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ZIMBABWE

The toll of impunity

1 Introduction

Amnesty International defines impunity as the failure to bring to justice those who commit serious violations of human rights. By ignoring the violation, the state compounds it. The absence of justice and redress prolongs and intensifies the pain felt by the relatives of those who are killed, or who “disappear”. Moreover, this failure by the state gives a green light to the perpetrators to continue.

Impunity begins when state authorities feel that they cannot achieve their political goals through legal means or with the support of the people. Impunity implies the distortion of the rule of law. It is justice being evaded by those for whom the law is an obstacle, as well as violations committed to attack or punish those who should be protected by the law. When a government adopts a policy of impunity, other measures may follow: the rights to freedom of information and assembly are suppressed, the protective role of the police and security forces is eroded and the independence of the judiciary is undermined. All this is done in order to form a shield under which impunity for further human rights violations can flourish without scrutiny.

Impunity has become the central problem in Zimbabwe, where state security forces – police officers, army officers or agents of the

Central Intelligence Organization (CIO) – commit widespread human rights violations without being brought to justice. The Zimbabwean government has also organized, coordinated or otherwise encouraged “militias” to carry out threats, assaults, abductions, torture and killings against its perceived political enemies. As a disguised arm of the state, these informal “militias” are composed of supporters of the ruling Zimbabwe African National Union – Patriotic Front (ZANU–PF) party, members of the Zimbabwe National Liberation War Veterans Association (ZNLWVA) and unemployed rural youths, sometimes press-ganged into their activities. Police have often accompanied these “militias” in committing their crimes. And after December 2001, members of an official national youth service trained as a paramilitary force joined the informal “militias” in committing human rights violations across the country. Amnesty International uses the term “militia” to refer to all such groups.

A culture of impunity has been reinforced in Zimbabwe for the “militias”, state agents and other supporters of the ruling party who carry out politically motivated violations. This report's purpose is to describe, using a series of case studies, how impunity has been promoted by the government in Zimbabwe and to propose recommendations on how to break that impunity for perpetrators of human rights violations.

Historical impunity

In Zimbabwe, the growth of impunity has been a long-term phenomenon that extends back into the days of the nationalist armed struggle in the 1970s, when Southern Rhodesian forces committed atrocities against the civilian population in their pursuit of African nationalist armed groups. Amnesty International documented many violations by forces of the white minority regime, and campaigned for the fair trial or release of Robert Mugabe, now the President of Zimbabwe, as well as many former and current senior politicians such as Joshua Nkomo, Eddison Zvobgo and Simon Muzenda¹. Then, as in the current situation, youth supporters of the armed opposition carried out assaults, torture and killings of rural people in the name of the liberation movement.

After a negotiated peace settlement led to independence in 1980, perpetrators of human rights abuses from both sides of the war were allowed to go unpunished in the name of reconciliation. After independence, there was no public discussion of holding accountable any of the nationalist leaders, combatants or youth followers for

¹ In the 1970s, Eddison Zvobgo was the former deputy Secretary-General of ZANU and became the Minister of Local Government and Housing at independence. Simon Muzenda was the Vice-President of ZANU at that time, and is currently Vice-President of the government. Both men remain senior members of the party. Joshua Nkomo, the President of the Zimbabwe African People's Union (ZAPU) party, later became the second Vice-President after the two political parties merged in 1987.

hundreds of arbitrary killings, torture or "disappearances" of civilians. Similarly, senior Rhodesian officials of the CIO, and other high-ranking military and police commanders who may have participated in widespread human rights violations, remained on duty in active service in the newly created nation of Zimbabwe.

Starting in the early 1980s, the purported threat of "dissident" ex-guerilla fighters in the Matabeleland and Midlands provinces led to a counter-insurgency war in which several thousands of civilians were killed or "disappeared".² Some estimates put the number of deaths at up to 10,000 civilians. Thousands were arbitrarily detained, beaten and often tortured in official operations by the Zimbabwe National Army. Some atrocities committed by the army's Fifth Brigade were disguised as "dissident attacks". Most of the perpetrators of other mass killings and "disappearances" can never conclusively be identified. A commission of inquiry was set up by the government to investigate the events in Matabeleland and Midlands. However, the report has never been made public. In 1999 human rights groups initiated court action to compel the government to release the report; however, the government claimed that the report was missing and could not be located.

The pattern of impunity

² Catholic Commission for Justice and Peace in Zimbabwe, Legal Resources Foundation, "Breaking the Silence – Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands 1980 - 1988".

This pattern of impunity in Zimbabwe has consisted of five elements:

- preventing those responsible for human rights violations from being brought to justice through the granting of presidential amnesties, clemencies and indemnities;
- the government has taken steps to obscure or prevent the identification of the state's agents in perpetrating human rights violations;
- human rights defenders and the independent media are prevented from investigating and publishing accounts of human rights violations;
- investigation and prosecution of state perpetrators has been blocked by the state's political manipulation of the police; and
- the undermining of the whole judicial system, not simply by encouraging the police to serve the political dictates of the government rather than the law, but also by eroding the independence of the judiciary and circumventing its effectiveness.

This report concentrates on human rights violations committed during the parliamentary elections in 2000, through the by-elections held in certain constituencies in 2001 after some of those seats fell vacant, to the presidential elections held in March 2002. In each of these election periods, the impunity of the past led to further violations being unleashed on the people of Zimbabwe. In this report Amnesty International examines the progression of several cases to illustrate how justice has been thwarted to ensure impunity for perpetrators of political killings and acts of torture.

"Terror Tactics" used in the run-up to the 2000 parliamentary elections

Grave human rights violations have been consistently reported in the context of recent elections in Zimbabwe. In the run-up to the parliamentary election of June 2000, Amnesty International documented extrajudicial executions, torture, beatings and abductions -- the vast majority committed by supporters of the ruling party or government agents. Amnesty International's report, *Zimbabwe: Terror tactics in the run-up to parliamentary elections, June 2000* (AI Index: AFR 46/14/00), was based on evidence gathered in Zimbabwe that the government was following "a deliberate and well-thought out plan of systematic human rights violations with a clear strategy, constituting state-sponsored terror in the run-up to the June elections". The report shone a spotlight on the lack of legal accountability of those responsible for the human rights violations in the three months prior to the parliamentary elections. It also described threats against journalists and human rights defenders, such as activists and civic education workers – and the deliberate lack of police action in investigating human rights violations, arresting those responsible and prosecuting them in a court.

Amnesty International described several cases in detail to illustrate violations involving politically motivated assaults, attempted political killings, political killings, and torture. It also recorded the intimidation of journalists and human rights defenders. In the first

case study, beatings were meted out in May 2000 to a young opposition activist, identified for reasons of security only as "A", in Mataga village in the district of Mberengwa in Midlands Province. A mob of 300 supporters of ZANU-PF abducted her and her husband after they reported assaults against them to the police. The ZANU-PF supporters beat them again for several hours in the presence of five police officers. In another case study, opposition candidate and later member of parliament for Kwekwe, Blessing Chebundo, told Amnesty International about attempts to kill him – including how he was doused with petrol and almost set on fire. His house, a few hundred meters from the police station, was subsequently burned down. No one has ever been prosecuted in connection with the attacks on Blessing Chebundo.

On 15 April 2000 David Stevens, an opposition supporter and commercial farmer in Macheke, Mashonaland East Province, was abducted from the police station in the town of Murehwa by "militia". The "militia" severely beat him and then summarily executed him by fatally shooting him at point-blank range. On that same day near Buhera, Manicaland Province, ZANU-PF supporters and at least one CIO agent, traveling in a truck marked "ZANU-PF Manicaland", used petrol to set alight a Movement for Democratic Change (MDC) campaign vehicle, killing opposition activists, Tichaona Chiminya and Talent Mabika. In July 2001 the Attorney General, acting on a request from the High Court, ordered a police investigation into the murders of Tichaona Chiminya and Talent Mabika. In May 2002 the office of the Attorney General reiterated its request, asking the police to submit the results of their investigation. However, at the time of

writing (June 2002), no docket had been submitted and the alleged killers, whose identities are known, remain at large. The CIO officer remains on active duty.

In researching the May 2000 "Terror Tactics" report, Amnesty International interviewed several victims of torture, including a man referred to only as X who said he was abducted in May 2000 by "militia" members and held captive in Budiriro, a suburb on the outskirts of Zimbabwe's capital, Harare. During four days of captivity, X was repeatedly kicked and beaten, threatened with death, and had his head held in a toilet until he almost suffocated. The same group of ZANU-PF supporters abducted another man, identified only as Y, and held him at the same location. He was subjected to electric shocks to his under-arms and genitals, and to beatings on the soles of his feet.

Finally, in describing the "terror tactics" of 2000, Amnesty International documented the cases of journalists, human rights activists and civic education workers who faced threats and violence by war veterans and ZANU-PF activists. Although journalists and others had requested police protection, they not only failed to receive it but were sometimes subjected to human rights violations with the acquiescence, cooperation or active involvement of the police.

Amnesty International carried out further research on impunity in Zimbabwe during visits to the country in May, November and December 2001, and in March 2002. The organization followed up on the cases described above in order to find out if they had been properly investigated, if suspects had been arrested or charged, or if

prosecutions had moved forward. In each case, Amnesty International has found that the perpetrators of killings, torture and assault had either never been arrested or had been arrested and absolved of their crimes after an official pardon.

The torture and killings Amnesty International documented in 2000 were indeed repeated during the next two years. Past impunity directly resulted in further state-inspired violence that took place in the run-up to the 9 to 10 March 2002 presidential election, as documented and criticized by members of observer missions from the United States, Norway, the Southern African Development Community (SADC) and the Commonwealth present during that election.

Impunity and international law and standards: the legal basis for rejecting impunity

A policy of impunity for human rights violations is totally contrary to international human rights law and standards. The 1993 UN World Conference on Human Rights declared that "[s]tates should abrogate legislation leading to impunity for those responsible for grave violations of human rights, thereby providing a firm basis for the rule of law."

States have a duty to bring to justice those within their jurisdiction who are responsible for human rights violations. These duties are spelt out in article (2) (3) of the International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe is party, and in international standards such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

The UN Special Rapporteur on torture has noted that "impunity continues to be the principle cause of the perpetuation and encouragement of human rights violations and, in particular, torture."

Impunity is sometimes enshrined in law in the form of legislation granting immunity to perpetrators of human rights violations. Amnesties, pardons and similar measures which prevent the emergence of the truth and accountability before the law have been rejected at the international level by the UN Secretary-General, the Security Council, the General Assembly, the UN Commission on Human Rights, the Committee against Torture and the Human Rights Committee, amongst others. On the subject of amnesties and other legal mechanisms for effecting impunity, in a General Comment on Article 7 of the ICCPR, the Human Rights Committee said: "Amnesties are generally incompatible with the duty of states to investigate such acts within their jurisdiction and to ensure that they do not occur in the future."

Recommendations on impunity in Zimbabwe

Amnesty International can explain how impunity has developed in Zimbabwe. The solutions to dispel it are not hard to find. What is difficult is how to persuade the authorities to change their policy. Breaking more than two decades of impunity, often deliberately instituted as state policy by the Zimbabwean government, will require considerable political will and commitment.

Zimbabwe's civil society has quietly begun forward-looking discussions about how a truth commission could contribute to ending the culture of impunity and promoting justice for victims. In the run-up to the 2002 presidential elections, some public debate was initiated about the issue of amnesties for perpetrators and reparations for victims and their families. Other mechanisms to strengthen accountability have been quietly broached in legal circles, such as the need to implement a just process of lustration, a legal process whereby

alleged past perpetrators in the security forces and government are identified and prevented from holding public office in any future government. However, the immediate challenge is how to facilitate a reduction in human rights violations and a transition to accountability of state agents and state-sponsored paramilitary groups, thus ending their present impunity.

Amnesty International has made seven recommendations to the Zimbabwean government and the international community. Whilst some of these recommendations can be implemented straight away, others require the political will on the part of the Zimbabwean government which is absent at this time.

- All reports of human rights violations should be promptly, independently and impartially investigated, and where sufficient admissible evidence is found, prosecuted. Amnesty International also encourages Zimbabwean civil society and international organizations, working together, to conduct investigations into human rights violations;*
 - The Zimbabwe authorities should ensure that the police abide by international human rights standards and the highest standards of professionalism;*
 - The government of Zimbabwe should review national legislation and the constitution with the aim of repealing or amending those laws that are not in conformity with international human rights standards;*
 - Zimbabwe should ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;*
 - The Zimbabwe authorities should establish an independent police monitoring mechanism;*
- reforms should be carried out to ensure the independence of the judiciary;*
- Further international and regional pressure should be applied on the Zimbabwe authorities to allow the United Nations Special Rapporteur on the independence of judges and lawyers access to the country.*

These recommendations are elaborated upon at the end of the report.

II The toll of impunity

As noted above, impunity has been reinforced in Zimbabwe through five mechanisms. Official pardons, clemencies and amnesties have been used to prevent those responsible for violations from being brought to justice. By sponsoring “militias”, the government has attempted to obscure or prevent the identification of the state's hand in perpetrating human rights violations. Human rights defenders and the independent media have been prevented from documenting the activities of perpetrators. The government has thwarted the prosecution of perpetrators by political manipulation of the police, and by undermining the independence of the judiciary, either through apparent manipulation or by the passage of legislation. Each of these mechanisms will be examined in turn, through a comparison of the violations documented in the earlier Amnesty International report and later events in Zimbabwe.

1. The granting of Presidential clemencies and amnesties has reinforced impunity in Zimbabwe.

The most blatant form of impunity is legalised impunity in the form of amnesty laws shielding human rights violators from prosecution. Amnesty International opposes the granting of pardons, amnesties and similar measures for human rights violations when they prevent

the emergence of the truth, the determination of guilt or innocence by a court and reparations for victims. There has been a historical pattern, by both the previous white minority government and the government of President Robert Mugabe, of reinforcing impunity by granting official pardons and clemencies to the perpetrators of violations.

During the liberation war of the 1970s, as African nationalists fought the white minority government of Ian Smith, human rights lawyers at the time sued the state for damages or the release of those arbitrarily detained. Despite the laws which gave the state wide powers to curtail internationally recognized rights, such as the Law and Order Maintenance Act and the Preservation of Constitutional Government Act, members of the army and police were sometimes successfully prosecuted in the courts. In response, the Rhodesian state adopted the Indemnity and Compensation Act number 45 of 1975, by which the state sought to indemnify police and soldiers in advance for any human rights violations they perpetrated. The key provision of this act was that "if any member of the security forces, defined as the army, the police, and the CIO, or if any civil servant or any minister of government, acting 'in good faith', committed a breach of the law and became liable criminally or civilly, no court of law could hold them accountable."³

³ Welshman Ncube, unpublished paper, "Zimbabwe since 1965: a history of injustice and impunity".

Although later repealed by the new Zimbabwean government, it was immediately resurrected by the new government as the Emergency Powers, Security Forces Indemnity Regulation of 1982, which provided a similar blanket indemnity not just for past conduct but for future violations of human rights. This act was later found unconstitutional by the Supreme Court, but it set the stage for further attempts to grant impunity to state actors.

As part of the Lancaster House agreement of 1979 that led to Zimbabwe's independence and one-person, one-vote elections, the Amnesty Ordinance (3) of 1979 and the Amnesty (General Pardon) Ordinance (12) of 1980 were legislated to grant an amnesty to all of those who had participated in the struggle for African self-determination or the defense of then-Rhodesia for any human rights violation they had committed – killings, rape, assault or torture. Welshman Ncube, a professor of law at the University of Zimbabwe, who is also Secretary General of the MDC, commented about this general amnesty:

"Zimbabwe therefore began independence with what can be described as a terrible precedent. We had a blanket immunity in the absence of full knowledge. The effect of this was to say: 'We don't want to know who did what, we are not interested in truth, nor are we interested in justice – in order to have reconciliation, the nation must

subject itself to a collective state of amnesia about its past, and proceed."⁴

In the current Zimbabwean constitution, the clemency or pardon clause reflects historical precedent. In the 1953 constitution of Rhodesia, this clause empowered the governor and later the head of state to effectively grant a pardon to any person convicted of a crime. In the 1969 constitution, this power of pardon was widened to allow the head of state to grant clemency to those involved in criminal activities – whether they have been convicted or before there is a determination of guilt. In the current Zimbabwean constitution, Section 31(i) gives the President the right to grant a pardon, amnesty or clemency to those convicted or due to be convicted of a crime. There are no definite criteria spelled out to limit this power or provide for further review by Zimbabwean society, and therefore it can be used to reinforce impunity for perpetrators of human rights violations.

Under President Robert Mugabe, this presidential power of clemency has been used several times to excuse politically motivated human rights violations. In Clemency Order (1) of 18 April 1988, the government issued a general amnesty with respect to all human rights violations committed by the state security forces and the so-called dissidents between 1982 and the end of 1987. This clemency was part of the Unity Accord between the Zimbabwe African National Union (ZANU) and the Zimbabwe African Peoples' Union (ZAPU) that

⁴ *Ibid.*

led to the creation of ZANU- Patriotic Front, and ended a bloody period in Zimbabwe's history.

The majority of those benefitting from the clemency were the state security forces involved in systematic and widespread atrocities. In their 1997 report "Breaking the Silence, Building True Peace - A Report on the Disturbances in Matabeleland and the Midlands, 1980 to 1988", the Catholic Commission for Justice and Peace and the Legal Resources Foundation estimated that during that period there were more than 3,000 extrajudicial executions, hundreds of "disappearances", more than 7,000 beatings or cases of torture and more than 10,000 arbitrary detentions in Matabeleland North, Matabeleland South, and Midlands provinces. The report presented evidence indicating that most killings and "disappearances" were committed by government forces, most notably the army's Fifth Brigade.

The abuses documented during this period by Amnesty International and other organisations, including torture, extrajudicial executions and "disappearances", are serious crimes under international law, and may amount to crimes against humanity, as defined in the Statute of the International Criminal Court, adopted in July 1998. The obligation to bring the perpetrators to justice applies no matter how much time has elapsed since the commission of the crime and regardless of any domestic legal measures such as amnesty or clemency exempting perpetrators from criminal prosecution or conviction.

One of the most famous cases of abuse of the presidential pardon occurred in 1993, when President Mugabe used his power to intervene in the punishment of a CIO agent and a ruling party activist who attempted to kill an opposition candidate. Businessman Patrick Kombayi, a candidate in the Gweru constituency in the 1990 General Election, ran against the ruling party's candidate, Vice President Simon Muzenda. When it appeared that Simon Muzenda might lose the election, a CIO agent, along with a supporter of the ruling party, shot Patrick Kombayi, maiming him for life. Although the two gunmen were prosecuted and ultimately convicted in the High Court and sentenced to a term of imprisonment, they did not spend a day in prison. Instead, on the day after the Supreme Court rejected their appeal against conviction in 1993, the President published a presidential pardon for them and they were set free. The government's Electoral Supervisory Commission expressed concern in 1994 that the public's perception of the pardon might lead some to conclude that in future elections violence would go unpunished. It noted:

“In this situation the Commission strongly recommends that the confusion and uncertainty in the minds of the electorate be put at an end with a firm statement or statements from the Office of the President and/or Government Ministers making it clear that in future elections violence will not be tolerated and anybody who

commits any act of violence or other electoral offence will be tracked down, brought to justice and duly punished.”⁵

The next presidential amnesty, Clemency Order (1) of 1995, officially excused the politically-motivated beatings, burning of homes and intimidation perpetrated by supporters of ZANU-PF during the 1995 elections, by granting amnesty to those liable to criminal prosecution for or convicted of these crimes. This set a further precedent for yet another presidential pardon for political violence, Clemency Order (1) of 2000, which was declared after the June 2000 parliamentary elections. Once again, those involved in human rights violations – such as kidnapping and torture, but excluding murder, rape and fraud – were placed beyond the reach of the justice system.

Case Study: Impunity for torturers in Budiriro

⁵ Extract from the Interim Report of the Electoral Supervisory Commission April 1994, published by the Legal Resources Foundation in Legal Forum, Volume 7 Number 1, March 1995.

On 30 May 2000, in Harare, Amnesty International met with two individuals who asked to be identified publicly only as "X" and "Y", out of fear of future reprisals by the Zimbabwean government and its agents for describing their torture to an international human rights organization. In the weeks before the interviews, Amnesty International had received several reports of systematic torture in Budiro, a high-density suburb on the outskirts of Harare, at the doctor's surgery owned by Chenjerai "Hitler" Hunzvi, the then-leader of the Zimbabwe National Liberation War Veterans Association. These were two men who claimed to have endured such torture.

War veterans leading a "militia" reportedly began to abduct those identified as MDC activists and torture them at the Budiro surgery sometime in April 2000. Police stepped in to make their first arrest of "militia" members only on 17 May, after a newspaper highlighted an incident in which an MDC youth leader was beaten to death while attempting to flee. MDC supporters and members of the community attacked the "militia" members at the surgery in an attempt to free those being held. By mid-May, some of the individuals who claimed to have been tortured and then released reported to Amnesty International that they saw police officers coming in and out of the surgery to secure the release of some torture victims, leaving behind others, who then endured further brutalization. At the time of the interviews, eyewitnesses also reported that the surgery was guarded by police and security force personnel to prevent further community attacks.

An MDC supporter who asked to be identified only as Y told Amnesty International in an interview in Harare that he was

abducted on 8 May 2000. He identified army soldiers as some of his captors. At the surgery, a group of ZANU-PF women supporters forcibly stripped him. A large group of people took turns torturing him with electric shocks through wires applied to his arm pits and between his legs near the genitals, leaving scars that were visible at the time of the interview. A doctor who examined Y confirmed that the scars were consistent with electrical shock burns. "The women are the ones who tortured us more," Y stated. Later, he was beaten with sticks and whips in the ribs and on the soles of the feet. At the insistence of a friend who witnessed Y's abduction, the police later intervened to rescue Y, but left several others behind.

An individual who is identified only as X described to Amnesty International how he had been walking home from work on 13 May 2000 in Budiriro when five "militia" members grabbed him and forced him to walk towards Hunzvi's surgery. He believes his abduction was a case of mistaken identity and that the intended victim was his brother, an MDC activist. As he struggled to escape, they beat him and squeezed his testicles. X reported that, on the first day of his captivity, he was beaten and kicked by several men until he bled through the nose and mouth, and fell to the floor in a feigned swoon. On the second day, he was again beaten by "militia" members using a broom stick on the hands, back, buttocks and on the soles of his feet. Later, the "militia" members threatened to cut his heart out with a knife. On the third day, he was made to spin around until dizzy, then bound and gagged and held upside-down, with his head suspended in a toilet bowl that was repeatedly flushed until he could not breathe. On the fourth day of his captivity, he was made to write a letter to

attract his brother to come to the surgery, and later released. X immediately reported the torture to police at Harare Central Police Station. The police finally took action on 17 May, when 46 “militia” members were arrested, some of whom were held in custody on charges of assault.

The clemency proclaimed by President Mugabe on 6 October 2000 granted an indemnity to every person liable to criminal prosecution, whose guilt or innocence has not been determined by a court, for any politically motivated crime committed during the period 1 January 2000 to 31 July 2000 – excluding the crimes of murder, fraud and rape. It protected perpetrators of human rights violations who were liable to prosecution for, or were charged with, assault with intent to do grievous bodily harm (torture), common assaults, kidnapping and abductions in connection with the 12 and 13 February referendum and the 24 and 25 June elections. The October 2000 amnesty ended any chance of accountability for X and Y. In late November, Minister of Justice, Legal and Parliamentary Affairs Patrick Chinamasa told parliament that 111 arrested individuals had been released (87 for public violence, 17 for assault, four for property damage, two for kidnapping and one on firearms offences). He did not provide figures for those ‘awaiting prosecution’.⁶

The torture that took place in Budiro was not an isolated event. Torture centers had been set up across Zimbabwe during 2000 in a widespread, systematic program by state-sponsored “militias” to abduct and torture those identified as MDC activists. Detailed

⁶ Hansard report of Parliamentary Debates, Vol. 27, No. 31 p. 3088.

accounts of such human rights violations have been compiled by the Zimbabwe Human Rights NGO Forum, a coalition of nine non-governmental organizations (NGOs) that have worked together since 1998 on documenting human rights violations and assisting victims of organized violence. The Human Rights Forum, as it is known, summarized the political violence in the period from February 2000⁷ through the June 2000 parliamentary elections to the first by-election held in late November 2000. It found a total of 2,694 incidents including a total of 80 political killings, 42 unlawful arrests or detentions, more than 800 kidnappings or disappearances, more than 90 cases of torture and more than 10 rapes.⁸

The main beneficiaries of the 6 October 2000 indemnity were those who allegedly committed the majority of the crimes: President Mugabe's own party's supporters, particularly the "militia" members who had set up torture camps and systematically abducted and assaulted those perceived to be sympathetic to the opposition. "Rural folk reported an upsurge in violence as they were assaulted for having laid the complaints which resulted in the arrests of the offenders who were subsequently released," according to the Human Rights Forum.⁹

⁷ This was the date of a referendum on draft constitutional proposals written under a government-controlled process, and included a clause allowing seizure of land with minimal compensation. Civil society campaigned against the proposal, handing the government its first-ever loss at the polls.

⁸ Zimbabwe Human Rights NGO Forum, "Human Rights and Zimbabwe's June 2000 election", January 2001.

⁹ Zimbabwe Human Rights NGO Forum, "Human Rights and Zimbabwe's June 2000 election", January 2001.

Zimbabwe's former Chief Justice Anthony Gubbay, whose resignation followed government harassment and criticism of his judgments, described the impact of this clemency order in terms of impunity:

"In the main, these crimes were committed by supporters of the ruling party against supporters or supposed supporters of opposition parties. Thus the effect of the amnesty is to create the impression that political violence will be condoned and those responsible for it will go unpunished. This is extremely dangerous. It sends the wrong signal, suggesting that the election related violence will be tolerated – a bad precedent for future elections. Already there are reports of persons who have benefitted from the amnesty taking violent action against those who reported them to the police."¹⁰

Amnesty International, with an eye to the 2002 presidential elections, called President Mugabe's 2000 clemency order "unjust and unacceptable", and noted that: "Given that Zimbabwe is preparing for a presidential election in early 2002 this pardon for human rights abuses in an election campaign is giving the wrong signal."¹¹ Amnesty

¹⁰ Anthony Gubbay, "The plight of successive chief justices of Zimbabwe seeking to protect human rights and the rule of law", an address delivered in London for the John Foster Charitable Trust Annual Lecture on 5 November 2001.

¹¹ Amnesty International, "Amnesty International condemns Zimbabwean amnesty", AI Index: AFR 46/28/2000, 11 October 2000.

International points to the impunity granted to state perpetrators in the 2000 elections as a direct cause of much of the violence they would again commit later in 2000, and then in 2001 and 2002.

Extending the case study: Impunity in Budiro and other Harare suburbs

The brutality meted out by uniformed police and army officers continued in Harare's suburbs after the amnesty declaration, bearing witness to the effects of the impunity granted to official perpetrators of human rights violations. In October 2000, Harare's high-density suburbs witnessed public rioting sparked by growing discontent over rising prices for bread, sugar, transport and other basic commodities. Using force in excess of that needed to restore order, the government sent in soldiers who, along with riot police, carried out random beatings of residents and indiscriminately used tear gas in what appeared to be politically motivated repression.

The Zimbabwe Human Rights Association, or ZimRights, documented cases of police and military brutality against residents in Harare suburbs. Philliat Matsheza, the director of the Human Rights Research and Documentation Trust of Southern Africa, made a public call upon the police and army to uphold professional standards and refrain from using excessive force against citizens. The Trust had conducted training courses in human rights for police officers, and he now expressed his shock at the behavior of "trained" officers:

"We don't expect such conduct from a professional force. What it means is that it is not a lack of knowledge that is leading to such conduct. It is a case of people willfully

doing something wrong. We are seeing political interference and the independence of institutions being eroded."¹²

In November 2000, 17 people, including a public prosecutor, filed a civil damages suit against the government for the door-to-door beatings and tear gas dropped arbitrarily on communities from police helicopters. For example, in two separate plaintiffs' declarations examined by Amnesty International, victims described how Zimbabwe Republic Army officers in uniform burst into their homes alleging that they had looted items from a nearby shopping center and that they were members of the MDC. The methods appeared similar in both cases: the victims were made to lie prone on the floor while the officers took turns assaulting them with baton sticks and kicks. In both cases, the officers stated that they were beating the victims in retribution for voting for the MDC political party. The Human Rights Forum filed 14 separate legal suits claiming compensation for beatings by police and army soldiers that took place at that time in Budiriro. According to one of the lawyers who filed those suits, the effect of the amnesty was to increase violence in Budiriro and across the nation:

"We witnessed people dressed in army uniforms, in army vehicles, using AK-47s – weapons available to the army alone – in an operation that involved going around high density suburbs indiscriminately beating people up in beer halls and elsewhere in retribution for voting for an MDC

¹² *Daily News*, "Police, Army Action Deplore", 23 October 2000.

member of parliament. These cases are the tip of the iceberg of a huge number of cases that will never see the light of day because these cases involved people who cannot afford lawyers to sue in civil court. "

The state only responded to the claims in June 2001, and the court proceedings continue in some of the cases.¹³ The state decided to settle six of the cases out of court with an undisclosed amount of compensation, but some five other cases were still pending trial as of April 2002.¹⁴ Amnesty International has not, so far, been able to ascertain whether compensation was actually paid out to the victims who settled their suit.

Between late February and 20 March 2001, army units were again deployed into densely populated suburbs of Harare, including Budiriro. In the night, soldiers began assaulting residents indiscriminately, in beer halls and in the streets, and in some cases breaking into people's homes. The soldiers accused residents of supporting the MDC, and forced them to chant slogans of the ZANU-PF party, while beating them with fists. Their intimidation again appeared to be motivated by the overwhelming number of votes cast by these communities in favor of the MDC in the June 2000 parliamentary elections.

¹³ *Daily News*, "17 to sue army over beatings", 8 July 2001.

¹⁴ Amnesty International interview, April 2002.

In another high-density suburb outside of Harare, the community of Chitungwiza, Amnesty International also documented the case of eight activists in the youth league of the MDC who were abducted from their homes in St. Mary's constituency between March and June 2001. By 11 June, MDC Member of Parliament Job Sikhala confirmed that three of the eight had been released from a "private jail" run by ZANU-PF supporters and war veterans. Those abducted reported being beaten day in and day out, in an attempt to make them confess to having received military training.¹⁵ The five others remained missing until later that year, when they were reportedly released. Job Sikhala, himself a former student leader and now an outspoken critic of the government in parliament, had earlier been singled out for attack when he and his wife were beaten by soldiers in January 2001. Lawyers for Job Sikhala and other victims of beating alleged that police officers were also directly involved in the attacks on MDC supporters.

By July 2001, Budiriro residents reported that army soldiers and police began beating residents up again, apparently in reprisal for their observance of a two-day stay away organized by the Zimbabwe Congress of Trade Unions. Tim Rhumba, who lived in Budiriro, was quoted in a daily newspaper describing how armed soldiers arrived in five trucks outside his home as they searched for someone identified as an MDC official. He said the soldiers ordered him and other occupants in the home to lie down on the floor, and then began to assault

¹⁵ Amnesty International interview, June 2001.

them.¹⁶ Similar beatings by the army and police, in a joint operation, reportedly took place in Harare's suburbs of Warren Park, Kuwadzana and Dzivaresekwa. Several people were injured by whippings and beatings in those incidents.¹⁷

¹⁶ *Daily News*, "Soldiers assault Budiriro residents", 12 July 2001.

¹⁷ *Daily News*, "Armed soldiers unleash terror", 6 July 2001.

By December 2001, hundreds of youths wearing green military fatigues arrived in the Harare suburbs and elsewhere. They were from the Border Gezi Training Centre in Mashonaland Central province, run by the government as part of the National Youth Service training program. On 20 December 2001, dozens of paramilitary youth arrived in trucks at a shopping center and forced Budiriro residents to sweep the area with brooms. They beat those who refused to comply. Police later arrested several people, all of them members of the public, in connection with the incident.¹⁸ Witnesses to further incidents in the Harare suburbs of Budiriro, Mabvuku, Glenview, Kuwadzana, Mbare, Warren Park and Epworth told journalists of how police officers stood by while the youths, clad in green army-style uniforms, beat up residents. The youths were transported in buses or in vehicles bearing government license plates. A police spokesman stated that police had arrested six youths and indicated that the attacks were politically motivated, but refused to confirm whether the youths were National Youth Service trainees.¹⁹

Amnesty International's conclusions about amnesties and clemency orders

In the aftermath of the 2002 presidential elections, Amnesty International remains concerned that yet another amnesty may be

¹⁸ *Financial Gazette*, "Youths descend on Harare suburb, assault locals", 20 December 2001.

¹⁹ *Financial Gazette*, "Human rights, civic bodies condemn 'fresh wave of terror' in cities", 4 January 2002.

issued by presidential decree to prevent those who have committed gross human rights violations – the vast majority of whom are ruling party supporters – from being brought to justice.

The use of presidential pardons represents a lost chance for justice and for breaking the cycle of impunity that has plagued Zimbabwe. By creating impunity for gross human rights abuses, these presidential clemency orders have encouraged state agents to continue to commit or condone human rights violations in the knowledge that they will not be held responsible for such crimes by the government. The repeated use of clemencies by the Zimbabwean government to grant impunity to its security forces and “militias” is a clear violation of international human rights law. For example, under the ICCPR, to which Zimbabwe acceded in May 1991, Zimbabwe undertook under article 2 “to ensure that any person whose rights or freedoms... are violated shall have effective remedy...” Such effective remedy includes the prosecution of perpetrators of human rights violations and the right to adequate compensation.

Amnesty International concludes that assaults and acts of intimidation by members of the army, police, “militias”, and National Youth Service have been encouraged by the clemencies granted for previous political crimes. State agents violate the human rights of Zimbabwean citizens because they know they will not be held accountable for their actions.

2. Obscuring or preventing the identification of those who commit human rights violations perpetuates impunity

Impunity can be granted through *de facto* means, as well as by official pardons or clemency orders. Impunity is facilitated when the state tries to obscure the identity of those committing violations, and thereby to deny its involvement and its responsibility. The “militias” have been used in illegal occupations of white-owned commercial farm lands, as well as for political assaults on and killings of those perceived to support the government's opponents. The lack of police action to check these proxy forces has allowed them to take control of rural areas, creating “no-go” areas out of broad stretches of countryside, and to take control of peri-urban communities and entire small towns. The police in many areas appear to have relinquished control to “militias” or to have assisted them in their abductions and attacks.

In the June 2000 parliamentary elections, the MDC won 57 out of 120 contested seats, and brought legal challenges at the High Court against the results in 39 constituencies. The MDC alleged that “militias” committed human rights violations against the MDC party and the general electorate with the knowledge or active participation of ZANU-PF and thus unfairly skewed the results. ZANU-PF candidates denied any link between the “militias” and the ruling party and government. The disavowal of the “militias” showed the importance of “deniability”.

In the court hearings reviewing the election in the Makoni East

constituency of Manicaland Province, for example, Amani Trust Clinical Director Tony Reeler testified that he examined torture victim Pishai Muchauraya and found evidence of post-traumatic stress disorder stemming from Mucharaya's assault by ZANU-PF supporters. Numerous witnesses for the petitioner testified that ZANU-PF candidate Tongesayi Shadreck Chipanga was aware of or was present at "militia" attacks in the run-up to the election. One witness, John Wenhira, testified that he had been assaulted on 22 June 2000 by "militia" members who were from a "militia" base set up outside the town of Nyazura by Tongesayi Shadreck Chipanga, who is a former director-general of the CIO.²⁰ Yet Tongesayi Shadreck Chipanga denied that he or his party were involved in any act of violence: "It has never been ZANU (PF)'s policy and it will never be ZANU (PF)'s policy to assault people."²¹

²⁰ *Daily News*, "Witness says Chipanga set up base for ZANU PF youths", 12 June 2001.

²¹ *The Zimbabwe Human Rights NGO Forum, Zimbabwe Parliamentary Election Challenges Newsletter* – July 23, 2001, v. 19.

In the court hearings reviewing the election in the Mutoko South constituency of Mashonaland East Province, Matthew Rukwata Dovi, a parliamentary candidate for the MDC testified that "militia" members abducted him on 20 April 2000 and held him for three weeks. He said that he was often handcuffed, and repeatedly assaulted, and on one occasion he and three other MDC party members were forcibly exhibited as "MDC turncoats" upon a stage at a ZANU-PF rally. Government trucks donated by foreign donors were used to transport the abducted victims. Upon release he fled to Harare and renounced his candidacy for parliament.²² In defending her electoral victory, ZANU-PF Member of Parliament Olivia Muchena denied that any violence had taken place in her constituency.

ZANU-PF candidate Pearson Mbalekwa, who won the election for Zvishavane in Midlands Province, told a court hearing on an election challenge that he could not have used the "militia" to win because he himself was threatened with death by "militias" sent by Cephass Msipa, a senior ZANU-PF party official and governor of the Midlands Province. "I was approached by five ex-combatants who broke bottles and said it was a message from Msipa that they could kill me," he testified.²³ Several other witnesses, including civil servants and trade unionists unconnected with the MDC party, testified that they had been beaten or threatened by "militia" members. Still other witnesses, including the unsuccessful MDC candidate, Farai

²² The Zimbabwe Human Rights NGO Forum, Zimbabwe Parliamentary Election Challenges Newsletter, March 12, 2001, v.3.

²³ *Daily News*, "MP claims Msipa wanted him dead", 22 February 2001.

Maruzane, described a 9 April 2000 incident in which 150 “militia” members arrived at an MDC rally at the Musuki Business Centre in Mushaya, Masvingo Province, and began assaulting some 15 residents. Maruzane told the court that he recognized at least one member of the CIO and one police officer among the “militia” attackers.²⁴

Using “militias” to commit human rights violations during illegal land occupations

Amnesty International is concerned at the widespread human rights violations carried out against dozens of commercial farmers and thousands of farm labourers in the context of redistribution of land in Zimbabwe. The pattern of attacks is part of the structural impunity, in that the government sees itself as above the law and resorts to the illegal use of force through the “militias”, which in turn leads to serious violations of human rights.

²⁴ Amani Trust, Zimbabwe Parliamentary Election Challenges Newsletter, February 26, 2001.

By the late 1990s, Zimbabwe's involvement in the civil war being waged in the Democratic Republic of the Congo created serious economic hardships and shortages of petrol and paraffin (kerosene). The government was widely criticised for economic policy mismanagement and large-scale corruption. In the opinion of the Zimbabwe Human Rights Forum: "The Government's popularity declined rapidly. It was faced with food riots and demonstrations, and then with the first major challenge to its stranglehold on power – the birth of the MDC. The subsequent farm invasions were not spontaneous; they were, and continue to be, orchestrated by the Mugabe Government in reaction to this challenge and to the growing opposition among the population."²⁵ Local human rights activists estimated that farm occupations have led to the displacement of tens of thousands of farm workers and their families and hundreds of people assaulted or tortured or otherwise ill-treated.

When the Zimbabwe National Army's Fifth Brigade committed mass human rights violations in the mid-1980s, it appeared that the Zimbabwean government attempted to camouflage political killings of civilians by attributing many killings to "dissidents". In a similar manner in recent years, the Zimbabwean authorities have attempted to conceal state involvement in creating and coordinating the activities of "militias" that occupied farmland owned by white commercial farmers starting in 2000. These "militias" later became a proxy force for intimidating opposition activists and potential

²⁵ Zimbabwe Human Rights NGO Forum, "Politically motivated violence in Zimbabwe, 2000 - 2001: A report on the campaign of political repression conducted by the Zimbabwean Government under the guise of carrying out land reform", August 2001.

opposition supporters through political killings, abductions, torture and assault in the context of the parliamentary elections of 2000 and the presidential elections of 2002.

Observers of contemporary Zimbabwean affairs date the creation of the “militias” that spearheaded countrywide land occupations to February 2000, shortly after the government lost a national referendum on a government-sponsored constitution. A key provision in the government's draft proposed constitution was article 57, which allowed for the compulsory acquisition of land, and whose broad criteria for assessing any compensation for land thus acquired could allow for minimal, or possibly no, compensation to be paid. Many human rights analysts see the “militia” activity as the government's attempt to implement its policy through a seemingly non-state force disassociated from the government. A senior war veteran, speaking to Amnesty International on condition of anonymity, confirmed the state link to the land invasions:

“The military and the Central Intelligence Organization did the land occupations but used the mask of the war veterans. The trucks, the salaries and the food rations: the war veterans don't have that kind of money to organize such invasions. It's all from the president's office funding. But less than 100 genuine war veterans are involved, and these wanted the money and the resources – the rest of the people [involved in land occupations] are unemployed youths and ordinary citizens in the rural areas. Why would the government use an unconventional force and

not come out and do this openly? It's not about land, but it's about politics. It's directed against whites to use them politically as a scapegoat but it's about the MDC, targeting MDC supporters because the MDC membership is a majority of black Zimbabweans."²⁶

Impunity is at the heart of the functioning of the state-sponsored "militias", which often have war veterans at their head. A member of the alternative war veterans organization, the Zimbabwe Liberators' Platform (ZLP), believes the war veterans get their authority outside the normal channels of the state. "The war veterans are doing it not out of fanaticism, but because of President Mugabe's control and the impunity given to them by the President."²⁷ The ZLP's stated objectives include assisting the rehabilitation of war veterans and others involved in the 1970's nationalist struggle, so that "...they cease to be a burden on the society, which makes them vulnerable to manipulation by unscrupulous politicians".

Amnesty International interviewed a former military officer, also speaking on condition of anonymity, who confirmed the government role in working with the army to coordinate land occupations by the "militias" :

"There's also the land acquisition coordination committee, which coordinated the military activities with the local

²⁶ Amnesty International interview, December 2001.

²⁷ Amnesty International interview, November 2001.

government ministry, because this representative with the Ministry of Agriculture is responsible for identifying land to be occupied. The resettlement is led by the army, through [the government parastatal] Agritex, which provides technical services such as sub-dividing the land. The army coordinates the activities of all the war veterans occupying the farms. Officers are given leave to help coordinate, and are dressed in civilian clothes."²⁸

After many years in the armed forces, this officer had been posted into the "Commander's Pool", where officers suspected of supporting the opposition were given a salary but had no desk or duties. Up to 100 army officers were in this pool by August 2001, with many transferred to lower status postings, discharged after quasi-judicial hearings by a Board of Suitability or forced into early retirement, according to Amnesty International's source. In their place, former guerilla fighters were promoted ahead of those army officers who did not fight in the 1970s nationalist war.

Political intimidation by the "militia"

"Militias" made up of ruling party supporters, often led by war veterans, were active in the 2000 parliamentary elections. In its report on election violence, the Human Rights Forum observed:

²⁸ Amnesty International interview.

"The rural areas were, and remain, the epicenter for the violence against MDC supporters. In the run-up to the June 2000 General Election, at least 35 MDC supporters were killed by ZANU-PF "militias", mainly in the rural areas. The "militias" kidnapped and tortured people at centers specifically set up for this purpose. They raped women. They set fire to houses and food stores. They assaulted and drove away teachers, doctors and nurses whom they suspected of encouraging people to support the MDC. They warned hospitals and clinics not to treat MDC supporters injured in these attacks."²⁹

International observers concurred with this judgment. In its published conclusions on the political violence it saw in the run-up to the 2000 parliamentary elections, the Commonwealth Observer Mission described incidents of violence and intimidation which had impaired the freedom of choice of the electorate. "We received a substantial number of reports of violent incidents and ourselves met with many victims of violence," the Commonwealth stated. "We directly experienced the climate of fear and uncertainty which characterized these elections in many parts of the country, especially in some rural areas, and we saw for ourselves that in some districts intimidation prevented open political campaigning, notably by opposition parties and candidates... In many cases of reported violence

²⁹ Zimbabwe Human Rights NGO Forum, "Politically motivated violence in Zimbabwe, 2000-2001: A report on the campaign of political repression conducted by the Zimbabwean Government under the guise of carrying out land reform", August 2001.

the authorities responsible for maintaining law and order failed to take action to apprehend those responsible. This is a serious situation.”³⁰

The use of “militias” continued after the 2000 parliamentary elections, with reprisals against those Zimbabweans perceived to have supported the opposition. By the end of 2001, the poorly organized informal “militia” were supplemented by government-trained “militia” members, known as the National Youth Service. The former army officer interviewed by Amnesty International confirmed the role of these young trainees, who were given green uniforms and nick-named “Talibans” by the general population. He said:

³⁰ Commonwealth Secretariat, “The Parliamentary Elections in Zimbabwe, 24-25 June 2000: The Report of the Commonwealth Observer Group”, 2000.

"Government said in parliament that there was no military training involved in the Border Gezi Training Centre, but that's entirely false. The army is involved in teaching politics, the history of colonization and the rise of nationalism, which is not the proper forum for teaching such things... It was normal military training that was given – weapons, drilling, and first aid...." ³¹

When approximately 1,000 trainees from the Border Gezi Centre near Bindura were deployed to locations across Zimbabwe to begin their campaign of intimidation in late December 2001 and early January 2002, Amnesty International noted a sharp escalation in the number of violations in both rural and peri-urban areas. "Hundreds of the National Youth Service members appear to be involved in the recent series of attacks on opposition party members," Amnesty International stated to the leaders of the Southern African Development Community (SADC). "While the government has said the training camps are part of a national service programme, which sees recruits deployed around the country to engage in community service, Amnesty International has interviewed eyewitnesses who describe military training as being provided at the training camp. Such military training and deployment of these ruling party supporters has resulted in many attacks in recent weeks..."

In the Report of the Commonwealth Observer Group to the 2002 presidential election, the observers noted the numerous

³¹ Amnesty International interview.

complaints about the paramilitary youth group trained by the government under its National Youth Training Programme:

"Members of this group appear to have replaced the 'war veterans' as leading perpetrators of politically motivated violence, intimidation and abductions during this campaign, especially in the rural areas. Our observers met dozens of victims of this group and saw enough other direct evidence of their activities to be seriously concerned. Members of the youth group appeared to operate mostly at night and in uniform. Its members set up illegal roadblocks and intimidated opposition supporters, confiscated national identity cards (which were needed to be able to vote) of known or suspected MDC supporters and forced many from their homes and areas of residence."³²

Case study: The case of "A" in Mataga village

³² Commonwealth Secretariat, "Report of the Commonwealth Observer Group to the Zimbabwe Presidential Election 9 to 11 March 2002, p. 32.

In the run-up to the 2000 parliamentary elections, the Mberengwa area of Midlands Province became a "no-go" zone controlled by ZANU-PF and state-sponsored "militia". Roadblocks were set up and access to the area was restricted. Those without ruling party membership cards were beaten up. During the weeks before the parliamentary election, more than 150 cases of torture and assault – including incidents of rape and genital mutilation – were reported to the police in Mataga town, according to the MDC, but there were no arrests.³³ It appeared to visiting journalists that police officers had close ties with the "militias": one foreign journalist was threatened by a "militia" member who was then seen conferring with the commanding officer of Mataga Police Station, Inspector Sande, only an hour or so later.³⁴

On 2 June 2000, an Amnesty International delegation in Zimbabwe interviewed a youth member of the MDC who had recently fled from Mataga Village in Mberengwa district. The woman, identified only as "A" for security reasons, told the delegation about accusations by local ZANU-PF leaders that she supported a political party "that wants to give Zimbabwe back to the whites" and of assaults by ZANU-PF members. In May 2000, she said, a 300-strong crowd force-marched her and her husband from their home and beat them for five hours with machetes, batons and axe-handles. They were made to chant ZANU-PF slogans and sing liberation war songs. "A" told Amnesty International that five police officers stood by about

³³ *Financial Times*, 21 June 2000. "Tales of terror from ZANU Country".

³⁴ *Financial Times*, 21 June 2000. "Tales of terror from ZANU Country".

50 metres away watching as they were beaten, but that the police took no steps to intervene.

During the run-up to the 2002 presidential elections, "A" was again driven from her home in Mataga village by threats from state-sponsored "militia". According to a local human rights NGO that interviewed her, she and her husband had received repeated death threats.

Further Case Study: The impunity of "Biggie" Chitoro in the Mberengwa area

Wilson "Biggie" Kufa Chitoro, the Mberengwa district chairman of the war veterans' association as well as a senior ZANU-PF provincial official, has been identified in legal proceedings as the leader of the "militia" operating in the Mberengwa West area near Mataga.³⁵ In a High Court petition challenging the election in June 2000 of Joram Gumbo as the member of parliament for Mberengwa West, Joram Gumbo testified that "Biggie" Chitoro was not part of his campaign team but was only a member of the war veterans' association. But several witnesses told the court that "Biggie" Chitoro, based at a "militia" camp at the Texas Ranch farm, coordinated the terror campaign against the opposition in the district.³⁶ Two women testified in court that they had been raped on 4 June 2000 by another "militia" leader closely associated with "Biggie" Chitoro. Both described in court how they were abducted, forced to chant

³⁵ *Daily News*, 14 March 2001. "Chitoro further remanded to next month".

³⁶ *Daily News*, 18 July 2001, "Joram Gumbo disowns Biggie Chitoro in court".

ZANU-PF slogans and denounce the MDC before being raped by the other "militia" leader. When one victim said she would report him to the police, the "militia" leader allegedly told her that it would be useless: "He said the police are part of them [the "militia"], and the government belonged to the war veterans and nothing would be done to him," said the woman, who went to the Zvishavane Police Station to report the rape only to find the "militia" leader who had raped her was already there with police at the doorstep, hanging about there.³⁷

"Biggie" Chitoro allegedly led some 18 "militia" members on 4 June 2000 when they abducted James and Fainos Zhou from their home in Danga, near Mataga and sexually tortured Fainos Zhou's wife, Mavis Tapera. Fainos Zhou had signed the nomination papers for an MDC parliamentary candidate, and was therefore singled out for attack. In a later court proceeding Mavis Tapera told the court about the incident. "Militia" members used a knife to slit apart her petticoat before taking her outside the house and beating her on the buttocks with sticks. One "militia" member forced an iron rod into her private parts, Mavis Tapera said, forcing her to imitate the sexual motions that she exhibited when she had sex with her husband.³⁸ Mavis Tapera went on to describe how "militia" members later urinated into a container and forced her to drink from it.³⁹

³⁷ The Zimbabwe Human Rights NGO Forum, Zimbabwe Parliamentary Election Challenges Newsletter – July 23, 2001, v. 19.

³⁸ *Daily News*, 10 July 2001, "MDC member's widow tells High Court of horrifying torture details".

³⁹ *Daily News*, 10 July 2001, "MDC member's widow tells High Court of horrifying torture details".

The “militia” took her husband and brother-in-law to Texas Ranch farm, near Zvishavane, which had been occupied by the “militia” earlier that year.⁴⁰ Fainos and James Zhou were beaten with iron bars and sticks, and tortured with burning plastic for more than 24 hours. Their torture was consistent with at least one other case of torture reportedly committed by this “militia”.⁴¹ The “militia” released Fainos and James Zhou on 7 June. Fainos Zhou was unable to walk⁴² and remained at Mbwembe Primary School, later being taken to the home of the MDC candidate for Mberengwa West, Mfandaedza Hove, where he died from internal injuries on 9 June 2000. James Zhou needed extensive skin grafts and reconstructive surgery for his extensive burns. In July 2000, police officers arrested “Biggie” Chitoro, along with three others on charges of kidnapping and killing Fainos Zhou, as well as public violence, robbery, arson and assault.

⁴⁰ *Daily News*, 13 June 2000, “CIO attempted abduction foiled”.

⁴¹ “Aspects of the crisis in Zimbabwe: a briefing paper for SADC Leaders”, Human Rights NGO Forum, September 2001.

⁴² *ZWNews*, 12 June 2000, “30th MDC Supporter dies in violence”.

However, the 6 October 2000 amnesty was issued. The prosecution of "Biggie" Chitoro and the three other alleged accomplices, on charges of kidnapping and assault was dropped. "Biggie" Chitoro remained in custody charged with the murder of Fainos Zhou. He was denied bail in March 2001 by High Court Judge Lawrence Kamocha on the grounds that his release would cause alarm to hundreds of his alleged victims.⁴³ However, on 6 November 2001, Justice Kamocha reversed this decision, and "Biggie" Chitoro was released on Z\$25,000 bail. His bail conditions stipulated that he should not participate in political activity and that he should report to Mberengwa Police Station three times a week. By December 2001, local human rights monitors alleged that "Biggie" Chitoro had set up a "militia" base at Chingoma Secondary School where approximately 200 "militia" members were instigating the same "terror tactics" against local residents.⁴⁴

Provincial towns taken over by "militia" in areas perceived to favor the opposition

In attempting to obscure the state's involvement in the campaign of intimidation and assaults, "militias" were also used to take over towns and other areas that were perceived to be sympathetic to the opposition. Areas of, or the entire towns of, Gokwe, Kwekwe, Gweru and Masvingo became "no-go" areas for outsiders or those campaigning for the MDC.

⁴³ *Daily News*, 14 March 2001, "Chitoro further remanded until next month".

⁴⁴ Zimbabwe Human Rights NGO Forum, "Political Violence Report, December 2001".

Case study: The attempted killing of Blessing Chebundo and others in Kwekwe

During the run-up to the June 2000 parliamentary elections, well-known opposition candidates suffered death threats and assaults by the state-sponsored "militia", publicly identified as ZANU-PF supporters. In its report *"Zimbabwe: Terror tactics in the run-up to parliamentary elections, June 2000"*, Amnesty International detailed the "militia" attacks on MDC parliamentary candidate, Blessing Chebundo, who later won his seat in the legislature in the 2000 elections. A trade unionist in the Zimbabwe Congress of Trade Unions (ZCTU), Blessing Chebundo was instrumental in the formation of the MDC and was elected to the party's national executive at the founding congress in February 2000.

On 28 March 2000, Blessing Chebundo met with 40 business people in Kwekwe and as the meeting drew to an end, a "militia" group led by war veterans stormed into the room to accuse the MDC of "intending to return the country to whites". As participants left the meeting, the war veterans began to assault them with pick handles and knives. Police were summoned but refused to assist, saying that they had not been given prior notification of the meeting. The officers left the scene as the war veterans beat and seriously injured an MDC organizer, Sylvester Majekuza Qoma, and several others.

Some MDC youth supporters retaliated later that day, forcing their way into the war veterans' office to break windows and damage furniture. Thus began an unofficial battle in Kwekwe, as the "militia" members led by war veterans began beating scores of people suspected

to be MDC supporters, including white Zimbabweans. Teachers and nurses - both black and white - were said to have been beaten because they were under suspicion of supporting the MDC or giving first aid to MDC members who had been injured. Police arrested some 26 war veterans and 23 MDC members over the following two days, later releasing all the war veterans and all but four of the MDC members. Local sources confirmed to Amnesty International that the four police officers who had arrested both ZANU-PF activists as well as MDC supporters were transferred to the rural areas as punishment for their impartiality in dealing with the political violence in Kwekwe.

The terror campaign stepped up in Kwekwe and by 9 May 2000, after having received death threats on a number of occasions, Blessing Chebundo was attacked by five men with grass scythes, knobkerries, whips and a container of petrol. The five began beating Chebundo at a bus stop near his home, knocking him to the ground and dousing him with petrol. As they attempted to set him on fire, Blessing Chebundo held tightly to one of his attackers, crying: "If you burn me one of you will burn with me." Less than a week later, Blessing Chebundo narrowly escaped after a group of "militia" members petrol-bombed his house while he was inside. When he called the police for assistance, they refused to come, although the police station is some 500 meters from the house.

Blessing Chebundo's campaign manager, Abraham Mtshena, was also singled out for attack in the run-up to the 2000 parliamentary elections. He lived in District 5 of Mbizo, a suburb of Kwekwe. On 7 April 2000, his family began to notice men waiting outside his home,

watching the house. On 12 May, Abraham Mtshena was attacked by a “militia” of ZANU-PF members and decided not to return to his home. In his absence on 13 May 2000, his family was watching television when a group of ZANU-PF supporters burst through the front door with axes and pick handles, and axed the television, smashed the radio, and beat the family. His one-and-a-half year-old child was hit in the face, and his wife suffered a deep cut on her forehead as the attackers sprinkled paraffin (kerosene) throughout the home before setting fire to it. Abraham Mtshena's family fled. Two of his sons were hospitalized with serious injuries and his other children were psychologically traumatized.⁴⁵

On 18 June 2000, according to an affidavit signed by an eyewitness and provided to Amnesty International, a group of almost 40 ZANU-PF supporters and “militia” – some ferried in a police vehicle driven by two police officers whose names were supplied – attacked the home of Mandishona Mutyanda, an MDC political organizer in Kwekwe. As the family fled, the “militia” hit Mandishona Mutyanda with iron bars and sticks until he fell to the ground unconscious. The group then broke into the house and stole the contents, including telephones, clothing, sewing machines, televisions, radios and the doors. Mandishona Mutyanda died on 29 June 2000 in the Avenues Clinic in Harare. Although police were informed, no suspects have been arrested and no further investigations have been noted.

⁴⁵ Amnesty International interview, June 2000.

Another resident of Mbizo, a 38-year-old woman vendor, told Amnesty International that she had been abducted in June 2000 by ZANU-PF supporters and taken for "trial" at the offices of the party's district chairman. The "court" found her to be a supporter of the opposition: her car was petrol bombed that same evening. On the evening before the parliamentary elections began, a group of some 30 "militia" members attacked her house. They stabbed her son in the back and destroyed the home's asbestos roof. The woman said that when she reported the attack to the police, she was told by the commanding officer that: "The instruction is that we will not send officers to where MDC people are affected."⁴⁶ This is consistent with dozens of other cases reported to Amnesty International in which police were said to have told victims that they were under orders not to intervene to protect them against "militia" violence.

Case Study: Further attacks in Kwekwe and Gokwe in 2001 and 2002

When an Amnesty International delegation visited Kwekwe and interviewed MDC activist Abraham Mtshena again in March 2002, he stood in the burnt-out remains of the local MDC headquarters. On 11 January 2002, eyewitnesses identified attackers in ZANU-PF t-shirts systematically petrol-bombing the houses of MDC officials. Eight homes and their contents were razed, and the same "militia" then proceeded to petrol bomb the Kwekwe office of the MDC, gutting the building.⁴⁷ On 22 February 2002, a group of some 200 "militia" members armed with clubs and stones attacked the offices again,

⁴⁶ Amnesty International interview, December 2000.

⁴⁷ Associated Press, "Zimbabwe Party Office Burns Down", 14 January 2002.

while the South African Observer Mission to the presidential elections were meeting with MDC representatives inside the charred remains of the office. The youths pelted the building with stones for fifteen minutes, and attacked the clearly marked car of the South African observers. Four MDC officials were hurt and had to be taken to hospital.⁴⁸

⁴⁸ Commonwealth Secretariat, "Report of the Commonwealth Observer Group to the Zimbabwe Presidential Election 9 to 11 March 2002", p.28.

During the 9 and 10 March 2002 election, Abraham Mtshena reported that while deploying MDC polling agents on 8 March at the Tiger Reef Mine polling station outside of town, the “militias” set fire to the MDC vehicle, destroying it. At another polling station in the community of Redcliff, two other polling agents not working for the MDC were arrested by police on 10 March and taken to Redcliff police station.⁴⁹ Shortly before the polling dates, some 40 “militia” members set up a road-block and began asking for ZANU-PF party membership cards. They beat those who could not produce a card, or who did not know the counter-response to ZANU-PF slogans. An estimated two dozen people were beaten in the first week of March 2002.

The MDC estimated that 10 people had been killed for political reasons by “militias” since the March 2002 presidential elections, including Funny Mahuni of Kwekwe, who was stabbed to death on 13 March by “militia” members in Mbizo township in Kwekwe apparently because he had refused to allow “militia” members to take his daughters to a “militia” camp for a ZANU-PF victory celebration. Police arrested two suspects on charges of murder. Amnesty International will continue to monitor developments in this case.

Impunity in Gokwe

⁴⁹ Amnesty International interview, March 2002.

In the run-up to the June 2000 parliamentary elections in the rural town of Gokwe, some 30 kilometres north of Kwekwe, the MDC chairman for Gokwe Central Vusumuzi Mukweli was busy campaigning for his party. He and his wife, Priscilla Mukweli, sold second hand clothes in the Gokwe market. After she left her husband at the couple's stall on 25 April 2000, ZANU-PF members abducted him and beat him. He suffered multiple fractures of the skull, and knife wounds in the back, in the left hand and in the side of the chest. Vusumuzi Mukweli was hospitalized. His wife reported the attack to the police. Later, she was told that the docket was lost and all the papers associated with the investigation could not be found.⁵⁰ Vusumuzi Mukweli suffered from seizures after the attack, and was prescribed medication to control the attacks. No action was taken to bring the perpetrators to justice.

On 7 August 2001, police detained Vusumuzi Mukweli without charge when he travelled to Gokwe to attend a relative's funeral. For three days, the police refused to provide him his medication and fellow prisoners began to protest that Vusumuzi Mukweli was suffering from severe seizures. On the fourth day, as he bled through the nose and lost consciousness, police provided him with his tablets.⁵¹ Vusumuzi Mukweli died in his cell at Gokwe Remand Prison on 14 August 2001.⁵² As far as Amnesty International is aware, no action has been taken to bring those responsible to justice.

⁵⁰ Amnesty International interview, December 2001.

⁵¹ Amnesty International interview, December 2001.

⁵² *Daily News*, "MDC activist in Midlands dies in Gokwe prison", 15 August 2001.

Later in 2001, other incidents resulting from police inaction led to continued human rights violations by the “militia” in Gokwe. The human rights organization ZimRights documented the role of the police there in allowing human rights violations to be perpetrated by “militia” with impunity. ZimRights also reported arbitrary arrests of opposition supporters. In a letter sent to the commanding officer of Gokwe Central Police Station on 20 August 2001, ZimRights complained of unfair and one-sided policing of clashes between supporters of ZANU-PF and MDC in early July 2001. Police arrested MDC supporters but took no action to investigate or apprehend perpetrators of assaults on MDC members, ZimRights stated.⁵³

ZimRights alleged that a “militia” group of ZANU-PF supporters and war veterans had set up a torture center at the Gokwe South Rural District Council offices, and described an August 2001 incident in which a group of “militia” members in eight trucks drove into the rural community of Sasame and abducted two MDC supporters, taking them back to this torture center and beating them. In the attack, ZimRights alleged that police, war veterans and ZANU-PF supporters traveled together in their attacks on the opposition. “They use police vehicles [Defenders and Santanas], a European Union Defender Registration Number 509-032V and [a] ...red or maroon Mazda DX. It is also alleged that the police transported youths who assaulted members of the MDC on Thursday, the 16th of August 2001. The police accompanied and watched ZANU-PF supporters destroy buildings at the Growth Point on the day in question.”⁵⁴

ZimRights received an answer from the police on 11 September 2001. In a letter from a police inspector ZimRights were told that the provincial police commander had been asked to look into the matter, and that the human rights group would be advised of the police findings in due course. No further communication has been received since then.

⁵³ ZimRights, letter regarding political violence in Gokwe South, 20 August 2001.

⁵⁴ ZimRights, letter regarding political violence in Gokwe South, 20 August 2001.

By October 2001, eight schools in the Gokwe area were closed as the “militia” attacked scores of teachers in the rural communities of Chomuwayu, Zumba, Gumunya, Naymasanga, Mashame, Makwiyo, Mashuma and Dekete. In two of the primary schools, some 500 “militia” members were alleged to have set up camps where suspected MDC supporters were taken for beatings and intimidation.⁵⁵ A deputy headmaster from one of those schools, who spoke to Amnesty International on condition of anonymity, confirmed that teachers were singled out by “militia” for intimidation and forcible displacement. In recounting his own story, he reported how the local ZANU-PF councillor told him that as a civil servant he could not hold a political position different from the government that paid his salary. In March 2001, while teaching a lesson on farming, the teacher stated that farm occupations would lead to a decrease in agricultural production in the white-held farming areas. The remark was reported to the “militia”, and by May 2001, war veterans had visited the school to tell the teacher that he had to leave his post. Later, after he had fled to Harare, the “militias” set fire to his house and destroyed it.⁵⁶

Other victims in Gokwe were taken to a “militia” base at Nembudziya Business Centre and allegedly beaten with iron bars, then burned with the bars. Elifanos Chamunorwa, for example, was abducted on 4 October 2001 shortly before he was due to testify in High Court hearings concerning challenges to the election of ZANU-PF parliamentary candidate Elleck Mkandla in the Gokwe constituency in the June 2000 elections. Elifanos Chamunorwa had been a victim of the violent intimidation, and had been brave enough to agree to tell his story to the court. The “militia” apparently abducted him for that reason. They took him to Tenda Business Centre and tortured him by pressing a hot iron rod to the soles of his feet. “We stayed at the base for two days. The police then came and rescued us and took us to Mutora Mission Hospital where we were admitted and treated for four days. They did not arrest the youths and as we speak, the youths are still camped at their base,” Elifanos Chamunorwa said.⁵⁷

Wallace Humana, the MDC chairperson for Gokwe East, claimed that seven people had been killed in “militia” attacks or died from torture they inflicted during the run-up to the March 2002 presidential elections.⁵⁸ Following the elections the “militia” carried out reprisal attacks on 13 March 2002 in Gokwe, assaulting 24 different MDC polling agents and burning down their homes, forcing them to flee the area. On that same night, James Nevana, an MDC polling agent, was abducted and tortured by “militia”. He

⁵⁵ *Daily News*, “Schools close as violence grips Gokwe”, 16 October 2001.

⁵⁶ Amnesty International interview, October 2001.

⁵⁷ *Daily News*, “Terror in Gokwe”, 3 November 2001.

⁵⁸ Zimbabwe Human Rights NGO Forum, “Violence and harassment linked to the polling process”, 7 to 11 March 2002.

alleges that bicycle spokes were used to pierce his genitals, rupturing a testicle, and that he was forced to drink poison that was giving him stomach pains.⁵⁹

Case study: More recent “militia” attacks in other areas

In the weeks after the 9 and 10 March 2002 presidential elections, the same “militia” who had been active in carrying out assaults and torture began a coordinated effort to track down, attack and abduct members of the opposition, including many who acted as polling agents during the elections. Using the published lists of names and addresses of those who acted as polling agents for the MDC, “militia” have attacked, abducted and destroyed the homes of these middle-ranking opposition officials. Amnesty International estimated by mid-March 2002 that dozens of people had been arbitrarily detained at “militia” bases, with police officers reluctant to intervene to release those being held. The Human Rights Forum summarized the situation:

⁵⁹ Zimbabwe Human Rights NGO Forum, "Violence and harassment linked to the polling process", 7 to 11 March 2002.

“The post-election period has seen a determined attack on those who served as MDC polling agents in the just ended Presidential election. Five MDC polling agents have since been reported as having been murdered for serving the opposition. Three of these were allegedly killed by soldiers. Other attacks have been in the form of abductions and torture of polling agents as well as the burning of their homes. Polling agents as well as other opposition party supporters are being forced to flee their rural homes out of fear.”⁶⁰

In just one reported incident, similar to dozens of others, on 15 March 2002 some 20 “militia” members in Marondera beat to death a security guard on a farm and seriously injured a commercial farmer. The same “militia” held and tortured three MDC polling agents on the same day. Other “militia” operating from 10 bases located around Macheke town in Mashonaland East Province were reported to be torturing suspected political opponents. National Youth Service trainees from the Border Gezi Training Centre were reportedly assisting in the abduction and beatings. By 18 March 2002, the Amani Trust organization said it had interviewed 22 torture victims who had sought medical treatment in Harare after being released from illegal detention by these “militias” operating across the country.

⁶⁰ Zimbabwe Human Rights NGO Forum, “Update to March 25”, 28 March 2002.

In another publicized case, the “militia” abducted trade unionist Ephraim Tapa and his wife Faith Mukwakwa Tapa in Marondera on 16 February 2002. Ephraim Tapa, the president of the Civil Servants Association since 1998, the provincial chairman for the Mashonaland East Province for that union, vice president of the Public Service Association and a senior member of the ZCTU was abducted because of his trade unionist involvement. Ephraim Tapa told Amnesty International that the “militia” almost killed him during his kidnapping, as they began to choke him until he almost lost consciousness. The couple were held for some 22 days at various “militia” camps around Mutoko in Mashonaland East Province, including Nyamamuzizi base, at a primary school in that village and at Mushimbo camp, at All Souls Mission. High Court Judge Paradza issued a court order on 8 March 2002 forcing Police Commissioner Augustine Chihuri to intervene and release Ephraim Tapa and Faith Mukwakwa Tapa, but the court deliberately struck out of the draft order submitted by Tapa's lawyers the directive to police to rescue others who were held in illegal detention by the “militia”.⁶¹

Victims of attacks and beatings by “militias” reported that police had been present but had taken no action to stop the “militia”. Privately, police have stated to citizens that officers were unable to take any action. For example, on 30 March 2002, a crowd of 50 “militia” members in the Bulawayo suburb of Sizinda beat residents in two homes, robbed them of money and destroyed valuables such as televisions and refrigerators. When the outraged community tried to evict the “militia” from their town hall, police tear-gassed them and arrested 42 people on charges of

⁶¹ Amnesty International interview, March 2002.

trying to destroy the building. Eyewitnesses report that police officers told the residents that the "militia" were "untouchables" and could not be removed nor restrained.⁶²

Amnesty International expressed its particular concern at the increasing number of reports of rape and other forms of sexual torture by the "militia", continuing the pattern seen in the run up to 2002 presidential elections. During its visit to Zimbabwe in March 2002, Amnesty International interviewed women in the towns of Kwekwe and Chinhoyi. An 18-year-old woman in Kwekwe described how she was sexually assaulted and then raped by four "militia" members on 26 January 2002 because a close relative was involved in the MDC. The woman said that although police promised to come and interview her, they had never done so. Police arrested four "militia" members who were suspects but within weeks released them. She told Amnesty International: "I saw them. I ran away when I saw them. [Name withheld] came to my house, and told my mother: 'We went to court, we've been released, we are out and we are coming back!'"⁶³ She later sought trauma counselling to assist her in recovering from her ordeal.

In January 2002, the Amani Trust had reported a new pattern of sexual violence that emerged from interviews with victims. Men were being forced by "militia" to rape both male and female victims in Mashonaland Central Province. In the town of Gokwe in Midlands

⁶² Report to Amnesty International.

⁶³ Amnesty International interview, March 2002.

province, the Amani Trust reported that in March “militia” members and army soldiers raped women and teenage girls or forced them to perform humiliating sexual acts in public, in revenge for the “crime” of living in a community perceived to support the opposition. Another human rights organization, the Zimbabwe Women Lawyers’ Association, estimated that some 1,000 women were being held in “militia” camps. Newspaper accounts described farm workers being beaten and their wives raped by “militia” in Masvingo because they may have voted for the opposition.

Amnesty International's conclusions on the attempt by the government to obscure its responsibility for human rights violations through the use of “militias”

In an attempt to escape accountability for human rights violations through “deniability”, the Zimbabwean government continued to use its “militias” to abduct and torture individuals who were publicly identified as polling agents during the 2002 presidential election. The evidence in cases documented by Amnesty International and local human rights organizations shows a clear link between the “militia”, the government and the ruling party.

These “militia” groups constitute a powerful weapon for suppressing any form of political opposition. While publicly distancing itself from the “militia”, the government is in fact promoting them by allowing them to act with impunity as well as giving them logistical support. These documented acts of torture and assault, as well as rape

and other forms of sexual violence, committed by "militias" as groups or individuals, are clearly occurring in a context of state-sanctioned violence.

In allowing these abuses to occur, the Zimbabwean government is flouting Zimbabwe's Constitution and evading its obligations under international human rights law. It has an absolute obligation, in accordance with international human rights standards, to protect all its citizens from human rights violations. The ICCPR, to which Zimbabwe is a party, obliges governments to ensure the rights recognised in the Covenant to all individuals within its territory, without distinction of any kind, such as on the basis of political opinion or race.

3. Impunity is reinforced by preventing journalists and human rights defenders from documenting violations

A policy of impunity usually entails restrictions on any form of reporting, particularly by outside investigators intent on interviewing victims and exposing the facts to the public. This is the last line of defence for human rights in a situation where the police refuse to act to protect people from abductions, assault and torture. In the run-up to the 2000 parliamentary elections and again in the run-up to the 2002 presidential election, the "militias" created "no-go" areas in the provinces of Mashonaland East, Central and West in particular. Election observer teams noted that outside, independent investigators – human rights lawyers, independent journalists or church leaders, as

well as Zimbabwean election observers themselves – were prevented by threats and intimidation from entering these areas.

In 2001, Amnesty International documented harassment, beatings or death threats against more than 40 journalists from privately-owned newspapers who tried to report on political or human rights issues, or who filed reports critical of the government. In rural by-elections held that year, roadblocks manned jointly by the police, security forces and ZANU-PF supporters were reportedly used to stop and search travellers for evidence of any support for the MDC. As a result journalists, election monitors, opposition activists and others involved in activities connected to by-elections, had their freedom of movement restricted.

The United States Election Observer Team documented how “militia” members restricted the circulation of independent newspapers. The *Daily News*, an independent newspaper, was “banned” from being delivered, sold or read in several provinces identified as strongholds of the ruling party. “Distributors and vendors of independent papers in urban areas were frequently subject to threats and/or acts of violence.”⁶⁴

The Zimbabwe Human Rights NGO Forum summarized the strategy by the Zimbabwean government to silence the independent media in the run-up to the 2002 presidential election:

⁶⁴ Fact Sheet, Bureau of African Affairs, U.S. State Department, “Zimbabwe: Initial Findings of U.S. Election Observer Team, 14 March 2002”.

"These measures include making death threats to and assaults on reporters, bombing the offices and printing press of one independent newspaper, charging editors and reporters with criminal defamation, and repeatedly suing newspapers for civil defamation, claiming large amounts of damages... Steps are also being taken against foreign journalists. In February 2001 the Government forced two foreign journalists who had been highly critical of it to leave the country. In mid-June it announced stricter working conditions for foreign journalists... Also in mid-June the Government rejected applications for entry by two BBC film crews. At the end of June a third foreign journalist was told that his work permit would not be renewed when it expired in July."⁶⁵

⁶⁵ Zimbabwe Human Rights NGO Forum, "Politically motivated violence in Zimbabwe, 2000-2001: A report on the campaign of political repression conducted by the Zimbabwean Government under the guise of carrying out land reform", August 2001.

After the 2002 presidential election, the Norwegian Election Observation Mission concluded that the Public Order and Security Act, signed into law in January 2002, was used to curtail civil liberties and created a negative human rights climate unsuitable for free and fair elections. "In recent weeks, the application of the Public Order and Security Act has been such as to place wholly unreasonable limitations on the freedom of assembly, with civil society coalitions, domestic election observers and some NGOs apparently being targeted. Accredited journalists have also faced police harassment."⁶⁶

⁶⁶ Norwegian Election Observation Mission, "Presidential Elections in Zimbabwe 2002", Preliminary Report issued on 12 March 2002.

Case study: The assault on Tawanda Hondora

On 7 April 2001 a large group of ZANU-PF supporters at Sadza Growth Point assaulted the chair of Zimbabwe Lawyers for Human Rights (ZLHR), Tawanda Hondora, with stones, axes, knobkerries [wooden sticks with knobbed heads] and other weapons. Two other lawyers who had accompanied him narrowly escaped being beaten. Tawanda Hondora had been investigating allegations of intimidation and assault against witnesses in a court hearing challenging the results of the parliamentary election in Chikomba District, Mashonaland East province. Tawanda Hondora was taken to Sadza Police Station, where police officers beat him further, searched him and interrogated him about his political affiliation. When the other two lawyers arrived to file a complaint, all three were held for almost three hours while a police assistant inspector lectured them about the evils of the MDC and ordered all police officers present to point rifles loaded with live ammunition at the men.⁶⁷

After the incident, Tawanda Hondora immediately filed a complaint at Harare Central Police Station about his assault by police officers. After two months of silence, he sent a written notice to Police Commissioner Chihuri, asking to know what disciplinary action had been taken against the officers. Later in June, Tawanda Hondora filed a civil suit against the Zimbabwe Republic Police, which asked for compensation for damages due to assault and unlawful detention. He described to Amnesty International how the police had been granted

⁶⁷ *The Zimbabwe Human Rights NGO Forum, Zimbabwe Parliamentary Election Challenges Newsletter – April 16, 2001, v. 8.*

impunity from prosecution for their assault: "I believe the police are deliberately making no response ... You can sue the police and win a case, but it's the execution of the court judgment that's difficult because you can't compel the state to pay the damages granted in a finding of a court of law. In the past, these damages were almost always immediately paid, to avoid embarrassment, but now they have stopped that practice." As of April 2002, police had taken no further action to discipline those officers involved in the assault.

The Public Order and Security Act, enacted in January 2002, imposes severe restrictions on civil liberties and criminalizes a wide range of activities associated with freedom of assembly, movement, expression and association. The Act provides for the imprisonment of journalists convicted of "causing hatred, contempt or ridicule of the president". "Terrorism", vaguely defined, is a capital offence. The Public Order and Security Act violates Zimbabwe's obligations under international human rights law. In particular, it violates the provisions regarding the freedom of expression, assembly and association contained in the ICCPR and the African Charter on Human and Peoples' Rights by establishing restrictions which go way beyond those permissible under international standards for the protection of public order. It also goes against the principles for the protection of human rights defenders set down in the UN Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms.

In January 2002, the government passed the Access to Information and Protection of Privacy Act – which President Robert Mugabe signed into law on Friday 15 March 2002. The Act severely curtails access by the public to information on many government activities, which are designated ‘protected’ categories. It provides for a government-appointed Media and Information Commission to register media houses and journalists, or decide to deregister them. Geoffrey Nyarota, editor-in-chief of Zimbabwe's only independent daily, *The Daily News*, was arrested and later released on 15 April 2002 after being charged under Section 80 of the new Act. He is accused of publishing false news by reporting allegations that the Registrar General announced conflicting results in the March 2002 presidential elections in different media outlets.

Amnesty International's conclusions about restricting the work of the media and human rights defenders

The Zimbabwean government has suppressed freedom of expression as part of its efforts to ensure impunity for perpetrators of human rights violations. The state not only controls much of the national radio and television broadcasting system, it also has attempted through administrative and legislative means as well as direct physical attacks to block investigations carried out by journalists or human rights activists.

In this regard, both the Public Order and Security Act and the Access to Information and Protection of Privacy Act contravene international standards for freedom of expression, including article 19 of the ICCPR and article 9 of the African Charter on Human and Peoples' Rights, amongst others.

4. Impunity is reinforced by blocking effective police investigation into violations

When the state acts to obstruct justice by blocking effective, impartial investigations by police into human rights violations, the perpetrators are given the clear message that the government condones the crimes they have committed. Impunity is reinforced when the state undermines the effectiveness and professionalism of the police. This can be accomplished through political manipulation, either by a clandestine order by top officials to stop police investigation or by indirect threats of demotion or transfer if officers persist in their investigations. Amnesty International has been told by former and serving police officers that both types of manipulation occur.

Police Commissioner Augustine Chihuri made it clear in a public statement in June 2001 that he expected officers to support the ruling party: "Not supporting the Government of the day is tantamount to rebelling, which is a punishable offence. Therefore, all those officers who are bent on supporting the so-called shadow ministries and governments have no room in the Zimbabwe Republic Police (ZRP). The ZRP will support the Government of the day and not a shadow government."⁶⁸ A former police officer who warned that his life would be at risk should he be identified told Amnesty International what his superiors thought party loyalty meant. He said that he received telephone calls from Harare police headquarters while he was commanding a provincial police station asking him to arrest more MDC officials and questioning why he had arrested ZANU-PF

⁶⁸ *Sunday Mail*, "Police have an obligation to support Government", 10 June 2001.

activists allegedly involved in political violence.⁶⁹

A purge of police officers has been underway since 2001, with officers accused of sympathizing with the MDC transferred to relatively inferior or rural positions, or to the "Commissioner's Pool".⁷⁰ This was an administrative limbo, in which those officers suspected of not supporting the ruling party were kept without duties, desk or command. In February 2001 senior assistant commissioners Solomon Ncube, who headed the Criminal Investigations Department Fraud Squad, and Emmanuel Chimwanda, who was commanding officer for Harare Province, were transferred to the Police General Headquarters, where they remained in the "Commissioner's Pool" until leaving the force. The two were alleged to sympathise with the MDC. Emmanuel Chimwanda said he resigned because he could not risk his professional integrity by remaining in a now partisan police force.⁷¹ Chief Inspector Rich Musambasi resigned "out of frustration" after 26 years in the force when he was alleged in an anonymous letter sent to the Commissioner to be passing information to the opposition.⁷² He denied the allegations.

⁶⁹ Amnesty International interview, December 2001.

⁷⁰ *Financial Gazette*, "Chihuri purges top cops", 14 June 2001.

⁷¹ *Daily News*, "Police officer refuses to board ZANU PF gravy train", 7 May 2001.

⁷² *Zimbabwe Standard*, "Another cop victimised", 3 November 2001.

A similar purge took place in the Zimbabwe Prison Service, when at least 34 prison officers were dismissed for allegedly having an MDC political affiliation. Amnesty International interviewed some of those dismissed, including Shepard Yuda, who said that he had been victimized by CIO agents and military intelligence officers in August 2000, when they alleged he was working as a personal bodyguard for the MDC's presidential candidate, Morgan Tsvangirai. He denied the allegations and said he was subjected to an unfair dismissal procedure under a militarised prisons service. In August 2001, Shepard Yuda was among a group of 15 people suspended on suspicion of supporting an opposition political party, then served with an eviction notice to vacate his employer-provided home at Chikurubi Prison in October. On 22 November 2001, after he had obtained a lawyer and fought against his dismissal and eviction, three attackers who claimed to be war veterans assaulted Shepard Yuda and seriously injured him.⁷³

A senior policing official, who was also assigned to the "Commissioner's Pool", confirmed for Amnesty International that promotions were given only to veterans of the liberation war and others who demonstrated that they conducted their duties in a manner that benefited the ruling party. He told Amnesty International about how he was forced out of the Zimbabwe Republic Police force after more than 20 years service because he refused to carry out politically motivated arrests of opposition supporters. "I was proud to be a policeman and to serve the nation, and now it hurts me to see the police officers working for a political party, and

⁷³ Amnesty International interview, November 2001.

not the people," said the officer, speaking on condition of anonymity.⁷⁴

⁷⁴ Amnesty International interview, December 2001.

Political favouritism by police was clearly seen in the presidential elections of 9 – 10 March 2002. In summarizing its findings, the SADC Parliamentary Forum Election Observation Mission concluded that police were partial and politically biased, noting that "...there are significant claims that the police have been partisan in handling of the political situation when called upon to intervene."⁷⁵ The United States Election Observer Team noted: "In many parts of rural Zimbabwe, ZANU-PF youth "militia", aided by police and military personnel, established opposition 'no-go' areas. ...On numerous occasions, opposition rallies and other campaign gatherings were disrupted violently by ZANU-PF youth "militia", often with the police observing."⁷⁶ The Commonwealth Observer Group found that the police did not take action to investigate reported cases of violence and intimidation against MDC supporters. "Indeed, they appeared to be high-handed in dealing with the MDC and lenient towards supporters of the ZANU-PF. This failure to impartially enforce the law seriously calls into question the application of the rule of law in Zimbabwe."⁷⁷

Sometimes police granted impunity to perpetrators out of fear. A former police officer who asked to remain anonymous described the police relationship with the "militia" as on an unequal political

⁷⁵ Statement by the SADC Parliamentary Forum Election Observation Mission, 13 March 2002.

⁷⁶ Fact Sheet, Bureau of African Affairs, U.S. State Department, "Zimbabwe: Initial Findings of U.S. Election Observer Team, 14 March 2002."

⁷⁷ Commonwealth Observer Group to the Presidential Election in Zimbabwe, preliminary report.

footing: "Many of the police officers are frightened of the war veterans, since they have their own command structure that goes to the top, and that will get them out of jail if they are arrested. Plenty of officers left the force because of that."⁷⁸

Amnesty International interviewed an 18-year-old former "militia" member in the rural area of Gwanda South in Midlands Province who confirmed that police turned a blind eye to their activities. The young man, who for reasons of security is identified only as Roy (not his real name), said he had been approached in February 2002 by two war veterans to "come and assist in sorting out the problem of the MDC". As a "militia" member, he beat men and women identified as opposition sympathizers in front of the police at the police station. "Police didn't do anything at all because they were scared of being labelled MDC. The war veterans also threatened the police," according to Roy.

As an incentive to join, the "militia" recruits were promised training and an opportunity to become a soldier fighting in the Democratic Republic of the Congo⁷⁹, or to be a policeman or a nurse. But the only training Roy received was physical exercise and military drills using sticks in place of guns. The "militia's" victims were challenged with ZANU-PF slogans, and had to give the counter slogan. "A failure in response would show that you are not part of ZANU-PF

⁷⁸ Amnesty International interview, December 2001.

⁷⁹ Zimbabwean troops have been present in the Democratic Republic of the Congo for several years.

and therefore are MDC," Roy said. He described how the "militia" beat their victims on the soles of the feet, as well as around the head and shoulders. About half of the 50 or so fellow members of Roy's "militia" were 14, 15 or 16 years old.

Not only have the police consistently failed to take adequate steps to prevent incidents of violence and arrest those responsible, they have also been directly involved as perpetrators of arbitrary arrests, beatings and torture during the past two years. Impunity is not just granted by police under political instructions not to arrest and investigate those who commit human rights violations, it is also enjoyed by officers who commit violations voluntarily without fear of being held accountable.

In dozens of cases reported to Amnesty International, the police appeared to have colluded with the "militias". In Kwekwe, for example, eyewitnesses alleged that the police assisted in "militia" attacks. Eyewitnesses said that while "militia" members carried out theft of property from homes they attacked in Mbizo suburb, police provided transport for them and their looted goods. "Militia" members appeared to work together with police, sometimes in a semi-official capacity. One resident in Kwekwe alleged to Amnesty International that "militia" members wore old police uniforms and attempted to carry out policing duties, such as searches of vehicles and arrests, alongside police:

"They [the "militia" members] are not police, but they are manning police stations in old police uniforms. You can identify them

because they are wearing old shoes, not police shoes."⁸⁰

Case study: The political killing of David Stevens

The first white commercial farmer to be killed in the present wave of political violence was David Stevens, who had been an active supporter of the MDC and allowed them to hold campaign rallies on his farm. Scores of black farm workers had been beaten previously in the area, but this was the first killing in the land occupations.

The "militia" killing on 15 April 2000 was sparked by an earlier confrontation between David Stevens' farm workers and the illegal occupiers who had begun to squat on the farm in February 2000. Allegedly one of the squatters had earlier raped a farm worker's daughter and assaulted another farm worker's daughter and son.⁸¹ Police Chief Superintendent Wayne Bvudzijena reportedly told Zimbabwean journalists that David Stevens had armed himself with a gun that day at around 6am, instructing his workers to arm themselves, and then attacked and injured 14 of the 35 "militia" members who had been occupying the farm. David Stevens' family contradicted the police version, denying that he was armed or that he was involved in the move by his farm workers to drive the occupiers off his property.⁸² Eyewitness accounts, below, confirmed the account provided by David Stevens' family.

⁸⁰ Amnesty International interview, March 2002.

⁸¹ Declaration by Maria Del Carmen Stevens to the US District Court, Southern District of New York, No.00-Civ.-6666 (VM/JCF).

⁸² *Mail & Guardian* (Johannesburg), "Mbeki jets to Harare as Zim crisis mounts", 20 April 2000.

According to these accounts, two trucks full of “militia” members arrived at David Stevens' house at a farm near the town of Macheke, some 100 kilometres east of Harare. The attackers broke in, looting property and seizing weapons before they beat and abducted David Stevens.⁸³ Fellow farmers Steve Krynauw and Gary Luke had arrived at David Stevens' farm in time to see him being driven away in handcuffs by the “militia”. They followed the vehicle to the small town of Murehwa, where they went into the police station to report the abduction. About 20 “militia” members dragged both men away – as police looked on – and tied them up and beat them with iron bars, fanbelts and rocks, and then dumped them beside a river.⁸⁴

According to farmer John Osborne, he and Stevens were taken by “militia” out of Murehwa Police Station in front of police officers, beaten again at the war veterans association office before being bundled into a car and taken a short distance outside of Murehwa. There the two were beaten once more, before a “militia” member executed David Stevens by shooting him in the face.⁸⁵ David Stevens' body was then thrown on top of Steve Krynauw and Gary Luke. Their account and that of John Osborne contradicted earlier denials by the police at Murehwa that the two men had never been there. Two other farmers, also abducted by “militia” members from the Murehwa Police Station and beaten with metal rods and whips, later escaped from a cave where they had been left tied up.⁸⁶

⁸³ Despite reports to the contrary, Stevens' farm foreman Julius Andoche was not killed.

⁸⁴ AFP, “Zimbabwean farmer describes night of horror”, 16 April 2000.

⁸⁵ Reuters, “Farmers killed, beaten as Zimbabwe crisis deepens”, 16 April 2000.

⁸⁶ Reuters, “Missing Zimbabwean farmers found beaten but alive”, 16 April 2000.

As they opened their inquiry on 17 April 2000, police investigating the murder of David Stevens immediately detained the farm workers who had clashed with the “militia”.⁸⁷ The farm workers were held on charges of public violence, then released. The police finally arrested one person in connection with this murder but the prosecution was later withdrawn “for want of evidence.”⁸⁸

In December 2000 lawyers acting on behalf of Marie Stevens, the widow of David Stevens, filed a civil action against the government, the Minister of Home Affairs, Police Commissioner Augustine Chihuri, ZANU-PF and the Zimbabwe War Veterans Association asking for financial compensation for the loss of earnings due to David Stevens' death, which was caused by the negligence of the police in allowing him to be taken from police custody. The police initially claimed that they did not release David Stevens to the war veterans, but lawyers for the Stevens family said they had evidence that the police cooperated with the war veterans in his abduction. Pleas filed by the Minister of Home Affairs and the Commissioner of Police in January 2001 stated that four people had been arrested in connection with the alleged murder. At the time of writing (June 2002) no one had been brought to justice in connection with the murder of David Stevens.

Case Study: The political killing of Tichaona Chiminya and Talent Mabika

A High Court upheld a legal challenge to the results of the June 2000 parliamentary race in the Buhera North constituency in Mashonaland East Province, in which MDC President Morgan Tsvangirai campaigned and lost against ZANU-PF's Kenneth Manyonda. The basis of the challenge filed on 26 July 2000 was that political killings, assaults and other intimidation prevented voters there from freely exercising their right to vote for whom they wished. Some 10 months later, in April 2001, Judge James Devittie gave his final ruling that the election result was nullified, in part because of the terror caused by the 15 April 2000 killings of Tichaona Chiminya and Talent Mabika.

⁸⁷ AFP, “Zimbabwe police make arrests following murder of white farmer”, 17 April 2000.

⁸⁸ Zimbabwe Human Rights NGO Forum, “Politically motivated violence in Zimbabwe, 2000-2001: A report on the campaign of political repression conducted by the Zimbabwean Government under the guise of carrying out land reform”, August 2001.

During the hearings, a witness testified in the High Court on 23 February 2001 that he was with the two individuals alleged to be the killers – CIO agent Joseph Mwale and war veteran Kainos Tom "Kitsiyatota" Zimunya, as well as a group of ZANU-PF youths. The witness said they drove a ZANU-PF Manicaland Nissan twin-cab truck to the CIO office at Murambinda, near Buhera on 15 April 2000; both Joseph Mwale and Kainos Tom Zimunya entered the office and each had an AK rifle when they left the office. With the witness in the vehicle, they drove with other men along the road from Murambinda to Buhera and overtook a red Mazda truck in which MDC supporters were travelling in the same direction. Speeding past the MDC Mazda truck, the ZANU-PF Manicaland Nissan then parked by a bus stop, blocking the road. Joseph Mwale and Kainos Tom Zimunya pointed their AK rifles at the MDC vehicle in which Tichaona Chiminya and Talent Mabika drove, forcing them to stop. According to the witness Joseph Mwale and Kainos Tom Zimunya began assaulting Tichaona Chiminya and Talent Mabika as they sat inside their truck. The other MDC supporters in the Mazda fled, while Joseph Mwale and Kainos Tom Zimunya took a container of liquid from the ZANU-PF truck, sprinkled it inside the MDC vehicle and set it alight. Joseph Mwale and Kainos Tom Zimunya then sped off from the scene of the killing.⁸⁹

⁸⁹ *Daily News*, "Chiminya killers named in court", 24 February 2001.

On 28 February, another witness said he was in the vehicle with Tichaona Chiminya and Talent Mabika when Joseph Mwale, Kainos Tom Zimunya and other ZANU-PF supporters attacked the vehicle. The witness was quoted in the press as testifying: "I then saw two armed men. One of them, Mwale, approached our vehicle and started beating Chiminya with the butt of his gun. Talent was screaming as the attackers broke the windscreen." The witness said he managed to escape from the vehicle through one of the windows. "I then heard them saying that they should fetch the petrol from their car...They poured the liquid in the front seat where Chiminya and Mabika were sitting. Thereafter, the car went up in flames." The witness saw Tichaona Chiminya manage to get out of the car and run away, his body ablaze. Talent Mabika followed behind, also in flames.⁹⁰ A third witness arrived on the scene with police just seconds after the two victims had been set alight. Both the witness and the police saw the same vehicle, marked ZANU-PF Manicaland, driving away. Police followed the truck, but later came back saying they had failed to locate it. Meanwhile, the third witness said, he found Tichaona Chiminya dead but Talent Mabika shouted that CIO agents from Murambinda had killed her. She died soon afterwards, he said.⁹¹ Kainos Tom Zimunya was later taken into custody briefly, then released by police. No one else was ever arrested in connection with these political killings.

Other witnesses in the challenge to the election results in Buhera North constituency told the court that they had been beaten by a CIO agent about the face and neck with empty beer bottles. Another witness testified that she was kicked and punched by a CIO agent for chanting MDC slogans. Fifteen ZANU-PF supporters allegedly beat a witness because he wore an MDC T-shirt. A woman stated that ZANU-PF youths forced her to march to their rally, then took her to a secluded place and threatened her with death. Others reported threats to burn their homes and crops if they voted for the MDC.

Judge Devittie ordered that Joseph Mwale and Kainos Tom Zimunya appear in court by 26 March 2001 to give evidence in the case, but neither appeared in court although police served summons on them at two police stations. Police said they could not locate either of them to serve the court summons.⁹² No further action was apparent on the part of the police, once they indicated that they could not find the two alleged killers. According to one human rights lawyer familiar with the case: "There was a deliberate attempt by the state to subvert the whole process. These two alleged killers were CIO

⁹⁰ *Daily News*, "Witness in Tsvangirai's election petition case breaks down in court", 1 March 2001.

⁹¹ *Daily News*, "Court hears harrowing tale of MDC poll agents' murder", 22 February 2001.

⁹² *Daily News*, "Named killers disappear", 27 March 2001.

operatives – this was not a disputed fact but a known fact demonstrated in court – so the state should be able to deliver summons to them."⁹³

When he made his final judgment, Judge Devittie also ordered that the record of the court proceedings be sent to the Attorney General's office, saying that according to Section 137 of the Electoral Act evidence of corrupt practice or illegal practice shall be forwarded to the Attorney General for prosecution.⁹⁴

⁹³ Amnesty International interview, December 2001.

⁹⁴ High Court Order HH 67/2001 HC 8139/2000, "Buhera North Election Petition".

On 13 July 2001, Attorney General Andrew Chigovera reportedly ordered police to investigate the case. "I have asked the police to investigate these murders because I feel there is a basis for criminal investigations. I cannot tell you how long the investigation is going to take, but you can rest assured that no stone will be left unturned."⁹⁵ The Attorney General's response came after MDC parliamentarians had called for his resignation in the previous week for failing to prosecute alleged perpetrators of violence. Yet on 30 August 2001, reacting to a parliamentary question on why Joseph Mwale and Kainos Tom Zimunya had not been prosecuted, Minister of Justice, Legal and Parliamentary Affairs Patrick Chinamasa contradicted the Attorney General, saying the court had no legal right to order a prosecution.⁹⁶ Another lawyer involved in the case, Sheila Jarvis, confirmed that in March 2001 her legal team had subpoenaed the police docket, which contained the record of the police investigations into the double murder, but that police failed to produce it. "We were told it was lost or in different places, but it was never given to us," Sheila Jarvis said.⁹⁷ *In May 2002 the office of the Attorney General reiterated its request, asking the police to submit the results of their investigation. However, at the time of writing (June 2002), there was no indication that this request had been complied with.*

Extending the case study: alleged activities of security forces in Chimanimani

Joseph Mwale, the CIO officer named in the High Court as one of two individuals alleged to have killed Tichaona Chiminya and Talent Mabika on 15 April 2000, is a senior CIO operative in Chimanimani, in the east of Zimbabwe. Allegations of human rights violations committed by Joseph Mwale in Chimanimani during 2001 and 2002 have been made by victims and by lawyers representing victims. The allegations have appeared in several press reports as well as reports made directly to Amnesty International⁹⁸. *Amnesty International believes that there is sufficient credible evidence to justify a prompt, thorough and independent criminal investigation into the allegations against Joseph Mwale; at the time of writing there was no evidence that an investigation had been undertaken by police.*

⁹⁵ *Daily News*, "Attorney General order police to investigate Chiminya's killers", 13 July 2001.

⁹⁶ *Daily News*, "Chinamasa says High Court has no legal right to order prosecutions", 30 August 2001.

⁹⁷ Amnesty International interview, December 2001.

⁹⁸ *Zimbabwe Standard*, "CIO Officer Spearheads Chimanimani Terror", 7 April 2002;

In December 2001, Amnesty International interviewed several victims of intimidation in Chimanimani who identified CIO officers as perpetrators of intimidation and torture. An MDC activist who spoke to Amnesty International identified the CIO as key coordinators of the security forces' campaign of abductions, torture and intimidation in Chimanimani. The activist, who was sent to Chimanimani to prepare MDC rallies, asked to be identified only as Oliver (not his real name). He told Amnesty International that army soldiers, CIO agents and the police were forcing the villagers to invade the farm of member of parliament Roy Bennett. State agents began dividing the farm into small plots while the farm workers were under instructions not to resist or react to the occupiers.

Daily News, "State agents threaten lawyers representing MDC suspects", 1 May 2002

On 1 November 2001, CIO officer Joseph Mwale identified himself to Roy Bennett when he arrived at the farm to accuse him of training an army and hiding arms caches. Joseph Mwale, who was accompanied by police, an army lieutenant colonel and air force officers, also claimed that helicopters had been seen flying to the farm.⁹⁹ Roy Bennett later told journalists that he believed that there was a state plan to plant an arms cache on his property and then charge him with possessing illegal weapons.¹⁰⁰

On 29 November 2001, five MDC activists left Roy Bennett's farm on a public bus, travelling from Chimanimani, when the bus was halted at a roadblock by soldiers in army uniform, accompanied by police and CIO officers. Two of the five MDC activists were detained. "They never said why they were arrested, they just pointed at them, saying 'you and you', and then put them into a blue Mazda truck that is used by the CIO," Oliver said. The bus was allowed to proceed, but within a few minutes, the CIO agents pursued the bus and stopped it once again at the roadside community of Wengezi. Oliver was detained and describes his subsequent treatment:

"They took me to the Cashel Valley Police Station, and beat me on the soles of my feet with a gun butt, and then put the barrel of the gun in my mouth," Oliver said. "They accused Bennett of training MDC soldiers and of keeping guns hidden... CIO agents beat me, and asked me questions, and told me they would kill me like they had killed my other two colleagues." Oliver was beaten and interrogated in handcuffs for two hours. He was then taken back to Chimanimani Police Station for further questioning, where he met two other detained colleagues before he was released in the early hours of the morning. Oliver summarized his allegations: "The soldiers there on Roy Bennett's farm are harassing, beating the workers. But it is the CIO committing the torture."¹⁰¹

Amnesty International's conclusions on policing and impunity

Impartial policing lies at the centre of any attempt to end the culture of impunity. Such policing is not just a matter of good training, since professional training can be corrupted. The government has a responsibility to diligently supervise, investigate and bring to justice those police officers who commit human rights violations. Proper internal mechanisms for inspection and discipline, created to be independent of the agency they supervise, as well as independent external bodies, are the means to creating accountability.

⁹⁹ Amnesty International interview, November 2001.

¹⁰⁰ *Zimbabwe Standard*, "Soldiers invade MP's Farm", 5 November 2001.

¹⁰¹ Amnesty International interview, December 2001.

The Zimbabwean government has undermined the effectiveness of the police, and distorted their professional role as protectors of the community, through the evident politicization of officers; their collusion with “militias”, or at the very least their acquiescence in the face of “militia” assaults; the failure to bring to justice those perpetrators who are apprehended; the further failure to bring to justice police who are colluding with or acquiescing to violations by the “militias”.

There are several international standards related to professional policing that are designed to require the police to respect, uphold and promote the human rights of the public. Among them are the UN Code of Conduct for Law Enforcement Officials, which states in its preamble that police in a democratic society should be “representative of and responsive and accountable to the community as a whole”.¹⁰² Other international standards that the Zimbabwe Republic Police have flouted include the Standard Minimum Rules for the Treatment of Prisoners, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. All these policing standards have been grossly violated by the conduct of the Zimbabwe Republic Police force. And impunity has been reinforced by the government for those officers that have violated human rights.

5. Impunity can be granted when the judiciary's independence and effectiveness is undermined or circumvented

Zimbabwe has had a strong historical tradition of judicial independence, and throughout the first two decades of independence, the courts remained tough on government violations of human rights. In the 1960s and 1970s, and then in the 1980s, *judges courageously sought to interpret the draconian Law and Order (Maintenance) Act in a manner that softened its more draconian aspects. Some judges upheld applications brought by human rights lawyers to produce in court those people detained under a State of Emergency, which was declared in 1965 by the Rhodesian government and only lifted in 1989, nine years after independence. It can be argued that judges' demands for police to produce detainees in court may have spared many individuals from the security forces' torture because detention incommunicado coupled with denial of*

¹⁰² UN General Assembly Resolution 34/169 of 17 December 1979, sub-paragraph (a).

access to legal representation creates the conditions in which a suspect is more likely to be subjected to torture and intimidation, as has been repeatedly highlighted by the UN Commission on Human Rights and the UN Special Rapporteur on torture.

The government provoked a sense of lawlessness and chaos among civil society during the last two years when it began openly to defy superior court rulings that contradicted its policies. Previously, the government used legislation to evade reforms proposed through court rulings, for example, the ruling that the death penalty was cruel, inhuman and degrading punishment. But starting in 2000, on the issue of land occupations, the government simply ignored repeated High Court and Supreme Court orders on the legality of the occupations. Further, it began a campaign of harassment to force those judges perceived to be critical of state policy to resign or retire. In undermining the effectiveness and independence of the judiciary, a culture of impunity for politically inspired human rights violations was reaffirmed and strengthened.

The issue of the contested legality of the state-organized occupation of commercial farmland in Zimbabwe, and the human rights violations that have occurred in that context, illustrate how the courts have been undermined and court orders to the police circumvented by the Zimbabwean authorities. Failure to comply with court orders not only undermines the independence of the judiciary, as well as the professional conduct of police, but jeopardises respect for human rights and perpetuates a culture of impunity.

When the countrywide occupation of white-owned agricultural land by state-sponsored "militia" and landless peasants began in February 2000, the Commercial Farmers Union initiated an application before the High Court to declare the occupations illegal and force the police to evict the occupiers. The order sought was against the Zimbabwe National Liberation War Veterans Association and its then chairperson, Chenjerai Hunzvi, as well as Minister of

Agriculture Dr Joseph Made, the then Mashonaland Central Provincial Govenor, Border Gezi, and Police Commissioner Augustine Chihuri. On 17 March 2000, the High Court declared the occupation of farms by those who claimed a right to do so simply in order to demonstrate against Zimbabwe's inequity in land distribution was unlawful, and directed Police Commissioner Chihuri to instruct his officers to enforce an order for those occupiers to vacate the land within 24 hours. Judge Paddington Garwe specifically directed the Police Commissioner to disregard any instructions contrary to the ruling.¹⁰³

¹⁰³ Consent Order HC 3544/2000, of 17 March 2000, p.1.

Although Police Commissioner Chihuri had consented to the order, he later applied to the court to amend it on the grounds that he lacked enough manpower to remove those in unlawful occupation, and argued that the occupation was a political matter needing a political rather than a legal solution. The High Court refused his request¹⁰⁴, but the Police Commissioner still failed to obey the order. Home Affairs Minister Dumiso Dabengwa announced on national television on 2 March 2000 that he had ordered the police to enforce the law and evict those illegally occupying farms. Dumiso Dabengwa said that farm owners, like everybody else, needed to be protected by law.¹⁰⁵ On the same day, however, President Mugabe stated on television that he would not stop the invasion of white commercial farms by land occupiers: "No, we are not going to put a stop to the invasions which are demonstrations, peaceful demonstrations, and lawful demonstrations by the ex-combatants. It is just the aspect of law and order that we would want to be observed. If these are observed, we will not interfere at all."¹⁰⁶ The President made further statements in the media in the following days, threatening farmers with "severe" violence if they start to be angry and start to be violent.¹⁰⁷

The number of violent incidents involving public assaults by ZANU-PF supporters and "militia" grew. On 1 April 2000,

¹⁰⁴ High Court decision HH 84-2000, HC 3985/2000.

¹⁰⁵ *Daily News*, "War vets ordered off farms", 3 March 2000.

¹⁰⁶ *Daily News*, "War vets ordered off farms", 3 March 2000.

¹⁰⁷ *Daily News*, "Mugabe threatens violence", 29 March 2000.

ZANU-PF supporters using iron bars and clubs attacked a peaceful march by the National Constitutional Assembly (NCA), a Zimbabwean non-governmental organization promoting constitutional reform, in downtown Harare, causing scores of injuries, as police stood passively and watched.¹⁰⁸ On 3 April, "militia" members in a coordinated attack assaulted farmer Iain Kay in Marondera, and then shot and killed a police officer on the same farm the next day.¹⁰⁹ On 13 April, the High Court again urged President Mugabe to abide by the court judgment ordering the police to evict land occupiers, but the President replied: "The question of land shall be solved by us, not by the courts... For us in government, it's more than just the law of trespass, we have here a whole historical and political question which has remained unanswered... We do not want to mess up what the war veterans have done so far."¹¹⁰

As noted earlier, on 15 April 2000 David Stevens became the first white commercial farmer to be killed.¹¹¹ President Mugabe, reacting to the killing, stated that David Stevens had provoked his attackers. "Stevens was the one who started the war. He was the one who started firing," President Mugabe said, although there remains no evidence of violence by him against the "militia" that had occupied his farm.¹¹² Journalists quoted Vice-President Simon Muzenda as

¹⁰⁸ *Zimbabwe Standard*, "Havoc in City", 2 – 8 April 2000.

¹⁰⁹ *Daily News*, "Policeman dies in farm violence", 5 April 2000.

¹¹⁰ Agence France Press, "Mugabe refuses to end farm occupations after murder of white farmer", 17 April 2000.

¹¹¹ *The Guardian* (London), "They kept saying we were going to die", 17 April 2000.

¹¹² Ananova Ltd., "Mugabe blames murdered white farmer for starting 'the war'", 12

saying he was not sorry about Stevens' death, nor about the subsequent killing of another farmer, Martin Olds. "Those two farmers who were killed had provoked the former fighters and it should not be regrettable... We are calling on war veterans to remain on the farms and we warn farmers not to provoke them."¹¹³

June 2000.

¹¹³ *The Guardian* (London), " 'The killers should just be tried – for the soul of the country' ", 26 April 2000.

Over the next six months, further killings and accounts of beatings and torture were reported as President Mugabe continued to claim that the commercial farmers were the enemy and that the "militias" were peaceful. The National Employment Council for the Agricultural Industry, a labour research organization, documented that 10 400 farm residents had been affected by the invasions: 3 000 displaced, 1 600 assaulted, 427 abducted, 26 killed and 11 raped. Their report also noted that more than 47 percent of the victims were MDC members, almost 44 percent had no political allegiance, while only five percent were ruling party supporters. The majority of the perpetrators of violations, 88 percent, belonged to ZANU-PF. The report concluded that a "third force" of army, police and CIO was behind ostensibly spontaneous invasions by peasants moving from the communal lands to squat on commercial farms.¹¹⁴

The Supreme Court issued another order on 10 November 2000, declaring the entry of uninvited persons on commercial farming properties unlawful. It required the respondents, including the Ministers of Agriculture and Home Affairs and the Police Commissioner – and those under their control – not to give sanction to the entry or continued occupation of farms by persons involved in resettlement until all the legal requirements and procedures had been fulfilled. The order was not meant, according to former Chief Justice Gubbay, to prevent the government from pursuing land resettlement. "Not at all. This has never been the objective or policy of the courts,"

¹¹⁴ National Employment Council for the Agricultural Industry, "Farm Workers – Farmers the Enemy?", June 2000.

Gubbay said. "The effect of the order was that land resettlement should be carried out within the framework of the constitution and in compliance with the provisions of the Land Acquisition Act; and not by unlawful invasion."¹¹⁵ Government officials and the police appeared to ignore this order, like the previous court orders.

By 21 December 2000, the Supreme Court once more declared that the relevant ministers and the Commissioner of Police should comply immediately with its order of 10 November and the order of the High Court of 17 March. In the course of giving its ruling the Supreme Court noted that:

¹¹⁵ Anthony Gubbay, "The plight of successive chief justices of Zimbabwe seeking to protect human rights and the rule of law", an address delivered in London for the John Foster Charitable Trust Annual Lecture on 5 November 2001.

"Wicked things have been done, and continue to be done. They must be stopped. Common law crimes have been, and are being, committed with impunity. Laws made by Parliament have been flouted by the Government. The activities of the past nine months must be condemned... A network of organisations, operating with complete disregard for the law, has been allowed to take over from government. War veterans, villagers and unemployed townspeople have simply moved onto farms. They have been supported, encouraged, transported and financed by party officials, public servants, the CIO and the Army. The rule of law has been overthrown in the commercial farming areas and farmers and farm workers on occupied farms have been denied the protection of the law."¹¹⁶

This Supreme Court judgment of 21 December 2000, given by Chief Justice Anthony Gubbay with four other judges, would be one of his last rulings. He resigned in July 2001 following government attempts to undermine the independence of the judiciary.

Harassment of judges and undermining the independence of the judiciary

¹¹⁶ These comments, noted in Judge Gubbay's speech of 5 November 2001 (see note 115 above), come directly from Judgment No. SC 132/2000 of 21 December 2000, *Commercial Farmers Union v President of Zimbabwe & others*.

In addition to refusing to comply with Supreme Court judgments, the government began attempts to intimidate the judiciary to pressure some judges into resigning. Interviewed for an article published on 22 October 2000 in the government-controlled *Sunday Mail*, Member of Parliament Phillip Chiyangwa representing ZANU-PF and close associate of President Mugabe, said that he would call for a commission of inquiry into the conduct of Supreme Court Chief Justice Anthony Gubbay. The call to probe Gubbay came when he forwarded to police a number of letters he had received asking for assurances that they would investigate the case of Patrick Nabanyama, an MDC election agent abducted and "disappeared" during the run-up to the June 2000 parliamentary elections.¹¹⁷

On 24 November 2000, about 200 'war veterans' and ZANU-PF supporters physically invaded the court buildings armed with steel rods, assaulting a security guard, shouting death threats and trapping the Supreme Court justices in their robing room for more than an hour. The police were called, and although a police station is located nearby, officers delayed responding to the attack for more than two hours. To Amnesty International's knowledge, there was no investigation nor prosecution of those involved. As the International Bar Association later observed: "The Attorney-General does not believe he has a responsibility to initiate an investigation of the widely publicised storming of the Supreme Court. Furthermore, both the Minister of Justice and the Attorney General said that no official action had been taken to prevent people from intimidating

¹¹⁷ *Sunday Mail*, "Probe Gubbay", 22 October 2000.

members of the judiciary. Such official inaction is unacceptable. Government officials have vigilantly to guard the judiciary against intimidation."¹¹⁸

¹¹⁸ International Bar Association, "Report of the Zimbabwe Mission 2001", p.94.

Afterward, when Chief Justice Anthony Gubbay and Justice Wilson Sandura met Acting President Simon Muzenda seeking assurances for the safety of the judiciary, Gubbay was reportedly asked: "What do you expect, your judgments threaten war veterans?" The conversation with the acting head of state reportedly turned into an attack on the judiciary itself, with similar comments later publicly repeated by President Mugabe.¹¹⁹

A public campaign of harassment and vilification continued against sitting High Court and Supreme Court judges. Government officials called on certain Supreme Court judges to step down from a controversial case.¹²⁰ Justice Minister Chinamasa gave a speech attacking two High Court judges by name, questioning how they could serve the country after having served "so faithfully" the Rhodesian government.¹²¹ War veterans were quoted in the national media making threatening remarks and by December 2000, special protection from the Police Protection Unit was provided to all judges who had been threatened with attacks on their homes.¹²² In that same month, President Mugabe attacked the judiciary for being guardians of the "white racist commercial farmers". In February 2001, the ruling party organized its members of parliament to quash an MDC motion of support, and instead to invert the motion's

¹¹⁹ Zimbabwe Human Rights NGO Forum, "Enforcing the Rule of Law in Zimbabwe", September 2001.

¹²⁰ *Financial Gazette*, "ZANU PF Wants Gubbay Fired", 2 - 8 November 2000.

¹²¹ Speech delivered by Minister of Justice, Legal and Parliamentary Affairs Patrick Chinamasa, at Troutbeck Inn, Nyanga, on 11 November 2000.

¹²² *Daily News*, 14 December 2000.

language to express a lack of confidence in the judiciary.¹²³ President Mugabe again stated that judges "sympathize with the whites and cannot be seen to pass judgments against the farmers."¹²⁴

Government pressure stepped up, and as some judges refused to resign, Minister of Information and Publicity Jonathan Moyo reportedly threatened to use the law to remove them.¹²⁵ Anthony Gubbay, Chief Justice of the Supreme Court, was forced into early retirement¹²⁶ in July 2001 after receiving a series of threats. His resignation reportedly came after he received assurances from the government that if he resigned, it would not put pressure on other judges to resign. Esmael Chatikobo, a High Court judge, resigned in May. He had reportedly angered ZANU-PF officials by issuing a restraining order in 2000 to prevent police from raiding the private radio station *Capital Radio*. Another judge, James Devittie, resigned in June 2001, a few days after handing down three judgments against ZANU-PF and in favour of the opposition in electoral petitions challenging election results filed by the MDC.¹²⁷

¹²³ Parliamentary Debates 27,24; 27,44; 27,46

¹²⁴ *The Herald*, "Judiciary under attack", 22 February 2001.

¹²⁵ *The Herald*, 23 February 2001.

¹²⁶ *The Herald*, 26 February 20.01.

¹²⁷ "Amnesty International Report 2001", entry on Zimbabwe.

Taking Gubbay's place was Chief Justice Chidyausiku, who reversed earlier Supreme Court rulings made in 2000 and 2001, and found, in December 2001 that the land occupations were legal. Legal commentators criticized this ruling on several grounds, but most notably that it tried to retroactively legalize what had previously been declared illegal.¹²⁸

In March 2001, a delegation from the International Bar Association visited Zimbabwe. It included senior judicial figures from Britain, the Caribbean, India, Namibia, South Africa and the USA. When they met with President Mugabe, the delegates expressed their concern about a rumoured government move to appoint additional members to the Supreme Court to create a majority favourable to the government's policies. They called it "packing the court" and said it was "fundamentally wrong". President Mugabe gave his assurances that he had no such intention.¹²⁹ In July 2001, President Mugabe expanded the full Supreme Court bench from five to eight, appointing three new judges. A former judge expressed his concern about these appointments at the time, saying it was "quite unnecessary to have three new justices. The fact is, this is now a 'loaded' court with these extra three."¹³⁰ The IBA delegation also met with Justice Minister Chinamasa, who confirmed to them that he would not repeat the call for judges to resign. By February 2002, Zimbabwean newspapers quoted Chinamasa as stating: "If they [judges] behave like unguided

¹²⁸ Report to Amnesty International, December 2001.

¹²⁹ International Bar Association, "Report of the Zimbabwe Mission 2001".

¹³⁰ Amnesty International interview, December 2001.

missiles, I wish to emphatically state that we will push them out.”¹³¹ Between 2000 and 2002 two Supreme Court Judges (including the Chief Justice) and four High Court Judges resigned from the bench.

An independent Zimbabwean newspaper noted that the new judges had strong links to the government and that: "Two of those appointees were reported last weekend to have benefited from the Government's opaque land lease scheme. In other words, they will be asked to deliver judgments on the legality of a land redistribution process of which they are recipients."¹³² According to a Zimbabwean human rights organization, independent political figure Margaret Dongo had circulated a list of those who had been allocated government-seized farm allocations in 1999. Among the names on the list were serving cabinet members, senior military officials and two of the justices.

¹³¹ *Daily News*, 6 February 2002.

¹³² *Zimbabwe Independent*, 24 August 2001.

The “militia” assaults, destruction of homes and death threats continued in 2002. Their victims included provincial judges, prosecutors and magistrates. One example was the 28 January 2002 fire-bombing of the house of Felix Matsinde, a senior prosecutor in Kwekwe, who had refused to grant bail to ZANU-PF “militia” who had been arrested for looting and assault. The “militia” chanted anti-MDC slogans as they broke into the house and doused it with petrol.¹³³ Felix Matsinde’s family suffered burns during the attack. On 4 February 2002, unknown assailants pointed a gun at Prosecutor Kennedy Mpomba, apparently in connection with his handling of several cases involving the prosecution of war veterans on charges including incest, issuing death threats and kidnapping.¹³⁴

As Amani Trust concluded, judges who have shown any sign of judicial independence have also been threatened with investigation and disciplinary action for supposed misconduct.¹³⁵ The organization quoted Justice Michael Gillespie’s final opinion before he resigned from the bench in September 2001:

“The executive has contrived to politicize the bench... manipulation of court rolls’ selection prosecution; and packing of the Bench of the superior courts are techniques which provide a government determined to do so with

¹³³ *Daily News*, “Suspected Zanu PF supporters petrol-bomb court official’s house,” 6 February 2002.

¹³⁴ *Daily News*, “Prosecutor threatened”, 6 February 2002.

¹³⁵ AMANI Trust, “Neither Free nor Fair: High Court decisions on the petitions on the June 2000 General Election”, 3 March 2002.

the opportunity to subvert the law while at the same time appearing to respect its institutions.”¹³⁶

The United Nations Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, expressed grave concern about the state of Zimbabwe's judiciary, stating: "These latest developments seen in the light of previous attacks, harassment and intimidation of the judiciary by the executive and others, as well as defiance of court orders by the Government, are indicative that Zimbabwe is no longer a government of laws but of men who have no regard whatsoever for the independence of the judiciary and the majesty of the law... Defiance of court orders in effect is defiance of the rule of law. When it is the Government and its agents who defy then governmental lawlessness becomes the order of the day".¹³⁷

He later stated in his report to the 58th session of the Commission on Human Rights, held in March and April 2002 in Geneva, that :

¹³⁶ Gillespie, J., *The State v Tapfuma Humbarume and Ask Ngoro*, p.5.

¹³⁷ Statement by the UN Special Rapporteur on the independence of judges and lawyers, 7 March 2002.

"I remain very concerned about the situation in Zimbabwe, which has deteriorated rapidly since I last reported at the 57th session. The attacks on the judiciary, particularly the Supreme Court, and the threats, harassments and intimidations against its judges particularly the then Chief Justice Anthony Gubbay, who was since forced to agree to retire early, amounted to an attack on the rule of law."¹³⁸

Amnesty International's conclusions on the judiciary's role in combatting impunity

There were in fact three killings in just one day, that are mentioned in the present report. On 15 April 2000, commercial farmer David Stevens was fatally shot. On the same day, Talent Mabika and Tichaona Chiminya were killed in an arson attack. In each of these cases, police were aware of the attack, on hand at the time of the killing, or obstructive to those who were trying to intervene or investigate afterward. The perpetrators were state agents, or those coordinated and sponsored by the state. In both situations, the victims' families have applied to the judicial system to oblige the police to carry out their duties and investigate with the aim of prosecuting and bringing to justice those responsible for these crimes. In both, the courts have failed.

The judiciary has a crucial role to play in enforcing the law and ending impunity for perpetrators of human rights violations. Unjustifiable and unreasonable attacks on its integrity jeopardize that process, as do attempts to politically manipulate those presiding over

¹³⁸ Report of the UN Special Rapporteur on the independence of judges and lawyers, 9 April 2002.

courts. Government attempts to force out those judges who remain independent of its political wishes, and its appointment of more compliant judges who appear to rule in accordance with the government position without regard to justice, will undermine the role of the judiciary, erode confidence in its decisions and damage it as an institution. The role of the courts and police in combatting impunity by upholding the rule of law appears to have been vitiated by political manipulation. As one former High Court justice told Amnesty International, shortly before stepping down: "In a situation like this, the good judges resign."

The government's interference in the judiciary, through its campaign to force superior judges to resign, constitutes a blatant violation of Zimbabwe's obligations under the ICCPR and other international standards to guarantee the independence of the judiciary, obligations which are spelled out in the United Nations Basic Principles on the Independence of the Judiciary. The government's further refusal to accept court rulings, and its attempts to carry out policies contradicting judicial decisions also violates the Basic Principles' guidelines that decisions of the courts should not be subject to revision save by lawfully constituted appellate courts.

III Recommendations

Breaking the culture of impunity promoted by the Zimbabwean government will entail a mechanism to investigate the true facts involved in thousands of incidents of human rights violations and to prosecute those responsible in a fair and impartial manner. This goal requires civil society involvement at every step in the process, to investigate the violations, to assist victims of violations in speaking out and healing their trauma, and to shape governmental policies as they affect basic human rights.

Adella Chiminya, the widow of Tichaona Chiminya, and Marie Stevens, the widow of David Stevens were driven to seek access to judicial remedies outside the country. In October 2001, a US Federal District Court in New York ruled that Robert Mugabe, Stan Mudenge, Jonathan Moyo and other ZANU-PF party leaders were liable to pay compensation to the families of Adella Chiminya, David Stevens and other victims of human rights violations that ZANU-PF had helped perpetrate. Under the Alien Tort Claims Act, a federal court can hear cases of citizens of foreign countries who file a law suit against the government in the United States.

The court ruled that President Mugabe was personally immune from the suit in his capacity as head of state, but did not have immunity from being sued in his capacity as First Secretary of the ZANU-PF party.¹³⁹ In his 130-page decision, Judge Victor Marrero ruled in November 2001 that:

"...ZANU-PF did not consist merely of loosely connected, haphazardly organized individuals or a misguided mob of marauders randomly roving and unleashing terror throughout Zimbabwe. Rather, plaintiffs' factual assertions and supporting evidence suggest that in carrying out the drive of organized violence and methodic terror portrayed here, ZANU-PF worked in tandem with

¹³⁹ Press release from the attorneys for the plaintiffs, "Mugabe's ZANU-PF held liable for murder – Political terror abroad held accountable under US law", 31 October 2001.

Zimbabwe government officials, under whose direction and control many of the wrongful acts were conceived and executed."

The verdict serves not only to provide limited forms of redress to the victims, but to show the legal responsibilities of the perpetrators and those who sponsor their violations, who are unlikely to face justice under their own law.

To begin to break the cycle of impunity and promote justice for the victims of human rights violations in Zimbabwe, Amnesty International has identified the following key initiatives that could provide a foundation upon which future action can be built:

1) Human rights violations should be investigated and reported.

The government of Zimbabwe has an obligation to investigate allegations of human rights violations within its jurisdiction and to bring those responsible to justice. Reports of human rights violations should be investigated promptly, independently and impartially and, where there is sufficient admissible evidence, prosecuted without waiting for complaints of victims or others with a sufficient interest in the case.

Amnesty International has been deeply impressed by the courageous investigative work being done by human rights defenders, often at risk to their own lives. The international community has an obligation to help protect human rights defenders under the UN declaration adopted in 1999 supporting their activities.

Above all, however, ending impunity requires the political will of the Zimbabwean government. The United Nations, the Commonwealth, the Inter-Parliamentary Union, the African Commission on Human and Peoples' Rights, the Southern African Development Community and other inter-governmental organizations that have mechanisms to carry out fact-finding missions should actively seek opportunities to visit Zimbabwe. When in the country, those investigative mechanisms should work in partnership with both government authorities and civil society to interview victims and perpetrators, members of the judiciary and legal community, and others involved in the criminal justice system. Reports of the

findings of such visits should be published promptly and distributed widely both inside and outside of Zimbabwe.

The international community should also provide advice and support to those civic organizations in Zimbabwean civil society that attempt to document human rights violations and to assist victims of torture and displacement or educate their fellow citizens about their rights in a non politically partisan manner.

2) The Zimbabwean government should ensure that the police abide by the highest standards of professionalism and respect for human rights.

The professionalism of the police and security forces has clearly been compromised, with political bias and partiality being demonstrated in the manner in which they carry out their day-to-day policing duties. While it appears there is little political will within the Zimbabwean government and the Zimbabwe Republic Police to carry out the sweeping reforms that are needed, there remain specific reforms that could become a base for longer-term work to improve the quality of policing in Zimbabwe.

The international community, in particular Southern African heads of state, should urge President Mugabe and the ministers of Home Affairs and Justice, Legal and Parliamentary Affairs to give public assurances that the police will regain their professionalism and obedience, not to political dictates, but to the highest of international policing standards.

International professional policing bodies and other organizations concerned with policing standards, including the Southern African Regional Police Chiefs' Cooperation Organization (SARPCCO), the UN Centre for Human Rights, the UN Commission on Crime Prevention and Criminal Justice and Interpol should actively engage with Zimbabwean

policing officials to encourage their counterparts to adhere to internationally and regionally agreed standards for policing and police training.

3) International pressure should be applied on the Zimbabwean authorities to allow the United Nations Special Rapporteur on the independence of judges and lawyers to visit the country.

The judicial system of Zimbabwe, while apparently becoming less effective in protecting human rights, remains a key institution in preventing human rights violations from being carried out with impunity.

The United Nations Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, reported to the Commission on Human Rights that:

“I regret that I have not received any reply from the Government on the four interventions I sent. I also regret that the Government appears to have reneged on its agreement for me to undertake a mission to Zimbabwe.”

Therefore, Amnesty International would urge the international community of states, including the Commonwealth and SADC, and the many international non-governmental organizations concerned about human rights in Zimbabwe, to press Zimbabwe to allow the UN Special Rapporteur on the independence of judges and lawyers to visit the country, carry out his investigations without hindrance, and make public his recommendations.

In the longer term, Amnesty International would recommend that:

4) The Zimbabwean government should review legislation to repeal or amend those laws that violate human rights.

The Zimbabwean government should repeal or drastically amend those laws that deny fundamental human rights. In particular, the Public Order and Security Act and the Access to Information and Protection of Privacy Act should be repealed or reformed because of their sweeping infringements upon international guarantees

of freedom of conscience and expression and of peaceful assembly and association.

Legislation providing for short prescription periods in civil claims against the state and its employees must be reviewed and the periods, some as short as eight months (e.g., the Police Act), should be substantially increased to give adequate time for aggrieved parties to seek justice and obtain redress.

Specific legislation should be adopted to qualify, or completely nullify, past clemencies and amnesties. These include the Clemency Order (1) of 18 April 1988, the Clemency Order (1) of 1995 and the Clemency Order (1) of 2000.

Parliament should review the military justice code, the Defence Act, and the Prescription Act with the aim of reforming or repealing those aspects that promote impunity for those who perpetrate violations of human rights.

In future discussions about the Constitution, the Bill of Rights should be reviewed and re-adopted to strengthen guarantees of basic human rights, in line with earlier proposals by the National Constitutional Assembly representing wider civil society.

5) The Zimbabwean government should ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Zimbabwe should ratify the Convention against Torture and incorporate specific provisions and definitions of the Convention into domestic law, with the aim of criminalizing the act of torture by state agents. The Zimbabwean parliament has already adopted a resolution on May 2001 urgently calling upon the government to ratify the Convention against Torture, and “introduce appropriate legislation that will ensure that these barbaric practices cease forthwith in Zimbabwe”¹⁴⁰, but the authorities appear to be dragging their heels.

In this connection, opportunity should be given to the UN Special Rapporteur on torture to carry out factfinding missions to Zimbabwe into matters falling within his mandate.

Few international treaties, conventions, and agreements to which Zimbabwe is signatory have yet been incorporated as domestic statutes, as required by Constitutional

¹⁴⁰ Parliament of Zimbabwe, “*Votes and Proceedings of the House*”, First Session – Fifth Parliament, 23 May 2001.

Amendment 12 of 1993. Either through specific provision in any future Constitution, or through specific legislation passed by parliament, there should be a legal enactment of a clause that makes international law applicable to situations in which Zimbabwean judges are interpreting constitutionally guaranteed rights, such as freedom of expression or association, in domestic law cases.

6) *An independent police oversight mechanism should be established.*

An independent civilian police complaints body should be set up, adequately resourced and empowered with a mandate to investigate complaints against the Zimbabwe Republic Police. The Judicial Services Commission, and not the President, should appoint members of such an oversight body to assure its impartiality. It should be accessible to all victims of human rights violations, publish its findings promptly and remain accountable to the Zimbabwean people.

7) *Reforms to protect the independence of the judiciary should be implemented.*

Magistrates, who are presently part of the public service, appear to be susceptible to political pressure and manipulation. They should be placed under the judicial system like other judges, which would guarantee greater independence and promote greater professionalism among magistrates. The Zimbabwe government's 1996 Thompson Commission recommended this reform, but it was never implemented.

The Judicial Services Commission, composed of the attorney general, judge president of the high court, chair of the public service commission, and two legal practitioners, has only limited power in respect to the appointment of judges and its composition is biased in favour of the government of the day. The Commission can only consider whether the nominees of the Minister of Justice are suitable

for appointment, but cannot nominate people or substitute a nomination. The President can still appoint a nominee rejected by the Commission as unsuitable, although he is statutorily required to explain to parliament why he has rejected the Commission's advice.

Amnesty International recommends that the Commission should be expanded to better reflect the whole legal community, including more lawyers who represent civil society. Through a constitutional amendment, the Commission's mandate of duties should be expanded to include the direct appointment of judicial officials, and presidential appointments of judges should be done away with, to ensure the independence of the judiciary.