

Zimbabwe Human Rights NGO Forum

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MEMORANDUM

FROM : Zimbabwe Human Rights NGO Forum

RE : AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS : 32ND
ORDINARY SESSION, BANJUL, THE GAMBIA : 17-31 OCTOBER 2002

- A. COMMUNICATION SENT TO THE AFRICAN COMMISSION IN NOVEMBER 2001 BY THE ZIMBABWE HUMAN RIGHTS NGO FORUM.
- B. RESPONSE BY THE GOVERNMENT OF ZIMBABWE TO THE COMMUNICATION.
- C. REPLY BY THE ZIMBABWE HUMAN RIGHTS NGO FORUM TO THE RESPONSE BY THE GOVERNMENT OF ZIMBABWE.

**A. COMMUNICATION SENT TO THE AFRICAN COMMISSION IN
NOVEMBER 2001 BY THE ZIMBABWE HUMAN RIGHTS NGO
FORUM.**

COMMUNICATION.

TO.

THE SECRETARY OF THE COMMISSION
AFRICAN COMMISSION ON HUMAN AND PEOPLE'S
RIGHTS
KAIRABA AVENUE
P.O. BOX 673
BANJUL
THE GAMBIA.

FROM.

ZIMBABWE HUMAN RIGHTS NGO FORUM.
SUITE 1.
1 RALEIGH STREET
P.O. BOX 5465
HARARE
ZIMBABWE

4. **Statement of Facts.**

The Zimbabwe Human Rights NGO Forum (hereinafter referred to as the Human Rights Forum) is a coordinating body and coalition of twelve Zimbabwean non-governmental human rights organizations. It has been in existence since January 1998. The Human Rights Forum was initially made up of nine human rights organizations, which came together to provide legal and psycho-social assistance to victims of the Food Riots of January 1998.

It has now expanded its membership and objectives to assist victims of organized violence, using the following definition:

"Organized violence," means the interhuman infliction of significant avoidable pain and suffering by an organized group according to a declared or implied strategy and/or system of ideas and attitudes. It comprises any violent action, which is unacceptable by general human standards, and relates to the victims' mental and physical well-being.

The Human Rights Forum operates a Legal Unit, which provides free legal assistance to victims of organized violence and torture; and a Research and Documentation Unit which records and produces periodic reports on all human rights violations in Zimbabwe.

Core member organizations of the Human Rights Forum are:

- Amani Trust
- Amnesty International (Zimbabwe)
- Catholic Commission for Justice and Peace
- Legal Resources Foundation
- Transparency International (Zimbabwe)
- University of Zimbabwe Legal Aid and Advice Scheme

villagers believed to support opposition parties. Some of the politically motivated violence documented included dragging farm workers and villagers believed to be supporters of the opposition from their homes at night, forcing them to attend re-education sessions with forced singing of ZANU (PF) songs and severe torture. Men, women and children were tortured and there are several documented cases of rape. Homes and businesses in both urban and rural areas were burnt and looted. Opposition organizers were killed, kidnapped and tortured.

Repeated reports of violence against teachers are documented. Numerous secondary schools, including two in Harare's high-density suburbs were invaded by ZANU (PF), either to instruct pupils to warn their parents against voting for opposition parties, or to intimidate teachers thought to be aligned with the opposition Movement for Democratic Change (MDC). Over 550 rural schools were disrupted or closed in the second term, as teachers, pupils and rural opposition members, numbering over 10 000 fled violence, intimidation and 'political re-education' to become refugees in the relatively safe towns.

Other civil servants, such as doctors, nurses, stationed in rural areas were also targeted for supposedly being pro-MDC. Nyamapanda border post was closed for 2 days as civil servants fled ZANU-PF supporters.

Bindura University was closed by a student boycott after ZANU-PF members were asked to produce a list of MDC supporters and one MDC supporter was kidnapped and assaulted by ZANU-PF supporters/members posing as MDC.

All-night ZANU (PF) 'political re-education' meetings (reminiscent of the pungwe, an all-night political meeting based upon traditional Shona rituals, developed during the 1970's liberation war) brutalized those forced to attend. Regular attendance is required and penalties are enforced upon absentees.

In variations of the pre-election pattern, MDC supporters were responsible for minor assaults against some ZANU (PF) stalwarts. Some MDC youths tried to bar peasant farmers from selling their vegetables in Harare. But in the high-density suburbs of those towns and cities that returned MDC candidates, both army and police personnel reportedly assaulted people. MDC celebrations were held against police instructions and some parties were broken up. This unsolicited state violence continued until after Parliament opened. New farm invasions also started after the polls closed.

The political affiliation of the victims supports the claim that those targeted were members of opposition parties and non-politically connected persons throughout the country.

ZANU-PF'S POSITION ON VIOLENCE

The stance of the ruling party ZANU (PF) is clear. In statements made by various party officials, Zanu-PF condoned the use of violence for political gains.

At a ceremony for the opening of the water pipeline between the Pungwe River and Mutare, President Mugabe had this to say, "those who try to cause disunity among our people must watch out because death will befall them". (Daily News 17 March 2000) •



This clearly set the tone, demonstrating that the party would use any and all means possible to retain its hold on political authority in the country.

President Mugabe – "We were told to arrest them [war veterans] and remove them from farms. We refused because the occupations are justified. We said there would be no policemen who will go there. If the British want police to evict the war veterans then they must send their police." – in a speech in Bindura shown on ZTV on 8 April 2000. •

rule of law

Both Andrew Ndhlovu and Chenjerai Hunzvi consistently held that only the State President could order the removal of the farm invaders. (See also Appendix 2)

THE ROLE OF WAR VETERANS AND ZANU (PF) SUPPORTERS.

War veterans were the primary instigators of violence. They operated groups of militias comprising of ZANU (PF) youths and other ZANU (PF) supporters, most of whom are not war veterans. The group leaders repeatedly stated that they would use violence to ensure that the MDC never assumes power in Zimbabwe, as they regard it as a front for the protection of white minority interests. They have also vowed to take whatever measures are necessary to ensure that President Mugabe and ZANU (PF) win the elections. Strategically placed on 1500 commercial farms around the country they unleashed terror on the countryside, brutalizing farmers, farm workers, rural folk and civil servants stationed in rural areas.

The militias kidnapped and tortured people at centres specifically set up for this purpose. They raped women. They set fire to homes and food stores. They assaulted and drove away teachers, doctors and nurses whom they suspected of encouraging people to support the MDC. They also warned hospitals and clinics not to treat MDC supporters injured in these attacks. (As will more fully appear in Appendices 1 and 2)

STATE INVOLVEMENT

This comprises primarily of the role played by the Zimbabwe Republic Police (ZRP) and the Zimbabwe National Army (ZNA) and the Central Intelligence Organisation (CIO).

Zimbabwe Republic Police.

After the General Election the police force became increasingly partisan in favour of the ruling party. Police and army personnel attacked people in urban areas to punish them for voting for the MDC. In essence the police force removed the protection of the law from those considered to be hostile to Zanu-PF. It became an instrument for violence rather than a force to protect the people irrespective of their party affiliation.

↑ internal remedies ↓

Then came the blanket presidential condonation of and pardon for most acts of violence between January and the end of July 2000. The General Amnesty for Politically-Motivated Crimes, which was gazetted on 6 October 2000, absolved most of the perpetrators from prosecution. While the Amnesty excluded those accused of 'murder, robbery, rape, indecent assault, statutory rape, theft, possession of arms or any offence involving fraud or dishonesty' very few persons accused of these crimes have been prosecuted. For example, during the Buhera North election challenge High Court Justice Devittie requested that Attorney General Andrew Chigovera cause the arrest of suspected murderers Joseph Mwale and Kainos Zimunya for their role in the petrol bomb murder of two MDC officials, but to date no one has been arrested. A copy of this judgment is annexed to this communication and marked 'Appendix 4'. If murders are not being dealt with, it is unlikely that any other offences exempted in the Amnesty will be dealt with at all.

ZIMBABWE NATIONAL ARMY

The ZNA consists of about 40 000 soldiers. The ruling party made attempts to turn the ZNA into a politically partisan force. The Army Commander, Constantine Chiwenga, is reported to have toured army barracks urging soldiers to rally behind Zanu-PF to thwart a possible MDC victory in the elections. Many high ranking ZNA officers are veterans of the liberation war and are members or supporters of the ruling party.

In the urban areas, army personnel participated in the ongoing campaign to punish people for voting for the opposition. They have also trained the police units that are

5. Statement of legal issues

Preliminary Issues

Exhaustion of local remedies.

It is recognised that “the rule requiring the exhaustion of local remedies as a condition for the presentation of an international claim is founded upon the principle that the responsible state must first have the opportunity to redress by its own means within the framework of its own domestic legal system the wrong alleged to be done to the individual.”¹

1. However, it is respectfully submitted that in this instance, domestic remedies need not be exhausted, as it is a case of serious or massive violations of human rights. It is submitted that in this case any remedies available at law in Zimbabwe would be and are in fact ineffectual. Furthermore, due to the sheer number of affected individuals and the seriousness of the violations local remedies would be impracticable and impossible.² In that case, ‘such remedies as might theoretically exist in the domestic courts are as a practical matter unavailable.’

Alternatively:

2. It is submitted that local remedies need only be exhausted if they are available, possible and effective in the domestic jurisdiction. In Zimbabwe such remedies are factually non-existent or should be deemed to be so for the following reasons:
 - a) A decree or other measure has ousted the jurisdiction of the court, making judicial recourse impossible. Thus there are no remedies, which, should be exhausted.³
 - The General Amnesty for Politically motivated Crimes, gazetted on 6 October 2000 effectively robs victims of the right to see justice being done. The public is

¹ Interhandel 1959 ICJ Reports 27

² Communication 64/92 Achuthan (on behalf of Banda) v Malawi

³ 101/93; 129/94.

The lawless conduct complained of includes torture, murder, beatings, rape, destruction of property and general inhuman and degrading treatment. These abuses were committed for the purpose of suppressing the people of Zimbabwe. Reference is made to the applicable provisions of the Charter.

It is submitted that the violence, which was and is still witnessed, albeit to a less extent, was a result of a grand plan hatched at the national level. The pattern of violence indicates that the President and other individuals acting as senior officers of government and the ruling party, by their utterances, encouraged the commission of gross human rights violations.

The grand plan of violence, which was designed to intimidate and suppress the people of Zimbabwe was executed, mostly by ZANU (PF) supporters and war veterans who were directed from the highest levels of the party and government. These instruments of the violent campaign acted pursuant to the plan and orders given through the government and the ZANU (PF) chain of command.

Attention must also be drawn to contemporary international expressions of concern and condemnation of gross human rights violations occurring in Zimbabwe.

7. Applicable provisions of the Charter

The government of Zimbabwe has violated several fundamental rights protected by the Charter. These rights are protected in the following provisions:

ARTICLE 1

The member states of the Organisation of African Unity parties to the Charter recognise the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

ARTICLE 2

Every individual is entitled to the enjoyment of rights and freedoms recognised and guaranteed in the Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, **political or any other opinion**, nation and social origin, fortune, birth or other status. [Emphasis added]

ARTICLE 3

2. Every individual shall be entitled to equal protection of the law.

ARTICLE 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, **torture, cruel, inhuman or degrading punishment and treatment shall be prohibited**. [Emphasis added]

ARTICLE 6

Conclusion

"For many Africans, independence created high expectations, especially regarding the restoration of human dignity, which had been totally violated during the colonial era. However, in many cases, the hope² ended in disappointment. The change of guards at Government House from white to black did not mean much in content. Violations of the individual's fundamental rights continued unabated."

This communication scarcely does justice to the real horror experienced by all the victims mentioned. No words can easily describe the experience of being tortured and terrorized. These victims will carry their horrifying memories to their graves. They can be treated but never cured; they will learn to cope, to live on, but they will never be the same.

The evidence clearly supports the view that there was (and still is) a systematic campaign of organized violence and torture perpetrated against all opposition political parties, their supporters and sympathizers (real or suspected). The physical acts of violence conform to the definition of torture contained in the U.N Convention Against Torture. Virtually all the perpetrators have been pardoned by the Clemency Order, and even those who are not covered have generally evaded prosecution.

Few Zimbabweans will forget the nationwide cloud of fear that gripped the country during the run-up to the 2000 General Election. As the attention of the international community is turned to the 'war against terror', it is important not to forget the state-sponsored terror that has rocked the Zimbabwean landscape. Justice requires that full investigation of all of these allegations take place, perpetrators are brought to book, and those responsible face the full weight of the law, without fear or favour.

It is our prayer that the Commission will see to it that not only is justice done but it is seen to be done.

- The AHSJ should publicly censure the actions of the government of Zimbabwe.
- The government should be urged to take steps to repair the prejudice suffered by the people.
- It is imperative that the 6 October Amnesty be revoked or annulled and an independent commission be appointed to investigate all allegations of torture and other human rights violations and make its own recommendations. The findings of the commission should be used to prosecute those persons accused of any politically motivated crime stemming from the June 2000 Parliamentary elections in order to restore faith in the rule of law and to facilitate the healing process in the nation.
- The state should set up mechanisms to ensure an end to the violence and no resurgence. It is urgent that the government takes steps to ensure a climate of peaceful competition, and to ensure that the rule of law is restored.
- The AHSJ should urge the government of Zimbabwe to adopt measures in conformity with its decision.

¹ Peter, C.M : "Human Rights in Africa: A comparative study of the African Human Rights Charter and the new Tanzanian Bill of Rights." 1990 Greenwood Press.

**B. RESPONSE BY THE GOVERNMENT OF ZIMBABWE TO THE
COMMUNICATION.**

AFRICAN UNION
الاتحاد الإفريقي



UNION AFRICAINE
UNIÃO AFRICANA

African Commission on Human & Peoples' Rights

Commission Africaine des Droits de l'Homme & des Peuples

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Ref: ACHPR/COMM/A044/1
23rd September 2002

Zimbabwe Human Rights NGO Forum
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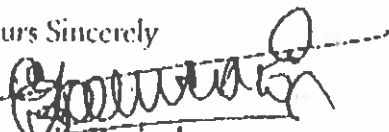
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Dear Mr. Mupanga,

~~SECRET COMMUNICATIONS FROM THE ZIMBABWE HUMAN RIGHTS NGO FORUM TO THE ACHPR~~

Please find attached hereto a copy of the submissions received from the Government of the Republic of Zimbabwe on the above-mentioned communication. You are hereby reminded that the above-mentioned communication has been scheduled for consideration at the forthcoming African Commission's 32nd Ordinary Session due to take place from 17th to 31st October 2002 in Banjul, The Gambia.

Yours Sincerely


Germain Baricako
Secretary to the African Commission

- following the referendum results, and in the pre- and post- 2000 parliamentary elections period, war veterans and Zanu (PF) members invaded white commercial farms,
- that war veterans and Zanu (PF) members committed acts of violence, including torture, and beatings of opposition political party members resulting in many being injured, some 82 deaths, rape of women and girls in both the rural and urban areas of Zimbabwe, and also the destruction, and looting of property. The police did nothing, and often turned a blind eye to the violence, and;
- further also that the Zimbabwe Republic Police, the Zimbabwe National Army and the Central Intelligence Organisation also committed these violations.

In summation, the allegations are that the Government of Zimbabwe directly through its own machinery, and / or indirectly by the non action of the same machinery violated the provisions of the African Charter, which it is actually supposed to uphold

BRIEF HISTORICAL BACKGROUND

The current problems being faced in Zimbabwe are all centred on the issue of land , ~~and the current land redistribution programme.~~ The land was undeniably one of the major causes of the protracted war of liberation that ended in 1979. In terms of the Lancaster House Constitution land could only be acquired on a willing -buyer -willing seller basis. It need not be emphasised that the former colonial power, Britain promised to fund the purchase of the land, but did not do so meaningfully, and even the Land Conference of 1998 yielded no results as the donors did not release any funding for the purchase of the land. Twenty years after independence therefore, land remained in the hands of a whites minority while the majority, landless black people of Zimbabwe were still being denied access to the land due to unavailability of resources to buy the land. Most of these landowners never bought the land in the first instance, but inherited it from their forefathers who unlawfully, and by force acquired it from the indigenous people of Zimbabwe. Following the "no" vote in the referendum, invasions of farms were started by genuine landless peasants who needed land in order to make a decent living, and by war veterans, who sacrificed their lives for the land, and who realised that once again Britain had gained an upper hand in influencing the outcome of the referendum through the Movement for . Democratic Change, and the National Constitutional Assembly. It is not true that the Government of Zimbabwe stood by and watched, neither is it true that the Government of Zimbabwe incited the invasions. The police arrested the initial land invaders. No sooner had they been fined, and released did the invasions become nationwide. The Zimbabwe Republic Police and the Zimbabwe National Army, in these circumstances could not be used to restrain people asserting a birthright as this would have caused a civil war. Accordingly, the government of Zimbabwe invoked Article 14 of the Charter which allows an encroachment of the right to property in the interest of the public need, or in the interest of the community. The Government of Zimbabwe brought about laws to appropriate land, and compensation for improvements on the land acquired for resettlement purposes. It is this process that is being resisted by some persons within, and outside Zimbabwe, and which has led to the allegations of

- it is sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged, ^{with 10}
- it is submitted within a reasonable period from the time the local remedies are exhausted or from the date the Commission is seized with the matter.

The Government of Zimbabwe finds no problem with the provision requiring the complainant to identify himself, or herself and in this case this was sufficiently done.

The Government of Zimbabwe generally has no grievance in the language used by the complainant.

The Government of Zimbabwe is concerned with the basis of the allegation that the State has violated, or failed to uphold human rights and the complainant's submission that local remedies are as a practical matter unavailable, or ineffective.

On the issue of the basis of the complaint itself, the statement of facts submitted by complainant is based on information disseminated through the mass media, (which itself in this country is partisan), though they have been attempts to support it by statements tailor-made to suit the press reports. It is not correct that the articles in Appendix 2 of the complainant's submissions buttress the accounts of eye witnesses as they are actually the basis of the complaint itself. In fact, the statement of facts is a presentation of the contents of newspaper articles, and whereas the articles in question speak of country-wide disturbances, the statements from eye witnesses are only from about three districts in the country. Such statements do not therefore prove massive, or nationwide violations as the complainant wishes the Commission to believe.

Further, the High Court judgement of Justice Doytze, as he then was, found no conspiracy between the Government of Zimbabwe, and the ruling Zanu (PF) party, and accordingly refused to declare the whole election as null and void. The said judgement of the High Court was not against the Government of Zimbabwe, as she was not a party to the case, and the recommendation to the Attorney General's Office regarding the deaths of Talent Mabika and Tichaona Chiminya was that the matter be looked into with a view to having the culprits prosecuted.

QUESTION OF ADMISSIBILITY OF COMPLAINT

To assess whether the Commission should admit the claims or not, in accordance with Article 56 referred to above, it has to be proven that local remedies are unavailable, or that they have failed, or alternatively that they have been unduly prolonged. All wrongful acts committed during the period in question are adequately provided for under our law. All wrongs fall under both criminal and civil law. The state's duty is to enforce criminal law through the prosecution of the offender, thereby protecting the society while the complainant's role is to enforce, with the assistance of the state, civil law. The success of a claimant does not depend on the conviction of an offender. The complainant in this case did not bring before the courts of Zimbabwe claims for redress. Neither did the complainant pursue the alternative of lodging the claims with the Office of the Ombudsman which has the mandate to investigate human rights violations in Zimbabwe. It is not true that there are limitations on Zimbabwe's law of vicarious liability, since our position is the same as South African law in this area. It should be mentioned that the ruling party has been sued, as well as the government, successfully in other matters in which the wrongful act was committed by an agent or an employee acting either in the course, or scope of his employment. The complainant

woman was beheaded in the presence of her children, when this never happened at all. We believe that her name, as well as those of other fictitious death appear on the list of the persons submitted by the complainant as having died of political violence when no such death ever occurred.

In this case, some of the allegations contained in appendix one to the complainant's case were not reported at all to the police, hence the law enforcing machinery has not been put to the test to determine its capability or otherwise. However, such law enforcing machinery has reacted to reports in the press and conducted investigations so that where the report has been proven to contain some grain of truth, arrests of perpetrators have been made and when there is no truth, the source of the story is made answerable.

(b) Cases reported to the police

In the complainant's case, it is evident, and it can be proven with official evidence, that where the police were informed of any attempts, or potential to violate other people's rights, or they came across a situation where violence was being perpetrated on any one, they did take measures to redress the wrong or to ensure non violation of the right through the following means:

- (i) by stopping the perpetrators from threatening to commit violence.
- (ii) by restraining assaults on persons.
- (iii) by apprehending culprits/suspects.

It should be stated here that most of the culprits were arrested and convicted of the offences and sentenced to terms of imprisonment. Although after the June 2000 parliamentary elections there was a General Amnesty for politically motivated crimes, such amnesty benefited not only Zanu (PF) members, but also members of the MDC and it was merely in recognition of the fact that not only were the prisons overflowing, but also that during elections, people are emotionally charged and commit offences they would not otherwise have committed under normal circumstances. Further to this, such pardon did not prejudice the victims from claiming compensation as the issue of compensation is governed by civil law.

Of the cases that were reported, after the offences had been committed, the Government of Zimbabwe, through the police did take measures to investigate the violation of the right, and where investigations were completed, measures were taken against the perpetrators, regardless of their political affiliation. Some of the perpetrators are in prison, while others are appearing before the courts. In all instances, the judgements of the courts have been honoured, save where there are justifiable reasons to appeal against such a decision.

Accordingly, the Government of Zimbabwe submits that not only are there sufficient and functioning, domestic remedies to redress the situation, but the complainant has not exhausted such remedies.

Regarding the allegations of murders committed/deaths arising from politically motivated crimes, attached herewith as an appendix is a list of the cases reported, and the stages reached in each respective case. Investigations are still underway to ascertain whether there are still any more deaths that may not have been reported. The issue of selective prosecution is unfounded because, the Office of the Attorney General like the Police does not deal with cases on party grounds, thus the record does not show which party the victim or the perpetrator belongs to. The list proves that

Accordingly, it is the submission of the Government of Zimbabwe that the present complaint should not be considered by the Commission as it does not fully satisfy the requirements of Article 56.

26 Mar. '02 14:04

FAX

P. 11

Simon Rwodzi
 Aleck Moyo
 Cain Nkula (deceased)
 Howard Ncube
 Stanley Ncube
 Julius Sibanda
 Medicine Ndebele
 Thomas Munyuku

16. Samson Mhewe

No suspects

docket closed, incomplete

17. Doreen Marufu

Taylor Dakwa
 Maswiwa Kugotsi
 Jostah Kukora
 Never Kanjere
 Godfrey Mhandu
 Shingirai Kanjere
 Edmore Nyagumbirira
 Scalliot Nyamadzawo
 Nelson Kwaramba
 Chenjerai Mukwenya
 Tinei Kupora
 Shylock Gutura
 Charles Mhoramasaka
 Shumba Kanjere

accused on remand

18. Finos Kafahuzvinei Wilson Chitoro Kufa
 Stephen Hove
 Enos Sibanda
 Francis Ncube
 Mthulisi Ndlovu
 Nhamoinesu Dziva
 Shadreck Makoni

trial to take place at
Bulawayo high court

19. Zeke Chigagvu

Joseph Mudyiwu
 Thompson Mutema

 Charles Ngopi
 Joseph Kwangwari
 Wonder Chenjerai Gweshe

Docket compiled
4 persons skipped bail
and matter awaits arrest
of the 4

20 Mandlshona Mutyanda No suspect

Investigations still
ongoing

22. Antony Oats

Bony Bakasa

Accused on the run

23. Lucky Kanyurira Chakwana Muneri
 Nicholas Chatitima Brazil basirio Nyanyi
 (alias bishop chatitima) Simbarashe Mhandu
 Nomatter Mutasa

matter to be set down for
hearing. Investigations
completed

FAX

P. 13

26 Mar. '02 14:05

Please note that we currently have no information on the rest of the persons appearing on the list submitted by the complainant. Investigations are however still under way.

**C. REPLY BY THE ZIMBABWE HUMAN RIGHTS NGO FORUM TO
THE RESPONSE BY THE GOVERNMENT OF ZIMBABWE.**

Zimbabwe Human Rights NGO Forum

Suite 1, 1 Raleigh Street, Harare – Tel: 731660 – Fax: 772860 – Email: admin@hrforum.co.zw – Mail: P O Box 5465, Harare

Our Ref: Admin/Acc

Cell #: 091-272089

The Secretary,
The African Commission on Human and Peoples' Rights,
90 Kairaba Avenue,
Banjul,
The Gambia
(Attention: Mr G. Baricako)

Dear Sir,

Communication 245/2002: Zimbabwe Human Rights NGO Forum

Thank you for your letter referenced ACHPR/CMM/A044/1 and dated the 23rd September, with which you sent us the response of the Government of Zimbabwe to our communication.

I attach a copy of our reply to the Government's submissions, and shall be grateful if you will place it before the African Commission for consideration at its 32nd Ordinary Session.

Yours faithfully,



Mrs E.M. Sawyer,
Director, Zimbabwe Human Rights NGO Forum

Members:

AMANI AI(Z) CCJPZ GALZ LRF TI(Z) UZ(LAC) ZACRO ZIMCET ZimRights ZLHR ZWLA

**REPLY BY THE ZIMBABWE HUMAN RIGHTS NGO
FORUM TO THE RESPONSE BY THE GOVERN-
MENT OF ZIMBABWE TO COMMUNICATION
245/2002 FROM THE ZIMBABWE HUMAN
RIGHTS NGO FORUM.**

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GOVERNMENT

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EXECUTIVE SUMMARY

The Government of Zimbabwe has responded to the Communication by the Zimbabwe Human Rights NGO Forum by raising the issue of admissibility, arguing that the Forum had not exhausted local remedies and had based its complaint on reports in the press.

In reply the Forum submits that the local remedies referred to are not in fact available either to itself or to its clients and that its complaint is not based solely on reports in the media. The detailed submissions are contained in the body of this reply but are outlined briefly in this executive summary.

Part A of the reply deals with the question of exhausting local remedies. It deals with each of the remedies put forward by the Government, and finds them to be inadequate:

The Office of the Ombudsman

The Ombudsman's Office has no jurisdiction to investigate human-rights abuses committed by policemen or army personnel, or by persons who are not employed by the State or a local authority. This means that the Ombudsman cannot legally investigate most of the human-rights violations that are the subject of the Forum's complaint. In any event, the Office lacks the human and material resources to investigate widespread human-rights abuses. It is not a specific human-rights watchdog, but monitors all departments of government and operates only from two centres in Zimbabwe. The Office is also subject to political control as it falls under the Ministry of Justice, Legal and Parliamentary Affairs and is headed by the wife of a leading member of the ruling party.

The Zimbabwean Republic Police

The police are perceived as a violent and partial arm of Government by many of the Forum's clients and by the Forum itself. Various factors have given rise to this perception. The Commissioner of Police has declared his personal support for the ruling party and has taken steps to ensure that police officers suspected of supporting the opposition party are removed from the police force. Police officers have

INTRODUCTION

In its response the Government of the Republic of Zimbabwe ("the Government") maintains that the complaint by the Zimbabwe Human Rights NGO Forum ("the Forum") is inadmissible on two grounds. These are:

1. The Forum has failed to exhaust local remedies as required by Article 56 of the African Charter on Human and Peoples' Rights.
2. The complaint is based solely on media reports, and therefore the complaint must be disallowed in terms of Article 56 of the African Charter on Human and Peoples' Rights.

The Forum replies in this memorandum to both these allegations.

Although the Government's response does not take serious issue with the allegations of human-rights abuses made by the Forum, it does allege certain facts that are incorrect or false and makes several unsubstantiated assertions. The Forum will reply to these as well.

Part A of this memorandum will deal with the Government's assertion that the Forum has failed to exhaust local remedies, by showing that the remedies suggested by the Government are either non-existent or unrealistic, or that resort to them would be unduly prolonged.

Part B of the memorandum will deal with the Government's allegation that the Forum's complaint is based exclusively on news reports, and will show that, on the contrary, the complaint is based to a great extent on reports made by victims to the Forum itself.

Finally, Part C of the memorandum will deal with some of the incorrect and unsubstantiated allegations that have been made by the Government in its response.

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Ombudsman can investigate human-rights violations committed by soldiers, policemen or prison officers only if they are prescribed under an Act of Parliament. They are not. Section 8(1) of the Ombudsman Act [*Chapter 10:18*] provides that:

“(1) In addition to the actions that the Ombudsman may investigate by virtue of subsection (2) of section 108 of the Constitution, the Ombudsman may investigate any action taken by any force, service, institution, authority or body set out in the First Schedule or by any officer or employee thereof.”

Item 1 of the First Schedule to the Act specifically excludes the Police Force, the Defence Forces and the Prison Service from the Ombudsman’s jurisdiction. Although section 8(2) of the Act goes on to say:

“(2) Notwithstanding item 1 of the First Schedule, the President may make regulations providing for all or any of the powers of the Ombudsman to be exercised over the Defence Forces, the Police Force and the Prison Service by the Ombudsman or by any other person or authority which he may appoint or establish for that purpose.”

no such regulations have been made. As a result, the Ombudsman’s Office cannot investigate members of the Police Force, the Defence Forces or the Prison Service, whether in respect of human-rights violations or anything else.

That is not the only limitation on the Ombudsman’s jurisdiction, as can be seen from the provisions of s 108 of the Constitution and s 8 of the Ombudsman Act, quoted above. The Office’s powers of investigation can be exercised only in respect of members of Ministries and departments and the persons specified in the First Schedule to the Act. The First Schedule lists most State employees (other than police officers, members of the Defence Forces and prison officers) and local authority employees. So persons who are not employed by the State or a local authority are beyond the Ombudsman’s jurisdiction. War veterans and party militants cannot therefore be investigated by the Ombudsman, unless they are State or local authority employees.

The making of a complaint to the Ombudsman’s Office is therefore not a remedy that is open to the Forum or to any of its clients, in so far as the human-rights violations complained of were committed by war veterans, party militants or members of a disciplined force — as the vast majority of them were.

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aware of their right to approach the Ombudsman, most of them would be unable to pursue it as they could not afford to travel to Harare or Bulawayo to lodge their complaints.

The Office of the Ombudsman falls under the Ministry of Justice, Legal and Parliamentary Affairs and its budget falls under that Ministry's, although it does report to Parliament. The Office is therefore completely dependent on the Ministry for its budget. This not only limits its independence from the Government but also restricts its capacity to operate at all. The Office is not computerised and has a lack of all resources. The Office has no vehicle and has to request vehicles from the Government to operate at all.

An indication of the Office's understaffing and lack of capacity is that the last report which was issued by the Office was for 1996, and it was issued in 2000. This was a delay of four years, and it can reasonably be expected that the report for any complaints made to the office in 2000 to 2001 will only be reported by 2005 to 2006 at the earliest.

The office has also complained of a lack of co-operation from some Government departments, and has claimed that public officials who have approached the office have been victimised by their departments for reporting to the office. The officials of the Ombudsman's office are civil servants and as such are answerable to the Public Service Commission in the same manner as any civil servant, limiting their independence and efficiency.

Even if the Office of the Ombudsman were to investigate an alleged human-rights violation and find that the complaint was well founded, it could do no more than recommend certain types of remedial action to the authority concerned. The Office has no power to demand or even recommend prosecution or the payment of compensation. If the authority fails to act on the recommendation within a reasonable period of time, the matter can be reported to the President and to Parliament (ss 16 and 17 of the Ombudsman Act). If the President and Parliament decline to take action on any report by the Ombudsman, there is nothing further the Ombudsman can do. The victim is without a remedy. Essentially, therefore, the Office of the Ombudsman has little or no real power to ensure that human-rights abuses are avoided or rectified.

report on its activities suggests that as a remedy its procedures are unduly prolonged (Article 56 of the African Charter).

It is completely unrealistic to expect the Office of the Ombudsman's to investigate properly all human-rights allegations against public officials, and it is incorrect and disingenuous to suggest that the Office could act as an effective check against abuses by Police and Defence Force personnel. The Commission is urged to hold, therefore, that the Office of the Ombudsman is not a viable internal remedy and anyway that its procedures would be unduly prolonged.

2. The Remedy of Reporting to the Zimbabwe Republic Police

On page 5 of the Government's response there is a suggestion that the human-rights violations alleged by the Forum should have been reported to the police before the complaint was made.

As stated in the Communication by the Forum, the police are perceived by many as a politically partial and violent arm of Government. This perception is founded on the open partisanship shown by the Commissioner of Police; by allegations of police complicity and participation in violence; by the manner in which the police apply statutes that regulate the holding of political gatherings; and by delays in prosecuting ruling party supporters for politically-inspired offences and the selective prosecution of such offences. The perception is particularly strong among lawyers involved in human-rights and criminal cases.

In this section, the Forum will deal with each of these points in turn.

The partisanship of the Commissioner of Police

The Commissioner of Police, Mr Chihuri, was a liberation war fighter. He is a self-avowed supporter of ZANU PF. He has publicly expressed his complete allegiance to the ruling party and displayed his antipathy toward the main opposition party. In January 2001 he stated that he was a member of the ruling party and would resign if another political party came to power.² In January 2002 he participated in a press conference attended by the service chiefs at which it was announced, in effect, that if

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alleges 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.

Police complicity and participation in violence

There are undoubtedly many members of the police force who would like to be able to perform their duties on an apolitical basis. There are, however, strong pressures upon them, in politically sensitive cases, to behave in a politically biased fashion. Like magistrates and prosecutors, they may be subject to severe reprisals from war veterans and members of the youth militia if they take action perceived to be antithetical to the interests of the ruling party.⁹ Attached hereto, marked A1, is a list of the public statements made by politicians (from both parties) and Government officials inciting violence. The leaders of both parties have called on members of their parties to shun violence, but the overwhelming impression from Government spokespersons has been that the Government condones violence against opposition supporters. It is respectfully submitted that the Government has created and exacerbated an atmosphere in which police officers believe that their duty includes the protection of ruling party members from prosecution and the victimisation of opposition supporters. Against such a backdrop it would be untenable to argue that the police are a viable local remedy.

Police participation and complicity have been reported in the following respects:

- Police and security officers have, to the knowledge of the Government, been both passive and active participants in murders and torture. On 15 April 2000 David Stevens was kidnapped from his farm by ZANU PF militia and taken to a police station in Murehwa. He was taken from the police station by ruling party militia with the tacit co-operation of the police and was tortured before being shot dead. The police at Murehwa Police Station did not at any time try and stop the militia from removing him from the police station, nor did they protect him from attack by the militia. No policeman has been prosecuted for the failure to protect Mr Stevens.

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 2002.¹⁰ The MDC also complain that many of their members who have been arrested have been subjected to brutal beatings whilst in police custody. There appears to be an ever-increasing incidence of serious ill treatment of suspects by the police, particularly those perceived to be political dissidents.¹¹

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.¹² It would seem that the organisers of such rallies and protests frequently do not even notify the police in advance of their intention to mount such rallies and protests, as required by the Public Order and Security Act. On the other hand, the police have very 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 brutal 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 that they were beaten when they were in police custody.

Delays in Prosecution and selective prosecution

In many instances the police and the Attorney-General's office have refused to act to protect the rights of persons seen to be in opposition to the Government. One example is the murder of Mr Stevens, mentioned above. The Government has claimed in the annexure to its response that the Stevens case has been set down for trial in October 2002. However, the *Herald* reported in 2000 that the police had arrested a suspect known as Daniel Chitekuteku for the murder and that he had been remanded in custody until October that year when charges were withdrawn against him for lack of evidence. Any subsequent arrest has not been publicised, and the Forum finds it strange that a new suspect has been indicted for trial without this being made public.

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The Zimbabwe Lawyers for Human Rights, which is an association of human-rights lawyers and a member of the Forum, recently conducted a survey of its members and other members of the legal fraternity in which lawyers were asked to comment on police behaviour. Around sixty legal practitioners responded to the survey. The lawyers who responded were mostly practising criminal lawyers. These lawyers heavily criticised police behaviour.

Most respondents complained of political bias on the part of the police. They maintain that the police favour members of the ruling party and are prejudiced against members and supporters of the opposition. Lawyers also complained that members of the opposition are frequently arrested without reasonable cause and that lawyers encounter problems when they are trying to represent members of opposition parties. The lawyers' specific complaints were as follows:

- The police were obstructive and denied legal practitioners access to their clients, often for up to two days. Clients were moved from police station to police station and the lawyers would not be told where their clients were currently being held. Alternatively lawyers would be informed that the investigating officer was absent or unknown, and in particular cases the lawyers were categorically denied access to their clients. Limitations were also imposed on lawyers' access to their clients, in particular as regards time and privacy.
- Police officers on occasion threatened violence or arrest against legal practitioners, and on one occasion a legal practitioner was arrested to stop him demanding to see his client.
- Prisoners were denied food and medical attention.
- Prisoners were often detained in excess of the statutory maximum of 48 hours.
- Clients were often arrested and released without charge; notably during the presidential election, when hundreds of people were arrested in Harare on

*The effect of the general amnesty and the inefficacy of civil suit as a
remedy*

The Government suggests at page 5 of its response that the General Amnesty of 2000 does not affect the internal remedies available to the Forum's clients, as the clients still have the opportunity to approach the civil courts for compensation.

It is submitted that criminal prosecution benefits not only society through the punishment and rehabilitation of offenders and the prevention of further crime, but also the victim by returning a vestige of his self-respect. Clemency Order 1 of 2000 had the effect of making the victims of political violence feel victimised again as their individual suffering had been held to be unimportant and the perpetrators had simply been forgiven. The other result of the amnesty was to perpetuate a culture of impunity, which has made ZANU PF members; police officers and other officials of the Government believe they could continue breaches of human rights without interference from the Government. Violence and torture has therefore continued with many of the early victims again being victims of the torture.

The Government's argument is predicated on the premise that civil proceedings against the perpetrators of human-rights violations will have any effect. The experience of the Forum proves this premise to be incorrect. Since the inception of the Forum in 1998 it has instituted legal proceedings on behalf of its clients against the Minister of Home Affairs, the Commissioner of Police, the Minister of Defence and the Commander of the Zimbabwe National Army in their official capacities for delicts (i.e. human-rights violations) committed by their employees, police and army officers. A number of these matters were settled out of court, and others on an order of court after the Government consented to the order. In other matters the cases were taken to trial and the Forum's clients were granted judgment and damages against the Government for the human-rights abuses perpetrated against them. In the majority of these cases the Government has taken up to three years to satisfy the monetary judgments. It should be noted that in terms of s 5 of the State Liabilities Act [*Chapter 8:14*] litigants cannot execute recover amounts awarded to them by execution against state property. Attached hereto is a schedule of the cases handled by the Forum,

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Without such proof, it will not be possible successfully to sue the official or the ruling party itself. Even if such an instruction could be proved, again in the atmosphere of violence and impunity prevailing, the victim would be likely to be fearful about the consequences of commencing legal action against a party official or the ruling party itself.

In more general terms, a civil action is not as an effective remedy as a criminal prosecution. The end result of a prosecution is that the culprit is punished. The punishment imposed serves to deter that person from repeating his violence in the future. It also deters other would-be perpetrators by sending a clear message to everyone that such conduct will not be tolerated and that perpetrators will be brought before the courts and punished. None of this can be achieved by means of civil proceedings.

Harassment of judges, magistrates, prosecutors and defence lawyers

There have been numerous incidents where war veterans and ZANU PF youth have assaulted or threatened lawyers and judicial officers. Magistrates have been transferred from one station to another on the demand of war veterans and have been subject to violent demonstrations against their judgments when they rule against the Government or the war veterans. High Court judges have been subject to public threats by Government and ruling party officials, and at least one has been subjected to harassment after leaving office. The harassment of judicial officers will have a clear deterrent effect against independent judicial decisions. Legal practitioners have been subjected to threats of assault and arrest on a regular basis while attending to their clients in politically sensitive cases. The following examples are cited to demonstrate the trend:

Threats by war veterans against judges and the invasion of the Supreme Court

Dr Chenjerai Hunzvi (then a member of Parliament and the leader of the War Veterans Association) vowed to oust the entire Supreme Court bench and four non-black High Court judges, and is reported to have said in Parliament:

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other court officials were also assaulted and one had to be hospitalised. The magistrate was then paraded round town and made to chant ZANU (PF) slogans.

The assault on Tawanda Hondora

On 7 April 2001 Mr Tawanda Hondora, a lawyer and the chairman of the Zimbabwe Lawyers for Human Rights was 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 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 a group of about 30 ZANU (PF) supporters assaulting one of the election challenge witnesses, a 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 him 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 extensively searched, interrogated about their relationship to the MDC and further assaulted. 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 Dr Chenjerai Hunzvi, war veterans and the army to assault the lawyers further.

Arrest and detention of the President and Secretary of the Law Society

On 3 June 2002 the President and Secretary of the Law Society of Zimbabwe were arrested on palpably false charges, based on two documents that appear to be crude forgeries. They were held incommunicado in custody for a few days in very poor conditions. They were moved from police station to police station and were at one

In the legal standing cases¹⁶, the High Court and Supreme Court have departed from earlier decisions and adopted a narrow view of legal standing, thereby severely restricting the right of litigants to institute proceedings in public-interest cases — for example, denying a candidate in an election the right to challenge the validity of regulations governing the electoral process.

In the Harare City Council saga the Supreme Court, in a series of cases¹⁷, prevaricated over fixing a date for council elections, thereby avoiding reaching a decision which would have conflicted with a decision reached by the President.

All these cases indicate a disinclination on the part of the current High Court and Supreme Court to make decisions against the Government. These cases are by no means the total number of cases in which the courts have shown an unfortunate and worrying tendency to rubberstamp the Government's positions. It is the submission of the Forum that there is now very little use approaching the courts in Zimbabwe to attempt to enforce legal and human rights because we do not have an independent judiciary. It is the Forum's submission that the Government has created a situation in which the exercise of domestic remedies is no longer a possibility, and it has done this through the packing of the Supreme Court and the enactment of repressive laws. The legal standing cases are of extra importance as they add further restraint to cases in which constitutional rights may be enforced through the courts and limit the rights of bodies such as the Forum from bringing actions to protect the constitutional rights of its clients.

PART B: WHETHER COMPLAINT BASED EXCLUSIVELY ON NEWSPAPER REPORTS

The Government submitted on page 5 of its response that the Forum's complaint was made on the basis of newspaper articles which are biased.

It is not correct that the Forum's complaint is based wholly on media reports. The reports contained in Annexure 1 of the Forum's complaint are based on individual complaints made directly to the Forum. Legal personnel of the Forum took full

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Pre-election violence

On page 3 of its response, the Government alleges that the violence in the run-up to the parliamentary and presidential elections was initiated by the opposition MDC, and avers that it serves no purpose to quantify the extent to which either party was violent. This is not true. The overwhelming majority of victims were supporters of the MDC. This gives the lie to any suggestion that the violence inflicted by the ruling party was purely retaliatory.

Violence by commercial farmers

Also on page 3 the Government alleges that "Commercial farmers were also using violence against settlers, when the Government was appealing for peaceful co-existence." Again, this is untrue. Commercial farmers were remarkably restrained. One farmer, Philip Bezuidenhout, was convicted of murder after he ran over and killed a settler in 2001, but that was a very isolated case. In August 2001 over 20 commercial farmers were charged with public violence in Chinhoyi after they attempted to rescue a colleague who was trapped in his homestead by settlers, but they were all acquitted at the close of the prosecution case after all the witnesses against them were shown to be liars.

Invalidation of election

On page 4 of the Government's response there is a curious statement: "Further, the High Court judgment of Justice Devittie, as he then was, found no conspiracy between the Government of Zimbabwe and the ruling Zanu (PF) party, and accordingly refused to declare the whole election as null and void." The case referred to was an election petition in which the result in a single constituency, not the whole general election, was being challenged. Mr Justice Devittie had no power to declare the whole election void, and was not asked to do so. He was asked to declare that one result void, which he did.

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Gibson Sibanda, Vice President of MDC

Speaking a rally in Bulawayo on 5 February 2001 Sibanda allegedly told his supporters that they should beat up ZANU (PF) supporters during the campaign for the presidential election. Sibanda has denied that he made this statement.

Sibanda has been charged with incitement to public violence. On 7 March 2001 Sibanda was further remanded by a Bulawayo Magistrate.

The trial of Sibanda has yet to commence.

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<p><i>Minister Sidney Sekeremayi</i></p> <p>In May 2000 Sekeremayi who was then the Minister of State Security commended white farmers and farm workers for attending the ZANU (PF) rally but he said he hoped the surrender of the t-shirts showed they really meant they had left the MDC. "I would want to hope that they are telling the truth and that even their workers are telling the truth. If not, the truth will always come out." "After the votes we will see who has been cheating us and we will deal with each other."</p> <p>(Source: <i>Daily News</i> 22 May 2000.)</p>	<p>No charges have been brought in respect of these statements</p>
<p><i>Minister Moven Mahachi, the late Minister of Defence</i></p> <p>In its complaint in connection with the lawsuit against President Mugabe in America the plaintiffs allege that Moven Mahachi the Minister of Defence told a crowd on 2 June 2000 that "we will move door to door, killing like we did to Chiminya. I am the minister responsible for defence therefore I am capable of killing."</p> <p>(Source: <i>Newsweek</i> 11 December 2001.)</p>	<p>No charges have been brought in respect of these statements</p>
<p><i>Minister Mudenge, the Minister of Foreign Affairs</i></p> <p>In July when speaking to staff and students at teachers colleges in Masvingo the Minister said the only way teachers and students could guarantee their safety was to support ZANU PF. Mudenge said: "You are going to lose your jobs if you support opposition political parties in the presidential election. "As civil servants, you have to be loyal to the Government of the day. You can even be killed for supporting the opposition and no one would guarantee your safety."</p> <p>In June Aeneas Chigwedere, the Deputy Minister of Education, Sports and Culture, last month said his ministry would not provide security to teachers affected by violence perpetrated by war veterans and ZANU PF supporters for supporting the opposition.</p> <p>(Source: <i>Daily News</i> 18 July 2001)</p>	<p>No charges have been brought in respect of these statements</p>
<p><i>Minister Ignatius Combo and ZANU(PF) Member of Parliament Philip Chiyangwa</i></p> <p>Addressing a meeting of farmers in Banket. In the course of the meeting, in front of 200 witnesses, Mr Chiyangwa said "...anyone who supports the MDC will be eliminated."</p> <p>(October 2001)</p>	<p>No charges have been brought in respect of these statements</p>
<p><i>Foreign Minister Stan Mudenge and Education, Sports and Culture Minister Samuel Mumbengegwi</i></p> <p>In July 2001 they threatened headmasters and teachers of teacher training colleges by telling them that they could be killed for supporting the MDC.</p>	<p>No charges have been brought in respect of these statements</p>

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<p><i>Dr Chenjerai Hunzvi The late Member of Parliament for Chikomba)</i></p> <p>On 10 December 2000 he said</p> <p>“We are not afraid of the High Court . . . this country belongs to us and we will take it whether they like it or not. The judges must resign. Their days are numbered as I am talking to you . . . I am telling you what the comrades want, not what the law says.”</p> <p>On 14 December 2000 he said “whosoever is killed , it’s tough luck.”</p> <p>On 3 March 2001 he said that all white judges must leave. “If they want us to use violence we are gong to use that.”</p> <p>In late March 2001 he said that ZANU (PF) will establish ‘mobilisation bases’ in Zimbabwe’s cities as part of “an aggressive plan.”</p>	<p>No charges were brought in respect of these statements</p>
<p><i>Mr Phillip Chiyangwa Zanu-PF MP for Chinhoyi</i></p> <p>Television footage recorded Chiyangwa inciting party youths during the August 2001 on commercial farms in his constituency. Shot by ZTV, but screened on BBC Channel 4. What he told the youths was:</p> <p>“If you get hold of MDC supporters, beat them until they are dead. Burn their farms and their workers’ houses, then run away fast and we will then blame the burning of the workers’ houses on the whites. Report to the police, because they are ours.”</p> <p>(Source: <i>Standard</i> 9 September 2001)</p>	<p>No charges have been brought in respect of these statements</p>
<p><i>Andrew Ndlovu (War veteran leader)</i></p> <p>On 15 March 2000 Ndlovu who is one of the leaders of the National Liberation War Veterans Association threatened to use violence to overthrow the MDC if it won the upcoming election. He said that the war veterans would never allow the country to go back to Smith and if the MDC did come to power the war veterans would declare a military Government. He said: “We will get arms to defence the Government of ZANU (PF). We will invade military camps just as we have gone to the farms.”</p> <p>(Source: <i>Daily News</i> 16 March 2000)</p>	<p>No charges have been brought in respect of these statements</p>

ANNEXURE A2: THE CHIMINYA AND MABIKA CASE

The killing of Mr Chiminya and Ms Mabika occurred on 15 April 2000. These two MDC members were part of team of persons who were involved in political campaigning for the MDC. They were travelling in the front of a vehicle which was stopped by a ZANU (PF) vehicle. Witnesses to the incident say that two men armed with AK47 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 Chiminya and Ms Mabika were trapped in this vehicle. It is alleged that Mwale ordered petrol bombs to be fetched and these were then thrown into the car. 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. Mr Chiminya and Ms Mabika died as a result of their injuries.

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.¹⁹ 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 carried this report in which it was said that the police spokesperson had refused to say why the police have not handed over to the Attorney General's office the docket in respect of this case. The Deputy Attorney-General said he had told the police he was still waiting for the docket more than two years after the incident happened. He said that the director of public Prosecutions had written to the relevant police department calling for the handing over of the docket.²⁰

In September 2002 the same local newspaper reported that the police spokesperson, had refused to say why the police are refusing to hand over the docket on Mwale and Zimunya to the Attorney-General's office. The report said that the Deputy Attorney-

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General, said the police are yet to respond to request from the Attorney-General's office for the docket, four months after the request. The report added that the docket was said to be at the Police General Headquarters after it was delivered there by the police in Manicaland early in 2002.²¹

There have been reports that following the presidential elections Joseph Mwale has been involved in violence against the MDC in the Chimanimani area where he is based.

For example, in April 2002 it was reported that, together with army personnel, he was spearheading violent retributions against MDC supporters in the area.²² Also in April 2002 two lawyers who had gone to represent On 28 April 2002 two Mutare lawyers who had gone to represent some MDC supporters arrested for allegedly petrol-bombing the house of Mr Mwale were accused of being "terrorists" and anti-ZANU (PF). The lawyers said Mwale and the officer in charge of the station drove them out of the police station.²³

In August 2002 another local newspaper reported that Mwale had led a group of ZANU (PF) vigilantes in attacking security guards and farm workers at a farm owned by a white MDC Member of Parliament.²⁴

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Gahadzikwa v Minister of Defence	8 December 1999	13 000,00	10 July 2001
Musadzikwa v Minister of Home Affairs	4 May 2000	46 617,62	6 August 2001
E Nyasulu v Minister of Home Affairs	30 October 2000	40 150,00	18 June 2002
E Katumba v Minister of Home Affairs	15 November 2001	30 000,00	20 May 2002
M Mutizwa v Minister of Home Affairs	February 2000	7 000,00	9 February 2001
Joyce Gahadzikwa v Minister of Defence	6 December 1999	10 000,00	8 June 2000

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argued, which provided a façade of legality for the land acquisition. It largely turned a blind eye to the body of convincing evidence about what was happening on the ground. This evidence established that land resettlement continued to be carried out in a chaotic fashion, that violence against commercial farmers and farm workers was continuing and that, generally, the police were doing very little to prevent this violence or to intervene when such violence occurred.

It is obvious from this brief survey that various judges have approached the issue of land resettlement from completely different perspectives. When he was still in the High Court Mr Justice Chidyausiku strongly castigated the Gubbay-led Supreme Court, accusing it of bias in favour of commercial farmers and of deliberate obstruction of land resettlement by its judgments in these cases. This criticism foreshadowed the approach that he would adopt in the Supreme Court. In the final interdict case, heard before a reconstituted Supreme Court, his views have prevailed. The decision has allowed the Government to claim that the entire programme is lawful, constitutional and in accordance with the rule of law. This is certainly not true, and the change of approach by the Supreme Court has raised fears that the newly constituted Supreme Court will make decisions more on the basis of political expediency than on the basis of the law. It must be noted here that the issue is not one of race — the Gubbay Supreme Court was racially mixed, with two black judges, two white and one ethnically Indian. Black judges in the High Court, before the first Supreme Court judgment, held that the land reform programme was being effected in an unlawful manner.

The matter of concern to the Forum and to the Forum's clients is the suspicion of political partiality which the judgments of the current Supreme Court have raised.

The Legal Standing Cases

In the legal standing cases²⁷ judges in the High Court and the Supreme Court interpreted the legal standing of applicants restrictively to bar them from enforcing their legal and Constitutional rights.

In the *Stevenson* matter the applicant applied for an order that the City of Harare hold council and mayoral elections after the city's affairs had been run by a commission

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sensitive issues. The Supreme Court corrected the *Stevenson* judgment, though too late to avoid the ill-effects it caused — the delayed municipal elections were held in conjunction with the presidential elections, resulting in the effective disenfranchisement of many voters who were unable to cast their votes. The *Tsvangirai* judgment, on the other hand, remains uncorrected, and its harmful influence may continue in our law for many years to come. The present effect of the legal standing cases has been to narrow the circumstances in which persons will be able to apply to court to correct breaches of Constitutional and other human rights.

It is the Forum's submission that these cases indicate the problems that face litigants in the Zimbabwean courts when they try to enforce political rights, and illustrate the hazards associated with court proceedings as a remedy for human-rights violations. The issue of legal standing will have a direct bearing on any future application brought by the Forum in the Zimbabwean courts on human-rights issues.

The Harare City Council Cases

In the Harare city council cases the Combined Harare Residents Association (CHRA) won a High Court order compelling the Registrar-General of elections to hold council elections in Harare before the end of December 2001.²⁸ The Registrar-General noted an appeal but the High Court specified that its order would be binding pending appeal.

The Registrar-General then made an urgent application to the Supreme Court to have the High Court's order stayed pending appeal. The Chief Justice granted the application and altered the High Court order so that it would not be binding pending appeal. The CHRA then filed a counter-application in the Supreme Court requesting that the Registrar-General's appeal be heard urgently, and an urgent hearing of the appeal was then allowed. On 7 December 2001, after full argument, the Supreme Court dismissed the appeal and ordered that the City Council elections be held on or before 11 February 2002. In his judgment the Chief Justice said the law was clear and this order was unavoidable.

If the Registrar-General was going to comply with the Supreme Court's order, he would have had to start the election process no later than 14 January 2002. He failed to take any steps to comply with the Supreme Court's order, however, and so after 14

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the court.³⁵ They held, however, that the notice had to be regarded as valid until it was declared *ultra vires* or unconstitutional by a final judgment of a court — and no such judgment had yet been given. The Supreme Court's decision, and the delay that would inevitably have been occasioned in bringing the issue back to the Supreme Court for final determination, meant that the Supreme Court's original deadline for the holding of elections could no longer be met. The elections therefore had to be held on the dates fixed by the President, that is to say simultaneously with polling in the Presidential election.

The decision of the Supreme Court which closed this series of cases indicates once again a willingness on the part of the newly-appointed judges to use technical procedural grounds to avoid deciding the real issues in a case, where a decision would be politically sensitive. The decision is an example of the manner in which the Government is willing and capable of thwarting court judgments and the unfortunate tendency of some judges to allow them to get away with it.

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suspected army officials, armed with automatic shotguns and rifles. In another related incident at Wicklow Farm, Selous, the farm owners were forced leave the premises temporarily for security reasons following a 24-hours notice to vacate the farm from the police, army officers, and the CIO agents. At Chakoma Estates in Goromonzi, General Constantine Chiwenga, his wife Joselyn Chiwenga and a T. Mautsa have been reportedly implicated in the forcible take over of Chakoma Estates in Goromonzi and produce from the farm valued at \$125m

Forced evictions appear to have spread to companies in some parts of the country. Reports were recorded of company officials that have been subjected to threats and intimidatory visits at work and at home by CIO agents, as well as humiliation before their workforce.³ In one case, Chikerema and Hamadziripi of the ZNLWVA are allegedly trying to forcibly take over a \$230m Bindura Engineering Firm, Hammond Engineering (Pvt) Ltd, in defiance of a High Court order issued on the 4th of September 2002. Chikerema reportedly led a group of about 50 Zanu PF youths to evict the company's owners, George Hammond and his wife Elaine.

In comparison to the month of August, cases of political intimidation in September declined to twenty from thirty-five and cases of assault rose from twenty three to thirty-eight. One case of murder was reported to the local press. **Nikoniari Chibvamudeve** was allegedly hacked to death by Zanu PF supporters in Hurungwe West ahead of the two day by-election which was held on 28 and 29 September 2002. He was reportedly brutally murdered by youths suspected to have been deployed by Zanu supporters to drum up support for its candidate.

The majority of the evidence recorded by the Human Rights Forum point to the Zanu PF as the main instigator of violence in the just ended September 2002 rural district and council elections. However, this is not to say that the MDC had no involvement in political violence.

Totals 1 to 30 September 2002

³ Financial Gazette, 26 September 2002, p8

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Human Rights Forum Legal Unit statements, CFU reports, newspaper reports, and statements taken by the member organisations of the Human Rights Forum. (See last page for list of member organisations)

Notes to the tables:

Torture:

All cases of torture fall under the definition of torture according to the general definition given in the United Nations Convention against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment and Punishment.

The four elements of torture are:

- 1 Severe **pain and suffering**, whether physical or mental
- 2 **Intentionally** inflicted
- 3 With a purpose
- 4 By a state official or another individual acting with the **acquiescence** of the State.

Those individuals referred to in point # 4 include the ZRP, ZNA, ZPS and the ZNLWVA (as a reserve force of the ZNA) and by any other grouping when directly sanctioned by the state.

Unlawful arrest and detention:

Arrest by the Zimbabwe Republic Police (ZRP) with no reasonable suspicion that an offence has been committed. Detention thereafter for a period exceeding 48 hours without access to redress through the courts or subsequent release without charge.

Abduction/kidnapping:

A kidnapping by a member(s) of an organised group that is not the ZRP organisation. political party, ZNLWVA, ZNA, MDC, Zanu PF etc

Disappearance:

Kidnapped persons whose whereabouts remained unknown at the time of reporting. Their whereabouts have still to be ascertained through follow –up reports or further

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neighbours brought about six war veterans and some police officers to the victim's residence. The police took a statement from the victim and they took him to Beatrice Police Station. The member-in-charge informed him that the war veterans had been annoyed by the client who had ploughed down their crops. HF explained that he had authority of the lands committee to continue farming and was therefore set free.

12 September 2002

- Moses Chitindo, a police officer and four other police officers entered OM's bedroom and searched through the room. Having found nothing Chitindo was ordered to dress up. They informed him that they were looking for guns. The victim, a youth secretary for MDC, was taken to Chitungwiza police station and interrogated on Kitsiyatota's whereabouts. Kitsiyatota is an MDC activist being sought in connection with the murder of Ali Khan Manjengwa in Mbare. He was then taken to Harare Central Police Station together with three others who had been captured, and was handed over to Detective Inspector Dhowa who interrogated him again about Kitsiyatota and the possession of guns. On professing ignorance, he was assaulted under the feet whilst in leg irons. He was ordered to undress, was taken underground where more assaults were perpetrated. He was forced to confess at gunpoint that he had received military training in Norton. He was blindfolded, had a gun poked into his mouth and was taken to Goromonzi Police Station where he was forced to confess to the whereabouts of Kitsiyatota under the application of electric shocks. Under duress the victim then told them where Kitsiyatota's wife was. No charges were pressed against Chitindo. He suffered injuries under the feet cheek, buttocks and arms.
- TT, an MDC activist reports that CIO agents arrested him, on allegations that he had a pending case in Marondera where he used to stay. On their way to Chitungwiza Police Station, the victim was asked about Kitsiyatota's whereabouts. Mwanjaranji, a CIO agent assaulted the victim with sticks under the feet, open hands and fists before the assailants arrested 3 other MDC activists. Inspector Dhowa and Inspector Dhliwayo also interrogated the victim at Harare Central Police Station, with Inspector Dhowa stepping on the victim's knee with booted feet. On 14 September the victim was forced to sign an affidavit, which stated how the victim knew Kitsiyatota, suspected to have shot Ali Khan Manjengwa, a Zanu PF activist, in Mbare. The victim was released on 16 September 2002, and was told to report to the police on 18 September 2002, and to bring information on the whereabouts of Kitsiyatota on 20 September 2002. No charges were laid against him.

22 September 2002

- ST was severely assaulted by Zanu PF supporters for allegedly intending to contest in Ward 15 on an MDC ticket. He currently complains of pains on the back, legs and hands.

25 September 2002

- A group of Zanu PF youths came to RM's house looking for her husband in Unit D, Seke at around 5pm. As he was away, they took the wife instead to their candidate's house, C.M Chikwirakomo, in Seke. He was the candidate for the rural district council elections on a Zanu PF ticket. There, the victim was assaulted with sjamboks and a plank. A stone was also thrown on her face. She was only released around 6pm after a whole day's torture. (*refer to Case 2 in the photographs document*)

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maid was assaulted by the CID officers who ordered her to produce all the keys to Mushonga's house. She alleged that the assailants chased her all over the house and turned things up side down while some of them assaulted Linos Mushonga in the other room. This case of assault follows the murder of Zanu PF activist Ali Khan Manjengwa,

- About twenty Zanu PF supporters were going around with sticks, iron bars and empty bottles assaulting innocent civilians. They allegedly attacked Tongesai Goremuचेचे, an MDC supporter, at Nenyere flats. He sustained a swollen cheek and a cut on his face. The victim alleged that he could not retaliate, as he believed the police would come after him. Goremuचेचे reported the case to officers at Matapi Police Station and it has been confirmed by one of the officers that investigations are underway. This follows the murder of Ali Khan Manjengwa, who was murdered in August 2002 in unclear circumstances in Mbare
- A female informal trader at Mupedzanhamo flea market in Mbare was assaulted by unnamed Zanu PF youths on accusations that she had ululated when she heard that Ali Khan Manjengwa had been murdered.

11 September 2002

- Zanu PF youths allegedly assaulted AM for not attending a Zanu PF meeting held at Shawasha flats. The group of about twenty went to the victim's room, forced down the door and allegedly assaulted him with sjamboks, booted feet and open hands. AM was taken to Harare Central Police Station and was accused of being part of the group which had killed Ali Khan Manjengwa. The victim was then released on 14 September 2002 around 10:00am. He was ordered to report back to the police on 16 September 2002. Statements were recorded but no charges were pressed against the victim. The victim claims that he lost \$26 400 during the assault.

MANICALAND

Buhera North/ South

September 2002

- Reports have shown that at least eleven teachers have not reported for school since the beginning of the third term, citing rampant intimidation, death threats and assaults by Zanu PF supporters and war veterans. Mr. Muti of Mutasa Secondary School was seriously assaulted while his wife Mrs. Muti was intimidated to the extent that she was forced to flee the area. Murabanda and the other teachers claim that they were assaulted and intimidated by Zanu PF vigilantes over the school holidays and some of them were threatened with death. Svinurai, a teacher at the school, is also alleged to have fled the area to Harare. Stanislaus Chikukwa, a national executive member of the ZNLWVA based in Manicaland, dismissed the allegations as a smear campaign against the war veterans. Takavafira Zhou, Progressive Teachers Union of Zimbabwe (PTUZ) president, said that teachers must seriously consider putting the victimisation to an end by any means necessary.

18 September 2002

- SM claims that he was severely assaulted with heavy logs by about sixteen Zanu PF supporters who came to his house and asked for his MDC party credentials. Having handed them over, the victim was allegedly assaulted on the soles of the feet, the

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home, as well as humiliation before their workforce. The company officials are being forced to sell their shares and their companies at prices way lower than their actual market value. It has also been alleged that the company officials cannot refuse these offers, which are like a fraction of their real market value. Companies, which have been attacked, include an engineering firm, a small chrome expoter, a baking company and a cement manufacturer all in Bindura.

3 September 2002

- Elliot Manyika, the Minister of Youth, Gender, and Employment Creation, Zanu PF Political Commissar and Acting Governor for Mashonaland Central, together with Bindura police officers, twelve Zanu PF supporters and war veterans namely Dickson Mafios, John Muchavepi, Cannan Nyaminhepa, Remigio Matangiro, Timothy Timothy, Joshua Kazaka, Mr. Mazivarimwe, Lot Gora Mataka, Mazivarimwe and Comrade Chitate are alleged to have severely assaulted Keiphaz Madzorera on allegations of supporting the MDC. The assailants threatened to kill the victim together with his family if they were to come across them in the area. The victim alleges that he was once stabbed in the chest and chased him away from Bindura by the group. Manyika hit the victim using an iron bar and someone else stabbed his right ear with a knife, injuring him on the eardrum. All the accused, including Manyika, were served with the provisional order papers by a police constable identified as 050782V at Bindura Police Station, after Madzorera won a provincial order barring Manyika and his colleagues from assaulting him. This called on Manyika to show cause why the order barring him from assaulting Madzorera should not be effected by 12 September 2002, when the matter was set down for hearing. By the date of the report, it was not yet clear whether Manyika and the Zanu PF supporters would challenge the order before the return date.

21 September 2002

- Some villagers at Trojan Mine had property worth tens of millions of dollars damaged and looted by a Zanu PF mob. The mob is said to have been angered by the residents' failure to attend a Zanu PF meeting held at the mine's stadium that morning. Eunice Levi, a five months pregnant woman alleges that she was prodded in the stomach by some of the youths, who accused her of faking her pregnancy. They beat her up on the back with sticks while police officers residing next door watched. Levi alleged that one of the assailants was picked up later on by the police. The man was allegedly holding a Zanu PF card in his hand, and he told the police that he was ferried from Mt. Darwin in a district development truck, but refused to say who had ordered them to attack the mine villagers. A three-year-old girl was also assaulted but no reason was given for the assault. Henry Chemberi, the MDC Information and Publicity Secretary for Mashonaland Central, claimed that Elliot Manyika, the Minister of Youth Gender and Employment Creation, was linked to the assaults on Trojan Mine. Other assailants identified were Dickson Mafiosi; Ezekiel Motsi; Eliah Chikamba and Lazarus Miti. The mob, armed with iron bars, slashers, sticks, axe-handles, electric cables and catapults, attacked the residents, injuring hundreds. Places of worship at the Trojan mine were also destroyed, clothes varying amounts of cash and groceries were stolen from the houses. One supermarket in Section 1 of the Trojan Mine was stoned. Most of the victims of the assault were treated at Trojan Mine Hospital, Bindura Hospital and Shashi Private Hospitals.

4 September 2002

- Edward Chikerema, Zanu PF, and Kowerai Hamadziripi of the ZNLWVA are

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house. He went out and was faced by Zanu PF youths who then ordered him to follow them as they rounded up other MDC supporters in the area. They arrived at the house of another MDC supporter but only the wife was there. She was ordered to watch while the youths assaulted the victim, to serve as a warning to her husband to stop supporting the MDC. The victim was ordered to lie in a prone position and was assaulted thoroughly on the buttocks. On their way to a Zanu PF base the victim escaped but he was met by another group of Zanu PF youths who also assaulted him. He was then forcemarched to their base in Chimoio. The victim was only released on 26 September 2002 but was cautioned not to report to the police or else they would kill him. The victim complied and did not report to the police. (*refer to Case 1 in the photographs document*)

Shamva

5 September 2002

- It was alleged that there were no nominees for the eighteen wards in Shamva because all the candidates were barred by the Zanu PF youths. On one occasion, Zanu PF youths stoned an MDC vehicle but no reason was given for the attack. The MDC spokesman for Mashonaland Central (a Zanu PF stronghold), Henry Chimbiri, alleged that most of the opposition candidates were barred from filling their nomination papers.

MASHONALAND EAST

Goromonzi

September 2002

- General Constantine Chiwenga, Jocelyn Chiwenga, his wife, and T. Mautsa have been reportedly implicated in the forcible take-over of Chakome Estates in Goromonzi and produce from the farm valued at \$125m. They are said to have demanded money for the produce already sold by Chakoma Estates to Farnaby Management Consultants and Hortico, saying Chakoma Estates belonged to them. Chiwenga and his wife have already reportedly received \$80m for flowers and vegetables belonging to Shepherd Hall Farm. According to the documents in the High court, Mrs Chiwenga spearheaded the siege of the farm, accompanied by armed guards. The trio allegedly used force and threats to grab the farm. Parts of the affidavits by Roger Stauton, a director of Shepherd Hall Farm (Pvt) Ltd, a company operating the Estate, showed that Jocelyn Chiwenga said that she had not tasted white blood since 1980, and that she needed just the slightest excuse to kill somebody. She is alleged to have ordered one of her guards to kill 'the white bastards' and the guard closest to the victim cocked his weapon and pointed it at him in a menacing manner. The Estate grows vegetables and flowers, mainly for export. Justice Matika prohibited Afex Zimbabwe from remitting to Mautsa all funds currently in its possession emanating from the sale of flowers from Shepherd Hall Farm by Mautsa, until the court directs the company to disburse the money to such person as it may, after considering evidence, deem to be the lawful beneficiary of the funds. He ordered Mautsa to surrender any money that has been disbursed to him by the company. Afex Zimbabwe is to pay into an account to be approved by the Registrar of the High Court, all funds currently in its possession realised from sales of the produce from the farm. The same order was also granted against the Chiwengas, Mautsa and Hortico, except that they were to disclose the bank statements reflecting the proceeds of exports of the produce to the farmer's lawyer,

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all over the body and he suffered bruises on his body and a cut above the right eye. He passed out and they left him for dead. The case was reported to the police but no arrests have been made as yet. The victim lost some clothing, two pairs of shoes and \$10 000 cash.

22 September 2002

- OC had visited his grandparents when he was allegedly abducted by a group of Zanu PF youths at Jembere shop and was interrogated on MDC activities in the area. They took the victim to a nearby river and made him roll in the water then on the bank of a river and then beat him up. Their leader, Hodzi, who came in a truck, forced the victim onto it and beat him on all the joints using empty beer bottles. He was taken to a bush where he was assaulted together with the shop assistant. He was ordered to cover up his eyes and the assailants drove off beating him. They then abandoned him in the bush and removed his shoes and belt. He later found his way home.

Seke

17 September 2002

- At around 1400hrs AM was abducted by war veterans allegedly for being an MDC supporter and for distributing MDC pamphlets and flyers to residents of Danstan Estates. He was assaulted with logs and bricks all over his body and with clenched fists on the face, head and rib cage. He was then taken to their nearby base where he was made to lie in a prone position and then assaulted with an electric cable several times on his buttocks and with pieces of a hose pipe. The victim was assaulted on the left arm and on the shoulder with the butt of a gun. One of the war veterans wanted to cut his throat but then he dunked his head and got cut on the middle finger. Later on around 0900hrs, the police came and they managed to rescue the victim but they did not arrest any one of the assailants.

Uzumba Maramba Pfungwe

15 September 2002

- FM was reportedly assaulted by Zanu PF supporters at his home in Mashambanhaka Chipuriro for daring to stand in Ward 9 in the rural district council elections held on 28 and 29 September 2002 on an MDC ticket. The assailants came to the victim's house at about 2100hrs and accused him of standing for Councillor, therefore embarrassing the Zanu PF MP. The victim now complains of painful eyes and a painful left hand. The victim alleged that he was ordered not to leave the area for treatment.

MASHONALAND WEST

Chegutu

September 2002

- Stephen Nyikadzino, MDC secretary for Chitungwiza, claims that he had just arrived in Chegutu from Harare when some Zanu PF supporters started assaulting him and confiscated the MDC nomination papers that he had. The victim also alleges that nine of the MDC candidates ran away and that they would probably not register

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18 September 2002

- At about 1400hrs at Meidon Farm a group of war veterans and settlers approached GW and accused him of supporting the MDC and the white farmer whom he worked for as a general hand. They reportedly assaulted him with sticks and open hands.

20 September 2002

- At about 0300hrs war veterans came to Meidon Farm in Karoi and allegedly stoned the house in which AC was sleeping, injuring him on the forearm. He alleges that the assailants wanted to beat him up because he was continuing with his duties on the farm. AC was cut on the neck by wires as he tried to flee from the assailants. He went to the farmer's residence for help but his assailants followed him again. The victim managed to escape and he hurt his left ankle in the process.

Hurungwe West

21 September 2002

- It has been reported that **Nikoniari Chabvamudeve**, an MDC member, was axed to death in the Chivende Communal area by suspected Zanu PF supporters as the violence in the run up to the 28-29 September rural district and council elections flaired. Chabvamudeve was reportedly brutally murdered by youths suspected to have been deployed by Zanu supporters to drum up support for its candidate. The youths were moving around in three pick up vehicles. However, the police spokesman, Wayne Bvudzijena, says that investigations have shown that the victim died in clashes over gold panning rights.

Makonde

7 September 2002

- Peter George Viljoen and his family were locked up in their farmhouse at Tevrede Farm in Mhangura in the afternoon. The victim alleged that he had been served with an eviction order, paid all his one hundred employees and was loading his truck so that he could leave when Major Mboweni who ordered him to leave all his personal belongings behind approached him. It has been reported that the victim made a report to Inspector Magwenzi of Mhangura police, but he has done nothing about the situation so far. The victim's son, Dirk, a cricketer for the Zimbabwean national team, was also locked up in the house together with his girlfriend, the victim's sister and brother-in-law. His son Dirk failed to attend a cricket match that he had scheduled for that afternoon. The fresh wave of evictions saw about two commercial farmers being ordered to leave their farms in Mashonland East and West. The victim pointed out that although he had been issued with section 8 order, the courts had overruled this, making the forced evictions illegal.

Zvimba North

4 September 2002

- The owner of Meme Estates in Banket was forced to flee his farmhouse when war veterans, two Libyans and one Major Murombedzi, armed with a rifle approached

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their property. The drum beating invaders, led by one Stephen Zibako, said they were settled on the farm by Masvingo Govenor, Josiah Hungwe, and would only move out if they got the directive from him, not from the High Court. Hungwe was however not available to comment on the issue. Chamwadoro is the owner of the farm and he alleges that it is the only farm that he has. The High Court order for the invaders to vacate the farm by 31 September 2002 is still valid. Chadamwoyo bought the farm, Lot 1 of Allavale Farm, from the Shabani Mashava Mines in 1999.

Zaka West

4 September 2002

- Michael Chitsama and Johannes Chongore were severely assaulted by suspected Zanu PF youths while they were waiting for transport to take them home soon after the nomination court. Chitsama was allegedly robbed of \$20 000 meant for the funding of a number of MDC candidates in the area. The Zanu PF youths, armed with sticks and iron bars, were chanting anti-MDC slogans. However, fourteen MDC candidates were disqualified from the nomination court after they were allegedly misled by the officials from the registrar's office to bring wrong birth certificates. However, the Human Rights Forum could not find a provision in the Urban Councils Act for a specific type of birth certificate ideal for registration in the elections. Police in Zaka confirmed the incident but refused to give details.

Zaka East/ West

10 September 2002

- While conducting a workshop on social and economic issues at Ferry Training Center, a truck reported to be written, Zanu PF- DDC (ZAKA) came to the venue where TM was conducting the workshop, ending it prematurely. One Edmore Munjanja was at the venue of the meeting when the truck pulled up and he took the victim with some resource materials including leaflets, to Jerera Growth Point police post. Hazvidi, a war veteran, interrogated her and accused her of being an MDC puppet working for NCA and Zimrights. She was threatened with death and was told that she was to be taken to a river where people were given "re-education". About twenty war veterans were invited to watch the "re-education" and the victim was forced to sign an agreement that she was kidnapped but was treated nicely, with no abuses. Ernest Zvirevo, a ZRP officer at Jerera, is said to have witnessed the signing of the agreement. She was then "escorted" by war veterans and was forced to buy drinks and to give Hazvidi hope and Edmore \$1 000. The case was reported at Masvingo Police Station.

MATABELELAND NORTH

Binga

6 September 2002

- Zanu PF supporters and 'war veterans' have reportedly caused the closure of seventy primary and secondary schools in Binga District, ordering more than seventy thousand teachers to attend a rural district and council election campaign rally on 8 September 2002. Headmasters and teachers in Binga district were forced to close down schools and attend a rally addressed by the Matebeleland North Zanu PF chairman Jacob Madenda. Notes were sent to the headmasters warning them to

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War veterans allegedly refused to grant MDC supporters permission to campaign in Tsholotsho for the forthcoming elections.

MIDLANDS

Chirumhanzu, Mberengwa, Zvishavane

September 2002

- In the Midlands province, only fifty-seven MDC candidates had the courage to stand their ground to run in the September 2002 rural district and council elections, against ninety-three Zanu PF supporters. Chirumhanzu constituency was one of the most affected in the Midlands Province. Reports have revealed that even those who have braved the threats of violence were finding it difficult to openly campaign as rowdy Zanu PF supporters often disrupted their rallies with the police taking no action. Opposition MDC candidates were harassed and threatened with unspecified action if they contested in the September 2002 rural district and council.

Shurugwi

September 2002

- Dave Wilson received threats from Chief Mapendere and some Zanu PF youths, ordering him to leave the area and emigrate to England if he was to insist on representing the MDC in the forthcoming council elections. He later withdrew his candidature. Thirty-six opposition MDC candidates in Midlands South reportedly withdrew their candidature from the September 2002 rural district and council elections fearing for their lives after being threatened with violence by Zanu PF supporters.
- Herbert Mhlanga was allegedly forced to withdraw his candidature by Zanu PF supporters in the area and was allegedly forced to surrender all MDC t-shirts and cards following unspecified threats from Chief Mapendere. Thirty-six MDC candidates have been forced to surrender their candidature by Zanu PF supporters in Midlands South. This came about in the run up to the September 2002 rural district and council elections. In Shurugwi, MDC was only left with only six candidates in the twenty -three wards that were contested as the rest withdrew from the election run.
- Njere Chou, Farai Sibindwani, Muhle Mudewa and Deliwe Marima claimed that Zanu PF supporters summoned them to the nomination court for daring to contest the election against their Zanu PF headmen. What transpired at the court was however not reported.

9 September 2002

- Joshua Tongogara and other MDC candidates in the rural district council elections had been held hostage at their homes by suspected ruling Zanu PF party militants. They were allegedly forced to withdraw their candidature in the upcoming rural and district council elections. Lyson Mlambo, MDC provincial spokesman for Midlands, alleged that all the MDC candidates' homes in Shurugwi had been sealed off by marauding Zanu PF youths to ensure that they did not reach out to the constituencies. They were forced to withdraw their candidature before the election. It is alleged that Zanu PF military tactics in the run up to the rural district and council

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- 19 **MANJENGWA, Khan Ali**, (Zanu PF), 22 August 2002, Harare, Mbare West
- 20 **MANYARA, Owen**, (MDC), 17 March 2002, Mashonaland Central, Mount Darwin
- 21 **MAPHOSA, Richard**, (MDC), 20 January 2002, Masvingo, Bikita East
- 22 **MAPHOSA, Stephen**, (Zanu PF), 2 February 2002, Harare, Budiriro
- 23 **MAPINGURE, Atnos**, , 9 January 2002, Masvingo, Zaka
- 24 **MASARIRA, Gibson**, (Zanu PF), 9 January 2002, Masvingo, Zaka
- 25 **MASEVA, Amos Misheck**, (ZNLWVA), 8 March 2002, Masvingo, Gutu North
- 26 **MATOPE, Kenneth**, (MDC), 13 January 2002, Mashonaland Central, Guruve
- 27 **MIJONI, Simwanja**, 15 January 2002, Midlands, Kwekwe
- 28 **MOYO, Henry**, (MDC), 7 February 2002, Masvingo, Masvingo Central
- 29 **MPOFU, Muchenje**, (MDC), 19 January 2002, Midlands, Mberengwa East
- 30 **MTETWA, Davis** (MDC), 27 April 2002, Harare, Zengeza
- 31 **MUDZIMUIREMA Cosamu**, (MDC), 16 July 2002, Manicaland, Buhera South
- 32 **MUKAKAREI, Tabudamo**, (MDC), 14 February 2002, Masvingo, Masvingo North
- 33 **Munyaradzi** (no surname given) (farm worker), 14 February 2002, Mashonaland East, Marondera East
- 34 **MUNIKWA, Isaac**, (Zanu PF), 17 January 2002, Masvingo, Zaka
- 35 **MUPAWAENDA, Takatukwa Mamhova**, 16 February 2002, Mashonaland West, Zvimba South
- 36 **MUTEMARINGA, Fungisai**, (MDC), 27 January 2002, Mashonaland East, Murehwa
- 37 **NCUBE, Richard** , (MDC), 18 July 2002, Midlands, Zhombe
- 38 **NCUBE, Sambani** (MDC), 17 March 2002, Matabeleland North, Hwange East
- 39 **NCUBE, Mthokozisi**, (MDC), 26 January 2002, Bulawayo, Pelandaba
- 40 **NEMAIRE, Solomon**, (MDC), 23 January 2002, Manicaland, Makoni
- 41 **NGAMIRA, Genus**, (MDC), 5 May 2002, Mashonaland Central, Bindura
- 42 **NGUNDU, Shepherd**, (MDC), 5 February 2002, Mashonaland Central, Mount Darwin South

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the Constitution the Prison Service is under the command of the Commissioner of Prisons. The clear inference is that the words “members of a Ministry or department” in s 108 of the Constitution do not encompass members of a disciplined force (which is a term defined separately in s 113 of the Constitution as including the Defence Forces, the Police Force and the Prison Service). Practice reflects the law: the disciplined forces — particularly the Defence Forces — are not in fact under the control of a Minister or a permanent Secretary. Furthermore, s 8 of the Ombudsman Act (which is set out in the text of this memorandum) was clearly drafted on the assumption that members of a disciplined force were not members of a Ministry or department. If the Legislature had believed that they were, it would not have excluded them from item 1 of the First Schedule to the Act.

² *Daily News* 16 January 2001. In terms of the Police Act [Chapter 11:10] it is an offence for a police officer actively to participate in politics.

³ In September 2002 he stated that he absolutely stood by what the security chiefs had said at their press conference.

⁴ *Herald* 31 August 2002

⁵ Senior officers Chimwanda and Ncube were quarantined in the “Commissioner’s Pool” introduced by Chihuri to monitor senior officers about whom he is distrustful. Both decided to leave the force. Former Assistant Commissioner Simbi said: “I need not pretend that all is well...The ZRP is going through a very bad patch and some unprofessional fingers that are raised have taken advantage of this.” *Independent* 11 May 2001.

⁶ *Financial Gazette* 4 June 2001.

⁷ *Sunday Mail* 7 June 2001.

⁸ *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.”

⁹ One recent example of this is a *Daily News* report on 2 September 2002 describing how two recently graduated members of the youth brigade beat up a police officer at Harare Central Police Station after they had been arrested on charges of theft and violence.

¹⁰ The MDC election director, Mr Nyathi, alleged that 70 of the MDC candidates for the election had been arrested on trumped up charges by the police. He also said that 20 MDC candidates had been assaulted and forty candidates had withdrawn in two districts out of fear for their safety. Associated Press report 3 September 2002.

¹¹ For instance, on 5 September 2002 the *Daily News* reported that Harare City Councillors and the MDC have 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 are in custody on allegations of murdering a ZANU (PF) activist. The previous week the two accused told a Harare magistrate that they were brutally tortured by the police, suspected

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²⁹ Electoral Act (Modification) (Postponement of Harare City Council Elections) Notice, 2002 (SI 13A/2002).

³⁰ Case no. HC 24/2002.

³¹ Whatever the Registrar-General's motives may have been, in fairness it must be pointed out that by then he was in an awkward position: the Supreme Court had ordered the election to be held by 11 February, while the President had directed that it be held on 9–10 March.

³² *Registrar-General v Combined Harare Residents' Assn & Anor* S-4-2002.

³³ *Registrar-General of Elections v Combined Harare Residents Assn & Anor* S-7-2002.

³⁴ *Ibid* at page 18.

³⁵ Since the High Court's ruling was only a provisional one, the High Court had not finally determined the validity or otherwise of the notice. Until it did so, and there was an appeal from that final determination, it was not open to the Supreme Court to decide the issue.