

THE LEGAL PROFESSION AND THE JUDICIARY AS HUMAN RIGHTS DEFENDERS IN ZIMBABWE IN 2003. SEPARATION OR CONSOLIDATION OF POWERS ON THE PART OF THE STATE? By Arnold Tsunga¹

“ You lawyers, you want to show off. You think you can just interfere in matters anywhere...you are only a lawyer at court. Here you are nothing. Get away...get out of the charge office. Far away!... Go to your court.”²

This article has been necessitated by recent attacks on Zimbabwe Lawyers For Human Rights by the state media, which has tried to create an impression that ZLHR has a motive other than fostering a culture of human rights in Zimbabwe. ZLHR is a non-partisan organization whose main objective is to foster a culture of human rights in Zimbabwe and encourage the growth and the strengthening of such rights at all levels of Zimbabwean society. ZLHR seeks to protect the constitutional rights of all individuals in Zimbabwe and advocates for the observance of the rule of law and protecting the independence and integrity of the courts and lawyers. The unfortunate remarks of his excellency the President of the Republic of South Africa Thabo Mbeki quoted below that have a potential of creating a real danger of human rights defenders being attacked or clamped down upon in Zimbabwe, make this response all the more necessary. President Thabo Mbeki is quoted to have stated that “it is clear that some within Zimbabwe and elsewhere in the world, including our country, are following the example set by “Reagan and his advisers” to “treat human rights as a tool” for overthrowing the government of Zimbabwe and rebuilding Zimbabwe as they wish. In modern parlance, this is called regime change.”³ Indeed these remarks are likely to have far reaching and grave consequences on the operating environment of human rights defenders in Zimbabwe.

One cannot talk about democracy without there being three distinct organs of the state represented by the Judiciary, the Executive and the Legislature (Parliament). This is normally referred to as the concept of separation of powers. The separation of powers is necessary to introduce checks and balances in the manner in which state power is exercised over those who are ruled. It allows for equality before the law and the

¹ Arnold Tsunga is the Executive Director of Zimbabwe Lawyers For Human Rights and writes this article in response to recent attacks on ZLHR and him in the state owned and controlled Herald newspaper of 29/11/03 and 3/12/03.

² Extract from a ZLHR statement quoting from a policeman who was allegedly assaulting a lawyer in Victoria falls, Zimbabwe on 15 august 2003.

³ . It would also help if this article can be read by his excellency, the President of the Republic of South Africa Thabo Mbeki given his highly publicised attack on human rights organizations in Zimbabwe in *ANC Today, Volume3, No 49, 12-18 December 2003 titled **We will resist the upside-down view of Africa.*** His attack of human rights defenders is likely to unfortunately result, whether intended or not, in an increase in attacks on human rights defenders in Zimbabwe and worsen an already deteriorating human rights record and increase the suffering of the majority of powerless Zimbabweans. In particular his attack on human rights organizations is consistent with the Herald attack on Zimbabwe Lawyers For Human Rights and The Legal Resources Foundation in the Herald of 03/12/2003 where the article by one Caesar Zvayi is titled “**Wolves in sheepskins... ‘ Human rights’ groups in desperate attempts at political subversion**”.

enjoyment of rights based on the rule of law. In dictatorial regimes or states where there is failing democracy, there usually begins to be a blurred separation of powers. The Executive organ of the state, which has control over the state machinery, (the army, the police, the intelligence, and other law enforcement agencies) usually becomes stronger than other organs of the state. In such undesirable situations as has become the case in Zimbabwe, the Executive begins to undermine other organs of the state. In Zimbabwe we have had the Executive refusing to enforce certain court orders that are seen to be unfavourable to the state or the ruling ZANU PF party.⁴ The Executive has also attacked the judiciary openly, quite unprofessionally and unfairly in a number of cases, some of which are discussed more specifically below. The government of Zimbabwe however has a history of attacking the judiciary or members of the legal profession each time the Executive is unhappy at certain judicial decisions.⁵ Even lawyers who have tried to

⁴ The Executive has not enforced Court orders in the following cases *inter alia*, Mark Chavunduka and Ray Choto –v- Ministry of Defence (1999 case); Andrew Meldrum –v- The Chief Immigration Officer and ors (May 2003); Associated Newspapers Of Zimbabwe Vs Chief Superintendent Madzingo &The Commissioner Of Police HC8191/2003; Dorothy Kumunda &7others –V- District Administrator Chikomba District &Another- HC9481/03; Charles De Kock –v- Mike Madiro and 4 ors HH 217/03, Cuthbert Chivhunze &Others –V- John Chitozho&Others –Mutare Court Case No.416/02; Commercial Farmers Union –V- Minister Of Lands & Others 2000 (2) ZLR 469 (S); Bennet Brothers Farm Entrprises Pvt Ltd –v-Vs Mupfukurirwa &Others Mutare B.O393/03; Commissioner Of Police –V- Commercial Farmers Union 2000(1)ZLR 503 (H); Commecial Farmers Union –V- Mhuriro&Others 2000(1)Zlr 405 (S); Yorke and Another –v- Minister of Home Affairs HC H264/82 HC H 247/82 Bennet Brothers –v- Mwale,Chogugudza, and ors (numerous High Court and Magistrate Court cases), Natalie Dube –v- Commissioner of Police, C/S Mabunda and ors (Mutare Magistrates Court case), Morgan Tsvangirayi’s Electoral challenge in the High Court at Harare where Justice Devittee directed that Joseph Mwale and another be prosecuted for allegedly torching to death Talent Mabika and Tichaona Chiminya, election agents for Morgan Tswangirayi the MDC leader. The Zimbabwe NGO Human Rights Forum in its report, The Abuja Agreement, Compliance or Non Compliance? quote the state President as follows “[the Government would] *respect judgments where the judgments are true judgments. We do not expect that judges will use subjectivity in interpreting the law. We expect judges to be objective. We may not understand them in some cases but when a judge sits alone in his house or with his wife and says ‘this one is guilty of contempt’ that judgment should never be obeyed. I am not saying this because we would want to defy judges. In fact we have increased their salaries recently. We want them to be happy. But if they are not objective, don’t blame us when we defy them.*”

⁵ See the Yorke Brothers (supra) a 1982 case where Ushewokunze [Home Affairs Minister then] had this to say about the legal profession “ We are aware that certain private legal practitioners are in receipt of money as paid hirelings, from governments hostile to our own order, in the process of seeking to destabilise us, to create a state of anarchy through an inherited legal apparatus. We promise to handle such lawyers using the appropriate technology that exists in our law and order section. This should succeed to break the unholy alliance between the negative bench, the reactionary legal practitioners and governments hostile to us, some of whose representatives are in this country.” The State President [then Prime Minister] was also quoted as having said the following about the judiciary in the same case on 29 July 1982, “the government cannot allow the technicalities of the law to fetter its hands in what is a very clear task before it, to preserve law and order in the country... We shall therefore proceed as the government in the manner we feel is fitting... and some of the measures we shall take are measures which will be extra legal (See Greg Linnington’s Constitutional Law of Zimbabwe LRF Harare 2001); In Mark Chavunduka’s case (supra) when judges complained about the non compliance by the Executive with court orders, President Mugabe is reported to have asked the judges to resign and is quoted as having said the following on the national television, “ the

defend the judiciary and the legal profession from unwarranted attack have themselves become targets of abuse and slander as happened with Zimbabwe Lawyers For Human Rights when they were attacked in the government controlled Herald Newspaper of 29 November 2003 after coming out strongly in defence of the independence of the judiciary. The government controlled newspaper the Herald, commenced its article as follows:

“ It is just as difficult to stop anyone from using “Zimbabwe” for selfish ends as is difficult to compel the Standard to carry the Zimbabwe flag. This seems to be the case with the so-called Zimbabwe Lawyers For Human Rights (ZLHR), that phony non governmental organisation which in fact does the bidding of foreign governments, and sees rights of all those that are not white farmers or members of the MDC [Movement For Democratic Change]⁶ as non-human rights!

However its Arnold Tsunga needs to be told quite clearly that to claim to be a lawyer is not as open-ended as claiming to be a patriotic Zimbabwean.”

It is regrettable that attacks on members of the legal profession have increased in recent years as can be seen from the specific cases dealt with below.

The state has also not always cooperated fully with lawyers in the discharge of their duties in recent years, mainly in cases where lawyers are acting for political opponents of the ruling party or for human rights defenders.⁷ There is no better way to demonstrate the

judiciary has no constitutional right whatsoever to give instructions to the President on any matter as the.. Judges purported to do. Their having done so can clearly be interpreted as an action of utter judicial indiscretion or as one of imprudence, or as, as I regard it, an outrageous and deliberate act of imprudence.” *The Herald's* article of 18 July 2002 titled ‘Judgment against Minister sinister’ is yet another example of the disrespectful and contemptuous manner in which members of the Executive have taken to treating the Judiciary. In that article Minister of Information Jonathan Moyo suggested that contempt charges should never have been laid against Mr. Chinamasa, the Minister of Justice. Moyo further insinuated that the Honourable Justice Blackie had been handing down ‘racist’ judgments since the Rhodesian days. His Excellency, the President of Zimbabwe Robert G Mugabe appointed Justice Blackie onto the bench.

⁶ The MDC is the opposition political party in Zimbabwe.

⁷ ZLHR has written to the police Commissioner on 5 June 2003 drawing the police attention to the general complaints of lawyers as follows

- there are credible reports that a significant number of the arrests and detentions are arbitrary.
- the army, CIO and PISI are arresting people and handing them over to the law and order section for investigations. The law enforcement agents have therefore fallen into the error of arresting first and investigating later in contravention of constitutional and other legislative safeguards preventing such action.
- the police are not fully cooperating with the lawyers with the normal excuse by the officers in charge of the police stations where people are detained being that they are merely providing accommodation to the detainees at the requests of the law and order section of the police force. Lawyers are not allowed access to clients in the absence of permission from the law and order section of the police force. This violates or compromises the rights of accused persons to have unimpeded access to their lawyers.

lack of cooperation on the part of the police than to quote from a statement of ZLHR which details the attitude of the police to human rights lawyers in cases involving representing human rights defenders. The statement is dated 22 October 2003 and states as follows:

“One issue of grave concern to ZLHR was that when human rights lawyers appeared at Harare Central Police station where Dr Madhuku and others were detained, the police were completely uncooperative in that among other things;

- ❖ The police manhandled human rights lawyers Beatrice Mtetwa and Arnold Tsunga and pushed them out of the police station. A woman officer was deployed at the entrance to physically prevent Beatrice Mtetwa from re entering the police station.
- ❖ When other human rights lawyers Alec Muchadehama, Jacob Mafume, Lawrence Chibwe and 5 others also turned up at the Police Station, they were initially also pushed out of the police station by the riot squad who advised that they were instructed by a senior policeman named Officer Dengu not to allow any lawyer to see the NCA members.⁸
- ❖ The riot squad thereafter maintained a presence at the police station’s entrance physically preventing any lawyers from having access to the charge office to represent the NCA members.
- ❖ When lawyers now led by Advocate Gijima were eventually allowed access into the charge office, Chief Superintendent Madzingo flatly refused to allow lawyers access to the detainees and ordered one officer Dowa to remove the lawyers from the law and order section of the police force which Dowa promptly did.
- ❖ After over 5 hours of waiting the human rights lawyers left Harare Central Police Station without having been allowed access to their clients, let alone to even see them.

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- the police in most cases are over detaining accused persons. Most of the detainees are detained in excess of the 48-hour period. The fact of arresting before investigating is compounding this problem.
 - The detainees are not being allowed in the majority of cases access to their families; neither are they being provided with food or medical treatment.
 - the detainees are being detained in extremely squalid conditions where there is generally poor sanitation, ventilation and hygiene. More specifically the cells are over crowded, in instances with 40 inmates in a cell designed to accommodate 6 inmates; some sewers are blocked and urine, water and other human waste finds itself into the cells like at Goromonzi police station which Zimbabwe Lawyers for Human Rights visited to do a spot random check; there usually are no adequate blankets in the cells. In short the conditions are degrading and inhuman which violates the Constitution of Zimbabwe and other international instruments that the government has signed and ratified like the African Charter on Human and Peoples Rights, the International Covenant on Civil and Political Rights, and the Universal Declaration on Human Rights.
 - there have been credible reports of torture, assault, violence and general intimidation of the people by the state machinery so far.
 - the police in many cases have opposed bail when it is not justifiable to adopt such a position.

⁸ The National Constitutional Assembly (NCA) is a nongovernmental organisation that is advocating for a new peoples constitution for Zimbabwe since the current constitution was a compromise constitution that was made in 1979 to end the civil war in Zimbabwe. It has also been amended to effectively create what is argued strongly to be a constitutional dictatorship where the state power is cristalised in the office of the state President.

This is not the first time that the police and other law enforcement agents have refused to allow suspects access to their lawyers. Such conduct by the police is unlawful and undermines the due administration of justice and the rule of law. It must be stopped. The attitude of the police to the lawyers which continues to deteriorate at an alarming rate in Zimbabwe is increasingly becoming an issue of serious concern to the lawyers given that it is not possible to administer justice in an environment where law enforcement agents will not cooperate with lawyers and refuse to accept the rights of lawyers to have unimpeded access to their clients. The rule of law will not work in this type of environment.”

The following instruments clearly spell out the government’s obligations and responsibilities towards ensuring that the Judiciary remains free from political or other interference:

1. **United Nations Basic Principles on the Independence of the Judiciary (1985)**, Article 1, which states:
“The independence of the judiciary shall be guaranteed by the state and enshrined in the Constitution or the law of the country. It is the duty of governmental or other institutions to respect and observe the independence of the judiciary.”
2. **United Nations Basic Principles on the Role of Lawyers (1990)**, Principle 17 which, states:
“Where the security of lawyers is threatened as a result of discharging their function they shall be adequately safeguarded by the authorities”
3. **The Constitution of Zimbabwe**, Section 79B, which states:
“In the exercise of judicial authority a member of the judiciary shall not be subject the direction or control of any person or authority...”

The fact of interference with the judiciary and lawyers in Zimbabwe has also been of concern to the **United Nations Special Rapporteur On The Independence Of The Judges And Lawyers**, Dato’ Param Cumaraswamy, who submitted to the United Nations Human Rights Commission a report dated 10 January 2003 which has a recommendation as follows:

“ With regard to Zimbabwe, the Special Rapporteur once again urges the Commission to consider and address appropriately its concerns about the deterioration in that country, inter alia with regard to the independence of the judiciary and its impact on the rule of law.”

African NGOs have also expressed their concerns at the interference with the judiciary and lawyers by the state in recent years. At the African NGOs Forum held at the African Commission’s 33rd session in Niamey, Niger in May 2003, the African NGOs made a resolution, which read in part that:

“ The participants at the NGO Forum urge the African Commission on Human and Peoples Rights to recommend that the government of Zimbabwe;

Take all necessary measures to ensure protection of lawyers, public prosecutors, magistrates, judges and to respect the independence of the judiciary.”

There is therefore no doubt that lawyers and judges are allowed to practice their profession independently, and without undue interference, harassment or impediment from the state or other non-state actors that operate with the acquiescence or at the instruction of the state or state actors. Specific cases in the year 2003 will now be dealt with below.

SPECIFIC CASES

January 2003. Gabriel Shumba’s case

Gabriel Shumba a human rights lawyer then working for the Zimbabwe Human Rights Forum was arrested and detained when he had allegedly tried to represent his client, the honourable member of parliament for Chitungwiza Job Sikhala of the MDC. There were reports of the inhuman treatment and serious torture of Gabriel Shumba, and his client Job Sikhala and other people they were arrested with. Their complaints and the medical reports on the injuries they sustained while in police custody are part of the court record in their case. The police have not at any time denied the allegations that they assaulted and tortured the accused, and forced Job Sikhala to drink an unidentified substance. There were reports of the detainees being forced to drink urine as part of the torture. Gabriel Shumba who complained of continued threats from the law enforcement agents now lives in exile for fear of his life.

17 February 2003. Justice Benjamin Paradza’s case

Justice Benjamin Paradza was arrested from his chambers at the High Court of Harare on the morning of Monday 17 February 2003. Thereafter he was detained overnight at Borrowdale police station Harare. Justice Paradza’s was charged with corruption. Similar charges had also been preferred against retired High Court judge Justice Fergus Blackie in late 2002. Before retiring, Justice Blackie had sentenced the Minister of Justice to 3 months in jail for contempt of court. His arrest was also generally seen as punishment for having made the ruling against the Minister of Justice. The arrest of Justice Paradza was arbitrary and irregular. He had recently presided over a case involving the mayor of Harare, Engineer Mudzuri who belongs to the MDC. His arrest was therefore generally seen as vindictive and a message to other judges not to be lenient with the opposition. The government denied this suggestion. On 16 September 2003 the Supreme Court of Zimbabwe in the constitutional application involving issues surrounding the arrest and detention of Justice Benjamin Paradza found the arrest, detention and remand of Justice Paradza to have been unconstitutional and set aside the criminal charges against him. This effectively brought the criminal proceedings against Justice Paradza to an end.

Judges are in a position of extreme trust in society, and with that trust they are entitled to full respect. They must only be arrested as a last resort. Before the arrest of any judge full investigations must be completed. The public's respect for the police and the courts will not be served if judges are continuously being pressurised, arrested and detained but not prosecuted. Although judges are not immune from prosecution the police are duty bound to finalise their investigations before bringing them to court. Justice Paradza's case illustrates the general tendency of the Zimbabwe Republic Police to arrest before investigations have been started, and without regard to the gravity of the offence.

In any case the interests of justice are adequately protected against corrupt judges by the Constitution of Zimbabwe, which provides for the setting up of a tribunal to make full enquiries into the matter when an allegation of misconduct has been brought against a judge. It would be advisable that the inquiry should be conducted before charges are preferred so that, if possible, the judge is removed from the bench before he is brought before a brother or sister judge to face trial on criminal charges. If investigations have indeed been completed the matter should be referred to the Judge President for such a commission of inquiry and the judge's removal before the trial proceeds.

24 March 2003. Gugulethu Moyo and Alec Muchadehama's case

Lawyers Gugulethu Moyo and Alec Muchadehama were allegedly assaulted on Tuesday 18 March 2003 in Harare. They had gone to Glenview Police Station to try and represent one Philimon Bulawayo who had been arrested in Glenview on 18 March 2003. Philimon Bulawayo was also allegedly assaulted by police officers and detained without charge. When lawyers Gugulethu Moyo and Alec Muchadehama arrived to represent him and establish any charges against him, the police in the charge office denied that Bulawayo was being held there. However Moyo spotted him in an office, and was thereafter ordered to wait for the investigating officer to discuss his release.

It is reported that while Moyo and Muchadehama were waiting outside Jocelyn Chiwenga, the wife of the then Commander of the Zimbabwe National Army, now Commander of the Zimbabwe Defence Forces, arrived at the police station accompanied by a personal "bodyguard", Kelvin Chadenyika, as well as riot police and soldiers. Chiwenga allegedly approached Moyo and upon learning that she worked for the Associated Newspapers of Zimbabwe⁹, began to assault her. When Muchadehama attempted to come to her assistance he too was pushed and assaulted by Chiwenga and Chadenyika. Chiwenga allegedly unlawfully searched Moyo's handbag and allegedly removed several items. The assault on Moyo continued unabated in the presence of some 60 police officers (some of whom had come out of their offices to witness the spectacle) and uniformed soldiers. Thereafter Moyo was locked in a cell on the orders of Chiwenga, where she was detained for 2 hours. Chiwenga then ordered the police to place Moyo and Muchadehama in a truck together with other arrested persons to be removed to Harare Central police station. On Chiwenga's instructions, 5 riot police assaulted Moyo

⁹ Associated Newspapers of Zimbabwe are the publishers of The Daily News and The Daily News on Sunday independent newspapers that the government has forcibly closed following a controversial Supreme Court ruling of September 11, 2003.

on the way to Harare Central. She was hit with baton sticks and booted feet and told by them that “police stations are not for lawyers”. At the Law and Order section Moyo was locked while Muchadehama was released. Following a High Court order, Moyo was taken to Parirenyatwa Hospital for medical attention at around 2200 hours. When her lawyer attempted to talk to her, the police removed her from the hospital before a doctor could examine them. Moyo was then detained at Harare Central Police Station, and was only released on the afternoon of Thursday 20 March 2003, after her lawyers had obtained a further High Court order and upon the intervention of the Attorney General’s office. No charges were preferred against either Moyo or Chiwenga.

April 2003: Levison Chikafu’s case

The *Daily News* of 8 April 2003 carried a story that a group of 7 people identifying themselves as war veterans led by one Makanyisa allegedly confronted a senior public prosecutor, Mr. Levison Chikafu, at the Magistrates’ Court at Mutare after forcing their way into his private office and demanded to know why “he had granted bail to MDC supporters” who “were supposed to have been remanded in custody”. The group is alleged to have threatened to assault the public prosecutor for his role in the successful bail application by the opposition Movement For Democratic Change members who included, the Member of Parliament for Mutare North Constituency Mr. Giles Mutseyekwa. The conduct of the war veterans, besides being unlawful and unwarranted in a democratic society, highlights a complete failure on their part to understand the role of the public prosecutor in court proceedings. It is the court’s function, through the presiding magistrate, to grant bail to accused persons. The public prosecutor and the accused’s legal representative merely place the evidence before the court to assist the court in ruling suitably on the question of bail. Official or unofficial extensions of the executive such as the militias have no right to confront judicial officers to question them on the exercise of their official functions as part of the Judiciary. One more disturbing issue about the harassment of Mr. Chikafu is that the Governor of Manicaland and Resident Minister Oppah Muchinguri is also reported to have summoned Mr. Chikafu to her office where she also reprimanded him in the company of some security agents.

2 June 2003. Reginald Chidawanyika and Dumisani Kufaruwenga’s case

On 2 June 2003 Chidawanyika and Kufaruwenga, two Gweru based human rights lawyers were subjected to abuse and manhandled by the police merely for attempting to represent their detained clients. Chidawanyika and Kufaruwenga, filed a complaint against the assailant police detail at Gweru Central police station. They were allegedly manhandled by one D/Sgt Masango who is reported to have grabbed the lawyers by the arms and “pulled [them] out of the charge office”. D/Sgt Masango further allegedly grabbed Chidawanyika by the waist to push him out of the charge office where he had gone to try and locate his detained clients. D/Sgt Masango also “physically manhandled [Mr. Kufaruwenga] by the jersey and pushed his back against the wall. This harassment

of the lawyers took place in front of their “clients numbering about eleven” and members of the police force manning the charge office. Relatives of the detainees and other members of the public also witnessed this public humiliation of lawyers by the police. When the lawyers tried to raise a complaint with Detective Woman Assistant Inspector Mapinge they advise that “she immediately went into a barrage in unprintable words” accusing the lawyers of not being human beings and that the treatment to which D/Sgt Masango had subjected them (the lawyers) is what they deserved.

The police ultimately refused to let the lawyers have access to their clients and forced the detainees to pay admission of guilt fines under the Miscellaneous Offences Act to secure their release from custody. This was contrary to the lawyers’ advice that their clients had no reason to pay any fines.

5 June 2003. Kossam Ncube and Travor Ndebele’s case

On Thursday 5 June 2003 two Bulawayo human rights lawyers, Kossam Ncube and Travor Ndebele, were detained at Bulawayo Central police station for some time together with their clients, Jenni Williams and Sheba Dube-Phiri, of the civic group Women of Zimbabwe Arise (WOZA). The two civic leaders were attempting to provide food for detainees held at Bulawayo Central police station who had not received nourishment for some days, in contravention of their rights under the Zimbabwean Constitution and international human rights instruments. Due to fears that the two women might themselves face arrest and detention, Ncube and Ndebele had escorted the two WOZA leaders to the police station in their capacity as their legal representatives. All four were escorted to the courtyard where they were interrogated by a named police officer, who relieved the two lawyers of their Law Society practising certificates. They were told that “If you are supporting [Williams and Dube-Phiri} then you must go inside with them”. The four were then removed to the Law and Order section where, in the presence of at least five police officers, they were subjected to verbal insults and threats of abduction and murder. The lawyers were accused of fuelling the behaviour of civilians during the mass protests and wanting to promote anti-state sentiment. Another named officer then ordered that all four be detained. They were later released after the two lawyers began telephoning their colleagues to attend and represent them.

15 August 2003. Mpokiseng Dube’s case

A human rights lawyer Mpokiseng Dube of Victoria Falls was assaulted by members of the Zimbabwe Republic Police stationed at the Victoria Falls Camp. The assault took place on 15 August 2003, at about 1700 Hrs. According to the report received Mr Dube was assaulted whilst he was attempting to represent his client who was also being subjected to assaults by the same police officers. Mr Dube witnessed his client being hauled head long down the stairs at his (the lawyer) offices where he “rolled and tumbled to the basement”. He also witnessed the officers taking turns to kick him all over the body

with booted feet. This was in full view of members of the public who had gathered at the lawyer's offices due to the commotion caused by the police.

As the assault on his client continued unabated Mr Dube summoned enough courage to identify himself to the police as the lawyer for the suspect. The lawyer was immediately subjected to verbal abuse and assault for identifying himself as such by the police. The lawyer was immediately accused of obstructing the course of justice and ordered to accompany the police to the charge office. The assault on the lawyer was with a booted foot and an open hand. This was also in full view of the public. Meanwhile his client was still being assaulted and was now bleeding through the nose and above one of his eyes, which by now had a cut.

At the charge office Mr Dube allegedly demanded to see the Officer in Charge to get an explanation on the police conduct. A certain junior police detail manning the office later identified as Constable Kasipe allegedly uttered the following abusive remarks in shona, *"Magweta munoda kuonererwa. Munofunga kuti munotonga nyaya pese...Iwe urigweta chete pa Court. Panapa hausu chinhu. Get away...get of out of the charge office. Katshana... yenda kuCourt kwako"* whose fair translation is as follows *"You lawyers, you want to show off. You think you can just interfere in matters anywhere...You are only a lawyer at court. Here you are nothing. Get away...get out of the charge office. Far away!... Go to your court."* The constable allegedly further uttered the following remarks, *"Panapa tinoita zvatinoda uchatiitei"* whose translation is as follows *"here we do what we want. What will you do to us?"* Constable Kasipe allegedly refused to allow Mr Dube unimpeded access to his client insisting that the two must only meet at court. At that point Mr Dube's client was allegedly detained and during detention the police allegedly uttered the following remarks in Ndebele *"Awukuwazi ukuthi thina siyanhlanya? Siyakutshaya ufe kungela muntu oza kuthini. Nguwe otshaya amapholisa? Ulenhlanhla uface I-temper yami iright Uface le appetite yami yokutshaya iphansi"*. The fair translation of these remarks is as follows *"You don't know that we are mad? We can beat you and no one will say a thing; you are the one who assaults policemen? You are lucky you found me with a correct temper, you found my appetite for assaulting low."* The police never disclosed to Mr Dube why his client was being arrested.

12 October 2003. Mrs Mtetwa's case

Mrs Beatrice Mtetwa a leading human rights lawyer was assaulted by a member of the Zimbabwe Republic Police stationed at Borrowdale police station in Harare. The assault took place on 12 October 2003 at night. According to the report, the attack on Mrs Mtetwa by a policeman who was in the company of other police details was unprovoked. Other police details at the police station who witnessed the assault did not intervene. The police are alleged to have further refused to pursue a group of possible carjackers who had tried to dispossess Mrs Mtetwa of her vehicle but instead chose to victimise her. It is understood that her plea to be taken for blood tests in order to rebut the malicious suggestions by the police that she was under the influence of alcohol at the time of her assault was ignored. According to the human rights lawyer "The assault continued right up to Borrowdale police where he kicked me all over my body in addition to the blows he had inflicted on my face. The assault was in full view of the other details who were at the

charge office and who refused to intervene... My attempts at lodging a formal complaint of assault failed as none of the duty details were prepared to take the report”

Mrs Mtetwa has been one of the leading human rights lawyers in Zimbabwe having handled many high profile human rights and other cases such as the ones involving the Harare Mayor Engineer Mudzuri, Brian Kagoro the coordinator of the Crisis Coalition, John Makumbe the Chairman of Transparency International Zimbabwe and Andrew Meldrum the journalists who was deported in violation and contempt of a High Court Order by the police and immigration officials in May 2003.

25 November 2003. Attack on the Administrative Court Judge Mr. Majuru

The Herald¹⁰ newspaper of 25 November 2003 contained a headline titled “Judge under probe- Majuru accused of making pre-determined judgments in ANZ, MIC legal wrangle” The paper thereafter went on to give a report that cast serious doubt about the professionalism of the President of the Administrative Court Mr. Majuru in his dealing with the case involving the Associated Newspapers of Zimbabwe (ANZ) (publishers of the Daily News) and the Media Information Commission (MIC) purportedly relying on an affidavit of the MIC lawyer complaining of bias on the part of Mr. Majuru. The paper went on further to state that the judge was under investigation for the improper conduct by a number of investigative and security organs of the state. The following day, the Herald carried another headline story that “Judge Quit” whose body showed that Judge Majuru had recused himself from the case on account of the Herald report of the previous day.

The attack on the Administrative Court and on Mr. Majuru by the government-controlled newspaper was contemptuous, unwarranted and calculated to bring the administration of justice into disrepute. ZLHR suggested that “it [was] also part of a wider, deliberate, systematic and sustained general attack on the judiciary to manipulate it, reduce its independence and weaken national institutions of protection that are vital for the restoration of the rule of law and democracy.”

Background information

The ANZ are publishers of the Daily News, which is the only independent daily newspaper in Zimbabwe. The other daily newspapers in Zimbabwe are The Herald and The Chronicle, which are government, owned and controlled and are generally believed to churn out government propaganda. For some time the Daily News has been the target of attack by the state or state organs.¹¹

¹⁰ The Herald Newspaper is a government of Zimbabwe owned and controlled newspaper. www.theherald.co.zw

¹¹ The Daily News premises have been bombed before. The Daily News printing press has been bombed before. The Minister of Information in the President’s Office has been on record attacking the Daily News as oppositional and British funded. The journalists of Daily News have been arrested more than journalists

On 11 September 2003 the Supreme Court of Zimbabwe made a ruling in the matter involving ANZ and MIC. Based on the controversial doctrine of “dirty hands” it refused to give ANZ audience on its constitutional challenge, instead ordering that the ANZ first comply with the challenged law before seeking judicial protection against it. This resulted in the ANZ failing to enjoy its constitutional right to the due protection of the law.¹²

On 12 September 2003 the police forcibly forced the ANZ to stop publishing the Daily News and the Daily News on Sunday, its two publications.

On 15 September 2003 the ANZ submitted its application for registration as a media house with the MIC in compliance with the Supreme Court ruling.

On 16 September 2003 the police forcibly closed the ANZ offices, stopped management and workers entry into ANZ premises, occupied the ANZ premises (including the news room), forcibly occupied the premises housing the printing press and uplifted virtually all ANZ computer equipment to some undisclosed location.

On 17 September 2003 in a very legally sound and brave judicial decision a High Court judge Justice Omerjee ruled that the police conduct of forcibly occupying the premises of ANZ and seizing their equipment without a Court order was illegal and that there was nothing at law to prevent the ANZ from publishing the Daily News. The police were ordered to return the seized equipment and not to interfere with the ANZ. In particular Justice Omerjee ruled that the police “ have no legal right to prevent the applicant or its employees from gaining access to the premises of the applicant and carrying on the business of publishing a newspaper.”¹³ The MIC appealed against this decision to the Supreme Court in a determined effort to prevent the Daily News from being published.

On 19 September 2003 the MIC predictably refused to grant ANZ a licence to operate as a media house. The ANZ took this decision on review to the Administrative Court. This is where Mr Majuru who is the President of the Administrative Court first entered the scene.¹⁴

On 24 October 2003 Mr Majuru made a ruling setting aside the decision of the MIC on three grounds namely that, the MIC was improperly constituted and could not in its current composition issue out any valid licences or decisions, the MIC had acted outside its powers when it turned down the ANZ application, and that the MIC was biased

of any other paper in Zimbabwe. For more information on media harassment contact MISA at misa@mweb.co.zw.

¹² See the Supreme Court ruling SC 20 /03 which has been widely criticised by the legal profession and human rights defenders as wrong and unsustainable at law and in a democracy.

¹³ See High Court case no HH 157/03

¹⁴ Judges of the Administrative Court are referred to in the statute creating that court as Presidents.

especially through its Chairman against the ANZ. Mr Majuru also made a ruling that as far as the court was concerned ANZ had to be issued with a certificate of registration. The operative part of the judgment reads as follows:

“ Given the finding of bias that we have made, the unjustifiable delays that might be occasioned to the Applicant by a re-determination, and the fact that we are in as good a position to make the decision ourselves, we order that the Appellant be issued with a certificate of registration by the Respondent”

Mr Majuru’s judgment was brave and well reasoned and contrary to some superior courts judgments, showed a marked degree of judicial activism in protecting the bill of rights and universally recognised human rights and fundamental freedoms. The position of the Administrative Court had therefore been always very clear in terms of the judgment quoted above. The over riding motive in attacking Judge Majuru in the way that the Herald newspaper did was of maintaining and prolonging the closure of the Daily News and sustaining the institutional attack on the right to freedom of expression hook or crook. This was achieved since Mr Majuru was left with no alternative but to recuse himself from the matter. The recusal of Mr Majuru from the matter prolonged the matter and placed the next president to deal with the matter under undue pressure. The attack on Mr Majuru was a deliberate reminder to the judiciary by those forces within the state that do not believe in the rule of law, that they are at risk if they make rulings that are seen to be against the state or the ruling party.¹⁵

8 December 2003. Z.M. Kamusasa’s case

On 8 December 2003 Mr. Z M Kamusasa a lawyer with Messrs Nduna and Partners accompanied his client one Constable Ngoni Marowa to Harare Central Police Station where his client was wanted for some unspecified allegations of robbery. Mr. Z M Kamusasa advises that upon arrival at the police station in the company he was referred to the office of one Inspector Ganyata. Upon entry into the office of Ganyata, Kamusasa advises that Ganyata gave instructions for his client to be detained without offering an explanation for such an instruction. When Kamusasa sought an explanation from

¹⁵ Last year in August 2002, Chipinge magistrates Mr. Nkomo and Walter Chikwanha were attacked by war veterans and ZANU PF supporters within the Court premises for making a ruling in a bail application that was seen as against the interests of the ruling party. Mr Chikwanha was dragged from the court premises and flogged in town while being brutally assaulted. He suffered a broken rib. 3 police officers were said to have been in attendance at all material times including one Inspector Sibanda. The culprits were identified and are known but no arrests have been made to date. The Minister of Justice has never condemned the attacks on the magistrates and has in fact transferred Mr. Chikwanha from Chipinge to Mutare. Another magistrate Mr. Douglas Chikwekwe was attacked in Gokwe in 2001 for making a ruling that did not please the ruling party supporters. A public prosecutor Mr. Chikafu was threatened in Mutare at the Governor’s office in April 2003 for agreeing to bail in a case involving MDC accused persons. A magistrate Wilbert Mandinde was forced to leave his job after he made rulings on bail conditions involving Justice Blackie and Raymond Manjongwe the Secretary General of the labour movement The Progressive Teachers Union.

Ganyata, he was ordered out of the office. Kamusasa insisted on being given an explanation why his client was being detained. Thereafter Ganyata assaulted Kamusasa using clenched fists and booted feet. In a fit of rage Ganyata threw Kamusasa's file into the corridor where the confidential notes were strewn all over the place. This assault allegedly took place in the presence of other police officers and humiliated the lawyer.

19 December 2003. Administrative Court Judge Nare's case

ZLHR notes with regret that Judge Nare presided over the case involving the ANZ and the MIC in an environment where his security and that of his family was of concern. Subtle and open pressure was brought to bear upon him. ZLHR in particular recalls a report in The Herald newspaper of 25 November 2003 containing a headline titled **"Judge under probe- Majuru accused of making pre-determined judgments in ANZ, MIC legal wrangle"** The paper thereafter gave a report that cast serious aspersions about the professionalism of the President of the Administrative Court Mr Majuru in his dealing with the case involving the ANZ and the MIC. Judge Majuru was consequently forced to recuse himself from the matter. ZLHR criticised the Herald report on Majuru as contemptuous and unwarranted and predicted that the next judge to deal with the case was likely to be under undue pressure.

Predictably on the morning before Judge Nare delivered his judgment on 19 December 2003, the Herald Newspaper which is state owned and controlled published a story on the front page titled **"Government to resist backdoor approach in ANZ case- Moyo"**. The body of the story contained an attack on Judge Nare that, *inter alia*, he was using back door methods to administer justice and that he was being political in his dealings. In particular the Minister of Information and Publicity Professor J Moyo is quoted in the Herald as follows **"We are seriously perturbed by this development which in our respectful and considered view is outrageously political...The reopening of the same matter relying on the same facts and in the same court in order to get a new and different judgment is scandalous and totally unacceptable** in terms of the law...**This is as clear as daylight and any backdoor approach is clearly political and will be resisted** by all available legal means in the interest of upholding the rule of law" The Herald further reported that "One source said 'in a letter Mr Nare wrote to the Registrar of the Administrative Court in Harare, he echoed almost word for word the claims of the ANZ lawyers'"

The Herald report was clearly another unfounded and unwarranted public attack on a judicial officer by the state. Judge Nare was not being asked to issue a new and different judgment. He was being asked to make a simple ruling whether to enforce the administrative court judgment pending appeal or not. Such applications are permissible in terms of the law and there is nothing political about them. The state must be presumed to know this legal position and the remarks cited in the Herald and attributed to the Minister

of Information and Publicity, besides being completely devoid of merit, showed a serious lack of appreciation of the law.

One issue of grave concern to ZLHR were very credible reports that, besides the above-mentioned pressure, Judge Nare also received death threats to himself and his family to the effect that any “bad” judgment would result in the judge personally and his family suffering serious bodily harm. The threat read in part, **“any such bad judgement by you tomorrow will result in serious suffering by you personally and members of your family. Take this as a mere threat at your own peril. Signed- War Liberators and sons and daughters of the soil.”** It cannot be overemphasised that in a constitutional democracy, the judiciary must be independent. The responsibility to protect and secure judges and other judicial actors falls with the state. Unfortunately Judge Nare has joined a growing list of judicial officers who have been subjected to undue pressure and threats merely for practising their profession. The threats against judges, magistrates, lawyers, public prosecutors and other legal actors remain an issue of concern to ZLHR.

Other cases

In January 2003 in Harare, Advocate Selemani was arrested and/or obstructed from doing his job as a lawyer representing Hon Member of Parliament Job Sikhala. Jacob Mafume, a human rights lawyer, was also obstructed and denied access to Gabriel Shumba during the time that Shumba was detained by the Law and Order section of Harare Central police station.

On 14 February 2003 human rights lawyers Perpetua Dube, Ndabezinhle Mazibuko, Thembelani Mkhwananzi and Kucaca Phulu, practising in Bulawayo and deployed on official business, were refused permission to access their detained clients at Bulawayo Central police station. They complained that the police officers, including the officer in charge, were generally obstructive and verbally and physically abusive. They were denied access into the police station and were physically pushed out of the police station by a group of about 20 riot policemen who shouted in the process that the police station belonged to the police and not to lawyers.

Riot police chased Andrew Makoni, a human rights lawyer, away from Glen Norah police station when he attended to represent detained clients on 18 March 2003. The police falsely accused him of aiding and abetting the commission of offences by MDC supporters.

On 20 March 2003 a Mutare lawyer, Chris Ndhlovu, drove to the rural Marange police station to attend to his detained client, the Hon MP Giles Mutseyekwa, but was denied access to him by the officer in charge. The lawyer intended to take instructions and to give him food and medication for a chronic condition. He and another Mutare lawyer,

Trust Maanda, were denied further access to about 17 other clients by the police in Manicaland who refused to cooperate with the lawyers about the places where various clients were detained after the mass stay away in March 2003.

On 21 March 2003 Obey Matizanadzo, a Harare lawyer, and Mr. Muchineripi, a Chinhoyi lawyer, were denied access by CID Chinhoyi from seeing their detained clients and were made to wait for long hours before being attended to by the police. One of the accused persons languished in jail for a long time after bail was refused based on a statement that was extracted from him during the time that he was denied access to his lawyer in violation of his constitutional rights.

On 31 March 2003 Obey Matizanadzo was again denied access to see his clients by Chinhoyi police despite spending the whole day at the police station where his clients were detained. During this period the police were interrogating his clients and threatening to stop the interrogation and detain them indefinitely if they insisted on their lawyer being present in the room where the interrogation was taking place.

The other case of concern that was reported in the press is that of the Bulawayo lawyer Kossam Ncube who is reported in *The Daily News* of 5 June 2003 (p7) to have been threatened with arrest merely for trying to ascertain the whereabouts of his clients at Western Commonage Police Station in Bulawayo.

Conclusion

It is critical that the principle of separation of powers be adhered to if democracy is to work in Zimbabwe. What has been demonstrated in this article is that there is an unhealthy level of political interference with the judiciary and the justice delivery system in Zimbabwe. Judges and lawyers need to operate in a safe and free environment so as to strengthen justice delivery and improve the integrity of the courts. The responsibility to ensure the safety of judges and lawyers rests with the authorities. It is regrettable that the authorities in some cases are at the forefront of the attack of the legal profession. With an administration of justice system that is not effective and can not offer real remedies to aggrieved parties, the rule of law is violated and lawlessness creeps in. The country ceases to be attractive to investors both local and foreign as business confidence reduces. Citizens also lose confidence in the rule of law and the courts and cannot in this environment produce the best in themselves for nation's good. An environment where there is still hope for remedies is the least that the people of Zimbabwe deserve. The politicians must therefore leave the judiciary and lawyers alone. It is important that leaders of Africa like President Thabo Mbeki must be careful not to compromise the security of human rights defenders on the continent. President Thabo Mbeki runs a big risk of compromising his own credibility as a responsible leader on the African continent

and in particular in the eyes of the majority of Zimbabweans. The consequences on NEPAD will be fairly predictable given its impression of being rooted in the observance of human rights, good governance and the rule of law.
