

ZIMBABWE

Zimbabwe was in deep political and economic crisis following the onset of a violent campaign in 2000 led by "war veterans" to crush the political opposition and seize commercial farms. Significant post-independence achievements in racial reconciliation, economic growth and development of state institutions have already been severely eroded. The continuing non-enforcement of court orders has led to the dismissal of the authority of the courts and the encouragement of general lawlessness. Following months of sustained personal attacks by the Government, its supporters and the press, Chief Justice Gubbay agreed to retire early from his judicial post. Judges and lawyers remained under persistent intimidation by the executive, signalling a further deterioration in the rule of law of Zimbabwe.

Zimbabwe gained independence in 1980 following a war against the white minority regime led by Ian Smith. That regime had declared unilateral independence from Britain in 1965 in what was then Southern Rhodesia. In the early 1980s there was armed conflict in the south and west of the country between the two main parties, the ruling Zimbabwe African National Union (ZANU), dominated by people of Shona origin, led by Robert Mugabe, and the Zimbabwe African People's Union (ZAPU), dominated by the country's largest minority group, the Ndebele, led by Joshua Nkomo. During the course of this war, Government forces and in particular the Fifth Brigade committed serious atrocities. An estimated 20,000 civilians were killed. Hostilities ceased in 1987 after a Unity Accord between ZANU and ZAPU, which resulted in the merger of the two parties. Since then, political power has been dominated by the Zimbabwe African National Union-Patriotic Front (ZANU-PF), both under the leadership of President Mugabe.

ZANU-PF won the 1990 and the 1995 elections. Thereafter, until 1999 there was no significant opposition party to challenge the dominance of ZANU-PF. However, in the June 2000 parliamentary elections, the newly emergent Movement for Democratic Change (MDC) succeeded in winning 57 out of 120 seats, thus having enough votes to block any constitutional amendments. Although the MDC has been criticised by the ruling ZANU-PF as mainly protecting the interests of white farmers, the election results demonstrate that it is a party with vast support from a large part of the black Zimbabwe population, as whites constitute less than one per cent of the population. In the run-up to the June 2000 elections, elements within the Government had allegedly initiated a violent campaign to suppress all political opposition. Violent persecution of political opposition has continued ahead of the scheduled 2002 presidential election. Throughout the 1980s, the Government had proclaimed its intention to pass legislation to make Zimbabwe a single-party state. Although it dropped this plan in 1990, it continued to take measures to ensure that the country was a *de facto* one-party state.

The Constitution of Zimbabwe, known as the Lancaster Constitution, was agreed to in London as a schedule to the Zimbabwe Constitution Order 1979 and has since been amended several times. The Lancaster Constitution provided for a bicameral Parliament, a Prime Minister as the Head of Government and a ceremonial President. Subsequent constitutional amendments resulted in the abolition of the office of the Prime Minister, the establishment of a President with executive powers, a unicameral Parliament and a Declaration of Rights allowing for derogation from certain provisions under specified grounds, such as during a state of emergency.

The President is now the Head of State, Head of Government and Commander in Chief of the armed forces. The President is elected by voters registered on the voters roll and holds office for a period of six years, after which he may be re-elected for a further period of office. The President has the power to dissolve the Parliament. The Constitution provides for two vice-presidents at a time, appointed by the President, whose responsibilities include assisting the President in discharging official functions. The Cabinet of Ministers is appointed by the President. The Ministers, as well as the Vice-Presidents are accountable both to the President and to Parliament.

Legislative power is vested in a 150-member Parliament, elected for a five-year term. One hundred and twenty members are elected by universal suffrage, ten are chiefs elected by all tribal chiefs, 12 are appointed by the President and eight are provincial governors. A two-thirds parliamentary majority is required to amend the Constitution.

On 21 May 1999, following pressure from within civil society, President Mugabe appointed a Commission of Inquiry, according to the Commission of Inquiry Act, to draft a new Constitution for Zimbabwe. The draft Constitution would have, *inter alia*, provided for the office of a Prime Minister, but at the same time would have broadened the presidential powers. After receiving the Commission's report, the President, acting on his own, added additional clauses to the draft, including a provision in Section 57, allowing for the acquisition of commercial farmland without compensation, unless the United Kingdom Government paid for it. The proposed draft Constitution, known as Amendment 14, was rejected in a February 2000 referendum. The Mugabe Government reacted bitterly and blamed the white majority, particularly the white farmers for the referendum's defeat. In fact, the draft constitution failed because of the overwhelming opposition of black voters in rural areas.

The Crisis: farm invasions, the war veterans and economic hardship

Towards the end of the 1990s, Zimbabwe experienced grave economic hardship, stemming primarily from economic mismanagement and massive corruption. In 1998, food riots took place and the popularity of ZANU-PF diminished rapidly. A promise of compensation to the Liberation struggle war veterans was made, along with a parallel announcement that the government would acquire 1,500 white-owned commercial farms without full compensation. Meanwhile, the inequitable distribution of land remained a pressing and unresolved issue, in a country where 32 per cent of the arable land belongs to white farmers comprising less than one percent of the population. During the 1980s and 1990s, the Zimbabwe government acquired farms, paying fair prices to white sellers, but little effort was made to resettle the acquired land. Similarly, the Commercial Farmers Union (an organisation which represents the interests of the commercial farmers in Zimbabwe), while formally acknowledging the need for land reform, seemed to be acting mostly to protect the short-term interests of its members. In September 1998, the Land Donors Conference took place bringing together all concerned parties. An agreement was reached on a two-year program to resolve the issue. The implementation of the agreement was not achieved. The "fast-track" resettlement program, the Government's latest effort to provide for compulsory acquisition of farms, began in early 2000, when the government's popularity had reached an all-time low.

Within days of the 2000 referendum rejecting the Constitution, the land issue exploded and invasions of farms occurred throughout the country. At least 28 farm workers and nine commercial farmers have been murdered since March 2000, The first land occupations were not, as claimed by the Government, a spontaneous protest by land-hungry people. They were planned, organised and executed reportedly by groups of ZANU-PF supporters, self-named "war veterans". The "war veterans" group appears to be constituted not only of those who participated in the liberation war, but also younger, typically unemployed ZANU-PF supporters, as well as members of the state

security services. It should be noted that many are too young to have fought in the liberation war. The invaders have terrorised, beaten, intimidated and killed farm workers of the white farmers.

Against this background, the commercial farming sector, a mainstay of the economy, has been badly affected. Ongoing intimidation by the squatters continues to disrupt agricultural activity. Due to the loss of agricultural production, Zimbabwe will have to import tons of maize in order to meet its annual domestic requirement. The Government's military operations since 1998 in the Democratic Republic of Congo have allegedly worsened the situation. The United States Congress has recently adopted legislation threatening targeted sanctions unless Zimbabwe ends attacks on the opposition and protects the media and the judiciary. The European Union is considering similar measures. The Zimbabwe government was considering declaring a state of emergency if the threat of imposing conditions went ahead.

On 6 September 2001, during a meeting of the Commonwealth foreign ministers in Nigeria, Mugabe endorsed a land plan to end seizures of white-owned farms in exchange for funds to implement a fair and just land reform programme. Britain and other countries agreed to compensate white farmers for land taken from them as part of the accord. The international community agreed to engage constructively with the UNDP and the government of Zimbabwe in pursuing an effective and sustainable land reform programme. The deal also committed Zimbabwe to broader political reforms, including guaranteeing freedom of expression and pledging to take firm action against violence and intimidation. On 18 September 2001, Zanu-PF unanimously endorsed the land deal. The Commercial Farmers Union and the MDC also welcomed the agreement, but they stressed that it would only be of importance if implemented by the President himself. The farmers have dropped the legal challenges to the transfer, which they say would allow the President to proceed in a manner acceptable to international donors, on whom the government depends to pay out compensation. At the time of this writing, the deal seemed to be unravelling, with new waves of attacks reported against farmers.

HUMAN RIGHTS BACKGROUND

The Constitution of Zimbabwe stipulates that it is the duty of every person to respect and abide by the Constitution and the Laws of Zimbabwe. Chapter III of the Constitution contains the Declaration of Rights, which sets out what "fundamental rights and freedoms of the individual" are to be protected, subject to certain limitations. These limitations, laid down in the Constitution, stipulate that the enjoyment of those rights and freedoms do not prejudice the public interest or the rights and freedoms of other persons. The Constitution protects, *inter alia*, the rights to life, freedom from slavery and forced labour, freedom from inhuman treatment, and freedom of conscience, expression, assembly, association and movement.

Zimbabwe is a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child. Zimbabwe is not party to the Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment and Punishment.

On 6 March 2001, the United Nations High Commissioner for Human Rights, Mary Robinson said that she had written again to President Robert Mugabe drawing his attention to international concern over respect for the right to life, security of the person, freedom of expression and freedom of opinion and association in Zimbabwe. The High Commissioner also referred to deep concerns

relating to the independence of the judiciary. She made a particular appeal to the President to “use his best endeavours for the well-being of the Chief Justice and other judges and magistrates”.

Violations of property rights

More than a year after the farms invasions, approximately 1,800 properties had been negatively affected. The "war veterans" have not been prosecuted for violence perpetrated against farmers and their workers, widespread theft of cattle and other goods, or destruction of property. Moreover, President Mugabe has declared the invasions “peaceful demonstrations” and ordered the police not to take action against them. In contrast, the police has been quick to press charges against white farmers who try to move the occupiers off their farms. For example, on 11 August 2001, 21 white farmers were arrested and held without bail on charges of causing public violence for allegedly attacking black settlers in the area of Chinhoyi. On 20 August 2001, Zimbabwe’s High Court granted bail to the 21 farmers under strict restrictions, including the surrender of passports to the police.

President Mugabe announced that his Government would not pay for the land, but compensation will be made for permanent improvements, such as road, dams and barns. On 16 August 2001, Mugabe announced that the army would be deployed on farms to “speed-up” the redistribution of land and to protect settlers from violent farmers. Most of the farms invaded had been bought following independence by their owners.

Impunity issues

Zimbabwe has a disturbing pattern of impunity going back to the war of independence and the Matabeleland atrocities. In February 2000, a Supreme Court order granted two human rights organisations, the Legal Resources Foundation and the Catholic Commission for Justice and Peace, the right to sue the President’s office in order to release the two official reports on the atrocities in Matabeleland in the 1980’s.

On 6 October 2000, President Mugabe issued a clemency order granting total amnesty to every person liable to criminal prosecution, whose guilt or innocence had not been determined by a court, for any politically motivated crime committed during the period 1 January 2000 to 31 July 2000. Although the order makes exceptions for some grave crimes, such as murder, rape and possession of arms, the amnesty protects the perpetrators of human rights abuses who are liable to prosecution for, or are charged with, assault with intent to do grievous bodily harm, common assaults, kidnapping and abductions (involving in at least one case of “disappearance”) in connection with the 12 and 13 February referendum and the 24 and 25 June 2000 elections. Many international organisations expressed their grave concern surrounding the amnesty law, as it threatens the rights of every citizen and demonstrates a contempt for the Rule of Law. There is strong evidence that many of these gross violations of human rights were committed at the instigation, or at least with the acquiescence of the government officials.

Political violence

In the period following the June 2000 elections, violent attacks and death threats against real and perceived MDC supporters continued. Numerous cases have been reported of police or soldiers beating MDC supporters during rallies or civilians because they live in areas where the opposition is dominant. Torture, including beatings, electric shock and mock drowning, is widespread. In a number of rural areas, war veterans and ZANU-PF supporters conducted “*pungwes*”, or forced

nightly political gatherings. Hundreds of villagers have been rounded up, driven to remote areas and forced to chant ZANU-PF slogans or denounce the opposition until the following morning. The Amani Trust in Harare, which monitors human rights abuses in Zimbabwe, recorded 11 political murders, 61 disappearances, 104 cases of unlawful detention by the authorities, and 288 incidents of torture in July 2001. According to the Amani Trust, “torture is purely intimidatory, not to extract information. It is to terrorise people, to stop them being politically active. Often, it is done quite publicly to send a lesson to others. People are abducted publicly. Their neighbours see it.”

The Human Rights Forum in Harare, a coalition of ten groups, including the Amani Trust, Amnesty International and the Catholic Commission for Justice and Peace, published a report in August 2001 concluding that “the rule of law has been replaced by rule by thugs. Armed militias roam the countryside assaulting people whose sole crime is to support the opposition party. The victims have received little or no protection from the law enforcement agencies; worse, members of these agencies sometimes participated in these assaults. ”

Freedom of expression and freedom of assembly

During the period under review, the Government restricted freedom of expression, particularly by opposition members and supporters. Editors and journalists remained under constant threat and harassment. Many of them have been arrested, questioned and detained on defamation grounds. Journalists who tried to report independently on the events in Chinoyi were abused and intimidated by the mob. The offices and the printing house of the *Daily News* were bombed in April 2000 and January 2001, respectively. However, major independent newspapers continued to monitor and criticise government policies. Since January 2001, three foreign correspondents have been expelled from Zimbabwe. In July 2001, the government suspended the accreditation of all correspondents for the British Broadcasting Corporation, saying it could no longer tolerate the BBC’s “distortions and misrepresentations”. At the time of this writing, the Government was promoting new legislation aimed at banning all foreign journalists from working in the country and requiring special permits for domestic journalists.

The judiciary

Zimbabwe law is based on Roman Dutch law. The law to be administered by the courts, in addition the African customary law, is the law in force in the colony of the Cape of Good Hope on 10 June 1891, as modified by subsequent statute. The court system is composed of the Supreme Court, the High Court, magistrates’ courts and local courts.

Under the Constitution, the Supreme Court is the final court of appeal. It exercises appellate jurisdiction in appeals from the High Court and other courts and tribunals. It also has an original jurisdiction conferred on it by the Constitution to enforce the protective provisions of the Declaration of Human Rights. The Supreme Court consists of a Chief Justice and at least two Supreme Court judges. The Supreme Court is also competent, under the Constitution, to hear constitutional cases at first instance, especially when there is an alleged violation of the Declaration of Rights. It can also hear matters referred to it by other competent courts where a certain law has been challenged as unconstitutional. When it sits as a constitutional court, the Supreme Court sits as a Bench of five judges. The Court’s permanent seat is in Harare, but it also sits regularly in Bulawayo.

The High Court has original full jurisdiction, in both civil and criminal cases, over all persons and all matters in Zimbabwe. The High Court is also headed by the Chief Justice, assisted by the Judge President and a number of High Court judges as may be assigned from time to time. The Judge President is in charge of the Court, subject to the directions of the Chief Justice. The Court has permanent seats in both Harare and Bulawayo and sittings are held three times a year in three other principal towns. There are currently 23 judges in the High Court.

Magistrates' courts are established by an Act of Parliament and are divided in regional and provincial courts. Regional magistrates' courts exercise criminal jurisdiction that is intermediate between that of the High Court and magistrates' courts. Regional magistrates' courts are established in Harare and in Bulawayo but also holding sittings in other town centres. Provincial magistrates' courts exercise both civil and criminal jurisdiction. The provincial magistrates' courts are established in 20 centres throughout the country and are staffed by full-time professional magistrates. The Chief Magistrate is in charge of all magistrates throughout the country. Magistrates are appointed by an executive authority.

In 1981, the tribal courts and the colonial era district Commissioner's courts were abolished and were replaced by a system of primary local courts consisting of village courts and community courts. Village courts are competent to try certain types of civil cases and have jurisdiction only where African customary law is applicable. Village courts are presided by officers selected from the local population, sitting with two assessors. Community courts have jurisdiction over all civil cases determined by African customary law and also deal with appeals from village courts. They have limited criminal jurisdiction over petty offences. Community courts are headed by presiding officers in full-time public service who may be assisted by assessors.

Under the Small Claims Court Act, small claims courts have been established to relieve the workload of the ordinary courts of the land. Under the Act, a qualified lawyer with three years experience, a former legal practitioner or a magistrate may be appointed to preside over claims in these courts. Legal representation is not allowed in these courts. The procedure is designed to be as informal as possible so as to allow for speedy resolution of matters. No formal pleadings are required, but simple forms of application are provided. The courts are designed to deal only with small claims and do not handle, for example, divorce cases. The decision of the adjudicator is final and not subject to appeal, although the proceedings can be reviewed for procedural impropriety before the High Court.

The Administrative Court Act 1979 establishes the Administrative Court, which functions as a court of appeal from a variety of administrative and judicial decisions issued under legislation and by tribunals and statutory authorities.

The Ombudsman

The Office of the Ombudsman is established under an Act of Parliament of 1982. The Ombudsman is appointed by the President acting on the advice of the Judicial Service Commission. The Ombudsman investigates complaints on administrative actions and may only initiate an investigation where a complaint has been lodged. The Act restricts the investigative powers of the Ombudsman to ministries, government departments and statutory authorities. Therefore, actions by the defence forces, police, prison services, the President and presidential staff, the Cabinet office, the Attorney-General and judicial officers may not be investigated by the Office.

Appointment and security of tenure

The Constitution of Zimbabwe provides for an independent judiciary. Section 79B states that in the exercise of judicial authority, a member of the judiciary shall not be subject to the direction or control of any person or authority, except to the extent that a written law may place him under the direction or control of another member of the judiciary.

The Chief Justice and other judges of the Supreme Court and High Court are appointed by the President of the Republic after consultation with the Judicial Service Commission. The Judicial Service Commission consists of the Chief Justice, the Chairman of the Public Service Commission, the Attorney-General, and no less than two other members appointed by the President. It should be noted that the Judicial Service Commission operates in the absence of any written procedures and rules. Under Section 84(2) of the Constitution, if “the appointment of a Chief Justice or a Judge of the Supreme Court or the High Court is not consistent with any recommendation made by the Judicial Service Commission, the President shall cause Parliament to be informed as soon as possible.”

Section 86 of the Constitution provides that a judge of the Supreme Court or the High Court shall retire when he or she attains the age of sixty-five years. A judge in good health may retire on attaining the age of seventy years, provided that a medical report attesting to the mental and physical fitness of the judge has been submitted and accepted by the President after consultation with the Judicial Service Commission. A judge of the Supreme Court or the High Court, who has attained the constitutional age of retirement, may sit as a judge for the purpose of giving judgement or in relation to any proceedings commenced or heard by him or her while in office. These provisions do not apply to an acting judge or to a judge who has been appointed for a fixed period of office. Under Section 86(3) of the Constitution, a judge of the Supreme Court or the High Court may at any time resign from his office by notice in writing to the President. The office of a judge of the Supreme Court or the High Court shall not, without the judge's consent, be abolished during his or her tenure of office.

The independence of the judiciary is enhanced by section 87 of the Constitution, which provides that judges of the Supreme Court or the High Court may be removed from office only for inability to discharge their functions or for misbehaviour. The procedure for determining the removal of judges is also guaranteed by the Constitution. Section 87(2) describes the procedure in the case of removal of the Chief Justice, where the President shall appoint a tribunal to inquire into the matter. Section 87(3) describes the procedure in the case of removal of judges other than the Chief Justice, where also a tribunal should be established for inquiry. A tribunal appointed under Section 87 (2) or (3) shall consist of no less than three members selected by the President from persons who have held office as a judge of the Supreme Court or the High Court, persons who hold or have held office as a judge of a court having unlimited criminal or civil jurisdiction in a country in which the common law is Roman-Dutch or English, and legal practitioners who have been nominated for this purpose. The procedures require investigation and recommendation by the independent tribunal of inquiry and the involvement of the Judicial Services Commission before any dismissal may take place.

The salaries and conditions of service of judges are fixed by the President.

THE RULE OF LAW AND THE COURTS

The non-enforcement of court orders

Zimbabwe's courts have succeeded against significant odds in maintaining their independence. The Courts have issued many rulings that have declared government policies illegal.

Following inaction by the police and the government concerning the farm invasions, the Commercial Farmers Union made an application in March 2000 to the High Court, to obtain declarations that the farm occupations were unlawful and to obtain orders which would have the effect of ordering the police to act. The orders were sought against the Commissioner of Police, against the War Veterans Association and its apparent leader, Chenjerai "Hitler" Hunzvi, and against the Governor of Mashonaland Central, who was alleged to be encouraging the invasions. On 17 March 2000, an order by consent was made declaring the occupations unlawful and ordering that the persons who had occupied the land should vacate it within 24 hours. Nonetheless, on 10 April 2000, the Commissioner of Police applied before Judge Chinhengo of the High Court to amend part of the order on the grounds that the Commissioner did not have adequate resources to enforce the order. Judge Chinhengo rejected the application in a clear, firm and courageous judgement. In the Judge's view, the Constitution guarantees the right of protection of the law to the farmers, and the police were obliged to provide that protection. Despite the orders of the High Court, the Government still did not act to enforce the orders of the Court, but allowed the farm invasions to continue.

The International Bar Association (IBA), in its report issued pursuant to a visit to Zimbabwe in 2001, noted that "once orders of the courts were issued but not executed the situation got out of control." The non-enforcement of the court orders led to the dismissal of the authority of the courts and the encouragement of general lawlessness. Allegedly, the non-enforcement of court orders was inspired by high-ranking police officials. In some cases, local police officers who tried to carry out the court orders were either demoted or transferred to other stations. Moreover, it was reported that higher ranking officers have ordered local and lower-ranking officers not to carry out the court orders. Judges complained to the IBA delegation that there was no use in giving certain judicial orders, as they would not be carried out. There was also a widespread perception that selective prosecution based on political allegiance was taking place, in contravention of Section 18 of the Constitution, which guarantees that "every person is entitled to the protection of the law".

Threats to judges

President Mugabe and some cabinet ministers have publicly criticised the justices of the Supreme Court as "relics of the Rhodesian era". "War veterans" have invaded the premises of the Supreme Court and both Supreme Court and High Court judges have received death threats. Traditional chiefs, who are appointed by the Government, called for the resignation of the Supreme Court and in particular the resignation of Chief Justice Gubbay. The apparent reason behind that extensive harassment is that the Government seems to want to reduce the threat posed by cases in which the MDC had challenged the June 2000 victories of the ruling party in 37 constituencies on grounds of gross violence and intimidation during the campaign. The Government also allegedly seeks to ensure favourable decisions in cases dealing with land-related issues.

On 24 November 2000, approximately 200 "war veterans" descended upon the Supreme Court as the Supreme Court Justices were in an adjacent room preparing to enter the Court. They jumped on the tables and shouted slogans, including "kill the judges", for over an hour. The Government failed to prosecute any of the persons who had invaded the Supreme Court and there has never been an official statement condemning the incident. The Attorney General has said that he did not take any steps concerning the incident, because he had not received any official complaint and therefore was powerless to do anything.

In December 2000, the Minister of Information revealed that he had received a statement from that war veterans threatening to descend upon the homes of hostile judges and force them to resign. Throughout February 2001, judges remained in fear for their security, especially when the Deputy Chairman of the Zimbabwean Liberation War Veterans' Association in Harare Province, Mike Moyo, stated that the "war veterans" would raid and occupy the homes of all white judges until "they have boarded the plane back to Britain". Mr. Moyo noted that "those black judges who sympathise with whites also need to watch out." Even after the agreement between Chief Justice Gubbay and the Minister of Justice (*see below*), war veterans have vowed to continue their attack on the judiciary, including the use of violence to oust from the Bench the Supreme Court and certain judges of the High Court.

Governmental officials have openly criticised judges for allegedly obstructing the Government's reform programs and have called publicly for the resignation of several judges. For example, in January 2001, in a public statement, the Minister of Justice not only criticised the work of the Supreme Court but also called into question the character of the Supreme Court. On 8 January 2001 at the opening of the legal year in Bulawayo, the Judge President, who has since been appointed Chief Justice, gave a widely reported speech in which he made certain criticisms of the Supreme Court and of Chief Justice Gubbay. In February 2001, in an interview with newspaper editors, President Mugabe stated that "judges drank tea with whites". Government officials have called on certain Supreme Court judges to excuse themselves from hearing citizenship cases between white Zimbabweans and the Government. In November 2000, the Minister of Justice had attacked the judiciary on the basis of racism in a speech questioning the ability of judges that had "so faithfully" served the Smith regime to "so faithfully" serve the current Government. In fact, all judges that have been attacked by the Minister of Justice were appointed to the Bench by the Government of President Mugabe.

As a result of these strong personal attacks on judges for making unpopular decisions, judges may be subjected in making their decisions to pressures extraneous to the merits of the case. According to Yvonne Mahklunge, one of the MDC legal advisers, most Zimbabwe judges, fearing attacks and political interference, have refused to handle MDC petitions. The MDC legal advisers have challenged Jacob Manzuzu, the Registrar of the High Court, over delays in replacing Justice James Devittie (*see also Cases below*) in the 29 pending hearings challenging ZANU-PF electoral victory. Against this background, the Government should clearly denounce such threats and should investigate these incidents. However, the Zimbabwe government has been unwilling to protect judges against threats of physical violence and has not provided reasonable security measures. Under Article 4 of the UN Basic Principles on the Independence of the Judiciary, "there shall not be any inappropriate or unwarranted interference with the judicial process". Consequently, the Zimbabwe government has a special responsibility to discourage and criticise publicly such attacks on the judiciary.

Despite the verbal attacks on the judges, the Zimbabwe judiciary is standing up admirably to ZANU-PF's campaign of threats. The trial of Zimbabwe's main opposition leader, Morgan Tsvangirai, on charges of encouraging the overthrow of President Mugabe's government illustrates

efforts by judges to uphold the rule of law. On 7 May 2001, the High Court accepted the argument made by Tsvangirai's lawyers that a Rhodesian-era law used to press terrorism charges against him may be illegal. Consequently, the Supreme Court should determine the constitutionality of the sections of the Law and Order (Maintenance) Act that deal with violence and incitement to violence. The charges against Mr. Tsvangirai arise from a statement he made in a rally, in September 2000, when he said that "what we would like to tell Mugabe is please go peacefully, and if you don't want to go peacefully, we will remove you violently". Many Zimbabweans see the trial as an attempt to prevent Mr. Tsvangirai from running for President against Mugabe. If the opposition leader is convicted and given more than six months in prison, he would be barred from standing in the elections.

The resignation of Chief Justice Gubbay

Chief Justice Gubbay was appointed to the post by President Mugabe in 1990 and has served with apparent distinction. In March 2001, the Chief Justice resigned from office with 14 months of his term left to serve. The position taken by Justice Minister Chinamasa was that the Chief Justice had resigned voluntarily. However, the IBA in its mission report in April 2001 stated that "Chief Justice Gubbay was forced into early retirement by relentless pressure from the government and state-controlled Government-supporting media that he should resign, coupled with unfair and untrue allegations about him and threats of violence which the Government appear at least to have condoned." Chief Justice Gubbay had several times challenged the Government's use of special decrees to bypass the Constitution on various issues.

Following threats and intimidation made against Zimbabwe judges, Chief Justice Gubbay, together with Supreme Court Justice Wilson Sandura requested a meeting in mid-January 2001 with the then-acting President Muzenda. The two Justices asked the executive to intervene and to persuade the war veterans to cease their intimidation and threats against judges. In the written request for the meeting, the Chief Justice said that in light of the threats and the intimidation, the judges had become concerned for their safety as well as for the safety of their families. He informed the Government that it had become difficult for the judges to carry out their duties under such pressure. Reportedly the meeting was not successful, as the acting President was not sympathetic to the judges' concerns. He said that just as the judges felt threatened by "war veterans", the latter felt threatened by the judgements on land issues. During the emotionally charged exchanges between the acting President and the Chief Justice, the latter said that he should perhaps resign if the government was unwilling to provide him and the rest of the judges with additional security. According to the IBA report, his statement was not taken at the time as an offer of resignation.

On 2 February 2001, two weeks after the meeting, the Minister of Justice visited the Chief Justice, who was told that his resignation had been accepted by the President and that a public announcement would be made. At this meeting, the Minister and Chief Justice came to an agreement according to which the Chief Justice would retire from his position on 30 June 2001 and would remain on leave of absence pending retirement from 1 March 2001 to June 2001. The Minister of Justice contended that the Chief Justice had agreed that an acting Chief Justice would be appointed in the meantime. However, the Chief Justice contended that the only commitment he had made was to remain Chief Justice until 1 July 2001.

On 26 February 2001, the Chief Justice wrote a letter to the Minister of Justice in his capacity as the Chairman of the Judicial Service Commission, replying to a request made by the Minister for a

meeting of the JSC to appoint an acting Chief Justice. Chief Justice Gubbay questioned the need to convene such a meeting of the JSC and stated that it would be premature to appoint an acting Chief Justice. On 26 February 2001, the Minister of Justice responded with a letter dismissing the Chief Justice from his position. The Minister of Justice informed the Chief Justice that his apparent refusal to comply with the request and to call a meeting of the Judicial Service Commission constituted misconduct and a basis for termination. Therefore, Section 87(2) of the Constitution could be invoked. Furthermore, the Minister of State for Information and Publicity informed Chief Justice Gubbay that the police would bar him from entering his chambers after 28 February 2001. On 27 February 2001, in a press release made by the lawyers of the Chief Justice, it was affirmed that the Chief Justice would not vacate his chambers nor his official residence until his seventieth birthday on 26 April 2002. The lawyers of the Chief Justice contended that the Minister of Justice's letter of 26 February 2001 constituted a breach of the agreement between the Chief Justice and the Minister on 2 February 2001.

On 1 March 2001, Chief Justice Gubbay showed up for work. The police did not prevent the Chief Justice from entering his chambers, but several officials insisted that the Chief Justice should vacate his office. While Chief Justice Gubbay was in his chambers, Joseph Chinotimba, the leader of the demonstrators who had stormed the Supreme Court on 24 November 2001, and who was currently on bail awaiting trial for attempted murder, forced his way into the Supreme Court demanding to see the Chief Justice. Mr. Chinotimba reportedly took over a guard's cell phone and ordered the Chief Justice, who was at the other end of the cell phone, to vacate his office. Subsequently, the Chief Justice and the Minister of Justice reached a written agreement. In that agreement, they jointly acknowledged "the importance of the independence of the judiciary" and stated that "any action by any party that seeks to undermine or interfere with the independence of the judiciary is contrary to the interests of the people of Zimbabwe."

The two men agreed on the withdrawal of any public statement by the Minister of Justice or other governmental officials demeaning or putting in question the reputation, honour and integrity of the Chief Justice either in his official or personal capacity. The Chief Justice also agreed to remain in his post until 26 April 2001 and to take early retirement with effect from 1 July 2001. Under the agreement, the Chief Justice would be on leave from 1 March 2001 until 1 July 2001 and he would not raise any objection to the appointment of an acting Chief Justice during the period of his leave pending retirement. The Chief Justice insisted that the Minister of Justice, on behalf of the Government, give assurances that there would not be any unlawful suspension, removal or resignation of any of the judges of Zimbabwe. According to the Special Rapporteur on the Independence of Judges and Lawyers, "Chief Justice Gubbay might not have opted for an early retirement if the international community had moved in early enough in support of his office. However, it was early enough to save the other senior judges from being intimidated to retire."

On 13 March 2001, Judge President Godfrey Chidausiku was sworn in as acting Chief Justice. A group of about 200 black lawyers has questioned the suitability of Godfrey Chidausiku taking over as the substantive top judge. The acting Chief Justice assured the IBA delegation that, although he felt sympathy for the landless people, he would respect the rule of law and judicial independence and he would protect judges from attack. On 20 September 2001, the Chief Justice dismissed an application by the Commercial Farmers Union that he should not be among the five Supreme Court judges to hear a government appeal on the legality of President Mugabe's land reforms. The CFU said in an affidavit that Judge Chidyausiku's public profile, his close political association with President Mugabe and his statements endorsing President Mugabe's land policy called his impartiality into question. The Chief Justice dismissed the application saying that he found some of the submissions in the affidavit "contemptuous, insulting, and very racist".

The Minister of Justice also called on two other Supreme Court judges and sought to persuade them to retire. In the case of Justice McNally, the Minister informed the Judge that “President Mugabe would not like anything to happen to him”. The Minister of Justice declared that the war veterans, through Chenjerai Hitler Hunzvi, would not recognise any agreement between the Government and Chief Justice Gubbay. The Minister of Justice reportedly commented that Chief Justice Gubbay is the first judge to go and that the remaining judges of the Supreme Court as well as one third of the High Court judges should follow.

In the case of the resignation of the Chief Justice, the constitutional provisions for a judge to be removed from office were not followed. No independent tribunal was established and the Judicial Service Commission was not involved. Moreover, according to the UN Special Rapporteur on the Independence of Judges and Lawyers, the Government’s decision to pay the Chief Justice four months salary in *lieu* of leave is “contrary to the very grain of the office of a judge”.

International reaction to threats to the judiciary

The UN Special Rapporteur on the Independence of Judges and Lawyers, Dato Param Cumaraswamy, has made a number of public statements and urgent appeals regarding the developments in the Supreme Court. In remarks delivered on 12 and 25 January 2001, he drew the attention of the Government to Principle 2 of the UN Basic Principles on the Independence of the Judiciary providing that the judiciary are able to conduct their professional duties “without restrictions, improper influences, inducements, pressures, threats or interference, direct or indirect, from any quarter for any reason.” On 21 February 2001, the Special Rapporteur sent an urgent appeal to the Government after receiving information that Mike Moyo, a member of the War Veterans Association, had threatened that squads of the war veterans would invade the houses of judges refusing to resign and that they would harm those judges and their families. In his communication, the Special Rapporteur drew the government’s attention to the Vienna Declaration and programme of Action of the 1993 World Conference on Human Rights, as well as to Article 26 of the African Charter on Human and Peoples Rights, which holds that “State parties to the present Charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter”. The Special Rapporteur expressed further concern at the requests by the Justice Minister for certain judges to resign, the early retirement of the Chief Justice and the provocative public comments by government ministers against judges, such as one accusing judges of “favouring whites over the majority black population”. On 28 February 2001, the Special Rapporteur asserted that “Judges, including the Chief Justice, are not employees of the Government or any other authority” and that their offices are constitutional appointments. In his Statement to the 57th session of the Commission on Human Rights, the Special Rapporteur remarked that “since the execution of an agreement on 2 March 2001 between the Chief Justice and the Government, threats and harassment seem to have eased”. The Special Rapporteur added that he was awaiting indication from the Government as to a date for a mission to which it had previously agreed. The Government has so far failed to agree to a date for an *in situ* mission.

The ICJ has closely followed events in Zimbabwe. In statements dated 7 February 2001 and 2 March 2001, the ICJ expressed serious concern over allegations of executive intervention in judicial appointments and tenure. On 24 April 2001, the ICJ welcomed the decision of the Government of Zimbabwe to grant permission to visit the country later in the year in order to carry out a fact-finding mission with regard to developments regarding the rule of law. The Government

has since informed the ICJ that the visit would have to take place in May 2002, after the Presidential elections scheduled for early 2002.

On 23 April 2001, the International Bar Association issued a report that condemned the Government for policies which had caused a breakdown of the Rule of Law. The detailed report followed a visit to Zimbabwe in March 2001 by seven eminent judges and lawyers. The delegation “found much concern that the effectiveness of the judiciary is being corroded by the executive as well as by several police officers’ statements that the non-enforcement of judicial orders and acquiescence to land invasions and other criminal behaviour are political matters requiring political decision.” On 23 April 2001, the Minister of Information, Jonathan Moyo, dismissed criticism from the IBA, stating that “it was self-evident to any fair-minded person that the judicial system in Zimbabwe is functioning well” and without interference, “save perhaps from teams such as the IBA, whose report seeks to inflame an otherwise settled situation.”

The Commonwealth Lawyers Association issued a statement in regard to the threats to the judiciary in March 2001 that concluded: “It is obvious that Zimbabwe today poses the greatest challenge to Commonwealth political values”.

LAWYERS

Historically, the legal profession in Zimbabwe had a bar divided between advocates and attorneys similar in nature to that between barristers and solicitors. In 1981, the legal profession was fused. The Bar Association of Zimbabwe continues to exist for those practitioners who practice solely as advocates. The present number of registered practitioners in Zimbabwe is approximately 600-800, most of whom practice in Harare, with some 79 situated in Bulawayo. Among this number, 21 attorneys are members of the Bar Association. The main professional body is the Law Society of Zimbabwe. The position and responsibilities of the Law Society are recognised by the Legal Practitioners Act of 1981. The overall number of lawyers in private practice is still extremely small in relation to the size of the population of 12 million. According to the report of the International Bar Association issued after its visit to Zimbabwe in 2001, “this apparent imbalance of the populace to the small numbers of the legal profession and the judiciary may affect public perception on the rights of access to the courts”.

Threats to the legal profession

The Law Society of Zimbabwe has come under pressure by the Government to curtail its criticism of official actions with regard to the judiciary. The Law Society has been courageous in supporting the judiciary. On 5 February 2001, at its annual general meeting, it passed a Resolution deploring, *inter alia*, the culture of violence and intimidation developing in Zimbabwe, especially towards the judiciary. The Law Society also took steps to denounce the speech of the Judge President at the opening of the legal year criticising the Chief Justice. It expressed its dismay at the executive’s promulgation of Statutory Instrument 318/2000, which sought to invalidate all pending legal challenges to the parliamentary elections. When in February 2001 the ZANU-PF recommended that the Government contract exclusively with black firms, the majority of the legal community rejected this proposal.

The Minister of Information and Publicity has reportedly suggested that the Government would amend existing legislation in order to prevent lawyers from issuing statements criticising governmental action relating to legal matters in the future. Such legislation would violate Article 17

of the UN Basic Principles on the Role of Lawyers, which provides: “Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights ...”.

With certain exceptions in individual cases, there are no overarching impediments to the work of lawyers, and Zimbabwean lawyers have not been prevented from representing and advising their clients. However, it has been reported that “war veterans” have engaged in frequent attacks against paralegals working in rural areas. Paralegals are the main providers of legal services in the rural areas of Zimbabwe. They are not licensed as lawyers, but are trained to provide legal advice and inform people of their legal rights. Lawyers supervise the work of paralegals. Paralegals have been forced to limit their activities and have closed offices in Lupane and Nkayi, as they have been subjected to harassment and intimidation. Lawyers were said to avoid working in the rural areas because they have no confidence in the police to stop the intimidation and physical attacks. Concerns have been therefore been raised about the Government’s commitment to the UN Basic Principles on the Role of Lawyers. Article 16 of the Principles stipulates that “Governments shall ensure that lawyers (a) are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics.” Article 17 provides that “where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.”

CASES

Justice George Smith and Justice Adam: On 11 November 2000, the Minister of Justice, Patrick Chinamasa delivered a speech in which he questioned “how can personnel so high up in the pecking order of a regime grounded in a racist grundnorm faithfully serve a democratic state?” The question was aimed in particular against Justice George Smith, whom the Minister of Justice said had served as a Cabinet Secretary for the Smith Government. The Minister of Justice also pointed out that Justice Adam “whilst unsoiled by the UDI years, somehow turned up at the Lancaster Constitutional Conference as a member of the Smith legal team.” (In response to this speech, Justice Smith sent a letter to the President of the Law Society saying that Minister Chinamasa’s speech contained certain untrue statements. Justice Smith explained that he was appointed Cabinet Minister when Bishop Muzorewa was Prime Minister, and that he stayed on in that post for more than three years under Mugabe’s presidency. Justice Smith also noted that Justice Adam had not represented the Smith Government but Bishop Muzorewa in the Lancaster talks.)

Justice James Devittie {High Court Judge}: On 7 May 2001, Justice Devittie, who had ruled on petitions challenging four ZANU-PF victories in the June 2001 parliamentary elections, submitted his letter of resignation but declined to make public the reasons for the resignation. The Judge’s decision came some days after Zanu-PF activists had accused him of bias in favour of the opposition MDC. Justice Devittie had upheld one ruling party victory in a constituency in south-western Zimbabwe and struck down three others on the grounds that the election procedures had been tainted by violence. Justice Devittie had also delivered the verdict upholding the MDC leader’s challenge to the constitutionality of the Law and Order Act (see above). The judge had reportedly received death threats.

Chief Justice Gubbay : The Chief Justice was pressed by the Government to take early retirement (see above).

Tawanda Hondora {Lawyer, Chairperson of Zimbabwe Lawyers for Human Rights}: On 7 April 2000, in Sadza Growth Point, 50 kilometres south of Harare, Mr. Hondora was allegedly violently attacked by ZANU-PF members. Mr. Hondora had gone to Sadza Growth Point to investigate the alleged assaults by police officers of witnesses who had testified in court cases challenging election victory results of the "war veterans" leader Chenjerai Hunzvi. They observed some 30 persons, most of whom were wearing ZANU-PF T-shirts, beating Nelson Chivanga, one of the witnesses in the case. Mr. Hondora was kicked, slapped, and whipped by the ZANU-PF supporters in full view of the police, who did not take action to stop the attack. The lawyer was forced to chant the ruling party's slogans while marching to the police station, where he was subjected to further beatings by the police. The local police rejected Mr. Hondora's report of the incident and he and his colleagues filed a complaint at the Harare Central Police Station.

Justice Nicholas McNally and Justice Ahmed Ebrahim {Judges of the Supreme Court}: On 9 February 2001, Justices McNally and Ebrahim went into a meeting with the Minister of Justice believing he was making a courtesy call, and instead found themselves confronted by implicit threats. They were allegedly pressured to consider early retirement with the stated reason that the Government would not want them to come to any harm. However, the Minister of Justice has denied ever pressing the two judges to resign, saying that the move would be unconstitutional. In a statement issued on 2 March 2001, the ICJ welcomed the stance of the two Supreme Court Justices in affirming their intention to carry out their full terms of office. The Minister of Justice was reportedly seeking to held meetings with two other Supreme Court judges, presumably also to ask them to resign. However, **Justices Wilson Sandura** and **Simbarashe Mucshete** were reported to have declined to attend a proposed similar meeting unless the agenda was clearly set out beforehand. The Minister has said that he was going to discuss with them "matters of mutual interest", which he maintained were confidential and not for public consumption.

Chris Ndlovu {Lawyer}: On 18 July 2001, Mr. Ndlovu reportedly was advised by the police not to enter the Magistrates' court in the eastern city of Mutare, where his client, Philip "Blondie" Bezuidenhout, a farmer, was appearing on charges of murdering a squatter by running him down in his truck. The police stressed that the lawyer should not enter the court, in case he was attacked by "war veterans". There were, however, numerous police officials situated both in and outside of the court. On 21 July 2001, Mr. Ndlovu had to flee a mob of war veterans, who were demanding to know why he "was defending a farmer who killed a black man".