

Zimbabwe: Drawing a line through the past

EXTERNAL (for general distribution)AI Index: AFR 46/04/93

Distr: SC/CC

No. of words: 4800

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**"DISAPPEARANCES" AND POLITICAL KILLINGS:
HUMAN RIGHTS CRISIS OF THE 1990s**

A MANUAL FOR ACTION

Chapter C-4

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Pre-Publication Version

August 1993

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This is a pre-publication version of Chapter C-4 of the Amnesty International report *"Disappearances" and Political Killings: Human Rights Crisis of the 1990s - A Manual for Action.*

Chapter C-4

Zimbabwe: Drawing a line through the past

" . . . we were trying to kill each other; that's what the war was about. What I'm concerned with now is that my public statements should be believed when I say that I have drawn a line through the past."

- Prime Minister Robert Mugabe, on retaining the head of Rhodesian intelligence in charge of Zimbabwe's Central Intelligence Organization after Zimbabwe became independent in 1980ⁱ

The issue of the accountability of security force personnel for human rights violations is seldom debated in Africa. In Latin America and, more recently, Eastern Europe, the issue of whether to bring officials who violated human rights under past regimes to justice has been a subject of national debate. But in most African countries the choice has been scarcely considered and has tended to be decided by default.

The issue occasionally receives public airing because of the former leaders of dictatorial and repressive African governments who gain refuge elsewhere in the continent. Thus, former presidents Hissein Habré of Chad, Siad Barre of Somalia and Mengistu Haile Mariam of Ethiopia currently enjoy the protection of the governments of Senegal, Nigeria and Zimbabwe respectively. The subject of this chapter is the impunity enjoyed by human rights violators in the transition from white minority to democratic rule. Yet the same issues of principle apply to many other African countries where officials responsible for human rights violations have escaped accountability for their actions.

In Rhodesia (later Zimbabwe) in 1980, a white minority government finally conceded democratic rule to the black majority after decades of political repression which had culminated in a brutal war of counter-insurgency in the 1970s. The army, police and other security agencies had been responsible for widespread extrajudicial executions, "disappearances", torture and other human rights violations which had been thoroughly documented by both domestic and international human rights organizations. At independence, however, essentially political considerations dictated that not only would past human rights violators not be brought to justice, but they would be retained in their positions in the security apparatus, with no investigation or calling to account for the deeds of the past. This was to have serious consequences which are explored in this chapter.

The 1980 amnesty

Zimbabwe's independence settlement came suddenly. Between September and December 1979 the major parties assembled for a conference at Lancaster House in London chaired by the United Kingdom, the colonial power. These parties were the Rhodesian Government and the leaders of a number of black parties co-opted into an "internal settlement" a year earlier, and the two major nationalist parties, the

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Zimbabwe African National Union (ZANU), led by Robert Mugabe, and the Zimbabwe African People's Union (ZAPU), led by Joshua Nkomo.ⁱⁱ

The Lancaster House settlement included an amnesty for all acts carried out in the course of the war. Earlier, the nationalist movement had been vocal in calling for Rhodesian leaders to be brought to trial, yet these demands were not reflected in the agreement reached. The amnesty, along with the entrenched guarantees of land and pension rights, were seen as political imperatives if the independence agreement was to be acceptable to the country's economically important white community.

After independence, the Zimbabwean Government adhered to the provisions of the Lancaster House settlement in a number of other matters which it found obnoxious, such as the maintenance of a racially segregated voters' roll. Arguably it would have been unrealistic to expect the government to break the agreement over the amnesty issue, since it depended on continued international good will. However, the new government went far beyond its Lancaster House obligations on this issue by failing to investigate past human rights violations and by keeping human rights violators in crucial positions in the security apparatus.

There was little expression of disquiet over these developments, and the international community heaped praise on the new Prime Minister, Robert Mugabe, for his "statesmanlike" compromises with the white community. The general view was that the new government, dominated by ZANU - regarded as the more radical of the two main nationalist organizations - could have sought "vengeance" against the white settler population, but had instead opted for "reconciliation".

The amnesty for human rights violators was rationalized by describing all abuses committed before independence as being part of the war effort. This was a serious distortion. Rhodesia had been a system of institutionalized racial domination which depended on systematic and often legalized human rights violations for its maintenance. Robert Mugabe and thousands of other nationalists were detained - and in many cases tortured - not for armed activities but for attempting to express their political views. The Rhodesian security forces carried out many extrajudicial executions of prisoners, civilians or others not taking an active part in hostilities, acts which are prohibited under the international humanitarian law of armed conflict as well as international human rights standards. In one of the clearest examples, in August 1976 the Rhodesian security forces launched raids on a Zimbabwean refugee camp at Nyadzonja in Mozambique, leaving nearly a thousand dead. A member of the elite Selous Scouts who took part in the massacre later described the pre-raid briefing:

"We were told that Nyadzonja was a camp containing several thousand unarmed refugees who could be recruited to join the guerrillas. It would be easier if we went in and wiped them out while they were unarmed and before they were trained rather than waiting for the possibility of them being trained and sent back armed into Rhodesia."ⁱⁱⁱ

This was not a normal armed combat operation. It was a gross human rights violation and a war crime - which found its echo in hundreds of smaller incidents throughout the country and across its borders.

The Lancaster House amnesty can be understood as an act of political expediency. But the victims of Rhodesian human rights violations and their surviving families were not consulted when the decision was made that their tormentors should go unpunished.

The rationale for retaining human rights violators in the security forces was explained by Emmerson Mnangagwa, then Minister of State responsible for security, in an interview with the journalist Joseph

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Lelyveld in 1983. On starting his job after Zimbabwe became independent, Emmerson Mnangagwa went to visit a room in a police station where he had been tortured while suspended upside down from butcher's hooks. In Lelyveld's words:

"The day after the independence ceremonies, the butcher's hooks were still on the ceiling, and astonishingly, his former interrogators were now on his staff, as was another official who acknowledged having once sent him a letter bomb. They told him they had just been doing their jobs; he then promised they could start in independent Zimbabwe with a 'clean slate.' Some had later proved to be South African agents, but others still appeared to be loyal officers, the minister said. In the beginning he had no choice but to trust them, he explained. Zimbabwe could not be expected to dismantle its only security agency."^{iv}

The legal framework for continuing human rights violations in Zimbabwe was provided by the state of emergency which had been in force in Rhodesia since 1965 and was retained for a further 10 years after independence. The broad and often arbitrary legal powers of the security forces under emergency regulations gave a sense that those forces operated beyond the reach of the normal provisions of the law. This perpetuated an atmosphere of impunity. It also meant that law enforcement officials such as police officers failed to gain the basic skills to investigate criminal cases and prosecute offenders in court, since they could choose instead to detain them without charge or trial.

Indemnity and compensation in Rhodesian and Zimbabwean law

In 1975 several victims of torture brought actions for damages in the Rhodesian High Court. The government's response was to introduce the Indemnity and Compensation Act. This indemnified members of the security forces and other government servants for any actions carried out in good faith in defence of national security since December 1972. The act also gave the Minister for Law and Order the authority to terminate actions for damages before the High Court.

The Zimbabwean Government retained the act after independence. A senior government Minister, Edgar Tekere, successfully invoked the act when he faced charges of murdering a white farmer in August 1980, with the result that the government was obliged to give way to political pressure and repeal the act. However, it promptly reintroduced almost identical provisions as regulations under its emergency powers - which meant that it avoided any parliamentary scrutiny.

In 1985 the government repealed the regulations after the Supreme Court had ruled unanimously that they were in breach of the constitutional provision allowing a person who is wrongfully arrested to sue for compensation. (The ruling was in response to a suit by a Harare lawyer, Denis Granger, for damages for wrongful arrest by the Central Intelligence Organization, CIO.) But despite the existence of a constitutional guarantee of the right to sue for compensation, in many cases the government has disregarded court rulings. Prime Minister Mugabe told Parliament in 1986:

"If Government - and I want to say this as a matter of principle - were to be awarding damages and paying huge sums of money that are involved in these cases, some of which are of a petty nature, Government would in my view be using the taxpayers' money wrongfully... [W]here people take advantage of our liberal situation to go to court and win on technicalities, they should not expect that Government is going to use the people's resources to enrich them..."^v

In May 1989 Parliament passed a further indemnity law, this time shielding National Park game wardens and other security force personnel from criminal prosecution for acts carried out in good faith in the

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course of anti-poaching activities.^{vi} The Protection of Wildlife (Indemnity) Act was introduced after senior National Park officials had faced criminal charges in connection with the deaths of poachers.^{vii}

Since then the Protection of Wildlife (Indemnity) Act has apparently encouraged the use of lethal force against poachers, including possible extrajudicial executions. According to official figures, between July 1984 and September 1991 anti-poaching patrols killed 145 suspected poachers.

To summarize: Zimbabwe embarked upon its existence as an independent state by sending a clear message to its security forces that they would benefit from the same impunity enjoyed by their Rhodesian predecessors. Officers responsible for human rights violations had been amnestied without any investigation or accounting for their actions. Many were kept on in similar positions of authority. Members of the security forces were indemnified from future prosecutions for human rights violations and much of the legal apparatus which had provided the framework for abuses in the 1970s remained intact. As a result, respect for the rule of law was weakened and the security forces continued to operate within a culture which saw human rights violations as part of an acceptable method of working. Specific techniques of human rights abuse were passed on from the Rhodesian to the Zimbabwean forces - often practised by the very same people.^{viii}

The effects of impunity: repression in Matabeleland

From the earliest months of Zimbabwe's independence there was tension and potential insecurity. Three armies were to be integrated to form a single Zimbabwe National Army: ZANLA, the military wing of ZANU; ZIPRA, the military wing of ZAPU; and the Rhodesian Army. While the former Rhodesian army continued to be housed in barracks and draw full army pay, the nationalist guerrillas awaiting integration were housed in makeshift camps in poor conditions. Resentment over these problems aroused latent rivalries between ZANLA and ZIPRA which broke out into open conflict in Entumbane township in Bulawayo, the main town in Matabeleland, in November 1980 and again in February 1981. During the latter round of fighting, Prime Minister Mugabe deployed the Rhodesian air force and the Rhodesian African Rifles against the ZIPRA forces in Bulawayo, killing more than 100. There were a number of reports of killings of civilians and prisoners. In Mzilikazi township, more than two kilometres away from the fighting, three children were killed in an attack by a helicopter gunship. In Bulawayo's industrial area former Rhodesian police reservists reportedly executed five ZAPU officials. A judicial commission of inquiry investigated the events, but its report was never made public.

Many former ZIPRA guerrillas were disillusioned by the government's use of the former Rhodesian military apparatus against them and returned to the bush to continue their armed struggle. Over the next six years the army's counter-insurgency campaign against these former guerrillas, now termed "dissidents", was to provide the occasion for renewed gross violations of human rights.

The government launched the anti-"dissident" campaign in early 1982 when it deployed a task force in Matabeleland North under the command of Lieutenant-Colonel Lionel Dyke, a former officer in the Rhodesian Selous Scouts. The force was composed of former Rhodesian African Rifles and Rhodesian Light Infantry. In the course of its operations there were frequent reports of villagers being beaten, tortured and killed.

The Task Force was later replaced by the Fifth Brigade, an elite unit. In the rainy season of early 1983, and again at the same time in 1984, the Fifth Brigade systematically killed civilians in Matabeleland, the area in southern Zimbabwe from which ZAPU drew much of its support. Unlike other army units, which

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were integrated, the Fifth Brigade drew exclusively upon former ZANLA guerrillas from the majority Shona-speaking groups. The Fifth Brigade used crude tribalist stereotypes of the minority Ndebele-speakers to justify its abuse of the civilian population.^{ix}

A Rhodesian tactic which was widely emulated by the Zimbabwean army was the use of "pseudo-gangs" - groups of soldiers posing as guerrillas, either to expose civilian supporters of the rebels or to commit abuses which could be blamed on the insurgents. Amnesty International documented two clear examples of this tactic in 1985. In April 1985 armed attackers, later officially described as "dissidents", killed seven people at a bar in the Mahamba business centre at Inyathi in Matabeleland North. Earlier the same day the paramilitary Police Support Unit had set up camp only 200 metres from the bar, and armed members of the unit were drinking there just before the attack. The attack was signalled by a single warning shot and the Support Unit members left immediately. Neither they nor the regular police intervened until the attackers had left. The owner of the bar was Micah Bhebhe, a member of the central committee of ZAPU. His son was among those killed.

In the second incident unidentified attackers shot dead Luke and Jean Kumalo, a Methodist headmaster and his wife, at Thekwane School near Plumtree in Matabeleland South in November 1985. Again the government described those responsible as "dissidents". Yet the attackers were wearing combat uniforms, some of which were identified by eye-witnesses as being those of the paramilitary People's Militia. The attackers stayed at the school for more than two hours, shooting and burning buildings, although soldiers at an army camp three kilometres away failed to intervene. Like Micah Bhebhe, Luke Kumalo was a supporter of ZAPU, the party which the authorities usually identified with the "dissidents".

The Zimbabwe Government resisted calls for independent inquiries into these two incidents and the culprits were never identified. It is impossible to know how many other killings officially attributed to "dissidents" may have been the work of the army's "pseudo-gangs".

In 1983 the government set up a commission to investigate allegations of army killings of civilians in Matabeleland. Its findings were never made public.

The official culture of forgetfulness reached its apogee in June 1988, when 75 members of the security forces serving sentences or awaiting trial for human rights violations were amnestied. One of those released was Robert Masikini, a CIO officer who only a week earlier had been found guilty of murdering a political detainee. Also released were four Fifth Brigade soldiers under sentence of death for murder, who were among the very few ever to have been brought to justice for human rights violations.^x

The government claimed to have a clear political justification for the 1988 amnesty. It was a direct parallel with an amnesty earlier the same year which granted immunity from prosecution to the so-called "dissidents", which in turn followed the signing of a unity agreement between ZANU(PF) and ZAPU.

The amnesty for "dissidents" was successful in bringing peace to Matabeleland, but it created serious public misgivings since some of the rebels amnestied were believed to have been responsible for atrocious crimes, such as hacking to death 16 people, including babies and children, at a Protestant mission in Esigodini in November 1987. However, by its amnesty for security force members, the government appeared to attach no special significance to the fact that their crimes had been carried out when they were charged with the responsibility of protecting the human rights of citizens. Essentially the government's rationale was the same as in 1980, when all past abuses were wiped clean under the pretence of being acts of war.

The debate over impunity

Remarkably few voices were raised within Zimbabwe to criticize the amnesties of either 1980 or 1988. However, particularly after the 1988 amnesty, there has been criticism of the government's failure to explain and learn from past human rights violations. There has also been a tenacious legal struggle by the families of one group of "disappeared" people.

The 1980 amnesty scarcely figured in political debate at the time. Even those who were critical of the new government's alleged failure to fulfil other aspects of its pre-independence programme, such as land reform, seemed content to accept the view that a line should be drawn through the past.

The 1988 amnesty did arouse some disquiet, especially the releases already mentioned of CIO official Robert Masikini and the convicted murderers of Lieutenant Ndlovu. In strict terms the issue was rather different from that in 1980. At independence a decision was made not to investigate or make any accounting for past human rights violations. By contrast, some of those released under the 1988 amnesty had already been tried and convicted. Once again, however, there was almost no support in political circles for the notion that there should be a thorough accounting for abuses which took place between independence and 1988. Kembo Mohadi, the ZAPU member of parliament who had successfully sued the government for damages for torture, dropped the case after the unity agreement between his party and ZANU(PF). "I personally don't really accept retrospective condemnation. A new chapter was opened on 22 December [when the unity agreement was signed]," he said. Another ZAPU member of parliament, Sidney Malunga, who had been detained three times and beaten on the soles of the feet, expressed similar sentiments: "I believe political leaders must be magnanimous. We don't want to open up old wounds."

Reaction in Matabeleland was different. Joseph Khumalo from Silobela was interviewed shortly after the unity agreement and amnesty:

"The memory is very powerful. Even people who I played with disappeared. A friend in our area, Matanda Fuzane, they shot him directly... It was done publicly, that shooting, at night. His father witnessed it. It was the Fifth Brigade. They shot him in front of his family. [The unity agreement] has done to help the souls of the people. The people were suffering, now it has come to a rest. But you can't just say, 'Gentleman, it's over.' There is nothing that proves to me that we are over this matter."

An Ndebele lawyer whose brother had been given electric shock torture by the CIO commented:

"For those who were untouched, they might as well have been reading about Lebanon. Those people have nothing to forget, nothing to forgive. But in Matabeleland, every family was touched. Every family suffered."^{xi}

One group of families has tried, with only partial success, to use the legal system to call the government to account for human rights violations. They are the relatives of nine men who were detained and "disappeared" from the Silobela area of Midlands province on the night of 30 January 1985.^{xii} In 1986 a lawyer for the Catholic Commission for Justice and Peace in Zimbabwe filed a suit in the High Court on behalf of nine women from Silobela. In their supporting affidavits the women told how their husbands had been threatened by ZANU(PF) officials before their "disappearance"; how the abductors did not speak proper Ndebele and appeared to be government officials rather than people who lived in the bush; how the abductors beat the men and drove them away in vehicles resembling the Nissan trucks used by the security forces; and how the police failed to carry out proper investigations into the "disappearances".

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The High Court ordered a police investigation into the case which finally reported in early 1989. However, the police findings did not go beyond what had already been stated in the women's affidavits.

In early 1992, the nine men from Silobela were declared dead. Although this resolved certain financial problems connected with the administration of their estates, the conclusion of the case was unsatisfactory since it failed to account for the circumstances of their "disappearance", to assign responsibility or to pay damages to the families. The security forces had received another assurance of their impunity.

Securing human rights: the need to come to terms with the past

It is important that the discussion of impunity does not oversimplify or exaggerate its effects. The amnesty for Rhodesian human rights violators was not by itself responsible for the continuation of the same abuses in independent Zimbabwe. However, it did provide the environment - and the means - for continuing human rights violations.

The new government consciously used the repressive apparatus of the Rhodesian state: emergency laws, intelligence personnel, specialized military units and counter-insurgency tactics. More broadly, it allowed a culture of abuse and impunity to permeate the security structures.

Many observers were surprised by the ease with which former Rhodesian personnel worked side by side with nationalist guerrillas in independent Zimbabwe. Yet their shared military ethos - including the notion that they were beyond the reach of the law - proved stronger than their previous differences.

The paradox is that impunity for human rights violators has flourished in a country which since 1980 has been a functioning multi-party democracy. Zimbabwe has a vigorous independent judiciary and a Declaration of Rights which is enforceable by the courts. In principle it does not lack the institutional means to enforce respect for human rights. However, the government has chosen to place the security forces above the law. The problem is essentially political rather than institutional.

Since 1987 the strengthening of institutions of civil society has created greater pressure on the government to act against human rights violators. The emergence of an independent press has been particularly important. For example, independent newspapers have highlighted the "disappearance" of a woman, Rashiwe Guzha, who was last seen in CIO custody in 1990. The elevation of the case into a *cause célèbre* has forced the government to bring charges against a senior CIO official. There have been calls from the press, academics and human rights groups for an independent commission of inquiry into the whole functioning of the CIO.

It is not too late for the Zimbabwean Government to initiate a thorough process of investigation and truth-telling about past human rights violations. The government should understand that this is part of the process of healing wounds both at the individual level - among the families of the dead and "disappeared" - and nationally. It might be added that the government would be likely to emerge with some credit from such an investigation: since 1987 it has made significant steps to overcome the conditions which have caused human rights violations or allowed them to occur. The danger is that without a proper accounting for past violations, such improvements will not be properly secured.

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Notes

i Quoted in Ken Flower, *Serving Secretly; An Intelligence Chief on Record; Rhodesia into Zimbabwe; 1964 to 1981*, John Murray, London, 1987, page 3.

ii At this stage ZANU and ZAPU were linked in an alliance known as the Patriotic Front (PF). At independence the Patriotic Front broke up and the two organizations contested the elections separately. ZANU(PF) - as it became known - won a majority of seats and formed the government, with a minority of ZAPU ministers. Most ZAPU ministers were dismissed in 1982 with the worsening of political tensions. In December 1987 the two parties agreed to unite and now form the government under the name of ZANU(PF).

iii Quoted in David Martin and Phyllis Johnson, *The Struggle for Zimbabwe; The Chimurenga War*, Faber and Faber, London, 1981, page 241.

iv Joseph Lelyveld, *Move Your Shadow; South Africa, Black and White*, Times Books, New York, 1985, page 213.

v Speech of 16 July 1986, cited in G. Feltoe, *A Guide to Zimbabwean Cases Relating to Security, Emergency Powers and Unlawful Arrest and Detention*, Legal Resources Foundation, Harare, 1988, page 8.

vi This indemnity does not apply to civil proceedings for compensation and is therefore not affected by the Supreme Court ruling in the Granger case.

vii There were widespread allegations that the charges had been fabricated by police personnel who were themselves involved in elephant poaching and eventually the charges were dropped.

viii The legacy of Rhodesian human rights violations was not confined within Zimbabwe's borders. Many Rhodesian personnel left the country at independence and placed themselves beyond the reach of Zimbabwean law. A proper truth-telling might have inhibited further abuses. Many ex-Rhodesians ended up in the service of the South African state, some actively engaged in subverting Zimbabwe's security. Others found employment with the nominally independent black "homelands" within South Africa. Among the most prominent, Ron Reid-Daley, head of the Selous Scouts who were responsible for gross abuses including the Nyadzonia massacre, became commander of the Transkei Defence Force. Many other Rhodesians also found senior positions in the Transkei security apparatus. During Reid-Daley's period in Transkei there were frequent reports of armed attacks on neighbouring Lesotho by the South African-backed Lesotho Liberation Army and the Transkei Defence Force itself. Rhodesia also bequeathed to South Africa an entire institution dedicated to the abuse of human rights - RENAMO, *Resistência Nacional Moçambicana*, Mozambique National Resistance. The Rhodesian CIO created RENAMO in the mid-1970s as a means of countering ZANLA, the military wing of ZANU, which operated from rear bases inside Mozambique. The organization grew into a fully fledged opposition to the Mozambican Government and engaged in widespread killing, mutilation and enslavement of that country's rural population. RENAMO was initially recruited from among the Shona-speaking Ndaus, who straddle the Zimbabwe-Mozambique border. At Zimbabwean independence in 1980 control of RENAMO "was transferred lock, stock and barrel" to the South African military, according to its creator, Ken Flower, who became Robert Mugabe's trusted security adviser. Flower later wrote: "I began to wonder whether we had created a monster that was now beyond control." (Flower, *op. cit.*, pages 261-2)

ix In 1984 Operation Turkey, a counter-insurgency tactic inherited from the Rhodesian army was revived by the Fifth Brigade in Matabeleland South, then in the grip of a three-year drought. As before, food supplies were destroyed, shops closed and food confiscated from travellers. A strict curfew was imposed and curfew breakers shot. There were reports that food relief was only supplied to those who produced a ZANU(PF) party card.

x Probably the reason why they were charged in the first place was that one of their four victims was an off-duty army officer, Lieutenant Edias Ndlovu. The inquest had found that "the deceased were tied with pieces of fibre, were got down on the ground and repeatedly stabbed with bayonets, much as a hunter slaughtering a wounded animal with a spear."

xi This and the preceding quotations are from interviews carried out by Bill Berkeley, Zimbabwe, 1988.

xii Dozens - possibly hundreds - of people "disappeared" in Matabeleland and Midlands in the space of a few weeks in January and February 1985. Most were abducted at night by armed men driving vehicles without registration plates. The victims were overwhelmingly Ndebele-speaking - although Midlands has a mixed population of Shona and Ndebele-speakers - and many were local ZAPU officials. The government alleged that the "disappeared" had slipped across the border to Botswana to join the "dissidents". Quite aside from the inherent improbabilities in this account - many of the "disappeared" were elderly and there are no reported instances of "dissidents" driving vehicles - it remains a fact that when the amnesty for "dissidents" was declared in 1988 not a single person reappeared of those who had gone missing in January and February 1985.