effective protection in practice and a lack of respect for those rights by the State structures.

To return to the constitutional commission the opposition demanded: 1st) a date from the President for legislative and presidential elections, after consultation with members of the civil society and opposition political parties; 2nd) the presentation of an electoral calendar with all the necessary steps to prepare the electoral process (e.g. the law on political parties funding, on electoral behaviour, electoral monitoring, electoral registration, etc.); 3rd), the breakage of an implicit linkage the MPLA was establishing between elections and the approval of a new constitution.

This move coincided (on purpose or not) with the President's visit to the US (where President Bush raised the question of elections), and seems to have had a clear impact on the MPLA and the presidency. Returning home, Dos Santos chose some members of the civil society and on the 28<sup>th</sup> July had bi-lateral meetings to listen to them on elections (e.g. NGOs and COIEPA) and four days later (2<sup>nd</sup> July) gathered the Council of the Republic and listened to the opposition parties represented there. In both meetings there seemed to be a major opinion in favour of 2006 as the limit for elections to take place.

Right after the first meeting with the civil society, on the 30<sup>th</sup> June, the MPLA's Political Bureau issued a statement saying that elections should take place until September 2006, no longer stressed the need for a prior approval of the constitution and stressed the need for a legal and juridical framework to organize the future elections.

With such a statement, the opposition (with the help of CS and International Community, i.e. the US) seems to have won this first battle, however, several obstacles remain to the effective implementation of multiparty politics:

- a) The blurring between State and party structures (e.g. some ministers are MPLA Central Committee members and several provincial governors are MPLA first provincial secretaries. The same happens with municipal and communal administrators and it is sometimes difficult to distinguish between their party and State activities).
- b) The Angolan judicial system lacks the means, experience, training, and political backing to affirm its independence towards the MPLA and the Presidency. The President has strong appointive powers, including the power to appoint Supreme Court justices without confirmation by the National Assembly and there are several reports where political pressure from the presidency affected the outcome of cases.
- c) CS organizations and opposition parties find it difficult to access to the state media (radio, television and daily newspaper); private media (weekly newspapers in the low thousands) only circulate in Luanda and Radio Ecclesia is restricted to Luanda.
- d) Although decreasing, there are still reports of political intolerance such as beatings, threats, burning of opposition delegations in rural areas; the MPLA still has an active para-military militia in the neighbourhoods (Organization of Civil Defence); still under investigation is the murder of the opposition leader M'Fulupinga Landu Victor, on the 2<sup>nd</sup> July 2004, which might be just an ordinary crime, but effectively spread the fear among the opposition and CS.
- e) Just like in the old days of the one-party regime, the State is still used as mechanism for patronage, feeding political clientele and the promotion to senior levels or access to State jobs is very much dependent on MPLA membership. This procedure has recently extended to UNITA ex-combatants, who according to the state media have joined the MPLA in the number of 12 000 since January 2004 (in *Jornal de Angola* 28/9//2004); promises of material benefits to these people in exchange for party membership were reported by several interviewees.
- f) Except for those 'political parties' and 'CS' groups supported by the government/MPLA/Presidency, opposition parties and CS organizations in general survive with severe financial difficulties.

Contrary to CS organizations, opposition parties hardly access external funding and membership fees are merely symbolic (the equivalent to 1 US\$/month) and even so most of the members usually lack the means to pay it. Opposition parties (represented in the parliament) live essentially on funds coming out of the State budget (10 US\$ per vote obtained in the 1992 election), which is paid irregularly (sometimes suspended) by the government to disrupt their activities. Under such financial conditions, it is extremely difficult to expand activities outside provincial capital cities. UNITA is the only opposition party with effective national presence outside provincial capital cities. Some parties are still struggling to get a representation in the capital city of Luanda (e.g. PDP-ANA and PAJOCA). The situation is much worse for parties without parliamentary representation, this without access to state budget funds. On the other hand, the MPLA has no financial difficulties whatsoever, having the largest State subsidy, having membership fees retained at source (salaries) by state companies and also indirectly controlling several private companies and with an impressive collection of buildings widespread throughout the country.

### Human Rights Legal Framework

The first Angola constitution was approved in 1975, the year of independence and established a one-party regime under the guidance of the Popular Movement for the Liberation of Angola (MPLA). The old constitution was amended several times up to 1991 when a major reform occurred to adopt the multiparty system and to integrate the economic reforms legislation adopted from 1987. It aimed as well to implement some of the terms and conditions of the General Peace Agreement signed by the Angolan government and UNITA at Bicesse (Portugal) in the same year. A new Constitutional Law was adopted in 1992 (law 23/92) after negotiations with opposition parties including UNITA. It was not called constitution, but constitutional law to emphasize its transitory character; it was by then agreed by all parties that a new constitution would be approved after elections due in September 1992. UNITA did not accept the electoral results and war resumed, the 1992 Constitutional Law (CL) was not changed thereafter and is not expected to at least until new elections take place in 2006.

The right to life and the prohibition of death penalty are established in the constitution (arts 22° and 20°), as well as the rights to the inherent dignity of the human person (arts 20° and 2°), free development of personality (art. 20°), personal integrity (art. 20°), equality under the law and non discrimination on grounds of «skin colour, race, ethnic group, sex, place of birth, religion, ideology, educational level, economic and social condition» (art. 18°) and to good reputation (art. 20°). The CL also establishes the prohibition of «torture (... or) other cruel, inhuman or degrading treatments or punishments» (art. 23°).

The CL provides for the freedom of expression, meeting, demonstration and association (art. 32°), of press and related prohibition of censorship (art. 35°), of conscience and religion (art. 45°), of choice and exercise of profession and employment (art. 46/3), to form trade unions and professional organisations (art. 33°), to strike (art. 34°) and for the

freedom of movement within the national territory (art. 25°). No person shall be subject to arbitrary and unlawful interference with his/her home or correspondence (art. 44°).

After establishing the principles of *nullum crimen sine lege* (art. 36/1 e 36/3) and non retroactivity of criminal law (art. 36/4), the CL establishes the presumption of innocence (art. 36/5), the right of a person to defend him/herself (art. 36/1), the principle of intervention of a judge when a preventive arrest takes place (art. 38°), the provision in the law of the grounds and terms of preventive arrest (art. 37°), habeas corpus (art. 42°), the right to appeal from courts conviction decisions (art. 41°), the right to information on the reasons of the arrest of the defendant (art. 39°) and the right to remain in contact with his/her family and friends (art. 40°).

Citizens have the right to participate in public life voting in elections and being elected to public office (art. 28°).

Concerning economic, social and cultural rights, the CL provides for the right to live in a healthy and non-polluted environment (art. 24°), to work (art. 46/1, also ruled in the CL as a duty), to medical and health assistance (art. 47°), of access to education, culture and sports (art. 49°) and to legal aid (art. 36/2).

The CL guarantees the protection of the family and the equality of men and women within the family (art. 29°), the special protection of children (art. 30°) and young persons (art. 31°), as well as the special protection of disabled veterans of war, orphans of war e citizens disabled as a consequence of war (art. 48°).

Any citizen may resort directly to courts in case of breach of fundamental rights and freedoms, with no need of any law regulating them specifically (art. 43°).<sup>49</sup>

Angola is a party in several human rights international instruments such as the Universal Declaration of Human Rights (1948), the African Charter of Human and Peoples Rights (1981), the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966), the Convention on the Rights of the Child (1989), the Convention on the Elimination of All Forms of Discrimination Against Women (1989).

According to the 1992 CL, all the rules contained in those international instruments are in force in the country as fundamental rights. CL expressly states that «the fundamental rights provided for in this Law do not exclude other rights emerging from laws and applicable rules of international law» (art. 21/1). Also, «the constitutional and legal norms related to fundamental rights shall be interpreted and integrated according the Universal Declaration of Human Rights, the African Charter of Human and Peoples Rights and the other international instruments of which Angola is a party» (art. 21/2).

A few months ago, work within the constitutional commission leaked out a draft for a new constitution and according to some jurists that analysed the text, the section on Fundamental Rights can be considered very progressive and modern. As explained in the country report (annex to this work), the constitutional commission was temporarily

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<sup>49</sup> Angola. *Country Reports on Human Rights Practices - 2002* (Released by the Bureau of Democracy, Human Rights, and Labour, March 31, 2003)

suspended and it is not realistic to expect a new constitution before the 2006 elections. By then the opposition expects a more favourable balance of power within the national assembly and will push for a more favourable deal in terms of power sharing between President, parliament and executive. Considering the reactions from CS organizations and opposition to the draft constitution leaked out, the only problems raised were the division between executive powers between the President and the Parliament and also between central and local administration.

According to the chief of the Presidential cabinet for civil affairs, one of the most influential Angolan jurists directly related to that draft, no one raised any objection on the fundamental rights section, be it national or international organizations, which, according to him, proves the progressiveness of the constitution in that area; it was a section that fed upon several Western constitutions considered the most advanced in terms of fundamental rights. Nonetheless, we must stress that the problem with human rights in Angola since 1992, is not so much a matter of constitutionally protected fundamental rights but the lack of mechanisms for the effective protection of those rights in practice and a lack of respect for those rights by the State structures as shown in Angola's country report.

As an example, the Angolan Constitution provides for an independent judiciary; however, the judiciary is extremely dependent on the President and the party. In several occasions, political pressure from the presidency has affected the outcome of cases. The President has strong appointive powers, including the power to appoint Supreme Court justices without confirmation by the National Assembly (see annex with Angola country report).

The Constitution provides defendants with the presumption of innocence, the right to a defence, and the right to appeal. Legal reform in 1991 established the right to public trials, a system of bail, and recognized the accused right to counsel; however, the Government does not respect these rights in practice. The lack of trained attorneys in remote parts of the country has forced defendants to defend themselves during trials. Trials are open to the public; however, each court has the discretion to close proceedings arbitrarily. Defendants do not have the right to confront their accusers. Judges usually are laypersons, not licensed lawyers. The judge and two laypersons elected by the full court act as the jury.

The CL also provides for the freedom of association, freedom of the press, strike and independent radio broadcasting; however as we saw from the analysis of the country report produced for this work, none of these rights are effective in practice: Civil Society (CS) organizations and opposition parties find it difficult to access to the state media (radio, television and daily newspaper); private media (weekly newspapers in the low thousands) only circulate in Luanda and Radio Ecclesia is restricted to Luanda; journalists are at times intimidated; there are still reports of political intolerance such as beatings, threats, burning of opposition delegations in rural areas; an opposition leader was killed recently and so far the case is still under investigation spreading the fear among the opposition and CS; the Government still uses arbitrary arrest and detention; the Ministry of Justice is nominally in charge of the prison system, but in practice the Ministry of Interior still has the power to arbitrarily, and secretly arrest, and detain

persons for all categories of crimes; the department for criminal investigation that was supposed to be under jurisdiction of the Ministry of Justice is still under the Ministry of Interior; the police under the Ministry of Interior is the main responsible for all kinds of abuses and the Government often does not prosecute nor punish those responsible; promotion to senior levels or access to State jobs is very much dependent on MPLA membership; the Government continues to dominate the labour movement and restricts workers' rights.

### Conclusion

Although in its early stages when compared with other African countries, Angolan CS seems to be emerging, taking the few opportunities given by the regime openness during the short peace periods experienced in the country: 1991-92, 1994-98 and from 2002 onwards. Constraints for CS assertiveness are daunting as shown in this paper: lack of human and financial capacity; major dependency on external funding; limited access to the state media; restrictive legislation; political dependency of the judicial system; limited democratic space either in public or private sector; weak private media circumscribed to Luanda; fragmentation of CS organizations still unable to operate efficiently in national or even less in regional networks; a still present culture of fear and intimidation.

Ways of fighting these obstacles were pointed out by several of our interviewees and were in great part related to the leverage of the international community, especially during the electoral process that is about to start in view of 2006 elections:

- Directly supporting genuine CS groups (i.e. those that are not part of the government run 'parallel civil society'), helping with capacity building, project funding and regional/continental/international networking;
- Lobbying for transparency, accountability and fair - democratic - procedures throughout the whole electoral process;
- Monitoring and public denouncing human rights abuses and any wrong doing during the electoral process;
- Capacity building and funding of opposition parties with sound and credible political projects.

A major hope (sometimes desperate belief) is placed upon the international community by CS organizations and opposition parties however, some interviewees also expressed concern on the way international economic interests in Angola might condition this leverage on the Angolan government.

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### **Appendix III: HRD documents available on request**

- All-Africa Human Rights Defenders' Conference Johannesburg, 2 – 4 November 1998
- Amnesty International, Southern Africa HRD Workshop Harare, 26 – 28 March 1998
- Attendance Register Human Rights Defenders Forum, July 2003
- Concluding Statement of the African Civil Society Consultation on Zimbabwe, August 6, 2003
- Draft report of the consultative meeting of NGOs in Tshwane, 7 – 8 November 2002
- Draft proposal to support initiatives of the African Commission on the Development of a mechanism to address issues relating to HRD in Africa, by Amnesty International.
- End of Year Statement of the African Civil Society Consultation on Zimbabwe, December 23, 2003
- Human Rights Defenders Forum for Central and Southern Africa, Durban, 28 June – 2 July 2003
- Johannesburg Declaration, Johannesburg, 4 November 1998
- Plan d'Action de Johannesburg, 28- 30 juin 1999
- Southern Africa HRD Network – Action Plan
- United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally recognized Human Rights and Fundamental Freedoms, March 8, 1999

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