

**ZIMBABWE HUMAN RIGHTS NGO FORUM**

---

**ENFORCING THE RULE OF LAW  
IN ZIMBABWE**

---

A report by the Research Unit of the  
Zimbabwe Human Rights NGO Forum

Special Report 3

September 2001

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 and Documentation Unit.

Core member organisations of the Human Forum are:

- Amani Trust
- Amnesty International (Zimbabwe)
- Catholic Commission for Justice and Peace
- 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 Human Rights Association
- Zimbabwe Lawyers for Human Rights
- Zimbabwe Women Lawyers Association

Associate members are: GALZ and ZIMCET

The Human Rights Forum can be contacted through any member organisation or the following personnel:

The Administrator, c/o P O Box 5465, Harare – email: [admin@hrforum.co.zw](mailto:admin@hrforum.co.zw)

The Legal Unit, c/o P O Box 5465, Harare – email: [legal@hrforum.co.zw](mailto:legal@hrforum.co.zw)

The Research Unit c/o P O Box 5465, Harare – email: [research@hrforum.co.zw](mailto:research@hrforum.co.zw)

Telephone: 792222 737509, 731660

Fax: 772860

Website: [www.hrforumzim.com](http://www.hrforumzim.com)

All earlier reports of the Human Rights Forum can be found on the website.

## TABLE OF CONTENTS

Glossary	2
<b>Chapter 1. What is ‘the rule of law’?</b>	<b>3</b>
<b>Chapter 2. Enforcing the rule of law: Parliament</b>	<b>6</b>
Laws passed by Parliament in breach of human/constitutional rights	6
The Speaker	9
The Parliamentary Legal Committee	10
Parliament’s Portfolio Committees	13
Subordinate legislation	13
Members of Parliament	13
<b>Chapter 3. Enforcing the rule of law: the Executive</b>	<b>16</b>
The State Presidency	16
Has the State President upheld the rule of law and existing laws?	18
The Cabinet	24
The Public Service	27
The Uniformed Forces	28
Zimbabwe Republic Police (ZRP)	29
The Attorney-General’s Office	35
<b>Chapter 4. Enforcing the rule of law: the Judiciary</b>	<b>38</b>
The Supreme Court and the Chief Justice	41
The High Court	43
Magistrates’ Courts	45
Other Courts	46
Deputy Sheriffs’ Offices	46
<b>Chapter 5. Enforcing the rule of law: non-State actors</b>	<b>47</b>
Militias	47
Political Parties	49
Zanu-PF	49
MDC	50
<b>Chapter 6. Conclusions</b>	<b>51</b>
<b>References</b>	<b>52</b>
<b>Appendices</b>	
(1) African Rights letter to President Obasanjo, 3 September 2001	
(2) Law and Order (Maintenance) Act	
(3) Public Order and Security Act	
(4) Presidential Powers (Temporary Measures) Act and applications	
(5) Presidential Statutory Instruments	

**GLOSSARY OF ABBREVIATIONS**

BAZ	Broadcasting Authority of Zimbabwe
BBC	British Broadcasting Corporation
CFU	Commercial Farmers' Union
CRF	Consolidated Revenue Fund
CZI	Confederation of Zimbabwean Industries
GAPWUZ	General and Agricultural Plantation Workers' Union
ISP	Internet Service Provider
JSC	Judicial Services Commission
LOMA	Law and Order (Maintenance) Act
MDC	Movement for Democratic Change
MMPZ	Media Monitoring Project of Zimbabwe
NCA	National Constitutional Assembly
PLC	Parliamentary Legal Committee
POSA	Public Order and Security Act
PP(TM)A	Presidential Powers (Temporary Measures) Act
SI	Statutory Instrument
UDHR	Universal Declaration of Human Rights
WVCF	War Victims Compensation Fund
Zanu-PF	Zimbabwe African National Union - Patriotic Front
ZBC	Zimbabwe Broadcasting Corporation
ZCTU	Zimbabwe Confederation of Trade Unions
ZDF	Zimbabwe Defence Forces
ZEXCOM	Zimbabwe Ex-Combatants' Company
ZimRights	Zimbabwe Human Rights Association
ZNA	Zimbabwe National Army
ZNLWVA	Zimbabwe National Liberation War Veterans' Association
ZRP	Zimbabwe Republic Police
ZTV	Zimbabwe Television

## CHAPTER 1

### WHAT IS 'THE RULE OF LAW'?

In the new millenium, sadly, Zimbabwe is a global pariah because our government is alleged to have trashed the rule of law and the Constitution on which is based its authority to govern. Government has repeatedly referred to the rule of law as 'extraneous' and 'peripheral'. As a result, the government has lost its former legitimacy, both at home and internationally. The text of the Abuja Agreement made this very clear.<sup>1</sup>

Newspaper editors are not the only citizens to have condemned the government's 'sabotage' of 'the very foundation of the law-based society we all had hoped underpinned our nation's democratic evolution'. The President of the Confederation of Zimbabwean Industries (CZI), Zed Rusike, was quoted as saying:

'For investors to continue to retain interest in Zimbabwe, government officials need to act responsibly and refrain from issuing hate and racial statements as well as respect the rule of law and the judiciary as competent institutions. Surely 20 years after attaining independence, Zimbabwe should be for all of us irrespective of race, colour, creed or political affiliation'.<sup>2</sup>

But what, exactly, is 'the rule of law'? Law includes both the unwritten 'common law' of past custom and tradition, and 'statutes' or 'acts' passed by Parliament. However, as a collective mind-set and expectation of behaviour, 'the rule of law' goes beyond specific laws. 'The rule of law' stands in contrast to 'the law of the jungle' operated by the strong and powerful where the weak and powerless lose out.

The Universal Declaration of Human Rights (*UDHR*) opens by stating '... it is essential, if a man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...'

In Article 7, the rule of law is defined as equality before the law, including, 'without any discrimination', equal protection of the law. Discrimination or incitement to discrimination before the law is prohibited. Thus no-one is above or exempted from the law. The general public, political parties, ethnic groups, the Government – all must see themselves as equally subject to the law, and equally punishable if they break it. No-one may break the law with impunity, especially not a State President who is installed by swearing to uphold State law. No-one is 'more equal than others', as George Orwell put it in *Animal Farm*.

As interpreted by our former Chief Justice, Anthony Gubbay, this equality before the law means that

'everyone must be subject to a shared set of rules that are applied universally and which deal even-handedly with people and which treat like cases alike... It is completely unacceptable to qualify the rule of law... Rulers who pick and choose which laws they wish to obey by defining certain matters as "political" thereby vitiate the principle of equality before the law, setting one standard for themselves and another for the people they govern.'

<sup>1</sup> See Appendix 1; *The Herald* 8.9.01; *The Daily News* 8.9.01.

<sup>2</sup> *The Financial Gazette* 7.12.00.

In contrast, an unnamed Government source who attended the meeting between Presidents Moi and Mugabe in Nairobi in mid-June 2001 made it clear that:

‘What Zimbabwe does not want to see is a fixation on peripheral matters, such as the rule of law, democracy, good governance and political violence when the core issue is land. The whole idea is to refocus on the land issue and not issues which are peripheral or if they are an issue, are derivatives from the unresolved principal issue of land.’<sup>3</sup>

Clearly, Government spokespersons and the current Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, have not understood the views of Zimbabweans committed to upholding the rule of law. Chinamasa has complained that ‘the ordinary people of Zimbabwe and the press share a fixated idea that the rule of law is about maintaining law and order’.<sup>4</sup> It is rather the executive which deliberately misunderstands the relationship between the rule of law, preventing anarchy, developing the economy, and acceptable governance.

Many Zimbabwean authors and organisations have tried to educate Government and the rest of us on the meaning of the term ‘the rule of law’. Feltoe (2001:131) notes that

‘The rule of law is an essential foundation of any democratic system of governance. [It] is a complex concept but its core aspects are straightforward. The rule of law requires that power be exercised in accordance with the law and disallows the arbitrary use of extra-legal power...

everyone should be equally subject to the law and that no-one should be above the law...  
the law enforcement agencies and the courts should enforce and apply the law impartially...  
the law should protect everyone equally against illegal action causing harm.’

According to the *Civic Alliance for Social and Economic Progress (CASEP)*,

‘The rule of law is both a legal and political term. It is a term that must always be distinguished from “by law” or “law and order”.

The rule of law has now become a universally accepted concept that is intrinsically connected to Human Rights. One of the most established tenets of the rule of law is the doctrine that the law reigns supreme. Put simply this doctrine explicitly puts across the idea that all people in society are subject to the law and to no other “powers”. Perhaps more importantly the doctrine means that government powers shall be exercised subject to the rule of law.

The rule of law is thus an essential foundation of any democratic system of governance. This is so because broadly speaking the doctrine demands:

the absence of arbitrary power  
equality before the law  
independence of the judiciary or impartiality of the law enforcement agencies.

Some writers have argued that this concept is the mark of a free society. This is particularly so because where the doctrine is followed government exercises its power only to the extent that this is sanctioned or conferred upon it by the authority of law. If this is allowed to happen, then the law will easily conform to certain minimum standards of justice.

<sup>3</sup> *The Herald* 21.6.01.

<sup>4</sup> *Parliamentary Debates* 27,32:3229.

The emphasis of the doctrine is on individual freedom by placing limitations on the exercise of power by those in government. This is achieved by subjecting everybody to the same law.'

What do these formulations mean in real-life practice?

Laws are made by people, in and through their political institutions, to govern their behaviour as members of a common society. The laws made in Parliaments are enforced by different institutions - police forces and Interpol, courts and judges, prisons and corrective institutions. So the rule of law is complicated by the fact it involves all three 'pillars of state' in the exercise of different but balanced powers by the legislature, judiciary and executive.

For the rule of law to apply, then, Parliaments must make laws and define the punishments for breaking them. Police forces must investigate and, where the required evidence exists, prosecute all alleged offences, no matter who commits them. Magistrates and judges, courts and tribunals must try people fairly and impartially according to the laws made by their country's Parliament. Police and prison services must do what the courts order regarding the release or punishment of people tried.

The legal goalposts should remain stable, even when particular laws are amended or repealed to suit a changing society. The law must not be changed to suit particular individuals, especially not after they have committed offences. The legal process must not be corrupted by bribery, political interference or violence.

In this report, we examine in some detail the evidence of breaches of the rule of law by the three pillars of the Zimbabwean State.

## CHAPTER 2

### ENFORCING THE RULE OF LAW: PARLIAMENT

As one of the three pillars of State, Parliament comprises the elected representatives of the people. Its function is to make laws for society. Laws are the rules by which we agree to live together, so it is important that they be made by our own representatives, who are elected to speak on our behalf.

Parliament, then, is the foundation of the rule of law. Over many centuries in other countries, the people's representatives have fought to defend and extend the people's rights, usually against arbitrary, autocratic, inherited and unaccountable powers of a monarch or emperor. These battles have shaped the function of contemporary law-making as a *democratic* process reflecting what the majority of the citizens – as opposed to executive rulers – want.

The rule of law starts with a democratically-elected legislature. That Parliament must then pass laws in accordance with both the Constitution (which is our 'supreme law' overriding all others) and the rules of procedure in the House of Assembly. Parliamentarians must obey their own laws and rules as a first step in upholding the will of those who elected them in a rule-bound society.

But Parliaments can – and regrettably often do – fall down on this job. They cave in to what the executive branch of the State wants, break their own rules of procedure, pass laws - against legal advice - that are unconstitutional. Formal roles in the structure of Parliament, especially those of the Speaker and the Leader of the House, can also be manipulated to political advantage. Finally, Members of Parliament (MPs) as individuals may break laws they themselves have passed - thus setting a very bad example to the rest of us.

If we look at our own Constitution, its sequencing implies that Parliament is *not* in reality the starting-point of Zimbabwean governance. After Citizenship and the Declaration of Rights comes the Executive, followed by Parliament. Our Judiciary ranks even lower, after the Public Service but before the three uniformed services. (Perhaps the current state of our economy is at least partly explained by the placing of Finance right at the end, just before Miscellaneous Provisions!) Moreover, all of our statutes state: 'Enacted by the President and the Parliament of Zimbabwe' – in that order.

If we are to assess how well our Parliament upholds the rule of law, we should ask some simple questions. Has Parliament passed legislation that contravenes our rights enshrined in the Constitution of Zimbabwe and the Universal Declaration of Human Rights? Have MPs listened to legal advice regarding proposed new laws? Have Parliament's own institutions operated in the spirit of democracy and in accordance with their own rules of procedure? Do MPs individually act in accordance with the laws?

#### **Laws passed by Parliament in breach of human/constitutional rights**

When a party wins two-thirds of the seats in our Parliament, it has the capacity to change our Constitution. Zanu-PF was not initially, in 1980, elected with that large a majority. But between 1981 and 1985, with the consent of MPs belonging to other parties, it amended the Constitution five times. With two exceptions, none of these amendments affected the Declaration of Rights in

Chapter 3. These two related to the creation of the Supreme Court, and were not detrimental to citizens' interests.

However, during the first Parliament, MPs did change the rules of citizenship without debate. The provision for dual citizenship was removed from the Constitution, which incorporates the Citizenship Act.

The Speaker's curtailing of debate on the Citizenship Amendment Bill by the elected representatives of the people was later repeated with other controversial bills, including the University of Zimbabwe Amendment Bill in 1990. The pattern, in cases of controversial new legislation, has been to *prevent* Parliamentarians from performing their defined function in a democratic system.

Between 1985 and 2000, in the second, third and fourth Parliaments, Zanu-PF did hold at least two-thirds of the seats. It was during this period that major changes were made to the Declaration of Rights, diminishing previously-protected rights of citizens. Hanging as a method of capital punishment and the whipping of juveniles were both approved by our Zanu-PF Parliament. They were also happy for people sentenced to death to remain on death row indefinitely. They repeatedly removed property protections from the Constitution. Practically every time the judiciary made a judgment unpalatable to the executive, Parliament changed the Constitution. Although in strict terms this was legal, it was *not* 'reasonably justifiable in a modern democracy', because it sacrificed the long-term interests of the citizens to the short-term political desires of the executive. Such behaviour did *not* accord with 'the rule of law', even if it was legal in the sense that it did not break the law. It did breach the intention of the Constitution to protect our democratic and other human rights.

Most of Parliament's important functional breaches relate to the role and powers of the executive, especially the Presidency. Parliament has given its approval, by amending the Constitution, to an executive presidency; to protecting presidential prerogatives from court challenge; to the State President *appointing* 12 Members of Parliament and eight Provincial Governors.<sup>5</sup> Under our current Constitution, one man (or woman) *appoints* 20 MPs to our Parliament. Six million adult Zimbabweans *elect* 120! Clearly, this is *not* equality before the law as understood by 'the rule of law' and as specified in our Constitution and Electoral Act. The respective ratios between electors and electees are 1:20 compared to 50 000:1.<sup>6</sup> To put it differently, one State President has the same electoral power as one million ordinary Zimbabweans! When white voters were rightly deprived of a similarly-loaded differential franchise in 1987, their 20 seats were effectively transferred to the State President – by those elected to Parliament to protect and advance our interests as equal citizens.

Turning to specific laws, Zimbabwe inherited from the settler colonial regime a particularly vicious piece of undemocratic legislation. It was originally passed in 1960 to crush political dissent from disenfranchised indigenous Zimbabweans. It is called the Law and Order (Maintenance) Act (LOMA). Many black politicians were jailed under it. Many publications were suppressed by it. Many human rights were breached by it *as a law* as well as in its

<sup>5</sup> In addition, 10 chiefs are elected indirectly by the College of Chiefs.

<sup>6</sup> In the June 2000 election, the average number of voters per constituency was 42 082, within a permissible range of 33 666 – 50 498 (*The 2000 Delimitation Commission Report*, page 4).

application. Most of its provisions clearly breached the 1980 Constitution. It was not the only obnoxious law on the books, just the most tyrannical.

Suspending for five years the enforcement by the courts of the Declaration of Rights gave Zimbabwe's new, Independent Parliament breathing space to clean up the statute book and repeal laws, like LOMA, which breached the Constitution. *It did not do so.* In 2001, LOMA, amnesties and other legal breaches of human rights are still valid in a Zimbabwe in which the rule of law is increasingly insecure.

What Parliament did *not* do, though, the Supreme Court started. When the Declaration of Rights came into force in 1985, complainants started coming before the courts. The courts overturned, section by section, those provisions of LOMA and other statutes which were unconstitutional. Although many unconstitutional provisions have not yet been tested before the courts, State monopolies over communication were invalidated and constitutional rights upheld. The courts were then repeatedly accused, by the executive, of making and changing the law. In fact, as we shall see later (in Chapter 3), it was the executive, not the judiciary, that interfered directly (through subordinate legislation) and indirectly (through the ruling party's majority in Parliament) in law-making.

The fourth Parliament passed what Internet Service Providers (ISPs) called the 'draconian' Posts and Telecommunications Act. It provides *inter alia* for the unconstitutional surveillance of electronic mail. On this controversial Bill as on earlier ones aimed at curtailing existing freedoms, there was no parliamentary debate. ISPs threatened constitutional action as soon as the President signed it into law, which he did on 16 June 2000. However, there have been no follow-up reports on whether such action was launched by those threatened, by their lack of Zimbabwean citizenship, with being deprived of their ISP licences.

Popular disaffection with such legislative failure to protect our rights resulted, in the June 2000 elections, in opposition parties holding nearly half of the elected seats in our fifth Parliament. Even with 30 Parliamentary appointees, the ruling party no longer has the necessary majority to change the Constitution. That has not stopped it passing, on slender majorities with party whips in action, new bills which its legal advisors have told Parliament contain unconstitutional clauses. These have included most recently, in 2001, the Land Acquisition Amendment Act and the Broadcasting Services Act.

The Land Acquisition Amendment Act (15/2000; Chapter 20:10) (LAAA) was unanimously rejected by Parliament's Lands, Agriculture and Rural Resettlement Portfolio Committee,<sup>7</sup> It was passed in two days by 61 to 49 votes, and gazetted into law on 7 November 2000. It replaced the earlier Amendment gazetted using the Presidential Powers (Temporary Measures) Act, at a time when both were under constitutional challenge in the Supreme Court. The ruling party refused to accept that the LAAA was anti-constitutional, an attempt to pre-empt a Supreme Court ruling,<sup>8</sup> or *sub judice*. The Speaker reported that the Parliamentary Legal Committee had given it a non-

---

<sup>7</sup> *Parliamentary Debates* 27,26:2710, 2713.

<sup>8</sup> Even while insisting that it would take retrospective effect from 23 May 2000 by incorporating the older provisions! (*Parliamentary Debates* 27,26:2752-61)

adverse report, although this was disputed by one of the PLC's members, Welshman Ncube (MDC, Bulawayo North-East).<sup>9</sup>

The Broadcasting Services Act (3/2001, Cap 2:06) was similarly fast-tracked through Parliament against the recommendation of the Parliamentary Legal Committee (PLC) and tough opposition.

So it is clear that Parliamentarians belonging to Zanu-PF have, for over 15 years, overlooked the interests of their electors. In passing unconstitutional statutes, they have deliberated and breached the rule of law and, on some occasions, Parliamentary rules of procedure. When its Parliament does not uphold the Constitution and the rule of law, Zimbabwe's citizens have a very big problem.

The Zimbabwe Council of Churches recently expressed 'concern' about another undemocratic practice – 'the fast-tracking of crucial Bills' through the House, 'since this is only another manifestation of lack of respect for the legal system. There should be broad-based consultation before a Bill is passed.'<sup>10</sup>

### The Speaker

Our Constitution (s39) requires MPs to elect a Speaker and Deputy Speaker to preside over Parliament. The Speaker does *not* have to be an MP, merely to meet the qualifications for election. At present, both the Speaker Emmerson Mnangagwa (himself a lawyer) and his female deputy, Edna Madzongwe, are Presidential appointees to Parliament. Neither were elected to Parliament and neither attracted any opposition support in their election to their presiding positions.

The Constitution is silent on the way in which the Speaker is to perform her or his role. The partiality in practice of this role was little evident while Zanu-PF had a large majority in the House. However, the Speaker and the Minister of Home Affairs curtailed normal Parliamentary debate on the Citizenship of Zimbabwe Amendment Bill, despite vocal protest from MPs belonging to opposition parties. The debate on the University of Zimbabwe Amendment Bill was also tightly managed, with vocal oppositionists from *within* the ruling party being ejected from the House.

More recently, in a House that now has a vigorous opposition, the importance of the Speaker's role in manoeuvring for his/her party has become more apparent. For example, on the urging of the leader of the House, the Speaker ruled that the Parliamentary Legal Committee had violated standing orders in delivering after its deadline its report on a Presidential Powers (Temporary Measures) Act Statutory Instrument (SI 255A/2000, dealing with broadcasting services). He used this breach to assume, under Schedule 4 s2(1) of the Constitution, that the PLC had approved the SI. He then discharged the PLC report from the Order Paper, thus preventing Parliamentary discussion of its contents. Rather than condoning a minor oversight, he chose to presume PLC consent to this SI against clear and vocal evidence to the contrary.<sup>11</sup>

<sup>9</sup> *Parliamentary Debates* 27,25:2475; 27,26:2597-8; 27,27:2831. The process of passing this Bill was very reminiscent of the University of Zimbabwe Amendment Bill in 1990, and the Citizenship Act in 1984.

<sup>10</sup> *The Daily News* 25.8.01.

<sup>11</sup> *Parliamentary Debates* 27,55:5612-9.

Freedom of expression is constitutionally protected and central to the rule of law. However, the current Speaker has arraigned two newspapers (*The Financial Gazette* and *The Daily News*) for contempt of Parliament in their reportage.

In the first session of the fifth Parliament, on 25 October 2000, the opposition moved a Constitutionally-watertight motion to impeach the State President. Only a month later did the Speaker set up a 12-person committee to examine the grounds for this motion. He initially promised to divide membership according to party representation in the House, but eventually he divided it 2:1 in favour of the ruling party. He reportedly<sup>12</sup> told Zanu-PF gatherings in Zhombe and Nembudziya that he would make sure the impeachment process did not succeed. In fact, he did not need to.

Chaired by another Presidential appointee, the Leader of the House, Justice, Legal and Parliamentary Affairs Minister Patrick Chinamasa, the impeachment committee had not been convened for its first meeting when Parliament was prorogued in May 2001. Chinamasa said he was too busy to call any meetings.

### **The Parliamentary Legal Committee**

The Constitution (s40)<sup>13</sup> provides for a Parliamentary Legal Committee (PLC) of not less than three ordinary Members of Parliament, a majority of whom must be professionally-qualified in the law. The current PLC comprises two eminent constitutional lawyers, one each from Zanu-PF and the MDC, and a non-lawyer and former minister<sup>14</sup> from the ruling party's back benches. To judge by some of their delays and actions, this composition seems to have created political difficulties for Zanu-PF. In practice on diverging political issues the PLC lawyers have tended to hold similar constitutional opinions.

The PLC is required to examine every non-Constitutional bill and Statutory Instrument (SI) and report to Parliament on whether it contravenes any provision in the Constitution. In the absence of a negative report from the PLC within a specified time period, Schedule 4<sup>15</sup> allows Parliament to proceed on the assumption that the bill or SI in question does not contravene the Constitution. As noted earlier, the present Speaker has used this proviso to hold that a negative report had *not* been submitted on sections of a Presidential statutory instrument (SI 255A/2000).

If the PLC considers that a bill or SI contravenes the Constitution, and Parliament accepts this recommendation, Parliament 'shall not pass' the proposed legislation or its offending section(s). If the offending provision is redrafted, it must be resubmitted to the PLC and the process repeated.

The PLC has given adverse reports on a number of proposed bills and Statutory Instruments, including SI 255A/2000 (the Presidential Powers (Temporary Measures) (Broadcasting)

<sup>12</sup> *The Zimbabwe Independent* 3.11.00, 1.12.00.

<sup>13</sup> Which was amended in 1989, and again in 1990.

<sup>14</sup> Kumbirai Kangai is currently defending himself in court against major corruption charges.

<sup>15</sup> Also amended in 1989.

Regulations); the Broadcasting Services Bill;<sup>16</sup> and the Labour Relations Amendment Bill. In all three cases the PLC found clauses that contravened freedoms and rights enshrined in the Constitution.

The Broadcasting Services Act (3/2001, Cap 2:06) was very little changed from its parent Presidential Powers (Temporary Measures) (Broadcasting) Regulation 2000.<sup>17</sup> Its coverage was expanded to include satellite<sup>18</sup> and cable broadcasting, and ‘webcasting’ (meaning ‘a computer-mediated broadcasting service’). The Minister’s discretion to appoint the Broadcasting Authority board was brought under the ‘directions’ of the State President, but the minister was given new authority to ‘stop, scramble, obliterate or interfere with’ any broadcast to Zimbabwe from beyond our borders and extensive control of licensing. The minister’s patronage potential was expanded by adding to the objectives of the Broadcasting Fund the possibility of providing grants and financial assistance to Zimbabwean creative artistes. He was later reportedly accused by artists of ‘trying to use the BAZ to fund, control and govern artistic productions for political ends.’<sup>19</sup>

The Act was fast-tracked through Parliament against the recommendation of the Parliamentary Legal Committee (PLC) and tough opposition. Sections 6, 7, 8 (3) and (5), 9, 11 (3), (4) and (5) plus the Sixth Schedule, 19 (1)(b) and (2), 20 and 21 of the Bill were found by the PLC to be in conflict with s20 of the Constitution.<sup>20</sup> Police and others investigating breaches of the Act have extensive (and arguably also unconstitutional) powers of entry, search and seizure, based largely on any ‘opinion’ they may have formed about what may be going on (s 42), but this issue will await testing in the courts. The PLC stressed as ‘paramount’ the rights of viewers and listeners, rather than broadcasters. Eddison Zvobgo as PLC chair rejected the regulation of programme content in the ‘national interest’, ‘national outlook’ or ‘African outlook’ as ‘not a laudable purpose at all’. He reminded the house that

‘In a democratic society, Government has no greater right to be heard than anybody else. The imposition of Government’s views on every broadcast is an unconstitutional infringement of the right of freedom of expression.’<sup>21</sup>

The PLC found the enforced splitting of transmission and broadcasting licences, together with their limited number, in particular, to negate freedom of expression, noting that ‘A broadcasting licence becomes a licence simply to record one’s programmes without the concomitant right to relay those programmes’.<sup>22</sup> It also regarded a legislated duopoly as similarly unconstitutional to

---

<sup>16</sup> On this bill, reincarnating SI 255A/2000, the only non-lawyer on the PLC, Kumbirai Kangai (Zanu-PF, Buhera South), dissented from the majority opinion (*Parliamentary Debates* 27,60:6249).

<sup>17</sup> Regarding SI 255A/2000, the Speaker of Parliament, on the urging of the leader of the House, ruled that the PLC had violated constitutional provisions and standing orders in delivering a report that was out of time (thus it could be assumed, constitutionally, that the PLC had approved SI 255A/2000). He discharged it from the Order Paper, thus preventing Parliamentary discussion of its contents while presuming PLC consent to this SI (against clear evidence to the contrary) under Schedule 4 s 2(1) of the Constitution (*Parliamentary Debates* 27,55:5612-9).

<sup>18</sup> S39(5): ‘Every subscription satellite broadcasting licensee shall transmit an unencoded signal from a public broadcaster’.

<sup>19</sup> *The Daily News* 7.7.01.

<sup>20</sup> *Parliamentary Debates* 27,60:6260-1.

<sup>21</sup> *Parliamentary Debates* 27,50:5078-9.

<sup>22</sup> *Parliamentary Debates* 27,50:5074.

the previous monopoly,<sup>23</sup> and found no technical justification for restrictions on signal transmission or broadcasting especially in regard to cable or satellite services.<sup>24</sup> After MDC denunciation of their political tactics and abuse of the rules, Zanu-PF members (summonsed to Parliament by ZBC announcements) passed the Broadcasting Services Act on a division. Describing the bill as unconstitutional, undemocratic and later proposing two dozen amendments, MDC MPs tried in vain to defer the debate in order to consult media industry stakeholders, 18<sup>25</sup> of whom had signed a petition to Parliament.<sup>26</sup> The consensus among media and civic activists is that this legislation will require extensive overhaul to comply with existing Constitutional freedoms of expression and communication.

The Labour Relations Amendment Bill (HB 21/2000) was denounced by both the opposition MDC and by the Zimbabwe Confederation of Trade Unions (ZCTU), on behalf of its 197 000 registered members. The ZCTU threatened a national stayaway if the bill was passed. Munyaradzi Gwisai (MDC, Highfield) drew specific attention to the harm done to farm-workers by ‘fast-track’ land resettlement.<sup>27</sup> His motion to amend the bill was adopted. While dropping the previous draconian proposals against the *leaders* of collective industrial and/or anti-Government action, the bill as initially amended still proposed to give the responsible minister the power to de-register the *organisations* involved. The requirement for a majority vote before any strike action was reportedly condemned by the Public Service Association (PSA) as contrary to ILO regulations.<sup>28</sup> The ZCTU also demanded an unqualified right to strike in accordance with ILO conventions. Sections 3 and 12 of the new bill were rejected by the PLC as contravening workers’ constitutional rights to freedom of association and assembly. In the absence of both other members, the PLC chair, Eddison Zvobgo, tried to withdraw their adverse report, but the motion was defeated and the issue adjourned.<sup>29</sup> It will be discussed again in the current session of Parliament.

When Parliament rejects a SI, the President ‘shall forthwith’ gazette its repeal. Among the SIs rejected were some sponsored by the State President using his Presidential Powers (Temporary Measures) Act, such as SI 222E/1999 (Capital Gains Withholding Tax) Regulations. Most of Zanu-PF’s dissenting MPs who voted this measure down subsequently lost their seats in Parliament, either through the preliminary selection processes within the party (its ‘primaries’) or by defeat in the election itself.

However, Parliament has not objected to other presidential SIs which have later been struck down as unconstitutional by the Supreme Court. They include SI 318/2000, by which the President purported to cancel the MDC’s electoral challenges in 38 constituencies, and 148A/2000,

---

<sup>23</sup> Justice minister Patrick Chinamasa accused the PLC of wrongly ‘failing to distinguish what are constitutional matters and what are matters of policy with which they do not agree’. He averred that s20(2)(b)(iv) of the Constitution, in allowing for its regulation, clearly permits ‘any monopoly’ in the fields of broadcasting or television, and that the Supreme Court had ‘no right to change a constitution’ in striking down that monopoly (*Parliamentary Debates* 27,60:6273).

<sup>24</sup> *Parliamentary Debates* 27,50:5066-80.

<sup>25</sup> Dismissed by one Zanu-PF MP as ‘merely a variation of the same group that is the same members of the NCA, MMPZ etc’ (*Parliamentary Debates* 27,60:6437).

<sup>26</sup> *Parliamentary Debates* 27,60:6223, 6333.

<sup>27</sup> *Parliamentary Debates* 27,41:4217, 4228-9.

<sup>28</sup> *The Herald* 12.3.01.

<sup>29</sup> *Parliamentary Debates* 27,69:7269-87.

purporting to alter the Land Acquisition Act. SI 255A/2000 (Broadcasting) Regulations, like the bill which repeated most of them, received a negative report from the PLC, on which the Speaker ruled that there would be no discussion because it had been received late.

### **Parliament's Portfolio Committees**

Zimbabwe's fifth Parliament created portfolio committees, comprising MPs from both sides of the House, to monitor each and every ministry. On the whole, these committees have discomfited the ruling party, particularly in a report criticising fast-track land resettlement, but their valuable work has been accepted.

However, the exception was the second report of the Parliamentary portfolio committee on lands, agriculture, rural resources, water development and resettlement. It indicted Minister of Rural Resources and Water Development, Joyce Mujuru, on flouting procedures for a DDF tender which prejudiced the State of approximately US\$1 million.<sup>30</sup> Claiming Cabinet authorisation, which she alleged made Tender Board approval irrelevant, and that the contract had been signed by 'the Head of State' and finance ministry officials, Minister Mujuru told Parliament it had not been told 'the whole truth' in this report. Following an adjournment, MPs were reminded by the Deputy Speaker that the report was to be *noted*, not adopted, and to the horror of the committee, its Zanu-PF chairman withdrew it. The opposition threatened legal action against the minister.

### **Subordinate legislation**

Subordinate legislation comes in the form of Statutory Instruments (SIs). Every year a few hundred of these are gazetted into law. These are usually the preserve of Cabinet Ministers and are used to pass regulations provided for in various statutes.

In Zimbabwe, however, the State President has, since 1986, personally intervened in the law-making process by issuing SIs (which go beyond his ceremonial functions) under his own name. These are analysed in Chapter 3 (see pages 19-21).

### **Members of Parliament**

From the June 2000 elections, Zanu-PF had 62 elected Members of Parliament. Fifteen of them (24,2%) were named<sup>31</sup> as having been directly and personally implicated in political violence during their election campaigns. They were:

- David Chapfika (Mutoko North),
- Shadreck Chipanga (Makoni East),
- Chen Chimutengwende (Mazowe East),
- Nobbie Dzinzi (Muzarabani),
- Border Gezi (Bindura - deceased),
- Nicholas Goche (Shamva),
- Joram Gumbo (Mberengwa West),
- Chenjerai Hunzvi (Chikomba - deceased),

<sup>30</sup> *Parliamentary Debates* 27,67:7034-7135.

<sup>31</sup> By their victims, who have given statements to the Zimbabwe Human Rights NGO Forum. See *Who was responsible? Alleged perpetrators and their crimes during the 2000 Parliamentary Election period.*

Saviour Kasukuwere (Mt Darwin South),  
 Ray Kaukonde (Mudzi),  
 Christopher Kuruneri (Mazowe West),  
 Marko Madiro (Hurungwe West),  
 Joel B Matiza (Murehwa South),  
 Joyce Mujuru (Mt Darwin North),  
 Herbert Murerwa (Goromonzi).

The questions must at least be raised as to whether the ‘Mckenzie’ named as causing violence in Mudzi may be related to Isaac MacKenzie (Zanu-PF, Kariba); and whether ‘Victor Chitungo’, similarly named in Murehwa North, may not be a spelling error for Oswald Victor Chitungo (Zanu-PF, Murehwa North).

Four election results were also overturned by High Court judges, in part because of electoral violence. The Zanu-PF MPs involved in these cases are: Elliot Chauke (Chiredzi North), Kenneth Manyonda (Buhera North), Rueben Marumahoko (Hurungwe East) and Olivia Muchena (Mutoko South). They have all appealed to the Supreme Court against the High Court judgments. The challenge to the electoral success of the late Moven Mahachi (Makoni West), together with those of Gezi and Hunzvi, were halted by their deaths. But in all three constituencies, the sitting MPs were reported to have been personally involved in the violence.

If all seven additional cases were included, the figure for Zanu-PF’s *elected* MPs known to have been personally involved in the violence would go up to 35,5%. And that figure *excludes* Presidential appointees to Parliament, one of whom was also named.

Two other unsuccessful Zanu-PF candidates were also listed, Gladys Hokoyo (Budiriro) and Sabina Themhani (Mufakose), together with former MP Josphat Shumba.

So one-third of the ruling party’s MPs elected in June 2000 were themselves implicated in violent and illegal acts *during the electoral process*. This proportion does not include another dozen cases withdrawn from the courts, including another four in which those elected were reportedly implicated, two in which opposition candidates had to flee their constituencies, one in which an opposition candidate was murdered, and three in which attempts were made to kill candidates. Nor does it include the inter-tribal clashes between Karanga and Shangane in Jeka village in which a policeman was seriously injured, which were allegedly incited by the re-elected Zanu-PF MP for Chiredzi South, Aaron Baloyi, bailed for Z\$1 000 for his alleged role in such incitement in 1999.<sup>32</sup> If all of these were to be included, well over half of Zanu-PF’s law-makers could be said to have been implicated in violence during the electoral process.

What an example for Zimbabwean ‘democracy’ just after the country celebrated its twentieth birthday.

And it got worse. Television footage<sup>33</sup> recorded Phillip Chiyangwa (Zanu-PF, Chinhoyi) inciting party youths during the August 2001 mayhem on commercial farms in his constituency.

<sup>32</sup> *The Herald* 27.3.00. The MDC’s appeal against Baloyi’s re-election was rejected by Justice Ziyambi.

<sup>33</sup> Shot by ZTV, but screened on BBC Channel 4 (*The Standard* 9.9.01).

*‘Mukabata veMDC rovayi kudzamara vafa. Mapurazi nedzimba dzevashandi pisai mokasika kutiza tozoti varungu vapisa misha yevasevenzi vavo. Mhanyai munomhangara kumapurisa nekuti ndevedu.’*

(If you get hold of MDC supporters, beat them until they are dead. Burn their farms and their workers’ houses, then run away fast and we will then blame the burning of the workers’ houses on the whites. Report to the police, because they are ours.)

A Zimbabwean resident in the UK noted that ‘Phillip Chiyangwa showed UK residents the true picture of Mugabe’s regime.’ What the Attorney-General’s Office and the police may do about this flagrant abuse of many laws by an MP remains to be seen. Chiyangwa is an equally outspoken champion of indigenous economic ‘empowerment’.

## CHAPTER 3

### ENFORCING THE RULE OF LAW: THE EXECUTIVE

The ‘Executive’ is defined by the Constitution of Zimbabwe as comprising the State President, Vice-Presidents, Cabinet Ministers, Deputy Ministers and the Ombudsman’s Office. The Public Service, the Police Force, the Defence Forces and the Prison Service are, of course, also part of the executive that administers the State. So, arguably, are the corruption-ridden state-owned corporations. However, there exists some uncertainty as to their appropriate classification even prior to the parastatals’ ‘privatisation’ and they will not be considered here.

The Public Service includes the Attorney-General’s Office and all court personnel other than judges - but including magistrates - as part of the Ministry of Justice, Legal and Parliamentary Affairs. The functions of the Messenger of Court and Deputy Sheriff are contracted out to private enterprises.

#### The State Presidency

Initially Zimbabwe had a bicameral legislature and a titular State President. In 1987, the Zanu-PF-dominated Parliament voted to abolish the Senate and switch to an executive Presidency.

As defined by the Constitution, the executive State President must be a citizen of Zimbabwe by birth or descent, at least 40 years old, and ‘ordinarily resident’ in the country. The presidential term of office ‘shall be a period of six years: provided that – (1) the President shall continue in office until the person elected as President at the next election of president assumes office’ (s29(1)). The Constitution is completely silent on whether a serving President may stand for office more than once, following the repeal in 1990 of s29(1)(ii) which limited tenure to two terms. Incumbents are prohibited from holding ‘directly or indirectly ... any public office or any paid office in the employment of any person’, a prohibition which extends to any recipient of a state pension after leaving the Presidency (s31B).

Presidential functions are specified in the Constitution of Zimbabwe (s31H-J). The incumbent is required to ‘uphold this Constitution and *ensure that the provisions of this Constitution and of all other laws in force in Zimbabwe are faithfully executed*’ (s31H(2)). Together with ‘such prerogative powers as were exercisable’ prior to Independence on 18 April 1980, the President has ‘such powers as are conferred on him by this Constitution or by or under any Act of Parliament or other law or convention’ (s31H(3)). His constitutional authority, which contains a marked element of personal patronage, includes:

- accrediting diplomats;
- entering into international treaties, conventions and agreements;
- proclaiming and terminating martial law;
- declaring war and peace;
- conferring honours and precedence;
- proroguing and dissolving Parliament;
- appointing and removing Cabinet Ministers, deputy ministers and provincial governors;
- assigning ministerial functions;
- selecting Vice-Presidents;

appointing (ceremonially, after required consultations) not only elected Parliamentarians but other state officials (including judges, heads of the uniformed services, various Board members, permanent secretaries in the Public Service, and many others);  
 exercising the prerogative of mercy;  
 declaring a public emergency in part or all of the country (which is subject to Parliamentary resolve and within 14 days requires its approval to be maintained, although 30 days is allowed if Parliament is not sitting).

While in office, the President of Zimbabwe is not ‘personally liable to any civil or criminal proceedings whatsoever in any court’ (s30). However, *the Supreme Court ruled that the incumbent is liable in her or his official capacity to legal proceedings*, and gave President Mugabe 20 days to respond to the demand made by Zimbabwe Lawyers for Human Rights (ZLHR) and the Legal Resources Foundation (LRF)<sup>34</sup> that he release the Dumbutshena and Chihambakwe reports into disturbances in Matabeleland between 1981 and 1985. ‘There has always been speculation that the reports do not support the government’s position that the violence was justified’.<sup>35</sup> The State President notified his intent to oppose publication. Shortly thereafter, the only extant copy of the Dumbutshena Report was reported to have been removed from the National Archives by the CIO,<sup>36</sup> which is located in the Office of the President and Cabinet.

In provisions that do nothing to strengthen and arguably weaken the rule of law in Zimbabwe, the President is *absolutely* protected from legal scrutiny of her or his decision-making by s31K, introduced in 1987 ahead of the switch to an executive presidency:

24 Where the President is required or permitted by this Constitution or any other law to act on his own deliberate judgement, a court shall not, in any case, enquire into any of the following questions or matters –

- (a) whether any advice or recommendation was tendered to the President or acted on by him; or
- (b) whether any consultation took place in connection with the performance of the act; or
- (c) the nature of any advice or recommendation tendered to the President; or
- (d) the manner in which the President has exercised his discretion.

25 Where the President is required or permitted by this Constitution or any other law to act on the advice or recommendation of or after any consultation with any person or authority, a court shall not, in any case, enquire into any of the following questions or matters –

- (a) the nature of any advice or recommendation tendered to the President; or
- (b) the manner in which the President has exercised his discretion.

Since Robert Mugabe defeated Edgar Tekere in the first election<sup>37</sup> for an executive State President in 1990, there has been growing disaffection with his performance, particularly the way in which he has used Presidential authority.

<sup>34</sup> Supported also by ZimRights (*The Daily News* 8.3.00).

<sup>35</sup> *The Daily News* 22.2.00.

<sup>36</sup> ZI 14.4.00.

<sup>37</sup> In 1987, MPs ‘elected’ the first executive President (Robert Mugabe) for the remainder (three years) of the five-year term due to retiring President Banana.

## Has the State President upheld the rule of law and existing laws?

The short answer is, only when it has suited him to do so. On other occasions he has either ignored specific laws, or used them in ways that subvert, if not overturn, the rule of law. In particular, ZTV has telecast President Robert Gabriel Mugabe delivering a number of public ‘hate speeches’ inciting violence and killing, for none of which has he been arraigned. In March 2000 he stated that: ‘Those who try to cause disunity among our people must watch out because death will befall them.’<sup>38</sup> In December 2000 he told the ZANU-PF congress ‘we must continue to strike fear into the heart of the white man, our real enemy.’ His audience chanted *hondo* (war).<sup>39</sup> He threatened white farmers with ‘very, very, very severe violence’ if any action was taken against anyone invading their farms,<sup>40</sup> describing them as ‘traitors’ and white Zimbabweans generally as ‘enemies of the state’.<sup>41</sup> He was later reported<sup>42</sup> to have denied that he had used these words, which appear to breach both the Constitution (s23) and the Prevention of Discrimination Act (s6), complaining that ‘the world is being deceived into believing that a villainous black government is victimising the white people in Zimbabwe.’<sup>43</sup>

### ‘6 Making or communication of racial statement

- (1) No person shall make or knowingly communicate a statement based on racial superiority or hatred if there is a substantial risk that the statement may adversely affect the reputations, rights and freedoms of other persons in Zimbabwe.
- (2) No person shall make any statement or do any thing which is reasonably likely to incite or encourage discrimination, in contravention of this Act, against any other person or class of persons on the ground of race, tribe, nationality, place of origin, national or ethnic origin, colour, creed or gender.
- (3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding ten thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.’

The Public Order and Security Act also intended to prevent such language.

### ‘26 Statements encouraging violence

Any person who makes a statement or communicates to another person a statement made by someone else –

- (a) intending by his conduct to imply that it would be incumbent or desirable to do any unlawful act likely to bring death or physical injury to any person or class of persons; or
- (b) realising that there is a substantial risk that his conduct will have the implication referred to in paragraph (a);

shall be guilty of an offence and liable to a fine not exceeding twenty-five thousand dollars or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.’

<sup>38</sup> *The Daily News* 17 March 2001.

<sup>39</sup> *The Zimbabwe Independent* 15.12.00; *Financial Gazette* 14.12.00.

<sup>40</sup> *The Daily News* 29.3.00.

<sup>41</sup> *The Financial Gazette* 20.4.00.

<sup>42</sup> *The Herald* 20.4.00.

<sup>43</sup> *The Zimbabwe Independent* 15.6.01

However, President Mugabe *refused* to sign POSA into law, after he had granted war veterans the financial package which was the first policy step in wrecking the Zimbabwean economy and *after Parliament had passed it* in 1998. He preferred to retain the colonial LOMA. Already the Supreme Court has struck down as infringing our constitutional rights s50(2)(a) of LOMA, which had been omitted from POSA. Sections 30(1), 44(1)(a) 51(2) and 58 of LOMA are also being challenged as unconstitutional.

Mugabe has used two specific legal instruments to achieve his own objectives: his Constitutional prerogative of mercy; and his own Presidential Powers (Temporary Measures) Act (PP(TM)A) (cap 10:20), passed in 1986 in anticipation of an executive presidency and used only four times by the outgoing president, presumably on the advice of Robert Mugabe as Prime Minister. The very first of these uses set an unfortunate example for the rule of law. SI 151B/1986 varied the time margins for electoral Nomination Courts. The second (SI 1998/1986) was used to order all property owners in Harare to clean up and paint their premises before the State Visit of Queen Elizabeth II! It set a precedent for two later ones making similar orders ahead of international meetings. In late 1987, the fourth and last dissolved all of the district councils in Matabeleland North province (SI 279A/1987).

Up to mid-2001, Mugabe had used his Presidential Powers (Temporary Measures) Act 32 times to promulgate subordinate legislation. Not infrequently, their use has been to pull bureaucratic chestnuts out of the fire when something has been overlooked, particularly regarding elections of various kinds. Some have corrected others!

However, six at least have *not* upheld *either* the rule of law *or* specific laws and court decisions, including two patronal ones, *SI 176A/1993, which nullified a specific High Court eviction order*, and SI 148/1994, which allowed the permanent secretary for Justice, Legal and Parliamentary Affairs to forbid sales in execution of private homes.<sup>44</sup> SI 368B/1998 achieved deserved notoriety, for amending regulations defining ‘unlawful collective action’ under the Labour Relations Act. So did SI 240B/1999, amending regulations under the Prisons Act *retrospectively* to confer powers on warders *after* a Supreme Court judgment had enforced remand prisoners’ rights. SI 153A/2001 similarly applied retrospective validation, this time to actions involving land designation taken over a year previously – and Parliament passed a similar inclusion in the Land Acquisition Amendment Act. Together with SI 255A/2000 and the Broadcasting Services Act (for which SI 255A/2000 formed the basis), both changes to the land legislation were deemed unconstitutional by the Parliamentary Legal Committee.

Robert Mugabe, as State President, has also legislated extensively through Statutory Instruments, using a wide range of statutes, as shown in detail in Appendices 4 and 5. In a total of 450 legislative interventions (excluding the purely ceremonial), many other presidential uses of subordinate legislation have combined patronage with ceremonial functions. Robert Mugabe has personally declared all National Heroes (at national, provincial and district levels) using SIs under the National Heroes Act. He has personally used the Privileges Act to extend diplomatic and financial privileges to a wide range of organisations, including the African Centre for Fertiliser Development (in addition to more obviously deserving beneficiaries such as the

---

<sup>44</sup> It is unclear whether these provisions were formalised more permanently. In August 2001, the Sheriff of the High Court was reported to have instructed that sales in execution of 39 homes be stopped, including one belonging to former minister Enos Chikowore (*The Daily News* 5.9.01).

UNFPA and the PTA Clearing House), and the Unlawful Organisations Act to lift restrictions on a specific company (Walmer Ranching). He has chartered all new tertiary educational institutions, in addition to largely ceremonial uses of the Constitution and the Commissions of Inquiry, Flag of Zimbabwe, Honours and Awards, and Public Holidays Acts. Among numerous other and perhaps less expected statutes he has used have been the Civil Protection, Control of Goods, Customs and Excise, Electoral, Emergency Powers,<sup>45</sup> Exchange Control, Income Tax, Law and Order (Maintenance), Magistrates Court, Parliamentary Salaries and Benefits, Rural District Councils, Rural Councils, Urban Councils and Water Acts. His statutory interventions in local government comprise over 42% of the total.

**Table 3.1. Frequency of presidential use of subordinate legislation under statutes**

<b>Act</b>	<b>N used</b>	<b>%</b>
Civil Protection	7	1.6
Commissions of Inquiry	12	2.7
Communal Land	4	0.9
Constitution	23	5.1
Control of Goods	26	5.8
Customs and Excise	14	3.1
Electoral	64	14.2
Emergency Powers	14	3.1
Honours and Awards	6	1.3
Income Tax	21	4.7
Legal Assistance etc	2	0.4
Magistrates Court	4	0.9
Mines and Minerals	2	0.4
National Heroes	8	1.8
National Council for Higher Education	3	0.7
Parliamentary Salaries and Benefits	20	4.4
Presidential Pension	3	0.7
Privileges etc	5	1.1
Provincial Councils	2	0.4
Public Holidays	3	0.7
Rural Councils	6	1.3
Rural District Councils	125	27.8
Urban Councils	58	12.9
Water	4	0.9
Other (used once each)	14	3.1
<b>Total</b>	<b>450</b>	<b>100.0</b>

As would be expected in such heavy use of Statutory Instruments, there have been errors and, more worrying, illegalities. SI 191/1998, altering regulations under which the Reserve Bank of Zimbabwe may intervene to stabilise fluctuations in the exchange rate, was issued under the Emergency Powers Act, when the state of emergency had finally expired on 25 July 1990. Presumably – unless the change was intended to be invalid – the Act used should have been the PP(TM)A. The PP(TM)A itself makes no provision for use by anyone other than the State President, but in 1993 two well-respected Cabinet ministers, Bernard Chidzero and Dennis Norman, appended their signatures to General Notices (516A and 568B) using it in order to get commuter omnibuses on the roads quickly.

<sup>45</sup> Nine of his total of 14 uses of the Emergency Powers Act were to control rents and/or prices.

On the land issue, using his presidential ownership of all communal land inherited from the colonial settler regime, Mugabe has four times issued SIs under the Communal Land Act to excise tens of thousands of hectares from nearly 50 communal lands, including 20 ha from his own home area of Zvimba, 97 ha from Semukwe, and 11 840 ha from Makoni, Manyika and Mutasa South communal lands. He has also used the Forests and National Parks and Wild Life Acts to alter boundaries, for equally unspecified reasons, of the Gwaai Forest Reserve and the Rhodes Nyanga National Park.

Mugabe has been widely quoted in the press,

‘warn[ing] judges not to interfere [specifically with the Government’s determination to acquire land] as “this is a political and not a legal issue... The land issue is not for the courts. It seems the judges did not hear me clearly on this one... We will take the land in a political struggle. If the courts want compensation then they should go to Britain... If the technicalities continue to hamper the process, I together with Vice-Presidents ... will do it on our own”.’<sup>46</sup>

‘The courts can do whatever they want, but no judicial decision will stand in our way. My own position is that we should not even be defending our position in the courts. We cannot ... brook interference or court impediment to the land acquisition programme’.<sup>47</sup>

Chenjerai Hunzvi reportedly told the High Court that the State President actually controlled those occupying the farms and that he himself was not in a position to ‘challenge’ the president. After two High Court rulings, Acting President Msika ordered the invaders to be removed. The State President cancelled this order on his return from abroad. As Minister of Home Affairs, Dumiso Dabengwa’s instructions to the farm invaders to vacate were ignored and countermanded by Mugabe. Dabengwa publicly washed his hands of responsibility. Even one of the President’s strong supporters was quoted as saying ‘The President has seriously undermined the rule of law’.<sup>48</sup>

The Land Acquisition Amendment Act (LAAA) was originally passed, after the fourth Parliament had been prorogued, by Robert Mugabe using his Presidential Powers (Temporary Measures) Act. The Commercial Farmers’ Union sought to have the Presidential Powers (Temporary Measures) Act itself struck down as unconstitutional before the LAAA passed through Parliament, but later withdrew its court action. The constitutionality of the PP(TM)A revolves around whether or not Parliament breached its own constitution role of law-making in devolving such powers to the executive president.

The prerogative of mercy is another area in which Robert Mugabe has bent the law to his own purposes. He has exercised clemency five times since becoming executive President in 1987 (see Table 3.2), though a General Notice does not appear to have been gazetted for the last, in 2001.

---

<sup>46</sup> *The Sunday Mail* 28.1.01.

<sup>47</sup> *The Financial Gazette* 14.12.00; *Zimbabwe Independent* 15.12.00.

<sup>48</sup> *The Financial Gazette* 16.3.00.

**Table 3.2. The exercise of presidential clemency.**

1990	GN424A	General amnesty, repeating GN257A/88 and Security Forces, infanticide offenders, 'politicals'
1993	GN111C	General amnesty for pre-31.3.1980 lifers and >12-months-to-serve prisoners
1996	GN362A	General amnesty for pre-31.1.81 lifers, infanticide offenders, 'determinate sentences'
2000	GN457A	General amnesty for politically-motivated crimes (liability pardon and remission of sentences)
2001	GN ?	(some 7 000 prisoners were released)

In 1988, following the Unity Accord, *Vice-President Muzenda* amnestied 'dissidents', 'collaborators' and members of ZAPU (General Notice 257A of 1988). When Mugabe repeated this amnesty two years later, he also included the State's uniformed forces, who had been responsible for the *Gukurahundi* in Matabeleland and the Midlands from 1982-7, as well as 'political' prisoners – mainly belonging to Zanu-PF – imprisoned for political violence, including the man who tried to murder and permanently disabled Patrick Kombayi. He later pardoned those party members serving 'determinate sentences' who had acted corruptly and had been found guilty by courts of law. Frederick Shava was saved from jail for buying new cars without paying sales tax, and then selling them well above the maximum price allowed by Zanu-PF's own price control law.

But of all his personal pardons, GN 457A/2000 most angered ordinary Zimbabweans. On 6 October 2000<sup>49</sup> the President amnestied those involved in political violence from the beginning of January to the end of July that year, covering both the Constitutional Referendum and the General Election but reportedly declining to include members of ZAPU imprisoned for some 15 years on similar charges.<sup>50</sup> Zanu-PF confirmed its Politburo and Cabinet had decided to apply.<sup>51</sup> A list of those pardoned was promised but never appeared, and the responsible minister was not available to answer a Parliamentary question to name all applicants.<sup>52</sup> Government said the amnesty responded to requests from *all* political parties, which was denied by the MDC. In fact, as numerous publications have recorded, Zanu-PF was responsible for the vast majority of violations, while the opposition parties were overwhelmingly victimised. Those responsible for murder, rape, theft, fraud and possession of arms were **not** pardoned, but many killers had their torture charges dropped and other torturers, who had not actually killed their victims, went free. Some 1 300 people were thought to be affected, but Home Affairs Minister John Nkomo noted that only 750 court cases would be withdrawn. In late November the Minister of Justice, Legal and Parliamentary Affairs listed only 111 arrested individuals as having been released (87 for public violence, 17 for assault, four for property damage, two for kidnapping and one on firearms offences). He gave no figures for those 'awaiting prosecution'<sup>53</sup> but confirmed that Government would not compensate anyone for any act pardoned.<sup>54</sup>

What was described by the National Constitutional Assembly and MDC as the President's disgusting abuse of his constitutional power of clemency to condone political thuggery by his own party, outraged Zimbabweans and foreigners alike. Among those who condemned the 2000

<sup>49</sup> This amnesty came less than three weeks before the MDC's Parliamentary motion to impeach President Mugabe.

<sup>50</sup> *The Financial Gazette* 19.10.00.

<sup>51</sup> *The Zimbabwe Independent* 13.10.00, 3.11.00.

<sup>52</sup> *The Daily News* 12.10.00; *Parliamentary Debates* 27,32:3076.

<sup>53</sup> *The Daily News* 16.10.00; *Parliamentary Debates* 27,31:3088.

<sup>54</sup> *Parliamentary Debates* 27,30:3086.

clemency order were Amnesty International, the USA, the UK Bar Human Rights Committee, the Commercial Farmers' Union, the *Daily News*, the Catholic Commission for Justice and Peace in Zimbabwe, a Methodist congregation, and many individuals. A delegation of human rights activists and victims of the amnestied abusers protested in person to the Geneva office of the UN High Commission for Human Rights. The MDC interpreted it as 'an admission that acts of violence, intimidation, murder, rape, etcetera took place ... that there was and still there is a breakdown of law and order'.<sup>55</sup>

On 8 December 2000, a week before the Zanu-PF congress but **after** the legal process had begun, President Mugabe attempted to cancel, under the Electoral Act s158,<sup>56</sup> all the MDC's legal challenges to the June 2000 election results. His action was described by Sternford Moyo, President of the Law Society of Zimbabwe, as 'a surprising and blatant disdain for the fundamental principles of natural justice'.<sup>57</sup> ZimRights chided the executive publicly for not upholding the rule of law. The MDC entered an urgent plea to the Supreme Court to have SI 318/2000 declared unconstitutional. The State defended the President's statutory instrument. The Supreme Court ruled he had acted unconstitutionally and the challenges went ahead. A week later, the Chief Justice, who like other judges is 'appointed by the State President after consultation with the Judicial Service Commission',<sup>58</sup> was forced into early retirement. Supreme Court judges were harassed.

Among the various ways in which the executive, including the State President, has abrogated the rule of law, is by failing to act against administrative, financial and political corruption. Greater accountability in the use of public funds was encouraged by Justice Chinhengo, who dismissed the Chief Immigration Officer's claim for defamation damages on the grounds that the public has an interest in and right to know about 'goings-on in a department funded from public coffers'.<sup>59</sup> On the first day of his trial, in pleading not guilty to corruption charges which he was later required to defend, former minister Kumbirai Kangai reportedly told Justice Hungwe that his actions had the approval of President Mugabe and the Cabinet.<sup>60</sup> Joyce Mujuru told Parliament that her flouting of normal tender procedures for a DDF contract which prejudiced the State of approximately US\$1 million had Cabinet authorisation which rendered Tender Board approval irrelevant, and that the contract had been signed by 'the Head of State' and finance ministry officials.<sup>61</sup>

It has frequently been alleged that corruption cannot flourish to the extent it has in Zimbabwe without at least tacit approval from the top. In this respect, it is important to note that the Central Intelligence Agency is located in the Office of the President and Cabinet. This Office draws its funds – over Z\$1,6 billion in 2001 - from the Consolidated Revenue Fund (CRF). However, in apparent contradiction of Constitutional safeguards governing the uses and accounting for use of funds from the CRF, these funds are exempt from audit by the Comptroller and Auditor-General.

<sup>55</sup> *Parliamentary Debates* 27,23:2336.

<sup>56</sup> SI 318/2000, Electoral Act (Modification) (No 3) Notice 2000 (Regulations) again used avoided advance Parliamentary scrutiny, although it was *not* issued under the Presidential Powers (Temporary Measures) Act.

<sup>57</sup> *The Daily News* 12.12.00.

<sup>58</sup> Constitution of Zimbabwe, s84(1).

<sup>59</sup> *The Herald* 9.2.01.

<sup>60</sup> *The Daily News* 23.5.01.

<sup>61</sup> *Parliamentary Debates* 27,67:7034-7135.

There may also be a class dimension involving political patronage in the relationship between the police and the ruling party, and more specifically the State President. The ZRP Commissioner was reported to have consulted President Mugabe about cabinet members implicated in various corruption scandals being investigated by the police, including Vice-President Simon Muzenda and Phillip Chiyangwa who were implicated in the NOCZANU-PFM scandals. In contrast, as ‘war veterans’ invaded urban companies, over 20 ‘small fish’ were charged with kidnapping and extortion.<sup>62</sup> Government’s failure to target Zanu-PF office-bearers was reportedly condemned by Mike Moyo who was released without charge after spending the best part of a week in illegal police detention.<sup>63</sup> There have been other inferences of corruption involving the State President, including in the tender for Harare’s new international airport terminal. Most recently, it was reported that the three prefabricated houses which President Mugabe commissioned in Kambuzuma on 22 August 2001, had been constructed without city council planning approval. Nor were they connected to the sewer and water reticulation networks.<sup>64</sup> Government did not address those allegations in a blustering reply which appeared to be predicated on the assumption that everything Government does is by definition legal.

“The housing project commissioned by President Mugabe was done legally on Government land. How can the construction of structures by the Government on Government property be considered to be illegal?”<sup>65</sup>

## The Cabinet

In the Rural District Councils Act, there are apparently ‘at least 258 instances where the Minister and/or the President can intervene in the running of the RDCS’.<sup>66</sup> As Appendix 5 shows, the President has intervened 131 times in rural local government. In at least one case of ministerial instruction to urban councils, the appointed Harare interim administration was reportedly told by Ignatius Chombo:

“You have to provide 30 000 stands to people on the housing waiting list before the end of the year [2001]. If the Council does not have any land, Government will be happy to provide it... We are all under a lot of pressure to deliver. Government is under pressure from the general population.”<sup>67</sup>

He was further reported to have ‘urged the commissioners to make the stands available before the end of the year to avoid being accused of campaigning for next year’s Presidential elections’, presumably in order to avoid any more accusations of illegal vote-buying.

The composition of Zimbabwe’s cabinet in September 2001 is shown in Table 3.3.

---

<sup>62</sup> There was some speculation that these funds might replenish Zanu-PF’s depleted coffers (*The Financial Gazette* 19.7.01; *The Herald* 19.5.01). Hunzvi’s followers intervened in hundreds of labour disputes, apparently targeting successful exporters, and reportedly extorted seven-figure sums on which the recipients paid variable commissions to the ‘war vets’. Farmers were reported to have been fleeced of half a billion dollars as protection fees to prevent their properties from being occupied, or to have them delisted.

<sup>63</sup> *The Zimbabwe Independent* 24.5.01.

<sup>64</sup> *The Daily News* 4.9.01.

<sup>65</sup> *The Herald* 5.9.01.

<sup>66</sup> *Parliamentary Debates* 27,63:6692.

<sup>67</sup> *The Herald* 5.9.01.

**Table 3.3. Zimbabwe's cabinet as at September 2001.**

<b>Ministry</b>	<b>Minister</b>	<b>Deputy</b>
Defence	S. Sekeremayi	
Education, Sport and Culture	A. Chigwedere	I. Shumba
Environment and Tourism	F. Nhema	
Finance and Economic Development	S. Makoni*	C. Kuruneri
Foreign Affairs	S. Mudenge	A. Ncube
Health and Child Welfare	T. Stamps*	D. Parirenyatwa
Higher Education and Technology	S. Mumbengegwi	
Home Affairs	J. Nkomo*	R. Gumbo
Industry and International Trade	H. Murerwa	
Justice, Legal and Parliamentary Affairs	P. Chinamasa*	P. Mangwana
Lands, Agriculture and Rural Resettlement	J. Made*	
Local Government, Public Works and National Housing	I. Chombo	K. Mohadi
Mines and Energy	E. Chindori-Chininga	
Public Service, Labour and Social Welfare	July Moyo*	K. Manyonda
Rural Resources and Water Development	J. Mujuru	
Transport and Communications	S. Mombeshora	C. Mushowe
Youth Development, Gender and Employment Creation	E. Manyika	S. Mahofa
PO: Information and Publicity	Jonathan Moyo*	
PO: State and National Security	N. Goche	
PO: Informal Sector	S. Nyoni*	
PO (V-P Msika)	O. Muchena	
PO (V-P Muzenda)	F. Bhuka	
Deputy Presidents	S. Muzenda, J. Msika	
Attorney-General	Andrew Chigovera	

\* Non-constituency MP appointed by State President

Among Zanu-PF's sitting or former MPs directly and personally implicated in the political violence were nine members or former members of the executive.<sup>68</sup> They included one provincial governor and seven Cabinet ministers, deputy ministers or former ministers, listed below:

Chen Chimutengwende (Minister of Information in the previous government),  
 Tony Gara (formerly deputy minister of Local Government and National Housing),  
 Border Gezi (deceased Minister of Youth Development, Gender and Employment Creation),  
 Nicholas Goche (Minister of State Security),  
 David Karimanzira (Provincial Governor, Mashonaland East),  
 Christopher Kuruneri (deputy minister of Finance and Economic Development),  
 Joyce Mujuru (Minister of Rural Resources and Water Development),

<sup>68</sup> See *Who was Responsible?* and *The Daily News* 31.8.019 (reporting on this report). In its attempted refutation of this report, even *The Herald* (1.9.01) did not attempt to suggest that the named individuals had not been involved.

Herbert Murerwa (previously minister of Finance, and of Higher Education and Technology, and now of Industry and International Trade).

Defence Minister Moven Mahachi (deceased) reportedly told a crowd on 2 June 2000 that ‘we will move door to door, killing like we did to Chiminya. I am the minister responsible for defence therefore I am capable of killing.’<sup>69</sup> Former minister Didymus Mutasa reportedly warned civil servants in Chimanimani that they risked being shot dead if they supported the MDC.<sup>70</sup>

Foreign Minister Stan Mudenge reportedly told staff and students at Masvingo Teachers Training College: “You are going to lose your jobs if you support opposition political parties in the presidential election. You can even be killed for supporting the opposition and no one would guarantee your safety.”<sup>71</sup>

While still Governor of Mashonaland Central province, Border Gezi warned opposition parties that ‘Zanu-PF is well known for spilling blood’.<sup>72</sup> One newspaper ‘understood the late Zanu-PF political commissar Border Gezi was personally involved in establishing the Zanu-PF committee whose activities generated the current chaos pervading the industrial and commercial sectors’.<sup>73</sup>

Provincial Governor Josaya Hungwe was quoted as telling people ahead of the Masvingo mayoral election, ‘If you do not vote for Zanu-PF in the coming mayoral election people are going to be killed. I want to tell you that someone is going to die.’<sup>74</sup> In May 2000, Hungwe had threatened white commercial farmers with war if they did not vote for the ruling party. “We do not want another war. If you want peace you should support me and the ruling party . . . If you want trouble vote for another party.”<sup>75</sup>

The Government Tender Board chair was reportedly instructed by the Deputy Minister of Finance and Economic Development to direct the PTC to open a tender previously closed to Japanese firm Itochu. A truckload of tender documents, including Itochu’s, for the Z\$5 billion digitalisation of telecommunications in Manicaland and Mashonaland, simply disappeared three years after being submitted. Although four officials were prosecuted, a full report was still awaited by mid-year and Japan as donor expressed serious concern about Zimbabwe’s international credibility before reportedly cancelling its funding.<sup>76</sup> Further questions were raised over the award of a PTC fibre-optic cabling contract reportedly without going through normal tender procedures and after Vice-Presidential intervention.<sup>77</sup>

Former Minister of Local Government and National Housing and now Minister of Home Affairs, national chairman of Zanu-PF John Nkomo assaulted a Bulawayo human rights activist, Sakhile Nkomo on 13 October 1999. The ZRP did finally forward a docket to the State Prosecutor to try him on this charge, but the result of this action was not publicised.

<sup>69</sup> *Newsweek* 11 December 2000.

<sup>70</sup> *The Daily News* 11.8.01.

<sup>71</sup> *The Daily News* 18.7.01.

<sup>72</sup> *The Daily News* 31.3.00.

<sup>73</sup> *The Zimbabwe Independent* 18.5.01.

<sup>74</sup> *The Daily News* 31.3.01.

<sup>75</sup> *The Daily News* 12 May 2000 (PMV)

<sup>76</sup> *The Financial Gazette* 22.3.01; *The Business Herald* 3.5.01; *The Daily News* 1.5.01, 5.6.01; *The Herald* 9.7.01.

<sup>77</sup> *The Daily News* 14.6.01; *The Financial Gazette* 14.6.01.

## The Public Service

Zimbabwe inherited a non-political civil service. Shortly after Independence, civil servants were encouraged to join Zanu-PF. Cabinet ministers reportedly intervened in appointments, supposedly the sole preserve of the Public Services Commission. More recently, all permanent secretaries have been appointed by the State President.

However, with the recent growth of opposition politics, Zanu-PF feared that civil servants might be switching their allegiance to the MDC. From 1 January 2000, SI 1/2000 prohibited civil servants from participating in party political activity. The revised Public Service Regulations<sup>78</sup> made it an act of misconduct for any civil servant to be an office-bearer in or even to address 'any political party, organisation or movement'. However, permanent secretary for Defence Job Whabira - also a member of the pre-electoral constituency Delimitation Commission - was in April 2000 permitted to contest (unsuccessfully) the Zanu-PF primaries. A number of Zanu-PF candidates were civil servants and teachers. They were belatedly required to regularise their position by resigning. Whether they did so was not reported publicly.

What has been monitored is the subsequent 'purging' of opposition supporters from the public service and police force. From *Politically-Motivated Violence in Zimbabwe 2000-2001* (pages 42-4) the most salient cases are repeated below.

- The government has suspended the assistant district administrator of Bulimamangwe district and 10 junior employees of the local authorities in Plumtree on charges that they are sympathetic to the MDC. (Source: *Financial Gazette* 18 January 2001.)
- Several civil servants who were suspected of sympathizing with the MDC have been transferred from Matabeleland. Transfers were at the instigation of war veterans who have shut most rural district councils in Matabeleland and barred civil servants from working there. (Source: *Financial Gazette* 1 March 2001.)
- Gabriel Karonga, the MDC vice-chairman for Hurungwe West district, was fired from his job in Mashonaland West after threats by so-called war veterans. (Source: *Daily News* 21 May 2001.)
- Mr. Siambala Bernard Manyena, an executive officer of the Binga Rural District Council, has defied an order from his superiors suspending him from duty over his membership of the MDC. (Source: *Daily News* 7 June 2001.)
- The Deputy Minister of Education said that his Ministry would not provide security to teachers affected by violence perpetrated by ZANU-PF supporters. (Source: *Daily News* 13 June 2001.)
- More than 30 police officers in Mashonaland West province were reportedly threatened with dismissal by allegedly attending a Christmas party hosted by an MDC politician in Chegutu. (*Daily News* 9 January 2001.)
- In July 2001 Commissioner Chihuri told a government newspaper that police who are anti-government and support opposition political parties would be kicked out of the force. An undisclosed number of officers have already been dismissed on those grounds. (Source: *Herald* 11 July 2001.)

To these should be added other examples, including the first female provincial administrator, Angelous Dube, who after two death threats was retired from Matabeleland South at the insistence of 'war vets' to the head office Directorship of Research, Policy and Public Relations. The late Minister of Youth Development, Gender and Employment Creation, Border Gezi, told Parliament that 'if [opposition party supporters] do not want to serve the current Government,

<sup>78</sup> SI 1/2000, First Schedule, s20 (p. 62).

which happens to be a Zanu-PF one, they must voluntarily leave the civil service or we will kick them out'.<sup>79</sup> The Speaker of Parliament, Emmerson Mnangagwa, reportedly told civil servants:

'You are being paid by a Zanu-PF Government to effectively implement its policies for the benefit of the people. But if you decide to belong to an opposition political party, you cannot discharge your duties professionally'.<sup>80</sup>

Asked in the House to confirm Government policy on this matter, the Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, said it was

'very clear. We employ people on merit and on professional standing not political affiliation... If we come across any person in the Public Service who, instead of pushing the policy of government of the day, pushes other policies, we will descend on that person'.<sup>81</sup>

This unconstitutional and illegal political discrimination also extended to state dependants. At least one war veteran's pension was stopped following Justin Sundai's participation in the MDC election campaign in Makoni district.

In contrast, Hurungwe District Administrator James Munetsi illegally occupied the farmhouse on La Vista after farmers and farmworkers had been driven out, apparently without any censure.<sup>82</sup>

## The Uniformed Forces

Zimbabwe's uniformed services are not renowned for upholding the human or constitutional rights of our citizenry, despite their spokesperson's claim that 'our soldiers are a disciplined force who do not go about beating up civilians'.<sup>83</sup> State violence has been and is still frequently used, often under the dubious legal aegis of the Law and Order (Maintenance) Act. Both the army and the police are routinely drafted in to deal with public demonstrations and strikes, particularly those against increased costs (whether of food or tuition). In addition, after the June 2000 general election, the uniformed services assaulted voters in many urban constituencies which returned opposition candidates to Parliament. These actions clearly violated the law and the failure to prosecute them violated the rule of law. Chitungwiza and Harare victims of assault by State agents launched a class action against the police (including the Minister of Home Affairs and Commissioner of Police), while the Minister of Defence denied in Parliament that the army was involved in these assaults.

Excluding 'political' violations, in the first eight months of 2001, 12 people died at the hands of state agents, including one student and four Ziscosteel workers killed as in the brutal suppression of dissent in public demonstrations.<sup>84</sup> In 2000, 25 were reported killed, including two Hwange workers. Many civilian deaths result from police shootings, but in 2000 14 deaths were also caused by their use of teargas, including 13 at the National Sports Stadium.

The kind of terror the army inflicts on civilians is captured in a recent CFU report from Norton published under *The Standard's* weekly Crime Watch.<sup>85</sup>

<sup>79</sup> *Parliamentary Debates* 27,24:2441.

<sup>80</sup> *The Herald* 2.10.00.

<sup>81</sup> *Parliamentary Debates* 27,24:2374.

<sup>82</sup> He also reportedly tried to evict followers of the *Mhondoro* spirit Chinenyanga, who had been claiming the farm since 1992 (*The Herald* 4.9.01).

<sup>83</sup> *The Standard* 9.9.01.

<sup>84</sup> *The Daily News* 31.8.01.

<sup>85</sup> *The Standard* 9.9.01.

‘Military personnel continue to move around the area with AK47s, intimidating farmers and their work forces and refuse to give information of who they are being commanded by, names, or identification. A soldier, in police presence, pointed an AK47 barrel into the stomach of the owner of Fort Martin farm, insisted that no planting would continue on the farm and harassed the owner for over an hour. The owner’s wife of Beersheba farm was abducted and returned unharmed by military personnel whilst the owner was away. Military personnel have sometimes been seen in the presence of a senior member of the District Administrator’s office who has been extremely intimidating in some cases.’

There is a large problem for the rule of law in the relationship between the police and the army. Not only are the armed forces subject to their own, non-transparent military policing and courts martial, they have also acted as if they are above civilian law and its enforcement. There are numerous examples of police refusing, or being unable, to use the law against army personnel; of court messengers being refused entry to military barracks and cantonments; and two infamous cases in 1999 of the police handing over to army torturers civilian detainees (journalists Mark Chavunduka and Ray Choto). Detective George Dhokwani was reported to have been shot dead by a soldier, Denfart Neurumba, who was guarding an army officer’s private house. Neurumba was initially taken into custody, but later released, apparently ‘following the alleged intervention of unnamed officials’.<sup>86</sup>

Masvingo police refused to heed an order involving soldiers by magistrate Shortgame Musaiona. He was incensed by the Z\$60 admission of guilt fines levied on 53 soldiers, and ordered the police to prosecute them on charges of public violence and/or assault. They had injured 10 patrons (five seriously), stolen \$5 000 and damaged cars and property at the Ritz Nightclub.<sup>87</sup> In response to a Parliamentary question, the Minister of Home Affairs denied that the Masvingo police were defying the magistrate’s order, noting that soldiers ‘cannot be treated like hunted animals’ and ‘it is folly for the police to remove the soldiers from the barracks without going through the [Joint Operations] Command’. The police had, he said ‘done everything possible’, so no action would be taken against them.<sup>88</sup> However, magistrate Musaiona was reportedly listed for transfer.<sup>89</sup>

### **Zimbabwe Republic Police (ZRP)**

The ZRP has acquired a poor reputation, both for assaulting citizens exercising their constitutional rights of expression and assembly, and for being thoroughly partisan, allegedly under the direction and control of the State President and the ruling party. However, when called to his farm by former prime minister Ian Smith, the police reportedly arrived promptly - with the assistant district administrator!<sup>90</sup> The Zimbabwe Council of Churches regretted that the ZRP did not send representatives to their July 2001 meeting in Victoria Falls and called on the Government ‘to apply the law impartially regardless of political affiliation’.<sup>91</sup>

---

<sup>86</sup> *The Daily News* 31.8.01.

<sup>87</sup> *The Daily News* 28.8.01.

<sup>88</sup> *The Herald* 30.8.01.

<sup>89</sup> *The Standard* 9.9.01.

<sup>90</sup> *The Daily News* 6.9.01.

<sup>91</sup> *The Daily News* 25.8.01.

Regarding their assaults, the profligate use of police teargas even in situations when it is not appropriate, has led to multiple deaths at a number of football matches. Virtually repeating a similar incident in 1998, in which five people died, on Sunday 9 July 2000 the police fired teargas into 50 000 soccer fans at the National Sports Stadium. As fans headed for the exits, more teargas was fired into these restricted areas by police outside the stadium. Thirteen people died, including two young boys and two students. Five fans were seriously injured among over 40 treated in hospital. A hastily-convened internal four-man ZRP enquiry, augmented by John Fashanu, shared the blame with other organisations but did not release their report. Five police officers whose indictment on culpable homicide charges was thought 'possible' were not named, nor were there any reports of their indictment. The Zimbabwe Human Rights NGO Forum assisted the bereaved families to seek redress from the Minister of Home Affairs and police commissioner using class action. Individuals also sued privately.

The South African Defence Minister was reported as saying that the Zimbabwean Government had threatened to use live ammunition in crowd control if the South Africans refused to deliver teargas ordered.<sup>92</sup> Since armed police have been responsible for shooting at least 22 individuals, including children, over the past two years, threats to use live ammunition on demonstrating people must be taken extremely seriously. Both demonstrating students and striking workers have been shot dead in the past two years, together with the nine who died earlier in the January 1998 'food riots'. In the October 2000 food riots, people were reportedly assaulted in their high-density homes by police. Those assaulted included MP Justin Mutendadzamera (MDC, Mabvuku) and his wife. Some 200 complaints of police assault were laid.

Regarding the second problem, all major political parties have levelled accusations of partisan policing. In the run-up to the June 2000 elections, the United Parties alleged that the police cancelled half a dozen of their rural meetings, or allowed Zanu-PF youth to break them up without arrest or prosecution. MP Joram Gumbo (Zanu-PF, Mberengwa West), accused the Criminal Investigation Department of 'brutality' in their investigations of political violence in Mberengwa district. He alleged some arrested Zanu-PF members had been severely assaulted to force confessions.<sup>93</sup>

However, the vast majority of complaints about partisan policing have come from the MDC. The MDC provincial chairman, Tapera Macheke, was quoted as saying that the Mashonaland Central police 'are reluctant to do their job' and it had been necessary to obtain a court order on 14 August 2001 to compel the police to escort MDC victims of political violence back to their homes in the province.<sup>94</sup> In neighbouring Mashonaland East, during the Makoni West by-election campaigning, MDC witnesses averred that police had watched while one of their number was badly assaulted and had apparently had an arm broken.<sup>95</sup> In Bulawayo, ahead of the mayoral and council elections, the MDC's provincial information secretary, Albert Gumbo, criticised the police for 'applying the law selectively', in their usual pattern of arresting MDC supporters involved in violence while failing to act against the Zanu-PF people involved.<sup>96</sup> During polling in

---

<sup>92</sup> *The Zimbabwe Independent* 27.10.00.

<sup>93</sup> *The Herald* 2.9.00. *The Herald* 2.9.00.

<sup>94</sup> *The Zimbabwe Independent* 24.8.01.

<sup>95</sup> *The Financial Gazette* 6.9.01.

<sup>96</sup> *The Daily News* 4.9.01.

Bulawayo, the police were reported to have arrested MDC security staff video-ing them towing away a party vehicle and charged them with taking a video in a public place.<sup>97</sup>

There have been numerous reports of police refusals to accept complaints, particularly against members of the ruling party and 'war veterans' (eg following the disturbances in Epworth in August 2001).<sup>98</sup> In Mount Darwin, it was reportedly alleged by one young man that 'war veterans have taken over as policemen... The police are not doing anything. The war veterans are fed at the District Administrator's office and paid every month'.<sup>99</sup> Chivhu police were reported by a motorist stopped by an illegal roadblock (manned by Zanu-PF 'youths – of advanced ages') to have been parked 'a few metres' from it.<sup>100</sup>

Our databases have 361 reports in which police reactions were specifically mentioned. In 33 cases, the police reaction was unknown. In only six cases – 1,7% of the total - did the police refuse to accept (overlapping) complaints, some of which were extremely serious: one killing, one torture, one intimidation, two kidnappings, four assaults. Five of these victims belonged to the MDC and one lacked any political affiliation.

Ten complainants (half of them belonging to the MDC) were assisted in their immediate difficulty: nine assaults were stopped, two kidnappes released, one electoral offence corrected. In these 10 cases, whatever police follow-up there may have been was not reported.

Of the 49 violations of human rights in which no report was made to the police, the army was responsible for seven, the police themselves for five, the army and police together for another three. In another five cases, the police had watched the violation but only in one had they effected an arrest without a complaint being laid. Of these 20 cases, all but one (a death threat) involved assault, one of which additionally involved torture: 13 victims belonged to the MDC while seven claimed to belong to no political party. Within the 49 cases, there were: nine of arson, two of intimidation, two of torture, 31 assaults, five death threats, seven kidnappings and five offences relating to property.

Of the 263 complaints laid, the police lost one. Another was resolved by their release of the vehicle which the police themselves had seized. In 186 cases they arrested no-one. What happened in 45 of the 76 cases in which they did arrest people, remained unknown. Of the remaining 31 cases, one prisoner escaped, apparently never to be re-arrested. Four were released. One policeman caught wearing an MDC T-shirt off-duty was victimised and left the force. Of the 25 against whom charges were actually laid, the result was unknown in 20 cases, including eight bailed and three remanded in custody. Two were fined, two were convicted (but the sentence unknown) and one was discharged, having been found not guilty.

Overall, therefore, in these 361 known violations in which the role of the police was specifically mentioned, the law was reported to have been activated in any way in a maximum of 21% of them. There is no record of anyone having been jailed, except on remand, and only two known

---

<sup>97</sup> *The Standard* 9.9.01.

<sup>98</sup> *The Daily News* 30.8.01.

<sup>99</sup> *Zimbabwe Independent* 24.8.01.

<sup>100</sup> *The Daily News* 24.8.01.

finances. It is clear why the public see it as a waste of time reporting 'political' violations to the police when four of every five reports yield no redress at all.

A similar picture comes from the Zimbabwe Women Lawyers Association (ZWLA 2001). ZWLA investigated 24 cases of women who had been affected by the political violence prior to the June 2000 election. They included cases of arson (4), assault (10), rape (4), torture (3) and husbands murdered (4), one after receiving death threats. Only 14 women had tried to report to the police, and in five cases their reports were rejected – suggesting that *women* may experience additional difficulties in having their complaints taken seriously. Only 3 of the 24 cases (one murder and two rapes) were prosecuted, although in mid-2001 another four, including one multiple rape, were still being investigated.

In a recent letter to the *Daily News*, the writer noted 'some are more equal than others, because any opposition member who seems to be breaking the law is fast-tracked [by the police] through the courts, while the rules are being changed where a ruling party member is involved.' Many examples could be given. The police have failed to prosecute numerous known offenders, including murderers. His known Zanu-PF kidnappers walk the streets of Bulawayo quite freely over a year after the MDC's Patrick Nabanyama disappeared. The Attorney-General's Office reportedly blamed the police for the delays in prosecuting Nabanyama's nine known abductors. Joseph Mwale, head of the CIO in Chimanimani, and Kainos Tom 'Kitsiyatota' Zimunya murdered in front of witnesses MDC organisers Tichaona Chiminya and Talent Mabika. When they were summonsed to give evidence in court by Justice Devittie, they disappeared. The judge then suggested that Attorney-General Andrew Chigovera prosecute them for murder. The police were finally ordered to 'investigate' in the first week of July 2001, 15 months after the two murders. No arrests have yet been announced. The police admitted<sup>101</sup> that 'some people took the law into their own hands and forcibly' kidnapped David Stevens and another white farmer, Alan Dunn, in broad daylight from Macheke police station. Stevens was executed in the presence of Dunn, who recorded a statement. The police know the 'war veterans' who abducted both farmers. Martin Olds was gunned down at his Nyamandlovu farmhouse by a large group of armed men, many from Harare. They were allowed through a police road block which stopped other farmers from going to Olds' help. Some of Olds' attackers sustained injuries during their assault on Olds. The police visited these injured persons in hospital and know their identities.

A number of the reported ZRP dockets on the deaths resulting from the political violence also appeared to be at gross odds with the reported facts. Judges and magistrates, including Bindura's Munamato Mutevedzi, have criticised police inefficiency, incompetence, and tendency to arrest people before adequate investigation of the charges.<sup>102</sup>

On the land issue, ZRP Commissioner Augustine Chihuri has argued consistently that a 'political' solution is required for the issue of trespass. He has himself refused, and refused to allow his force, to perform a police duty imposed by the law of our land. The police repeatedly refused to assist deputy sheriffs to evict anyone, despite High Court orders from numerous magistrates and judges. Moreover, some of his officers have been named<sup>103</sup> as perpetrators of

<sup>101</sup> *Politically-Motivated Violence*, p. 53.

<sup>102</sup> *The Daily News* 28.8.01.

<sup>103</sup> By their victims, who have given statements to the Zimbabwe Human Rights NGO Forum. See *Who was responsible? Alleged perpetrators and their crimes during the 2000 Parliamentary Election period*.

violence associated with the farm occupations and Parliamentary elections during 2000-1. They include: Chigora (Goromonzi); ‘Desmore’, Cuthbert Mapfumo and Assistant Inspector Majora (Chikomba); John Matarakire and Inspector Mabunda (Hurungwe/Karoi); Constable Makore and Sergeant Chidyamakono and either Constable or Sergeant Mazinyani or Mazinyari (Shurugwi).

Police details refused to intervene in Matabeleland North, after foot and mouth had broken out in a number of feedlots belonging to the Cold Storage Commission, when, against veterinary regulations, ‘war veterans’ drove cattle off farms, into wildlife areas and across district boundaries, because their actions were also defined as ‘political’.<sup>104</sup> Even after the use of the riot squad to break up protests by ‘war veterans’ (eg outside the Mwenezi District Office, against their removal from one of the 600-odd undesignated farms<sup>105</sup>), no arrests or charges were reported.

The ZRP has recurrently ignored court orders, not merely those from magistrates, but equally some from the High Court, such as those from Justices Garwe, Chinhengo, Hungwe, Makarau and Munyira to evict farm invaders; from Justice Chidyausiku disallowing them the right to search MDC offices<sup>106</sup>; and from Justices Chatikobo and Gwaunza forbidding them to seize Capital Radio’s equipment. ZRP Assistant Commissioner Liberman Ndlovu was convicted of contempt in carrying out what were reported to be Information Minister Jonathan Moyo’s<sup>107</sup> instructions to seize Capital’s hired equipment and search its directors’ homes in defiance of court orders. Commissioner Chihuri avoided conviction by dissociating himself from his colleague’s actions.

On 17 March 2000 the police were first ordered by Justice Garwe<sup>108</sup> of the High Court to remove people occupying commercial farms within 24 hours. They were also instructed specifically to disregard any executive instructions to the contrary. Chihuri said they had exhausted their budget. His subordinate officers followed his lead and recurrently refused farmers’ assistance when requested, even when they were locked into or out of their own property, farmworkers were chased away and production was stopped. The police also recurrently failed to act when farmers, farmworkers, journalists<sup>109</sup> and opposition party supporters were assaulted in front of them.

Following a clash on Listonshields farm in the Chinhoyi district on 6 August 2001, despite conflicting accounts of what happened, 22 farmers but no farm occupiers were arrested. The 22 farmers were remanded in custody for two weeks, initially in prison clothing, before being bailed on \$100 000 each by the High Court. The wife of one of the detained farmers was reportedly

---

<sup>104</sup> Eg. *The Daily News* 29.8.01

<sup>105</sup> *The Daily News* 31.8.01.

<sup>106</sup> While the ZRP confirmed at the time to local and international journalists as well as the MDC’s lawyers that they had found no arms of war, the Minister of Home Affairs told Parliament that the police had indeed confiscated weapons and grenades found on MDC property. (*The Daily News* 15.9.00; *The Zimbabwe Independent* 15.9.00; *The Herald* 20.9.00; *Parliamentary Debates* 27,16:1566-1608; 27,17:1609-13)

<sup>107</sup> ‘Moyo, in complete disregard of protocol, which prescribes that ministerial orders to the police be made only through the Minister of Home Affairs, had personally instructed the police to raid Capital Radio’s studios. As if that blunder were not terrible enough, Moyo then proceeded to overzealously lodge a complaint directly with the Judge President, Justice Godfrey Chidyausiku, registering the government’s displeasure over a High Court ruling in the same Capital Radio saga.’ (*The Daily News* 17.10.00, Editorial)

<sup>108</sup> His order was later confirmed by Justice Chinhengo.

<sup>109</sup> Eg. *Daily News* 28.8.01, citing their Bulawayo-based photographer Mduduzi Mathuthu’s experience on Redwood Farm.

assaulted in full view of the police.<sup>110</sup> Even though justice minister Patrick Chinamasa confirmed to Parliament that remand prisoners are entitled to their own food and clothing, Chief Superintendent Naison Chinyan'anya (OC Makonde) and Chief Superintendent Jefnos Tawengwa (Chinhoyi) were reportedly suspended for allowing the remanded Chinhoyi farmers their own clothes and later new prison uniforms. They were reported to be facing charges under the Police Act for upholding the rights of remand prisoners.<sup>111</sup> This violation of the rule of law is arguably more disturbing than those affecting the detained farmers.

However, the police have evicted 'squatters' with 'political motives' thought *not* to support Government. Most notable were those who invaded former ZAPU properties seized by the State in the early 1980s, and the members of *Inqama*, a movement to restore Mzilikazi's original capital on what is now the state-owned national park of Matopos Rhodes Estate. *Inqama*, who since 1996 had recurrently protested the loss of their sacred land on which Mzilikazi is interred, were forcibly evicted on 25 August 2001.<sup>112</sup>

In September 2000 the police raided - without search warrants - all MDC Harare offices, the home of its youngest MP Tafadzwa Musekiwa, and the offices of the Combined Harare Residents' and Ratepayers' Association. They removed material, including computerised records, despite a court order from Justice Chidyausiku declaring this action illegal. The police actions were described by one editor as carrying out "security operations" which are nothing short of naked State terrorism<sup>113</sup> and by another as

'resembling crude thugs more than officers of a respectable police force ... smashing their way in... What is taking place now is more than madness. It is just total anarchy.'<sup>114</sup>

'In our opinion, Zimbabwe has one of the most barbaric, morally decadent, corrupt, and disreputable police and armed forces who shamelessly allow themselves to be manipulated by politicians. The few who have attempted to be professional have either been hounded out of the police force or resigned themselves to the system under which they operate.'<sup>115</sup>

The latter view is understandable, coming as it did from Mark Chavunduka. A year after Chief Justice Anthony Gubbay had ordered an enquiry into the January 1999 torture of *The Standard's* Chavunduka and Ray Choto, no identification parade had been held, no arrests had been made, nor any charges preferred.

Two newspapers (*The Daily News* and *The Zimbabwe Mirror*) reported even more serious police abrogation of the rule of law - their involvement in the August 2001 looting of commercial farms in the Mhangura area. The police admitted that their vehicles had been carrying looted property, but said that they had recovered it from looters and were transferring it to the police station. Both papers' senior staff were arrested, questioned and threatened with charges of criminal defamation and/or publishing subversive material.<sup>116</sup> It is not clear whether these initial charges also covered the *Daily News'* later report which named Sergeant Muwadzuri ('a staunch Zanu-PF supporter' said to be attached to ZRP Internal Security Intelligence who urged others to loot) and 'Cde Maguvaza' ('a Zanu-PF activist') as 'feasting on the meat of the biggest bull and drinking beer in

<sup>110</sup> *The Herald* 25.8.01.

<sup>111</sup> *The Daily News* 28.8.01.

<sup>112</sup> *The Sunday Mail* 26.8.01; *The Daily News* 30.8.01.

<sup>113</sup> *The Daily News* 19.9.00.

<sup>114</sup> *The Standard* 17.9.00.

<sup>115</sup> *The Standard* 26.9.01.

<sup>116</sup> *The Zimbabwe Mirror* 17.8.01; *The Herald* 22.8.01; *The Daily News* 14, 23.8.01, 7.9.01.

York's house' after the looting on Cotswold Farm. Muwadzuri was reported to have 'personally screened settlers and war veterans for release from arrest'. Together with striking labour leaders, journalists have repeatedly been charged under these and other provisions of the Law and Order (Maintenance) Act (LOMA).

The promotion of 419 police, over 300 of whom were war veterans and some allegedly incompetent, reportedly provoked disaffection within the ZRP. Their promotion was seen by some as unearned and a form of political discrimination which disadvantaged 'professional' police thought to be 'sympathetic' to opposition parties. Over 300 ZRP personnel were transferred in the first half of 2000, thought in many cases to be related to their professionalism and desire to see the law upheld in respect of the farm invasions. In a number of individual cases, their transfer was required by war veterans. Some high-ranking officers resigned, citing their wish not to impair their professionalism by remaining in a politicised force.<sup>117</sup>

Police corruption has been frequently reported. In the first half of 2000, the Zimbabwe Republic Police suspended numerous officers (55 in Harare alone) for corruption and incompetence. More police corruption was prosecuted under the Prevention of Corruption Act, especially for demanding bribes from motorists, many cases of which were reported, and theft of property from suspects under investigation. In a quiet *Saturday* hearing, four policemen<sup>118</sup> were bailed for Z\$2 500 each on bribery charges relating to extortion from companies by 'war veterans'. However, in a number of 'sting' operations, suspects (usually on theft charges) have been prosecuted for attempting to bribe the police. Apparently no police officers have been censured for using any form of unacceptable violence, or failing to prevent others from using violence.

### **The Attorney-General's Office**

Granted that lawyers can argue whatever points they deem relevant to their clients' cases, argument by the Attorney-General's Office that the objective of the Law and Order (Maintenance) Act (LOMA) was 'to preserve democracy' seems simply obscene. This Act, first passed in 1960, was used to imprison the majority of Zimbabwe's current ruling politicians, including President Mugabe. (Its full text can be scrutinised in Appendix 2.)

The last three Attorneys-General have been Godfrey Chidyausiku (now Chief Justice), Patrick Chinamasa (now Minister of Justice, Legal and Parliamentary Affairs<sup>119</sup>), and Andrew Chigovera (the current incumbent).

Political pressure reportedly caused the Attorney-General's Office under Patrick Chinamasa to close investigations into the claims against the War Victims' Compensation Fund (WVCF) by Johanna Nkomo (widow of the deceased Vice-President), Joyce Mujuru (who was reappointed Minister of Rural Resources and Water Development) and Reward Marufu, brother-in-law of the State President. After the Government was reported to have abandoned its investigations into the looting of the WVCF, Justice Smith reiterated concern that nothing was being done to punish those responsible. However, Minister of Justice, Legal and Parliamentary Affairs, Patrick

<sup>117</sup> *The Daily News* 20.3.01, 11.4.01.

<sup>118</sup> They were named as: Edmore Chiza, Fungai Mupondiwa, Proud Chizivano and Lazarus Mukwenya (*The Herald* 20.6.01).

<sup>119</sup> Pius Wakatama referred to 'the Minister of Injustice, Illegal and Unparliamentary Affairs' (*The Daily News* 25.8.01).

Chinamasa noted, in answering a question in Parliament, that 21 dockets had been completed and investigations were continuing. Political interference at ministerial level was also suspected in the aborted prosecutions of Nkomo's son-in-law, Francis Nhema,<sup>120</sup> on three fraud charges and Faber Chadirike (former mayor of Chinhoyi) on four murder charges. Poor investigation by the ZRP reportedly produced insufficient evidence to prosecute on three of the four charges against Chidarikire.

Andrew Ndhlovu, ZNLWVA projects secretary and allegedly a former dissident, and later Edmore Hwarare, threatened war if Zanu-PF lost the general election. After the Minister of Home Affairs declined to do so, the Front for Democracy in Zimbabwe (FODEZI) petitioned Attorney-General Patrick Chinamasa to prosecute him for treason; sedition; and under both the Law and Order (Maintenance) Act (s27) and Electoral Acts (s103-105). As far as we are aware, no such prosecution was undertaken. However, Ndlovu was reported to be facing a charge of incest.<sup>121</sup>

As Attorney-General, Patrick Chinamasa appealed *after the court deadline* over the land issue. The legal profession condemned this action by the top-ranking lawyer in the Public Service. However, two members of his staff also resigned in protest at the refusal of the State executive to heed its own legal advisors.

MDC MP David Coltart (Bulawayo South), on 22 August 2001 in Parliament accused the current Attorney-General, Andrew Chigovera, of selectively administering justice. He reportedly<sup>122</sup> called for Chigovera's resignation for prosecuting senior MDC officials while ignoring similar, indeed much worse offences by senior Zanu-PF officials.

'The AG should be called upon to resign for failing to prosecute without fear or favour, and according to the Constitution, he must not be subject to control or direction by any person.' The Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa, reportedly<sup>123</sup> confirmed to Parliament that the Attorney-General is solely responsible for the decision not to prosecute the two known killers, Mwale (of the CIO) and Zimunya, of MDC activists Chiminya and Mabika, notwithstanding Justice Devittie's referral to him of the court evidence.

The Broadcasting Services Act (3/2001, Cap 2:06) came into effect on 4 April 2001, after Attorney-General Andrew Chigovera had repeatedly told Parliament that, in his opinion, all but one of the impingements on freedom of expression rejected by the Parliamentary Legal Committee actually fall under constitutional saving clauses and are 'justifiable in a democratic society'.<sup>124</sup>

The police were reported to be concerned about corruption among public prosecutors. One, Casper Merinyo, was jailed for four years (two being conditionally suspended) after being convicted of soliciting a bribe of Z\$50 000 to drop charges against two accused. Some 50 criminal dockets reportedly missing from the Harare Magistrate's court were explained by the Chief Magistrate as mis-filing. Parliament's portfolio committee on justice, legal and parliamentary affairs expressed concern that it received 'highly conflicting evidence from the

<sup>120</sup> Later appointed Minister of the Environment and Tourism.

<sup>121</sup> Having allegedly fathered a child with his daughter (*The Standard* 9.9.01).

<sup>122</sup> *The Daily News* 23.8.01.

<sup>123</sup> *The Daily News* 30.8.01.

<sup>124</sup> *Parliamentary Debates* 27,52:5436-50; 27,60:6261-2.

Attorney-General's office and the Commissioner of Police on all aspects' of this problem of missing dockets, starting with a major discrepancy in numbers (21 vs 186).<sup>125</sup> The committee recommended tightening accountability and administrative procedures.

As the fuel crisis precluded remand prisoners being brought to court, prosecutor Wilbert Mandinde complained of having to remand prisoners *in absentia*, without those remanded being able to complain.

---

<sup>125</sup> *Parliamentary Debates* 27,71:7563.

## CHAPTER 4

### ENFORCING THE RULE OF LAW: THE JUDICIARY

Zimbabwe's judiciary is tiny. As at September 2001, it comprised eight judges of the Supreme Court, a High Court bench of 19 (after three resignations), and a Labour Tribunal of four judges. The magistracy falls under the Public Services Commission, not the Judicial Services Commission.

Our judiciary has had a very rough ride in the new millenium. The reasons are purely political and relate to the result of the Constitutional referendum, the outcome of the June 2000 Parliamentary elections, and the land question.<sup>126</sup> As yet, however, there are only a few question-marks hanging over the professionalism and integrity of our judges, despite strenuous attempts by the executive to politicise the judiciary.

Godfrey Chidyausiku, then Judge President of the High Court, has asserted that the land controversy is 'a minefield for the judiciary. I only hope it does not become the graveyard for the judiciary.'<sup>127</sup> In a speech suggesting that he spoke on behalf of Government, he located the origins of the controversy over land between the judiciary and the executive in the then Chief Justice Gubbay's address opening the 1991 legal year. Later publicly reprimanded by the Chief Justice with the full support of the Supreme Court bench, Justice Chidyausiku was reportedly required to 'avoid making inflammatory statements' on the land issue.<sup>128</sup> But that was before he was appointed Chief Justice by the State President.

Most judges have hitherto failed to facilitate the executive's desires. Some have already paid with their jobs, including the former Chief Justice, Anthony Gubbay. Repeated international protests about political interference with our judiciary have apparently been ignored, including protests from the United Nations, the International Commission of Jurists, the International Bar Association, the Association of Commonwealth Lawyers,<sup>129</sup> lawyers within the SADC region, and even the Confederation of South African Trades Unions (COSATU). Virtually every local organisation of any note has also called for the restoration of the rule of law. 'The rule of law is fundamental to economic and social stability in the region and it is indivisible. We believe it to be accurate to say that the legal system in Zimbabwe is at extreme risk', the chair of South Africa's

---

<sup>126</sup> The land issue was re-politicised despite one Zanu-PF MP's plea, after Margaret Dongo's revelations in 1999 about its allocation to the politically well-connected with few farming qualifications, 'let us not continue to make the land question a political football' (*Parliamentary Debates* 26,11:505). Very early in the run-up to the referendum, the Zimbabwe National Liberation War Veterans Association (ZNLWVA) threatened to disrupt the poll if the draft constitution was not first amended to make land and social security benefits constitutional rights for its members. After the referendum, they invaded white-owned farms. The land invasions reportedly caused dissent within Zanu-PF, but were consistently supported in public by the State President. The independent press noted that presidential endorsement of the farm invasions was merely the latest in a history of government and presidential actions abrogating the rule of law, tore into the police for failing to uphold the rule of law in order to please their political masters, and called for the removal of the Mugabe government in the election.

<sup>127</sup> *The Herald* 12.1.01.

<sup>128</sup> *The Financial Gazette* 18.1.01.

<sup>129</sup> Which relocated its September 2000 conference from Harare.

General Bar Council was quoted as saying.<sup>130</sup> However, at the start of 2001, the Law Society of Zimbabwe was still confident

‘that the courts of Zimbabwe will continue to uphold the Constitution without fear or favour... They have been impartial, fearless of public clamour, regardless of public praise and indifferent to private, political or partisan influences. They have administered justice according to the law’.<sup>131</sup>

The Law Society later demonstrated in all major cities and towns, calling for Government to enforce court orders and for the rule of law to be restored immediately. The State President refused to accept the Law Society’s petition.

Whether or not our judiciary will indeed survive as a reputable institution in which citizens and the outside world (can) have any faith, remains to be seen. Even Zanu-PF-PF’s Eddison Zvobgo was reported as noting earlier ‘We have allowed confidence in our legal system to slide’.<sup>132</sup> Massive restructuring may be necessary in the not-too-distant future.

The politicisation of our judiciary has been absolutely explicit. Zacharia Ziyambi (Zanu-PF, Kadoma West) stated in Parliament that ‘when we are at this stage of pursuing our revolution, they [judges] need also to play the tune ... they also need to bend down and do like what the revolution requires us to do’.<sup>133</sup> Philip Chiyangwa (Zanu-PF, Chinhoyi) proposed to seek a Parliamentary commission of enquiry into the judiciary, to ‘impeach’ the Chief Justice.

Among many senior politicians, **Justice Minister** Patrick Chinamasa recurrently attacked the judiciary,<sup>134</sup> particularly the former Chief Justice, in the state-controlled media and in Parliament. In addition to calling for the removal of the Chief Justice because he was first appointed to the High Court by the ‘racist Smith regime’, Chinamasa was repeatedly quoted as saying Government would not rest until there was a complete overhaul of the judiciary. ‘Eurocentric’ judges regarded as being in conflict with the other arms of Government and perceived as constituting ‘the main opposition to the ruling party’ would have to go. Judges should be politically correct: if they behave like

‘unguided missiles, I wish to emphatically state that we will push them out’. ‘The present composition of the judiciary reflects that the country is in a semi-colonial state, half free, half enslaved’.

Chinamasa also inveighed against high-ranking blacks who, he alleged, had forgotten their humble origins and ‘delude themselves into thinking that they are where they are solely through their own merit’. He denied intimidating the judges.<sup>135</sup>

The war veterans’ leadership backed Chinamasa. Chenjerai Hunzvi (Zanu-PF, Chikomba) vowed to oust the entire Supreme Court bench and four non-black High Court judges.<sup>136</sup>

<sup>130</sup> *The Daily News* 14.2.01.

<sup>131</sup> *The Herald* 19.1.01.

<sup>132</sup> *The Daily News* 13.9.00.

<sup>133</sup> *Parliamentary Debates* 27,44:4383-4.

<sup>134</sup> The Supreme Court had earlier ruled that Chinamasa should be charged with contempt of court under the common law for a public outburst while he was Attorney-General, despite his constitutional defence (*The Herald* 7.11.00).

<sup>135</sup> See *The Herald* 19.1.01; *The Daily News* 6.2.01; *The Zimbabwe Independent* 9.3.01.

<sup>136</sup> *The Standard* 4.3.01.

‘We are not afraid of the High Court ... this country belongs to us and we will take it whether they like it or not’. ‘The judges must resign. Their days are now numbered as I am talking to you... I am telling you what the comrades want, not what the law says.’<sup>137</sup>

The deputy chairman of ZNLWVA’s Harare branch, Mike Moyo, noted ‘The judiciary must go home or else we will chase them and close the courts indefinitely until President Mugabe appoints replacements’.<sup>138</sup> This particular threat was followed by one to remove judges by force if they did not resign within a fortnight. Moyo was also quoted as saying ‘the judiciary of Ian Smith is still with us now, joined by some black puppet judges who are making their own laws instead of following laws made by Parliament’.<sup>139</sup>

Judges were harassed. Only some publicly defended themselves. Just before Zanu-PF’s congress began in December 2000, special protection from the Police Protection Unit was provided to all judges, threatened with attacks on their homes.<sup>140</sup> Two months later, Zanu-PF passed by itself its own Parliamentary motion of no confidence in the judiciary. It used the ZBC to request that all of its MPs be in Parliament on 28 February 2000, when they defeated and inverted the MDC’s motion to support the judiciary.<sup>141</sup> Thereafter, enormous pressure was brought on the remaining judges of the Supreme Court and High Court judges from minority ethnic groups to resign as well. They initially refused, whereupon Jonathan Moyo reportedly threatened to use the law to remove them.<sup>142</sup> Two High Court judges who repeatedly found against the State on fundamental human rights cases subsequently resigned.

Generally the judges have acted properly and tried all cases equally according to the law, even when the police, Attorney-General’s Office, or court administrators have discriminated in their handling of cases, for example by remanding people in custody while delaying the processing of bail. Recently-appointed judges thought to sympathise with Zanu-PF and the State President followed the law in ordering trespassers off privately-owned property.

Very recently, however, lawyers for 21 Chinhoyi farmers charged with public violence expressed public doubts as to whether their clients would receive a fair trial because of the politicisation of the case and its pre-trial publicity, including statements by prominent public figures as to their guilt.<sup>143</sup> There has been no reported (judicial or other) condemnation of news reportage (especially by the state-owned media) that has presumed – indeed, explicitly asserted – the guilt before trial of these farmers and many others accused of public order offences.

However, courts at all levels have for the last two years severely criticised ‘gross administrative inefficiency’ within the judicial system.<sup>144</sup> Both judges and magistrates slammed inefficiencies which threaten the capacity of the judicial system to deliver justice. In part to address this

<sup>137</sup> *Parliamentary Debates* 27,26:2686; *The Standard* 10.12.00.

<sup>138</sup> *The Daily News* (20.11.00, 22.12.00) team was denied entry to State House to cover the swearing in of the new judges.

<sup>139</sup> *The Herald* 24.1.01.

<sup>140</sup> *The Daily News* 14.12.00.

<sup>141</sup> The Zanu-PF majority voted for its ‘amendment’ – ruled by the Speaker as ‘proper, procedural and admissible’ [sic] - ‘to delete the motion in its entirety and to substitute’ a proposal that the President set up an [unconstitutional] enquiry into what they alleged to be unspecified ‘misconduct’ among the judiciary. This debate (*Parliamentary Debates* 27,24; 27,44; 27,46) made profoundly depressing reading.

<sup>142</sup> *The Herald* 23.2.01.

<sup>143</sup> *The Standard* 26.8.01.

<sup>144</sup> *The Daily News* 26.8.99.

problem, the Minister of Justice, Legal and Parliamentary Affairs sought to apply the High Court model to all other courts. He wanted seniority for one judge over others in all courts,

‘to have in place a person who will be in charge of the others in terms of administration, work assignments and court cases and so forth. Up to now, for instance, all the presidency [sic] have been equal and that has been very difficult. We want someone who is in a senior position to assign work to others.’<sup>145</sup>

Such a system would, of course, allow cases to be directed to judges thought to be politically-compliant, as seemed to have happened in respect of the initial distribution of the MDC’s electoral challenges, even if some of the results did not follow that pattern.

### **The Supreme Court and the Chief Justice**

The Constitution of Zimbabwe defines the Supreme Court as our ‘superior court of record and the final court of appeal’ (s80(1)) and the Chief Justice as ‘the head of the judiciary’ (s79A(a)). The Supreme Court Act (28 of 1981, cap 7:13) lays out its powers, functions and procedures.

Section 24 of the Constitution of Zimbabwe also gives the Supreme Court ‘original jurisdiction’ for redress of alleged contraventions of the Declaration of Rights, by complainants or by those presiding over hearings in lower courts. Since the Declaration of Rights became justiciable in 1985, the Supreme Court has overturned provisions in many statutes that contravene constitutional rights. In deciding against the State on such issues, the Supreme Court appears to have annoyed authoritarian politicians of the ruling party. Two Supreme Court judgments were followed by amendments to the Constitution which rendered these judgments void.

In the last five years, the relationship between the Supreme Court and State executive has worsened, as the court struck down the State’s telecommunications and broadcasting monopolies, s50(2)(a) of the Law and Order Maintenance Act, and the amendment<sup>146</sup> to s5(4) of the Land Acquisition Act; confirmed that the State President can be sued in his official capacity; twice ruled that land acquisition and the eviction of farmers must follow legal provisions; found ‘fast-track’ resettlement procedures to be unconstitutional; and endorsed the Administrative Court’s decision to require by 1 July 2001 a workable land policy from Government before allowing it to proceed with acquisitions after farms have been designated.

At present, a number of sensitive political charges under the Law and Order (Maintenance) Act (LOMA) are currently pending in the Supreme Court for resolution under s20 of the Constitution. Among many other members of the MDC, Davison Nhairwa asked that s44(1)(a) be referred for impairing his freedom of expression. Justice Chinhengo asked the Supreme Court to determine whether sections 51(2) and 58, under which Morgan Tsvangirai<sup>147</sup> was charged with ‘terrorism’,<sup>148</sup> contravene constitutional rights. (On 12 July 2001 acting Chief Justice

<sup>145</sup> *Parliamentary Debates* 27,62:6659.

<sup>146</sup> It incorporated retrospective provisions originally gazetted using the Presidential Powers (Temporary Measures) Act. Welshman Ncube strenuously rejected ‘that kind of law ... which seeks to legalise illegality, ... to make lawful that which is admittedly unlawful and which was unlawful when it was done... Parliament should not seek to legislate retrospectively’ (*Parliamentary Debates* 27,26:2754).

<sup>147</sup> One independent paper reported State security plans to assassinate Tsvangirai and to ‘eliminate’ several ‘anti-Zanu-PF’ personages, including two judges and prominent journalists (*The Financial Gazette* 7.6.01).

<sup>148</sup> The docket disappeared from the Attorney-General’s Office. John Chimusoro Mabika was later charged with its disappearance.

Chidyausiku reserved indefinitely judgment in this particular matter.) Nelson Chamisa, MDC national youth chair, has also applied to have his charges of inciting public violence at a political rally under LOMA s30(1), alternatively s58, discharged under s20(1) of the Constitution. His lawyer, Innocent Chagonda, was reported<sup>149</sup> to have argued that

‘certain people in certain quarters have not been charged under the same sections, with particular reference to Zanu-PF which has openly boasted of having degrees in violence. The selective application of justice is totally undesirable in a democracy. You cannot have one section of the population enjoying immunity while another does not, when they have both made utterances likely to cause violence’.

For the last half-year, Government has appeared to ignore Supreme Court rulings which it finds inconvenient. The executive has also attempted to restructure the judiciary and has not discouraged its politicisation, particularly the Supreme Court. The MDC opposition has protested vigorously in Parliament, before being outvoted.

Until mid-2001, five judges comprised the full Supreme Court bench. In July 2001, three new judges were appointed to the Supreme Court, bringing the full bench to eight, including, for the first time in our history, one woman, Vernanda Ziyambe from the Harare High Court. Misheck Cheda and Luke Malaba were promoted from the Bulawayo High Court. The *Zimbabwe Independent* noted

‘Two of those appointees were reported last weekend to have benefited from the Government’s opaque land lease scheme. In other words, they will be asked to deliver judgments on the legality of a land redistribution process of which they are recipients.’<sup>150</sup>

According to the list of farm allocations circulated by Margaret Dongo in 1999, Justice Cheda had been allocated Marula Farm 38 and Justice Malaba Marula Farm 35, both on leases of unspecified duration and with rentals still to be assessed. The ‘Marula block’ of farms has twice been invaded by disaffected neighbouring villagers.

In November 2000, ‘war veterans’ and Zanu-PF supporters physically invaded the Supreme Court. The Minister of Justice, Legal and Parliamentary Affairs failed to condemn this invasion.<sup>151</sup> Then Chief Justice Anthony Gubbay and Justice Wilson Sandura met the acting president, ostensibly to discuss the threats to the judiciary by the ‘war veterans’, but were reportedly faced with an attack on the judiciary itself which was later repeated by the State President.<sup>152</sup>

As only the judiciary stood between Zimbabwe and anarchy, there was a massive crisis as the Chief Justice, Anthony Gubbay, was forced into early retirement,<sup>153</sup> first from March and then from July 2001. His resignation was enforced five days after the Supreme Court had struck down as unconstitutional Statutory Instrument 318/2000 – the State President’s attempt, using his Presidential Powers (Temporary Measures) Act, to nullify the MDC’s petitions against the

<sup>149</sup> *The Daily News* 9.2.01: Chagonda refers here to a boast made by President Mugabe himself.

<sup>150</sup> *The Zimbabwe Independent* 24.8.01.

<sup>151</sup> *The Daily News* 10.1.01.

<sup>152</sup> *The Sunday Mail* 28.1.01.

<sup>153</sup> He admitted this only on departure, having earlier accepted an invitation from the US government ‘to discuss matters of mutual concern and interest, including the role of the judiciary in promoting democracy in Zimbabwe’, with a wide range of officials, politicians and human rights activists (*The Herald* 26.2.01).

election results.<sup>154</sup> The Bar Council called on Government to protect Gubbay from ‘war veterans’ threatening to occupy his home. *The Herald*<sup>155</sup> attributed to ‘misunderstandings between the Government and the judiciary’ the chief justice’s ‘early retirement’. (The Supreme Court had also ruled unconstitutional the September 2000 police raid on the MDC offices and the banning of political meetings on UZ campus.)

Justice Godfrey Chidyausiku was sworn in as Acting Chief Justice in mid-March 2001. In April, participants in a closed seminar organised by Zimbabwe Lawyers for Human Rights reportedly called for judicial appointments to be free of political influence.<sup>156</sup> Some 200 black lawyers petitioned the Judicial Services Commission (JSC) against Chidyausiku’s appointment as Chief Justice.<sup>157</sup> But in August 2001 he was appointed substantively to the highest judicial post in the land, even though his reported desire to have all four sitting Supreme Court judges removed first was not met.<sup>158</sup>

Justice Chidyausiku has reportedly shocked lawyers over his recent conduct. While still Judge President of the *High Court*, he had purported to vary a *Supreme Court* ruling and allow one peasant farmer, Samson Mhuriro, 15 days to put together a class action on behalf of peasant occupiers of all commercial farms. The Supreme Court overruled his decision. Chidyausiku then used his opening of the 2001 Bulawayo High Court session ***to defend publicly his own judgment and criticise the Supreme Court for nullifying his decision***. One press commentator suggested that

‘Goddie has become blinded by his allegiance to Zanu-PF that it is difficult to imagine him being impartial when presiding in a case in which the party or its government is a contestant’.<sup>159</sup>

The JSC was rumoured to have been split on their recommendation to the President on Chidyausiku’s appointment as Chief Justice. The lawyers who protested to the JSC were reportedly described by Information minister Jonathan Moyo as ‘so-called black lawyers ... speaking for Rhodesians’, ‘the usual black Uncle Toms’ fronting for ‘the usual white liberal gang in the judiciary’. He urged them ‘to desist from compromising the judiciary by making unfounded, irresponsible and malicious political attacks on targeted individual judges’.<sup>160</sup>

## The High Court

The Constitution of Zimbabwe defines the High Court as a ‘superior court of record’ (s81(1)) and in its composition gives precedence to the Chief Justice over the Judge President ‘who shall, subject to the directions of the Chief Justice, be in charge of the High Court’ (s81(2)(b)). The High Court Act (no 29 of 1981, cap 7:06) specifies the court’s jurisdiction, powers of review and issues relating to appeal.

<sup>154</sup> *Parliamentary Debates* 27,43:4374.

<sup>155</sup> *The Herald* 15.2.01.

<sup>156</sup> *The Standard* 1.4.01.

<sup>157</sup> *The Standard* 20.5.01.

<sup>158</sup> *The Sunday Mail* 18.2.01; *The Herald* 9.3.01.

<sup>159</sup> *The Zimbabwe Independent* 19.1.01.

<sup>160</sup> *The Herald* 24.5.01, 27.6.01.

The High Court has recently had to deal with two major and intensely ‘political’ sets of litigation: commercial farmers’ petitions to remove ‘invaders’ from their land; and – after the State President’s unsuccessful attempt to ‘disappear’ them - the Movement for Democratic Change’s challenges to the election results of June 2000. Lawyers, some of whom have been assaulted by ‘war veterans’ while investigating or representing clients, objected to CIO security staff being deployed as gatekeepers at the High Court in Harare.

On 17 March 2000 Justice Garwe first ruled the occupation of commercial farms an illegal trespass. Justice Chinhengo later upheld Justice Garwe’s original order. Garwe gave the war veterans 24 hours to remove themselves before ***requiring the police to remove them and to ignore executive intervention which might prevent that action***. Both war veterans and police ignored his order, the latter applying to be absolved from his order and arguing that a political solution was required to the issue of trespass. Chenjerai Hunzvi also ignored Justice Garwe’s order to remove his followers from the farms and reportedly told the High Court that the State President actually controlled those occupying the farms. Presidential spokesman George Charamba noted that the Government could not defy court orders, especially from the Supreme Court which upheld the High Court rulings, but realities on the ground militated against compliance. Its own consent to the order was seen by one independent newspaper as Government’s symbolic means of declaring its own actions to be constitutional, legal and orderly while doing exactly what it wished.<sup>161</sup>

Three issues formed the core of the MDC’s 39 court challenges to the June 2000 election results: intimidation, irregularities and treating. The MDC appeals were eventually set down for hearing between January and May 2001, as non-urgent, by Judge President Godfrey Chidyausiku. They were heard by High Court judges Devittie, Garwe and Ziyambi. The latter two have been thought to have personal links with Zanu-PF. Justice Garwe, who in January 1999 had taken four days to issue an urgent release order for Mark Chavunduka and Ray Choto against the police and army, during which time they had been tortured, was later appointed Judge President to replace Godfrey Chidyausiku. Justice Ziyambi was promoted to the Supreme Court bench, after she had found against MDC petitioners in two cases but annulled the Zanu-PF result in the Chiredzi North constituency.

Justice Devittie found in favour of the MDC in three of their electoral challenges (Buhera North, Hurungwe East, Mutoko South). Joseph Chinotimba was reported as telling one paper ‘Devittie is a judge for opposition political parties. The way Gubbay went is the same way Devittie is going to go’.<sup>162</sup> Later, Justice Devittie was quoted as noting that his rulings to uphold three MDC petitions against the election results caused him ‘more anxiety than I have had cause to feel in the time I have sat on the [High Court] bench’.<sup>163</sup> He resigned shortly thereafter. Two other High Court judges also resigned, including Justice Chatikobo, who in 2000 was reportedly described by Jonathan Moyo as ‘a night judge dispensing night justice’ in Moyo’s attack on Capital Radio and its equipment. With its cultural overtones of witchcraft, this description was publicly condemned by Justice George Smith, who also expressed concern at Zimbabweans’ growing disregard for the law and its enforcement agents.<sup>164</sup>

<sup>161</sup> *The Financial Gazette* 30.11.00.

<sup>162</sup> *Eastern Star* 4.5.01.

<sup>163</sup> *The Herald* 27.4.01.

<sup>164</sup> *The Daily News* 31.10.00.

New appointees<sup>165</sup> to the High Court bench were widely perceived to have personal ties to the Government and ruling party. They included former non-constituency (appointed) MP and member of the Government's Constitutional Commission Rita Makarau; her law firm partner Annie Gowora; former UZ law lecturer and member of the Government's Constitutional Commission Ben Hlatswayo; ex-combatant Charles Hungwe; Godfrey Chidyausiku's brother's daughter, Antonia Guvava, formerly Director of the Legal Advice Division in the Attorney-General's Office; and ex-combatant George Chiweshe (previously Judge Advocate in the Zimbabwe Defence Forces). The justice minister admitted that, even with these new appointments, the demand (driven by human rights organisations) for justice in the courts exceeds its current supply.<sup>166</sup>

Perceptions notwithstanding, both Justices Makarau and Hungwe upheld earlier judgments and found against the State on cases of farm trespass. However, Justice Hlatswayo upheld a state appeal against record bail (totalling Z\$16 million), with surrender of travel documents, granted by a magistrate, and ordered Peter Raymond Lotriet and Patricia Ann Mitchell to be remanded in custody over a case involving NOCZIM.

### Magistrates' Courts

As the magistrates courts were extended, *inter alia* to Chivu and Featherstone, in May 2001 of 222 magisterial posts at various levels, 39 were vacant and advertised. State employment practices, as well as low pay and poor benefits, seem to have been implicated in the vacancy rate. Four magistrates were reported to have sued the State for unfair labour practices and back pay, after being paid as assistant magistrates for over three years, since 1997.<sup>167</sup> The danger to justice posed by inadequate remuneration was exemplified in the prosecution of former Gweru magistrate Elias Chiterera. He was sentenced to eight months in jail, with a further seven months conditionally suspended, for accepting a Z\$500 bribe to issue a false marriage certificate. But the job carries many other dangers as well.

A fundamental problem is that magistrates are part of the public service, and thus particularly vulnerable to intimidation, especially in smaller towns where they have no State protection against either disaffected litigants or expectations of 'politically correct judgments', as one lawyer put it. As seen by some lawyers in small-town practice, the magistrates' general tendency is to deal with politically-sensitive cases by referring them to other courts.

The Secretary for Justice, Legal and Parliamentary Affairs reportedly refused to provide magistrates with 24-hour police protection, despite abnormal threats to their safety.<sup>168</sup> Like other civil servants and law enforcement officers, magistrates have been transferred at the behest of the 'war veterans'. A large crowd, reportedly of Zanu-PF supporters, demonstrated for three days against Karoi magistrate Sikhumbuzo Nyathi after he had bailed 106 farmworkers on charges of public violence in attempting to throw 'war veterans' off 'their' farms. Following deputy

<sup>165</sup> 'All with strong links either to the government or to Zanu-PF' (*The Daily News* 22.12.00). Charles Hungwe, according to the Justice minister, was to represent on the High Court bench and thus 'empower' war veterans as a class (*The Zimbabwe Independent* 5.1.01).

<sup>166</sup> *Parliamentary Debates* 27,36:3655-6.

<sup>167</sup> *The Herald* 27.6.01.

<sup>168</sup> *The Herald* 23.5.01.

ministerial intervention, Nyathi was reportedly transferred to Kadoma and forbidden to speak to the press.<sup>169</sup> Over 200 ‘war veterans’ disrupted proceedings at Harare Magistrate’s Court in protest against the further remand in custody of colleagues on kidnapping and extortion charges. After Bindura magistrate Tito Feyi Gweshuro sentenced 17 Zanu-PF supporters each to three years’ jail for public violence ahead of the July 2001 by-election there, other party supporters held ‘an all-night vigil’ outside his home and ‘forced his wife to accept the post of party treasurer’.<sup>170</sup>

In Harare, the clerk of the magistrate’s court, Lydia Mutambirwa, refused to accept the bail of six million dollars granted by the court to Peter Lotriet and Patricia Mitchell. They spent two extra nights in jail. Their lawyer, Jonathan Samkange, noted that Ms. Mutambirwa had acted unlawfully in refusing to accept the money, since she had no right to refuse the court’s instruction. High Court judge Ben Hlatswayo later upheld the State’s appeal against the magistrate’s granting of bail, and enforced their remand in custody.

Magistrates threatened to refuse additional requests for remand in custody when police dockets were not ready for prosecution.

### **Other Courts**

Another four judges were appointed to the Labour Relations Tribunal, in an attempt to mitigate delayed justice and clear the huge backlog of some 3 000 appeals.

The Urban Councils Association reportedly proposed to set up municipal courts to deal with by-law infringements.<sup>171</sup> There is no provision for such courts under the Urban Councils Act.

### **Deputy Sheriffs’ Offices**

As early as 1999, Harare’s acting Messenger of Court had attributed what he called ‘flagrant disregard of the law’ to ‘loss of respect for the courts’ and their failure to punish contempt appropriately, which was already making it difficult for his office to function. The police recurrently failed to protect messengers of court delivering court documents, in Norton and elsewhere, particularly documents pertaining to land cases.

Justice Devittie of the High Court had to order the commander of the Zimbabwe National Army to permit an authorised representative of the Deputy Sheriff’s office to enter Cranborne barracks in order to serve summons on the commander himself, General Constantine Chiwenga, Colonels Muhambi, Mukudoka and Charles Maredza, and Majors Mhonda and Shumba, in respect of the claim for damages of Z\$4 million by the two illegally-detained and tortured journalists, Mark Chavunduka and Ray Choto. The Messenger of Court had been refused entry in November 1999.

During the first half of 2001, the Affirmative Action Group, with assistance from ‘war veterans’, attempted to harass the white Deputy Sheriffs of both Bulawayo and Mutare into early retirement, but later backed down in the Mutare case.

<sup>169</sup> *The Daily News* 28.8.01; *The Standard* 9.9.01.

<sup>170</sup> *The Standard* 9.9.01.

<sup>171</sup> *The Herald* 19.2.01.



## CHAPTER 5

### ENFORCING THE RULE OF LAW: NON-STATE ACTORS

Zimbabwe's political history is littered with rather shadowy, 'third force'-type militias. From the nationalist parties' 'youth wings' of the 1960s, through the unarmed *majiba* (couriers and spies) and armed *pfumo revanhu* ('spear of the people') of the 1970s, the 'dissidents' of the 1980s to the contemporary 'war vets' and (again) party youth, the privatised use of violence has always threatened the State and the rule of law. Indeed, it was in the forceful politics of the early 1960s that the Law and Order (Maintenance) Act originated, equating the rule of law with the forceful and undemocratic maintenance of public order. This statute has been used ever since to stifle dissent that is always seen as potentially if not actually armed. Perhaps no other State is so afraid of armed citizens, particularly if they are thought to support opposition parties, as Zimbabwe in its first two decades of Independence. Although war-lording has not yet emerged, to judge by its proposed Public Order and Security Act the State clearly fears this possibility as the economy crumbles.

After Independence, civilians were disarmed. While the State insisted on farmers handing in their weapons and communication equipment, however, the cross-border gun trade was later resurrected by desperate Mocambiquean refugees selling AK47s cheaply, often in exchange for food. As South African *apartheid*-era destabilisation rearmed southern parts of Zimbabwe, so commercial farmers also reinstated, with State approval and licences, their private, armed security systems as well as their shotguns used for hunting.

More recently, there have been more sinister reports of defence force personnel colluding in armed farm invasions and providing arms as well as logistic support to farm occupiers. Indeed, the State has attempted to incorporate as a semi-official 'reserve force' those with arms sympathetic to Zanu-PF. We are on a parallel, again, with the transitional Government of Bishop Muzorewa clandestinely arming *pfumo revanhu*.

#### **Militias**

Part if not all of the Zimbabwe National Liberation War Veterans Association (ZNLWVA) has appeared, in the past two years, to have become a private militia operating on behalf of (certain elements within) Zanu-PF. Although the political responsibility for proven<sup>172</sup> war veterans was initially located in the Office of the President and Cabinet, in 2000 responsibility for ZNLWVA as a mobilisable reserve army was transferred to the Ministry of Defence. And yet within ZNLWVA

'Many are too young to qualify as war veterans; they are either hired thugs or unemployed youths who see the invasions as an economic opportunity. Television footage of cash payments to young men after they had forced people out of their farms and homes leaves no doubt about the motives of some of these "veterans." The police have been ordered not to intervene in the invasions, a fact which underlines the essentially political nature of their thrust. The common sight of policemen standing on the sidelines while young men beat and harass people has become one of the defining images of Zimbabwe in recent months. Far from constituting a legitimate group of genuine war veterans, the invaders are the basis for rudimentary militia groups which have targeted Zimbabweans seen as critical of President Mugabe's policies and his government. Their activities and the political patronage they enjoy

---

<sup>172</sup> Those who were registered in 1997 to receive their Z\$50 000 payouts and monthly pensions.

from Zanu-PF increasingly suggest parallels with the Rwandese interahamwe militia, who carried out the 1994 genocide. They have already inflicted untold suffering on the black rural communities that they claim as their constituency.<sup>173</sup>

By September 2001, one faction of ZNLWVA, led by Andrew Ndlovu, demanded from the army retraining and weapons ‘in case there is a war’, instead of interference in the association’s leadership elections.<sup>174</sup> The army had earlier agreed with ZNLWVA acting chairman Patrick Nyaruwata that the elections should be postponed until after the Presidential election in 2002. Ndlovu reportedly accused the army, air force and police of harassing ‘war veterans’, and the MDC of having infiltrated ZNLWVA. He had earlier, on 15 March 2000, threatened to use violence to overthrow the MDC if it won the June election. He said if the MDC did come to power the war veterans would declare a military government. ‘We will get arms to defend the government of ZANU-PF. We will invade military camps just as we have gone to the farms.’<sup>175</sup>

Police firearms were reportedly issued ‘clandestinely’ to ‘war veterans’ not employed in the force by ZRP Deputy Commissioner Godwin Matanga, himself a war veteran. Apparently these did not include the weapon carried by Joseph Chinotimba, which was the subject of police investigation. The CIO was also reported to have cached firearms on selected commercial farms invaded by ‘war veterans’.<sup>176</sup>

In May 2000, ‘Comrade Zimbabwe’ (a war veteran leader) told farm workers

‘If ZANU-PF loses this election, you will not say that I did not warn you. If we lose, we will get out our guns. We cannot allow the MDC to sell our country... We will be at the voting stations. If ZANU-PF loses, the way forward will be filled with war. You will witness our strength in the coming weeks.’<sup>177</sup>

In June 2000, Edmore Hwarare (commander of the war veterans occupying farms in Masvingo West and parts of the Midlands) confirmed that the ex-combatants would not accept election results if any opposition party won the elections.

‘This country was won through the loss of blood and not elections. Therefore, if anyone wants to take it he should go to war with the ruling party. Even if other people accept the results, we will not. We are married to this country and Mugabe. We are going to support Mugabe until we bury him.’<sup>178</sup>

During the June 2000 poll, ‘war veterans’ tried - in front of two EU observers! - to hijack two mobile booths in Shamva and relieve them of their boxes. As monitored by *Politically-Motivated Violence in Zimbabwe 2000-2001* (pages 42-3) they have also been responsible for disrupting local government and ‘dismissing’ local government employees and civil servants, particularly police and teaching personnel.

- War veterans in Plumtree shut down offices of Bulilimangwe Rural District’s Council and the district administrators’ offices after accusing workers of supporting opposition parties. (Source: *Herald* 11 January 2001.)

<sup>173</sup> African Rights’ letter to President Obasanjo: see Appendix 1 for full text.

<sup>174</sup> *The Daily News* 3.9.01.

<sup>175</sup> *Daily News* 16 March 2000 (reported in PMV).

<sup>176</sup> *The Financial Gazette* 4.1.01.

<sup>177</sup> *Daily News* 8 May 2000.

<sup>178</sup> *Daily News* 5 June 2000.

- War veterans forcibly closed the offices of the Bulilimangwe District Council in Plumtree after accusing workers of sympathizing with the MDC. (Source: *Standard* 11 January 2001.)
- Workers at the Bulilimangwe district and provincial offices were driven out by war veterans accusing them of supporting the MDC. (Source: *Daily News* 17 January 2001.)
- War veterans and ZANU-PF supporters swooped on the Victoria Falls Town Council offices and ordered all workers out. They accused a number of ZANU-PF councillors of sympathizing with the MDC. (Source: *Daily News* 26 January 2001.)
- War veterans closed government and council offices at Zaka in Masvingo, accusing most of the civil servants of working with the MDC to undermine State programmes. (Source: *Herald* 31 January 2001.)
- War veterans closed the Umguza Rural District Council offices, accusing officials of supporting the MDC. (Source: *Financial Gazette* 21 February 2001.)
- War veterans closed the Nyamandlova sub-offices of the Umguza Rural District Council in protest against the presence from the MDC whom they believed to be frustrating land redistribution. (Source: *Herald* 17 February 2001.)
- Two workers at the Post and Telecommunications Corporation (PTC) branch in Centenary were dismissed from their jobs and evicted from their homes by war veterans, who accused them of supporting and sympathizing with the MDC. (Source: *Daily News* 28 February 2001.)
- War veterans in Redcliff, a mining town near Kwekwe, closed down four of the municipality's offices alleging that the officers were supporters of the MDC. (Source: *Daily News* 7 March 2001.)
- War veterans in Kadoma closed down three offices at the town centre over allegations that three of the council's directors supported the opposition MDC party. (Source: *Daily News* 12 March 2001.)
- War veterans and ZANU-PF supporters have "dismissed" 16 council workers in Marondera, accusing them of supporting the MDC. (Source: *Daily News* 19 March 2001.)
- Pupils at Murambinda Secondary School thwarted efforts by war veterans to terrorise their headmaster because of his alleged support of the MDC. (Source: *Standard* 15 April 2001.)
- War veterans and ZANU-PF supporters have chased scores of teachers and civil servants from their jobs in rural Matabeleland North alleging that they supported the MDC. The "sacking" of the teachers comes at a time when the Matabeleland regional office is battling to engage qualified teachers to fill thousands of vacant posts in most schools. (Source: *Financial Gazette* 17 May 2001.)
- War veterans and ZANU-PF supporters in Buhera sacked thirty-two teachers and deposed eight headmen for supporting the MDC. (Source: *Daily News* 20 June 2001.)

Some 20 'war veterans' charged with kidnapping and extortion reportedly told the court that they had shared money supposed to have been sent to Zanu-PF headquarters.<sup>179</sup> Identical charges against Mike Moyo (former ZNLWVA vice-chairman of Harare province) were dropped 'for lack of evidence' after he had been unlawfully detained for a week.<sup>180</sup>

## Political Parties

### Zanu-PF

During the 2000 Parliamentary elections, Zanu-PF advertised an extraordinary threat, claiming that

"Your vote is your secret" but chaos and instability out of our secret votes will not be a secret - the referendum aftermath is clear testimony of that... Only Zanu-PF brought peace... Use your vote for peace and stability or else we kiss our country goodbye to the likes of Somalia, Rwanda, Ethiopia, Sierra Leone etc'.<sup>181</sup>

<sup>179</sup> *The Herald* 19.5.01.

<sup>180</sup> *The Herald* 22.5.01.

<sup>181</sup> *The Herald* 22.6.00.

Following the June 2000 election, Government sought to deprive the MDC of state funding to which it was entitled under the Political Parties (Finance) Act. The MDC successfully sued to prevent Zanu-PF from spending Z\$30 million of the funds allocated earlier. Zanu-PF was required to lodge the money with the Registrar of the High Court. It failed to do so, claiming entitlement to all of the 2000 funding available. The High Court found that Zanu-PF was **not** entitled to all the State funding available, was guilty of contempt, and ordered it to repay the already-spent Z\$30 million, with costs. When the money was not forthcoming, the MDC applied for a Z\$50 000 fine against Zanu-PF for its contempt, or a three-month warrant of committal of Zanu-PF's National Chairman, John Nkomo (also the Minister of Home Affairs) to Harare Central Remand Prison.<sup>182</sup> Zanu-PF MPs then passed an amendment to the Political Parties (Finance) Act, which cut off the 2000 funding at the end of June (instead of December) and thereby allowed them to retain the money to which the court had decided they were not entitled.

Special constabulary units (reportedly comprising 'volunteers, Zanu-PF youths and war veterans') were also trained ahead of their planned integration into the ZRP.<sup>183</sup>

## **MDC**

As Zanu-PF attested its militia into the ZRP for training, MDC supporters were arrested for possessing registered firearms and accused of training an MDC militia and/or planning to send youths for military training in Uganda. MDC youths had allegedly been sent to Uganda three months before the party was even formed! Later, another five were reportedly alleged to have joined the 'Red Army' for local military training - in St Mary's cemetery!<sup>184</sup>

Apart from the above type of light relief, the main opposition party has seen its leadership, MPs and supporters harassed almost beyond belief, usually on charges of inciting public violence under the Law and Order (Maintenance) Act (LOMA) (and sometimes more serious charges). Among many members of the MDC who have been so harassed using LOMA are its President and Deputy President (Morgan Tsvangirai and Gibson Sibanda), national youth chair Nelson Chamisa, Justin Mutendadzamera, Jeffer Munyanyi, Tafadzwa Musekiwa, Job Sikhala, Nelson Chamisa, Mzila Ndlovu, Peter Nyoni, Thokozani Khupe, Abednico Bhebhe, Bernard Mhunduru, Gift Chimanikire and hundreds of ordinary party members.

Justice Chinhengo upheld the MDC's complaint that it was being debarred from contesting the Chegutu mayoral election, for which nominations had been closed on 18 October 1999 without an election having been held. He ordered the Registrar-General to hold a new nomination court for this post. By September 2001 this had still not been done and there was no indication of when the election would be held.

---

<sup>182</sup> *The Herald* 14.12.00.

<sup>183</sup> *The Zimbabwe Independent* 2.3.01.

<sup>184</sup> *The Daily News* 17.5.01.

## CHAPTER 6

### CONCLUSIONS

From the evidence presented in this report, our conclusions are brief and extremely depressing.

Zanu-PF Parliaments and parliamentarians have repeatedly traduced their electors in passing unconstitutional legislation (often with retrospective provisions) desired by the executive that contravenes the constitutional and democratic rights of Zimbabweans. In collaborating with an increasingly despotic and autocratic executive, the Parliament of Zimbabwe has failed to uphold the rule of law.

The executive, and particularly the presidency, has intervened, often unconstitutionally, in the law-making process; deliberately used State and militia forces against those it defines as the ‘opposition’; publicly contravened Zimbabwe’s laws and Constitution in repeated ‘hate speeches’ inciting violence and discrimination; undermined Zimbabweans’ human rights (though these rights to livelihood are *not* protected in our Constitution) by trashing the economy through policy; and assailed the independence of the judiciary.

The role of the current Minister of Justice, Legal and Parliamentary Affairs, and former Attorney-General, Patrick Chinamasa, in the executive’s undermining of the rule of law has shocked citizens almost as much as the role of the State President, Robert Mugabe. It will take both the police and the defence forces a long time and fundamental restructuring even to begin to regain the trust of Zimbabweans in the role they are supposed to play as neutral protectors of the State (as opposed to the ruling party) and its laws.

The judiciary as a whole has sought to uphold both the Constitution and the laws, despite a few individual judges’ collaboration with the executive in its assault on the rule of law. For upholding the rule of law, the judiciary has been publicly humiliated by the executive and denied the protection of Parliament by Zanu-PF MPs.

In short, as the world recognised in the recent Abuja Agreement, the post-colonial ‘liberation’ regime has been a complete legal, social, political and economic disaster for ordinary Zimbabweans.

Those responsible will, we sincerely hope, one day face a justice that they cannot subvert.

## References

- Biti, T. 1999 Judiciary bashing, a predatory state, and the rule of law in Zimbabwe. *Zimbabwe Human Rights Bulletin*, Issue 1, pages 97-108.
- Feltoe, G. 2001 The onslaught against democracy and the rule of law in Zimbabwe. *Zimbabwe Human Rights Bulletin*, Issue 4, pages 130-58.
- Zimbabwe 1996 *The Constitution of Zimbabwe*. Harare: Government Printer.
- Zimbabwe 1996 *High Court Act (Chapter 7:06; revised edition)*. Harare: Government Printer.
- Zimbabwe 1996 *Supreme Court Act (Chapter 7:13; revised edition)*. Harare: Government Printer.
- Zimbabwe 1996 *Presidential Powers (Temporary Measures) Act (Chapter 10:20; revised edition)*. Harare: Government Printer.
- Zimbabwe 1996 *Law and Order (Maintenance) Act (Chapter 11:07; revised edition)*. Harare: Government Printer.
- Zimbabwe 1998 *Prevention of Discrimination Act (Chapter 8:16)*. Harare: Government Printer.
- Zimbabwe 1998 *Public Order and Security Act (Chapter 11:17)*. Harare: Government Printer.
- Zimbabwe 2000 *The 2000 Delimitation Commission Report*. Cmd. RZ 3/2000. Harare.
- Zimbabwe Human Rights NGO Forum 2001 *Who was Responsible? Alleged Perpetrators and their Crimes during the 2000 Parliamentary Election Period: A Report*. Harare: ZHR NGO Forum.
- Zimbabwe Human Rights NGO Forum 2001 *Politically Motivated Violence in Zimbabwe 2000-2001: A Report*. Harare: ZHR NGO Forum.
- Zimbabwe Women Lawyers Association 2001 *Research on Politically-Motivated Violence perpetrated on Women in the pre-run to the June 2000 Parliamentary Elections in Zimbabwe*. Harare: ZWLA.