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# Partisan policing:

# An obstacle to human rights and democracy in Zimbabwe

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Human Rights Institute Report**

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# Executive summary

This is the executive summary of the report of a fact-finding visit to the Republic of Zimbabwe by experts on behalf of the International Bar Association Human Rights Institute (IBAHRI) between 11-18 August 2007. The fact-finding visit was prompted by increasing international, regional and domestic concerns at the apparent erosion of the rule of law in Zimbabwe. These concerns related to unlawful police action in the country, police excesses and brutality and the intimidation of civilians, human rights activists, the organised legal profession, trade unions and non-governmental organisations (NGOs).

The delegation was sent to investigate the status of the rule of law and administration of justice in that country and, in particular, the role of the police in the administration of justice. The issues were to be analysed within constitutional and relevant regional and international standards, and the administration of justice processes in Zimbabwe. The particular focus area was the role of the police in the administration of justice. Specifically, to evaluate the relationship between the police, lawyers and prosecutors, and to prepare a report on the situation in Zimbabwe for dissemination. The report contains recommendations for the immediate and long term measures necessary to protect and uphold the rule of law and administration of justice in Zimbabwe and prevent impunity for human rights violations.

The delegation comprised the following members: Dr Overs M M Banda, the ex-Permanent Secretary for Justice of Zambia up and until 2002 and currently Honorary Treasurer of the Law Association of Zambia. Dr Banda is the Dean of the School of Law, Cavendish University, Zambia and runs his own law firm, OMM Banda and Co., Professor D J Titus, Executive Dean in the College of Law at the University of South Africa in South Africa, Andrea A Gabriel, an Advocate in practice and a member of the Durban Bar in South Africa (Andrea acted as rapporteur) and Esther Major, Programme Manager of the IBAHRI.

What follows is a summary of the conclusions and recommendations of the report.



# Summary of the conclusions

## **The ZRP and its constitutional responsibilities**

The IBAHRI is of the view that the Zimbabwe Republic Police (ZRP) has abdicated its constitutional functions, responsibilities and obligations. Police officers are responsible for some of the most serious human rights and rule of law violations in Zimbabwe today. The ZRP has consistently shown disrespect and contempt for the law, lawyers and judicial authorities to an extent that has seriously imperilled the administration of justice and the rule of law in Zimbabwe. Far-reaching reforms and reorientation are necessary to bring Zimbabwe's policing operations into conformity with constitution and regional and international human rights standards.

## **The ZRP and basic rights to ensure the safety and security of those in custody**

The IBAHRI found that one of the most common allegations against the police is that they routinely disregard basic rights of detainees, such as free access for detainees to their lawyers, access to family members, medical personnel and courts. Without these basic protections, individuals in police detention are at increased risk of torture, disappearance and other serious human rights violations. Indeed, the IBAHRI delegation found the large number of credible allegations of torture, use of excessive force, ill-treatment, arbitrary detention and obstruction of legal representatives to be a cause for alarm.

## **Impunity for grave human rights violations committed by the ZRP**

The IBAHRI found that underlying the large number of grave abuses by the ZRP is a culture of impunity. Members of the police force act as if they are above the law because, in fact, they are rarely prosecuted even when they commit the most serious of crimes. Police officers who have been identified in court proceedings as responsible for serious violations, including torture, continue to occupy their positions. There is even little evidence of internal disciplinary action being taken against them.

There has been no public condemnation by the President, the Minister of Justice, the Minister of Home Affairs, the Police Commissioner and other senior government officials of even the most shocking cases of torture and ill-treatment by police or any show of a commitment to investigate, discipline and prosecute those responsible are notable by their absence. On the contrary, the public support expressed by those in key positions of power, such as the President, the Minister for Home Affairs and the Police Commissioner amongst others, for the various actions of the ZRP, appears to have exacerbated the impunity surrounding abuses by police and emboldens them in their unlawful behaviour.

## **Partisan policing**

Instead of conducting itself as a national security force charged by the Constitution and statute with ensuring public order and security in the country, the ZRP has abandoned its constitutional

mandate in favour of an approach to policing which is blatantly partisan. The police repeatedly characterise government opponents and critics and their lawyers as ‘agents of the West’ or ‘enemies of the state’ and routinely violate the rights of these persons during policing operations.

Biased policing further polarises Zimbabwean society and heightens insecurity and political tensions. Everyone in Zimbabwe should be guaranteed equal protection of the law. The IBAHRI asserts that the absence of such protection is a major obstacle to democracy in Zimbabwe and a considerable impediment to free and fair elections.

### **Undermining the role of the Attorney General**

The IBAHRI delegation heard of numerous cases in which members of the ZRP have attempted to usurp the constitutional role of the Attorney-General, who is responsible for prosecutions in Zimbabwe. Credible reports were received of attempts by police to coerce the Attorney-General’s officers into prosecuting cases. The report also highlights the stress that prosecutors are currently placed under by members of the ZRP when carrying out their professional duties.

Such a course undermines the integrity and independence of the office of the Attorney-General. This is recognised as a matter of law in section 12 of the Police Act, which obliges the Commissioner of Police to comply with directions issued by the Attorney-General ‘to investigate and report on any matter which relates to any criminal offence or alleged or suspected criminal offence’.

### **Ineffective judicial action**

The IBAHRI found the lack of due judicial action in the cases of police abuse to be another cause of serious concern. The judicial processes in which police abuses are alleged show a disturbing pattern that reflects, in many cases, the complacency on the part of the courts in holding police to account for alleged abuses.

Many of those interviewed reported facing serious obstacles when seeking urgent judicial protection of persons in police custody and judicial investigation of allegations against police is lacking. The lack of responsiveness shown by the courts to urgent cases has negatively impacted on human rights protection and frustrated access to justice.

Where there are found to be actions by the members of the ZRP which are contrary to the rule of law, investigations and disciplinary action should be undertaken. Judicial inaction on such issues, particularly where they relate to serious human rights violations and fundamental rights such as habeas corpus will inevitably lead to a situation where the role of the courts in protecting human rights becomes defunct.

### **Contempt for court orders**

The high number of court orders, in particular those relating to matters requiring urgent attention, which have been ignored or not enforced, is of grave concern. The frustration among the members of the legal profession with whom the delegation met was palpable. The delegation concluded that there is rampant contempt for the courts and judicial decisions by police, to the detriment of those



seeking redress for, or protection from, human rights violations.

Contempt for judicial decisions and lack of enforcement of court orders is a serious impediment to access to justice and a further affront to the independence of the judiciary. The delegation found that such contempt has contributed to a serious loss of public confidence in the justice system and an increase in lawlessness. The lack of follow up, particularly in relation to the contempt shown by the police for orders issued by the court is of grave concern.



# Summary of the recommendations

## **To the Zimbabwean Authorities :**

Cease the widespread practice of denying police detainees access to their lawyers and threatening the safety of lawyers who represent government opponents and critics.

Eliminate the practice of identifying lawyers with the political causes of their clients.

Conduct independent, impartial and thorough investigations into all allegations of human rights violations against the police. As a first priority, investigations should focus on complaints against those police officers who have been the subject of numerous complaints or repeatedly civilly sued for alleged rights violations. The results of investigations should be made public and suspected perpetrators should be brought to justice.

Convene meetings between the leadership of the ZRP and the Law Society of Zimbabwe and establish clear guidelines to ensure that all detainees held by the police are permitted access to a lawyer of their choice from the moment at which they are detained, and that defence lawyers can conduct professional duties without unlawful police interference.

Establish a system for the independent monitoring of the way the ZRP carry out their duties with regard to detainees. Such a system should allow appointed members of the public, including representatives of the legal and medical professions, human rights organisations and the wider community to observe and report publicly on detention conditions and practices in Zimbabwe's police stations.

Ratify the United Nations Convention against Torture and its Optional Protocol which assists the State to establish mechanisms to facilitate the elimination of torture through regular visits and inspections of places of detention by both national and international experts.

Put in place measures to ensure that human rights defenders in Zimbabwe receive the support and protection necessary to carry out their duties free from fear or intimidation, in accordance with Zimbabwe's Constitution and laws, and international and regional legal and treaty obligations.

Open channels of communication with human rights groups, NGOs, members of the organised legal profession and other civil society groups to ensure that measures are implemented and systems put in place to stem and reverse the tide of rule of law infractions and human rights abuses identified in this report and to ensure free and fair elections in March 2008.

Judicial authorities should promptly and fully investigate all reports of human rights violations and non-compliance with court orders by police that come to their attention. All cases of non-compliance with court orders by police should be punished. Measures should be put in place to ensure that cases in which allegations of unlawful detention, assault, ill-treatment or contempt of court orders are made against the police are heard urgently. The judiciary must initiate investigations into cases of contempt and call specific police officers to account for their actions or inactions in relation to orders of the court.

The Attorney-General should denounce all attacks and threats by police against its officers and ensure that those working in the Attorney-General's office can carry out their duties free from fear of intimidation and threats.

### **The Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO):**

It is vital that SARPCCO ensures that its members are not just paying lip service to this important and valuable code of conduct which they have developed. All SARPCCO members should be held to account for allegations of serious breaches of the code of conduct. In this case, questions should be asked of the ZRP in particular (but not exclusively) in relation to Article 1 – Respect for human rights; Article 2 – Non-discrimination; Article 3 – Use of force; Article 4 – Torture, cruel, inhuman or degrading treatment; Article 5 – Protection of persons in custody; Article 7 – Respect for the rule of law and Code of Conduct; Article 9 – Corruption and abuse of power; and Article 10 – Performance of duties.

### **African Commission:**

The IBAHRI commends the work of the African Commission in trying to address the complex human rights violations occurring in Zimbabwe. The IBAHRI recommends that the African Commission facilitate a visit to Zimbabwe by the Special Rapporteurs on human rights defenders and freedom of expression and further, the Robben Island Working Group on torture and arbitrary detention, to carry out independent investigations into police abuses.

### **The international community especially the SADC is called upon to:**

Ensure that the SADC and all those involved in the negotiations for a solution to the crisis in Zimbabwe, prioritise addressing the problem of police abuses and impunity as a fundamental part of the solution.

Emphasis should be placed on the importance of working to restore public faith in the police. Measures and reforms must be put into action, with the objective of increasing the accountability of the police to the public they serve, and ensuring the protection of the human rights of all citizens in Zimbabwe. Equality before the law and accountable, independent policing that protects human rights are essential components to ensuring that the citizens of Zimbabwe feel able to actively take part in normal democratic processes, including future elections, without fear of intimidation or reprisal.

Urge the Government of Zimbabwe to develop a credible plan to ensure that the policing of public gatherings in the run-up to 2008 elections conforms with regional and international standards of human rights and democratic elections

Exert pressure on the Zimbabwean government to set out a clear timetable for developing a comprehensive programme to transform the ZRP into a politically neutral, service-oriented force that ensures law and order for all within Zimbabwe and observes human rights.

Guarantee that sufficient resources and expertise will be available to support a credible police reform programme.



# 1. Introduction

1.1 This is the report of a fact-finding visit by jurists and lawyers to Zimbabwe during August 2007. The visit was carried out and organised by the International Bar Association's Human Rights Institute (IBAHRI) in order to investigate the status of the rule of law and administration of justice in that country and, in particular, the role of the police in the administration of justice. The visit took place in Harare from 12 to 17 August 2007. The visit was funded by the Open Society Initiative of Southern Africa (OSISA).

1.2 The IBA is the world's largest lawyers' organisation with 195 member bar associations and law societies and over 30,000 member lawyers worldwide. It is an independent, non-political body dedicated to the legal profession. The Human Rights Institute (IBAHRI) is the human rights arm of the IBA and was formed in 1995 under the honorary presidency of President Nelson Mandela. It is directed by officers and a council selected from 21 different countries. The IBAHRI works across the Association, to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

1.3 The fact-finding visit was conceived and prompted by increasing international, regional and domestic concerns at the apparent erosion of the rule of law in Zimbabwe. These concerns related to unlawful police action in the country, police excesses and brutality and the intimidation of the organised legal profession, human rights activists, civilians, trade unions and non-governmental organisations (NGOs).

1.4 The plethora of well-documented and sustained reports suggested overwhelmingly that rule of law in Zimbabwe was in a precarious state. It indicated that there was an increase in contempt for the rule of law, and that the right to equality before the law was being disregarded by the Zimbabwe Republic Police (ZRP) in order to defend targeted state action against those perceived to be a threat in any way to the existing government.

1.5 The objective of the investigative visit was to analyse the state of rule of law, the administration of justice, within constitutional and relevant regional and international standards, and the administration of justice processes in Zimbabwe.

1.6 The particular focus area was the role of the police in the administration of justice. Specifically, to evaluate the relationship between the police, lawyers and prosecutors, and to prepare a report on the situation in Zimbabwe for dissemination. The report would, as appropriate, make recommendations for the immediate and long term measures necessary to protect and uphold the rule of law and administration of justice in Zimbabwe.

1.7 The delegation comprised the following members:

- (a) Dr Overs M M Banda, the ex-Permanent Secretary for Justice of Zambia up and until 2002 and currently Honorary Treasurer of the Law Association of Zambia. Dr Banda is the Dean of the School of Law, Cavendish University, Zambia and runs his own law firm, OMM Banda and Co.

- (b) Professor D J Titus, Executive Dean of the College of Law at the University of South Africa in South Africa;
- (c) Andrea A Gabriel, an Advocate in practice and a member of the Durban Bar in South Africa. Andrea acted as rapporteur; and
- (d) Esther Major, Programme Manager of the IBAHRI.

1.8 During the course of the visit, the delegation met in Harare with numerous members of the legal profession, including NGOs and human rights activists, lawyers, the Chief Justice of the Supreme Court, the Permanent Secretary of Justice, the Judge President and the ex-President of the Law Society of Zimbabwe, who is currently a member of the Southern African Development Community (SADC) Lawyers' Association (SADCLA), amongst others.

1.9 The delegation wishes to record its gratitude to all those who assisted it during its visit, and to all those interviewed for their frank discussions and generosity with their time.

1.10 The delegation were grateful that, despite the fact that the Minister of Justice was unable to attend a meeting, the Permanent Secretary for Justice, David Mangota, kindly made arrangements to meet them even though he was on annual leave on 15 August 2007.

1.11 In addition, the delegation held a meeting at 1000 on 15 August 2007 with the Chief Justice of Zimbabwe, his Lordship Justice Godfrey Chidyausiku.

1.12 The delegation was disappointed that its meetings with the Minister of Home Affairs, the Minister responsible for the administration and control of the ZRP, and the Attorney-General, who is the constitutional functionary responsible for prosecutions and who has a statutory watchdog role over the ZRP, were both cancelled at the last minute.

1.13 This meant that the delegation could not obtain the views of these important governmental officials about the allegations relating to police brutality, lack of discipline of police, lack of enforcement of court orders or the reports of a deficit of investigations and prosecutions for acts of torture and ill-treatment.

1.14 Although the delegation had planned to visit Bulawayo to meet with the members of the legal profession and NGOs during its visit, that was not possible due to limited fuel supplies in Zimbabwe at the time making any long distance travel by car difficult, and the consequential overbooking of airline flights.

### *The approach and methodology for the report by the IBAHRI*

1.15 What follows is an analysis of the situation of the rule of law in Zimbabwe, in particular the role of the police in the administration of justice. The analysis draws on documentation (such as local court orders, affidavits, public documents, reports from the State and respected NGOs



operating in Zimbabwe) and the information obtained through interviewing State officials, lawyers and human rights activists in Zimbabwe. The IBAHRI uses Zimbabwe's national and international legal obligations as the benchmark for the report. The IBAHRI has purposefully not named all those interviewed for fear of reprisals.

1.16 As is evident in this report, Zimbabwe is a deeply polarised society and the delegation was conscious of the need to seek the views of all interested parties.

1.17 The delegation records at the outset that its observations on the current rule of law crisis must be examined in the light of the broader political context in Zimbabwe. In order to place this report in context, of particular importance is the prospect of national elections in 2008, which have been the focus point of many of the ongoing regional and local negotiations at the time of the writing of this report<sup>1</sup>

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1 Prior to the SADC heads of State meeting in Lusaka, President Thabo Mbeki of South Africa was quoted as saying 'So it is important that when those elections take place the results should not be contested,' and further: 'You must have elections in Zimbabwe that are free and fair and therefore produce a government that will be accepted by all the people of Zimbabwe as a legitimate government emerging out of a democratic process.' South Africa is leading the negotiation talks between the ruling party and the MDC. For more see full article: <http://abcnews.go.com/International/wireStory?id=3426427>



## 2. Country background

### Background

2.1 The situation in Zimbabwe, both in terms of respect for the rule of law and economic development, has been in a state of deterioration, in particular since the ruling party, the Zanu PF, suffered its first defeat during the referendum on Constitutional reform in 2000, which the opposition successfully lobbied against. The repressive legislation similar to that which had existed during the Ian Smith regime prior to Zimbabwe's independence began to reappear under the guise of new pieces of legislation, such as the Public Order and Security Act (POSA). Freedom of expression has been greatly curtailed and independent news sources shut down.<sup>2</sup>

2.2 The last seven years have been characterised by increased poverty and rocketing inflation, the scale of the crisis evident in measures such as the Reserve Bank reducing the value of notes, limits placed on the amount of money to be carried by an individual at any time and the development of a parallel market which sells and buys foreign currency at rates far exceeding the Government-declared rate of exchange.

2.3 The judiciary and legal profession have been targeted and attacked both verbally and physically as a result of carrying out their professional duties.<sup>3</sup> The same treatment has been meted out to any others who have questioned the legality of Government policies in some way or perhaps expressed an alternative opinion. Human rights defenders are in an increasingly vulnerable position. Allegations of police torture and ill-treatment of human rights defenders abound.

### Recent high profile events

2.4 Some pertinent events suffice to demonstrate the seriousness of situation in Zimbabwe. These include the following:

In December 2005, the African Commission for Human and Peoples' Rights, charged with monitoring state compliance with the African Charter for Human and People's Rights (ACHPR), passed a resolution condemning the Zimbabwe Government for human rights violations and calling on it to respect fundamental rights and freedom of expression, association and assembly by repealing repressive legislation. The Zimbabwe Government has refused to accept any of the ACHPR resolution's recommendations, and human rights violations continue.<sup>4</sup>

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2 A detailed examination of the human rights practices of the Zimbabwean Government, including freedom of expression, is set out in *Zimbabwe Human Rights in Crisis: A Shadow Report to the African Commission for Human and People's Rights May 2007* prepared by five independent international organisations, the International Bar Association's Human Rights Institute, Amnesty International, Human Rights Watch, Article 19 and Redress. The Shadow report reflects a marked and steady erosion of the basic norms fundamental to rule of law in any democratic society. The report was prepared for the African Commission as a counter to the report presented by the Zimbabwean [Government?], in accordance with its reporting obligations to the African Commission on Human and People's Rights. It is available from [www.ibanet.org/images/downloads/05\\_2007\\_May\\_Shadow\\_Report\\_to\\_the\\_ACHPR\\_Zimbabwe\\_human\\_rights\\_in\\_crisis\\_Final.pdf](http://www.ibanet.org/images/downloads/05_2007_May_Shadow_Report_to_the_ACHPR_Zimbabwe_human_rights_in_crisis_Final.pdf).

3 For further information on the decline in the rule of law in Zimbabwe see the IBA report of 2001 at [www.ibanet.org](http://www.ibanet.org), which contains a detailed analysis of the situation of the judiciary and rule of law in Zimbabwe.

4 *Ibid.*

## *Operation Murambatsvina (restore order)*

2.5 In 2005, the Zimbabwean authorities demolished homes and buildings in several high density urban districts in Zimbabwe. The operation, which resulted in the loss of homes and livelihoods, and the displacement of thousands of people, received huge international and regional attention. The operation was executed by the ZRP despite it not being the authority responsible for enforcing the decision to demolish the buildings in the area. There were no plans in place to assist those forced from their homes, which meant many were left homeless. The United Nations Secretary General sent a Special Envoy on Human Settlement Issues, Anna Kajumulo Tibaijuka, to assess the situation and produce a report.<sup>5</sup>

2.6 The report stated:

‘Operation Restore Order, while purporting to target illegal dwellings and structures and to clamp down on alleged illicit activities, was carried out in an indiscriminate and unjustified manner, with indifference to human suffering, and, in repeated cases, with disregard to several provisions of national and international legal frameworks. Immediate measures need to be taken to bring those responsible to account, and for reparations to be made to those who have lost property and livelihoods.’<sup>6</sup>

2.7 Further, the Special Envoy report stated:

‘The Government of Zimbabwe should set a good example and adhere to the rule of law before it can credibly ask its citizens to do the same. Operation Restore Order breached both national and international human rights law provisions guiding evictions, thereby precipitating a humanitarian crisis.’<sup>7</sup>

## **Events in March 2007**

2.8 On 11 March 2007 the ZRP prevented a prayer meeting organised by the Save Zimbabwe Campaign (a coalition of church, civic groups and NGOs) and the opposition party Movement for Democratic Change (MDC), from taking place in the high density suburb of Highfields in Harare. Leaders of the MDC and the civic movement as well as 50 other people hoping to attend the function were arrested and assaulted by the police.

2.9 The international reaction to the media coverage of the state violence of 11 March 2007 was enormous. Governments and regional and international human rights organisations condemned the violence and approximately 200 arrests followed the events.<sup>8</sup>

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5 For a detailed assessment of the demolitions and events surrounding the same, see the following publication: ‘*Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe*’, Anna Kajumulo Tibaijuka, 18 July 2005

6 *Ibid.* p 7

7 *Ibid.* p 9

8 Two other organisations were so concerned at reports of violent treatment of lawyers that they visited the country to analyse the situation. The SADCLA sent a delegation to Zimbabwe on 9–11 May to investigate the issues relating to the human rights situation there. Thereafter, the International Commission of Jurists (ICJ) concluded, on 19 June 2007, a five-day mission to Zimbabwe to investigate the facts and laws surrounding extensive international reports of arrests in Zimbabwe and related detention and beating of members of the legal profession.

2.10 As a result of the huge international attention drawn to the state violence of 11 March 2007 and a growing unease about the deepening Zimbabwean crisis, the SADC called an Extraordinary Summit of the Heads of State and Government in Dar-es-Salaam, Tanzania, on 29 March 2007. The summit was called to discuss ‘the political, economic and security situation in the region, with special focus on the situations in Lesotho, DRC, and Zimbabwe’, with Zimbabwe as the major item on the agenda. While there are varying reports of what went on at the summit, the final communiqué gave President Mbeki a mandate to facilitate dialogue to resolve the Zimbabwean crisis. President Mbeki has since disclosed that he regards the holding of a free and fair election in Zimbabwe in March 2008 as the way to resolving the crisis.



## 3. Normative framework governing the ZRP

3.1 The ZRP comprises almost 23,000 police officers, yielding a ratio of one police officer to 523 civilians. The ZRP is centrally controlled, with the command centre situated in Harare. It is hierarchically divided, with provincial headquarters overseeing two to three district headquarters, each of which supervises up to seven stations. It is also divided into specialised units, namely the Duty Uniform Branch (DUB), the Police Protection Unit (PPU), the Support Unit (a paramilitary branch of the organisation), the Criminal Investigation Department (CID), the Staff Branch and the Technicians' Branch.

3.2 It is useful perhaps to understand the Constitutional and statutory context which bind and regulate the ZRP.

3.3 Chapter IX of the Constitution provides for the establishment of the police force, namely the ZRP as follows:

'93...

- (1) There shall be a Police Force which, together with such other bodies as may be established by law for the purpose, shall have the function of preserving the internal security of and maintaining law and order in Zimbabwe.
- (2) Subject to the provisions of an Act of Parliament, the Police Force shall be under the command of the Commissioner of Police, who shall be appointed by the President after consultation with such person or authority as may be prescribed by or under an Act of Parliament.
- (3) An Act of Parliament shall make provision for the organization, administration and discipline of the Police Force, including the appointment of persons to offices or ranks in the Police Force, their removal from office or reduction in rank, their punishment for breaches of discipline and the fixing of their conditions of service.'

3.4 The ZRP operates under the authority of the Minister of Home Affairs, currently Kembo Mohadi, and the command of a Commissioner of Police, currently Augustine Chihuri.

3.5 The Act of Parliament contemplated in section 93 of the Constitution is the Police Act, No 2 of 1995 (as amended). It repeats constitutional obligations on the police to preserve internal security and maintain law and order in Zimbabwe.<sup>9</sup>

3.6 Section 9 of the Police Act permits the Commissioner of Police, in consultation with the Minister, to make Standing Orders with respect to the discipline, regulation and orderly conduct of the affairs of the police force.

3.7 Section 12 of the Police Act obliges the Commissioner of Police to comply with directions issued by the Attorney-General 'to investigate and report on any matter which relates to any criminal

<sup>9</sup> Preamble to the Police Act, referring to sections 93 to 95 of the Constitution.

offence or alleged or suspected criminal offence' and the Commissioner is required to comply with those instructions forthwith.

3.8 Part 5 of the Police Act deals with the discipline of members of the ZRP. Section 29 makes it an offence for members of the ZRP to contravene any provision of the Act or any order made in terms of it or who commit offences specified in the schedule to that Act. The remainder of Part 5 provides further procedures to investigate unlawful conduct by members of the ZRP police and appropriate procedures and sanctions for their discipline.

3.9 The ZRP is also a member of the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO). This institution is a regional professional association which is committed to disseminating best practices and raising the standard of policing in the region, including the respect for human rights.<sup>10</sup> The SARPCCO Code of Conduct, titled the 'Harare Resolution on the SARPCCO Code of Conduct for Police Officials', outlines the minimum standards to which the ZRP are meant to be committed. Of further value here is the UN Code of Conduct for Law Enforcement Officials, which also provides similar guidance on the role and obligations of officials of the police.<sup>11</sup>

3.10 Zimbabwe is party to the following international and regional human rights treaties:

- United Nations International Covenant on Civil and Political Rights (13/05/91)
- United Nations Convention on the Elimination of All Forms of Discrimination against Women (13/05/91)
- United Nations International Convention on the Elimination of All Forms of Racial Discrimination (13/05/91)
- United Nations International Covenant on Economic, Social and Cultural Rights (13/05/91)
- United Nations Convention on the Rights of the Child (11/09/1990)
- African Charter on Human and Peoples' Rights (12/06/86)
- Protocol to The African Charter on Human and Peoples' Rights on The Establishment of an African Court on Human and Peoples' Rights (signed on 09/06/98)
- Protocol to The African Charter on Human and People's Rights on The Rights of Women in Africa (signed on 18/03/2003)
- African Convention on Preventing and Combating Corruption.(22/02/07)
- African Charter on the Rights and Welfare of the Child (22/02/95)
- The SADC Treaty

<sup>10</sup> See preamble to the SARPCCO Code of Conduct for Police Officials 'Harare Resolution on the SARPCCO Code of Conduct for Police Officials' 2001, downloadable from: [www.idasa.org.za](http://www.idasa.org.za)

<sup>11</sup> UN Code of Conduct for Law Enforcement Officials Adopted by General Assembly Resolution 34/169 of 17 December 1979 downloadable from: [www.unhchr.ch/html/menu3/b/h\\_comp42.htm](http://www.unhchr.ch/html/menu3/b/h_comp42.htm)



## Non-treaty based standards relevant to policing in Zimbabwe

3.11 Whilst they do not retain the same binding powers of the treaties, there are a number of guidelines and principles which have been developed by the United Nations and regional bodies in order to facilitate the implementation of the rights enshrined in the treaties. The Member States of the relevant bodies are expected to use these guidelines as benchmarks and should be adhering to them, despite their non-treaty status.

- Code of Conduct for Law Enforcement Officials General Assembly Resolution 34/169 of 17 December 1979
- The UN Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (1988)
- The UN Basic Principles for the Use of Force and Firearms by Law Enforcement Officials (1990)
- The UN Basic Principles for the Treatment of Prisoners (1990)
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (1999)
- The Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('The Robben Island Guidelines') (2002)
- Harare resolution on the SARPCCO Code of Conduct for Police Officials (2001)
- The SADC Principles and Guidelines Governing Democratic Elections (2004)

3.12 This is not intended to be an exhaustive list. There are additional domestic norms, human rights treaties, non-treaty instruments and resolutions which are relevant to human rights, the police and the administration of justice, the focus areas of this report.

## Torture under international law

3.13 Zimbabwe is not party to the United Nations Convention Against Torture. However, there now exists overwhelming evidence to support the stance that the prohibition of torture has reached the status of *jus cogens*, that is to say a peremptory norm of international law.<sup>12</sup> This means that it is a norm which cannot be derogated from by States and their officials, even if they are not party to any specific treaties prohibiting the same. Torture is also prohibited by the Universal Declaration of Human Rights, which in large part has been argued to have achieved the status of customary international law.<sup>13</sup>

<sup>12</sup> According to Article 53 of the Vienna Convention on the Law of Treaties this means that the prohibition of torture has developed into a norm 'accepted and recognized by the international community of States as a whole, as a norm from which no derogation is permitted and which can only be modified by a subsequent norm of general international law having the same character'. According to Nigel Rodley '...It is safe to conclude that the prohibition is one of general international law, regardless of whether a particular state party is party to a treaty expressly containing prohibition.' See page 74 of the *Treatment of Prisoners under International Law*, Second Edition, 2002 OUP. A further relevant source for the conclusion of the prohibition torture reaching the status of a peremptory norm in international law, and advancing the spectrum of understanding about what that norm may reach to encompass, can be found in decision of *Prosecutor v Anto Furundzija*, in the International Criminal Tribunal for the Former Yugoslavia, IT-95-17/1-T, 10 December 1998, [www.un.org/icty/cases/jugemindex-e.htm](http://www.un.org/icty/cases/jugemindex-e.htm)

<sup>13</sup> *Ibid*, Rodley, Nigel, p 74

3.14 There are thus, de jure, arguably adequate Constitutional and statutory controls and frameworks in place in Zimbabwe to regulate the ZRP and to ensure that any unlawful behaviour is timeously investigated and remedied through disciplinary measures. The purpose of the visit therefore was to find out if de facto this framework delivered a police force which functions in accordance with its statute, and the relevant international obligations and standards. Further, it was to see whether this body of norms was being used effectively to prevent human rights violations, protect the Zimbabwean citizen from abuse, and further, promote human rights.

## 4. Unlawful action, excessive use of force and torture on suspects and legal representatives

‘I actually met Tsvangirai Mukwazhi during my visit and I saw with my own eyes the serious injuries he sustained on his back during the beating by the police. Not only was he in pain but was also traumatised by the experience. His eyes were full of tears as he was narrating to me the incidents of 11 March. His car, equipment and laptop were also confiscated by the police.’ Advocate Pansy Tlakula, the Special Rapporteur on Freedom of Expression of the African Commission on Human and Peoples Rights.<sup>14</sup>

4.1 During the visit, the delegation received reports and evidence of numerous acts of violence and abuse committed by ZRP officers against Zimbabwean citizens. The delegation felt that it would be useful to highlight a key example of those analysed during the investigation. Of particular concern were the repeated references to the actions and behaviour of the Law and Order Section of the ZRP.

4.2 The delegation received numerous reports of widespread and ostensibly arbitrary arrests by members of the ZRP without any charges ultimately being brought against detainees, or with charges that were subsequently found by courts to be baseless. An example of this provided to the delegation was the case of Women of Zimbabwe Arise (WOZA), whose members have been detained on numerous occasions, with charges that have subsequently been dropped or have yet to be ascertained.<sup>15</sup> On the occasions when the charges have reached a court hearing, the prosecution has often been found lacking and the case withdrawn. This pattern of arrest and release without charge may suggest that members of the ZRP are using arrests as punishment, or an opportunity to beat or intimidate, rather than following due process of law and the criminal justice system.



4.3 It is clear that the vast majority of victims of this policy of violence and arbitrary detention by the ZRP are those who are seen as: i) resistant to Government policy and/or political dissenters; or ii) any persons associated with them. This even extends to those carrying out their professional duties, such as their legal representatives. Such actions are unacceptable by any legal standard both at the domestic level in Zimbabwe or at the level of the country's regional and international law commitments and obligations.

<sup>14</sup> For further details on this incident and the letter written by Advocate Pansy Tlakula to President Mugabe expressing her concerns at the deterioration in freedom of expression and rule of law in Zimbabwe, visit: [www.kubatana.net/html/archive/media/070320misaz.asp?sector=CACT&year=0&range\\_start=1](http://www.kubatana.net/html/archive/media/070320misaz.asp?sector=CACT&year=0&range_start=1)

<sup>15</sup> By way of example, on 11 September 2006 some 100 WOZA members were arrested in advance of a peaceful protest they had planned to carry out. In an effort to draw attention to the deteriorating services, they were intending to hold a peaceful 'sit in' at the Town Hall in Harare. They were all detained despite the fact that some had small children and babies with them. Despite the inhumane conditions of the detention facilities, many of those arrested were kept in longer than the 48 hours permitted by law. The women were subsequently charged with 'participating in a public gathering with the intent to cause public disorder, breach of peace or bigotry'. All those charged were acquitted just over a month later on 23 October 2006.

## The case of the alleged petrol bombers

4.4 Prior to the arrest of activists in connection with alleged bombings near Harare in May 2007, approximately 34 other civilians were arrested for alleged bombings. The delegation was provided with copies of letters written on the instructions given by those civilians to their attorneys. Those attorneys were instructed to institute damages claims against the State and the delegation was provided with copies of letters detailing such claims arising from arrests during the early hours of the mornings of 20 March, 27 March, 28 March, 29 March, 3 April, 7 April and 21 April 2007.

4.5 Of that spate of arrests for alleged petrol bombings, instructions provided to the attorneys include claims of severe beatings by police at the Law and Order Section of the Harare Central Police Station. More importantly, many of those letters of demand identify by name groups of police officers who beat and tortured those detained at that police station.

4.6 The instructions also detail shocking physical and psychological suffering meted out by the police officers to the individuals in their care. The alleged acts of torture and violence correspond with the results of physical examinations documented by medical professionals subsequent to the abuse. The methods used – such as the placing of a handcuffed individual in the so-called ‘Birchnough Bridge’ position, before being suspended in the air, putting enormous strain on the victim and causing acute pain; beating on the soles of the feet; and being made to lie on the stomach and beaten across the buttocks and back using metal bars, batons, open hands and clenched fists – are repeated in numerous allegations and other complaints made against the ZRP.

4.7 By way of illustration, one such arrestee, Shame Wakatame was arrested on 28 March 2007 for an alleged petrol bombing and was tortured and detained for three days. On 30 March 2007, a court order was issued calling for his immediate release and for the remand of others, ordering his release by 1400 on 30 March 2007. That order also required the provision of immediate medical attention and examination. The order was ignored by the police, and the medical attention was only provided to Mr Wakatame approximately three days later, and then only at the point when he collapsed at the time he was finally brought to court. Mr Wakatame remained in custody until 4 April 2007.

4.8 The damages claims arising from the March to April 2007 arrests of the 34 civilians in the alleged petrol bombings amount to approximately Z\$2.21 trillion, and damages for unlawful arrest and detention amount to approximately Z\$1.61 trillion.

4.9 Those letters of demand were served on the Minister of Home Affairs between 7 and 8 August 2007. The delegation was informed that to date no response has been received to those letters of demand from any of the governmental officials to whom those letters were addressed and sent.

4.10 The delegation was provided with a copy of a decision of the High Court of Zimbabwe, dated 20 June and 24 July 2007 (CRB No B472/84/07).<sup>16</sup> That judgment concerned an application made relating to three applications for bail pending trial, including an application brought on behalf of detainee, Shame Wakatame, referred to in the previous paragraphs.

<sup>16</sup> For more information see the High Court of Zimbabwe decision downloadable from: <http://www.ibanet.org/images/downloads/HCZ4728407.pdf>

4.11 The facts recounted and findings in the decision of the High Court of Zimbabwe per Kamocha J are unsettling. The court found that in each instance, all of the applicants were alleged to have attended a course of training, inter alia, on the manufacturing of petrol bombs and to receiving military training to enable them to commit acts of insurgency, banditry, sabotage or terrorism in Zimbabwe. It was alleged that such training was received in Pretoria and the Orange Free State provinces in South Africa. The judgment records that each of the accused had alibis ‘which the police had never bothered to investigate in an effort to rebut them’, which meant ‘their alibis therefore remained intact’.<sup>17</sup>

4.12 The judgment records that although the original allegations were that the accused underwent military training in South Africa between December 2006 and March 2007, the State changed its version to allege that the training occurred in South Africa in different phases between 2002 and 2006.

4.13 As is evident from the judgment, each of the accused was found to be settled residents of Zimbabwe.

4.14 The judgment records:

‘In all these three cases the applicants pointed out that the charges that were being preferred against them were too vague and the State’s case was too weak to the extent that there was no justification for denying them bail. Their submissions were premised on the fact that there were no details of when each of them went to South Africa. The details of the training were not given. They are entitled to know what they are alleged to have done.

They further pointed out that the evidence that the State claims to have is that the applicants had been implicated by their accomplices. The police have no other independent evidence beyond these accomplices.

The accomplices who are alleged to have implicated others vehemently denied doing so. Instead, they gave details of brutal assaults and torture at the hands of the police.

The applicants went on to further point out that in a desperate attempt the State even claimed that it had evidence from one Peter Chindodana and one John Zhiwawo but these turned out to be fictitious persons who did not exist. When the State was ordered by Court to produce these individuals to show that they existed, it failed to do so.’

4.15 The judgment recorded further:

‘The police had alleged that the applicants had trained at a farm known as Lalabundu Farm. When challenged to show on the map where Lalabundu Farm was, they failed to do so. It turned out to be non-existent.’

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<sup>17</sup> Ibid

4.16 The judgment concluded that the State's request for three more months to carry out investigations, pending arrest, was 'clearly [a] pre-trial incarceration for the purposes of carrying out investigations which is undesirable and has always been frowned upon'.

4.17 The High Court accordingly granted bail to each of the applicants in the three cases. On the information available to the delegation no action or any investigation was taken by the Attorney-General or the Minister of Home Affairs arising out of the arrests and subsequent detention and prosecution of the alleged petrol bombers.

4.18 The delegation was informed that on Saturday, 26 May 2007, approximately 200 human rights activists were arrested in connection with alleged recent bombings near Harare. On Sunday, 115 were released and on the Monday, 84 others were released with no charges being brought against those arrestees, but with reports of extensive police beating while in police custody. The delegation was informed that it was around this time that the police allegedly raided the Movement for Democratic Changes headquarters in central Harare and seized documents and other items for evidence without a search warrant.<sup>18</sup>

4.19 Once more, on the evidence available to the delegation, no subsequent enquiry or investigation by the authorities followed upon these actions by the ZRP.

### **The Attorney-General's office**

4.20 There is a further concern arising from the events described in this section. The members of the ZRP appear to have usurped the constitutional role of the Attorney-General, who is responsible for prosecutions in Zimbabwe. It is for the Attorney-General to decide who to prosecute, not for members of the ZRP to arrest unlawfully and then fail to instigate and press for charges to be brought through the offices of the Attorney-General. Such a course undermines the integrity and independence of the office of the Attorney-General. This is established as a matter of law in section 12 of the Police Act, which obliges the Commissioner of Police to comply with directions issued by the Attorney-General 'to investigate and report on any matter which relates to any criminal offence or alleged or suspected criminal offence'.

### **The ZRP and prosecutors**

4.21 A further concern expressed by many of those interviewed by the delegation related to the increased pressures under which prosecutors and officials from the Attorney-General's office now operate. Police intimidation and harassment of prosecutors is increasing, in particular to those who show independence in carrying out their professional duties.

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<sup>18</sup> Those events are described in an article 'Zimbabwe Police Beats Activists', accessible at <http://news.bbc.co.uk/1/hi/world/africa/6696171.stm>

4.22 A key example highlighted by numerous interviewees was that of the consent orders obtained in the case of lawyers Muchadehama and Makoni. The delegation was provided with more than one eyewitness account of the intimidation of prosecutors who consent to such court orders. One eyewitness account described the emotional breakdown by a prosecutor who had been intimidated by members of the ZRP when he advised them that he could not ethically support the charges sought against detainees.<sup>19</sup>



### Excessive use of force

4.23 The delegation received numerous reports of excessive use of force. The allegations that the number of cases involving firearms and violations of the right to life in particular were worrying developments. By way of illustration, Gift Tandari, Youth Chairman of the National Constitutional Assembly was shot dead by police on 11 March 2007 during a rally organised by the Save Zimbabwe Coalition. During the same spate of clashes between police and opposition supporters, many officials from the opposition parties were rounded up, arrested and beaten. No official investigation into the events surrounding his death has been carried out, nor justification for the use of live ammunition provided.

4.24 In Bulawayo in the month of September 2007, the police shot and killed a civilian and seriously injured another – both were unarmed. No public investigation into these incidents has started and no request for the same has emanated from the Minister of Home Affairs or the Police Commissioner.

4.25 The delegation received accounts of impunity reigning over the ZRP for alleged acts of torture, violence and unlawful arrest. Not only have court orders been torn up by members of the ZRP in Harare (an issue which we deal with in the next section), but also the evidence suggests that members of the ZRP are inclined to believe that they are the law and that the law practised by all lawyers is inimical to the Government.

4.26 During the interviews, numerous accounts were presented of lawyers being told by members of the ZRP, particularly at the police station in Harare, that the law practised by lawyers was ‘not the law of the country’ and that ‘the President has stated what the law is’. In other words, lawyers have been openly told that what the President states is the law and if these allegations are true then it

<sup>19</sup> One article published on 21 August 2007 indicated that 35 prosecutors had left the Attorney-General’s office this year alone. The most common reason cited for resigning from their posts were the conditions of service.

would appear that members of the ZRP see their role as an extension of the policies and orders of the Executive.

4.27 On 11 March 2007, while enquiring on the whereabouts of his arrested clients who are members of the Movement for Democratic Change, practising lawyer, Harrison Nkomo, was assaulted with a baton by officers at Matshipisa police station in Harare in full view of other police officers. He was forced to flee the scene with police officers in pursuit and threatening to beat him further. Mr Nkomo was warned not to return to the police station.

4.28 The delegation was provided with an affidavit deposed to by Harrison Nkomo, under proceedings brought in the High Court of Zimbabwe, under case number 3960/07.<sup>20</sup> That affidavit described Mr Nkomo's experiences at the hands of the ZRP and was deposed to in Harare on 22 May 2007.

4.29 The affidavit of Harrison Nkomo records what happened when he enquired about the whereabouts of his clients detained at the Highfield Police Station:

- ‘7. Upon realising this, I politely explained to the...police officer that my purpose of the visit was to be advised of the nature of the allegations that my clients were facing, confirmation from the police that indeed the said persons were detained there and if so, get further instructions from them.
8. From nowhere, this male police officer withdrew a baton stick and struck me on the left shoulder. In fear of further assault, I retreated with him in hot pursuit shouting that he did not want me at the police station or else, he will detain me.
9. I managed to outpace him and went straight to my car and drove off at high speed.’

4.30 Other examples include the inception of price control regulations and the price control campaign in July 2007. Although this was initially announced as a matter of government policy without any implementing legislation, the police carried out arrests despite the absence of appropriate legal framework. The policy was only later given legal force by the promulgation of Regulations and the Zimbabwe Government announced economic measures that prescribed price controls on goods and services. State media reports indicated that since the Government began its campaign, up to 7,500 business managers and traders have been arrested for failing to cut prices. There were widespread reports of threats to and intimidation of business officials, looting of shops as price controls were enforced and the ‘seizure’ of goods without police providing receipts for their impoundment.

4.31 One practising attorney interviewed by the delegation recounted the events of when he was summoned by his client to a store that had been invaded by a large number of police, including plain-clothed police officers and persons who were referred to as ‘people from the office of the President’. Members of the ZRP were threatening to arrest the store owner for possession of 480 ‘Geisha’ soaps and 560 tubes of toothpaste.

4.32 The lawyer recounted to the delegation in detail that the police told him that price control

<sup>20</sup> The full text of the application to the High Court of Zimbabwe Case Number 3960/07, including the affidavits, is downloadable from [www.ibanet.org/images/downloads/HCZ396007.pdf](http://www.ibanet.org/images/downloads/HCZ396007.pdf)



regulations were the 'law' and that the lawyer's attempts to repeat the law applicable to his client and to the search and seizure of his store were actually not applicable in those circumstances. The lawyer reported to the delegation that he was threatened and asked to leave, which frustrated his attempts to provide any effective legal assistance to his client.

4.33 The lawyer indicated to the delegation that he was completely compromised by the threats and intimidation by the police officials present and was effectively precluded from providing a proper legal service to his client. Eventually the lawyer was forced to leave when he was pulled aside and asked how many children he had and questioned whether he wished to have any more children, implying a clear threat to his life and safety.



## 5. Police contempt for officers of the courts, court orders and human rights defenders

5.1 The IBAHRI delegation was shocked at the number of cases and complaints of threatening behaviour, physical and verbal assaults on lawyers and court officials carrying out their professional duties. These incidents occurred particularly when the lawyers enquired about their detained clients and when they attempted to serve court orders after hours relating to urgent matters, such as ensuring their client received medical attention or a court order compelling release. Such orders were invariably obtained on an urgent basis after hours and consequently could not be served by the Sheriff; a procedure which the delegation has established is permissible in terms of the Rules of the High Court.

5.2 When opposition leader Morgan Tsvangirai was arrested his lawyers had to obtain a High Court order granting them the right to see their client after police had refused to allow them access. Alec Muchadehama, one of Tsvangirai's legal team, was unable to get the police to comply with an order issued by the Zimbabwe High Court, giving lawyers immediate access to the opposition activists being held in police stations throughout Harare.

5.3 The delegation was provided with an affidavit deposed by Mr Muchadehama in proceedings brought in the High Court of Zimbabwe under case number 3960/07.<sup>21</sup> It is evident from that affidavit, deposed to on 20 June 2007 that Mr Muchadehama had great difficulties in obtaining access to his clients. The affidavit describes the extreme difficulties Mr Muchadehama had in fulfilling his legal obligations to his clients. It details his own subsequent arrest and detention at the Matapi police station on 4 May 2007. Mr Muchadehama was himself denied access to a lawyer.

5.4 Around that time Mr Muchadehama's legal offices were searched despite claims that the search warrant was unlawful as it was too wide and unconnected to the charges which related to false statements in affidavits he had deposed to on behalf of his clients in bail application proceedings. Concerns were also raised over the fact that the search amounted to a violation of privileged legal information.

5.5 Mr Muchadehama was not the only one arrested for allegedly deposing false statements in affidavits deposed to on behalf of clients in applications for bail. At the time that Mr Muchadehama was arrested, practising lawyer Andrew Makoni, was also arrested for allegedly having deposed false statements in affidavits in support of his client's bail applications. As with Mr Muchadehama, Mr Makoni was denied access to lawyers and members of his family, and both of their whereabouts were not initially disclosed to their lawyers or members of their family.

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<sup>21</sup> *Ibid*

5.6 The disregard also shown for essential procedures, such as the documentation of those in detention, free access for lawyers to their clients, access to family members and medical personnel, as illustrated in the present case, was highlighted by lawyers and advocates a number of times. Without these procedures being adhered to, individuals in detention are at increased risk of torture, disappearances and other serious human rights violations.

5.7 Numerous examples were presented to the delegation concerning lawyers and family members of detainees travelling to several police stations in order to find their client or relative, often returning to the first station where the client's presence was initially denied. This can only be seen as a way of hindering the work of the lawyers and frustrating access to justice for the detainee.

5.8 An affidavit was deposed to by Beatrice Mtetwa, the President of the Law Society of Zimbabwe, in proceedings brought in the High Court of Zimbabwe under case number 3960/07.<sup>22</sup> That affidavit reflects the extreme difficulties lawyers have experienced in finding out where their clients had been detained and their futile attempts at securing access to their clients.

5.9 The delegation was provided with a copy of an affidavit deposed to by Mr Makoni, in proceedings brought in the High Court of Zimbabwe under case number 3960/07.<sup>23</sup> That affidavit describes the details of Mr Makoni's arrest, interrogation and denial of access to his legal team and family. As with Mr Muchadehama, Mr Makoni was advised that he would be charged with attempting to defeat or obstruct justice arising from statements deposed to on behalf of his clients in applications for bail.

5.10 The affidavit of Mr Makoni details another event relating to his attempt to serve a court order on the officer, Chief Inspector Mabunda. That order was a provisional order granted by Justice Uchena. The Assistant Commissioner tore the court order into pieces and ordered Mr Makoni to leave the police station immediately if he did not wish to be arrested.

5.11 That affidavit records:

'I should also add that this was not my first encounter with the wrath of the officers of law and order. On the 18th March 2007, I served a court order at the offices of the Zimbabwe Republic Police, law and order section, in the matter.

I asked the Assistant Commissioner Mabunda to allow me to him and serve the order. The assistant advised me that the Assistant Commissioner Mabunda had directed that I serve the court order on the Officer-In-Charge Chief Inspector Mavhunda.

I then proceeded to the Officer Chief Inspector Mavhunda, where I met him together with Inspector Muchada and Inspector Rangwani. Immediately after I entered the office, Chief Superintendent Mavhunda told me that he was under instructions to search my pockets for weapons. I emptied my pockets and they saw nothing. Assistant Commissioner Mabunda came in. He said he want to see for himself whether I was being searched for real as if the officers had not complied they would have been in trouble.

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<sup>22</sup> *Ibid*

<sup>23</sup> *Ibid*

Mabunda then asked me to spell my mission. I told him I wanted to serve him with a court order in the case of Spiwe Mudariki involving the burial of Gift Tandare. He asked for the Provisional Order granted by Justice Kudya, I gave him.

Mabunda then asked that I give him a copy which I did. To my utter surprise the Assistant Commissioner in charge of Law and Order [of] the whole of Zimbabwe started tearing the Court Order into pieces. In the process he asked me and the police officers in the office whether Law and Order deal with dead bodies. We all replied that it did not. He also asked whether there was a dead person in the office, and I told him there was no body. As we spoke he was squeezing the torn pieces into a ball. Before I knew what he was up to, he had thrown the Provisional Order turned ball onto my face.

He ordered me to leave the office immediately and not to visit the Law and Order section again. If I dare visit he threatened to arrest me.’

5.12 Members of the legal profession, acting upon the arrest of Alec Muchadehama and Andrew Makoni, secured a High Court order declaring their arrest and detention unlawful and ordering their immediate release by lunchtime on 5 May 2007. Despite this order the ZRP refused to release the lawyers and they remained in custody overnight. The delegation was advised that the ZRP also defied a second High Court order stating that the two lawyers were to be brought to court on 6 May 2007. The lawyers remained in custody until 7 May 2007 when they were released on bail and their lawyers told the delegation that they were threatened by members of the ZRP.

5.13 When Mr Muchadehama and Mr Makoni were arrested, their legal representatives were prevented access to them at the Harare police station.

5.14 The testimony of Jessie Majome, a lawyer and member of the Law Society of Zimbabwe, describes the difficulties and ordeals she experienced in gaining access to her clients Muchadehama and Makoni in a report entitled ‘Self Regulation at a Crossroads: Attacks on Lawyers and Independence of the Legal Profession in Zimbabwe’ published by the Law Society of Zimbabwe<sup>24</sup>.

5.15 The testimony of Jessie Majome recorded:

‘...[I] gave general responses and demanded to know if I was under interrogation and for what purpose. The officer took offence with this (in fact, he and his senior colleague seemed to take offence with everything I said) and warned and made me aware that I was more or less privileged to be standing there talking to them and that if I did not want to answer his questions I would be made to leave and “accompanied” out. I was told not to visit police offices with “pre-conceived ideas” and told of how the officers had just dispatched my colleagues Harrison Nkomo, Lawrence Chibwe, Otto Saki, and another and threatened them with assault and summoning the riot police. I found myself caught in the contradictory awkward position of insisting, begging and defying!’

24 See pp 22-25 ‘Self Regulation at a Crossroads: Attacks on Lawyers and Independence of the Legal Profession in Zimbabwe.’ Law Society of Zimbabwe 2007 Downloadable from: [www.lawsociety.org.uk/documents/downloads/dynamic/persecutionlawyerszimbabwe-oct07.pdf](http://www.lawsociety.org.uk/documents/downloads/dynamic/persecutionlawyerszimbabwe-oct07.pdf)

5.16 On 8 May 2007 members of the Law Society of Zimbabwe attempted to gather for a peaceful protest outside the High Court of Zimbabwe in Harare following on from the arrests of Muchadehama and Makoni. The lawyers planned to present a petition to the Minister of Justice, the Attorney-General and the Commissioner of Police urging the protection of lawyers in the execution of their professional duties, as stipulated in the African Union Guidelines on the Right to Fair Trial and Legal Assistance in Africa.<sup>25</sup> This peaceful protest was planned in part following up on threats and assaults received by lawyers by members of the ZRP.

5.17 A similar affidavit was deposed to in the High Court of Zimbabwe under case number 3960/07 by Josephat Tshuma.<sup>26</sup> Mr Tshuma is the Vice-President of the Law Society of Zimbabwe. The affidavit was deposed to on 5 July 2007 and detailed the gathering of lawyers on 8 May 2007 outside the High Court and their assault by the ZRP shortly after an order was issued for their dispersal.

5.18 That affidavit records at paragraph 17 that a group of lawyers, including Beatrice Mtetwa, the President of the Law Society of Zimbabwe, were unlawfully bundled into a police truck, taken to an open place in Eastlea, ordered to lie on their stomachs and were severely assaulted. A number of them sustained serious injuries necessitating treatment at a Harare hospital.

5.19 The affidavit of Mr Tshuma also reflects, at paragraph 18, attempts by members of the legal profession to present a petition to the Governor and resident Minister of Manicaland protesting against the harassment of lawyers in the execution of their duties in that area. Those lawyers were arrested and escorted by the police to deliver the petition to the Governor.

5.20 The President of the Law Society of Zimbabwe also addressed a complaint dated 18 May 2007 to the Deputy Commissioner of Crime at the police general headquarters in Harare.<sup>27</sup> That letter records the assaults perpetrated on her as well as her colleagues on 8 May 2007.

5.21 The letter also describes the difficulties experienced by Ms Mtetwa and her colleagues in attempting to report the charge at the police station in Eastlea. The report was not accepted there and the lawyers were asked to lodge their report at Rhodesville police station, which was said to have jurisdiction over the matter.

5.22 When the lawyers proceeded to Rhodesville police station they once more experienced difficulties lodging their complaint and were referred to Highlands police station, which it was stated was the police station with the relevant jurisdiction.

5.23 Subsequent enquiries at the Highlands police station confirmed that the report had not been received. Later investigations confirmed that the report had been sent to Harare Central police station under CR61/5/07.

5.24 Members of the Law Society of Zimbabwe advised the delegation that to date no official response has been received from neither the Attorney-General, the Minister of Justice nor the Commissioner of Police in response to the petitions lodged by the President of the Law Society of

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25 The full AU Guidelines on Fair Trial can be downloaded from: [www.interights.org/doc/Guidelines%20on%20Right%20to%20Fair%20Trial%20AU.doc](http://www.interights.org/doc/Guidelines%20on%20Right%20to%20Fair%20Trial%20AU.doc)

26 *Ibid*

27 *Ibid*

Zimbabwe and the criminal charges sought to be registered with the ZRP arising from the assaults of lawyers on 8 May 2007.

5.25 During the meeting with the Chief Justice, one member of the delegation remarked with concern that if lawyers were being beaten by the police then the very bedrock of the rule of law would fall. In response the Chief Justice noted that lawyers had to abide by court processes, including the fact that court orders ought to be served properly by messengers of the court and not, except where expressly authorised by the court, by lawyers themselves. The Chief Justice said service by messengers or the sheriffs of court was necessary to ensure that orders were served by neutral parties, precisely to avoid a situation where a person who was not fully neutral was called upon to serve court orders against opposing litigants. Those instances in his view probably contributed to difficulties experienced by lawyers at police stations.

5.26 The procedure suggested by the Chief Justice is clearly appropriate for those cases not of an urgent nature. However, for court orders requiring urgent attention and action in order to prevent a human rights violation or in order to protect the rights of an individual at risk waiting for messengers of court to arrive in the morning of the next day, could result in an unacceptable delay to the potential detriment of the detained individual. In any event, it is significant that Rule 36 of the High Court appears to permit directions from a court for service of court orders other than by Sheriff or messenger of the court.

5.27 The Chief Justice agreed with the delegation that proper service of a court order, if ignored by members of the ZRP, would constitute contempt of the court.

5.28 Similarly, the Permanent Secretary for Justice, despite his characterisation of human rights groups movements as those intent on 'stage-managing events' to discredit Zimbabwe on the eve of international events, agreed that it could never be countenanced in any country based on rule of law that it would be acceptable conduct for a police official to tear up an order of court.

5.29 The repeated instances of alleged disobedience of court orders are cause for grave concern. It suggests that the ZRP considers itself above the law and indeed above the courts and their justice processes. The episodes described in this report also warrant immediate investigation to ensure that those responsible are held accountable and to prevent any further contempt of court.

5.30 The IBAHRI is concerned to note the number of reports and that such contempt for the law and courts decisions is increasing. Such disregard for the rule of law by the ZRP was also documented by the United Nations Special Envoy in her report dated 18 July 2005 on Operation Murambatsvina [in which thousands of people living in informal settlements were summarily relocated with the assistance of the ZRP].<sup>28</sup>

5.31 It is perhaps instructive to note that a High Court in Zimbabwe's neighbouring country South Africa, has recently condemned the disobedience of court orders, particularly when such conduct may be sanctioned by members of the Executive, stating that such a situation would constitute:

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<sup>28</sup> Para 6.3.3, p 58, 'Report of the Fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe', Anna Kajumulo Tibaijuka, 18 July 2005

‘[A] grave constitutional crisis involving a serious threat to the doctrine of the separation of powers. Should that continue, the members of the Judiciary will have to consider whether their oath of office requires them to continue on the bench.’<sup>29</sup>

5.32 There can be no question that reports of disobedience of court orders and the more extreme reported case of tearing up an order of a High Court constitutes evidence of a grave constitutional crisis in Zimbabwe, which threatens the very foundations of the rule of law and the administration of justice.

5.33 In any democratic society founded on rule of law values, disobedience of court orders ought to be treated with utmost concern and urgency. It is one thing for a member of the Executive to disobey an order of court, which as the above extract demonstrates would constitute a grave threat to the separation of powers, but a rather more serious matter when a member of the administration, such as a member of the ZRP, is permitted to tear up an order of court without fear of sanction or without any measure of accountability to superior powers. Immediate investigation of such disobedience ought to follow not only by the Executive but indeed by the judiciary itself.

5.34 The manner in which these acts of disobedience are brought to the attention of the court need not necessarily be at the instance of litigants themselves but, as the Zimbabwean Rules of Procedure in the High Court suggest, by the courts who are entitled to know why detainees are not brought to court on the days and times stipulated in their orders. However, it is accepted that it would ordinarily be incumbent on the litigating party having obtained the order in the first place to apprise the court immediately on becoming aware of its non-compliance, whether by way of an urgent chamber application or on the return day of the court order.

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<sup>29</sup> *N and Others v Government of the Republic of South Africa (No. 3)* 2006 (6) SA 575, at 584F-585I.



## 6. Executive endorsement of police actions

6.1 During its meetings with members of the legal profession and NGOs, the delegation was advised of the existence of two publications published by the ZRP during April and May 2007.

6.2 The delegation only managed to obtain access to Volume 2 of those publications from the Zimbabwe Government's official website, entitled 'Zimbabwe Republic Police, Opposition Forces in Zimbabwe, the Naked Truth, Volume 2' (which appears to have been issued during March 2007).<sup>30</sup>

6.3 This report is a disturbing document for many reasons. The very first paragraph records:

'It is not a secret that the emergence of the MDC was a result of local civic organisations coming together to form a western sponsored political front against the Government being led by the liberation movement that ushered independence in the country in 1980.'<sup>31</sup>

6.4 The document records further :

'On their own word, members of the ZLHR [Zimbabwean Lawyers for Human Rights] are registered legal practitioners, who are officers of the court of Zimbabwe as required by national laws, regional laws and international human rights treaties. We find it shocking and unbelievable that they have raised their voice in condemnation of the perpetrators of violence against law enforcement agents and ordinary citizens who had been petrol bombed by hooligan gangs of the MDC.'<sup>32</sup>

6.5 The document issued by ZRP goes on to describe details of violent attacks committed on the Government, the police and other members of society. One such incident is recorded on page 5 as follows:

'The lawyers protested against the arrest of Sternford Moyo who was the (then) President of the Law Society of Zimbabwe and his Secretary General, Wilbert Mapombere. The two had been arrested under [the] Law and Order Maintenance Act for producing subversive documents. They asked the judges to condemn the alleged improper practice by police and stand firm against human rights abuses.

The lawyers also falsely [missing words in document] that police deny them access to their clients whenever they get arrested and call for legal representation.'

6.6 That then is the perception, so it would seem, from the authors of the ZRP document. It is helpful to note here that all charges against Mr Moyo and Mr Mapombere were dropped.

6.7 The document issued by the ZRP refers to the mandate of the ZRP enshrined in section 93(1) of the Constitution which is to preserve the internal security of, and maintain law and order in Zimbabwe.

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30 The full report can be downloaded from: [www.moha.gov.zw/violencereport2.pdf](http://www.moha.gov.zw/violencereport2.pdf)

31 *Ibid* p 2

32 *Ibid* p 3

6.8 On page 11, the ZRP comments that:

‘It is quite apparent that the representative of ZLHR attended this political gathering [on 11 December 2003 convened by the Zimbabwe coalition in which human rights activists complained about the Public Order and Security Act] with a view to participate in a political process. So this organisation cannot even deny establishing opposition politics. The attack on government on this occasion was self-evident.’

6.9 Such comments and statements gave considerable alarm to the delegation and suggest that the ZRP do not view the role of human rights defenders as valuable in a democratic society. They are also making an inappropriate link between lawyers and their clients.<sup>33</sup> Human rights defenders are naturally at risk due to their work and this type of publication exacerbates such dangers, and inhibits the work of human rights defenders.

6.10 The African Commission on Human and Peoples’ Rights has issued a resolution relating to human rights defenders in which it implores all Member States ‘to take all necessary measures to ensure the protection of human rights defenders’.<sup>34</sup> These reports by the ZRP do not indicate that protection of human rights defenders in Zimbabwe is a priority for them. In fact, looking through the many derogatory statements in this report by the ZRP, the opposite is true.

6.11 The content of the report also demonstrates that the ZRP appear to regard members of the Zimbabwe Lawyers for Human Rights with extreme suspicion and as being decidedly anti-government. The report appears to be an attempt to justify the actions of the ZRP.

6.12 We are reinforced in this observation by the conclusion in the document at page 36 which reads as follows:

‘The branding of professions in Zimbabwe as “Lawyers for Human Rights”, “Doctors for Human Rights” etcetera, is mischievous, and nefarious. They are only waiting for another opportunity to see the MDC opening other fronts as

Engineers for Human Rights;

Teachers for Human Rights;

Pilots for Human Rights;

Nurses for Human Rights;

Bishops for Human Rights, etc.

To an unsuspecting citizen, the ZLHR is a well meaning entity for the promotion of social transformation in society yet to alert and vigilant executive arms of government, most of these organisations are actually wolves in sheep skins ready to devour the government at any moment. [emphasis added]

<sup>33</sup> For example the *United Nations Basic Principles on the Role of Lawyers* (1990), in Principle 18 states ‘Lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions’. The UN Basic Principles can be downloaded from [www.unhchr.ch/html/menu3/b/h\\_comp44.htm](http://www.unhchr.ch/html/menu3/b/h_comp44.htm)

<sup>34</sup> ACHPR Resolution on the Protection of Human Rights Defenders in Africa downloaded from [www.achpr.org/english/\\_doc\\_target/documentation.html?../resolutions/resolution74\\_en.html](http://www.achpr.org/english/_doc_target/documentation.html?../resolutions/resolution74_en.html)

There is no doubt that the mushrooming of multi-faceted western sponsored politically aligned non governmental organisations, masquerading as champions of democracy, human rights and good governance, are simply there to peddle the regime change agenda meant to dislodge a democratically elected government through such futile attempts as the Save Zimbabwe Campaign.

The above is just the tip of an iceberg with numerous inclinations by human rights lawyers determined to exert pressure through engagement and opposition politics that seek to unseat legitimate and democratically elected government.’

6.13 Upon leaving Zimbabwe, members of the delegation were provided with a response compiled by the Zimbabwe Human Rights NGO Forum to the documents compiled by the ZRP. The contents of the Zimbabwe NGO Forum response strongly condemns the assertions of the ZRP. Further, it highlights the increased danger for human rights defenders which is caused by such public statements – particularly made by the security forces supposedly entrusted with the independent and equal enforcement of the law.

6.14 It is difficult to accept that members of the ZRP who are constitutionally charged with duties and obligations to maintain and preserve law and order and peace and stability have adopted what is clearly a bluntly intolerant approach to any action perceived to be anti-governmental, or resistant to government policy, however small that dissent may appear to be.

6.15 The ZRP is created by the Constitution as a neutral arm of the administration charged with the constitutional responsibility of maintaining security in Zimbabwe. It is clear that the ZRP has been deliberately politicised, to the extent that the ZRP feels confident to express publicly its partisan and apparently biased view towards lawyers seeking to assert the protection of human rights in Zimbabwe for all Zimbabweans.

6.16 Even more alarming is the fact that these documents are published on the official governmental website, which can only mean that they carry the imprimatur of those members of the Executive and administration responsible for administering the ZRP.

6.17 Further causes for some concern are statements by the President of Zimbabwe which endorse and set the tone of the written statements of the ZRP and coincide with the perceptions of the Permanent Secretary, Mr Mangota.

6.18 On 30 March 2007 the Mail and Guardian online<sup>35</sup> reported that the President, in addressing a meeting in Shona to his supporters, was openly defiant and unapologetic about the assault on MDC leader Tsvangirai. The report quotes the President as saying ‘yes, I told them he was beaten, but he asked for it’.<sup>36</sup>

6.19 Earlier the President was quoted on SABC News on 25 September 2006 from the official Zimbabwean newspaper *The Herald*, in referring to brutal assaults on members of the Zimbabwe Congress of Trade Unions (ZCTU), as saying:

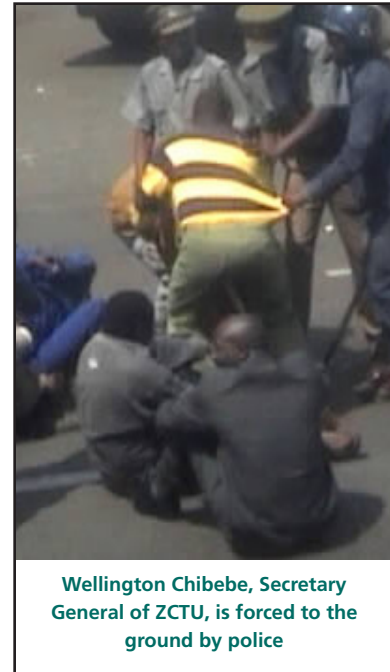
<sup>35</sup> Accessible at: [www.mg.co.za/articlePage.aspx?area=breaking\\_news/breaking\\_news\\_africa/&articled=303477](http://www.mg.co.za/articlePage.aspx?area=breaking_news/breaking_news_africa/&articled=303477)

<sup>36</sup> Similar quotations emerge from media reports in *BBC News*, on Friday 30 March 2007, accessible at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/6508813.stm>

‘...[T]he police were right in dealing sternly with the ZCTU leaders. Some people are now crying foul that they were assaulted, yes, you get a beating. When the police say move, move. If you don’t move, you invite the police to use force.’<sup>37</sup>

6.20 The attacks on members of the ZCTU have been comprehensively documented by eyewitnesses, victims and doctors who treated the victims in a report provided to the delegation and prepared by Zimbabwe Lawyers for Human Rights, entitled ‘In Defence of the Right to Organise: Trade Unions as Human Rights Defenders’.<sup>38</sup>

6.21 Against this background it is easy to see why members of the ZRP consider themselves simply to be doing their duty. However, therein lies the problem. It would seem that members of the ZRP function no more than as an administrative extension of the Executive arm of the government of Zimbabwe, while the Constitution and statute referred to previously, dictate legal obligations which require neutral and unbiased action to fulfil legal obligations to ensure peace, security and protection of the civilian populace in Zimbabwe. These roles and responsibilities appear to have been subsumed, and the actions of the ZRP clearly enjoy support from the highest levels of the Zimbabwean Government.



6.22 Earlier in the report there was reference to the lack of any stated commitment to investigation or of actual investigation of the actions of the ZRP.

6.23 The delegation found it surprising that in its interviews with the Chief Justice and the Permanent Secretary, Mr Mangota, questions put to them on the issues and events described earlier and the failure by the Executive to investigate what could ordinarily be described as unlawful or excessive police action, were met with equally non-committal responses. Both the Chief Justice and the Permanent Secretary simply stated that ‘no one was above the law’.

### **The judiciary and the lack of enforcement of court orders**

6.24 Members of the delegation asked the Chief Justice about the extent of his knowledge of international, regional and local reports about lawyers who were beaten and detained by the ZRP and about the actions of the members of the ZRP who disobeyed, and in one instance tore up court orders, issued by the High Court. The Chief Justice acknowledged that he had read of such instances in the newspapers. He replied further that he was also aware that lawyers were sometimes beaten up in other countries in the world such as Pakistan.

6.25 In the Chief Justice’s view it was difficult to approach the matter on an abstract basis. He advised the delegation that Zimbabwe is a highly polarised society and that cases which come to the courts have to be dealt with strictly in accordance with due process of law.

<sup>37</sup> Accessible at [http://sabcnews.com/africa/southern\\_africa/0,2172,135420,00.html](http://sabcnews.com/africa/southern_africa/0,2172,135420,00.html). Similar reports are to be found at [http://www.zimbabwejournalists.com/story.php?art\\_id=1043&cat+4](http://www.zimbabwejournalists.com/story.php?art_id=1043&cat+4)

<sup>38</sup> For more information go to the Zimbabwe Lawyers for Human Rights website at [www.zlhr.org.zw/](http://www.zlhr.org.zw/)

6.26 Upon further questioning by a member of the delegation on whether beatings or the harassment of the legal profession could ever be countenanced within a framework of rule of law, the Chief Justice answered that any infractions of law could not be countenanced in any framework aspiring to and rooted in the rule of law.

6.27 A member of the delegation asked the Chief Justice whether he had cause to communicate with members of the Executive at all over these disturbing issues. The Chief Justice replied that he had not done so and in the past had to do so only once when the President had criticised one of his judges. He dealt with that incident by making an appointment to see the President and the issue was resolved amicably. The Chief Justice also stated that the judiciary had no control over the ZRP and their actions.

6.28 The Chief Justice agreed with the delegation that a fully functional and independent legal profession is an important element in the rule of law and is essential to secure and protect the administration of justice and civilian faith in the administration of justice and the court system.

6.29 The Chief Justice advised the delegation that he had attended regional symposiums where the language of human rights had been used to ‘demonise’ Zimbabwe. He noted that although he and the rest of the judiciary had no problems with the concept of the protection of human rights it was difficult dealing with a human rights agenda which appeared to be directed solely to demonise Zimbabwe. The Chief Justice was otherwise unaware of any other serious threat to rule of law.

6.30 Mr Mangota expressed strident views about non-governmental operations in Zimbabwe. In his view the NGOs in Zimbabwe were funded by the West and were established to complain about human rights violations. He said that the problem was compounded by the fact that Zimbabwe had inherited white judges such as the former Chief Justice Gubbay, who said that he would not support the land reform process in court.

6.31 Mr Mangota told the delegation that Government spoke to Chief Justice Gubbay who subsequently resigned and other ‘white’ judges followed suit. Mr Mangota said that the Zimbabwean Government replaced its judges and that prompted much lambasting in the international media.<sup>39</sup>

### *Human Rights Defenders and NGOs*

6.32 Reverting back to his views on NGOs in Zimbabwe, Mr Mangota was of the view that Zimbabwean NGOs had developed a tendency to ‘stage things’ to coincide with international events. For example, he said that whenever the Human Rights Commission in Geneva had a meeting something would be ‘staged by the NGOs in Zimbabwe’. In Mangota’s view, the ‘whites’ who were in Zimbabwe, and those who were in the United Kingdom, could never say that Mugabe had given his land to his people because that would be the correct thing to do; instead they found it easier to complain about human rights abuses.

6.33 Mr Mangota was equally clear that in his opinion the NGO movement had spawned an opposition political party to unseat and discredit Government.

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<sup>39</sup> For more information on the judiciary and the events of 1999–2001, the Report by the International Bar Association on the independence of the judiciary contains comprehensive details. This can be downloaded from [www.ibanet.org](http://www.ibanet.org)

6.34 In this category of undesirables, the Permanent Secretary included some members of the organised legal profession. Mr Mangota said that he had had regular interactions with a number of past presidents of the Law Society of Zimbabwe and problems had usually been amicably resolved. However, he said the current President, Beatrice Mtetwa, was not the same. Mr Mangota said 'she is a human rights activist' and further stated that he was not sure 'if she is a member of the opposition'. Mr Mangota did also state though that despite this opinion, his door was always open for the Law Society to come and discuss its concerns.

6.35 When questioned about the arrests, beatings and detentions of lawyers by the ZRP, the Permanent Secretary's view was that the question that first had to be asked was what those groups had done to warrant such treatment at the hands of the police. The implication was clear, that is, that the actions of the organised legal profession were wrong and the reactions of the police was acceptable and warranted in the circumstances.

6.36 Mr Mangota was asked about allegations emerging from court documents dealing with the assault of lawyers and noted that some of these documents had emerged from very senior members of the legal profession. Mr Mangota's response was that those senior legal professionals were also very senior human rights activists. He reiterated that no one was above the law and that everyone is entitled to have the law applied equally. Mr Mangota said that on the information made available to him he questioned the motives of those lawyers who had chosen to demonstrate in the first place. He said that if the lawyers had anything to prove they ought to bring their cases 'legitimately' through the courts. In Mr Mangota's view the lawyers who were arrested provoked the situation and were responsible for the position they found themselves in.

6.37 When asked whether members of the legal profession had the right to associate and to demonstrate peacefully, he answered in the affirmative. He noted however that Zimbabwe was a polarised society and that the human rights activists seemed particularly keen on attracting attention and appeared to be linked to attempts to discredit the current governmental regime.

6.38 The delegation asked whether Mr Mangota, in his capacity as member of the Law Society, would raise and resolve these issues. He said that he would and made it clear that he was not trying to protect the ZRP because as a lawyer he also owed a duty to protect his profession.

6.39 The delegation questioned Mr Mangota about the perception held by human rights activists and members of the legal profession that the ZRP were acting excessively. Mr Mangota's immediate response was that that 'was a lie'. He told members of the delegation that they ought to have observed that the police had behaved reasonably on the days in which the delegation was present in Zimbabwe.

6.40 One member of the delegation questioned Mr Mangota about his apparent perception conveyed during the interview that all lawyers were bad. The question raised specifically was whether it could ever be countenanced in a country based on rule of law that it would be acceptable conduct for a police official to tear up an order of court. Mr Mangota's response was that this would never be justifiable.

6.41 Pursuing those questions, other members of the delegation asked whether a serious event, such as the tearing up of a court order, ought not to warrant an immediate investigation. Mr Mangota agreed but said that no one had approached him to investigate the matter. Mr Mangota said that he made efforts to talk to the Police Commissioner who knew nothing of the incident. He said that he was unaware of complaints and petitions that had been lodged on these issues.

6.42 Mr Mangota told the delegation to pay close attention when the next international human rights meeting took place. He said that Zimbabwe's own Law Society would 'stage-manage' a controversy to attract negative publicity for Zimbabwe.

6.43 When questioned on the values codified in the Zimbabwean Constitution and the Bill of Rights, Mr Mangota was clear that anyone could approach a court to assert their rights in terms of the Bill of Rights but that the 'current crop' of human rights activists who stage-managed events to achieve political aims were not acting strictly in accordance with the rule of the land.

6.44 As noted in the introduction to this report, meetings scheduled and confirmed for 16 August 2007 with the Minister of Home Affairs, the minister responsible for the administration of the police, and the Attorney-General who is the constitutional entity responsible for prosecutions in Zimbabwe, did not materialise.

6.45 The delegation found this turn of events disappointing as they were unable to question these governmental officials about the allegations relating to police brutality and in particular as it related to assaults on members of the legal profession and what appeared to be more than one instance of court orders being openly disobeyed. We were similarly unable to ascertain these officials' views on what appeared to be a lack of any investigation into police assaults on members of the organised legal profession, despite repeated complaints, charges and petitions.





# 7. Impunity for police accused of human rights violations

## **Lack of investigation and disciplinary action against police officers accused of human rights violations**

7.1 The IBAHRI was concerned that the complaints against officials of the ZRP, many of which are well documented and have been reported on locally, regionally and internationally, as well as which have formed the subject matter of petitions and criminal charges, all appear to have been ignored by the authorities.

7.2 On the evidence available to the delegation, no action has been taken by the Government of Zimbabwe and no evidence exists to suggest that there will be any future commitment to such investigations or future investigations into the numerous allegations of human rights violations committed by members of the ZRP.

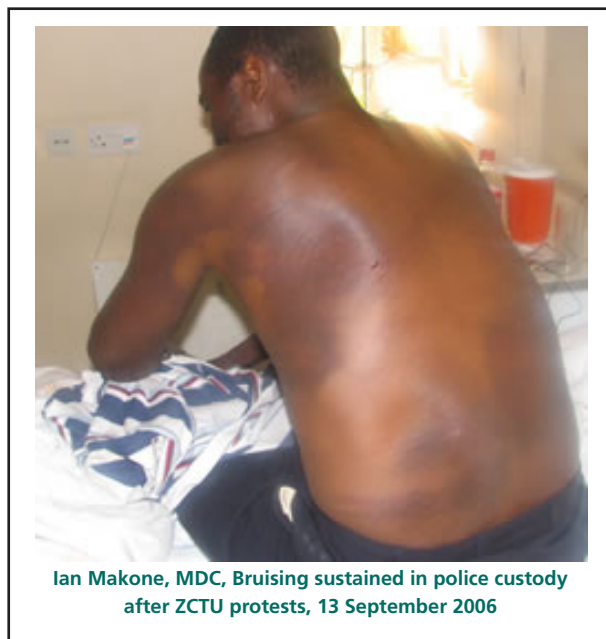
7.3 This lack of professional discipline and deficit of successful criminal prosecutions for actions such as torture, excessive use of unlawful force or detention without reasonable cause, exacerbates the climate of impunity in which the ZRP are operating. Further, it demonstrates serious failures by the Police Commissioner and the Attorney-General to use the extensive evidence available to ensure that these acts do not continue and that those responsible are held accountable to ensure that such actions are not repeated.

7.4 Effective disciplinary proceedings are essential. Law enforcement agents must have clear and effective internal and external mechanisms of control and be fully accountable to the public they serve. The investigation procedures for allegations and complaints of human rights violations should be prompt, competent, thorough and impartial.

7.5 Notable also is the lack of public statements by the Police Commissioner decrying acts of torture and calling for an immediate investigation. This would be an important signal from the highest levels that torture and other grave human rights violations will not be tolerated. Unfortunately to date, the statements have been wholeheartedly supportive of the violent actions of the police. Such behaviour is also cause for grave concern and indicates an approval at the highest level for acts of torture and violence in Zimbabwe.

7.6 It is worth repeating that the letters of demand sent to the state arising from the arrests, torture and detention of individuals accused of being involved in the petrol bombing, identified a distinct group of members of the ZRP who were responsible for those atrocities. To date nothing has happened in relation to the allegations made.

7.7 Similarly, nothing has come of the petitions presented by the President of the Zimbabwe Law Society, Beatrice Mtetwa, arising from her arrest and the brutal beatings of her and senior members of the legal profession.



### **Fearful environment**

7.8 The IBAHRI fact-finding visit found that the rising incidents of police brutality and increased impunity have created a dangerously tense and fearful environment.

7.9 An example of the fear that individuals have of the police can be seen in the recent imposition by the Government of a Z\$1 million accommodation fee at the University of Zimbabwe and subsequent immediate order for forced eviction of those who could not pay. The university authorities initially supported the students and allowed them to remain in their university accommodation, since they were unable to pay the large imposed rise in costs. This was confirmed in a public statement made on 27 June 2007.

7.10 Some students however were harassed, beaten and arrested by police in the subsequent days and eventually in a statement on 13 July 2007, the University Vice Chancellor noted that despite having 'agreed to a consent order allowing for the opening of specified habitable halls of residence' that 'in light of renewed threats to life and property that came to light after that order, the University of Zimbabwe is unable to open any of the halls of residence'.

7.11 Lack of confidence in, and wariness of, the police is high. This is exacerbated by the lack of accountability the police have to the public they are bound to serve.

## **Lack of equal protection of the law and the politicisation of the ZRP**

7.12 The African Charter establishes the right to equality before the law in Article 3, and in Article 2 it prohibits discriminatory practices which might impede human rights protection.

7.13 In the report from its fact-finding mission to Zimbabwe, the African Commission, the body charged with the promotion and ensuring the protection of the rights enshrined in the Charter, urged that Zimbabwe should ‘avoid any further politicisation of the police service’.<sup>40</sup> Further, the African Commission in the same report urged that the authorities ensure that the ZRP abided by the Constitution and did not serve political interests.

7.14 Article 1 of the SARPCCO Code of Conduct, entitled ‘The Harare Resolution on the SARPCCO Code of Conduct for Police Officials’, states that ‘In the performance of their duties, police officials shall respect and protect human dignity and maintain and uphold all human rights for all persons.’ Further, Article 2 of the same Harare Resolution mentions that ‘Police officials shall treat all persons fairly and equally and avoid any form of discrimination.’

7.15 The delegation was deeply concerned to observe that, far from reforming the police force in accordance with the request made by the African Commission in their report to ensure their independence, the police force have indeed become more contemptuous of the law that governs them.

7.16 The IBAHRI is of the view that if Zimbabwe truly is committed to developing a democratic society based on the rule of law, and is to have any hope of holding free, fair and safe elections in the future, then it is critical that immediate steps are taken to investigate the actions of the ZRP described in this report, to stem and reverse the tide of unacceptable conduct by members of the ZRP.

7.17 It is clear that even if all the repressive legislation currently in place was repealed, without comprehensive reform of the police, the rule of law and democracy in Zimbabwe will continue to be seriously eroded. The authorities must act now to immediately end the impunity surrounding violations of human rights committed by the ZRP and ensure that the ZRP acts in accordance with its statuted obligations and professional codes of conduct.

7.18 When discussing the violence against lawyers peacefully gathering outside the High Court during the meeting with the Permanent Secretary for Justice, David Mangota, he reminded the IBAHRI delegation that ‘no one is above the law’. It would appear from the evidence collated during this investigation that the police are in fact currently operating ‘above the law’ in Zimbabwe. It would also be important to remain mindful of the fact that in Zimbabwe, everyone also has the right to equal protection of the law. Without normalising the Zimbabwean environment and ensuring effective, independent policing which respects and protects human rights, the aspirations to construct a truly democratic society will remain out of reach.

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<sup>40</sup> For more detail see the executive summary of the Report of the African Commission Fact-Finding Mission to Zimbabwe 24–28 June 2002.



# 8. Conclusions

## **The ZRP and its constitutional responsibilities**

8.1 The IBAHRI is of the view that the Zimbabwe Republic Police (ZRP) has abdicated its constitutional functions, responsibilities and obligations. Police officers are responsible for some of the most serious human rights and rule of law violations in Zimbabwe today. The ZRP has consistently shown disrespect and contempt for the law, lawyers and judicial authorities to an extent that has seriously imperilled the administration of justice and the rule of law in Zimbabwe. Far-reaching reforms and reorientation are necessary to bring Zimbabwe's policing operations into conformity with constitution and regional and international human rights standards.

## **The ZRP and basic rights to ensure the safety and security of those in custody**

8.2 The IBAHRI found that one of the most common allegations against the police is that they routinely disregard basic rights of detainees, such as free access for detainees to their lawyers, access to family members, medical personnel and courts. Without these basic protections, individuals in police detention are at increased risk of torture, disappearance and other serious human rights violations. Indeed, the IBAHRI delegation found the large number of credible allegations of torture, use of excessive force, ill-treatment, arbitrary detention and obstruction of legal representatives to be a cause for alarm.

## **Impunity for grave human rights violations committed by the ZRP**

8.3 The IBAHRI found that underlying the large number of grave abuses by the ZRP is a culture of impunity. Members of the police force act as if they are above the law because, in fact, they are rarely prosecuted even when they commit the most serious of crimes. Police officers who have been identified in court proceedings as responsible for serious violations, including torture, continue to occupy their positions. There is even little evidence of internal disciplinary action being taken against them.

8.4 There has been no public condemnation by the President, the Minister of Justice, the Minister of Home Affairs, the Police Commissioner and other senior government officials of even the most shocking cases of torture and ill-treatment by police or any show of a commitment to investigate, discipline and prosecute those responsible are notable by their absence. On the contrary, the public support expressed by those in key positions of power, such as the President, the Minister for Home Affairs and the Police Commissioner amongst others, for the various actions of the ZRP, appears to have exacerbated the impunity surrounding abuses by police and emboldens them in their unlawful behaviour.

## **Partisan policing**

8.5 Instead of conducting itself as a national security force charged by the Constitution and statute with ensuring public order and security in the country, the ZRP has abandoned its

constitutional mandate in favour of an approach to policing which is blatantly partisan. The police repeatedly characterise government opponents and critics and their lawyers as ‘agents of the West’ or ‘enemies of the state’ and routinely violate the rights of these persons during policing operations.

8.6 Biased policing further polarises Zimbabwean society and heightens insecurity and political tensions. Everyone in Zimbabwe should be guaranteed equal protection of the law. The IBAHRI asserts that the absence of such protection is a major obstacle to democracy in Zimbabwe and a considerable impediment to free and fair elections.

### **Undermining the role of the Attorney General**

8.7 The IBAHRI delegation heard of numerous cases in which members of the ZRP have attempted to usurp the constitutional role of the Attorney-General, who is responsible for prosecutions in Zimbabwe. Credible reports were received of attempts by police to coerce the Attorney-General’s officers into prosecuting cases. The report also highlights the stress that prosecutors are currently placed under by members of the ZRP when carrying out their professional duties.

8.8 Such a course undermines the integrity and independence of the office of the Attorney-General. This is recognised as a matter of law in section 12 of the Police Act, which obliges the Commissioner of Police to comply with directions issued by the Attorney-General ‘to investigate and report on any matter which relates to any criminal offence or alleged or suspected criminal offence’.

### **Ineffective judicial action**

8.9 The IBAHRI found the lack of due judicial action in the cases of police abuse to be another cause of serious concern. The judicial processes in which police abuses are alleged show a disturbing pattern that reflects, in many cases, the complacency on the part of the courts in holding police to account for alleged abuses.

8.10 Many of those interviewed reported facing serious obstacles when seeking urgent judicial protection of persons in police custody and judicial investigation of allegations against police is lacking. The lack of responsiveness shown by the courts to urgent cases has negatively impacted on human rights protection and frustrated access to justice.

8.11 Where there are found to be actions by the members of the ZRP which are contrary to the rule of law, investigations and disciplinary action should be undertaken. Judicial inaction on such issues, particularly where they relate to serious human rights violations and fundamental rights such as habeas corpus will inevitably lead to a situation where the role of the courts in protecting human rights becomes defunct.

### **Contempt for court orders**

8.12 The high number of court orders, in particular those relating to matters requiring urgent attention, which have been ignored or not enforced, is of grave concern. The frustration among the members of the legal profession with whom the delegation met was palpable. The delegation

concluded that there is rampant contempt for the courts and judicial decisions by police, to the detriment of those seeking redress for, or protection from, human rights violations.

8.13 Contempt for judicial decisions and lack of enforcement of court orders is a serious impediment to access to justice and a further affront to the independence of the judiciary. The delegation found that such contempt has contributed to a serious loss of public confidence in the justice system and an increase in lawlessness. The lack of follow up, particularly in relation to the contempt shown by the police for orders issued by the court is of grave concern.

8.14 At worst, the rule of law and the language of the law are currently being used to defend what the rule of law was designed to protect against and prevent from happening, that is, arbitrary and excessive action by members of the ZRP, which appears to be supported, if not dictated, by the Executive.

### **Excessive use of force**

8.15 The right to life is enshrined in several treaties to which Zimbabwe is party, including the African Charter on Human and Peoples' Rights and the UN International Covenant on Civil and Political Rights.

8.16 The increasing incidences where firearms have been used with fatal results must be investigated. The use of firearms must be tightly controlled and regulated, in line with international law and standards relating to the same.<sup>41</sup> Use of firearms is only permitted in the most extreme of situations and even then with tight scrutiny and accountability for the justification of the same. The cases highlighted to the delegation, such as that of Gift Tandari, clearly warrant independent investigation and public understanding of the events leading to the use of firearms by the ZRP.

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41 It is perhaps helpful to refer to the United Nations Basic Principles for the Use of Force and Firearms by Law Enforcement Officials Principle 4, 'Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result' and further, Principle 7 states 'Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.' Also, Principle 8: 'Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.' The Principles can be found at: [www.unhcr.ch/html/menu3/b/h\\_comp43.htm](http://www.unhcr.ch/html/menu3/b/h_comp43.htm)





# 9. Recommendations

## To the Zimbabwean Authorities :

9.1 Cease the widespread practice of denying police detainees access to their lawyers and threatening the safety of lawyers who represent government opponents and critics.

9.2 Eliminate the practice of identifying lawyers with the political causes of their clients.

9.3 Conduct independent, impartial and thorough investigations into all allegations of human rights violations against the police. As a first priority, investigations should focus on complaints against those police officers who have been the subject of numerous complaints or repeatedly civilly sued for alleged rights violations. The results of investigations should be made public and suspected perpetrators should be brought to justice.

9.4 Convene meetings between the leadership of the ZRP and the Law Society of Zimbabwe and establish clear guidelines to ensure that all detainees held by the police are permitted access to a lawyer of their choice from the moment at which they are detained, and that defence lawyers can conduct professional duties without unlawful police interference.

9.5 Establish a system for the independent monitoring of the way the ZRP carry out their duties with regard to detainees. Such a system should allow appointed members of the public, including representatives of the legal and medical professions, human rights organisations and the wider community to observe and report publicly on detention conditions and practices in Zimbabwe's police stations.

9.6 Ratify the UN Convention against Torture and its Optional Protocol which assists the State to establish mechanisms to facilitate the elimination of torture through regular visits and inspections of places of detention by both national and international experts.

9.7 Put in place measures to ensure that human rights defenders in Zimbabwe receive the support and protection necessary to carry out their duties free from fear or intimidation, in accordance with Zimbabwe's Constitution and laws, and international and regional legal and treaty obligations.

9.8 Open channels of communication with human rights groups, NGOs, members of the organised legal profession and other civil society groups to ensure that measures are implemented and systems put in place to stem and reverse the tide of rule of law infractions and human rights abuses identified in this report and to ensure free and fair elections in March 2008.

9.9 Judicial authorities should promptly and fully investigate all reports of human rights violations and non-compliance with court orders by police that come to their attention. All cases of non-compliance with court orders by police should be punished. Measures should be put in place to ensure that cases in which allegations of unlawful detention, assault, ill-treatment or contempt of court orders are made against the police are heard urgently. The judiciary must initiate investigations into cases of contempt and call specific police officers to account for their actions or inactions in relation to orders of the court.

9.10 The Attorney-General should denounce all attacks and threats by police against its officers and ensure that those working in the Attorney-General's office can carry out their duties free from fear of intimidation and threats.

### **The Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO):**

9.11 It is vital that SARPCCO ensures that its members are not just paying lip service to this important and valuable code of conduct which they have developed. All SARPCCO members should be held to account for allegations of serious breaches of the code of conduct. In this case, questions should be asked of the ZRP in particular (but not exclusively) in relation to Article 1 – Respect for human rights; Article 2 – Non-discrimination; Article 3 – Use of force; Article 4 – Torture, cruel, inhuman or degrading treatment; Article 5 – Protection of persons in custody; Article 7 – Respect for the rule of law and Code of Conduct; Article 9 – Corruption and abuse of power; and Article 10 – Performance of duties.

### **African Commission:**

9.12 The IBAHRI commends the work of the African Commission in trying to address the complex human rights violations occurring in Zimbabwe. The IBAHRI recommends that the African Commission facilitate a visit to Zimbabwe by the Special Rapporteurs on human rights defenders and freedom of expression and further, the Robben Island Working Group on torture and arbitrary detention, to carry out independent investigations into police abuses.

### **The international community especially the SADC is called upon to:**

9.13 Ensure that the SADC and all those involved in the negotiations for a solution to the crisis in Zimbabwe, prioritise addressing the problem of police abuses and impunity as a fundamental part of the solution.

9.14 Emphasis should be placed on the importance of working to restore public faith in the police. Measures and reforms must be put into action, with the objective of increasing the accountability of the police to the public they serve, and ensuring the protection of the human rights of all citizens in Zimbabwe. Equality before the law and accountable, independent policing that protects human rights are essential components to ensuring that the citizens of Zimbabwe feel able to actively take part in normal democratic processes, including future elections, without fear of intimidation or reprisal.

9.15 Urge the Government of Zimbabwe to develop a credible plan to ensure that the policing of public gatherings in the run-up to 2008 elections conforms with regional and international standards of human rights and democratic elections

9.16 Exert pressure on the Zimbabwean government to set out a clear timetable for developing a comprehensive programme to transform the ZRP into a politically neutral, service-oriented force that ensures law and order for all within Zimbabwe and observes human rights.

9.17 Guarantee that sufficient resources and expertise will be available to support a credible police reform programme.