

ZIMBABWE HUMAN RIGHTS NGO FORUM

Zimbabwe, the Abuja Agreement and Commonwealth Principles: Compliance or Disregard?

8 September 2003

A report by the Zimbabwe Human Rights NGO Forum

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Executive Summary

The report examines obligations upon the Government of Zimbabwe arising from the Abuja Agreement on Zimbabwe, signed in Abuja, Nigeria on 6 September 2001. It examines commitment by the Zimbabwe Government to the *Harare Commonwealth Declaration* and the *Millbrook Commonwealth Action Programme on the Harare Declaration* and its compliance with the recommendations of the Marlborough House Statement and the Zimbabwe Mid-Term Review Statement. It is published two years following the signing of the Abuja Agreement and three months before the Commonwealth Heads of State and Government Meeting in Nigeria in December 2003 and is intended to provide some clarification with regard to the Zimbabwean crisis and its causes.

The report notes that high levels of human rights violations continue to prevail, some of them consequent on laws such as the Public Order and Security Act. This has been accompanied by the establishment of a culture of impunity presided over by a seemingly partisan police force. State agents have been frequently reported as being perpetrators of human rights violations themselves. There has been continued inter-party violence as a result of political intolerance. Victimisation on the basis of political affiliation remains a common phenomenon.

Elections have, since the Parliamentary Elections in June 2000, been accompanied by organised violence and intimidation. The electorate's freedom of choice in electing representatives in all these elections has been heavily constrained by victimisation of potential voters on the basis of their political affiliation. There have been reports of supplying food in exchange for votes and the use of retributive force where voters are deemed not to have voted in the expected manner.

The two main political parties in the country have failed to engage in any meaningful dialogue aimed at addressing the Zimbabwe crisis and the political impasse between them as recommended by the Commonwealth. Previous and current Commonwealth, regional and local initiatives to mediate in the process have apparently been met with disdain. The two parties have yet to resume talks since the breakdown of the Commonwealth-led initiative in May 2002, although there have been deliberations by both parties on the conditions for resumption of talks and the nature that these negotiations would assume.

The majority of evidence seems to indicate that the Zimbabwe Government has failed to abide by Commonwealth Principles enshrined in the Harare Declaration, the Millbrook Commonwealth Action Programme on the Harare Declaration, the Abuja Agreement itself and subsequent communiqués in the form of the Marlborough House Statement on Zimbabwe and the Zimbabwe Mid-Term Review Statement.

GLOSSARY - ABBREVIATIONS

ACP	African Caribbean and Pacific countries
CMAG	Commonwealth Ministerial Action Group
MDC	Movement for Democratic Change
MP	Member of Parliament
NGO	Non-Governmental Organisation
POSA	Public Order and Security Act
SADC	Southern African Development Community
UNDP	United Nations Development Programme
ZANU PF	Zimbabwe African National Union – Patriotic Front
ZCTU	Zimbabwe Congress of Trade Unions
ZLHR	Zimbabwe Lawyers for Human Rights
ZNLWVA	Zimbabwe National Liberation War Veterans Association
ZNA	Zimbabwe National Army
ZRP	Zimbabwe Republic Police

Purpose of the report

This report serves as a follow up to its two predecessors *Complying with the Abuja Agreement* and *Complying with the Abuja Agreement: A Two Months Report* both published at the end of 2001 following the signing of the Abuja Agreement. The report examines obligations imposed upon the Government of Zimbabwe arising from the Abuja Agreement in the context of the *Harare Commonwealth Declaration* and the *Millbrook Commonwealth Action Programme on the Harare Declaration*. The report further attempts to present the facts for consideration in determining whether the Abuja Agreement was ever implemented with any degree of determination or whether it was a mere agreement on paper and for the most part was regarded with apathy by Government. In order to achieve this, the report will provide an overview of events during the two-year period from September 2001, the month in which the Abuja Agreement was brokered, until the present. The report will also examine compliance with the recommendations of the Marlborough House Statement and the Zimbabwe Mid-Term Review Statement.

The Zimbabwe Human Rights NGO Forum believes that the commitment, or lack thereof, of the Zimbabwe Government to Commonwealth principles and past Commonwealth initiatives to resolve the Zimbabwe crisis should determine whether or not there is a need for stronger measures to be taken against the Zimbabwe Government. It is in this light that a report of this nature is considered necessary. It is published two years following the signing of the Abuja Agreement and three months before the Commonwealth Heads of State and Government Meeting in Nigeria and is intended to provide some clarification with regards to the Zimbabwean crisis and its causes.

The report focuses on the shortcomings of the Government of Zimbabwe in its commitment to Commonwealth principles, agreements and communiqués. The focus is on Government's and the ruling party's failings as, while the MDC may have also displayed some disregard for Commonwealth principles, it is the Government that signed the Abuja Agreement and it is with the Government that the obligation to abide by the principles of the associations and international agreements, to which it is party, rests.

Overview

The Government of Zimbabwe has often asserted that the economic, social and political problems currently plaguing the country are rooted in the inequitable distribution of land. The Government further claims that the reason that attempts to address these problems have attracted an unprecedented amount of regional and international attention is that the Government's land reform program has been viewed unfavourably by Britain and its fellow Western nations, white farmers in Zimbabwe and the opposition political party the Movement for Democratic Change (MDC), which is perceived as an extension of these white interests. It is however the Human Rights Forum's contention that while the issue of land has always been and is a very critical issue requiring urgent attention, it is debatable as to whether the land issue is at the core of the current Zimbabwean crisis

or whether it is in fact a crisis arising out of misgovernance, mismanagement of the economy and a political struggle to retain power; all masqueraded as a campaign for land reform.

*“Land is at the core of the crisis in Zimbabwe and cannot be separated from other issues of concern to the Commonwealth, such as the rule of law, respect for human rights, democracy and the economy. A programme of land reform is, therefore, crucial to the resolution of the problem.”*¹ The Abuja Agreement indicated land as being at the core of the Zimbabwe crisis. It however went on to stress that to consider misgovernance, human rights violations, decline of democracy, unsustainable social and economic development as peripheral matters to the land issue is clearly not within the spirit of the Commonwealth as espoused in the Harare Commonwealth Declaration.

While the land issue has been used to divert attention away from economic decline and a general onslaught on civil and political rights, these factors are not causally linked with the need to redress land imbalances. The consequence of the crisis on the enjoyment of economic and social rights has also been severe. The economic crisis has shrouded Zimbabwe since late 1997 predating the start of the Fast Track Land Reform Program by at least two years. The high levels of political violence commonly reported throughout the country, since March 2000, by no means have their root in the need for land reform but conversely were closely associated with elections and mass demonstrations.

Since the signing of the Abuja Agreement violence on commercial farms has scaled down.² However, the massive displacement of commercial farm workers is ongoing although it has received little Government attention. Farm workers continue to be victims of gross human rights violations.³ Additionally, there has certainly been no significant reduction in the prevalence of gross human rights abuses generally. Politically motivated violence has continued countrywide and there does not appear to be any sincere efforts by the Government to guarantee *“the liberty of the individual, in equal rights for all citizens regardless of race, colour, creed or political belief, and their inalienable right to participate by means of free and democratic political processes”*.⁴

The violation of basic human freedoms in the past two years, predominantly through political violence, is in violation of the Abuja Agreement and Commonwealth principles. The Zimbabwe Government has failed to take firm action against violence and intimidation as it had pledged. High levels of inter-party political violence have been recorded throughout the period from the signing of the Abuja Agreement to date. Such violence, while prevailing throughout, has intensified at times of

¹ Abuja Agreement, 6 September 2001

² Violence on commercial farms continues to be reported, however it is now occurring on fewer farms than was previously the case.

³ In addition to having been subjected to organised violence and torture, farm workers' rights to a livelihood (as a result of massive job loss) and to shelter were summarily violated as a result of fast-track land reform. Housing and property belonging to farm workers has been reportedly destroyed/ damaged by both the ZRP and militia groups. Most farm workers have no access to basic social services (health and education) and are extremely food insecure.

elections having an inherent effect of constraining the electorate's ability to exercise the right to vote without fear. Gross human rights violations perpetrated by some uniformed state agents also continue to be reported. These violations appear to be taking place with Government acquiescence and are being carried out by a seemingly partisan police force.⁵

Background

The Abuja Agreement on Zimbabwe, signed in Abuja, Nigeria on 6 September 2001, was a result of negotiations headed by the Commonwealth Ministerial Action Group (CMAG)⁶. Foreign Affairs Minister Stan Mudenge led the Zimbabwean delegation to the negotiations. President Robert Mugabe agreed to the terms of the Agreement, however the objectivity with which the Abuja Agreement would be enforced remained questionable. The fact that the President felt the need to consult, not only Government but also the ruling party, ZANU PF, as to whether or not to implement the Agreement showed the politicised nature that land reform had taken. Upon his return to the country following the signing of the Abuja Agreement, President Mugabe announced that he would "have to go to Cabinet and the party but he did not see these two **authorities** rejecting it."⁷ On 17 September 2001 the party did endorse the document with the Politburo stressing "the need for urgency in implementing the Agreement if the momentum created by Abuja was to be sustained."⁸

The major thrust of the Abuja Agreement was the land issue, placing this at the "core of the crisis in Zimbabwe". Other aspects of the crisis, such as the breakdown in the rule of law, disregard for human rights and the absence of democratic principles were mentioned as being further "implications" of the crisis. This wording of the Abuja Agreement resulted in Government focusing solely on the land issue and disregarding other matters of concern addressed by the Abuja Agreement. Subsequent perceptions of the crisis in Zimbabwe, particularly within Africa, have been tainted by this patently erroneous conception.

On 15 March 2002, the Commonwealth Observer Group⁹ released an adverse report on the Presidential Election. The report noted that high levels of political violence, media restrictions and limitations on voter education marred the elections. The Commonwealth Observer Group concluded "the conditions in Zimbabwe did not adequately allow for a free expression of will by the electors in the 2002 Presidential election".¹⁰ The Commonwealth Marlborough House Statement of 19 March

⁴ Declaration of Commonwealth Principles signed in Singapore in 1971

⁵ Political violence has been documented extensively by the Zimbabwe Human Rights NGO Forum in its *Monthly Political Violence Reports* published on a monthly basis since January 2001

⁶ The Commonwealth Ministerial Action Group (CMAG) is a mechanism established by the Millbrook Commonwealth Action Programme on the Harare Declaration. The mandate of CMAG is to "deal with serious or persistent violation of principles contained in the Harare Declaration"

⁷ *The Herald* 10 September 2001 (the emphasis on *authorities* is our own)

⁸ *The Herald* 18 September 2001

⁹ See recommendations from the Commonwealth Observer Group in appendix 1

¹⁰ *Zimbabwe Presidential Election 9 – 11 March 2002: Report of the Commonwealth Observer Group*

2002¹¹ suspended Zimbabwe from the Councils of the Commonwealth for one year, subject to review in March 2003. The statement was mainly founded on the findings of the Commonwealth Observer Group and their recommendations. Thus the admonition of the Marlborough House Statement was similar to that of the Report of the Commonwealth Observer Group whose recommendations included the following¹²:

- Cessation to the systematic use of violence in political campaigns.
- Clear separation of party and state in Zimbabwe and for there to be a proscription on the use of state resources for party political activity.
- Government and law enforcement agencies should strictly enforce the law in respect to all acts of political violence.
- The provisions of the Public Order and Security Act which impede freedoms of association and movement should be repealed

On 23 September 2002, six months after the initial suspension of Zimbabwe, the Zimbabwe Mid-Term Review took place in Abuja, Nigeria. President Robert Mugabe turned down his invitation to the meeting that was attended by the heads of government of Nigeria, South Africa and Australia. The Zimbabwe Mid-Term Review Statement¹³ noted with disappointment Zimbabwe's seeming reluctance to dialogue with the Commonwealth. It however, decided to continue monitoring Zimbabwe's compliance with the recommendations of the Marlborough House Statement over the ensuing six months.

In mid-March 2003, Zimbabwe's suspension from the Councils of the Commonwealth was extended until December 2003. The statement issued by the Commonwealth Secretary General, Rt Hon Don McKinnon, on this occasion urged the Zimbabwe Government to engage the UNDP on the issue of land reform as had been agreed in terms of the Abuja Agreement. In addition the statement urged the Government of Zimbabwe to "*honour its undertaking to other regional leaders on issues of concern*".

Unfolding of violence since the Abuja Agreement

Expectations that farm invasions would cease were high in September 2001 following the signing of the Abuja Agreement. Government pledged to halt farm invasions and further promised to adhere to the rule of law and respect human rights standards which it asserted was already provided for by the country's Constitution and laws by which the Government operated. Yet with such explicit support for Abuja, Government's practical commitment was brought into question by the lack of a

¹¹ See full text of the Commonwealth Marlborough House Statement in appendix 1

¹² *Zimbabwe Presidential Election 9 – 11 March 2002: Report of the Commonwealth Observer Group*

¹³ See full text of the Zimbabwe Mid-Term Review Statement in appendix 1

corresponding reduction in the human rights violations prevailing as a result of politically motivated violence. Concomitantly farm invasions continued in the immediate period following the signing of the Abuja Agreement. These were accompanied by the extensive displacement of farm workers, with widespread assault and torture of farm workers also being reported.¹⁴

Politically motivated violence continued throughout October and November 2001 with attacks on civil servants, whose support of the ruling party was deemed questionable, intensifying. Teachers were reported as having been particularly targeted.¹⁵ Reminiscent of common practices in the run up to the June 2000 Parliamentary elections, reports began to surface of campaign bases for militia (also known as torture centres¹⁶) being set up across the country. This phenomenon signalled the increase in levels of violence across the country.

A concern underlying prevailing events was the apparent partisan nature of the Zimbabwe Republic Police (ZRP). While appearing vigilant in investigation and arrests when the alleged perpetrators were opposition party members or supporters, evidence suggested that the ZRP was lethargic in its pursuit of justice when the alleged perpetrators were members or supporters of the ruling party, ZANU PF or members of the Zimbabwe National Liberation War Veterans Association (ZNLWVA). This occurrence was later noted by the Commonwealth Observer Group in its report on the Presidential Election. The report concluded that “*very often Zimbabwe Republic Police (ZRP) and other security forces did not take action to investigate reported cases of violence and intimidation, especially against known or suspected supporters of the MDC.*” also noted with concern A case in point in November 2001 was the swift arrest of 14 MDC members who were arrested for the murder of Bulawayo war veteran’s chairman, Cain Nkala including two who were in Harare at the time of the murder. Davis Mtetwa and Steven Chasara were allegedly arrested and severely tortured before they were released without being charged for the alleged offence.¹⁷ In contrast, no arrests were reported in connection with the murder of Kufa Rukara¹⁸ in Gokwe. This is a trend that has been common in the politically motivated murders documented by the Human Rights Forum.

¹⁴ For more detail see the *Monthly Political Violence Report – September 2001* by Zimbabwe Human Rights NGO Forum

¹⁵ The Human Rights Forum further documented violence against and victimisation of teachers in a report *Teaching Them a Lesson: A report on the attack on Zimbabwean Teachers, 20 September 2002*

¹⁶ Militia groups used bases as launch pads to violence in communities and at times victims were abducted to these centers and tortured. For more details see *Who Was Responsible? Alleged Perpetrators during the 2000 Parliamentary Election period* and *Are They Accountable? Examining alleged violators and their violations pre and post the Presidential Election March 2002* by the Zimbabwe Human Rights NGO Forum

¹⁷ Davis Mtetwa and Steven Chasara denied any involvement in the murder of Cain Nkala at the time of their arrest and were in Harare at the time that the murder was committed. See also *Monthly Political Violence Report – November 2001* by the Zimbabwe Human Rights NGO Forum

¹⁸ Kufa Rukara and five others were reportedly abducted to a base at Tenda School in Gokwe by a group of ZANU PF youths on 4 October 2001. The group was held at the base and tortured until the following day. They were reportedly rescued by the ZRP who took them to Mtora Hospital in a police vehicle. Rukara was seriously injured and later died at Gweru Hospital, where he had been transferred, on 19 November 2001. Although his fellow abductees were able to name the alleged perpetrators no arrests have been effected to date. It is disconcerting that the police, who were the ones to remove the victim from the scene, were unable to effect any arrests, yet were able to promptly make several arrests in the case of the murder of Cain Nkala, a scene to which they did not attend.

As the campaign for the Presidential Election gained momentum in late December 2001, it was reported that youths who had graduated from the Border Gezi National Youth Service Training Centre in Mount Darwin were victimising and assaulting residents in Harare's high-density suburbs.¹⁹ At the same time there were concerns that those that had benefited from the Clemency Order No 1 of 2000²⁰ were once again at the helm of utilisation of violence as a political tool. What followed was a violent campaign for the Presidency.²¹ The stakes in this election certainly appeared higher than in other elections before it, with violence levels reaching a peak and in January of 2002, 16 politically motivated murders were recorded, more than had been previously reported in any one month since the first politically motivated murder that was recorded in March 2000. High levels of political violence and intimidation of the electorate were evidenced in February and March 2002. Incidents of violence and intimidation were even recorded on the polling days of 9-11 March 2002.

President Robert Gabriel Mugabe of ZANU PF retained the Presidency with 1 685 212 votes, approximately 400 000 more than those of main opponent Morgan Tsvangirai. In spite of his loss, the large number of votes that Morgan Tsvangirai garnered in the elections led to a wave of retributive attacks targeting primarily MDC office bearers, those who had served as polling agents, and any individuals who were perceived as supporters of the MDC, whether or not this was actually the case.

In April and May 2002, with the election over, violence on the farms gained momentum, targeted at both farmers and farm workers. Resultant displacement of farm workers regrettably received little attention from the Government. Off the farms, in the communal areas, real and perceived supporters of the opposition were also reporting displacement from their homes as part of the retribution for allegedly voting for the opposition candidate in the Presidential Elections.

The majority of human rights violations recorded pre and post the Presidential Election were not resultant of the land redistribution exercise. They were in fact a consequence of inter-party violence, specifically an effort by the ruling party, ZANU PF, to retain and subsequently consolidate power through violence targeted at the opposition party, MDC, and retaliatory violence by the latter. There did not seem to be a concerted effort by Government to put an end to such violence. In the months

¹⁹ The Border Gezi National Youth Service Training Centre in Mount Darwin was the first national youth service training centre to be set up in the country. (Several others have since been set up countrywide.) The centre was to officially intended to train youths on national service issues. However, youths at the centre were reportedly given military training under the guidance of retired and serving army personnel and there were subsequent allegations that the youths were being used to perpetrate violence. The first group graduated in November 2001.

²⁰ Clemency Order No. 1 of 2000 was a general amnesty for politically motivated crimes committed between 1 January 2000 and 31 July 2000 (the campaign and election period for the June 2000 Parliamentary elections). Crimes such as assault, torture, abduction and arson were pardoned as the amnesty **excluded** only those that had committed "specified offences" prescribed as indecent assault, fraud, murder, possession of arms, rape, robbery, statutory rape and theft.

²¹ For detailed documentation of violence in the run up to the Presidential Election of March 2002, refer to *Are They Accountable? Examining alleged violators and their violations pre and post the Presidential Election March 2002* and *Human Rights and Zimbabwe's Presidential Election: March 2002 Election: (Special Report 4)* by the Zimbabwe Human Rights NGO Forum

that followed politically motivated violence continued, in the absence of elections, and the economic crisis deepened. Farm evictions continued in earnest²², reportedly under the auspices of ZANU PF militia and war veterans with as little as an hour's notice for vacation given to farmers and farm workers. The process, reported widely in August and September 2002, was characterised by looting, intimidation and property damage. While evicted white commercial farmers perhaps had better prospects of finding alternative accommodation, farm workers, who had no savings and in many cases had resided on the farms for generations, had no alternative urban or rural homes to go to. Many farm workers essentially became internally displaced persons with unpredictable and irregular access to food and water, much less basic amenities such as schools, clinics and hospitals.

There did not, at this stage, appear to be any meaningful steps taken by Government to address the plight of farm workers nor to restore the rule of law and ensure respect for human rights. Civil servants remained under attack for their perceived lack of loyalty to Government and the ruling party. Accounts of involvement of uniformed state agents actively taking part in incidents of organised violence and torture continued to be recorded by the Human Rights Forum.

Allegations of politicisation of food aid surfaced in September 2002.²³ It was asserted that, rather than being distributed on the basis of those most in need, it was being distributed irrespective of need, according to political affiliation and as a vote-buying tool. Reports recorded by the Human Rights Forum in September and October showed that food distribution had been politically manipulated to obtain votes from the electorate during the Rural District Council Elections and Insiza by-election respectively. Danish Human Rights Group - Physicians for Human Rights/Denmark released a report in October 2002 entitled *Voting ZANU PF For Food: Rural District and Insiza Elections* which detailed these allegations.²⁴ However it did not appear that the accused party was taking these allegations seriously. ZANU PF Secretary for Information and Publicity reportedly gave the following retort in denial of having any knowledge of the politicisation of distribution of food aid: "If you know who is selling mealie-meal at the party offices, please tell me. I need it and I would like to buy some."²⁵

Rural District and Urban Council elections in September 2002 and a by-election in Insiza in the following month attracted an increase in political violence, a phenomenon consistent with other pre-election periods in Zimbabwe, particularly since the June 2000 Parliamentary Election. Incidents of opposition candidates withdrawing their candidature in the elections due to violence and intimidation

²² For further details on farm evictions and violence taking place on farms at this time see *Monthly Political Violence Report – August 2002 and September 2002* by the Zimbabwe Human Rights NGO Forum

²³ The Human Rights Forum documented incidents of politicisation of food distribution in its Monthly Political Violence Reports from October 2002 through to December 2002. These reports can be accessed from the website www.hrforumzim.com

²⁴ Website address: www.phrusa.org/healthrights/phr-denmark.html or e-mail omv@dadlnet.dk

²⁵ *The Daily News* 6 December 2002

were recorded.²⁶ Reports later came in of retributive attacks targeted at opposition party candidates and supporters after the Rural District and Urban Council elections, as was similarly the case in the aftermath of the Insiza by-election. ZANU PF militia in Insiza allegedly intimidated opposition party supporters and demanded that they publicly condemn the MDC and join or rejoin ZANU PF.

As the year 2003 opened, political violence was once again on the increase with the forthcoming by-elections in two urban constituencies in Harare, Highfield and Kuwadzana, scheduled for 29 –30 March 2003. Politically motivated murders were recorded and organised violence and torture was rife. The torture of human rights lawyer, Gabriel Shumba and MDC MP for St Mary's Job Sikhala was one of the more gruesome incidents that occurred in January 2003. Sikhala and Shumba, arrested along with Bishop Shumba, Taurayi Magaya and Charles Mutuma, were severely tortured. Means of torture included electrical torture with shocks being administered to their genitals and toes while their hands and feet were tied together.²⁷

Human rights violations at this stage and in the preceding four months had little or nothing to do with farm invasions or the subsequent Fast Track Land Reform Program. Political violence had remained prevalent throughout Zimbabwe since March 2000, surviving independently throughout and outliving the land redistribution exercise.²⁸

Between February and July 2003, it became more evident than before that the Public Order and Security Act (POSA) would be used to curtail Zimbabwean citizen's Constitutional rights to freedom of association, assembly and expression. Restrictions were to be clearly revealed in the two mass demonstrations called for by the MDC that took place from 18 to 19 March and 2 to 6 June 2003 respectively, and the stay-away called for by the ZCTU from 23 to 25 April 2003. The stay-aways were declared illegal by government and the crack down on suspected organisers was severe. There was widespread use of torture by state agents following both these events as a means of investigating crimes that had been allegedly committed by supporters of the MDC during these two demonstrations. Other victims reported having been tortured in order to provide details with regards to the whereabouts of suspects or having been tortured into confessing to a crime they had not committed.²⁹

²⁶ For further details on the violence surrounding these elections see *Monthly Political Violence Report – September 2002* and *Monthly Political Violence Report - October 2002* by the Zimbabwe Human Rights NGO Forum.

²⁷ See *Monthly Political Violence Report – January 2003* by the Zimbabwe Human Rights NGO Forum.

²⁸ Political violence throughout this period has been extensively documented by the Zimbabwe Human Rights NGO Forum on a periodic and monthly basis, as was done by some of its members including ZimRights and Amani Trust. (President Mugabe announced the end of the Fast Track Land Reform Program in August 2002).

²⁹ Further information on human rights violations that surrounded these events can be found in the following reports: *Monthly Political Violence Report – March, May and June 2003* by the Zimbabwe Human Rights NGO Forum, *Defiance vs. Repression Critical Reflections on “the final push” June 2-6 2003* by the Crisis in Zimbabwe Coalition and *Report: Victims of Organised Violence and Torture 2nd to 9th June 2003 (Period of National Mass Action)* by Zimbabwe Association of Doctors for Human Rights.

The Human Rights Forum recorded high incidence of torture by state agents in May and June 2003, although the government denied any knowledge of such activities. Yet it was plausible for victims to conclude that perpetrators that were dressed in army and police regalia were ZNA and ZRP personnel; a conclusion which seems to have been given merit by the victims' transportation in police or army vehicles to places at which they were tortured or detention at police stations following arrests and torture by these individuals. Violence disguised as exercise of freedom of expression could not be condoned but neither could torture as a means of law enforcement or investigation. Several victims also alleged the presence and active involvement of the Minister of Youth Development, Gender and Employment Creation, Elliot Manyika, in their victimisation and torture³⁰, a clear sign of State acquiescence with the prevailing events.

Most recently, in July and August 2003, political violence has been documented in association with the Urban Council Elections scheduled for 30/31 August 2003. Violence has been targeted in particular at prospective candidates for the opposition and has been mainly aimed at preventing them from attending Nomination Courts and being duly registered as candidates in their wards, resulting in the uncontested nominees being duly declared winners in their respective wards.

³⁰ See *Monthly Political Violence Report – June 2003* by the Zimbabwe Human Rights NGO Forum.

Adherence to the Abuja Agreement, Commitment to the Harare Commonwealth Declaration and the Millbrook Commonwealth Action Programme on the Harare Declaration

In the Abuja Agreement³¹ the Zimbabwe Government undertook the following:

- i Commitment to the Harare Commonwealth Declaration and the Millbrook Commonwealth Action Programme on the Harare Declaration.
- ii There would be no further occupation of farmlands.
- iii To speed up the process by which farms that did not meet set criteria, were de-listed.
- iv For farms that were not designated, occupiers would be moved to legally acquired lands.
- v Acceleration of discussions with the UNDP, with a view to reaching agreement as quickly as possible.
- vi Commitment to restore the rule of law to the process of the land reform program.
- vii Commitment to freedom of expression as guaranteed by the Constitution of Zimbabwe and to take firm action against violence and intimidation.

What follows is an examination of attempts made, or the lack thereof, by the Government of Zimbabwe to realise their undertakings.

Harare Commonwealth Declaration and the Millbrook Commonwealth Action Programme on the Harare Declaration

The Harare Commonwealth Declaration of 1991 demands a commitment to fundamental Commonwealth principles. These principles include the following:

- The liberty of the individual under the law, equal rights for all citizens regardless of gender, race, colour, creed or political belief.
 - The inalienable right of every individual to participate by means of free and democratic political processes in framing the society in which he or she lives.
 - That every individual is entitled to human dignity and equality.
- ❖ The protection and promotion of the fundamental political values of the Commonwealth:
- Democracy, democratic processes and institutions that reflect national circumstances, the rule of law and independence of the judiciary, just and honest government.
 - Fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief.

There is little doubt that the Zimbabwe Government has shown a lack of commitment to ensuring that individuals enjoy the “*inalienable right ... to participate by means of free and democratic political processes in framing the society in which he or she lives*”. Electoral processes in Zimbabwe continue to be conducted in an environment in which citizens are unable to participate freely. They are persistently subjected to violence, intimidation and coercion. Post the Abuja Agreement, elections have been conducted during the following periods: Presidential Election of March 2002; Rural District and Urban Council Elections and Hurungwe West by-elections in September 2002; Insiza by-election in October 2002; Highfield and Kuwadzana by-election in March 2003; Urban Council Elections and by-elections in Makonde and Harare Central constituencies in August 2003. To varying degrees, every one of these elections has been preceded by organised violence, torture and intimidation and followed by recriminatory attacks, on candidates and on voters for votes garnered by the opposition. Several of these elections have also been attended by allegations of politicisation of food aid and distribution and at times allegations of manipulation of the voters roll.³²

In the run-up to the August 2003 Urban Council elections, there were widespread allegations by opposition party, MDC, candidates that they had been deliberately barred from registering as candidates by ZANU PF members, resulting in some ZANU PF candidates being elected unopposed. In terms of the Urban Councils Act, an uncontested nominee wins the poll.³³ There was in this respect, failure to guarantee “*equal rights and opportunities for all citizens*” as while ZANU PF candidates had unfettered access to Nomination Courts, there was a failure to provide evidently needed security to opposition party candidates to attend and duly present their nomination papers. Several ZANU PF candidates reportedly won seats as uncontested candidates despite the fact the opposing candidate had been prevented from being nominated due to political violence, in the form of victimisation, intimidation and / or physical violence. For instance, Albert Ndlovhu of Chegutu (Mashonaland West) reportedly sustained an injury to his neck following an assault by ZANU PF youths manning the gate at Chegutu’s Town House as candidates handed in their nomination papers. As a result, he failed to submit his own. In Bindura, Martin Dinha of ZANU PF was declared Executive Mayor subsequent to Fred Chinembiri of the MDC failing to reach the Nomination Court to present his papers as all roads leading to the court had been sealed off by suspected ZANU PF supporters.³⁴

Uniformed state agents have been tools used in violating human rights, particularly surrounding periods of mass demonstrations, which have predominantly taken the form of stayaways. Below is a

³¹ Refer to full text of the Abuja Agreement, provided in Appendix 1

³² The Human Rights Forum has extensively documented violence and intimidation surrounding these elections. (all previous reports of the Human Rights Forum are available on their website www.hrforumzim.com) and the Zimbabwe Election Support Network (ZESN). (reports by ZESN are available on their website www.zesn.org.zw)

³³ Urban Councils Act [Chapter 29:15] S45 (10a)

presentation of some cases from March 2003 through to June 2003 illustrative of human rights violations attendant to the mass demonstrations³⁵ during this period:

Mufakose (Harare)

22 March 2003

Soldiers are said to have searched JC's³⁶ house at around 3:00 am and assaulted him and his family on accusations of having information linked to the mass stay away called for on 18 and 19 March 2003. They are then said to have tortured JC by further assaulting him with sjamboks all over his body. JC was blindfolded, pushed into a ZNA vehicle and taken to an unknown location where he was further assaulted. He was then dumped near Manyame Airbase later that morning.

Mutare Central

19 March 2003

SK, a journalist, accompanied a colleague to a police station when one police officer overheard him talking about the 18 and 19 March 2003 mass stay-away on his mobile phone. He was approached and asked why he was talking about the stay-away, as well as to whom he was talking. The officer is then said to have snatched his phone away, searched through his phone for numbers, and accused him of being a sell-out and an MDC supporter when he found numbers of MDC officials in Mutare on his person. He claims that he was then pushed into an office, arrested, and denied access to his lawyer.

Chitungwiza (Harare)

18 April 2003

*LG, the late **Richard Tonderai Machiridza's** wife, reported that on 13 April 2003, more than 20 police officers and soldiers forced their way into her house, assaulted her husband on the head and then arrested him. She alleged that he was bleeding heavily at the time he was dragged outside. Her husband was handcuffed and taken to St. Mary's Police Station. LG claims that when she started screaming, two police officers came back into the house and assaulted her until she lost consciousness. She managed to identify one Constable Kasinamunda, whom she claims kicked her on the head. LG went to visit her husband at St. Mary's Police Station the following day but was allegedly sent back and told by a police officer to return at midday if she wanted to see him. She was later informed that Machiridza had been taken to Chitungwiza General Hospital and when she went to see him, she found him under heavy police guard. He told her that he had been tortured by being beaten with electric cords on accusations of perpetrating violence during the 18-19 March 2003 stay-away. His bail was paid and he was transferred to the Avenues Clinic where he died on 18 April 2003.*

Glen View (Harare)

4 June 2003

PG was asleep at home when soldiers arrived at her home, knocked on the door, broke it down and assaulted everyone therein. The victim was accused of wanting to march in protest against the government, in support of the mass action called for by the MDC in June 2003. She claims that she was beaten with a truncheon on the soles of the feet and on the right arm. The assailants are said to have stolen food, money, and other movable property from the house.

Mbare East/ West (Harare)

³⁴ Such incidents are further detailed in the *Monthly Political Violence Report – July 2003* by the Zimbabwe Human Rights NGO Forum.

³⁵ The Movement for Democratic Change called for Mass Stayaways from 18 – 19 March 2003 and 2 – 6 June 2003; the Zimbabwe Congress of Trade Unions called for a Mass Stayaway from 23 – 25 March 2003

³⁶ In this case and in the subsequent cases listed, the identity of the victim is protected by the use of initials. This is done in order to protect the victim from further violence, intimidation and possible recriminatory attacks.

3 June 2003

40 armed soldiers and members of the police reportedly arrived at the home of Harare City Councillor Sydney Mazaranhanga. **Tichaona Kaguru**, who was at Mazaranhanga's home at the time, jumped over the wall to seek refuge at a neighbour's house but soon reappeared with two soldiers holding him. Mazaranhanga claims that he and Kaguru were ordered to lie on the tar, assaulted on their backs with sjamboks and baton sticks, forced into one of the trucks, and further assaulted. Mazaranhanga asserts they were targeted on suspicion that they were holding a meeting at his house to discuss the ongoing mass action. Mazaranhanga denies that there had been a meeting at his house, but that, as the Councillor, he occasionally entertained people at his home. Mazaranhanga reportedly fainted three times during the ordeal. The two victims were later dumped along the road leading to Chikurubi Maximum Prison. Kaguru was reportedly left lying helpless and could not get up. Mazaranhanga claims that they were denied medical attention by staff at Chikurubi Police Camp Hospital on the basis that the hospital was not intended for civilians. Kaguru died while awaiting an ambulance to ferry him to hospital. Mazaranhanga hid Kaguru's body in the tall grass nearby, and went to seek help. He was ferried to Parirenyatwa Hospital, and the police later followed with Kaguru's body.

The Millbrook Commonwealth Action Programme on the Harare Declaration³⁷ was adopted in New Zealand in 1995. The Action Programme was adopted as an agreement on the of implementation and enforcement of the Commonwealth principles and standards contained in the Harare Commonwealth Declaration. This would be achieved by an enforcement mechanism: the Commonwealth Ministerial Action Group (CMAG). CMAG at any one time comprises eight Foreign Ministers from member countries. The mandate of CMAG is to “deal with serious or persistent violation of principles contained in the Harare Declaration ...and recommend measures for collective Commonwealth action aimed at the speedy restoration of democracy and constitutional rule.”

The Action Programme was divided into three parts:

- i Advancing Commonwealth fundamental political values³⁸;
- ii Promoting sustainable development;
- iii Facilitating consensus building

Zimbabwe, for the past three years, has mainly been in breach of the first part of the three-part programme, violating rather than advancing the Commonwealth's fundamental political values. Despite encouragement by the Commonwealth for restoration of democracy as espoused by the Millbrook Commonwealth Action Programme, the Zimbabwe Government has failed to take effective measures designed to achieve this. In addition, the government has declined to take up Commonwealth assistance available to it in terms of the Millbrook Commonwealth Action Programme to strengthen the rule of law, promote the independence of the judiciary, legal and Constitutional matters and the establishment of independent electoral machinery.

³⁷ A copy of the Millbrook Commonwealth Action Programme may be accessed on the website www.thecommonwealth.org

³⁸ These are elucidated in the Harare Commonwealth Declaration as being “democracy, democratic processes and institutions that reflect national circumstances, the rule of law and independence of the judiciary, just and honest government; fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief.”

Preventing further occupation of farmlands; speeding up the process by which farms that do not meet set criteria are de-listed; removal of occupiers from undesignated farms to legally acquired land.

Further farm invasions were recorded in September 2001 after the signing of the Abuja Agreement. Occupiers illegally settled on farms that were not designated for compulsory acquisition by the State were protected from eviction by the Rural Land Occupiers (Protection from Eviction) Act of June 2001³⁹ and this relieved Government of the pressure of removing farm invaders as a matter of urgency. Under this Act farm invaders were categorised as “protected occupiers” and could not be evicted while the Government was taking steps to legally acquire the farms they had invaded. If legal acquisition was successful they could subsequently be legally settled on that land and if those steps failed, the invaders could not be evicted for a further six months. At a minimum, all illegal farm occupiers were protected from eviction until 5 December 2001, three months after the Abuja Agreement.

Acceleration of discussions with the UNDP, with a view to reaching agreement as quickly as possible and commitment to restore the rule of law to the process of land reform program.

In preference to engaging in a sustainable land reform program with the assistance of UNDP, the Government engaged in the Fast Track Land Reform Program which has to date reportedly⁴⁰ been of greater benefit to Government and ZANU PF officials than rural peasants. Additionally, a largely ignored casualty of the fast Track Land Reform Program has been the farm worker, displaced but not resettled in the process. The Fast Track Land Reform Program has proved to be largely unsustainable and has aggravated Zimbabwe’s food crisis. It is difficult to foresee how the UNDP and the Government of Zimbabwe will be able to reach an agreement in the future when the land distribution process remains mired in contradictions. The President announced that the program had ended on 31 August 2002, however as late as August 2003⁴¹, preliminary notices for acquisition of new farms were still being listed for compulsory acquisition, a year after the Fast Track Land Reform Program “ended”. Between August 2002 and 5 September 2003, 1327 new notices for preliminary acquisition of commercial farms had been issued.⁴²

To “take firm action against violence and intimidation”

The Government has yet to take any firm measures against the violence and intimidation that continues to pervade Zimbabwean society. Political violence and intimidation has largely managed to thrive in a climate of impunity and lack of respect for political pluralism. This is not an implication of the land redistribution exercise and should be recognised as a problem of high magnitude in its own right which is in no way linked to land reform. Assault, intimidation and torture on the basis of

³⁹ Chapter 20:26; Act No. 13 of 2001.

⁴⁰ *A Brief Overview Of The Current Situation, August 2003* by Justice for Agriculture

⁴¹ Preliminary notices to acquire land are still being published in the Herald, as at 5 September 2003

⁴² *A Brief Overview Of The Current Situation, August 2003* by Justice for Agriculture

political affiliation remain prevalent.⁴³ So far as is known, the Government has not promptly, objectively and systematically investigated reported cases of organised violence and torture. If such investigations have taken place, the findings of such investigations have not been made public.

CIO operative Joseph Mwale, allegedly responsible for the murder of MDC activists Talent Mabika and Tichaona Chiminya in April 2000, is yet to be arrested for the murders as at the end of August 2003, three years after the murders took place.⁴⁴ President Robert Mugabe gave assurances to President Olusegun Obasanjo, in February 2003, that an enquiry into the torture of Member of Parliament, Job Sikhala, and human rights lawyer, Gabriel Shumba would be conducted.⁴⁵ However no findings of the enquiry were ever made public or made known to the victims, bringing into question assertions to representatives of the Commonwealth troika on Zimbabwe that Government would take firm action against violence and intimidation. St Mary's MP, Job Sikhala, has since indicated that the enquiry was never completed.⁴⁶

Furthermore, violence and intimidation on the basis of political belief or affiliation remains prevalent. Zimbabwean citizens have become accustomed to being subjected to violence and intimidation on the basis of genuine or perceived political affiliation.⁴⁷ Such acts are clearly in violation of the Commonwealth principle expressed in the Harare Declaration to respect "*fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief*". This is further enshrined in the Zimbabwean Constitution. With regards to freedom of association s21 states that Zimbabweans have the right to '*assemble freely and associate with other persons and in particular to form or belong to political parties or trade unions or other associations*'. Despite such guarantees, violence and intimidation on the basis of political beliefs continues and it is disconcerting, in particular, to note that there have been numerous reports of systematic violence and intimidation by uniformed state agents on the basis of actual or alleged political beliefs.⁴⁸ What the Mid-term Review Statement observed on 23 September 2002 is still prevalent at present. "*Harassment of the political opposition*" continues.

The following are some recent cases from Chitungwiza, a constituency in Harare.

⁴³ The Human Rights Forum has continued to document such incidents in its Monthly Political Violence Reports from January 2001 through to August 2003. These reports can be accessed from the website www.hrforumzim.com

⁴⁴ Mwale was alleged to be one the murderers of Tichaona Chiminya and Talent Mabika in the Buhera North Parliamentary Electoral Petition in the High Court. In his judgement in the matter, (reported in 2001 (1) ZLR 295), Justice Devittie suggested that the Attorney General should institute a prosecution. In 2001 a docket in which Mwale is cited as one of the prime suspects in the murders of Tichaona Chiminya and Talent Mabika was reportedly sent by Mutare Police to Police General Headquarters in Harare for them to forward to the Attorney General's Office. However to date no charges have been laid against Mwale, nor have their been any arrests. The Attorney General says that investigations are ongoing.

⁴⁵ *Zimbabwe Independent* 4 July 2003

⁴⁶ *ibid*

⁴⁷ For further illustration of such incidents refer to Monthly Political Violence Report – March, May, June and July 2003 by the Zimbabwe Human Rights NGO Forum

⁴⁸ *ibid*

Chitungwiza

31 March 2003

- *JM⁴⁹ was asleep at home when a group of soldiers allegedly arrived, woke him up, and assaulted him with sjamboks, hosepipes and rifle butts. He was reportedly told that they were beating him because he was affiliated to the MDC and that they wanted to annihilate all MDC members. The soldiers also took all MDC party material in his house before leaving. He sustained bruises on his back, buttocks and arms and an ulcer on the right arm caused by swelling.*
- *A group of soldiers and policemen reportedly broke into ET's bedroom and enquired about the whereabouts of her father. She was dragged outside the house; was forced to lie down; and then assaulted with rifle butts, baton sticks and booted feet. She claims that she was threatened with death because she had failed to assist the soldiers in locating her father. They are also said to have accused her of being an MDC youth because her father is an MDC activist. ET sustained a swollen ear, bruises and welts on the back and thighs. Her jawbone aches and she also has loose teeth.*

2 June 2003

- *AA alleges that the police arrested him on allegations of being an MDC supporter. The victim, an old man and a stone carver, claims that he is not involved in party politics. He was picked up by the police and then put in cells at Chitungwiza Police Station. He was released after four days without any charges being preferred against him.*

3 July 2003

- *BC alleges that she was tortured and detained by the police and army officials on accusations of being an MDC supporter. She claims that she was questioned about the activities of the opposition MDC. The assailants allegedly harassed and slapped her children and then detained her for 15 days at Chikurubi Female Prison. She was later asked to pay \$4 000 to be released from prison although she was not charged with any offence.*

Commitment to freedom of expression

The right to freedom of expression is guaranteed by Section 20 of the Constitution of Zimbabwe, which entitles an individual to the 'enjoyment of the freedom of expression, that is to say freedom to hold opinions and to receive and impart ideas and information'. However the Public Order and Security Act, which regulates public meetings and demonstrations, appears to have been applied so as to restrict freedom of expression unduly. The Zimbabwean Constitution permits freedom of expression to be limited in the interests of defence, public safety, public order, public morality or public health. Relying on this, the Police appear to have applied the Public Order and Security Act selectively, allowing the ruling party, Zanu PF, to hold meetings and rallies while prohibiting the civil society and the opposition, MDC, from doing so, allegedly in the interests of public security.

In February 2003, the organisers of a Public Meeting held by the Crisis in Zimbabwe Coalition⁵⁰ were arrested for organising an "illegal gathering"; twenty-three pastors and members of clergy on their way to present a petition to the Deputy Commissioner of Police at Police General

⁴⁹ In this case and in the subsequent cases listed, the identity of the victim is protected by the use of initials. This is done in order to protect the victim from further violence, intimidation and possible retaliatory attacks.

⁵⁰ The Crisis in Zimbabwe Coalition is a grouping of more than 350 civil society organisations whose vision is a democratic Zimbabwe. The Coalition aims to promote freedom and democratic values through dialogue, tolerance and debate by Zimbabweans.

Headquarters in Harare and of seventy women peacefully marching against all forms of violence on Valentines Day were arrested in Harare and Bulawayo under similar circumstances.

On 18 March 2003, Philemon Bulawayo, a photographer with an independent newspaper, *The Daily News*, was reportedly arrested in Budiro for covering a mass demonstration. He claims that he was severely beaten at Glen View Police Station, was then taken to Harare Central Police Station, and eventually to Highlands Police Station where the police further assaulted him. Bulawayo sustained bruises all over his body leading to his experiencing difficulties breathing. He was detained for three days before being released without charge.⁵¹

Employees of ZIMCET (an NGO engaged in peace-building activities) claim that they were arrested and detained by police and ZANU PF youths while holding a workshop in Bindura in June 2003. Two senior members of staff were charged under S24 of the Public Order and Security Act with organising an illegal gathering while the rest were released without charge having been detained for two days.⁵² The workshop was being held to discuss issues to do with HIV and AIDS, gender, as well as the organisation's position with regard to peace building.

Forty-eight women were arrested in Bulawayo in July 2003 and one of them was allegedly assaulted by the police for staging a demonstration against POSA. They were holding the demonstration outside Tredgold Building, and their delegation delivered a letter to the Senior Prosecutor for Bulawayo, protesting against POSA. All forty-eight were reportedly charged under POSA for participating in an 'illegal gathering'.

Rule of Law

The Government's undertaking with regard to the rule of law seems to have been restricted to the land reform program. This was tackled through the amendment of laws that previously made processes undertaken during the fast track land reform program illegal. This included amendments to the Land Acquisition Act in May and September of 2002.

With respect to a broader view of the rule of law, the Government of Zimbabwe has continued to disregard court orders when they were not within the parameters of Government plans. At a reception to mark the opening of the third session of the Fifth Parliament, President Robert Mugabe in effect gave consent for defiance of court orders as and when the Government did not consider them to be impartial. The President was quoted as stating that the Government would "*respect judgements where the judgements are true judgements. We do not expect that judges will use subjectivity in interpreting the law. We expect judges to be objective. We may not understand them in some cases but when a judge sits alone in his house or with his wife and says 'this one is guilty of contempt' that judgment should never be obeyed. I am not saying this because we would want to*

⁵¹ Sources - Monthly Political Violence Report – March to July 2003 by the Zimbabwe Human Rights NGO Forum

⁵² Public Order and Security Act, Section 11.17

defy judges. In fact we have increased their salaries recently. We want them to be happy. But if they are not objective, don't blame us when we defy them."⁵³

On 16 May 2003, the Ministry of Home Affairs deported journalist Andrew Meldrum, a foreign correspondent for *The Guardian* newspaper. Despite issuance of three consecutive High Court orders barring the deportation, Meldrum was deported, during which process he was subjected to manhandling by several police officers. The following excerpt from a statement on the deportation of Andrew Meldrum issued by Zimbabwe Lawyers for Human Rights, a membership organisation of lawyers and law students in Zimbabwe, details the incident:

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

Despite the existence of this Order and the fact that the Supreme Court has yet to hear this matter, on the morning of 16 May 2003 the Minister of Home Affairs and the Chief Immigration Officer saw fit to seize Meldrum's passport, cancel his lawfully issued residence permit and issue a further Deportation Order. At around 1230 hours Meldrum's legal counsel, Beatrice Mtetwa, obtained an interim High Court Order from Justice Charles Hungwe. This required that the Minister of Home Affairs, the Chief Immigration Officer and a senior immigration official, Evans Siziba, (the respondents), produce Meldrum in court at 1530 hours and ensure that he was not deported. The Court Order was served on immigration and Air Zimbabwe officials at the Harare International Airport, and they were advised in no uncertain terms that any attempt to place Meldrum on a flight out of Zimbabwe would constitute an intentional breach of a Court Order. (South African Airways and Zambia Airways had refused to allow the immigration authorities to place Meldrum on their flights because of the Court Order.)

The respondents flagrantly ignored Justice Hungwe's Order and Mtetwa was forced to again seek the court's assistance in having Meldrum produced. Justice Hungwe confirmed the Order that the Respondents produce Meldrum in court or risk contempt proceedings. Siziba was present in court and undertook to produce the journalist. Almost four hours later the respondents' representative, Mrs Loice Matanda-Moyo (the Director of the Civil Division of the Attorney General's office), returned to court alone and advised Justice Hungwe that she had been unable to make contact with Siziba and said that she presumed that he had failed to obtain authority from the Ministry of Home Affairs for Meldrum's release. No such authority is required in terms of the Immigration Act and

⁵³ *The Herald* 27 July 2002; for an in depth analysis of flouting of court orders and contempt for the courts by the Government of Zimbabwe, refer to the report *Justice in Zimbabwe, A Report Compiled by the Legal Resources Foundation, Zimbabwe*

the failure to produce Meldrum constituted a blatant refusal to acknowledge the overriding power of a Court Order. Siziba is a senior immigration official with power to release Meldrum, and had made an undertaking to the judge to carry out his duties. His failure to obey the High Court Order shows an unacceptable disregard for the judicial process and the concept of separation of powers, which is vital for the upholding of the rule of law in our society.

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

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

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

We are extremely concerned at the conduct of the Director of the Civil Division. As an officer of the court her professional and ethical duty first and foremost is to ensure that the judicial process is respected. Her failure to do so has undoubtedly brought the administration of justice into disrepute.

The behaviour of the police who removed Meldrum from Linquenda House in the morning, the respondents and their legal representative, immigration officials at the airport and Air Zimbabwe officials calls into question their impartiality and shows a complete lack of respect for the rule of law. There is an unmistakable and extremely unfortunate suggestion of collusion between state organs and affiliates in subverting the process of the court and going ahead with illegal actions.

The deportation of Mr Meldrum highlights the government's continued stubborn refusal to safeguard the freedom of the press and to persecute all those perceived to be painting the country in a bad light. Such acts, carried out in the face of Court Orders, seem to be intended to act as a warning to the media profession, that even the courts cannot protect their rights and ensure their safety in the face of vindictive and all-powerful executive bodies who believe they are above the law. The last foreign correspondent has been unlawfully and unceremoniously removed from Zimbabwe.

It has become very common for police officers and government officials to deliberately flout Court Orders. This has subverted the rule of law and left the Judiciary and legal practitioners powerless to protect victims against their illegal actions. The events of 16 May 2003 have further highlighted the disdain in which certain arms of government hold the Judiciary.”

Compliance with the Commonwealth Observer Group Recommendations, the Marlborough House Statement and the Zimbabwe Mid-Term Review Statement

The Commonwealth Observer Group's primary recommendations are listed below followed by a brief note on compliance.

- (a) *There is an urgent need for there to be a cessation to the systematic use of violence in political campaigns, especially against the opposition party. To address this need, the political parties and the security authorities should jointly establish mechanisms and structures at central and district levels to co-ordinate and implement peace initiatives.*

Political violence continues to form an integral part of election campaigns. The Human Rights Forum, while commending peace-building activities by actors in civil society,⁵⁴ expresses concern at the lack of simultaneous Government initiatives to do the same.

- (b) *There is a fundamental need for there to be a clear separation of party and state in Zimbabwe and for there to be a proscription on the use of state resources for party political activity.*

The line between party and state in Zimbabwe remains blurred with politicisation of the judiciary, police force⁵⁵ and the civil service. Tolerance of persons in these structures whose allegiance to the ruling party is questionable has been low.

- (c) *The Government and law enforcement agencies should strictly enforce the law in respect to all acts of political violence.*

Faith in the ZRP as a non-partisan law enforcement agency remains low. State agents are commonly reported as being perpetrators themselves.⁵⁶ These actions have undoubtedly had the effect of undermining the integrity of the police force.

- (d) *the provisions of the General Laws Amendment Act, the Public Order and Security Act and the Access to Information and Protection of Privacy Act which impede the freedoms of association movement and speech should be repealed.*

The General Laws Amendment Act was nullified by the Supreme Court on 27 February 2002. No provisions of the Public Order and Security Act and Access to Information and Protection of Privacy Act have been repealed. A petition to the Minister of Justice, Legal and Parliamentary Affairs by civil

⁵⁴ The Zimbabwe Civic Education Trust, ZIMCET, (a member of the Human Rights Forum) runs peace building programmes in rural and urban areas aimed at building tolerance amongst supporters of various political parties.

⁵⁵ Refer to the reports *Justice in Zimbabwe, A Report Compiled by the Legal Resources Foundation, Zimbabwe* and *Are They Accountable? Examining alleged violators and their violations pre and post the Presidential Election March 2002* by the Zimbabwe Human Rights NGO Forum for an examination of attempts to politicize the judiciary and police force.

⁵⁶ An examination of the role of state agents in the violence is made in the report *Torture By State Agents In Zimbabwe: January 2001 to August 2002* by the Zimbabwe Human Rights NGO Forum

society⁵⁷ for the repeal of POSA was disregarded. The Minister of Justice, Legal and Parliamentary Affairs later described POSA as “*a useful weapon to fight opposition-sponsored lawlessness*” and asserted that Government had no intention to repeal any of its provisions.⁵⁸ Parliament has passed an Act to amend AIPPA, though the Act has not yet been promulgated. The amendment will not significantly reduce the Government’s power to prevent people, particularly foreigners, from practising as journalists in Zimbabwe, though it will clarify the provisions that make it an offence for journalists to publish false news.

The Marlborough House Statement focused on reconciliation between Zimbabwe’s two main political parties, ZANU PF and MDC, following the polarisation of supporters of the two parties in the past three years and in particular in the run up to the Presidential elections. The Zimbabwe Mid-Term Review Statement echoed this need. There has not been meaningful reconciliation between the two parties since the issuing of the Marlborough House Statement although the Commonwealth took a lead in promoting the process. Special envoys, Professor Adebayo Adedeji (Nigeria), and Kgalema Motlanthe (South Africa), presided over these initial efforts in April and May 2002. However, ZANU PF withdrew from the talks in May 2002, citing the MDC’s challenge to the legitimacy of President Robert Gabriel Mugabe’s presidency as the cause. They were against proceeding with the talks while the MDC had a petition before the courts that challenged the outcome of the Presidential Election.

Since this breakdown in talks, there has since been a mere exchange of rhetoric between the two parties with regards to the issue of talks, principally conducted through the press as a conduit. This has predominantly been the case for both parties who appear not to have communicated directly on the issue of talks since the collapse in May last year. While ZANU PF Secretary for Information and Publicity, Nathan Shamuyarira, categorically stated that agendas for the talks would “*only be set by the parties’ delegations when they meet and not through the Press*”⁵⁹ ZANU PF has remained a culprit in engaging in the press-based dialogue banter.

ZANU PF initially maintained that the MDC should withdraw its Presidential Election Petition prior to dialogue resuming and subsequently demanded acknowledgement of the President’s legitimacy. The MDC has made parallel demands that dialogue should resume with no preconditions and has been unwilling to drop the election petition now scheduled to be heard before the High Court beginning 3 November 2003. While there were suggestions mid-year by South African President Thabo Mbeki that dialogue between the two parties was ongoing, this apparent misconception was corrected by MDC President Morgan Tsvangirai who aptly responded by stating that there had been

⁵⁷ On 12 March 2003 the Crisis in Zimbabwe Coalition presented a petition to the Minister of Justice, Legal and Parliamentary Affairs calling for the repeal of POSA on the grounds that it has been used to “*wantonly detain, intimidate and viictimise pro-democracy actors such as labour activists, students, women, congregants, civil society activists, civil and political leaders and the generality of Zimbabweans*”

⁵⁸ *Zimbabwe Independent*, 20 June 2003

*“no formal negotiations and talks between the MDC and ZANU PF” since May 2002 apart from “emissaries from various groups that include churches, civic groups and indeed the South African government” who had made several attempts to act as intermediaries between the two parties and resuscitate the talks.*⁶⁰

Church efforts aimed at resumption of dialogue were headed by the Zimbabwe Council of Churches’ President, Bishop Sebastian Bakare, Bishop Trevor Manhanga of the Evangelical Fellowship of Zimbabwe and Bishop Peter Mutume of the Zimbabwe Catholic Bishops’ Conference. The initiative was however met with derision by ZANU PF. While the MDC was reported to have submitted its position papers on dialogue to the churches⁶¹, Minister of Justice, Legal and Parliamentary Affairs characterised the church leaders as *“MDC activists wearing religious collars”*.⁶² ZANU PF National Chairman, John Nkomo, went on to explicitly reject the mediation efforts by the church aimed at bringing the two main political parties to the table. He expressed disregard for the fact that a request was being made for ZANU PF’s agenda for the talks on the basis that the church initiative was in receipt of the MDC’s agenda. Nkomo was quoted as stating that ZANU PF would *“not be forced to draft an agenda by anybody, or be blamed for not coming up with an agenda for the talks... As far as ZANU PF is concerned, the fact that the MDC has drafted its agenda is none of our business. We will not be bothered by that and we do not wish the church leaders to tell us how to conduct our business.”*⁶³

MDC President, Morgan Tsvangirai on 25 August 2003 reportedly gave ZANU PF a deadline by which it must enter into dialogue with the MDC. If ZANU PF does not resume talks with the MDC before 1 October 2003, the *“window of opportunity it [MDC] had opened for dialogue”* will close.⁶⁴ In apparent response, the Minister of Justice, Legal and Parliamentary Affairs, Patrick Chinamasa asserted that ZANU PF was in no hurry to enter into dialogue with the MDC, as *“nothing should be rushed, hurried.”* ZANU PF will only enter into negotiations with MDC when the environment is *“ripe and conducive to delivering a successful conclusion.”*⁶⁵ This lack of urgency to enter into negotiations with the MDC, that has been reiterated on several occasions by ZANU PF, mocks the gravity that the Commonwealth placed in this process in the Zimbabwe Mid-Term Review and the Marlborough House Statement which *“encouraged a climate of reconciliation between the main political parties in Zimbabwe which they considered essential to address the issues of food shortages, economic recovery, the restoration of political stability, the rule of law and the conduct of future elections.”*

⁵⁹ *The Herald* 5 August 2003

⁶⁰ *The Daily News* 10 July 2003

⁶¹ *The Herald* 5 August 2003

⁶² *The Herald* 31 July 2003

⁶³ *The Sunday Mail* 17 August 2003

⁶⁴ *The Daily News* 25 August 2003

⁶⁵ *Sunday Mirror* 24 August 2003

Civil society's position on dialogue is that it is necessary for it to resume without delay. Furthermore civil society wishes to assert its position as a necessary constituency that must be part of the dialogue. Civics meeting in various forums have reiterated this demand. Over 175 civil society leaders meeting at a Conference on Dialogue and Transition hosted by Crisis In Zimbabwe Coalition on 5 July 2003 declared, "*that civil society has an integral role to play in any political transition, and should be involved in discussions regarding such transition as an equal partner. In addition, the meeting agreed to encourage non-partisan regional interventions around nation-building while opposing external partisan interference.*" Zimbabwean civil society again convened in Johannesburg at a Symposium entitled "Civil Society and Justice in Zimbabwe" and on 13 August 2003 issued a Declaration which outlined minimum demands on the two main political parties when they sit down to negotiate.⁶⁶ Negotiations for a settlement must take into account and examine colonial and post-colonial human rights abuses in the country with a view to setting up mechanisms for redress. Demands for immediate action include an immediate end to political violence and disbanding of militia groups, a return to the rule of law evidenced by non-partisan policing, and non-selective application of the law. Additional stipulations are the repeal of repressive legislation that has been used to facilitate human rights abuses and finally an overhaul of electoral institutions and laws to accommodate the holding of future ballots in an environment conducive to peaceful, free and fair elections.

The Marlborough House Statement emphasised that the issue of food shortages should be urgently addressed. It further solicited the assistance of the international community in the provision of food aid. Food has remained in short supply, particularly in the rural areas, and has steadily become inaccessible in terms of cost in the urban areas. Response to food shortages through the provision of food aid has been hampered through policy conflict in terms of the manner in which this food is to be allocated and distributed. Most recently government announced that food aid would only be distributed through village headmen and not directly through donor agencies. In terms of this arrangement "*beneficiaries of the NGOs food distribution programme will be selected from the ward/village assembly and neighbourhood committee registers.*"⁶⁷ This has resulted in uncertainty and ultimately this may impact negatively on the objectivity in selection of recipients of food aid according to criteria of need.

Six months into Zimbabwe's suspension from the Councils of the Commonwealth, the Zimbabwe Mid-Term Review took place on 23 September 2002. Nigerian President Olusegun Obasanjo, Australian Prime Minister John Howard, South African President Thabo Mbeki and the Commonwealth Secretary-General, Rt. Hon Don McKinnon, attended the discussions. President Robert Mugabe declined his invitation to attend with the Zimbabwe Government regarding this meeting with a high degree of contempt. The Commonwealth Chairperson's Committee on

⁶⁶ See Appendix 3 for the full text of the Declaration of the Johannesburg Symposium

⁶⁷ This is in terms of a new policy – Policy on Operations of Non-Governmental Organizations in Humanitarian and Developmental Assistance in Zimbabwe; *Daily News* 19 August 2003

Zimbabwe “*was also deeply disappointed that the President of Zimbabwe had not taken up their invitation to come to Abuja to dialogue with them.*”⁶⁸ While the Committee noted that the two parties had failed to engage in meaningful dialogue by September 2002, it however gave them a further six months in which to respond positively to the recommendations of the Marlborough House Statement, sparing Zimbabwe full suspension from the Commonwealth.

Little progress prevailed in Zimbabwe within the six-month period that followed resulting in the extension of Zimbabwe’s suspension from the Councils of the Commonwealth in March 2003. The suspension was extended until December 2003 when Commonwealth Heads of Government will meet in Nigeria. At this time the Commonwealth will review the Zimbabwean situation before taking further action, whether it be to lift the current level of suspension, maintain it or fully suspend Zimbabwe from the Commonwealth.

⁶⁸ Zimbabwe Mid-Term Review Statement

Conclusion

The evidence available at present indicates that Zimbabwe remains divergent to the Commonwealth goal of “*promoting democracy and good governance, human rights and the rule of law, gender equality and sustainable economic and social development.*”⁶⁹ High levels of human rights violations continue to prevail, some of them entrenched in laws such as the Public Order and Security Act. There has been continued disregard for the rule of law and manipulation of the judiciary that has compromised equal access to justice. This has been accompanied by the establishment of a culture of impunity presided over by a seemingly partisan police force. Economic decline has accelerated as a result of mismanagement, coupled with engagement in an unsustainable land reform program that has only served to aggravate food insecurity in the country.

Elections have, since the Parliamentary Elections in June 2000, been held in an environment that does not favour a transparent, free and fair electoral process. Organised violence and intimidation have preceded and commonly followed the Parliamentary Elections of June 2000, the Presidential Election of March 2002, Rural District and Urban Council Elections of September 2002, Urban Council Elections of August 2003 and constituency by-elections held alongside and in between these major election periods. The electorate’s freedom of choice in electing representatives in all these elections has been heavily constrained by victimising persons on the basis of their political affiliation, supplying food in exchange for votes and the use of retributive force where voters are deemed not to have voted “correctly”.

These factors, among others, indicate that the Zimbabwe Government has for over three years and indeed since the signing of the Abuja Agreement displayed a disregard for the Commonwealth Principles enshrined in the Harare Declaration, the Millbrook Commonwealth Action Programme on the Harare Declaration, the Abuja Agreement itself and subsequent communiqués in the form of the Marlborough House Statement on Zimbabwe and the Zimbabwe Mid-Term Review Statement. There has been no directive given to the police, army or the intelligence organisation to cease gratuitous use of violence against Zimbabwean citizens and to ensure the impartial prosecution of all perpetrators of political violence. The Zimbabwe Government has apparently acquiesced to human rights violations, in particular those at the hands of uniformed state agents.

The fact that the crisis far transcends the land issue is evidenced by the reality that long after President Mugabe announced the end of the Fast Track Land Reform Program (in August 2002); Zimbabwe remains buried in a political, social and economic crisis. The Zimbabwe Government’s disregard of the Abuja Agreement, Marlborough House Statement, Zimbabwe Mid-Term Review and other Commonwealth recommendations warrants stronger measures to be taken by the Commonwealth.

⁶⁹ The Millbrook Commonwealth Action Programme on the Harare Declaration

Recommended Action

The Human Rights Forum calls upon the Zimbabwe Government and the Commonwealth (as the architect of the Abuja Agreement) and other regional groupings including the African Union, SADC, and the ACP to acknowledge that the Zimbabwean crisis does not have a single nucleus in the issue of land redistribution but rather is a multi-faceted crisis.

We call upon them to recognise the crisis as resultant of the combination of racial inequities in possession of land that date back to forceful occupation of land by colonial settlers in the late 19th to early 20th century; the endemic political violence and human rights abuses; a partisan and politicised judiciary; the break down in the rule of law and a deteriorating economic and social environment that has prevailed since March 2000.

It is of particular interest to African countries to accurately diagnose the crisis for as the Abuja Agreement aptly stated it, "*the situation in Zimbabwe poses a threat to the socio-economic stability of the entire sub-region and the continent at large*". Misdiagnosing the crisis, as has been the case to date, perpetuates further decline of the Zimbabwean nation and subsequent negative effects on Africa.

Efforts should be made, in particular by regional mediators, to reach a consensus as to the approaches that should be taken to address the Zimbabwean crisis. Disparate positions on the roots of the crisis and its plausible solutions have to date heavily contributed to the deterioration of an already desperate situation.

We call upon them to recognise that these factors pertaining to the Zimbabwean crisis are inter-related and cannot and should not be dealt with as elements independent of each other, or as a single core issue with several minor implications

Dialogue between ZANU PF and the MDC should be resumed as a matter of urgency. Civil society must not be left out of the process as a critical constituency. Negotiations must proceed in good faith. It would be deplorable for either party to resume negotiations superficially as a face saving measure to provide troika members with cause to petition for Zimbabwe's readmission into the Councils of the Commonwealth in Nigeria in December. Negotiations should be entered into with sincerity and with the aim of addressing the Zimbabwean crisis.

The culture of intolerance and impunity in Zimbabwe must be urgently addressed. Perpetrators of past and present human rights violations must be made accountable so as not to perpetuate further abuses.

While appreciating Government efforts to review the Fast Track Land Reform Program, we call for an independent assessment of the Fast Track Land Reform Program in order to establish land ownership and occupancy of reportedly redistributed land, taking corrective measures to ensure security of tenure and equitable, non partisan, rational and sustainable redistribution of land.

We call upon the Zimbabwe Government, in upholding the principles contained in the Harare Declaration, to take firm measures to end political violence, gross human rights violations, including the disbanding of militia groups. We further call upon the Government to ensure that the rule of law prevails and that there is impartial investigation and prosecution of all crimes by the Zimbabwe Republic Police

Appendix 1: The Abuja Agreement and Subsequent Commonwealth Communiqués on Zimbabwe

Full Text of the Abuja Agreement on Zimbabwe

Conclusions of the meeting of the Committee of Commonwealth Foreign Ministers on Zimbabwe, Abuja, Nigeria, 6 September 2001

- 1 The Meeting of the Committee of Commonwealth Foreign Ministers on Zimbabwe met in Abuja on 6 September 2001 at the invitation of HE Olusegun Obasanjo, President of the Federal Republic of Nigeria. Ministers from Canada, Jamaica, Kenya, South Africa, Zimbabwe and the United Kingdom, as well as the High Commissioner for Australia to the United Kingdom, representing the Australian Foreign Minister, and the Commonwealth Secretary-General attended. The Nigerian Foreign Minister, Sule Lamido, chaired the meeting.
- 2 The meeting recognised that as a result of historical injustices, the current land ownership and distribution needed to be rectified in a transparent and equitable manner. It also agreed on the following:
 - (a) Land is at the core of the crisis in Zimbabwe and cannot be separated from other issues of concern to the Commonwealth, such as the rule of law, respect for human rights, democracy and the economy. A programme of land reform is, therefore, crucial to the resolution of the problem;
 - (b) Such a programme of land reform must be implemented in a fair, just and sustainable manner, in the interest of all the people of Zimbabwe, within the law and Constitution of Zimbabwe;
 - (c) The crisis in Zimbabwe also has political and rule of law implications, which must be addressed holistically and concurrently. The situation in Zimbabwe poses a threat to the socio-economic stability of the entire sub-region and the continent at large;
 - (d) The need to avoid a division within the Commonwealth, especially at the forthcoming CHOGM in Brisbane, Australia, over the situation in Zimbabwe; and
 - (e) The orderly implementation of the land reform can only be meaningful and sustainable, if carried out with due regard to human rights, rule of law, transparency and democratic principles. The commitment of the government of Zimbabwe is, therefore, crucial to this process.

The Way Forward

- 3 The committee recognises the need for the adoption of confidence-building measures to ensure the implementation of the conclusions of the meeting. In this regard, the meeting welcomed the assurances given by the Zimbabwe delegation as follows:

- viii Commitment to the Harare Commonwealth Declaration and the Millbrook Commonwealth Action Programme on the Harare Declaration;
 - ix There will be no further occupation of farm lands;
 - x To speed up the process by which farms that do not meet set criteria, are de-listed;
 - xi For farms that are not designated, occupiers would be moved to legally acquired lands;
 - xii Acceleration of discussions with the UNDP, with a view to reaching agreement as quickly as possible;
 - xiii Commitment to restore the rule of law to the process of land reform program;
 - xiv Commitment to freedom of expression as guaranteed by the Constitution of Zimbabwe and to take firm action against violence and intimidation; and
 - xv Invitation by the Foreign Minister to the Committee to visit Zimbabwe.
- 4 The meeting agreed, in the overall context of the statement, that the way forward is for Zimbabwe's international partners to engage constructively with the UNDP and the government of Zimbabwe in pursuing an effective and sustainable land reform program, on the basis of the UNDP proposals of December 2000; to respond positively to any request from the government of Zimbabwe in support of the electoral process; and to continue to contribute to poverty reduction programmes for the benefit of the people of Zimbabwe; and that those partners present (Australia, Canada and United Kingdom), would actively pursue these objectives.
- 5 The meeting also welcomed the re-affirmation of the United Kingdom's commitment to a significant financial contribution to such a land reform program and its undertaking to encourage other international donors to do the same.

Appreciation

- 6 The meeting expressed its profound gratitude and appreciation to President Olusegun Obasanjo for his continuing efforts at finding a durable solution to this problem. It also expressed gratitude to the Chairman, Foreign Minister Sule Lamido, for the excellent manner in which he conducted the proceedings. Lastly it expressed gratitude to the Government and people of Nigeria for the hospitality and the conducive atmosphere provided for the meeting. The spirit of camaraderie, informality, honesty and forthrightness that was brought to bear on the proceedings of the meeting, was also recognised as being consistent with the best Commonwealth tradition.
- 7 Finally, the Committee agreed to convey to President Obasanjo its willingness to hold further consultations, if he so desires.

Abuja, 6 September 2001

Recommendations from the Zimbabwe Presidential Election 9 to 11 March: Report of the Commonwealth Observer Group

14 The Group recommends as follows:

- (e) *There is an urgent need for there to be a cessation to the systematic use of violence in political campaigns, especially against the opposition party. To address this need, the political parties and the security authorities should jointly establish mechanisms and structures at central and district levels to co-ordinate and implement peace initiatives.*
- (f) *There is a fundamental need for there to be a clear separation of party and state in Zimbabwe and for there to be a proscription on the use of state resources for party political activity.*
- (g) *The Government and law enforcement agencies should strictly enforce the law in respect to all acts of political violence.*
- (h) *The provisions of the General Laws Amendment Act, the Public Order and Security Act and the Access to Information and Protection of Privacy Act which impede the freedoms of association movement and speech should be repealed.*
- (i) *In accordance with its commitment to all the people of Zimbabwe to assist in the development of a democratic society, the Commonwealth should continue to offer assistance to strengthen the country's democratic institutions. The Commonwealth should also offer technical and economic assistance as appropriate.*

15 The Commonwealth Observer Group which was present for the June 2000 Parliamentary elections in Zimbabwe made a series of recommendations intended to assist in resolving problems which the Group had identified during its observations. A number of us were members of that 2000 COG. We regret that in effect none of our recommendations has been accepted by the Government nor by the electoral authorities. In particular, we remain strongly of the view that had a more transparent electoral process been established under a truly impartial authority, the credibility of the current Presidential Election could have been considerably enhanced. The lack of such an authority inevitably raises questions over the conduct of this election.

16 We note that steps have been taken to allocate greater resources, and a role in keeping with constitutional provisions, to the Electoral Supervisory Commission (ESC). This is a move in the right direction, but there is still a need to divorce this body from governmental control in order to ensure its independence.

17 We make the following recommendations, which we believe would assist in the conduct of future elections in Zimbabwe:

- a) *There is a need to revisit the system of election administration. The responsibility is currently shared between the Elections Directorate, the Registrar-General and the Electoral*

Supervisory Commission. All these bodies are appointed by either the President or the Executive. There is a need to establish an Independent Electoral Commission adequately staffed and equipped to be fully responsible for all aspects of electoral administration and management.

- b) *Legislation should provide for publication of a preliminary and subsequently final voter's roll in sufficient time prior to an election. Both of these lists should be made available for easily accessible public inspection, rather than only in offices of constituency registrars.*
- c) *All parties should subscribe to a Code of Conduct regarding the activities of political parties and candidates during the campaign and election period.*
- d) *Regulations governing the use of public media by the political parties and a Code of Conduct on media coverage and advertising during the campaign and election period need to be devised.*
- e) *There is a need to review the Constituency delimitation exercise and the number of polling stations attached to constituencies.*
- f) *A well-organised and ongoing voter education programme should be initiated and carried out by election officials, political parties and civil society.*

18 We are grateful to the Commonwealth Secretary-General for inviting us to participate in this Commonwealth Observer Group. We recognise the importance of our mission for the Commonwealth and for Zimbabwe. In this light, we also thank the Government of Zimbabwe for having invited Commonwealth Observers to this election. We have reported what we have seen in accordance with our mandate. We feel our highest obligation is to the people of Zimbabwe.

Commonwealth Marlborough House Statement on Zimbabwe

The Commonwealth Chairpersons' Committee on Zimbabwe, consisting of the Prime Minister of Australia, Rt Hon John Howard, the President of Nigeria, HE Chief Olusegun Obasanjo, and the President of South Africa, HE Mr Thabo Mbeki, met at Marlborough House, London on 19 March 2002 to discuss the situation in Zimbabwe. The Commonwealth Secretary-General, Rt Hon Don McKinnon, also attended the discussions.

The Committee recalled the mandate given to them by Commonwealth Heads of Government at their recent meeting in Coolumberr, Australia, to determine appropriate Commonwealth action on Zimbabwe, in the event of an adverse report from the Commonwealth Observer Group to the Zimbabwe Presidential Election, in accordance with the Harare Commonwealth Declaration and the Millbrook Commonwealth Action Programme.

The Committee noted that the Commonwealth Observer Group, led by General Abdulsalami Abubakar of Nigeria, had concluded that the Presidential Election was marred by a high level of politically motivated violence and that "*the conditions in Zimbabwe did not adequately allow for a free expression of will by the electors*". They deemed these conclusions, together with other aspects of the Report of the Observer Group, to be an adverse reflection on the electoral process, requiring an appropriate Commonwealth response.

The Committee took note of the various recommendations contained in the Commonwealth Observer Group Report. It also received a Report from the Commonwealth Secretary-General on his consultations with other Commonwealth leaders.

The Committee expressed its determination to promote reconciliation in Zimbabwe between the main political parties. To this end the Committee strongly supported the initiatives of the President of Nigeria and the President of South Africa in encouraging a climate of reconciliation between the main political parties in Zimbabwe which they considered essential to address the issues of food shortages, economic recovery, the restoration of political stability, the rule of law and the conduct of future elections.

The Committee called upon the international community to respond to the desperate situation currently in Zimbabwe, especially the shortages of food.

The Committee noted the reference in the Commonwealth Observer Group Report to national reconciliation being a priority and that the Commonwealth should assist in this process: and requested the President of Nigeria and the President of South Africa to continue to actively promote the process of reconciliation in Zimbabwe between the main political parties and to appoint special representatives to remain engaged with all the parties concerned towards this end.

The Committee decided to suspend Zimbabwe from the Councils of the Commonwealth for one year with immediate effect. This issue will be revisited in twelve months time, having regard to progress in Zimbabwe based on the Commonwealth Harare principles and reports from the Commonwealth Secretary-General.

The Committee mandated the Commonwealth Secretary-General to engage with the Government of Zimbabwe to ensure that the specific recommendations from the Commonwealth Observer Group Report, notably on the management of future elections, in Zimbabwe are implemented.

In line with the Abuja Agreement and the Coolum Statement, the Committee stated that land is at the core of the crisis in Zimbabwe and cannot be separated from other issues of concern, and the Commonwealth will be ready to assist Zimbabwe to address the land issue and to help in its economic recovery in co-operation with other international agencies. The Committee requested the Commonwealth Secretary-General to remain actively involved with the United Nations Development Programme in promoting transparent, equitable and sustainable measures for land reform in Zimbabwe.

The Committee will actively promote the implementation of all the goals contained in this Statement in consultation with the Commonwealth Secretary-General and will meet at the request of the Commonwealth Chairperson-in-Office.

19 March 2002

Zimbabwe Mid-Term Review

The Commonwealth Chairpersons' Committee on Zimbabwe, consisting of the Prime Minister of Australia, Rt Hon John Howard, the President of Nigeria, HE Chief Olusegun Obasanjo, and the President of South Africa, HE Mr Thabo Mbeki, met in Abuja, Nigeria, on 23 September 2002, to discuss the situation in Zimbabwe. The Commonwealth Secretary-General, Rt Hon Don McKinnon, participated in the discussions.

Following a review of recent political developments in Zimbabwe, the Committee recalled that in their Marlborough House Statement of 19 March 2002, they had mandated the President of Nigeria and the President of South Africa to continue to actively promote the process of reconciliation in Zimbabwe and to appoint special representatives to remain engaged with all the parties concerned towards this end. The Committee had also mandated the Commonwealth Secretary-General to engage with the Government of Zimbabwe to ensure that the specific recommendations from the Commonwealth Observer Group (COG) to the March Presidential Elections were respected and to remain actively engaged with the United Nations Development Programme (UNDP) in promoting transparent, equitable and sustainable measures of land reform in Zimbabwe.

The Committee deeply regretted that the process of reconciliation facilitated by the Special Envoys of the President of Nigeria and the President of South Africa had stalled. The Secretary-General reported that as a consequence, the level of suspicion, division and hostility between the various parties in Zimbabwe had increased considerably in recent months and that reports of harassment of the political opposition, the press and sections of the judiciary continued.

The Committee was disappointed to note that despite repeated efforts, including in collaboration with regional Commonwealth Heads of Government, the Commonwealth Secretary-General had been unable to establish a dialogue with the Government of Zimbabwe in fulfilment of his mandates.

The Committee was also deeply disappointed that the President of Zimbabwe had not taken up their invitation to come to Abuja to dialogue with them.

The Committee also called on the Government of Zimbabwe to engage with the Commonwealth Secretary-General at an early opportunity on the basis of the mandates given to him.

Whilst all members of the "Troika" strongly believe that efforts to engage the Government of Zimbabwe should continue, one member, Australia, supported the full suspension of Zimbabwe with immediate effect whilst the other members wish to see how Zimbabwe responds to the Marlborough House Statement over the next six months as foreshadowed in that Statement, as which point stronger measures might need to be considered.

Abuja, 23 September 2002

Monday 17 March 2003

Commonwealth Statement on Zimbabwe

The Commonwealth Secretary-General, Don McKinnon, issued the following statement in London today.

"The Commonwealth Troika, mandated by Heads of Government to deal with the Zimbabwe issue, suspended Zimbabwe from the councils of the Commonwealth on 19 March 2002 for a period of one year. Under the Marlborough House Statement, the issue was to be revisited in twelve months time, 'having regard to progress in Zimbabwe based on the Commonwealth Harare principles and reports from the Commonwealth Secretary-General.' At their subsequent meeting in Abuja on 23 September 2002 the Commonwealth Troika decided to 'see how Zimbabwe responds to the Marlborough House Statement over the next six months as foreshadowed in that Statement, at which point stronger measures might need to be considered.'

"Members of the Troika, in reviewing the Zimbabwe issue, agreed that I should undertake wider consultations among Commonwealth governments. Accordingly, over the past few weeks, I have been listening to the views of and discussing the issue with virtually all leaders across the Commonwealth. They have all stated that they wish to see the Commonwealth continue to work together on the issue of Zimbabwe.

"Some member governments take the view that it is time to lift Zimbabwe's suspension from the councils of the Commonwealth when the one-year period expires on 19 March 2003. Some others feel that there is no justification for such a step and that there is in fact reason to impose stronger measures. However, the broadly held view is that Heads of Government wish to review matters at the Commonwealth Heads of Government Meeting (CHOGM) in Nigeria in December 2003 and that the suspension of Zimbabwe from the councils of the Commonwealth should remain in place pending discussions on the matter at CHOGM.

"I have advised members of the Troika of these views. I have also submitted to them my report as foreshadowed in the Marlborough House Statement.

"The members of the Troika have now concluded that the most appropriate approach in the circumstances is for Zimbabwe's suspension from the councils of the Commonwealth to remain in place until Commonwealth Heads of Government address the issue and decide upon a way forward at the CHOGM in December 2003.

"I wish to reiterate that Zimbabwe and its people matter to the Commonwealth. All the Heads of Government I have spoken to have urged me to persist with my efforts at engagement with President Mugabe and his government in the context of my good offices role. I intend to do so.

"The issue of land reform is at the core of the situation in Zimbabwe and cannot be separated from other issues of concern to the Commonwealth, such as the rule of law, respect for human rights, democracy and the economy. The Commonwealth and the wider international community remain ready to assist the Government of Zimbabwe in addressing this key issue. I once again call on the Zimbabwe Government to re-engage with the Commonwealth and the United Nations Development Programme on the issue of transparent, equitable and sustainable measures for land reform, as agreed at Abuja in September 2001. Commonwealth governments also look to the Government of Zimbabwe to honour its undertakings given to other regional leaders on issues of concern.

"The Commonwealth looks forward to Zimbabwe being able to regain its full and rightful place in the Commonwealth family."

Appendix 2

The Harare Commonwealth Declaration

The association's fundamental values

- 1 **The Heads of Government of the countries of the Commonwealth, meeting in Harare, reaffirm their confidence in the Commonwealth as a voluntary association of sovereign independent states, each responsible for its own policies, consulting and co-operating in the interests of their peoples and in the promotion of international understanding and world peace.**
- 2 Members of the Commonwealth include people of many different races and origins, encompass every stage of economic development, and comprise a rich variety of cultures, traditions and institutions.
- 3 The special strength of the Commonwealth lies in the combination of the diversity of its members with their shared inheritance in language, culture and the rule of law. The Commonwealth way is to seek consensus through consultation and the sharing of experience. It is uniquely placed to serve as a model and as a catalyst for new forms of friendship and co-operation to all in the spirit of the Charter of the United Nations.
- 4 Its members also share a commitment to certain fundamental principles. These were set out in a Declaration of Commonwealth Principles agreed by our predecessors at their Meeting in Singapore in 1971. Those principles have stood the test of time, and we reaffirm our full and continuing commitment to them today. In particular, no less today than 20 years ago:
 - ❖ we believe that international peace and order, global economic development and the rule of international law are essential to the security and prosperity of mankind;
 - ❖ we believe in the liberty of the individual under the law, in equal rights for all citizens regardless of gender, race, colour, creed or political belief, and in the individual's inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives;
 - ❖ we recognise racial prejudice and intolerance as a dangerous sickness and a threat to healthy development, and racial discrimination as an unmitigated evil;
 - ❖ we oppose all forms of racial oppression, and we are committed to the principles of human dignity and equality;
 - ❖ we recognise the importance and urgency of economic and social development to satisfy the basic needs and aspirations of the vast majority of the peoples of the world, and seek the progressive removal of the wide disparities in living standards amongst our members.
- 5 In Harare, our purpose has been to apply those principles in the contemporary situation as the Commonwealth prepares to face the challenges of the 1990s and beyond.
- 6 Internationally, the world is no longer locked in the iron grip of the Cold War. Totalitarianism is giving way to democracy and justice in many parts of the world. Decolonisation is largely complete. Significant changes are at last under way in South Africa. These changes, so

desirable and heartening in themselves, present the world and the Commonwealth with new tasks and challenges.

- 7 In the last twenty years, several Commonwealth countries have made significant progress in economic and social development. There is increasing recognition that commitment to market principles and openness to international trade and investment can promote economic progress and improve living standards. Many Commonwealth countries are poor and face acute problems, including excessive population growth, crushing poverty, debt burdens and environmental degradation. More than half our Member States are particularly vulnerable because of their very small societies.
- 8 Only sound and sustainable development can offer these millions the prospect of betterment. Achieving this will require a flow of public and private resources from the developed to the developing world, and domestic and international regimes conducive to the realisation of these goals. Development facilitates the task of tackling a range of problems which affect the whole global community such as environmental degradation, the problems of migration and refugees, the fight against communicable diseases, and drug production and trafficking.
- 9 Having reaffirmed the principles to which the Commonwealth is committed, and reviewed the problems and challenges which the world, and the Commonwealth as part of it, face, we pledge the Commonwealth and our countries to work with renewed vigour, concentrating especially in the following areas:
 - ❖ the protection and promotion of the fundamental political values of the Commonwealth:
 - democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government;
 - fundamental human rights, including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief;
 - ❖ equality for women, so that they may exercise their full and equal rights;
 - ❖ provision of universal access to education for the population of our countries;
 - ❖ continuing action to bring about the end of apartheid and the establishment of a free, democratic, non-racial and prosperous South Africa;
 - ❖ the promotion of sustainable development and the alleviation of poverty in the countries of the Commonwealth through:
 - a stable international economic framework within which growth can be achieved;
 - sound economic management recognising the central role of the market economy;
 - effective population policies and programmes;
 - sound management of technological change;
 - the freest possible flow of multilateral trade on terms fair and equitable to all, taking account of the special requirements of developing countries;

- an adequate flow of resources from the developed to developing countries, and action to alleviate the debt burdens of developing countries most in need;
 - the development of human resources, in particular through education, training health, culture, sport and programmes for strengthening family and community support, paying special attention to the needs of women, youth and children;
 - effective and increasing programmes of bilateral and multilateral co-operation aimed at raising living standards;
- ❖ extending the benefits of development within a framework of respect for human rights;
 - ❖ the protection of the environment through respect for the principles of sustainable development which we enunciated at Langkawi;
 - ❖ action to combat drug trafficking and abuse and communicable diseases;
 - ❖ help for small Commonwealth States in tackling their particular economic and security problems;
 - ❖ support of the United Nations and other international institutions in the world's search for peace, disarmament and effective arms control; and in the promotion of international consensus on major global political, economic and social issues.
- 10 To give weight and effectiveness to our commitments we intend to focus and improve Commonwealth co-operation in these areas. This would include strengthening the capacity of the Commonwealth to respond to requests from members for assistance in entrenching the practices of democracy, accountable administration and the rule of law.
- 11 We call on all the intergovernmental institutions of the Commonwealth to seize the opportunities presented by these challenges. We pledge ourselves to assist them to develop programmes which harness our shared historical, professional, cultural and linguistic heritage and which complement the work of other international and regional organisations.
- 12 We invite the Commonwealth Parliamentary Association and non-governmental Commonwealth organisations to play their full part in promoting these objectives, in a spirit of co-operation and mutual support.
- 13 In reaffirming the principles of the Commonwealth and in committing ourselves to pursue them in policy and action in response to the challenges of the 1990s, in areas where we believe that the Commonwealth has a distinctive contribution to offer, we the Heads of Government express our determination to renew and enhance the value and importance of the Commonwealth as an institution which can and should strengthen and enrich the lives not only of its own members and their peoples but also of the wider community of peoples of which they are a part.

Appendix 3: Declaration of the Civil Society and Justice in Zimbabwe Symposium, 13 August 2003

Preamble

Mindful that a political solution is urgently required to overcome the crisis in Zimbabwe, and in the understanding that there is or may soon be dialogue between the major political parties in Zimbabwe, a number of Zimbabwean civic leaders convened a symposium to enable civic society leaders to have a forum at which to discuss issues of human rights and justice in Zimbabwe

The Zimbabwean participants resolved to make representations to the negotiating political parties with recommendations on issues of human rights and justice that they desire should form part of any political settlement reached by the political parties.

The recommendations are as follows:

- 1 That human rights abuses of the past – both during the colonial and post-colonial eras– must be redressed.
- 2 That mechanisms be put in place to guarantee that human rights abuses never again occur in Zimbabwe.
- 3 That blanket amnesties for human rights abusers should not be allowed; and specifically that there should be no further general amnesty for human rights abusers.
- 4 That the necessary institutions be set up to deal with past and present human rights abuses, and that such institutions be empowered not only to investigate and seek the truth, but also to recommend criminal prosecution, provide for redress and reparations for victims, and lead to healing of the nation. Such institutions must encourage and sensitively deal with the special needs of victims. This is particularly important in dealing with women and children as victims.
- 5 That the Constitution guarantees future respect for human rights and sets up a justice system and other institutions to give effect to such guarantee.
- 6 That the government must enable Zimbabweans to take advantage of the protection and remedies offered by international human rights instruments.
- 7 That there should be an investigation into corruption and asset stripping, and the repossession of all assets misappropriated from state and private enterprise, or acquired through corruption and other illegal means.

In the short term, we make the following demands on the Zimbabwe Government:

- 1 That there be an immediate end to political violence and intimidation, an immediate disbanding of the militia, and an immediate return to non-partisan police, army and intelligence services and non-selective application of the law.
- 2 That there be an immediate repeal of all repressive legislation and unjust laws such as the Public Order and Security Act, the Access to Information and Protection of Privacy Act and the Broadcasting Services Act and charges brought before the repeal of these laws should be withdrawn and sentences previously imposed be annulled.
- 3 That there be an immediate opening up of political space, including the immediate and complete overhaul of electoral laws and institutions to enable all elections to be held under free and fair conditions.
- 4 That the economic and humanitarian crisis in Zimbabwe must be immediately addressed.

We also call upon the United Nations to immediately send a Special Rapporteur to Zimbabwe to assess the human rights environment.

We also call upon the African Commission on Human and People's Rights to immediately release the report of the findings of its mission to Zimbabwe.

13 August 2003

Appendix 4

ADMINISTRATIVE MAP OF ZIMBABWE

