

# **ZIMBABWE HUMAN RIGHTS NGO FORUM**

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## **Organised Violence and Torture in Zimbabwe in 2001**

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A Report by the Human Rights Legal Unit of the  
Zimbabwe Human Rights NGO Forum

March 2002

The Zimbabwe Human Rights NGO Forum (also known as the “Human Rights Forum”) has been in existence since January 1998. Nine non-governmental organisations working in the field of human rights came together to provide legal and psycho-social assistance to the victims of the Food Riots of January 1998.

The Human Rights Forum has now expanded its objectives to assist victims of organised violence, using the following definition:

“organised violence” means the interhuman infliction of significant avoidable pain and suffering by an organised group according to a declared or implied strategy and/or system of ideas and attitudes. It comprises any violent action which is unacceptable by general human standards, and relates to the victims’ mental and physical wellbeing.

The Human Rights Forum operates a Legal Unit and a Research Unit.

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- Amnesty International (Zimbabwe)
- The Catholic Commission for Justice and Peace
- The Legal Resources Foundation
- Transparency International (Zimbabwe)
- The University of Zimbabwe Legal Aid and Advice Scheme
- Zimbabwe Association for Crime Prevention and the Rehabilitation of the Offender
- Zimbabwe Civic Education Trust
- Zimbabwe Human Rights Association
- Zimbabwe Lawyers for Human Rights
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## Introduction

For many Zimbabweans the year 2001 was a very difficult one. The politically motivated violence, which began after the referendum in February 2000, continued as a result of the election challenges and the forthcoming 2002 presidential elections. The police force continued to be used as a tool for violence by the ruling party.

In many instances the police declined to investigate reports of violence and intimidation for the reason that they were political. In some instances, police officers were implicated in human rights abuses. The failure by the police to guarantee the equal protection of the law to the victims encouraged the perpetrators to continue the violence and intimidation.

## Use of excessive force

The majority of cases being handled by the Legal Unit involve the use of excessive force by State agents in circumstances which smack of a desire for retribution for perceived or real political motives. The law is clear and unambiguous with regard to the use of force by State agents. Police officers, for example, are entitled to use force only to the extent that this is reasonably justifiable to effect a lawful arrest.

What is reasonably justifiable in a democratic state is a matter of an objective test. The use of force must be fair, sensible, and only to the extent that it is necessary to effect a lawful arrest. Undoubtedly, proof of malice would tend to vitiate an assertion of a reasonable mistake.

In the context of the use of weapons during riots, the law is also settled. The question was put:

‘Whether the state of unpreparedness on the part of the police as a whole makes it reasonable for riot control squads to resort to the use of military weapons to suppress riots? Do the legal convictions of the community deem it pardonable for a modern police force to use military weapons to suppress an urban uprising in the full knowledge that such weapons are dangerous and thus unsuitable for purposes of riot control?’<sup>1</sup>

Recent events have made it necessary for us to question the professional conduct of the police force. The question which arises is whether the offences being committed by the police officers in the course and scope of their duties are a mere aberration in the enforcement of laws or whether these are part and parcel of a declared plan or course of action to benefit a particular political party.

On 8 August 2001, workers at Ziscosteel in Redcliff agreed to embark on a collective job action. They withdrew their labour and went on a sit-in. The job action was lawful in so far as it complied with labour relations regulations. Notice of the impending action had been given. For all intents and purposes the job action was peaceful. There are no verifiable reports of destruction of property pursuant to any criminal conduct, which would blemish the conduct of the employees.

Undoubtedly the effect of the industrial action was devastating on the company. It is imperative to note that the government is the major shareholder in this company. It has not been refuted by the government that the workers’ concerns were genuine. In short, bread and butter issues were at stake. Like every Zimbabwean, the workers at the factory had not been spared the vagaries of an economy in recession. It was, however, believed at least in government circles that the devastating effect of the

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<sup>1</sup> Per Chatikobo J in *Musadzikwa v Minister of Home Affairs & Anor* 2000 (1) ZLR 405 at 415F. This case concerns a man who was shot and injured by a police officer during the January 1998 food riots. The Legal Unit dealt with this case.

collective job action by workers would favour the opposition. The events that followed confirmed that suspicion.

On the third day of the collective job action members of the Zimbabwe Republic Police and the Zimbabwe National Army armed with assault rifles moved on the workers. The workers had not conducted themselves in a threatening manner or in any manner that would amount to a breach of the peace.

In complete defiance of logic, the officers fired into the crowd. The shooting was deliberate and it was made with reckless disregard of the sanctity of life. Two people were killed in the shooting and 2 others died later. It is our considered view that in these circumstances the use of firearms was improper. The shooting could only have been done as a punitive or deterrent measure for participating in an otherwise lawful gathering.

Police officers have been particularly heavy handed in dealing with demonstrations by university students. There can be no gainsaying the fact that university students are to a very large extent perceived to be in opposition politics. The way the police have dealt with student demonstrations is a microcosm of a bigger picture. In April 2001 riot police opened fire into a largely peaceful procession of University of Zimbabwe students. The students were marching into town to protest the death of a fellow student, Batanai Hadzidzi. Hadzidzi died in his room after police indiscriminately fired teargas and beat up students at the university.

Similarly, police in Gweru resorted to drag-net arrests after students at the Midlands State University had gone on a rampage. In the process, police officers entered shops and hair salons and beat up anyone they suspected was a student. The Legal Unit is dealing with cases of students who were injured during the unlawful shooting and the dragnet arrests.

'One must concede to forces of law and order the power to use force, even potentially deadly force, in the course of protecting lives and property and preserving the peace. The whole philosophy of the use of force by the police in a democratic country, however, is that where violence is required to meet any unlawful challenge to order and peace, only the minimum force required to quell that challenge may be used, and it must be used in a way reasonably calculated to avoid unnecessary harm, not only to perpetrators of wrong but a *fortiori* to the innocent bystander.'<sup>2</sup>

Use of force, which is not commensurate with the harm threatened, by the police and the army is deserving of censure, as it is clearly condemnable. The use of force is only admissible where it is being done pursuant to provisions of the law. Use of force in any other circumstances becomes extralegal and as such is unlawful. If such use of force is unlawful then perhaps it is being done for political gains.

The Civil Division of the Attorney General's Office has in a number of cases involving unlawful shooting admitted liability on behalf of the offending government department. Some of the matters have been referred to court for argument on the issue of quantum of damages only.

The presumption through the law of agency is that these admissions are made with the express authority of the client, in this case the offending government department. If these admissions of liability were *bona fide* then naturally we would expect the ministry concerned to move decisively and discipline the wayward officers. This is of course assuming that when the offence was committed the officers concerned were on a frolic of their own and not following superior orders.

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<sup>2</sup> Per Gillespie J in *Sweden Mugadza v The Minister of Home Affairs and The Commissioner of Police* HH 140/2001, a food riots case dealt with by the Legal Unit.

The absence of any disciplinary measures against these officers gives very fertile grounds for suspicion. One may be forgiven for wondering whether these admissions are not being made to cover up a scheme of organised violence being perpetrated through the use of State machinery. Is the State simply seeking to avoid the washing of dirty linen in public by going to court only to argue the quantum of damages? This notwithstanding, for us the most worrying issue is the recurrence of these incidents.

We do not entertain any doubt whatsoever that the failure by senior officers to take disciplinary action against unprofessional conduct by junior officers has created the impression that government acquiesces in such malpractices. It is in the context of these developments that we strongly urge especially the Commissioner of Police, the Commander of the Army, and the Ministers of Defence and Home Affairs to take stern measures against any officers who might prove to be trigger-happy.

### **Selective enforcement of the law**

The disturbing trend of partial prosecution and selective application of the law, which started in the year 2000, continued unabated during the year under consideration. The Legal Unit received several reports of victims of organised violence being prosecuted while the perpetrators were let scot-free.

It is common cause that the current land ownership, where a small fraction of the population farms the bulk of the productive land by mere reason of an oppressive colonial legacy, is unconscionable in a democratic society. Such a structure of land ownership is a social injustice and can cause political instability, as has already been the case. Regrettably, though, much of the crisis we have is of our own making.

In terms of the Constitution of Zimbabwe the government can compulsorily acquire land following the procedure as laid down in the Land Acquisition Act. In fact, government has an obligation as part of its responsibilities in discharging its functions to see to it that the provisions of the statute are strictly adhered to.

Where the strict application of the statute would result in an injustice or where the statute itself becomes an obstacle in the way of government policy, then the law should be amended. The law is dynamic and malleable. The rule of law demands that the law should never be suspended to achieve political ends. There are no qualifications regarding situations when the government can exempt itself from the application of the law.

Let us assume that the invasion of farms by landless people was not a declared plan of action by government to achieve political goals. Our view is that a sincere government would have enforced the full weight of the law and immediately thereafter amended the law to achieve an equitable land ownership structure.

The landless people should never have been allowed to trespass and commit all sorts of offences simply because they are disgruntled. Allowing the settlers to trespass amounted to abdication of responsibilities on the part of government. It is only natural that we would end up in the mess we are in today. To then arrest and prosecute a victim of those settlers who, with the encouragement of the government, take the law into their own hands simply because the victim is a beneficiary of an oppressive colonial legacy, amounts to a partial enforcement of the law. It is a breach of the law. Such conduct only serves to create a vicious cycle of violence.

Having placed total confidence in the law, commercial farmers approached the courts for redress when their properties were invaded. The reason why they adopted this approach is obvious. Being the propertied class, the law favoured them and government had not amended the law to achieve equity.

Those in the legal profession will agree that the farmers had a watertight case and, of course, they got favourable judgments. No self-respecting judge would have ruled otherwise. The law was clear and unambiguous. It can only be mischief for one to argue that the court favoured the white commercial farmers. When the farmers got eviction orders, the Commissioner of Police refused to enforce them. The issue was, quite unnecessarily, made political.

When the farmers sought to defend themselves politically and at times by taking the law into their own hands, they were arrested. This glaring selective application of the law only served to further deteriorate the situation. The assertion by certain sections of the society that the government was racist was vindicated. The utterances by politicians, which tended to criminalize the support for the Movement for Democratic Change (MDC) by white commercial farmers, confirmed that the issue was now political and thus far removed from the realms of economics and the law.

Quite unsurprisingly, the government finally enacted a statute of impunity, the Rural Land (Protection from Eviction) Act. Statutes of impunity are generally retrogressive as they are seen as an incentive for those who commit crimes for political gain. This Act flies in the face of several High Court and Supreme Court judgments declaring farm invasions illegal and ordering the removal of the occupiers. The statute sought to exempt lawbreakers from facing the full wrath of the law by making lawful that which the courts had declared unlawful. It became clear that the government was going to seek refuge in the law only when it suited them and conveniently ignore the law when it did not suit them. This frustrated the farmers for obvious reasons.

The incident at Chinhoyi involving commercial farmers, monitored by the Legal Unit, gives a very good insight into the bigger picture. Sometime in August there was violence at a farm just outside Chinhoyi. There are two versions of what actually transpired.

On one hand, it is alleged by the white commercial farmers that they responded to a crisis call when illegal settlers were holding one of the farmers hostage. On the other hand, the 'squatters' allege that they were attacked in the most brutal and senseless manner when they peacefully requested for more land from the farmer. For our purposes it does not really matter which one of the two versions is true, for all we know, neither of the two could be accurate.

The fact of the matter is that there was violence and that the ensuing events are regrettable. Apportioning blame for what happened can only result in the shifting of the goal posts. The resultant exchange of abuse of the opposing forces is not useful work. We wish to demonstrate here that notwithstanding all the noise about equitable land redistribution to correct a skewed land ownership structure, the real problems we face are caused by partial prosecution and selective application of the law.

Displeased by this general course of action, the farmers in Chinhoyi quite foolishly, but understandably, appear to have taken the law into their own hands. Foolish because the Rural Land (Protection from Eviction) Act, though undesirable, made the presence of the settlers on the farms lawful. Understandable because they were frustrated by the failure of the justice delivery system, which, for reasons of being subverted, appeared to be crumbling.

Following this incident, the farmers were arrested. On the same day, members of one political party took the law into their own hands. They indiscriminately beat up white people in town. There are no prizes for guessing that no one was arrested. It became clear that the arrest of farmers was not being done in the name of the State but in the name of a political party. This in our opinion is deplorable and should be condemned in the strongest terms.

## Election petitions

Readers of this report will recall that certain results of the 2000 General Election were challenged in court. The Movement for Democratic Change (MDC) filed the bulk of the petitions. ZANU (PF) filed only one. As a result of deaths and withdrawals 21 cases remained before the court. At the time of writing this report 12 petitions had been heard. A total of 5 petitions had been taken to the Supreme Court on appeal.

Section 124 of the Electoral Act [*Chapter 2.01*] under which most of the petitions were filed proscribes corrupt practices or illegal practices committed by or with the knowledge and consent or approval of a candidate who wins an election. However, it appears that most of the petitions contained further charges of organised violence and intimidation. Human rights activists greeted the hearings, which opened in January 2001, with a lot of optimism and excitement.

A general amnesty of October 2000 excused most of those who perpetrated violence before the election.<sup>3</sup> The amnesty was a direct response to the pressure on the police to investigate reports of gross human rights violations. The consequences for the government and the ruling party would have been uncomfortable and most ghastly if the investigations had gone ahead. The amnesty provided the government with an escape route from being held accountable for gross human rights violations. It was therefore a statute of impunity and threatened to silence all the victims of gross human rights violations forever.

Human rights activists particularly expressed optimism when the trials opened for two reasons. Firstly, it was perceived that what the victims had failed to get through the prosecution of offenders, they would get through testifying in the election petitions. Often times the Legal Unit has interviewed victims and witnesses who have expressed a desire to 'stand against these perpetrators in court'. It is generally acknowledged that talking about one's problems provides very good therapy.

The petitions presented a glorious opportunity for the victims to talk about their horrendous experiences, setting in motion the beginning of the healing process. Secondly, the threat of impunity, which we seem to have become accustomed to would subside. Certain individuals who had believed that they were above the law were going to be asked to account for their activities in a court of law. The therapeutic effect that this would have on the victims cannot be overemphasised.

The good tidings is that most of the victims who, but for the petitions, would not have had a chance to talk about their experiences, are quite satisfied with themselves for having testified. It appears that one of the reasons for optimism about the petitions was indeed achieved. In fact, most of the witnesses indicated that 'it was a great opportunity to be in court with the perpetrators since they were said to be invincible and that no one could take them to court'.

In a number of judgments handed down, it appears that the court chose to confine the scope of the inquiry to the constituency where the election was challenged. For example, in the Buhera North Election Petition,<sup>4</sup> Mr. Justice Devittie declined to deal with press reports of statements made by the President, the Chairman of the War Veterans Association, and the Minister of Defence, Moven Mahachi (as he then was), which it was argued had unduly influenced the outcome of the election and set the campaign of violence in motion.

The judge further refused to deal with the petitioner's charge of the existence of a 'grand national conspiracy by the ruling party and the government to subvert the electoral will of the people of this country'. From a human rights perspective, such a restrictive interpretation of the court's function is undesirable. Cases of such importance as these electoral challenges, where there were damning

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<sup>3</sup> See Clemency Order No. 1 of 2000.

<sup>4</sup> HH 67/2001

testimonies of gross human rights violations, cry for active and brave judges ready and willing to develop the country's human rights jurisprudence so that it keeps in step with international standards.

## Violence against witnesses

The downside of the election challenges was the violence against the witnesses. Just before the electoral challenges were heard, the President, purporting to act in terms of the Electoral Act, passed yet another statute of impunity, the Electoral Act (Modification) (No.3) Notice of 2000. The regulations purported to validate corrupt and illegal practices committed by election candidates or their agents during the election, thus rendering the elections not subject to judicial inquiry. The Supreme Court struck down these regulations for being unconstitutional.<sup>5</sup>

Realising that nothing was going to stop the challenges from going ahead, supporters of the ruling party unleashed a fresh wave of violence against MDC supporters who were going to testify in the election petitions. It is clear that the objective of this fresh wave of terror was to intimidate the potential witnesses against testifying.

Following reports of violence against witnesses from Chikomba, two lawyers from the Legal Unit accompanied by the Chairperson of the Zimbabwe Lawyers for Human Rights decided to investigate the reports and travelled to Sadza Growth Point on 7 April 2001. Apart from observing a witness in the election challenges being assaulted and treated in the most inhuman and degrading manner by a group of people wearing ZANU (PF) shirts, the lawyers were themselves victims of an attack by the same group of people.

The most disturbing aspect of this incident was the failure by the police to protect the victims. Police officers in uniform stood by and watched the witness being attacked. Police have a legal duty to come to the assistance of victims of brutal attacks. Such an omission by the police to protect the victim, apart from inciting moral indignation, infringes the victim's right to equal protection of the law as guaranteed by the Constitution of Zimbabwe.

One of the lawyers was kicked, slapped, hit with fists, whipped, and hit behind the ear with a stone. He was also treated in the most inhuman and degrading manner by being forced to chant ZANU (PF) slogans and to *toyi toyi* to the Police Station. At the station, the lawyer and the witness were subjected to the most cruel torture by police officers and interrogated about MDC.

Meanwhile the other two lawyers who had escaped went to the Police Station to rescue their colleague. Upon arrival, they were immediately detained. The officer in charge, one Assistant Inspector Majora<sup>6</sup> ordered all the police officers present to be armed and to thoroughly search the lawyers. He went on to lecture the lawyers about how evil the MDC was and threatened to call Chenjerai Hunzvi and his war veterans to deal with them.

The incident at Chikomba confirms beyond doubt the widely held view that the police force has since the year 2000 been used as a ZANU (PF) instrument for violence.

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<sup>5</sup> *Movement for Democratic Change & Anor v Chinamasa NO & Anor SC 7/2001.*

<sup>6</sup> It is noteworthy that Assistant Inspector Majora has been implicated by witness statements as having been involved in the perpetration of gross human rights violations – see *Who was responsible? A consolidated analysis of pre-election violence in Zimbabwe* (July 2001) and *Report on Election-Related Political Violence in Chikomba* (September 2001); reports by the Zimbabwe Human Rights NGO Forum

## Attacks on the Judiciary

During the year, the Judiciary came under very heavy attack from the government. The attacks were in several forms. There were threats of actual physical harm on individual judges and the subversion of the courts' powers to resolve disputes in labour matters.

Several government officials, including the Minister of Justice made statements impugning the reputation and integrity of individual judges. It is believed that the threats led to the resignation of High Court judges Chatikobo, Devittie, Bartlett and Gillespie. A sustained campaign to force the Chief Justice to resign was launched. Notwithstanding his duty to protect the judiciary, the Minister of Justice spearheaded the campaign which led to the resignation of Chief Justice Gubbay.

In flagrant disregard of the labour laws of the country, ZANU (PF) set up shady tribunals to deal with labour disputes. Employers were literally abducted and forced to appear before the tribunals.

We understand from the cases we monitored that there was no attempt at all to follow the rules of natural justice. The Legal Unit received reports of employers who were tortured for failing to pay their employees to the satisfaction of those presiding in the tribunals.

## The Abuja Accord

Signed in September 2001, the accord notes that the crisis in Zimbabwe is a result of the land question. The land question, it was agreed, 'cannot be separated from other issues of concern to the Commonwealth, such as the rule of law, respect for human rights, democracy, and the economy'. The agreement also made reference to two other Commonwealth instruments, the Harare Declaration and the Millbrook Commonwealth Action Programme, both of which specify human rights standards for the members of the Commonwealth.

It was agreed, among other things that 'land reform can only be meaningful and sustainable if carried out with due regard to **human rights, the rule of law**, transparency and democratic principles'. The agreement committed the government of Zimbabwe to 'restore the rule of law to the process of land reform,' and to guarantee 'freedom of expression as guaranteed by the Constitution of Zimbabwe and to take firm action against violence and intimidation'.

Although the agreement has been criticised<sup>7</sup> for failing to recognise that land is but one of the reasons why the country has sunk into the quagmire it is now, at least on paper it provided an impetus to resolve the crisis. The agreement signified the beginning of the process of resolving the problems bedeviling the country.

Early on, a lot of pessimism had been expressed about the likelihood that the government would abide by the agreement, particularly the commitment to 'take firm action against violence and intimidation'. We must stress that a lot of the violence and intimidation that has and is still occurring in Zimbabwe has nothing to do with land reform.

The violence is a weapon used by a very unpopular government to stay in power. It is only fair to say that violence and intimidation have been used by the present regime to divert people's attention from the mismanagement of the economy, bad governance, and corruption by government officials.

So, Abuja was always in danger of being regarded as high-sounding nonsense. This was confirmed by utterances attributed to the President and other government ministers, in particular, the Minister of Information, who intimated that the Abuja Agreement did not require the government to stop the

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<sup>7</sup> See *Complying with the Abuja Agreement* (October 2001); A Report of the Zimbabwe Human Rights NGO Forum.

violence on the farms. Events taking place around the country put paid to the debate over government's insincerity in its commitment to the terms of the agreement.

Post Abuja, the Zimbabwe Human Rights NGO Forum continued to receive reports of gross human rights violations. The press also reported several incidents of violence and intimidation. The pattern of violence which has now emerged indicates that preparations for the presidential elections have begun.

Gokwe North appears to be the most affected. Reports received by the Legal Unit show that ZANU (PF) supporters have established a base at Tenda Growth Point. It is from here that they make forays into the community where they identify supporters of the opposition, burn their homes, and take them to their base where the victims are tortured.

In one case seen by the Legal Unit a 63-year-old man was abducted from a beer drink and taken to the base at Tenda. He was suspected to be an opposition supporter. Together with five other MDC supporters, he was severely assaulted and left for dead. He was rescued by the police and taken to hospital. He died at Gweru Hospital on 17 October 2001 from injuries sustained. The other men were seen by a doctor who confirmed that their injuries were consistent with severe beating.

Although the police were able to rescue the victims, they did not do enough. The base has been set up for unlawful purposes. The police should have gone on to break-up the base and arrest the perpetrators of human rights abuses. As long as the base remains constituted as it is, we will continue to receive reports of people being taken to the base and tortured. It is fair to say that it is only a matter of time before another life is lost.

In Kadoma, ZANU (PF) supporters are also reported to be keeping night vigil at their office at Rimuka. Reports received by the Legal Unit indicate that it has exceedingly become difficult to get out at night since this is the time that the ZANU (PF) supporters are usually active. We have also received reports of a base having been established at Shamva where ZANU (PF) supporters are terrorising residents of that town.

There were press reports<sup>8</sup> of violent clashes between ZANU (PF) supporters and workers at Bita Farm in Wedza on 15 September 2001. The Legal Unit has also seen a victim of these clashes. The ZANU (PF) supporters beat up farm workers and burnt huts. Two people died. According to an eyewitness account, one of the deceased was one of the ZANU (PF) supporters. The other one was a farm worker. She died a few days later at Parirenyatwa Hospital from injuries sustained during the assault.

The Legal Unit also received reports of violence and intimidation from constituencies like Harare, Bindura, Chegutu, and Nkayi.

The position taken by many that the government was not sincere has been vindicated. The violence and intimidation, which began in the year 2000 has not shown any signs of abating, even after the Abuja Agreement was signed. With the presidential elections not far off, there is a real likelihood that violence and intimidation will flare up.

## **Debate on the new constitution**

We followed the debate on the new constitution with keen interest following government defeat at the referendum in February 2000. On 31 March, we were invited to the all stakeholders' conference. We

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<sup>8</sup> See *The Daily News* of 27 September 2001, *The Financial Gazette* of 20 September 2001, and *The Herald* of 17, 19 and 20 September 2001.

firmly endorse the resolutions passed, in particular the conference's affirmation of the 'need for a new constitution now especially before the 2002 presidential elections'.

Zimbabwe deserves an effective system for the protection of human rights through the Constitution. Apart from the justiciable bill of rights, the country does not have a comprehensive system. The bill of rights itself has its own serious weaknesses. It contains many wide claw back provisions, which allow the State to take away fundamental rights and freedoms in the interests of defence, public order and during emergencies.

The Judiciary has been particularly active in interpreting the bill of rights. There is a body of bold and imaginative judgments delivered by a great generation of judges who graced the bench before the year under consideration. The gains made from the creative judgments have all been rendered nugatory by subsequent amendments to the Constitution.

It is our view that a comprehensive bill of rights and an implementing organ, which is composed of human rights experts who are able and willing to take forceful action to curb human rights abuses, is long overdue.

## **International perceptions**

The country continued to suffer a very bad reputation internationally. International financial institutions and multilateral development banks continued to shun the country. Malawi and South Africa are the SADC countries which expressed concern over the breakdown of the rule of law and human rights violations in Zimbabwe.

The high watermark though, was the resuscitation of the debate on Zimbabwe in the United States of America Congress. This culminated in the passing of the Zimbabwe Democracy and Economic Recovery Act of 2001. This statute, which our government calls a sanctions Act, addresses several issues of good governance and human rights. Among them are the rule of law as it relates to land reform, free and fair elections, and democracy.

If the conditions for good governance are not satisfied, the government of the United States of America, through its Treasury Department, shall oppose the extension of debt relief and development aid to Zimbabwe by financial institutions.

The United States seeks to expose those responsible for the breakdown of the rule of law, politically motivated violence and intimidation and impose personal sanctions like asset freeze and travel restrictions.

Sanctions will usually hurt most those people they intend to assist. For this reason we find the argument for sanctions untenable. The factual basis upon which the statute is premised is impeccable. We support the idea of exposing those people responsible for violence and intimidation and imposing personal sanctions on them.

There were also reports of discussions to place the country under Article 96 of the Cotonou Agreement. The Cotonou Agreement governs relations between the African Caribbean and Pacific (ACP) countries and the European Union (EU). Article 96 deals with issues of human rights, democracy and the rule of law.

## Casework

The table below shows the number of cases handled by the Legal Unit from the year 1999 to the year 2001. The number of cases excludes instances involving selective application of the law dealt with by the Legal Unit. There are other instances where we have obtained restraining orders for some of our consultants. These cases too have been excluded from the table.

As will be seen from the table, there was a significant increase in the number of cases against the army and the police. This bears testimony to the fact that both the army and the police force have been used as a tool for violence by the ruling party.

<i>Year</i>	<i>Total</i>	<i>ZRP</i>	<i>ZNA</i>	<i>Other</i>	<i>Completed</i>	<i>Pending</i>	<i>Amount awarded</i>	<i>Pending</i>
1999	13	13				13	-	\$110,000
2000	23	15	5	3	5	18	\$100,000*	\$250,000
2001	42	19	15	8	5	37	\$60,000*	\$4m pending

\* The amounts awarded are in Zimbabwe Dollars and have not been paid.

The table shows the number of active cases taken by the Legal Unit. We indicated in our report for the year 2000 that organised violence of a political nature began soon after the February 2000 Constitutional Referendum. It continued throughout the year. We have indicated elsewhere in this report that this type of violence continued unabated in 2001.

We saw and recorded statements from 939 victims of organised violence of a political nature in the year 2000. During the year under consideration, the Legal Unit saw 280 victims and recorded their statements.

Given the nature of the complaints the Legal Unit found it impossible to mobilise the domestic law for remedies on behalf of most of the victims. Further, the General Amnesty for Politically Motivated Crimes gazetted on 6<sup>th</sup> October 2000 effectively robbed the victims of justice. It is our view that in Zimbabwe the system for the protection of human rights, both procedural and institutional is weak.

The Legal Unit nevertheless, recorded the victims' statements with a view to engaging the international human rights protection mechanisms. We considered the systems provided by the African Charter for Human and People's Rights and the complaints procedure under the First Optional Protocol to the International Covenant on Civil and Political Rights. The regime provided by the International Covenant for Civil and Political Rights looked more attractive and more effective.

We aborted our efforts of approaching the United Nations Human Rights Committee at the first hurdle. It is a requirement of the First Optional Protocol that before lodging a complaint the author must first ensure that the state against which remedies are sought is a party to the International Covenant on Civil and Political Rights and the First Optional Protocol. The author must also ascertain that no relevant reservations have been entered by the defendant state. Zimbabwe, though a party to the International Covenant on Civil and Political Rights is not a party to the First Optional Protocol.

We were then left with the Complaints procedure under the African Charter. The Legal Unit is pleased to announce that the process of preparing the communication in terms of the Charter was completed. The African Commission on Human and People's Rights has acknowledged receipt of the dossier. The complaint will be dealt with at the Commission's 31<sup>st</sup> Ordinary Session, which will take place from 2<sup>nd</sup> to 16<sup>th</sup> May 2002.

As stated elsewhere in this report, the Legal Unit saw a good number of victims who complained that they had been brutalised and yet they were being prosecuted on trumped up charges. We assisted these victims. These cases however, are not included in the table above. As will more fully appear from the summary of cases appended to this report, other victims complained of general harassment and intimidation for their political opinions. We sought relief for them in the form of restraining orders where we could.

## **Conclusions**

The socio-political situation in Zimbabwe has deteriorated to the lowest possible levels. The running down of the economy continued unabated leaving millions of Zimbabweans poor. Politically motivated violence and intimidation, and abuse of fundamental human rights at the behest of the government have become manifest.

Throughout the year, the Zimbabwe Human Rights NGO Forum published several reports and condemned human rights violations committed with the express or tacit support of the government of Zimbabwe. We urge the government to take urgent steps to stop politically motivated violence and intimidation.

After a decent stock-take, it is clear that despite our recommendations for the years 1999 and 2000, there has not been any serious attempt by the government to restore the rule of law. Certain individuals still behaved as if they were above the law. We demand a restoration of the rule of law.

In this respect, we reiterate our concern over the failure by the government to ensure that the police carry out their duties in terms of the Constitution of Zimbabwe and the Police Act. During the year, the failure by the police to provide protection to victims of gross human rights violations was a continuing cause for concern. Partisan policing must end and all Zimbabweans must be afforded the equal protection of the law.

We strongly condemn politically motivated violence and intimidation. As Presidential Elections are not far off and violence is likely to flare up, we reiterate the demand we have made since the Zimbabwe Human Rights NGO forum was formed - that the government should set up an independent commission of inquiry to investigate the widespread human rights abuses.

We urge the government to judiciously observe its international obligations for the protection of human rights. In particular, all reports of human rights abuses must be investigated and the suspected offenders must be tried by a court of law. If they are found guilty the offenders must be punished in accordance with the law. It is for this reason that we call upon the government to revoke the General Amnesty of 6 October 2000.

## **Appendix A**

### **SUMMARY OF CASES FROM 2001**

#### ***MJ & 6 Others***

These are the Gonarezhou victims. The victims, numbering 12 in all, were picked up by police details and CIO from the home of Bikita West MDC candidate. They were taken to Zaka Police Station where they were subjected to the most gruesome, cruel and inhuman treatment. The victims allege that they were asked to remove all their clothing and ordered to simulate sexual activity whilst lying prone. They were further forced to put on condoms before being compelled to lick them. The victims were also forced to grind with their teeth various items including party cards and whistles. They were assaulted with gun butts, hoe handles, baton sticks, and open and clenched fists and booted feet. They were also burnt with cigarettes.

The victims also allege that for the 5 days they were held in unlawful detention, they were denied food. They were allowed a small supply of drinking water but would not be given access to a bath. Among the perpetrators mentioned is a police Chief Superintendent.

To cap all the agony the victims were then bundled into a truck and driven to Gonarezhou National Park where they were dropped in groups of two to four members and ordered to run into the forest or risk shooting. They eventually coordinated their escape through blowing whistles. Only 7 victims reported their abuse to the Legal Unit.

Summons was issued and served and a plea was entered. A settlement is being negotiated.

#### ***BC & 9 Others***

The time, place and occurrence in this case are similar to the Gonarezhou case above except that these victims were not discharged into the Game Park. This case is now at plea stage.

#### ***LP & 11 Others***

These victims of terror, brutality and property damage are from St. Mary's. Certain officers from the Law and Order Police Department made night-time raids of homes of suspected MDC supporters and sympathizers. They knocked down gates, pulled down fences, broke doors, wardrobes and cabinets purportedly in search of MDC youths who had received military training. During the raids elderly women and children were victims of attacks with baton sticks, gun butts and other weapons.

#### ***WT***

This man was attacked by a Government Minister and other ZANU (PF) supporters. He was believed to be an MDC supporter. He sustained serious injuries. Summons has been issued and served.

#### ***NM***

He alleges that he was attacked with an iron bar in Mount Darwin by a Member of Parliament. He lost his right eye and sustained injuries on the ribs. We are waiting for further instructions.

#### ***AM & 4 Others***

These people complained of harassment, intimidation and threats because of their involvement in the election petitions. We obtained a restraining order for them from the Magistrates Court at Guruve. Police were however reluctant to serve the order.

**AMM**

She was shot and wounded on her right thigh by a member of the War Veterans Association and a senior ZANU (PF) member. After she reported her case to the police and the accused was hauled before the court, she began to receive death threats as well as threats to her property. She identified the perpetrators as ZANU (PF) supporters who were sympathetic to the accused. We obtained a restraining order for this woman.

**TN**

We obtained a restraining order for this woman. She is the owner of a certain house in Epworth. ZANU (PF) youths acting in cahoots with war veterans violently drove her out of her house. She then decided to let the house but the tenant was denied entry because 'the house had been invaded'. They abducted the tenant and took him to their base where he was severely assaulted.

**MC**

This is the case of an 18-year-old Form 4 pupil who was shot and killed in circumstances aptly described by relatives as 'cold blooded murder'. Police officers shot him at point blank range. They suspected that he was a car-jacker. We have given the police notice of our intention to sue. Meanwhile an out of court settlement is being negotiated.

**NK**

This is one case that gives a poignant reminder of the need for Parliament to amend the law regarding the possibility of awards for bereavement damages. The consultants in this case were the mother and father of a six-year-old boy who was shot and killed by the police in circumstances revealing a cold blooded and callous disregard for the sanctity of human life. The consultants' car stalled at a hump in Chitungwiza. It was around 10.30 an night.

Along came 6 police officers in a Landrover Defender motor vehicle. They surrounded the motor vehicle and without warning one of the police officers opened fire. The Attorney General's office has offered to pay out of court but since our law does not provide for bereavement or emotional suffering and pain, the only claim is for funeral expenses.

**BN**

He was arrested by police officers following a break-in at his employer's house. He was assaulted by the police while in custody. He sustained multiple injuries. Summons has been issued and served.

**TC & 5 Others**

The plaintiffs in these cases are University of Zimbabwe students. They were participating in a peaceful march together with other students when police disrupted the march by indiscriminately firing teargas and live ammunition on them. 2 students were shot. The other 3 were arrested and treated in the most inhuman, cruel and degrading manner. Summonses have been issued and served.

**GM**

The plaintiff in this case is a lawyer. He was stopped at the National Sports Stadium by certain police officers who demanded to take a sip of his drink to satisfy themselves that the drink was non-alcoholic. For reasons to do with hygiene the plaintiff refused to comply. He was manhandled and pushed and shoved. He was arrested and detained for about an hour. Summons will be issued and served shortly.

***DC & 5 Others***

These people allege that they were victims of an assault but they were instead arrested. They made allegations of selective application of the law and victimization because of their political affiliation. The Legal Unit assisted these people and they were granted a refusal of further remand.

## Appendix B

### SUMMARY OF EARLIER CASES

#### Food Riots Cases

Below is a table showing the status of cases from 1998.

	Awarded	Paid	+Costs Paid
Antony Nyasulu	\$40 000		
Anesu Mafunga	\$10 000	\$10 000	
Charles Nhongo	\$20 000		
Dorothy Julius	\$15 000	\$15 000	
Eneresi Katumbu	\$30 000		
Fabian Muradzikwa	\$46 617	\$46 612	\$27 433
Fungai Gahadzikwa	\$13 000	\$13 000	
Gabriel Kawara	\$10 000		
Garikayi Murungweni	\$10 000		
Herbert Mashaira	\$20 000	\$20 000	\$5 000
Joyce Gahadzikwa	\$10 000	\$10 000	
Lioba Goro	\$60 000	\$60 000	\$5 000
Masimba Mutizwa	\$7 000	\$7 000	
Ngonidzashe Mapuranga	\$55 000	\$10 000	
Simbarashe Ruka	\$13 000	\$13 000	
Sweden Mugadza	\$100 000		
Tsitsi Mubvumba	\$14 000	\$9 000	
Webster Mugiyo	\$35 000		
Willington Ngoshi	\$15 000	\$15 000	
Ratidzai Madzimure	\$30 000		
Idah Manango	\$50 000		
Lovemore Musona	\$12 000		
Stanlake Nyakudya	\$21 000	\$21 000	
Norman Bhita	\$30 000	\$30 000	
Pindukai Chideme	\$25 000	\$25 000	\$3 000

#### Rescission

We obtained default judgement for Janet Jonasi. The defendants have applied for rescission of that judgement. The application will be set down soon.

### **Awaiting Judgement**

Peter Chirinda, where amount claimed is \$1.5 Million

### **Withdrawn**

The cases listed below were withdrawn for two reasons. The first two lacked sufficient evidence while in the other two matters the victims are now staying in England.

Aginet Mujuru

William Dhlakama

Maidei Gahadzikwa

Leonard Mushambi

### **Missing**

The cases listed below could not proceed because we have up to now failed to establish the whereabouts of the following clients:

Agnes Mabhidhi

Christine Shumba

Loveness Zishiri

Mabwe Mujuru

### **Passed away**

3 clients passed away. Their claims could not proceed.

Darlington Gambanga

Future Rukweza

Jonathan Matake

### **Trial**

We are waiting for trial dates in the cases listed below.

Taurayi Kudyamukonde

Innocent Chandomba

Juliana Kadewere

Nyaradzai Katsande

The defendants have been ordered to produce Firearms Registers, Incident Occurrence Books and other police documents FROM Mbare Police Station, Musika Police Post, Matapi Police Station, and Stodart Police Station in Chandomba and Katsande.