

COUNTRY REPORT: ZIMBABWE

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I. INTRODUCTION

Zimbabwe is in the southern part of Africa. It is a former British Colony which gained its independence on 18 April 1980 after a protracted war of liberation.

II. DEFINITION OF TERRORISM

The term terrorism has come to mean different things to different people over different times. Those once called terrorists can easily be legitimized and may as is the situation in Zimbabwe be called liberation fighters. The dictionary³ meaning of the word terrorism is “*the use of violence for political aims or to force a government to act*”. International law, and in particular international humanitarian law, recognizes acts committed in accordance with such international law during an armed struggle in the exercise or furtherance of their legitimate right to national liberation, self determination by alien or foreign forces, as being excluded from terrorist activities.

The 2002 Report of the UN Policy Working Group on the UN and Terrorism⁴ offers some guidance.

“Without attempting a comprehensive definition of terrorism, it would be useful to delineate some broad characteristics of the phenomenon. Terrorism is, in most cases, essentially a political act. It is meant to inflict dramatic and deadly injury on civilians and to create an atmosphere of fear, generally for a political or ideological (whether secular or religious) purpose. Terrorism is a criminal act, but it is more than mere criminality. To overcome the problem of terrorism it is necessary to understand its political nature as well as its basic criminality and psychology.”

In Zimbabwe what constitutes terrorism is defined mainly in the Public Order and Security Act [Chapter 11:17] as follows:

- (1) Any person, who for the purpose of:
 - (a) causing or furthering an insurrection in Zimbabwe; or
 - (b) causing forcible resistance to the Government or the defence forces or any law enforcement agency; orprocuring by force the alteration of any law or policy of the government; commits any act accompanied by the use or threatened use of weaponry with the intention or realizing that there is a risk or possibility of:-
 - i) killing or injuring any other person; or
 - ii) damaging or destroying any property; or
 - iii) inflicting financial loss upon any other person; or
 - iv) obstructing or endangering the free movement in Zimbabwe of any traffic on land or water or in air; or
 - v) disrupting or interfering with an essential service.

Since the attacks on the United States on 11 September 2001, terrorism has become the new global enemy to be eradicated no matter the cost to domestic civil liberties. Though much of the world now stands united against terrorism and catching the perpetrators of terrorist acts, the task of defining terrorism still successfully evades us.

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¹ Oxford Advanced Learners Dictionary 5th Edition.

² 2002 Report of the UN Policy Working Group on the UN and Terrorism.
<http://www.un.org/terrorism/957273.htm>.

III. ACCESSION BY ZIMBABWE TO THE UNIVERSAL CONVENTIONS ON TERRORISM

This paper attempts to provide an overview of the range of anti-terrorism measures taken by Zimbabwe and the aims and scope of such legislation. Realizing the need for every country to be equipped with an effective legal regime for anti-terrorism the Republic of Zimbabwe has always made efforts to adopt measures to prevent and combat terrorism and related activities. The Government of the Republic of Zimbabwe has committed itself in International fora, such as the United Nations and the African Union, to the prevention and combating of terrorists and related activities. Whereas the United Nations Security Council Resolution 1373/2001 which is binding on all Member States of the United Nations as well as the Convention for the Prevention and Combating of Terrorism adopted by the Organisation of African Unity requires Member States to become party to instruments dealing with terrorist and related activities as soon as possible, Zimbabwe has already become party to the following instruments of the United Nations:

- a) The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed in Tokyo on 14 September 1963. The Republic of Zimbabwe became a party thereto by ratification on the 8 March 1989.
- b) The Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. The Republic became a party thereto by ratification on the 16 February 1989.
- c) The Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation concluded at Montreal on 23 September 1971. The Republic became a party thereto by ratification on the 16 February 1989.

The Republic is also a signatory to the International Convention for the Suppression of the Financing of Terrorism adopted by the United Nations General Assembly on the 9 December 1999 but has not yet ratified it. The Republic has also become a party by ratification to the Convention on the Prevention and Combating of Terrorism adopted by the Organisation of African Unity at Algiers on 14 July 1999. In 1992 Zimbabwe signed and ratified the Organisation of African Unity Convention for the Elimination of Mercenarism in Africa.

However Zimbabwe is yet to become a party to the following remaining Instruments of the United Nations:

- a) The Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons (1973)
- b) International Convention against the Taking of Hostages (Hostages Convention; 1979)
- c) Convention on the Physical Protection of Nuclear Material (Nuclear Materials Convention; 1980)
- d) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988)
- e) Convention for the Suppression of Unlawful Acts against the Safety of Marine Navigation (1988)
- f) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf (1988)
- g) Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991)
- h) International Convention of the Suppression of Terrorist Bombing (1999)
- i) International Convention for the Suppression of the Financing of Terrorism.

IV. EXISTING DOMESTIC LAWS TO COMBAT TERRORISM

The legislation that assists in combating terrorism in Zimbabwe:

- (i) The Public Order and Security Act [Chapter 17] (P.O.S.A)
- (ii) Foreign Subversive Organisation Act [Chapter 11:05]
- (iii) Extradition Act [Chapter 9:08]
- (iv) Criminal Matters (Mutual Assistance) Act [Chapter 9:06]
- (v) Bank Use Promotion and Suppression of Money Laundering Act [Chapter 24:24]
- (vi) Aircraft Offences Act
- (vii) Civil Aviation Act.

The main piece of legislation that deals with terrorism is the Public Order and Security Act (P.O.S.A). Sections 6 – 13 of the Act criminalize various acts of terrorism and related activities such as:

- (i) Recruiting or training insurgents, bandits, saboteurs or terrorists inside or outside Zimbabwe in order to commit any act of insurgency, banditry, sabotage or terrorism in Zimbabwe.
- (ii) Providing training to any person inside or outside Zimbabwe in order to commit any act of insurgency banditry, sabotage or terrorism in Zimbabwe.
- (iii) Training as an insurgent, bandit, saboteur or terrorist inside or outside Zimbabwe for purposes of committing any act of insurgency, banditry, sabotage or terrorism in Zimbabwe.
- (iv) Supplying weaponry to insurgents, bandits, saboteurs or terrorists whether inside or outside Zimbabwe knowing that the person to whom such weaponry is supplied is an insurgent, bandit, saboteur or terrorist or realizing that there is a risk or possibility that such person is an insurgent, bandit, saboteur or terrorist.
- (v) Possessing weaponry for insurgency, banditry, sabotage or terrorism.
- (vi) Harboursing, concealing or failing to report insurgents, bandits, saboteurs or terrorists within a reasonably practicable time after becoming aware of the presence in Zimbabwe of the insurgent bandit saboteur or terrorist and in any event within seventy two (72) hours of becoming so aware.

The main thrust of the Public Order and Security Act is to combat acts of terrorism within Zimbabwe and to make provision for the maintenance of public order and security in Zimbabwe.

The Foreign Subversive Organisation Act [Chapter 11:05] makes provisions for the punishment of certain acts hostile to other states or territories as follows:

Any person who organizes or sets up or helps to organize or set up, or advocates, urges or suggests the organization or setting up of any group or body with a view to that group or body:

- a) *overthrowing or taking over the government of any state by unlawful means or usurping the functions of such government; or*
- b) *conducting a campaign or assisting any campaign against the lawfully established government of any state with a view of securing any of the objects or purposes described above – shall be guilty of an offence and liable to imprisonment for a period not exceeding five years.*

V. CRIMINAL MATTERS (MUTUAL ASSISTANCE) ACT [CHAPTER 9:06]

To provide mutual assistance in criminal matters between Zimbabwe and Commonwealth countries and other foreign countries, to facilitate the provision and obtaining by Zimbabwe of such assistance, and to provide for matters connected therewith or incidental thereto. In terms of the Act, mutual assistance in criminal matters include:

- a) the obtaining of evidence, documents or other articles;
- b) the provision of documents and other records;

- c) the location and identification of witnesses or suspects;
- d) the execution of requests for search and seizure;
- e) the making of arrangements for persons to give evidence or assist in investigations;
- f) the forfeiture or confiscation of property in respect of offences;
- g) the recovery of pecuniary penalties in respect of offences;
- h) the interdicting of dealings in property or the freezing of assets that may be forfeited or confiscated or that may be needed to satisfy pecuniary penalties imposed in respect of offences;
- i) the location of property that may be forfeited or that may be needed to satisfy pecuniary penalties imposed, in respect of offences; and
- j) the service of documents.

Assistance may be refused where:

- a) offence in question is not an offence in Zimbabwe;
- b) where the person could no longer be prosecuted in terms of Zimbabwe law due to lapse of time or any other reason;
- c) the provision of assistance could prejudice an investigation in Zimbabwe; and
- d) assistance would impose an excessive burden on the resources of Zimbabwe.

The Bank Use Promotion and Suppression of Money Laundering Act [Chapter 24:24] is to promote the use and suppress the abuse of the banking system, to enable the unlawful proceeds of all serious crimes including drug trafficking to be identified, traced, frozen, seized and eventually confiscated; to establish a Bank Use Promotion and Suppression of Money Laundering Unit to require financial institutions and cash dealers to take prudential measures to help combat money laundering and to provide for matters connected with or incidental to the foregoing.

VI. EXTRADITION ACT

The Extradition Act provides for the extradition of persons between Zimbabwe and other countries and for matters incidental to or concerned with extradition.

In terms of the said Act the Minister of Home Affairs may enter into an agreement with the government of any foreign country providing, whether on a basis of reciprocity or otherwise, but subject to this Act and to the obligations of Zimbabwe in terms of any international convention, treaty or agreement for:

- (a) the extradition of persons accused or convicted of any offence within Zimbabwe or that foreign country; and
- (b) the transit through Zimbabwe of persons who are being extradited to or from any foreign country; and
- (c) any matter which in the opinion of the Minister is incidental to the matters referred to above.

An extradition agreement may relate to:

- (a) any offence whatsoever, whether or not they are offences in both Zimbabwe and the foreign country concerned and whether they were committed before, on or after the date of commencement of the extradition agreement; and
- (b) any person whomsoever, whether or not they are nationals of both Zimbabwe and the foreign country concerned.

The Aircraft Offences Act provides for the suppression and punishment of certain offences in relation to certain aircraft and provides for matters incidental to or connected with the foregoing. The Act has extra-territorial operation.

In terms of the Act:

- (i) any person who without lawful excuse takes or exercises control of an aircraft shall be guilty of an

offence and liable to imprisonment for a period not exceeding seven years;

- (ii) any person who, without lawful excuse, takes or exercises control of an aircraft while any person other than his accomplices is on board shall be guilty of an offence and liable to imprisonment for a period not exceeding fourteen years;
- (iii) any person who without lawful excuse takes or exercises control of an aircraft by force or violence or by threat thereof, while another person not his accomplice is on board shall be guilty of an offence and liable to imprisonment for a period not exceeding twenty years; and
- (iv) any person who without lawful excuse takes or exercises control of an aircraft and at anytime before or during the taking or exercising control of that aircraft does or omits to do any act or thing with intent to kill any person, shall be guilty of an offence and liable to imprisonment for life.

Damaging, destroying or prejudicing the safe operation of an aircraft is also criminalized under the said Act and carries a maximum penalty of life imprisonment. Assaulting, intimidating or threatening a person on an aircraft is equally criminalized in terms of this Act and has a maximum penalty of fourteen years. The carrying of dangerous goods on aircraft is also criminalized and has a maximum prison penalty of seven years. Equally criminalized is the threatening damage or destruction of an aircraft without lawful excuse and the making of false statements, in relation to an aircraft from which it could be reasonably inferred that there has been or is to be a plan, proposal, attempt, conspiracy or threat to unlawfully take control, destroy, damage or kill any person on an aircraft.

The Civil Aviation Act enables effect to be given to the International Convention on Civil Aviation and to make provision for control, regulation and orderly development of aviation within Zimbabwe. In terms of this Act the Minister of Transport and Energy can make regulations relating to any matters including securing the safety, efficiency and regularity of air navigation and the safety of aircraft and persons and property carried therein.

VII. TERRORISM AND RELATED CRIMES IN ZIMBABWE

Whilst Zimbabwe has laws that deal with terrorism at the domestic level, there are none to deal with international terrorism. In 1983 the country had to deal with a case involving some South African agents who came to Zimbabwe with the sole intention of killing members of the military wing of the African National Congress who were residing in Zimbabwe. The killing was to be by means of a bomb or other explosive devices. They had no intention of sabotaging or injuring Zimbabwe, what they perpetrated were acts of terrorism on Zimbabwean soil with the intention of eliminating members of the A.N.C. who had been offered sanctuary in Zimbabwe, which resulted in the death of a Zimbabwean.

The three namely Kevin Woods, Phillip Conjwayo and Michael A. Smith were charged with murder and sentenced to death. Murder was the only charge that could apply to them as the country did not have provision for dealing with terrorism which is not specifically targeted against Zimbabwe.

The legal system of Zimbabwe was also recently found wanting by the events of the 7 March 2004 when a Boeing 727-100 aircraft with a total of sixty seven persons, landed at Harare International Airport. The flight crew consisted of three persons, the pilot Jaap Neil Steyl, his co-pilot Hamman and a flight engineer Kenneth Fred Pain. There were sixty four other passengers on board this aircraft. The aircraft was supposed to refuel and take on board, by prior arrangement, a consignment of arms and ammunition. The final destination was Equatorial Guinea where they intended to forcefully remove the lawful government of that country. Their leader Simon Mann had been contracted by Severo Moto, an exiled opposition political leader of the Equatorial Guinea, to assist him in toppling the President of that country by a violent *coup-d'etat*.

When the crew contacted the control tower at the Harare International Airport seeking permission to land, they misrepresented to the controller that there were only three crew members on board. However, when the plane reached Manyame intending to collect arms and ammunition which had been purchased by Simon Mann, it was discovered after a search that apart from the crew members there were sixty four other passengers aboard the aircraft. The passengers had been given specific instructions to switch off the lights of the aircraft upon landing, remain still to avoid detection and not to allow anyone to leave or enter the

aircraft. A document detailing the action plan authored by Simon Mann was recovered from the aircraft. Also recovered from the aircraft was an assortment of material.

Although it was apparent that these were mercenaries out to carry out terrorist activities due to the gap in our law they got away with very minor charges under the Immigration Act. The allegations were that they unlawfully and fraudulently made a false representation by conduct, statement or otherwise for the purpose of facilitating or assisting the entry or departure from Zimbabwe of themselves or some other persons that is to say the persons told the Aviation Authorities at Harare International Airport that a Boeing 727-100 aircraft registration number N4610 had on board only three crew members and no other passengers. Had it not been for the declaration that there were only three crew members on board - the aircraft would not have been allowed to land at Manyame Air Base and thereby enter Zimbabwe.

At the trial it was not in dispute that the mercenaries did not intend to disembark in Zimbabwe as their final destination. They were in transit to another country.

The two pilots were each sentenced to sixteen months imprisonment and the rest of the members to twelve months imprisonment each. On appeal to the High Court they each had four months of their sentences suspended for five years on condition of good conduct. The Attorney-General appealed to the Supreme Court of Zimbabwe against the suspension and all of them finally served the original sentences.

The terrorist leader Simon Francis Mann was also charged with one count of contravening section 4(2)(b) of the Firearms Act [Chapter 10:09] (Attempting to purchase weapons without a certificate) and one count of contravening section 13(1)(e) of *The Public Order and Security Act [Chapter 11:17] as read with section 360(2)(a) of The Criminal Procedure and Evidence Act [Chapter 9:07]* that is for attempting to possess dangerous weapons. He was sentenced to a total of four years imprisonment and is still serving and yet to be extradited to Equatorial Guinea where he is likely to face other charges.

This case exposed the weaknesses of Zimbabwe's legal system in combating terrorism. Having realized that the phenomenon of terrorism that is waged on an international scale is not adequately addressed by our existing laws, the legislature is currently working on a law to provide for the suppression of foreign and international terrorism including mercenary activity. Currently it is still a bill titled the *Suppression of Foreign and International Terrorism Bill*.

The Bill is not yet law, it is yet to be tabled in Parliament. The Bill specifically provides for the suppression of foreign and international terrorism including mercenary activities and to provide for matters connected therewith or incidental thereto. If passed into law the Bill would repeal the Foreign Subversive Organisation Act [Chapter 11:05]. In terms of the Bill, the Minister of Home Affairs may make a regulation implementing measures adopted by the United Nations Security Council for the suppression of Foreign or Internal terrorism.

This thus shows that the Republic realized that it is necessary to make a provision in the domestic law of Zimbabwe to combat terrorism and is making an effort to conform to the Universal Conventions and Protocols and thus avoid the country becoming a safe haven for terrorists.

VIII. PROBLEMS AND CHALLENGES

The United Nations Security Council from time to time passes resolutions under Chapter VII of the United Nations Charter, requiring Member States to combat terrorist and related activities, including taking effective measures to prevent and combat the financing of terrorist and related activities and freezing of funds, assets or economic resources of persons who commit terrorist and related activities. Our national laws do not meet all the international requirements relating to the prevention and combating of terrorist and related activities.

The definition of terrorism, as it exists in Zimbabwean law, is limited only to acts affecting only Zimbabwe. The definition needs to be extended to include acts of terrorism even those not specifically targeting Zimbabwe. It should be expanded to cover acts which may seriously damage a country or an international organization.

The courts should have extra-territorial jurisdiction to try any terrorist offence and impose the penalties where the acts have been done or completed outside Zimbabwe. Necessary steps need be taken to bring the national system into conformity with the Universal Conventions and Protocols.

The prohibition of acts of terrorism need to be expanded to include any person who:

- a) does or threatens to do or does an act preparatory to or in furtherance of an act of terrorism; or
- b) omits to do anything that is reasonably necessary to prevent an act of terrorism.

The acts of terrorism ought not to be limited to acts only targeting the Republic of Zimbabwe. Terrorism should mean an act which:

- (a) may seriously damage a country or an international organization; and
- (b) is intended or can reasonably be regarded as having been intended to:
 - i) seriously intimidate a population;
 - ii) unduly compel a government or an international organisation to perform or abstain from performing any act;
 - iii) seriously destabilize or destroy the fundamental political, constitutional, economic or social structures of a country or an international organization; or
 - iv) otherwise influence such government or international organization.

Training, supporting, harbouring and obstructing a terrorist investigation and withholding of any information on terrorist activities should be criminalized.

There is need for the country to enact appropriate domestic legislation necessary to implement the provisions of relevant international instruments dealing with terrorist and related activities to ensure that the jurisdiction of the courts of the Republic of Zimbabwe enables them to bring to trial perpetrators of terrorist and related activities and to cooperate with and provide support and assistance to other states and relevant international and regional organization to that end.

The Republic is committed to bringing to justice persons who commit such terrorist and related activities and to carrying out its obligations in terms of the international instruments dealing with terrorist and related activities.

The major challenge for the country is for it to accede to the thirteen Universal Conventions and Protocols. It so far has only ratified three of the thirteen conventions and is only a signatory to the International Convention for the Suppression of the Financing of Terrorism (1999).

Our courts do not have extra-territorial jurisdiction to try any terrorist offence and impose the penalties where the acts have been done or completed outside Zimbabwe. Necessary steps need to be taken to bring about a national system for combating terrorist financing and to effectively implement these measures, for example there is need to adopt the Financial Action Task Force (FATF) Recommendations. These Recommendations contain a set of measures aimed at combating the funding of terrorist acts and terrorist organizations. They have been recognized by the International Monetary Fund and the World Bank as the International Standards for combating money laundering and financing of terrorism. Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF recommendations.

In Zimbabwe, the Bank Use Promotion and Suppression of Money Laundering Act [Chapter 24:23] which came into effect in 2004 was designed along the FATF recommendations in regard to customer due diligence and keeping of records. The designated financial institutions are also required to report suspicious transactions.

In terms of the said Act, the banks are required to take the following measures:

- i) Identify the customer and verify that customer's identity using reliable, independent source

documents, data or information.

- ii) Identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer.
- iii) Obtain information on the purpose and intended nature of the business relationship.
- iv) Conduct ongoing due diligence on the business relationship and scrutiny of transactions undertaken through the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile including, where necessary, the source of funds.

However, the said Act only relates to money laundering and other serious crimes. It does not specifically mention terrorism and related activities. Zimbabwe is only a signatory to the International Convention for the Suppression of the Financing of Terrorism, 1999; it is yet to ratify it. A key element in the fight against financing of terrorism is the need for countries' systems to be monitored and evaluated, with respect to the international standards.

There is a need for the country to rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to terrorist financing investigations, prosecutions and related proceedings.

In line with the UN Security Council resolution 1373 adopted on 28 September 2001, Zimbabwe has taken necessary steps to prevent the commission of terrorist acts including suppressing the recruitment of members of terrorist groups, preventing those who finance, plan, facilitate or commit terrorist acts from using its territory, preventing the movement of terrorists and measures to prevent counterfeiting, forgery or fraudulent use of identity papers and travel documents. Having realized the lacuna in our law Zimbabwe has promulgated a bill to cover terrorism on an international scale namely: '*Suppression of Foreign and International Terrorism Bill 2004*'. The Bill is to provide for the suppression of foreign and international terrorism, including mercenary activity. When this Bill becomes law it will criminalize:

1. Engaging or participating in foreign or international terrorist activity.
2. Training as a foreign or international terrorist.
3. Recruiting or training foreign or international terrorists.
4. Possessing weaponry for the purposes of foreign or international terrorist activity.
5. Harboring, concealing or failing to report foreign or international terrorists.
6. Promoting, directing or belonging to foreign or international terrorist organizations.
7. Soliciting support for foreign or international terrorist organizations.
8. Supplying weaponry to foreign or international terrorists or terrorist organizations.
9. Materially assisting foreign or international terrorists or terrorist organizations.

In terms of the Bill, all sections criminalizing terrorist activities shall have extra territorial operation. The Bill is yet to be passed by Parliament into law. All things being equal it should sail through Parliament in the first quarter of 2006.

The Zimbabwean law development committee has finished working on a Criminal Law Code which will codify all the common law offences in the country. It is meant to consolidate and amend the criminal law of

132ND INTERNATIONAL SENIOR SEMINAR
PARTICIPANTS' PAPERS

Zimbabwe and various other Acts.

This Code also has Provisions relating to terrorism but as in the P.O.S.A they are limited to terrorist acts targeting Zimbabwe only, not on an international level. This code is also likely to become operative before the middle of 2006.

Efforts have always been made to bring our laws in line with international requirements. The main problem has been lack of skilled personnel in the field of drafting and that being a third world economy which is currently undergoing economic challenges, the financing of such technical training has not been easy. There is a need for legislative assistance to the country which would enable it to become party to and implement the universal anti-terrorism conventions and protocols as well as to implement Security Council Resolutions. Zimbabwe is a landlocked country, this could probably be one reason why it has not yet become party to the conventions relating to Marine Navigation and Fixed Platforms on the Continental shelf. Secondly since the country is in a generally peaceful part of Africa it has not faced any serious threat of terrorism hence Government efforts were focused elsewhere.