

Repression camouflaged as law in Zimbabwe

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(August 2003)

Paper produced for "Civil Society and Justice in Zimbabwe" Symposium

1. Background

We are all familiar with the techniques used by tyrants to mask their repression. Rather than resorting exclusively to naked use of power, repressive regimes often try to disguise their tyranny by pretending that their countries have democratic institutions and functioning legal systems. A despotic regime will often go through the motions of holding elections, but it will ensure it always wins the elections by terrorizing opponents and rigging the ballot. Instead of disposing of its opponents and critics by killing them or imprisoning them without trial, the regime will create an array of so called-security laws to be used as weapon against its opponents. It will pretend that these criminal laws apply equally to everyone, but in practice the laws will be used only or mainly against opponents. When political opponents breach these laws, the regime will try to discredit its opponents by depicting them as common criminals who fully deserve to be arrested and imprisoned. By processing their cases through the ordinary criminal courts, it will attempt to depoliticise opposition political activity by transforming it into criminal behaviour. The regime will staff all key law enforcement institutions with personnel who are fanatically loyal to it. It will pack the security agencies, the prosecution service and the judiciary with loyalists and these persons will rigorously apply security laws against political opponents of the regime, and turn a blind eye to breaches of the law by the regime's supporters. The regime will grant amnesties to any of its supporters who happen to be caught up in this legal net. Finally the regime will construct the legal system in such a way that victims of the regime's repression are denied any effective remedies for the harm done to them by the regime.

Behind this cloak of legality, however, the iron fist will be at the ready. The security agencies will employ extra-legal terror tactics to intimidate opponents when they see fit or when ordered to do so by the regime. They will disappear dissidents, or spirit them away to secret locations to torture them. When they do arrest opponents, they will frequently extract confessions under duress.

The Smith regime used all of these tactics. Regrettably, many of these same tactics have been employed in post-Independence Zimbabwe.

2. The post-Independence situation

After Independence in 1980 the security apparatus of the Smith regime was not dismantled. Many of Smith's henchmen were left in security positions and, deplorably, quite a number of them assisted the apartheid regime to destabilize Zimbabwe. For the first ten years after Independence there was a continuous declared state of emergency. This meant that government could continue to employ any of the network of extreme emergency powers constructed by the Smith regime. Smith's notorious Law and Order (Maintenance) Act was not repealed and when many years later it was finally replaced by the Public Order and Security Act, the new Act was arguably as bad if not worse in some respect than the previous Act. At about the same time as this, a further, thoroughly offensive piece of legislation was added, which is misleadingly entitled the "Access to Information and Protection of Privacy Act". These two pieces of legislation have been used to mount a full-scale attack upon political opponents, the non-government controlled press and various non-governmental

organisations. They have been used to deprive many Zimbabweans of fundamental rights such as freedom of expression and freedom of assembly.

To counteract the serious political threat posed to its continued hold on power, the regime unleashed forces of violence, intimidation and disorder throughout the country. It enlisted the war veterans, unemployed youth and members of the intelligence service and military in this campaign of violent intimidation.

As part of this process the regime initiated a violent land grab. It did this despite the fact it could have achieved substantial land redistribution without causing the enormous economic harm that emanated from its chaotic, unplanned massive land takeover. The land grab had more to do with power politics than it did with genuine concern for the needs of the landless. It was used both to punish whites who had supported an opposition political party and in order to try to bribe rural voters into supporting the ruling party.

An increasingly unpopular regime, that has been unprepared to brook political opposition, has brought Zimbabwe to the brink of disaster.

3. The rule of law

In his independence speech in 1980, Robert Mugabe had this to say:

“Only a government that subjects itself to the rule of law has any moral right to demand of its citizens obedience to the rule of law. Our Constitution equally circumscribes the powers of the government by declaring certain civil rights and freedoms as fundamental. We intend to uphold these fundamental rights and freedoms to the full.”

The rule of law is an essential foundation of any democratic system of governance. Although it is a complex concept, its core elements are straightforward. The rule of law requires that

- power be exercised in accordance with the law and there should be no arbitrary use of extra-legal power;
- everyone should be equally subject to the law and that no one should be above the law;
- law enforcement agencies and the courts should enforce and apply the law impartially;
- the law should protect everyone equally against illegal action causing harm.

A democratic society will operate within the framework of legal rules that have been passed in the interests of the people. Democracy cannot function in a lawless society. In a system based on the rule of law, the courts act as a bulwark against the illegal and arbitrary exercise of power by the Government. The courts will declare to be illegal Government action in contravention of the Constitution or other laws. They will rule to be illegal actions by government officials that they are not legally empowered to take. In order to perform this control function it is essential that the judicial officers are independent of the Government. If the judges are appointed on a political basis and they are staunch supporters of the ruling party, it is likely that they will rule in favour of Government even if the Government actions are not in accordance with the law. If the judges do this, then the people have no legal protection against arbitrary and illegal use of power by Government.

4. Devastation of the rule of law in Zimbabwe

The rule of law has been under savage attack in Zimbabwe. Over the last few years serious harm it has caused to the entire legal system of Zimbabwe. The police force has become one of the ruling party's instruments of coercion against its opponents. The prosecution department has come under intense pressure to pursue vigorously cases against supporters of the opposition, but not to deal with or deal with extremely tardily cases against ruling party supporters. Judges have been forced to resign and have been replaced by judges considered to be sympathetic to the ruling party. Judges who have handed down judgments

in favour of opponents of the government have been severely criticised. Prosecutors and magistrates who have sought to continue to apply the law without fear or favour have been heavily criticised by government officials and supporters and in some cases they have been physically threatened. The police have assaulted, threatened or held in custody some legal practitioners who have tried to provide legal assistance to arrested members of the opposition.

5. Harm to key institutions

5.1 The police force

The police force and other law enforcement agencies have been turned into blatantly politically partisan forces and have been used as instruments of political repression. To a large extent the police no longer protect the rights of government opponents and have instead become a major abuser of the rights of these persons.

In the lead up to the June 2000 General Election there were many instances when the police turned a blind eye to violence perpetrated against opposition MDC supporters and commercial farmers. Although some members of the force tried to carry out their duties professionally in a politically neutral manner, in many cases the police failed to intervene or to investigate murder, rape, torture or the destruction of property by "war veterans". In one incident, a commercial farmer was taken from a police station and killed by "war veterans".

After the 2000 General Election the police force became increasingly partisan in favour of the ruling party. There has been a full-scale purge of the police force; many police officers suspected of being sympathetic to the main opposition party were forced to resign or were penalised by being transferred or demoted. Many persons were promoted into high-ranking officers because of their loyalty to the ruling party. Some high-ranking police officers resigned because they believed that the police had become an unprofessional and politically biased force. War veterans in the force received rapid promotion.¹ Large numbers of ZANU (PF) war veterans and youth militia were recruited. War veterans were placed in effective charge of rural police stations to ensure that the police facilitate or actively participate in the campaign of terror against supporters of opposition parties. Increasingly war veterans in the police called the tune at urban police stations, with the other officers being scared of acting contrary to their wishes.

To justify his purge of senior officers, Commissioner Chihuri alleged that there were reactionary elements in the force.² In July 2001 he told a government-controlled newspaper that police officers thought to support opposition political parties would be sacked.³ In mid-January 2001 the Commissioner cast off the cloak of political neutrality by publicly announcing: "I support ZANU (PF) because it is the ruling party." He said he would resign if another political party came to power.⁴ On 9 January 2002 the service chiefs, including the Commissioner of Police, held a press conference at which they announced that they would not recognise Tsvangirai as President if the people elected him.

¹ In March 2001 it was reported that more than 300 war veterans were promoted, some of whom were said to be illiterate. *Daily News* 20 March 2001. See also *Financial Gazette* 14 June 2002.

² *Sunday Mail* 7 June 2001.

³ *Herald* 11 July 2001. Amnesty International researchers interviewed one former police officer on 30 November 2001 who described his experience: "I had twenty years of service, but I was fired because I was accused of supporting the MDC... I liked my job, I was loyal, I was proud to be a policeman to serve my nation, and now it hurts me to see the police officers are working for a political party, not the nation... The police are frightened of the war veterans, they have their own command structure, and if you arrest them, they will get them out of jail. If one is an ex-combatant, one can be promoted to take your position. Only ex-combatants are promoted. We're at the worst stage now, when everyone is doing what he wants."

⁴ *Daily News* 16 January 2001.

A recent newspaper article gave details of allegations made by two Zimbabwean police officers who have obtained asylum in England.⁵ These officers alleged that the police had killed, maimed and beaten scores of Zimbabweans suspected of no crime except supporting the legal opposition party. One of the officers said: "They don't care about crime, all they care about is stamping out the opposition." The police were ordered to ignore crimes committed against supporters of the opposition party.

The first officer described a murder he witnessed. "One man was picked up because he was wearing an MDC T-shirt. That was all. He was handcuffed and several police kicked with their heavy boots and they beat his head with a rifle butt. He fell unconscious and died. They said he jumped from a truck. The murder of the MDC supporter of was one of five deaths in custody in just one police district." They were ordered to do terrible things. He was forced to beat people on the soles of their feet and all over their bodies.

He said many other ranking officers had left the force and been replaced by untrained, uneducated, violent loyalists of the ruling party, transforming the force from upholders of the rule of law into a partisan gang of brutal henchmen. He was harassed and threatened by the new loyalists on the force, who accused him of supporting the MDC. He went into hiding and then went to Britain.

Another police officer, an assistant inspector who had been in the force for 20 years said he was forced out the force because they said he supported the MDC. "More than 200 others of my rank have been forced out. They were replaced by people without qualifications. Officers in charge of stations have low educations. They don't take the exams for promotions, as we used to do. They tell the police not to investigate crimes against MDC supporters."

He said that "police in the law and order section at Harare central charge office are torturing people with terrible beatings and electric shocks. This has been going on for some time."

In July 2002 Amnesty International issued a report entitled *Policing to Protect Human Rights*. This report accused the government of transforming the Zimbabwe Republic Police into a partisan force which had become little more than a party militia. It alleged that the ZRP was perpetrating human rights abuses by using repressive methods; it was using excessive or unjustified force to suppress peaceful protest and was arbitrarily detaining government opponents. The report says:

In Zimbabwe, the undermining of professional and impartial policing has taken an extreme form in the past two years. Police have been directly involved in the torture, ill treatment and arbitrary arrest of members of the opposition Movement for Democratic Change (MDC). They have also been complicit in nationally widespread acts of violence, arson and rape committed by state-sponsored militia against supporters of the MDC.

Whereas previously the police force collaborated in the lawless activities or was rendered powerless to act, increasingly members of the police force became the actual perpetrators of acts of brutality against members of the opponents and critics of the government. This has been particularly apparent in the way it has dealt with protest action against the government. Arrested persons were frequently assaulted and the police also participated in brutality perpetrated upon people as reprisals in the aftermath of protest action. In political matters, the police force has removed the protection of the law from those who display their opposition to ZANU (PF).

Selective enforcement of the law has become the norm in political cases, with the police arresting persons connected with the MDC for offences such as inciting or committing public violence, but ignoring similar offences committed by ZANU (PF) supporters. The police

⁵ *The Guardian* 4 July 2003

regularly carry out raids on MDC party offices and arrest MDC members on apparently flimsy charges.

The police have used their extensive powers under the Public Order and Security Act as a weapon against the MDC and others who are critical of the ruling party. In the lead-up to the Presidential elections the MDC alleged that the police frequently arrested their polling agents and party officials on spurious charges in order to disrupt their election campaign. They made similar accusations in the lead-up to local council elections held at the end of September 2002.⁶ The MDC also complained that many of their members who had been arrested were subjected to brutal beatings whilst in police custody.⁷

The police hardly ever interfere with rallies and protest marches by ZANU (PF) and war veterans. Indeed the police often provide police escorts for these and in some instances they have failed to intervene when the participants have engaged in acts of violence.⁸ It would seem that the organisers of such rallies and protests frequently do not even notify the police in advance of their intention to convene such rallies and protests, as required by the Public Order and Security Act. On the other hand, the police have frequently barred political rallies by the MDC and demonstrations by groups perceived to be critical of government such as the National Constitutional Assembly. Since the Presidential elections, the police have disallowed all demonstrations by civic groups. When protestors have tried to go ahead with peaceful marches despite police bans, there has been a massive police and army presence to thwart them, and increasingly strong measures have been used against protestors. Many protestors have been arrested and charged under the Public Order and Security Act. These protestors have often alleged they were beaten when they were in police custody.

Rather than arresting the perpetrators of the violence, the police now not infrequently arrested the victims of violence if they are supporters of the main opposition party.

5.2 The prison service

As with the police force, the government has taken concerted steps to weed out from the prison service members considered to be sympathetic to the opposition and to replace them with ruling party supporters.

5.3 The prosecution service

The Attorney-General and officers in the Attorney-General's office have been subjected to political influence and pressure by members of the ruling party. The position deteriorated further after the Attorney-General was made a non-voting member of Cabinet, as this meant that he became directly embroiled in the political process and could also be put under direct political pressure by his fellow Cabinet Ministers. Particularly over the last few years there has been a widespread perception that decisions about whether or not to institute prosecutions have been taken on a political basis, with prosecutions often not being pursued against supporters of the ruling party. This has added to the public feeling that there is selective justice in Zimbabwe.

⁶ Associated Press report 3 September 2002.

⁷ For instance, on 5 September 2002 the *Daily News* reported that Harare City Councillors and the MDC petitioned government, the Chief Justice and the Commissioner of Police about the alleged torture and inhuman treatment of a Councillor and MDC security officer who were in custody on allegations of murdering a ZANU (PF) activist. The previous week the two accused told a Harare magistrate they had been brutally tortured by the police and by suspected Central Intelligence Organisation (CIO) agents and soldiers, who were pressurising them to confess to the murder. The petitioners also registered their protest "against the inhuman and unconstitutional treatment of ... Fletcher Dhulini and countless other suspects while in police custody." They observed that "the entire nation is living in a state of fear of the very people who are charged with protecting us."

⁸ For example, on 16 November 2001 a crowd of about 300 ZANU (PF) youths and war veterans, reportedly escorted by the police, went on the rampage in Bulawayo following the murders of Cain Nkala and Limukani Lupahla.

Especially in smaller rural places, prosecutors have come under enormous pressure to act in a politically partisan fashion. They have been verbally abused and, in some cases, have even been physically threatened or attacked if they have brought prosecutions against ruling party supporters. Conversely if they have been condemned and threatened if they decided to withdraw charges against opposition party supporters because there was insufficient evidence to proceed with these cases. Despite these pressures, some prosecutors have attempted to continue to perform their duties on an impartial, professional basis.

5.4 The judiciary

The Zimbabwean government maintains that it was obliged to revamp the judiciary to rid it of its colonial, reactionary elements who were obstructing reforms aimed at advancing the rights of the black majority, especially its programme of land redistribution. The new judicial officers, it said, would be sympathetic to reform programmes and would facilitate rather than obstructing their implementation. In actuality, the government's main aim was to re-mould the judicial system into a pliant instrument of State power that would not stand in the way of the government in drastically curtailing organised political opposition and clamping down on criticism and dissent.

The independence of the judiciary has been severely undermined. The Mugabe administration and the "war veterans" waged a vicious campaign to get rid of judges who were perceived as being likely to pass judgments against it. They forced the early retirement of Chief Justice Gubbay and applied pressure to a number of other judges. Several other judges resigned. Mugabe then proceeded to appoint a whole series of new judges, all of whom had close connections with the ruling party. Justice Chidyausiku, who was widely seen as being a staunch supporter of the ruling party, was appointed as the new Chief Justice. The Mugabe administration also promoted three judges, perceived as being sympathetic to the ruling party, to the Supreme Court. In this way Mugabe undermined the independence of the judiciary by packing the High and Supreme Courts with judges who would do the bidding of the ruling party.

Judges and magistrates who have continued to give rulings contrary to the perceived interests of the government or the ruling party have been severely criticised and some magistrates have even been subjected to threats and even physically assaulted by ruling party supporters. Despite pressures, a number of judges and magistrates have continued to continue to perform their duties on an impartial professional basis.

In constitutional cases, after the reconstitution of the Supreme Court there has been a pronounced shift in the court's approach to the protection of human rights. Whereas the Gubbay court adopted a broad approach to the protection of human rights, the current court has adopted a very narrow and restrictive approach. It has avoided dealing with a number of important human rights issues by adopting a pedantic approach towards legal standing of the litigants. There have also been protracted delays in handing down judgments in many cases heard by the court. Some of the judgments handed down by the Chidyausiku court have been fiercely criticised by human rights lawyers.

5.6 Legal practitioners

From all over the country lawyers who represent members of the opposition MDC party or commercial farmers, or anyone else regarded as an opponent of the government, have reported being subjected to threats and intimidation. In a number of instances they have been physically assaulted when dealing with such cases. The persons responsible for the intimidation and violence against them have been war veterans, ruling party officials or youths, and sometimes even members of the police force. Lawyers practising in smaller centres are particularly vulnerable. Because of fear amongst the local lawyers, lawyers often have to be brought in from other centres such as Harare. These outside lawyers are also subjected to intimidation.

5.7 Flouting of court orders and contempt for the courts

With increasing frequency, government officials and the police have refused to comply with court orders, especially where these pertained to cases involving members and supporters of the opposition. Government officials have displayed a highly contemptuous attitude towards the courts when they have handed down judgments in favour of members of the opposition.

These cases reflect a growing tendency by government officials to behave as if they were a law unto themselves. The ignoring of court orders and the contemptuous attitude towards the courts adopted by high-ranking public officers has led other officials to behave as if they were immune from the law. The failure on the part of the police to enforce court orders has severely undermined the rule of law and the whole administration of justice.

5.8 Amnesties

The government has also followed in the footsteps of the pre-Independence regime by issuing a series of amnesties and pardons to persons who have perpetrated acts of violence, and this has exacerbated the breakdown of law and order in Zimbabwe. These amnesties and pardons have mostly benefited members of the ruling party and have created the dangerous impression that those who perpetrate violent acts on behalf of the party are immune from the law.

Supporters of the ruling party who engaged in these activities were granted an amnesty to confirm that they were above the law and had a licence to continue to engage in violent intimidation against the opposition supporters. The end result of these events has been to plunge Zimbabwe into a state of ever-increasing lawlessness and repression and to doom the country to economic destitution.

5.9 The militia

The Mugabe government has made extensive use of militias to perpetrate violence against MDC officials and supporters and to harass and intimidate critics of the regime. Young ZANU (PF) supporters make up the core of the militias led by the "war veterans" and the Mugabe administration introduced a National Youth Service with the intention of using it as a way of politically indoctrinating young people and recruiting more of them for a nation-wide campaign of violence against the opposition.

The government campaign against its opponents has been vigorously and ruthlessly supported by militias. Members of these militias have committed large numbers of gross human rights abuses, but their activities have been controlled or condoned by the government. The activities of these militias have been fully documented in a recent report.⁹

What needs to be stressed is that these militia groups have operated on an extra-legal basis and yet the ruling party has controlled or condoned their illegal activities.

One recent example of the extra-legal use of ZANU (PF) youths was the bussing in of substantial numbers of these youths ahead of the protest action being mounted by the opposition in early June this year. The youths camped at the ZANU (PF) headquarters and were deployed to assist State security agents who were brutally suppressing the planned protest action. The ZANU (PF) secretary for information and publicity said the youths had been employed to ensure peace during the mass action. Asked why it had to use untrained supporters to ensure peace and order, he said the police might have failed to handle the situation."¹⁰

⁹ *The role of militia groups in maintaining Zanu PF's political power* A P Reeler, March 2003

¹⁰ *Daily News* 4 June 2003

5.10 The Central Intelligence Organisation (now called the Department of National Security)

The CIO is under the President's direct control. It has a separate, very large budget that is not subject to audit by the Auditor-General. Its Director is a war veteran.

The primary function of this agency has not been to engage in legitimate intelligence gathering in the national interest. Instead it was to harass and intimidate the opposition political parties, to infiltrate and cause divisions within these parties and to monitor and intimidate critics of the Government. The agency played a key role in organising the terror campaign against opponents of the Mugabe administration. It also helped to support the farm invasions.

5.11 The military

The Mugabe Government has attempted to turn the army and air force into politically partisan forces. The armed forces have been used together with the police as a political weapon to suppress opponents and critics and to overcome resistance to unpopular policies.

6. Restoring the rule of law

The starting point for putting the country back onto the rails will be to restore the rule of law and respect for the basic ground rules of a democracy. There will be a need to re-build the legal system on the firm foundation of the rule of law.

6.1 Security laws

On the statute books there is a whole array of highly repressive "security" legislation. Many of these provisions are unconstitutional. There must immediately be a thorough review of all such laws to get rid of all laws that offend against fundamental human rights.

6.2 Law enforcement agencies

The police have become so thoroughly partisan and unprofessional that considerable rehabilitation efforts will be needed to return the force to its role of even-handedly upholding the rule of law.

The rebuilding of the police force of Zimbabwe will not be an easy task. What will be needed is a Commissioner of Police who will ensure that the police force once again becomes a politically neutral, professional force whose officers perform their duties competently. The appointee to this post must lead by example. He or she must take vigorous steps to restore professionalism within the police force and send a strong message that the force must remain a politically neutral force that is there to enforce the law against all who breach it and to protect everyone against criminals.

Any commanding officers are proved to have directly participated in or ordered the carrying out of serious human rights abuses should be required to resign from the force. Other officers identified as perpetrators of gross human rights abuses should be removed from the force. Other top ranking officers, appointed because they were staunch supporters of the ruling party and who feel that they will not be able to serve a new Government, should be given the opportunity to resign.

There is a core of police officers, who despite the efforts of the Mugabe administration to politicise the force, continued to try to do their jobs professionally and impartially. These officers should be identified, and providing they are competent, they should be given a significant role in the reconstruction of the force as a professional force and the process of re-training of members of the force.

All officers in the force should be made to undergo a thorough re-training programme which covers:

- the professional duties and responsibilities of the police

- the Constitutional and other laws relating to the police
- the obligation to respect fundamental human rights of the general public and of criminal suspects
- the obligation to use minimum force and the role of the police when dealing with crowd control, protests and demonstrations.

Non-governmental agencies who have conducted police training previously should be called upon to assist with this retraining exercise. In this regard we can benefit from the South African experience in re-training the police in the a post-apartheid era and from programmes conducted by the Commonwealth and the United Nations.

6.3 The judiciary

The judiciary is a key institution for ensuring compliance with the rule of law. In a country governed by the rule of law all judicial officers will be bound to apply the law without fear or favour. Judicial officers are expected to decide all cases on the basis of the law and not on the basis of political bias. It is a gross injustice for cases to be decided on the basis of political considerations rather than on the basis of the existing law.

Measures will have to be taken to restore the independence of the courts and to make sure that in future the courts remain scrupulously independent. The Constitution must contain a provision guaranteeing the independence of all judicial officers including magistrates, and persons presiding over customary law courts.

All judicial officers must in future be appointed solely on the basis of professional legal competence and suitability. The primary responsibility for the appointment of all judicial officers, including magistrates will rest with a body that will be composed in such a way that the public will have confidence that it will reach decisions on a purely professional basis and will not take into account political considerations.

After political change the composition of the judiciary will need to be addressed. Given the circumstances leading up to his appointment, the bias displayed by him and the widespread perception that he was appointed to do the bidding of the Mugabe administration, the present Chief Justice must be asked to resign in order to allow for the appointment of a Chief Justice who will be seen as being independent of Government influence. There are some other judges who were appointed on an overtly political basis. After political change there will justifiable fears that these judges will obstruct the implementation of new policies.

Once appointed all judicial officers must have security of tenure and the system must ensure that a dominant political party can remove a judge because of political reasons.

A new Government should signal its firm commitment to a new constitutional order by moving quickly to establish a Constitutional Court. This Court should be composed of the top practising and academic lawyers available. The function of this court will be to uphold the Constitution of Zimbabwe. The head of the Constitutional Court will be the overall head of the judiciary in Zimbabwe.

6.4 The prosecution service

The Mugabe administration appointed Attorney-Generals on an overtly political basis. The Attorney-General in the new administration must be appointed on the basis of professional competence and must remain independent of political influence.

Like the judiciary, the Attorney-General and his staff must be shielded against political pressure. The Attorney-General must be appointed on a non-political basis and the sole criterion for this post should be professional competence to perform the job. The Deputy Attorney-General should also be appointed according to this procedure as should also the Director of Public Prosecutions.

6.5 The prison service

As the political and economic situation deteriorated, the prisons became increasingly harsh places where there were frequent abuses of the rights of prisoners. As in the police, the prison service was also affected by the determination of the Mugabe regime to ensure that the prison service was composed of persons who were staunch supporters of the ruling party.

Concerted steps will need to be taken to re-establish a prison service that will deal with prisoners on a basis that will respect their basic human rights and will lay emphasis upon rehabilitation. Prison officers found to have committed gross human rights abuses must be removed from the service. Prison officers who stay in the service will have to undergo thorough retraining.

Prison officers must be made to understand that respect for human rights of prisoners is entirely consistent with sound penal policy. It is not only humane to accord prisoners their basic human rights but it is also in line with the programme of rehabilitation. That is not to say that dangerous or difficult prisoners should be molycoddled and granted all sorts of privileges that they do not deserve. Disciplinary measures should obviously be applied to undisciplined prisoners and proper measures should obviously be taken to stop violent prisoners causing harm to prison officers and fellow prisoners. Prisoners should be expected to earn the right to better conditions with fewer restrictions. It is an essential part of the learning process that bad conduct attracts disapproval and sanction and good conduct is rewarded. But even badly behaved or dangerous criminals should not be subjected to measures that are unconscionable and unacceptable. On the other hand, a harsh control regime that simply requires mindless obedience and conformity by prisoners will not create favourable conditions for rehabilitation of prisoners.

6.6 The intelligence service

This service will have to be rebuilt to ensure that the abuses of the past do not recur. The first step will be to remove from the service those found to have committed gross human rights abuses and to retrain other members.

It is not incompatible with democracy to have an intelligence agency provided that this agency does not play a role that is contrary to democratic principles. It is a legitimate and justifiable function of an intelligence service to gather intelligence information that will allow the Government to combat the external enemies of Zimbabwe and to prevent terrorist acts from being perpetrated within Zimbabwe.

However, as in the past the intelligence unit has operated as a terror agency against the political opposition it is imperative to take steps to ensure that this does not happen again in the future. There is obviously a danger that the agency itself or its agents will end up abusing their positions intelligence agency, especially given the clandestine way in which such an agency will operate. It is therefore necessary to have a system of monitoring in place that does not compromise the operations of the unit but at the same time ensures that the powers of the unit are not abused. Clearly any monitoring system must not compromise things like sensitive security information or confidential sources of information. In the South African Constitution there is a provision which lays down that "national legislation relating to intelligence services, including any intelligence division of the defence force or police service, must provide for civilian monitoring of the activities of those services by an inspector appointed by the President, as head of the national executive, and approved by a resolution adopted by the National Assembly with a supporting vote of at least two thirds of its members."

6.7 Disbanding and banning militias

All such militias must be disbanded and in the future the formation of such groups must be banned, no matter what the political affiliation of the people who wish to form them.

This is not to say that political parties cannot have youth branches. What must be made illegal is the transformation of such youths into militant forces. There must be legal provisions

which lay down strict conditions barring political parties from giving of military training to their youths or arming them.

Given the dangers of any scheme of compulsory national service for young people being turned into a programme of political indoctrination and militarisation of the youths for a narrow political purpose, unless Zimbabwe is faced with a clear military threat, national service must not be introduced.

6.8 The defence forces

The incoming Government will be faced with the task of re-building the defence force as a professional, politically neutral force that will defend Zimbabweans instead of terrorizing them. Persons found to have committed gross human rights abuses must be removed from the forces. Re-training of other force members will be important.

Appendix 1.

Illustrations of the breakdown of the rule of law in Zimbabwe

The Chavunduka and Choto cases

In January 1999, after the *Standard* newspaper published a story that there had been a failed military coup, Mark Chavunduka, the paper's editor, and one of the paper's reporters, Ray Choto, were arrested by the police. They were illegally handed over to the military who detained them for several days at a secret detention centre and subjected them to vicious and prolonged torture. Mr Chavunduka was stripped naked. His head was plunged into water. He was then handcuffed and electric shock treatment applied all over his body. Mr Choto was stripped naked and electric shock treatment was applied to his genitals and other parts of his body. The intensity of the shocks was progressively increased. He was beaten on the soles of his feet. His head was forced into water. His hands were stamped upon. He was slapped on the ears for a long time and one of his eardrums was perforated. He was made to roll around on ground that seems to have had spikes in it. Both journalists were threatened with death. They were told that the law and courts would not protect them and that President Mugabe had authorised their killing. Medical examinations confirmed their claims that they had been subjected to torture through electric shocks and beaten with wooden sticks in a case which shocked the international community.

Despite an international outcry, no government leaders condemned the assaults upon the journalists by military personnel. In fact, despite independent medical verification of the torture, the then Minister of Defence, Moven Mahachi, tried to play down the entire incident by ridiculously suggesting that the journalists had scratched themselves. He did, however, concede in the High Court that what had happened was wrong. President Mugabe later defended the military, saying that their actions were understandable as a response to the attempted coup story. When the matter came before the High Court, the Minister and the Permanent Secretary for Defence said that the military did not take orders from judges.

In the aftermath of this incident, members of the judiciary, led by the Supreme Court, sent an open letter to the President requesting him to reaffirm that the rule of law would be adhered to in Zimbabwe. The President refused to do so, and instead suggested in a televised address that the judges involved had committed "an outrageous and deliberate act of impudence" and should resign if they wished to enter politics.

Nearly a year after the incident a case was brought in the Supreme Court to try to force the police to investigate the journalists' allegations of torture and to bring to justice those responsible. The Supreme Court found that for nine months no action whatsoever had been taken to address the charges laid by the applicant, and thereafter what was done was so minimal as to justify the inference that the investigation was not being regarded seriously. The Commissioner of Police had not done all that his duty required of him. The court found that this failure to investigate the case violated the victims' constitutional entitlement to protection of law, including their right to require the police to perform their public duty of law enforcement by investigating the alleged crimes, arresting the perpetrators (if the investigation so warranted) and bringing them to trial. The court accordingly ordered the Commissioner of Police "forthwith" to institute or continue a comprehensive and diligent investigation of the alleged offences.

More than two years later, nothing appears to have been done to comply with the court's order. Indeed, far from having the alleged offences investigated in accordance with the Supreme Court's order, the government seems to condone them. In June 2002 *The Herald* reported what the Speaker of Parliament (Mr Emmerson Mnangagwa, a former Minister of Justice) told a fact-finding mission sent by the African Commission for Human and People's Rights to assess the situation in Zimbabwe. Mr Mnangagwa is reported as having told the mission that what happened to *The Standard* journalists Chavunduka and Choto in 1999 would happen again. He said: "What happened to them when they falsely wrote that the

army was planning a coup would happen to them again if they repeat that because nobody is above the law." (The law under which the journalists had been prosecuted was in fact declared to be unconstitutional by the High Court.)

Mark Chavunduka died in November 2003 and Choto relocated to the United States. Choto is currently reporting for the Voice of America.

Finally three years after the Supreme Court ordered a full investigation into these allegations of torture, a local newspaper reported that two police officers had visited the offices of the Standard newspaper that saying they wanted to interview Chavunduka and Choto. The policemen said they wanted to record statements from the two to complete a docket which had gone missing.

Chavunduka and Choto also tried to sue the army for wrongful arrest and torture and to bring contempt of court charges against Defence secretary Job Whabira for ignoring a High Court order to release the two journalists. Chavunduka and Choto had been charged with contravening a provision in the Law and Order (Maintenance) Act which makes it an offence to publish a false statement likely to cause fear, alarm and despondency among the public. In 2000 the Supreme Court ruled that this provision was unconstitutional as it was far too wide and vague and grossly violated the fundamental right to freedom of expression.

The deaths of Chiminya and Mabika

On 15 April 2000 a ZANU (PF) vehicle stopped a convoy of MDC vehicles outside Murambinda Growth point in Buhera. The persons in the MDC vehicles were involved in campaigning for Morgan Tsvangirai, the MDC president, in the run-up to the June 2000 parliamentary election. Two men armed with AK-47 rifles and others bearing iron bars emerged from the ZANU (PF) car. It is alleged that Joseph Mwale, a Central Intelligence Organisation operative, and one Kainos Tom "Kitsiyatota" Zimunya started to attack an MDC truck with iron bars. The MDC youths at the back of the truck fled at the sight of the guns. Mr Tichaona Chiminya and Ms Talent Mabika were trapped in the vehicle. It is alleged that Mwale ordered petrol bombs to be fetched and these were then thrown into the car. Although Mr Chiminya and Ms Mabika managed to escape from the burning vehicle, Mr Chiminya had been badly burned and died a few metres away; Ms Mabika died later in Murambinda Hospital. A police vehicle was said to be parked less than 100 metres away from the scene, but the police acted only later. The police, so it is alleged, did not intervene and made no effort to stop the ZANU (PF) vehicle or to follow it when it left the scene.

Neither Mwale nor Zimunya has been arrested, despite the fact that a High Court judge recommended that the Attorney-General's office should pursue the matter after evidence was led in a election petition about the killings. The judge, Mr Justice Devittie, commented that the killing of Mr Chiminya and Ms Mabika was "a wicked act." In July 2001 Mr Andrew Chigovera, the Attorney-General, ordered the police to investigate the murders.

In July 2002 a local newspaper reported that the deputy-Attorney-General was still awaiting the docket. His office had written to the police to ask them to hand over the docket but more than a month had elapsed and the police had still not handed over the docket.

In September 2002 the same local newspaper reported that the police spokesperson, had refused to say why the police refused to hand over the docket on Mwale and Zimunya to the Attorney-General's office. According to the report, the deputy Attorney-General said that four months after his office had asked for the docket, the police had yet to respond to the request. The report added that the docket was said to be at the Police General Headquarters after it had been delivered there by the police in Manicaland early in 2002.

There have been reports that following the presidential elections Joseph Mwale was involved in violence against the MDC in the Chimanimani area, where he was based. For example, in

April 2002 this report appeared in a local newspaper that Mwale was spearheading a campaign of retribution against MDC supporters in the area, assisted by another CIO agent and a number of serving officers in the national army. In August 2002 another local newspaper reported that Mwale had led a group of pro-ZANU (PF) led a group of pro-ZANU (PF) vigilantes in assaulting security guards and workers at a farm owned by a white MDC Member of Parliament.

As with the torturers of Chavunduka and Choto, the killers of Chiminya and Mabika appear to have a *de facto* immunity from prosecution.

The extra-judicial killing of David Stevens

David Stevens was brutally murdered on 15 April 2000. He was the first white commercial farmer to be killed after the start of the farm invasions in 2000. Stevens, who had been an active supporter of the MDC and allowed them to hold campaign rallies on his farm. The "militia" killing was sparked by an earlier confrontation between David Stevens' farm workers and the illegal occupiers who had begun to squat on the farm in February 2000. Allegedly one of the squatters had earlier raped a farm worker's daughter and assaulted another farm worker's daughter and son. A police spokesperson reportedly told Zimbabwean journalists that David Stevens had armed himself with a gun that day at around 6am, instructing his workers to arm themselves, and then attacked and injured 14 of the 35 "militia" members who had been occupying the farm. David Stevens' family contradicted the police version, denying that he was armed or that he was involved in the move by his farm workers to drive the occupiers off his property. Eyewitness accounts confirmed the account provided by David Stevens' family. According to these accounts, two trucks full of "militia" members arrived at David Stevens' house at a farm near the town of Macheke, some 100 kilometres east of Harare. The attackers broke in, looting property and seizing weapons before they beat and abducted David Stevens. Fellow farmers Steve Krynauw and Gary Luke had arrived at David Stevens' farm in time to see him being driven away in handcuffs by the "militia". They followed the vehicle to the small town of Murehwa, where they went into the police station to report the abduction. About 20 "militia" members dragged both men away - as police looked on - and tied them up and beat them with iron bars, fanbelts and rocks, and then dumped them beside a river.

According to farmer John Osborne, he and Stevens were taken by "militia" out of Murehwa Police Station in front of police officers, beaten again at the war veterans association office before being bundled into a car and taken a short distance outside of Murehwa. There the two were beaten once more, before a "militia" member executed David Stevens by shooting him in the face. David Stevens' body was then thrown on top of Steve Krynauw and Gary Luke. Their account and that of John Osborne contradicted earlier denials by the police at Murehwa that the two men had never been there. Two other farmers, also abducted by "militia" members from the Murehwa Police Station and beaten with metal rods and whips, later escaped from a cave where they had been left tied up.

As they opened their inquiry on 17 April 2000, police investigating the murder of David Stevens immediately detained the farm workers who had clashed with the "militia". The farm workers were held on charges of public violence, but then released. The police finally arrested one person in connection with this murder but the prosecution was later withdrawn "for want of evidence." In 2002 four persons were put on trial for the murder of Stevens. They applied for discharge at the end of the State case, but the court turned down this application finding that they had a case to answer. The trial of these four accused persons has still not finished.

In December 2000 lawyers acting on behalf of Marie Stevens, the widow of David Stevens, filed a civil action against the government, the Minister of Home Affairs, Police Commissioner Augustine Chihuri, ZANU-PF and the Zimbabwe War Veterans Association asking for financial compensation for the loss of earnings due to David Stevens' death, which was caused by the negligence of the police in allowing him to be taken from police custody. The police initially

claimed that they did not release David Stevens to the war veterans, but lawyers for the Stevens family said they had evidence that the police cooperated with the war veterans in his abduction. Pleas filed by the Minister of Home Affairs and the Commissioner of Police in January 2001 stated that four people had been arrested in connection with the alleged murder.

In an article in June 2003 entitled "Police sent white farmer to his death", an English newspaper gave details of an interview of a Zimbabwean police detective Magombedze who had been granted asylum in Britain. He was one of a small group of men on duty at Murehwa police station on the Saturday morning when Stevens was killed. "Suddenly this procession of vehicles arrived at the police station," he said. "It was like a movie: high-speed cars, clouds of dust, shooting, brakes squealing, people opening car doors and running out. Five white farmers were running away from the war vets, pleading, 'Help us! They are shooting at us and want to kill us.'

There were between 30 and 50 war vets singing and chanting Zanu PF slogans and they had vehicles belonging to the party and the Central Intelligence Organisation (CIO). But we told them to stop and didn't allow them in. They only had sticks and two or three small guns so we didn't think they could overpower us." Then the officer in charge arrived. "This was strange," said Magombedze. "Normally they don't work on Saturdays and nobody from the station had called him. "This officer invited the war vets and CIO men into his office. To our astonishment, he then allowed them to abduct the farmers from the police station and take them to a compound in the township. The farmers were screaming, 'These guys were shooting at us and you are letting them take us? They are going to kill us!' " Shaking his head, Magombedze said: "The police had the chance to save Stevens's life - we knew where he was and could easily have got him out, but we didn't. I followed for a while with a colleague in an unmarked car but we were pulled off so didn't witness the final moments. I know what happened next from our subsequent investigation. The farmers were separated in groups and taken to different places, including the cemetery for heroes of independence. They were beaten up severely. At one point Stevens said 'Why don't you just kill us? I can't take this any more'. One of the war vets put the barrel of his rifle inside Stevens's mouth and fired. But he didn't get a proper grip, probably because they were all high on marijuana. So the bullet just cut through the skin and came out of the mouth. Then one of them started screaming, 'Are you crazy? Don't you know how to kill a man?' He took out his shotgun, placed it against Stevens's chest and fired. The other farmers were severely beaten up and left for dead though they had not been killed."

Magombedze was put on the investigation under the supervision of officers from Harare. "We were given clear orders on the 'facts' the government wanted to come out. The official version was to be that Stevens's death was caused by self-defence. They were instructed by superiors in Harare to present it as a case of killing in self-defence. "We were not allowed to arrest the war vets even though they were trespassing on property, abducting and beating people and committing all sorts of atrocities. Murehwa is not a big area and I knew quite well who they were. But this was a political case and the forms where we normally write the grounds of the case were left blank. The statements of the other white farmers were left out and some witnesses were forced to say Stevens was shooting at them."

He said fled for England after a colleague who tried to reveal the truth about Stevens's death was killed by a lorry driven by a leading war veteran. Magombedze was warned that he would be next. He flew to London with his wife and

children - and heard later that his younger brother had been beaten and his mother's house had been set on fire.

The case of Mr Hondora

On 7 April 2001 Mr Tawanda Hondora, a lawyer and the chairperson of the Zimbabwe Lawyers for Human Rights was brutally attacked by members of ZANU (PF) in full view of, and with the active participation of, members of the Zimbabwe Republic Police. Mr Hondora had gone to a rural area in the company of two other black lawyers to investigate allegations that persons from the area who came forward to testify in the court case challenging the election result in the district had been assaulted by local police officers. When they got to the area the lawyers observed that a group of about 30 ZANU (PF) supporters was assaulting one of the election challenge witnesses, Mr Chivanga. Uniformed police officers stood by and watched. The group of assailants saw the lawyers and chased them. They caught Mr Hondora and kicked and slapped him, hit with fists, whipped him and hit him on the head with a stone. The mob then forced Mr Hondora to chant ZANU (PF) slogans and to toyi toyi to the police station. At the police station Mr Hondora and Mr Chivanga were then extensively searched, interrogated about their relationship to the MDC and further tortured. A constable in the presence of Assistant Inspector Majora assaulted them. Two male and two female constables later took over the beating. When the other two lawyers arrived at the police station to rescue their colleague, Assistant Inspector Majora detained them as well. He ordered all police details to be armed and distributed live ammunition. Assistant Inspector Majora then proceeded to lecture the lawyers about the evils of the MDC stating that as educated people they ought to be wiser and not allow themselves to be used by white people. He threatened to call Mr Chenjerai Hunzvi, war veterans and the army to further assault the lawyers.

The arrest and detention of the President and Secretary of the Law Society

On 17 April 2002 the Minister of State for Information and Publicity, Professor Jonathan Moyo publicly attacked the Law Society of Zimbabwe and its President, Mr Sternford Moyo. He accused it of working with its British and other "imperialist" donors to dilute, if not destroy Zimbabwe's sovereignty, by invoking "fictitious notions of judicial independence." He condemned Mr Moyo for questioning the competence of some of the decisions made by the Supreme Court and for calling for constitutional reforms to prevent the packing of the Supreme Court with pro-government judges.

On the morning of 3 June 2002 the police searched the Law Society office and arrested Mr Wilbert Mapombere, the society's secretary. Shortly after 2.00 pm plainclothes policemen from the Law and Order Section searched the offices of Mr Moyo and then his residential home. Mr Moyo was then taken to Harare Central Police Station. The police then questioned him and showed him two letters, which formed the basis of the allegations against them. The first was on Law Society letterhead paper. It purported to be from Mr Mapombere (in that it bore a signature purporting to be his) and was addressed to the British High Commission, though not to any specific person there. The second letter was unsigned but purported to be written by Mr Moyo to the Secretary-General of the MDC. The two men emphatically denied that they had written the two letters that formed the basis of the charge and *prima facie* the letters were of highly questionable authenticity. There were numerous indications that they were crude forgeries and that their contents were completely false. The allegations against the men and evidence of the allegations was entirely specious. The main basis of the charge against the President of the Law Society was that he had organised a meeting on 4 March 2002 to plan "peaceful" "mass action" in support of the MDC and at this meeting it was agreed that the MDC would cease reconciliation talks with ZANU (PF). This was a patently false allegation. On 4 March 2002 the Presidential elections had not yet been held. The reconciliation talks between MDC and ZANU (PF) only commenced some time after the election and mass action was mooted only after the election. In any event the planning of "peaceful" mass action is not a criminal offence. Planning mass action can only constitute an offence in terms of s 5 of the Public Order and Security Act if the mass action is

"accompanied by physical force or violence or the threat thereof." This section does not criminalise the organising of peaceful mass action. Indeed it could not criminalise peaceful mass action as this would violate the fundamental right to demonstrate peacefully protected by the freedom of expression and association clauses in the Constitution. (ss 20 and 21 of the Constitution.)

Just before midnight on 3 June, the police officers released Mr Moyo and Mr Mapombere from custody. About one and a half-hours later, Detective Inspector Dohwa came to Mr Moyo's house and advised him that he had been instructed to re-detain him. Mr Moyo was taken to Highlands Police Station and was locked in a small cell together with eight or nine other inmates. The conditions in the cell were appalling. The next morning Mr Moyo was taken to Harare Central Police Station where he spent most of the day seated in the offices. The only thing the police did was to take Mr Moyo's fingerprints. At about 3.30 p.m. Mr Moyo and Mr Mapombere were taken to Chivero National Park about 50 km west of Harare together with the entire staff of the Law Society of Zimbabwe. When they reached a remote part of the national park, they were separated and questioned. They were then driven back to Harare. On the way in the police stated that they were now free and could arrange their transport home. However, before they reached the city centre, the police received an instruction to keep Mr Moyo and Mr Mapombere in detention. Mr Moyo was then held overnight at Borrowdale Police Station and Mr Mapombere at Avondale Police Station. The next morning Mr Moyo and Mr Mapombere were taken to the High Court.

Meanwhile, on 3 June 2002 the lawyers representing Mr Moyo and Mr Mapombere had applied to the High Court for an order for the release of the men on the grounds that the detention was illegal. The Judge President, Mr Justice Garwe, heard this application. The prosecutor informed the court that he and the Attorney-General's office continued to be unable to contact the Police Commissioner; he and his deputies and senior police officers all had their cell phones switched off and were unavailable. It seemed that the senior police officers who had ordered their re-detention were unwilling to provide reasons for their detention. The investigating officers, who were present at the hearing, were not in a position to explain the two men's detention.

The judge finally issued a *habeas corpus* writ ordering that Mr Moyo and Mr Mapombere be immediately given access to their lawyers and that the police produce them before the High Court the following morning at 9.00 a.m. The following day the two men were brought before the High Court. The police had also complied with the order that they be allowed access to their lawyers.

The police had still given no instructions to the prosecutor. There was no opposing affidavit to the application for the release of the men. Technically, therefore, the State was in default. Despite this default, the court found that the police had held a reasonable suspicion that Mr Moyo and Mr Mapombere had committed an offence. The reasonable suspicion had been formed on the basis of the two letters allegedly written by them. These letters required full investigation and the court could not make a ruling that they were forgeries. The court did not address the issue of whether there were any valid grounds for their continued detention such as that there was a prospect of the men absconding or interfering with witnesses. The court found that although the preamble to the warned and cautioned statements they had signed referred to a non-existent section in the Public Order and Security Act, the allegations could fit another section in the Act, which the court identified.

Mr Justice Garwe did, however, deplore the actions by the police for failing to co-operate with the Attorney-General's office. He said the police conduct was unacceptable and that the Attorney-General's officer and the Commissioner of Police should carry out an inquiry into this matter. On the issue of the search warrant, Mr Justice Garwe said both parties should file their heads of argument, if they so wished, for him to determine its legality.

The investigating officers who were present at the High Court hearing had apparently expected the court to release Mr Moyo and Mr Mapombere. As they did not see any basis for the continued detention of the two men, they decided to release them immediately after the High Court hearing. They had not applied for a warrant for further detention. Their stated basis for releasing them was the expiration of the maximum period of time for which the men could be held, namely forty-eight hours. The police officers arranged for the men to meet them at the Magistrate's Court the following day so that they could be formally placed on remand. At the time of the arrest the police do not seem to have had any particular section of the Public Order and Security Act in mind, and in their preamble to the warned and cautioned statements they referred to a non-existent section of the Act. It was not the function of the judge to correct this deficiency by finding a section that could possibly apply. It was the function of the police to identify the particular offence under the Act that would apply and to arrest on the basis of a reasonable suspicion that the two men had committed that offence.

Whilst these events were taking place the government controlled press waged a vicious propaganda against the two men. In the light of the propaganda campaign waged by the government against the President of the Law Society, his arrest and detention, together with that of the Society's Secretary, was seen by many as a crude attempt at harassment and intimidation of Mr Moyo and his Secretary.

Female lawyer savagely beaten

The story that follows is told in her own words by a female lawyer who is a Director in the corporation that publishes the only private national daily newspaper in Zimbabwe. The story is a harrowing one and graphically exposes many of the most disturbing features of Zimbabwean society presently. The story shows:

- the extent to which the police are controlled by the ruling party;
- the partisan nature of the police;
- the extent to which powerful persons connected with Zanu (PF) but not members of the police force can direct police operations and engage in brutality against political opponents with the assistance of the police;
- the extent of human rights abuses committed by the police;
- the extent of the breakdown of the rule of law, leading to situations where lawyers are subjected to brutal attacks when they are seeking to carry out their professional duties.

Three days of hell at the hands of the police

By Gugulethu Moyo

Associated Newspapers Corporate Affairs Director

Daily News 24 & 25 March 2003

I arrived at Glen View at about 11:30 am on Tuesday morning, accompanied by a fellow legal practitioner, Alec Muchadehama. Our mission was to secure the release of Philemon Bulawayo, whom we found in a back office, sprawled on some chairs writhing in pain. The officer-in-charge advised us to wait outside for the investigating officer who would tell us why Bulawayo had been arrested.

Twenty minutes later, two pick-up trucks, one written Chivaraidze Farm, swept into the police station and riot policemen swarmed out. An army Range Rover, registration number 750-123A, drove in after them. Out jumped three soldiers in combat gear; a man in khaki longs and shirt came out of the driver's seat. An expensively dressed woman alighted from the passenger seat and walked purposefully across the lawn, gesturing wildly as she spoke on her mobile phone.

"Deploy more police, these people in Glen View are a problem. When you get them, beat them," she ordered over the phone.

I looked on, drawn in by the action, having assumed by now that this woman was a plain-clothed policewoman. She dashed across the yard to where the police in riot gear were forcing accused persons to roll in mud.

As they rolled in the dirt, the police officers bore down on them with their batons. Their screams fell on deaf ears. Nearby a group of 10 others were being forced by baton wielding police officers to toyi-toyi and shout political slogans. The woman stood over the rolling bodies and shouted: "This is not Tsvangirai's country!"

My phone rang. It was my boss and as we spoke, I looked up and saw the woman fly straight towards me. "Who is this woman talking on the phone?" she shouted. "Who are you?" "Madam, I did not realise it was an offence for me to talk on the phone. I'll be with you just now," I said, turning away to continue with my conversation. I felt a tug at my jacket. "Answer me! Who are you and what do you want at this police station?" she bellowed. "Gugulethu Moyo, I work for Associated Newspapers of Zimbabwe," I explained. There was something terribly wrong with my answer. Her eyes blazed with anger. "What? You are from The Daily News? You are here for that journalist?" "You, the people who write that there is no rule of law in Zimbabwe, you are here to bail out that criminal so that you can go and write that there is no rule of law. Never!" "Do you know who I am? My name is Jocelyn Chiwenga, wife of the army commander. I am going to show you that there is no rule of law in Zimbabwe. Today you shall know," she roared. Chiwenga held me like a vice. I struggled to escape, but she held on, hurling curses at me all the while. The man in khaki ran towards me from the other end of the yard. He rolled his fist, aimed straight for my right eye and landed a blow as he lunged at me. He pulled my collar. "Come here, you traitor, I'll show you!" At this point Chiwenga grabbed my handbag. She searched it. She pulled out my British Council library card. "You work for the British," she snarled. "This card says British Council member. The British prostitute, sell out!" she roared. She held up the card for all to see. "You see, we told you, these people work for the British, they work with foreigners to destroy this country, they have sent her here so she can go and write about the rule of law in Zimbabwe. Well, today your British shall pay you, we will beat you up. You shall tell them that the wife of the army commander beat you up." "Tell them it is Heritage that beat you!" the man in khaki added. "We fought for our country to be taken over by the British and traitors like you? Never!" shouted Chiwenga. The British give you money to come and bail out criminals like your photographer. Well, today the British will do nothing to save you. Your will see why Tafadzwa Musekiwa ran to the British," the man added. "I will beat you and nothing will happen, you can go to court, all the judges will do nothing. I can even kill you, I have a gun," she shouted as she rammed her fist into my body. "I have everything, I am filthy rich, filthy rich, you hear me? I have farms, many businesses and more than 10 kombis that operate in Glen View. No one can touch me. I am the General's wife!" she said, punching me again. "You don't know me, I am the General's wife. If you call your people, I will call helicopters!" She roared again. The man in khaki kicked me while she held me down. I got up. He shoved. A sharp pain shot through my body as my head bumped against a stone as I fell to the ground. They kicked me while I was down. They ordered Muchadehama and I to sit down on the ground. The unrelenting interrogation started. She questioned and questioned. Her questions were punctuated by slaps, punches and kicks from her accomplice.

The more than 60 police officers and soldiers stood watching as we were beaten and interrogated. The officer-in-charge who had been in his office when the drama started, was now a spectator.

She fired questions at me. "Why do you speak to me in English, little girl? Are you Ndebele?" "Yes," I replied. "You stupid Ndebele girl, what are you doing here? What happened in Matabeleland in the 80s is going to happen to you today, now!" she shrielled while here accomplice thumped me on the head. I felt a deep chill creep down my spine. She asked me where I had studied law. Not wanting to get myself into more trouble regarding my associations with the British, I said, "University of Zimbabwe," at which she shouted: "Mugabe and I fought so you could have an education and call yourself a lawyer, now you

promote anarchy and tell the British there is no rule of law. What rule of law? I am a lawyer myself. I can tell you about the rule of law, as you know nothing."

At this moment, I felt a pang of pain in my heart. I recalled a day, just over a year ago when I had informed my father of my decision to return to Zimbabwe after completing my post-graduate law degree at the University of Oxford. He tried to dissuade me, saying that this was not the time to return to Zimbabwe. "You have a brutal government that does not countenance free thought. Our African politicians are ruthless, why don't you work in Europe and send articles to newspapers back home if you want to contribute to Zimbabwe? He had said. The irony of this as I sat at Jocelyn's feet rang clear. Jocelyn had just told me that I owed her a great debt of gratitude, whilst my own father who many years ago in Zambia, during the struggle, taught the subject of law to a number of politicians who lord over us in Zimbabwe today, had long adopted the cynical view that it would be some time before the value of lawfulness would penetrate the minds of those very politicians who claimed to be responsible for my enlightenment.

The questions and claps continued for 15 more minutes. Occasionally, Muchadehama would be slapped or kicked by the man in khakis. Suddenly she ordered: "You two are leaving this station now, go!" "We're not leaving until we find out why the journalist is being detained," I said. "Out!" she screamed as the man in the khakis dragged me towards the gate. As we got to the gate she had a sudden change of mind. "Lock this dirt away, seal the gates, no one leaves this station, no one comes in." She looked at me, sneered and turned to the policeman. "I said open up the cell and lock her in," she shouted. She was the master here as she gave orders. This civilian has taken charge of this uniformed force, I said to myself. Muchadehama intervened. "How can you lock her up? She has done nothing wrong. She is a lawyer, her to look after the interests of a detainee." "Shut up, you think I'm stupid! She roared. "You are staying here my girl, I will show you who has power; you will sleep here and we will beat you so your British masters can pay you more."

The police officer complied and locked me up. Three hours later I was still in the cage at the Glen View Police Station, locked up with at least 30 young men who had been arrested that day. For three hours I had watched silently as a soldier who was inside the cage with us, would, every five minutes or so, aim at someone's head with a baton. The men maintained a defiantly dignified demeanour, enduring the pain silently. I was fortunate, the soldier never touched me. A 13-year-old boy sat next to me. I asked him why he was in custody. He said he had been picked up outside his house with others in the morning when the riot police swooped in on the neighbourhood. An old man about 60, who wore only a pair of boxer shorts had huge welts on his back and stomach. He had been dragged out of his home in his shorts when he attempted to protect his daughter from the police.

Just after 3:00 pm, Jocelyn returned. In her hand was my British Council Library card. "Stupid girl, this is no library card. I have investigated. The British don't run libraries, you think I am stupid. They work with traitors like you," she said, poking me through the fence. "Open up, I am taking her to (Harare) Central (police station)" she directed the policeman. I was hauled on to a truck with 15 men. The truck was manned by five police officers in riot gear. "Beat her up, I'm following you to the station," she ordered as she walked towards the Range Rover. As soon as the truck moved out of Glen View Police Station, the police officers instructed me to lie flat on my belly, with my hands at my sides. What I felt next was indescribable pain. The five police officers rained blow after blow on me with their batons. They used maximum force. They aimed straight for my buttocks and my thighs. The blows were occasionally substituted with a hard kick from a heavy-duty boot. My body curled in pain and I lifted my hands to cover my head. I prayed. I screamed, louder and louder. Not out of pain, but because I thought they might stop if I screamed. That did not happen. They only stopped to taunt me. "You are a lawyer, why did you come to Glen View Police Station? Don't you know that police stations are for the police?" And down came the batons again. "You are Ndebele, well today you shall speak Shona!" and down came the batons. "Are you married?" "No," I answered. "Why are you not married?" and down came the batons. Pure

hatred. For about 10 minutes I was locked in an early hell when, quite miraculously, we encountered an accident. Three police officers were directed to jump off the truck and attend to the accident victims. Jocelyn got out of her car to survey the scene of the accident and give directions to the police.

When we arrived at Harare Central Police Station, the riot police took us upstairs to the Law and Order Maintenance Section. The corridors were crowded with injured detainees. As I walked in, the eyes of the police officers who recognised me turned away in shame. One officer approached me and asked: "Gugu, why are you here?" The explanation for that arrived as we spoke. Jocelyn came strutting down the corridor asking: "Where is that girl?" I was easy to find, being the only woman there. Pointing at me, she ordered the police officers in the vicinity: "Lock her in, she is not coming out of here." She turned to me and said: "You see how powerful I am. I am the General's wife, they take orders from me, you are nothing, nothing. This is only the beginning, I will come for you, mark my words, you don't mess with the commander's wife."

I was detained at Harare Police Station with more than 150 people who had been picked up in Glen View that day. Fellow detainees said that Jocelyn, her accomplice and the soldiers had been in Glen View all morning. Her private trucks had ferried the riot police. Some said they were dragged from their homes. Almost all had been assaulted. They claimed that they did not know why they were there. We were all denied medical treatment and struggled quietly with our pain. We could not believe that this was happening in Zimbabwe in the Year of Our Lord, 2003.

For three days I was abused. Subjected to the most inhumane conditions – toilets that could only be flushed from the outside of the cell by police officers who seemed to delight in not flushing out these cesspools. For three days I lived in an overcrowded, dirty cell. The first night I stood until morning, the concrete beds and floors were full. When I asked for medical treatment or in the least, a soft chair to rest my swollen bottom, the police officers taunted me, told me that I had no rights, rights were "lawyers talk", not for prisoners. For three days, I watched as police officers assaulted my fellow prisoners. The assaults were totally unprovoked. They were meant to keep us in line. Every three or so minutes a heavy gumboot would land on the jaw of a helpless prisoner. At one point, a police officer aimed straight at the bloated eye of a young man and punched him. I cannot describe the horror of his cry of pain. I was lucky, I only got pushed and shoved.

On Thursday evening, I was finally released. A policeman who had allowed me to use his mobile phone to call for help earlier that day, said to me as I left: "Sister, I have nothing against you. We knew you were being held here for nothing. We even knew there was a court order to release you, but with these political cases even the most senior guy in the police station makes no decision, we are instructed right from the top."

I left almost 200 "political prisoners" behind. They were battered, bruised and oppressed souls, but their eyes flickered with an awesome glow which to me signalled defiance. Their backs were broken but their spirits were not.

Ms Moyo was detained by the police from 18 March to 20 March 2003. She was released was released without charge after the High Court had issued an order compelling the ZRP to release her. This order had been ignored for almost 24 hours and was only executed when my lawyers threatened to lodge a complaint for contempt of court.

On 31 March 2003 Ms lodged a complaint against Chiwenga and her assistant for assault. To date no one has been charged. Ms Moyo has not received any feedback from the ZRP on the status of their investigations.

On 25 April 2003 she went to the Harare Central Police station to attend to the matters of two ANZ executives who were being charged under Public Order and Security Act.

Ms Moyo filed a civil claim against Chiwenga and Chadenyika for damages arising from the assault and unlawful detention. The total amount claimed is \$15 million. Ms Chiwenga denies that she assaulted Ms Moyo or that she ordered the police to detain me. Ms Chiwenga has in turn launched a civil suit against Ms Moyo for a huge sum of money.

On Monday 30 June 2003 Ms Moyo went to the Harare Central Police Station in connection with criminal charges brought against a number of staff of the Daily News. When at the police station, she was suddenly told that the police had been looking for her because they wanted to charge her with a criminal offence. The offence was that of incitement to public violence on the day she was assaulted at Glen View police station by Ms Chiwenga. It was alleged in the charge that on that day in the Glenview and Budiro areas, she incited people to demonstrate against the sitting government of Zimbabwe by telling them to be arrogant and refuse to take heed of police instructions.

In her warned and cautioned statement she emphatically denied the charge, saying that she had been assaulted at the police station and at no stage had she incited people. She had travelled from Harare to Glen View by car and did not make any stops along the way. She stated that the charge was a complete fabrication and is patently malicious.

The Meldrum Case

Mr Andrew Meldrum has lived and worked in Zimbabwe for the last twenty-three years as a journalist. He had permanent resident status.

In 2002 was acquitted of charges under section 80 (1)(b) of the Access to Information and Protection of Privacy Act, a section that has recently been struck down by the Supreme Court Constitutional Court bench struck on the basis that it violates the fundamental right of freedom of expression. Shortly after his acquittal Justice Anele Matika ruled that the authorities were barred from deporting Meldrum until such time as the Supreme Court ruled on the constitutionality of a previous attempt to deport him.

On the morning of Friday 16 May 2003 Meldrum went to the immigration department with his lawyer. and was informed that he had been declared a prohibited immigrant and that he would be deported. Despite the existence of the order from Justice Matika and the fact that the Supreme Court has yet to hear this matter the Chief Immigration Officer informed him that the Minister of Home Affairs had revoked his lawfully issued permanent residence permit and he had been declared a prohibited immigrant and he was to be deported. His passport was seized and he was taken into custody. He was detained by them. He was later bundled into a vehicle by police officers. He was flanked by two men in plain clothes suspected to be by CIO officers. One threw a jacket over his head and held it tightly around his neck. The other officer said: 'The games are now over,' thumping him on the back for emphasis. 'Now it is serious.'

At around 1230 hours Meldrum's legal counsel, Mrs Beatrice Mtetwa, obtained an interim High Court order from Justice Charles Hungwe. This required that the Minister of Home Affairs, the Chief Immigration Officer and a senior immigration official, Mr Evans Siziba, (the respondents), produce Meldrum in court at 1530 hours and ensure that he was not deported. The court order was served on immigration and Air Zimbabwe officials at the Harare International Airport, and they were advised in no uncertain terms that any attempt to place Meldrum on a flight out of Zimbabwe would constitute an intentional breach of a court order. (South African Airways and Zambia Airways had refused to allow the immigration authorities to place Meldrum on their flights because of the court order.)

The respondents ignored Justice Hungwe's order to produce Meldrum and Mtetwa was forced to again seek the court's assistance in having Meldrum produced. Justice Hungwe confirmed the order that the respondents produce Meldrum in court or risk contempt proceedings. Mr Siziba was present in court and undertook to produce the journalist.

Almost four hours later the respondents' representative, Mrs Loice Matanda-Moyo (the Director of the Civil Division of the Attorney General's office), returned to court alone and advised Justice Hungwe that she had been unable to make contact with Mr Siziba and said that she presumed that he had failed to obtain authority from the Ministry of Immigration for Meldrum's release. No such authority is required in terms of the Immigration Act and the court order should have been obeyed. Mr Siziba is a senior immigration official with power to release Meldrum, and had made an undertaking to the judge to carry out his duties.

Justice Hungwe ordered that Meldrum be released forthwith and that no further steps be taken to deport him until the matter had been finalised. He further ordered that Mrs Matanda-Moyo accompany Mrs Mtetwa to the Harare International Airport to serve the order on the immigration officials there and ensure that Meldrum was not placed on the 2115 hours Air Zimbabwe flight to the United Kingdom, which Mrs Matanda-Moyo undertook to do. Despite such undertaking, Mrs Matanda-Moyo refused to accompany Mrs Mtetwa to the airport.

Mrs Mtetwa, in the company of a legal representative from the Zimbabwe Lawyers for Human Rights, arrived at the airport at 2105 hours to serve the court order on immigration officers and Air Zimbabwe officials. Both parties refused to accept service of the order or to release Meldrum in terms thereof, and he was seen being led away by two men who forced him to board the Air Zimbabwe flight.

Mrs Matanda-Moyo arrived at the airport as the aeroplane took off on its journey and made no attempts to engage the immigration officials to ensure that the court order was respected. In any event, it was too late as the aeroplane was already in flight.

Attacks on judicial officers

In August 2001 a large crowd of allegedly ZANU (PF) supporters, demonstrated for three days against a Karoi magistrate after he had granted bail to 106 farm-workers who were charged with public violence for attempting to throw "war veterans" off their farms. The magistrate was transferred to Kadoma at the instigation of the war veterans.

In 2001 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.

In September 2001 after a Bindura magistrate sentenced 17 ZANU (PF) supporters to three years' imprisonment each for public violence ahead of a by-election in June, it was reported that other party supporters held "an all-night vigil" outside his home and intimidated his wife.

In November 2001 ZANU (PF) militants assaulted a senior magistrate in Gokwe after he convicted a ruling party supporter on a robbery charge and sent him to jail for eight months. The magistrate, Douglas Chikwekwe, subsequently fled from his workplace and home. Police officials confirmed the incident, but said investigations were still in progress. They said they had not arrested anyone. The ZANU (PF) supporters were apparently unhappy with Mr Chikwekwe's decision to convict one of their colleagues for robbery. They called the conviction and sentence a "miscarriage of justice". The militants descended on Mr Chikwekwe's home over the weekend, breaking his windows and destroying his furniture. Mr Chikwekwe escaped the attack with minor bruises, but fled the area.

In January 2002 more than 150 ZANU (PF) supporters besieged the Bindura Magistrates Court and forced it to close. They demanded the removal of three magistrates whom they accused of sympathising with and supporting the opposition MDC and whites in the area. They said the magistrates should go to Harare and be employed by Morgan Tsvangirai, and if they refused to go they would be driven away. The riot squad eventually moved in and quelled the disturbance.

In February 2002 a magistrate, Godfrey Macheyo, sentenced war veteran leader Joseph Chinotimba to an effective term of imprisonment of two months for illegally possessing a firearm without a licence. A crowd of about 200 ZANU (PF) youths who were packed into the courtroom threatened to deal with the magistrate soon after he had pronounced sentence. Riot police were on stand by to deal with any violence that broke out.

In August 2002 Walter Chikwanha, a Chipinge magistrate, was dragged from his courtroom by a group of war veterans and assaulted at the government complex after he dismissed an application by the State to remand in custody five opposition MDC officials. Sources said the magistrate sustained broken ribs and a fractured collar-bone. The attack allegedly took place in full view of the police, who apparently did not try to stop the assault. The magistrate was then paraded round town and made to chant ZANU (PF) slogans. Several other court officials were also assaulted and one had to be hospitalised. The magistrate had previously granted bail to the five MDC officials after they had spent several days in custody on charges of malicious injury to property arising out of the burning of three tractors belonging to the District Development Fund. The day after their release on bail the five had been re-arrested by the police and held for a few days before being brought back to court. The magistrate released them on bail on the same conditions as he had imposed previously. The identity of the assailants was presumably known to the police, yet at the time of the compilation of this report no arrests had been made.

According to a newspaper report, magistrates and prosecutors in Manicaland abandoned work in protest against the attack upon the Chipinge magistrate. The report quoted a prosecutor as saying: "This is unheard of. It is a total breakdown of the rule of law in the country and we cannot be seen to condone it. How on earth can people just walk into a courtroom, drag the presiding magistrate out and assault him?"

Just over a week after the attack on the Chipinge magistrate, on 26 August 2002 Mr Godfrey Gwaka, the magistrate for Zaka district in Masvingo province, was stabbed at Zaka petrol station. It was suspected that this attack was related to recent judgments handed down by the magistrate. However, the police have said that this attack was not politically inspired.

In a statement issued on 2 September 2002 Amnesty International stated: "The attacks on the magistrates reflect on-going attempts on the part of government authorities and state sponsored 'militia' to undermine the judicial system and prevent court officials from executing their duties impartially and professionally."

Neither the President nor any of his Ministers have seen fit to censure these outrageous attacks on magistrates, and their silence has undoubtedly encouraged the perpetrators to believe they are immune from prosecution and further diminished public respect for the judiciary.