

2003

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Jamal Jafari

*American University Washington College of Law*

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### Recommended Citation

Jafari, Jamal. "Attacks from Within: Zimbabwe's Assault on Basic Freedoms through Legislation." *Human Rights Brief* 10, no. 3 (2003): 6-10.

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## Attacks from Within: Zimbabwe's Assault on Basic Freedoms through Legislation

by Jamal Jafari\*

Personal freedoms in Zimbabwe have disintegrated over the past few years as President Robert Mugabe has compromised the civil and political rights of citizens to maintain his grip on power. In the face of mounting opposition to his rule, Mugabe has severely restricted the rights of journalists to express themselves freely, the rights of opposition political parties to hold rallies and meetings, and the rights of citizens to assemble freely. These rights are protected under the Constitution of Zimbabwe, as well as international covenants to which Zimbabwe is a party. These restrictions have been codified in two news laws—the Access to Information and Protection of Privacy Act (AIPPA) of 2002 and the Public Order and Security Act (POSA) of 2002. Both laws were instituted prior to a contentious presidential race in March 2002 and have allowed Mugabe to solidify his hold on power by subrogating any opposition while claiming to uphold the rule of law. This effort, which assured him an electoral victory despite failing to meet international election standards, will have far-reaching consequences on the rights of Zimbabweans to assemble, speak, and conduct a free press for years to come. In addition, Zimbabwe's problems come at a time when the rest of the continent is moving toward democracy and transparency. The failures of Zimbabwe will reflect poorly upon pan-African efforts to achieve these goals.

### Background

President Mugabe has ruled Zimbabwe since it gained independence in 1980. After maneuvering to head the largest army that fought against white minority rule, he came to power espousing reconciliation with the white population that had previously ruled Rhodesia, as Zimbabwe was formerly known. Mugabe initially attempted to establish a *de jure* one-party state with his ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) as the sole legal political party. He did not succeed, however, and created a *de facto* one-party state instead.

During the formative stages of Mugabe's rule, the administration did not tolerate dissent. In the early 1980s Mugabe sent the North Korean-trained Fifth Brigade of the Zimbabwe National Army to the Matabeleland region of the country, where it killed 20,000 people. Matabeleland, a base for many critics of Mugabe and ZANU-PF, was home of the Ndebele people who were united behind Joshua Nkomo and his Zimbabwe African People's Union party (ZAPU), which opposed Mugabe's centralization of power. Nkomo eventually agreed to a power-sharing agreement in which he would serve as vice president as long as he merged his party with ZANU-PF, thus eliminating the only major opposition party. This massacre, known in Zimbabwe as the Gukuruhundi, or "the rains that cleanse," set the tone for Mugabe's response to future attempts at political opposition.

From the late 1980s until the late 1990s, small political parties emerged, such as the Zimbabwe Unity Movement (ZUM), to contest an occasional parliamentary seat or run a symbolic presidential candidate who had no real chance of unseating Mugabe. Even though these parties posed no practical risk to Mugabe due to limited exposure and support, he did not hesitate to resort to violence and intimidation to ensure that no opposition party gained a foothold in Zimbabwean politics. For example, a ZANU-PF television ad broadcast during the 1990 presidential race threatened constituents who did not wish to support ZANU-PF. The announcer of the ad, which



Credit: UN/UNMEE photo by J. Avrambaru

Robert G. Mugabe, President of the Republic of Zimbabwe, addressing the United Nations General Assembly on September 12, 2002.

featured a car crash, stated: "This is one way to die. Another way is to vote for ZUM. Don't commit suicide. Vote ZANU-PF and live."

Mugabe's hold on power began to crumble in September 1999, when the opposition Movement for Democratic Change (MDC) was born out of the labor movement. The MDC demonstrated its strength in February 2000 when it mobilized an effective campaign to defeat a referendum on a draft constitution written by ZANU-PF that would greatly expand the powers of the president. This was the first defeat ZANU-PF ever suffered at the polls. Four months later, the MDC emerged from a bloody parliamentary election campaign to win almost 50 percent of the elected seats. In the process, ZANU-PF members killed hundreds of people and tortured thousands, the vast majority of them MDC members.

The presidential election was due to be held in less than two years. ZANU-PF's efforts to use violence and intimidation failed to defeat the MDC. In subsequent court challenges, the MDC nullified the elections of several ZANU-PF members of Parliament after the Zimbabwe High Court ruled that ZANU-PF's heavy-handed campaign tactics created an illegal advantage for the ruling party. Although many judges who ruled against ZANU-PF were forced to resign, opposition support continued to grow. It was clear that the traditional tactic of violent suppression of opposition would not be enough to ensure Mugabe's re-election. To enhance its candidate's chances of winning the presidency, ZANU-PF resorted to instituting new laws in order to limit dissent, free expression, and free assembly.

### The Public Order and Security Act of 2002

POSA, which was passed in January 2002, replaced the Law and Order Maintenance Act of 1960 (LOMA), one of the few pieces of legislation retained from the Rhodesian era. LOMA generally outlined police powers, state security measures,

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and the limits of personal freedom as they related to state security. LOMA was considered to be a draconian piece of legislation that served the interests of the white minority. Ironically, the Rhodesian regime often invoked this statute to inhibit the revolutionary forces and their supporters who now rule Zimbabwe. Mugabe kept LOMA in place after independence mainly due to its effectiveness in suppressing dissent against the government. The decision to replace LOMA came after years of public criticism over its colonial roots and the Mugabe regime's desire to restrict opposition to the government beyond the boundaries of LOMA.

#### *Effects of the Public Order and Security Act on Freedom of Expression*

Although LOMA was generally considered restrictive, POSA has maintained, and in some instances expanded, limitations on personal freedom, including freedom of expression. POSA retains the provision of LOMA that criminalized insulting the president, although the passage of POSA reduced the penalty from five years of imprisonment to one. Section 16 of POSA criminalizes the making of virtually any negative comment about the president in his professional or personal capacity. This section also criminalizes any printed or broadcast "abusive, indecent, obscene or false statement" directed toward the president. Although there is no independent electronic media within Zimbabwe, virtually any writer at an independent newspaper could be arrested for criticizing the president. In practice, however, the government has chosen to prosecute journalists under AIPPA rather than rely on this provision.

An additional provision of POSA that inhibits the right of free expression is section 15, which prohibits making any false statements prejudicial to the government, or any oral or written false statements that may, *inter alia*, adversely affect Zimbabwean defense or economic interests, or undermine public confidence in defense and law enforcement agencies. The determination of what constitutes a "false statement" is left up to the executive. This provision not only affects any local or foreign journalist writing about Zimbabwe, but also severely hinders human rights groups and other advocacy organizations that serve as a check on the government. If the press and non-governmental organizations are stripped of their power to criticize the state, critical debate in Zimbabwe will come to a virtual halt.

Another new clause incorporated into POSA is section 12, which addresses causing disaffection among the police forces. Under this clause, any person who commits an act that may be construed as attempting to cause the police or defense forces to withhold their loyalty, services, or allegiance, or to commit a breach of discipline, may be fined 20,000 Zimbabwe dollars (U.S.\$357) and imprisoned for up to two years. Because most police stations have close ties to government-sponsored militias and often apply the law selectively, many opposition supporters who report acts of political violence to the police are told that the police cannot help MDC members.

According to section 12, any person who makes public statements condemning the actions of the police or suggesting that they should uphold the rule of law may be a target for prosecution. For example, MDC official Kenneth Mathe was arrested and brought before a magistrate in the resort town of Victoria Falls on January 24, 2003 for violating section 12(a) of POSA. In an interview with the opposition newspa-

per *Daily News*, Mr. Mathe commented on reports that police and members of the armed forces were beating civilians in the area after the murder of an Australian tourist. He likened the events to the Matabeleland massacres in the 1980s. The police interpreted his statement as "causing disaffection amongst members of the Police Force or Defense Forces," arrested him, and released him on bail pending trial.

#### *Effects of the Public Order and Security Act on Freedom of Assembly*

Section 5 of POSA addresses acts of subversion. The language of section 5 is so broad, however, that even peaceful protests may be subject to prosecution. Specifically, subsection 2(iii) of this act makes "coercing or attempting to coerce the Government" a crime punishable by up to 20 years of imprisonment. "Coercing" is defined as "constraining, compelling or restraining" through "boycott, civil disobedience or resistance to any law, whether such resistance is active or passive . . . if accompanied by physical force or violence or threat of physical force or violence." Thus, any participant in a rally or a mass stayaway may be subject to prosecution under this clause. This would include any participant in a rally that is later attacked by a government-sponsored militia, which occurs with some regularity.

Section 17 of POSA, which addresses public violence, has been expanded to apply to anyone who "forcibly disturbs the peace, security or order of the public . . . or invades the rights of other people." On the surface, the objective of this provision seems to preserve the peace by punishing rioters. A closer examination reveals that it can be applied to anyone who objects to the operations of the state. For example, Raymond

Majongwe, secretary-general of the Progressive Teacher's Union of Zimbabwe (PTUZ), was twice arrested under section 17 while leading a nonviolent national teacher's strike in October 2002. Each time, he was arrested for approaching teachers at schools and encouraging them to join the strike. During the first arrest he was badly beaten in police custody and prevented from seeking medical attention for days. During the second arrest he was tortured by having electrodes applied to his genitals and his mouth. The police told him to call off the strike and not to talk to the press.

In general, POSA strengthens the police force and equips it with broader powers to inhibit demonstrations. Section 25, which regulates public gatherings, has enabled police to approve, disapprove, or shut down virtually any public gathering at will. Any person who wishes to hold a public gathering must provide advance notice to the authorities, who then have the power to determine the duration, location, and route of the gathering. The authorities may deny any request for a public gathering if they claim it will cause public disorder, a breach of the peace, or an obstruction to any thoroughfare. Any organizer of a public gathering who fails to seek approval from the state may be fined up to \$10,000 Zimbabwe dollars (U.S.\$179) and imprisoned for up to six months according to section 24(6). In addition, section 27 gives the police the power to prohibit any gathering within a specific police district for up to three months. Section 28 provides that the organizer of any public gathering who has breached any aspect of POSA relating to such gatherings may be held civilly liable for damage that results from the gathering. Further, section 31 states that any person at a public gathering who "engages in disorderly or riotous conduct; or uses threaten-

**Any organizer of a public gathering who fails to seek approval from the state may be fined up to \$10,000 Zimbabwe dollars (U.S.\$179) and imprisoned for up to six months according to section 24(6).**

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ing, abusive or insulting words; or behaves in a threatening, abusive or insulting manner” may be liable for a fine up to \$50,000 Zimbabwe dollars (U.S.\$893) and may be imprisoned for up to two years. Police have even required advance notice of political discussions taking place at public places in the capital city of Harare.

Officials have relied on POSA when arresting elected MDC officials. On January 11, 2003, Harare Mayor Elias Mudzuri, his deputy mayor, and several members of the city council were arrested and charged with addressing an illegal gathering under section 25(1) of POSA, which regulates public gatherings that may cause “public disorder; or a breach of the peace; or an obstruction of any thoroughfare.” According to the British Broadcasting Corporation, at the time of their arrest, the officials were holding a meeting with residents at the city council building and were discussing municipal issues such as water, sewage, and roads.

Because POSA was passed two months before the presidential election, the restrictions on public gatherings had a serious effect on the campaign for the presidency. President Mugabe addressed roughly 50 rallies during that period and all ZANU-PF rallies were allowed to proceed unhindered. In contrast, Morgan Tsvangirai, the head of the MDC and its candidate for president, managed to hold only eight rallies. The MDC secured a court order to prevent the police from interfering in a rally in February 2002, but cancelled the rally after police refused to provide security in the face of mounting threats. In all, the police used POSA to disrupt or prevent 83 MDC rallies between January and March 2002. They often prevented MDC meetings in private homes as well, and disrupted a meeting between Mr. Tsvangirai and diplomats held at a hotel. The police disrupted several gatherings of the Zimbabwe Election Support Network, an organization devoted to voter education and free and fair elections, after classifying the gathering as political and therefore subject to the provisions of POSA.

### The Access to Information and Protection of Privacy Act of 2002

The Zimbabwean Constitution has never explicitly guaranteed freedom of the press, although it does guarantee free expression to all citizens in section 20, which has been interpreted to include journalists. Before AIPPA was passed in March 2002, journalists were prevented from publishing information that contained state secrets or could be proven to be defamatory. There was no law hindering the ability of journalists to operate, except for a statute regulating electronic media.

### Accreditation of Journalists and Mass Media Outlets

AIPPA has drastically changed the work of journalists in Zimbabwe. Among other measures, it has created a Media and Information Commission (Commission) to oversee the press, has imposed a strict registration policy on journalists, and has introduced severe penalties for publishing false information. Three members of the Commission are chosen by officials from journalist organizations and three by associations of media owners, while the remaining members are chosen by the minister of information under orders from the president. The minister has the power to accept or reject any members nominated by journalists and media owners and holds the final decision, along with the president, as to who sits on the Commission.

The Commission has the power to register any individual journalists and all mass media outlets, including newspapers, magazines, news services, and any organization that derives revenue from news collection and dissemination.



Credit: AFP Photo/Aaron Ujumbi

*Morgan Tsvangirai, leader of the Movement for Democratic Change (MDC), at a press conference in Harare, criticizing the ZANU-PF-led government for physically abusing members of his party during a mass stayaway opposing Zimbabwean president Robert Mugabe's human rights record and dictatorship.*

Sections 65 through 77 of AIPPA specify who may be a mass media owner, the manner in which he or she must apply for registration, and the manner in which he or she must operate in order to retain registration with the Commission. Section 65 provides that all mass media owners must at least be citizens of Zimbabwe. In addition, all partial owners must be permanent residents of Zimbabwe. Under section 69, the Commission may refuse to register any organization that violates the Act and may suspend or nullify registration due to bankruptcy of any owner or membership in a banned organization pursuant to section 71.

In a country where there is little internal capital investment, section 71 severely hampers the ability of news organizations to raise money. In addition, the mandatory registration of journalists amounts to the requirement of approval from the government to practice as a journalist. In practice, local journalists are initially granted registration, but renewal by the Commission is delayed or halted for those who have been particularly critical of the government. A journalist cannot report freely on government activities if he or she is worried about the nullification of his or her registration.

Journalists are subject to individual registration according to sections 78 through 90 of AIPPA. Under section 79, all journalists must apply to the Commission for registration that must be renewed annually. Only Zimbabwean citizens and permanent residents are eligible to receive this type of accreditation. Section 79(4) stipulates that any foreign reporter may be accredited for a maximum of 30 days. Therefore, all reporters from outside the country must get prior approval from the government and inform it of the subject of their work. A foreign media outlet may set up a permanent office in Zimbabwe, but only with prior approval from the Commission according to section 90.

As a result of the passage of section 79, numerous foreign journalists have been denied entry into Zimbabwe after their requests for temporary accreditation were denied. Among those denied visas were Sally Sara of the Australian Broad-

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casting Corporation and David Blair of the British Daily Telegraph who was immediately deported upon arrival. Further, the government alleges that it accredited 580 journalists before the March 2002 presidential election, but a private media watchdog group, the Media Institute of Southern Africa, suggests that number is closer to 72.

Local reporters have been most affected by the registration policy. For example, Fanuel Jongwe, a senior reporter for the *Daily News*, was arrested on January 27, 2003 in the town of Zvishavane along with five foreigners and charged under section 79 of AIPPA, which prohibits practicing journalism without a license from the Commission. The five foreigners, reported to be members of the World Lutheran Foundation (WLF), were charged under section 72, which prohibits running a media outlet without authorization. Jongwe stated that he had been invited to cover the WLF's activities as a development organization in the area. The group was later released after police confiscated a laptop, notebooks, cameras, and literature.

#### ***Effects of the Access to Information and Protection of Privacy Act on Freedom of Expression***

Possibly more troubling to journalists than the accreditation issue are the new restrictions on freedom of expression imposed by AIPPA. Section 64, entitled "Abuse of Freedom of Expression," criminalizes usage of mass media outlets to commit a criminal offense or publish a false record. Anyone who violates this section may be fined up to \$100,000 Zimbabwe dollars (U.S.\$1786) and may be sentenced to up to two years in jail. While many countries hold journalists civilly liable for defamation, criminal liability serves to stifle the free expression of information due to the threat of imprisonment.

Individual journalists are also criminally liable from publishing false information under section 80, which provides penalties if a journalist "falsifies or fabricates information, publishes falsehoods . . . or contravenes any of the provisions" of AIPPA. The definition of a falsehood is left up to the Commission and the minister of information. The penalties for violating this section are up to a \$100,000 Zimbabwe dollars (U.S.\$1786) fine and up to two years in jail.

These sections of AIPPA have been used repeatedly to detain journalists who publish stories that criticize the government. In April 2002, Geoff Nyarota, the editor-in-chief of the *Daily News*, was arrested under section 80 after publishing a story accusing the Registrar General of Elections of releasing contradictory information to different media outlets concerning the results of the presidential election. In his subsequent legal challenge, Nyarota was remanded to prison until early 2003 while the government considers whether section 80 of the AIPPA violates section 20 of the Constitution, which guarantees freedom of expression. In total, at least 16 journalists were arrested and charged under section 80 from the time of the presidential election until early July 2002.

#### **Zimbabwe's Responsibilities under the Zimbabwean Constitution and International Law**

##### ***AIPPA's Compliance with the Constitution and International Law***

AIPPA has sparked fierce constitutional debate within Zimbabwe. Section 20 of the Constitution maintains that

every citizen has the "freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence." There are exceptions to this right. In Section 20(2) (a), exceptions are made in the interest of "defence, public safety, public order, the economic interests of the State, public morality or public health." AIPPA goes one step further, however, and restricts freedom of expression on the basis of accuracy of information as perceived by the state. This is clearly a limitation the Constitution did not intend, and is currently being debated by the courts.

In addition, the provisions of AIPPA outlined above violate Zimbabwe's obligations under international law. Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe is a state party, guarantees freedom of expression, including "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." The only restrictions that may be imposed are those that are provided for by law and aim to protect the rights or reputations of others, national security, public order, public health, or morals. Any restriction must be justified as

"necessary" for achieving one of these purposes. General Comment 10, which elaborates on the implementation of Article 19, is clear that a state party may impose restrictions on the right to freedom of expression only if such restrictions do not jeopardize the right itself.

AIPPA's requirement that journalists provide accurate information is in violation of Zimbabwe's international obligations. Although most international bodies recognize some restrictions on press freedom to protect national security, AIPPA's prohibition against publishing false information regardless of content surpasses acceptable international norms. By making journalists criminally liable for their reports, AIPPA has trampled on internationally recognized components of a free press by imposing illegitimate restrictions on journalists' right to freedom of expression. Further, the restrictions on the press not only inhibit journalists' right to impart information, but they also jeopardize the public's right to receive information. Unless AIPPA is amended, a truly free word may never again be published in Zimbabwe, in turn stifling public debate among Zimbabweans.

Zimbabwe also has obligations as a state party to the African Charter on Human and People's Rights (ACHPR). Article 9 states that "every individual shall have the right to receive information," and "every person shall have the right to express and disseminate his opinions within the law." AIPPA certainly violates this provision by withholding registration from some independent journalists and prosecuting others for publishing allegedly false information. Imposing such limitations violates the Constitution, making its legal application dubious. In addition, AIPPA contradicts the spirit of Article 9 of the ACHPR.

AIPPA also contradicts nearly every provision of the Windhoek Declaration (Declaration) (1991) governing freedom of the press in Africa. Zimbabwe signed this document, which was drafted during the General Conference of United Nations Educational, Scientific and Cultural Organization in 1989 and later passed by the UN General Assembly. The Declaration establishes that a free press is essential to a functioning democracy and every effort should be taken to remove gov-

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ernment restrictions on the press, establish constitutional guarantees of press freedom, and protect journalists from prohibitions on their freedom of expression. Specifically, the Declaration states that “African States should be encouraged to provide constitutional guarantees of freedom of the press . . . .” Additionally, the Declaration asserts that “African Governments that have jailed journalists for their professional activities should free them immediately.”

These documents represent the will of Africa and the will of the world in allowing free speech. By preventing free access to information through the restrictions in AIPPA, Zimbabwe is turning its back on regional and international standards to which it previously agreed to adhere. Throughout its current crisis, Zimbabwe has repeatedly said that African problems demand African solutions, but this argument holds little weight considering the disrespect Mugabe has shown to standards of free speech outlined by the ACHPR.

### *POSA's Compliance with the Constitution and International Law*

Zimbabwe has contravened sections of its own Constitution and provisions of international law by passing and implementing POSA. Section 21 of the Constitution guarantees the right to assembly and does not provide for the sweeping authority POSA gives to officers of the state to restrict such gatherings. Further, Section 20 provides for freedom of expression and makes exceptions only for the protection of national security, defamation, and other circumstances relating to the general public welfare. POSA's restrictions on freedom of assembly, including breaking up private meetings and outlawing all public assembly in certain areas for up to three months certainly contradict the Constitution, even if state security is considered. The assembly itself should always be guaranteed even if the content of the discussions at certain gatherings may be regulated, in extreme circumstances, in the interests of security.

POSA also contradicts many provisions of the ICCPR. Article 21 guarantees the right of peaceful assembly and only provides for exceptions for situations “necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.” Preventing peaceful demonstrations as stipulated under POSA cannot be considered necessary in a democratic society. These internationally recognized provisions, if implemented, would allow Zimbabweans of all political persuasions to assemble peacefully. As POSA is written, this is not possible.

Article 11 of the ACHPR states that every individual shall have the right of free assembly provided he abides by the law. As provisions of POSA itself may be unconstitutional, certain provisions may violate Article 11 regarding to peaceful assembly. These provisions represent the will of Africa to protect peaceful assembly. POSA's restrictions on assembly and criticism of the president contradict the will of Zimbabwe's neighbors and the previous will of Zimbabwe itself.

### **Conclusion**

POSA and AIPPA represent an assault on the freedoms of the Zimbabwean people guaranteed to them under the ICCPR, the ACHPR, and their own Constitution. A careful examination of both acts reveals that they were designed in part to aid the government during the presidential election and were used afterward to silence opposition voices and journalists in the independent media. Unchallenged, they create a virtual police state in which the government can deny

any public assembly (even gatherings in private homes), prosecute any person for a perceived threat or insult to the government, prevent journalists from expressing themselves, and prosecute journalists who disseminate information contrary to the official version of events. While sections of these acts are being challenged in court, they represent a trend by Mugabe and the government of Zimbabwe to put self-preservation before the rights of the people.

These pieces of legislation are symptomatic of the larger problem of Mugabe's autocracy and disregard for the needs of the Zimbabwean people. At age 79 and a hardened veteran of many physical and political battles, it is unlikely that he will have a change of heart and loosen his grip on basic freedoms. As internal dissent is suppressed, the key to the reinstatement of these rights lies within the international community, starting with Zimbabwe's neighbors. As Zimbabwe dwindles deeper in its political and economic problems it relies more on international organizations such as the Commonwealth, an organization composed mainly of Britain and its former colonies, and the Southern African Development Community (SADC). To date, SADC has offered mild criticism, and the Commonwealth renewed its suspension of Zimbabwe for a second year due to gross neglect of human rights. Despite mounting criticism, African powers such as South Africa and Nigeria have shielded Zimbabwe from further action by the Commonwealth while SADC has taken little significant action.

South African President Thabo Mbeki recently suffered a setback to his “quiet diplomacy” efforts with the Mugabe regime. Days after using POSA to arrest MDC Vice President Gibson Sibanda for his involvement in leading successful mass stayaways protesting the government, Minister of Justice Patrick Chinamasa announced that neither POSA nor AIPPA would be amended in any way because the government is “under siege” from the MDC. The government had considered the idea of amending POSA and AIPPA as a way of easing sanctions and gaining favor among international bodies, but eventually abandoned this plan.

The test of Africa's future begins with Zimbabwe. If the ideals of the African Charter are going to be realized, ushering in an era of democracy and peaceful transfer of power through free and fair elections, Zimbabwe must be used as a model. African leaders must join the international call for “smart” sanctions targeted at Zimbabwe's leadership, not its suffering population. The Commonwealth and SADC should strip Zimbabwe of any power within their organizations until a legitimate election has been held. Most importantly, all nations should condemn the restriction of basic rights and the establishment of an autocracy where a democracy once existed. If all nations, especially African nations, condemn Mugabe's tactics, he might be convinced to leave office and hand over power to a more moderate government. Only then can Zimbabweans hope to enjoy the rights guaranteed to them by their Constitution and the laws of humanity. ☹

*\*Jamal Jafari is a J.D. candidate at the Washington College of Law and a staff writer for the Human Rights Brief.*

