

ABOUT THE ORGANISATION

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Zimbabwe Lawyers for Human Rights (ZLHR) is a not for profit human rights organization whose core objective is to foster a culture of human rights in Zimbabwe as well as encouraging the growth and strengthening of human rights at all levels of Zimbabwean society through observance of the rule of law. ZLHR is committed to upholding respect for the rule of law and the unimpeded administration of justice, free and fair elections, the free flow of information and the protection of constitutional rights and freedoms in Zimbabwe and the surrounding region. It keeps these values central in its programming activities.

ZLHR AIMS AND OBJECTIVES

1. To strive to protect, promote, deepen and broaden the human rights provisions in the Constitution of Zimbabwe.
2. To strive for the implementation and protection in Zimbabwe of international human rights norms as contained in important international conventions such as but not limited to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Elimination of all Forms of Discrimination against Women, the United Nations Convention on the Rights of the Child, and the African Charter on Human and People's Rights.
3. To strive for the adoption of a Southern African Human Rights Charter and the establishment of a Southern African Court of Human Rights.
4. To endeavour to find common ground with and to work alongside other Zimbabwean groups, organisations, activists and persons who share a broadly similar concern for and interest in human rights.
5. To liaise and work with other human rights groups wherever situated but particularly in Southern Africa, and especially those closely linked to the legal profession.

Secretariat: *Arnold Tsunga B.L. Hons, LLB (UZ) Director ; *Irene Petras LLB (Rhodes);
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Board: Nokuthula Moyo LLB (UZ)(Chairperson); Jacob Mafume LLB (UZ); Charles Kamba LLB (UZ), Sheila Jarvis LLB; Sarudzayi Njerere BA, LLB (UCT); Kucaca Phulu LLB(UZ); Trust Maanda LLB(UZ); Hope Ngara (Magistrate & law student); Arnold Tsunga B.L.Hons, LLB (UZ)(Executive)

* Finalising his MBA

* Doing her Masters in International Human Rights Law

TABLE OF CONTENTS

	Page
Foreword	<i>ZLHR Chairman, Nokuthula Moyo</i> 3
Legal Profession and the Judiciary as Human Rights Defenders in Zimbabwe	<i>ZLHR Director, Arnold Tsunga</i> 4-14
The Constitution of Zimbabwe Chapter VIII	Annexure I 15-20
Basic Principles on the Independence of the Judiciary	Annexure II 20-23
Basic Principles on the Roles of Lawyers	Annexure III 24-27
Guidelines on the Role of Prosecutors	Annexure IV 28-31
ANC Today	Annexure V 32-35
The Saturday Herald 29 November 2003	Annexure VI 36
The Herald 3 December 2003	Annexure VII 37

FOREWORD

The year 2003 has been a difficult one for lawyers in Zimbabwe. In the worsening human rights climate, tremendous demands have been made on human rights lawyers. There have been so many arrests of human rights defenders that human rights lawyers were called upon to attend to. Every time there has been any kind of mass protest, human rights lawyers have been called out. There have been mass protests by the NCA, WOZA, the ZCTU, and other civic movements. On each occasion, great numbers of people were arrested, and human rights lawyers found themselves stretched to provide adequate service to all the people who were arrested. Some of our lawyers have burnt out this year. Many of our members have exhibited amazing degrees of commitment and dedication. Names such as Kucaca Phulu, Perpetua Dube, Beatrice Mtetwa, Jacob Mafume, Alec Muchadehama, Trust Maanda, Andrew Makoni, Irene Petras, Otto Saki and Lawrence Chibwe have become well known to the public and the police, as champions of human rights and defenders of the downtrodden.

Human Rights lawyers have themselves been subject to abuse by the police and other extra judicial forces as is evident from this annual report on the operating environment of the legal profession in Zimbabwe in the year 2003. It is a pathetic human rights record for our police force that lawyers have suffered abuse at the hands of the police. It is also a reflection of a lack of commitment by our Government to the protection and promotion of human rights. We have regressed to the extent that those organs of the state, which should be protecting and upholding human rights, such as the police, are the ones who are the most guilty of violating people's rights. It is even more damning that their attacks have been aimed at human rights lawyers and human rights defenders.

On a positive note, the spirit with which lawyers have consistently maintained the fight for justice and human rights is commendable. Alec Muchadehama may have been nominated human rights lawyer of the year in Zimbabwe, but many lawyers deserve laurels for the sterling work that they have done throughout the year. Beatrice Mtetwa did the legal profession proud by winning an international prize, the Peace and Justice Human Rights Lawyer of the year award, while Arnold Tsunga was runner up in the international prize, Martin Ennals Award of the Human Rights Defender of the year. We are proud of these achievements by these dedicated members of our association. We are also encouraged and challenged by their spirit and dedication.

As we enter 2004, we do so with apprehension. We have no cause to believe it will be a better year than the last. We have, however, girded our loins and are ready to continue the struggle for human rights, justice, peace and equality. Whatever 2004 may bring to the legal profession; whatever the legal profession may have to face in the new year, it is important that the profession remain committed and united to the cause of giving our country justice and relief in difficult times. We know that with commitment and dedication, we will attain our dream of freedom from impunity and tyranny, and justice for all our people.



NOKUTHULA MOYO
CHAIRPERSON

THE LEGAL PROFESSION AND THE JUDICIARY AS HUMAN RIGHTS DEFENDERS IN ZIMBABWE IN 2003. SEPARATION OR CONSOLIDATION OF POWERS ON THE PART OF THE STATE?

By Arnold Tsunga¹

*"You lawyers, you want to show off. You think you can just interfere in matters anywhere...you are only a lawyer at court. Here you are nothing. Get away...get out of the charge office. Far away!... Go to your court."*²

ZLHR is a non-partisan organization whose main objective is to foster a culture of human rights in Zimbabwe and encourage the growth and the strengthening of such rights at all levels of Zimbabwean society. ZLHR seeks to protect the constitutional rights of all individuals in Zimbabwe and advocates for the observance of the rule of law and protecting the independence and integrity of the courts and lawyers. The unfortunate remarks of his excellency, the President of the Republic of South Africa Thabo Mbeki, quoted below that have a potential of creating a real danger of human rights defenders being attacked or clamped down upon in Zimbabwe, make this report critical. President Thabo Mbeki is quoted to have stated that "it is clear that some within Zimbabwe and elsewhere in the world, including our country, are following the example set by "Reagan and his advisers" to "treat human rights as a tool" for overthrowing the government of Zimbabwe and rebuilding Zimbabwe as they wish. In modern parlance, this is called regime change."³ Human rights' groups in desperate attempts at political subversion". Indeed these remarks are likely to have far reaching and grave consequences on the operating environment of human rights defenders in Zimbabwe.

One cannot talk about democracy without there being three distinct organs of the state represented by the Judiciary, the Executive and the Legislature (Parliament). This is normally referred to as the concept of separation of powers. The separation of powers is necessary to introduce checks and balances in the manner in which state power is exercised over those who are ruled. It allows for equality before the law and the enjoyment of rights based on the rule of law. In dictatorial regimes or states where there is failing democracy, there usually begins to be a blurred separation of powers. The Executive organ of the state, which has control over the state machinery, (the army, the police, the intelligence, and other law enforcement agencies) usually becomes stronger than other organs of the state. In such undesirable situations as has become the case in Zimbabwe, the Executive begins to undermine other organs of the state. In Zimbabwe we have had the Executive refusing to enforce certain court orders that are seen to be unfavourable to the state or the ruling ZANU PF party.⁴

¹ Arnold Tsunga is the Executive Director of Zimbabwe Lawyers For Human Rights.

² Extract from a ZLHR statement quoting from a policeman who was allegedly assaulting a lawyer in Victoria falls, Zimbabwe on 15 August 2003.

³ It would also help if this article can be read by his excellency, the President of the Republic of South Africa Thabo Mbeki given his highly publicised attack on human rights organizations in Zimbabwe in ANC Today, Volume3, No 49, 12-18 December 2003 titled We will resist the upside-down view of Africa. (*Annexure V*) His attack of human rights defenders is likely to unfortunately result, whether intended or not, in an increase in attacks on human rights defenders in Zimbabwe and worsen an already deteriorating human rights record and increase the suffering of the majority of powerless Zimbabweans. In particular his attack on human rights organizations is consistent with the Herald attack on Zimbabwe Lawyers For Human Rights and The Legal Resources Foundation in the Herald of 03/12/2003 where the article by one Caesar Zvayi is titled "Wolves in sheepskins..." (*Annexure VII*)

⁴ The Executive has not enforced Court orders in the following cases inter alia, Mark Chavunduka and Ray Choto –v- Ministry of Defence (1999 case); Andrew Meldrum –v- The Chief Immigration Officer and ors (May 2003); Associated Newspapers Of Zimbabwe Vs Chief Superintendent Madzingo &The Commissioner Of Police HC8191/2003; Dorothy Kumunda &7others –V- District Administrator Chikomba District &Another- HC9481/03; Charles De Kock –v- Mike Madiro and 4 ors HH 217/03, Cuthbert Chivhunze &Others –V- John Chitozho&Others –Mutare Court Case No.416/02; Commercial Farmers Union –V- Minister Of Lands & Others 2000 (2) ZLR 469 (S); Bennet Brothers Farm Enterprises Pvt Ltd –v- Vs Mupfukurirwa &Others Mutare B.O393/03; Commissioner Of Police –V- Commercial Farmers Union 2000(1)ZLR 503 (H); Commercial Farmers Union –V- Mhuriro&Others 2000(1)ZLR 405 (S); Yorke and Another –v- Minister of Home Affairs HC H264/82 HC H 247/82 Bennet Brothers –v- Mwale,Chogugudza, and ors (numerous High Court and Magistrate Court cases), Natalie Dube –v- Commissioner of Police, C/S Mabunda and ors (Mutare Magistrates Court case), Morgan Tsvangirayi's Electoral challenge in the High Court at Harare where Justice Devittee directed that Joseph Mwale and another be prosecuted for allegedly torching to death Talent Mabika and Tichaona Chiminya, election agents for Morgan Tsvangirayi the MDC leader. The Zimbabwe NGO Human Rights Forum in its report, Zimbabwe, The Abuja Agreement and Commonwealth Principles: Compliance or Disregard? quote the state President as follows "[the Government would] respect judgments where the judgments are true judgments. We do not expect that judges will use subjectivity in interpreting the law. We expect judges to be objective. We may not understand them in some cases but when a judge sits alone in his house or with his wife and says 'this one is guilty of contempt' that judgment should never be obeyed. I am not saying this because we would want to defy judges. In fact we have increased their salaries recently. We want them to be happy. But if they are not objective, don't blame us when we defy them."

The Executive has also attacked the judiciary openly, quite unprofessionally and unfairly in a number of cases, some of which are discussed more specifically below. The government of Zimbabwe however has a history of attacking the judiciary or members of the legal profession each time the Executive is unhappy at certain judicial decisions.⁵ Even lawyers who have tried to defend the judiciary and the legal profession from unwarranted attack have themselves become targets of abuse and slander as happened with Zimbabwe Lawyers For Human Rights when they were attacked in the government controlled Herald Newspaper of 29 November 2003 (*Annexure VI*) after coming out strongly in defence of the independence of the judiciary. The government controlled newspaper the Herald, commenced its article as follows:

“ It is just as difficult to stop anyone from using “Zimbabwe” for selfish ends as is difficult to compel the Standard to carry the Zimbabwe flag. This seems to be the case with the so-called Zimbabwe Lawyers For Human Rights (ZLHR), that phony non governmental organisation which in fact does the bidding of foreign governments, and sees rights of all those that are not white farmers or members of the MDC [Movement For Democratic Change].⁶ as non-human-rights. However its Arnold Tsunga needs to be told quite clearly that to claim to be a lawyer is not as open-ended as claiming to be a patriotic Zimbabwean.”

It is regrettable that attacks on members of the legal profession have increased in recent years as can be seen from the specific cases dealt with below.

The state has also not always cooperated fully with lawyers in the discharge of their duties in recent years, mainly in cases where lawyers are acting for political opponents of the ruling party or for human rights defenders.⁷

⁵ See the Yorke Brothers (supra) a 1982 case where Ushewokunze [Home Affairs Minister then] had this to say about the legal profession “ We are aware that certain private legal practitioners are in receipt of money as paid hirelings, from governments hostile to our own order, in the process of seeking to destabilise us, to create a state of anarchy through an inherited legal apparatus. We promise to handle such lawyers using the appropriate technology that exists in our law and order section. This should succeed to break the unholy alliance between the negative bench, the reactionary legal practitioners and governments hostile to us, some of whose representatives are in this country.” The State President [then Prime Minister] was also quoted as having said the following about the judiciary in the same case on 29 July 1982, “the government cannot allow the technicalities of the law to fetter its hands in what is a very clear task before it, to preserve law and order in the country... We shall therefore proceed as the government in the manner we feel is fitting... and some of the measures we shall take are measures which will be extra legal (See Greg Linnington’s Constitutional Law of Zimbabwe LRF Harare 2001); In Mark Chavunduka’s case (supra) when judges complained about the non compliance by the Executive with court orders, President Mugabe is reported to have asked the judges to resign and is quoted as having said the following on the national television, “ the judiciary has no constitutional right whatsoever to give instructions to the President on any matter as the.. Judges purported to do. Their having done so can clearly be interpreted as an action of utter judicial indiscretion or as one of imprudence, or as, as I regard it, an outrageous and deliberate act of imprudence.” The Herald’s article of 18 July 2002 titled ‘Judgment against Minister sinister’ is yet another example of the disrespectful and contemptuous manner in which members of the Executive have taken to treating the Judiciary. In that article Minister of Information Jonathan Moyo suggested that contempt charges should never have been laid against Mr. Chinamasa, the Minister of Justice. Moyo further insinuated that the Honourable Justice Blackie had been handing down ‘racist’ judgments since the Rhodesian days. His Excellency, the President of Zimbabwe Robert G Mugabe appointed Justice Blackie onto the bench.

⁶ The MDC is the opposition political party in Zimbabwe.

⁷ ZLHR has written to the police Commissioner on 5 June 2003 drawing the police attention to the general complaints of lawyers as follows

- there are credible reports that a significant number of the arrests and detentions are arbitrary.
- the army, CIO and PISI are arresting people and handing them over to the law and order section for investigations. The law enforcement agents have therefore fallen into the error of arresting first and investigating later in contravention of constitutional and other legislative safeguards preventing such action.
- the police are not fully cooperating with the lawyers with the normal excuse by the officers in charge of the police stations where people are detained being that they are merely providing accommodation to the detainees at the requests of the law and order section of the police force. Lawyers are not allowed access to clients in the absence of permission from the law and order section of the police force. This violates or compromises the rights of accused persons to have unimpeded access to their lawyers.
- the police in most cases are over detaining accused persons. Most of the detainees are detained in excess of the 48-hour period. The fact of arresting before investigating is compounding this problem.
- The detainees are not being allowed in the majority of cases access to their families; neither are they being provided with food or medical treatment.
- the detainees are being detained in extremely squalid conditions where there is generally poor sanitation, ventilation and hygiene. More specifically the cells are over crowded, in instances with 40 inmates in a cell designed to accommodate 6 inmates; some sewers are blocked and urine, water and other human waste finds itself into the cells like at Goromonzi police station which Zimbabwe Lawyers for Human Rights visited to do a spot random check; there usually are no adequate blankets in the cells. In short the conditions are degrading and inhuman which violates the Constitution of Zimbabwe and other international instruments that the government has signed and ratified like the African Charter on Human and Peoples Rights, the International Covenant on Civil and Political Rights, and the Universal Declaration on Human Rights.
- there have been credible reports of torture, assault, violence and general intimidation of the people by the state machinery so far.
- the police in many cases have opposed bail when it is not justifiable to adopt such a position.

There is no better way to demonstrate the lack of cooperation on the part of the police than to quote from a statement of ZLHR which details the attitude of the police to human rights lawyers in cases involving representing human rights defenders. The statement is dated 22 October 2003 and states as follows:

“One issue of grave concern to ZLHR was that when human rights lawyers appeared at Harare Central Police station where Dr Madhuku and others were detained, the police were completely uncooperative in that among other things;

- The police manhandled human rights lawyers Beatrice Mtetwa and Arnold Tsunga and pushed them out of the police station. A woman officer was deployed at the entrance to physically prevent Beatrice Mtetwa from re entering the police station.
- When other human rights lawyers Alec Muchadehama, Jacob Mafume, Lawrence Chibwe and 5 others also turned up at the Police Station, they were initially also pushed out of the police station by the riot squad who advised that they were instructed by a senior policeman named Officer Dengu not to allow any lawyer to see the NCA members.⁸
- The riot squad thereafter maintained a presence at the police station’s entrance physically preventing any lawyers from having access to the charge office to represent the NCA members.
- When lawyers now led by Advocate Gijima were eventually allowed access into the charge office, Chief Superintendent Madzingo flatly refused to allow lawyers access to the detainees and ordered one officer Dowa to remove the lawyers from the law and order section of the police force which Dowa promptly did.
- After over 5 hours of waiting the human rights lawyers left Harare Central Police Station without having been allowed access to their clients, let alone to even see them.

This is not the first time that the police and other law enforcement agents have refused to allow suspects access to their lawyers. Such conduct by the police is unlawful and undermines the due administration of justice and the rule of law. It must be stopped. The attitude of the police to the lawyers which continues to deteriorate at an alarming rate in Zimbabwe is increasingly becoming an issue of serious concern to the lawyers given that it is not possible to administer justice in an environment where law enforcement agents will not cooperate with lawyers and refuse to accept the rights of lawyers to have unimpeded access to their clients. The rule of law will not work in this type of environment.”

The following instruments clearly spell out the government’s obligations and responsibilities towards ensuring that the Judiciary remains free from political or other interference:

1. United Nations Basic Principles on the Independence of the Judiciary (1985), (Annexure II)

Article 1, which states:

“The independence of the judiciary shall be guaranteed by the state and enshrined in the Constitution or the law of the country. It is the duty of governmental or other institutions to respect and observe the independence of the judiciary.”

2. United Nations Basic Principles on the Role of Lawyers (1990), (Annexure III)

Principle 17 which, states:

“Where the security of lawyers is threatened as a result of discharging their function they shall be adequately safeguarded by the authorities”

3. The Constitution of Zimbabwe, (Annexure I)

Section 79B, which states:

“In the exercise of judicial authority a member of the judiciary shall not be subject the direction or control of any person or authority...”

The fact of interference with the judiciary and lawyers in Zimbabwe has also been of concern to the **United Nations Special Rapporteur On The Independence Of The Judges And Lawyers**, Dato’ Param Cumaraswamy, who submitted to the United Nations Human Rights Commission a report dated 10 January 2003 which has a recommendation as follows:

⁸The National Constitutional Assembly (NCA) is a non-governmental organisation that is advocating for a new peoples constitution for Zimbabwe since the current constitution was a compromise constitution that was made in 1979 to end the civil war in Zimbabwe. It has also been amended to effectively create what is argued strongly to be a constitutional dictatorship where the state power is cristalised in the office of the state President.

“ With regard to Zimbabwe, the Special Rapporteur once again urges the Commission to consider and address appropriately its concerns about the deterioration in that country, inter alia with regard to the independence of the judiciary and its impact on the rule of law.”

African NGOs have also expressed their concerns at the interference with the judiciary and lawyers by the state in recent years. At the African NGOs Forum held at the African Commission’s 33rd session in Niamey, Niger in May 2003, the African NGOs made a resolution, which read in part that:

“ The participants at the NGO Forum urge the African Commission on Human and Peoples Rights to recommend that the government of Zimbabwe; Take all necessary measures to ensure protection of lawyers, public prosecutors, magistrates, judges and to respect the independence of the judiciary.”

There is therefore no doubt that lawyers and judges are allowed to practice their profession independently, and without undue interference, harassment or impediment from the state or other non-state actors that operate with the acquiescence or at the instruction of the state or state actors. Specific cases in the year 2003 will now be dealt with below.

SPECIFIC CASES

January 2003. Gabriel Shumba’s case

Gabriel Shumba a human rights lawyer then working for the Zimbabwe Human Rights Forum was arrested and detained when he had allegedly tried to represent his client, the honourable member of parliament for Chitungwiza Job Sikhala of the MDC. There were reports of the inhuman treatment and serious torture of Gabriel Shumba, and his client Job Sikhala and other people they were arrested with. Their complaints and the medical reports on the injuries they sustained while in police custody are part of the court record in their case. The police have not at any time denied the allegations that they assaulted and tortured the accused, and forced Job Sikhala to drink an unidentified substance. There were reports of the detainees being forced to drink urine as part of the torture. Gabriel Shumba who complained of continued threats from the law enforcement agents now lives in exile for fear of his life.

17 February 2003. Justice Benjamin Paradza’s case

Justice Benjamin Paradza was arrested from his chambers at the High Court of Harare on the morning of Monday 17 February 2003. Thereafter he was detained overnight at Borrowdale police station Harare. Justice Paradza’s was charged with corruption. Similar charges had also been preferred against retired High Court judge Justice Fergus Blackie in late 2002. Before retiring, Justice Blackie had sentenced the Minister of Justice to 3 months in jail for contempt of court. His arrest was also generally seen as punishment for having made the ruling against the Minister of Justice. The arrest of Justice Paradza was arbitrary and irregular. He had recently presided over a case involving the mayor of Harare, Engineer Mudzuri who belongs to the MDC. His arrest was therefore generally seen as vindictive and a message to other judges not to be lenient with the opposition. The government denied this suggestion. On 16 September 2003 the Supreme Court of Zimbabwe in the constitutional application involving issues surrounding the arrest and detention of Justice Benjamin Paradza found the arrest, detention and remand of Justice Paradza to have been unconstitutional and set aside the criminal charges against him. This effectively brought the criminal proceedings against Justice Paradza to an end.

Judges are in a position of extreme trust in society, and with that trust they are entitled to full respect. They must only be arrested as a last resort. Before the arrest of any judge full investigations must be completed. The public’s respect for the police and the courts will not be served if judges are continuously being pressurised, arrested and detained but not prosecuted. Although judges are not immune from prosecution the police are duty bound to finalise their investigations before bringing them to court. Justice Paradza’s case illustrates the general tendency of the Zimbabwe Republic Police to arrest before investigations have been started, and without regard to the gravity of the offence.

In any case the interests of justice are adequately protected against corrupt judges by the Constitution of Zimbabwe, which provides for the setting up of a tribunal to make full enquiries into the matter when an allegation of misconduct has been brought against a judge. It would be advisable that the inquiry should be conducted

before charges are preferred so that, if possible, the judge is removed from the bench before he is brought before a brother or sister judge to face trial on criminal charges. If investigations have indeed been completed the matter should be referred to the Judge President for such a commission of inquiry and the judge's removal before the trial proceeds.

24 March 2003. Gugulethu Moyo and Alec Muchadehama's case

Lawyers Gugulethu Moyo and Alec Muchadehama were allegedly assaulted on Tuesday 18 March 2003 in Harare. They had gone to Glenview Police Station to try and represent one Philimon Bulawayo who had been arrested in Glenview on 18 March 2003. Philimon Bulawayo was also allegedly assaulted by police officers and detained without charge. When lawyers Gugulethu Moyo and Alec Muchadehama arrived to represent him and establish any charges against him, the police in the charge office denied that Bulawayo was being held there. However Moyo spotted him in an office, and was thereafter ordered to wait for the investigating officer to discuss his release.

It is reported that while Moyo and Muchadehama were waiting outside Jocelyn Chiwenga, the wife of the then Commander of the Zimbabwe National Army, now Commander of the Zimbabwe Defence Forces, arrived at the police station accompanied by a personal "bodyguard", Kelvin Chadenyika, as well as riot police and soldiers. Chiwenga allegedly approached Moyo and upon learning that she worked for the Associated Newspapers of Zimbabwe,⁹ began to assault her. When Muchadehama attempted to come to her assistance he too was pushed and assaulted by Chiwenga and Chadenyika. Chiwenga allegedly unlawfully searched Moyo's handbag and allegedly removed several items. The assault on Moyo continued unabated in the presence of some 60 police officers (some of whom had come out of their offices to witness the spectacle) and uniformed soldiers. Thereafter Moyo was locked in a cell on the orders of Chiwenga, where she was detained for 2 hours. Chiwenga then ordered the police to place Moyo and Muchadehama in a truck together with other arrested persons to be removed to Harare Central police station. On Chiwenga's instructions, 5 riot police assaulted Moyo on the way to Harare Central. She was hit with baton sticks and booted feet and told by them that "police stations are not for lawyers". At the Law and Order section Moyo was locked while Muchadehama was released. Following a High Court order, Moyo was taken to Parirenyatwa Hospital for medical attention at around 2200 hours. When her lawyer attempted to talk to her, the police removed her from the hospital before a doctor could examine them. Moyo was then detained at Harare Central Police Station, and was only released on the afternoon of Thursday 20 March 2003, after her lawyers had obtained a further High Court order and upon the intervention of the Attorney General's office. No charges were preferred against either Moyo or Chiwenga.

April 2003: Levison Chikafu's case

The *Daily News* of 8 April 2003 carried a story that a group of 7 people identifying themselves as war veterans led by one Makanyisa allegedly confronted a senior public prosecutor, Mr. Levison Chikafu, at the Magistrates' Court at Mutare after forcing their way into his private office and demanded to know why "he had granted bail to MDC supporters" who "were supposed to have been remanded in custody". The group is alleged to have threatened to assault the public prosecutor for his role in the successful bail application by the opposition Movement For Democratic Change members who included, the Member of Parliament for Mutare North Constituency Mr. Giles Mutseyekwa. The conduct of the war veterans, besides being unlawful and unwarranted in a democratic society, highlights a complete failure on their part to understand the role of the public prosecutor in court proceedings. It is the court's function, through the presiding magistrate, to grant bail to accused persons. The public prosecutor and the accused's legal representative merely place the evidence before the court to assist the court in ruling suitably on the question of bail. Official or unofficial extensions of the executive such as the militias have no right to confront judicial officers to question them on the exercise of their official functions as part of the Judiciary. One more disturbing issue about the harassment of Mr. Chikafu is that the Governor of Manicaland and Resident Minister Oppah Muchinguri is also reported to have summoned Mr. Chikafu to her office where she also reprimanded him in the company of some security agents.

2 June 2003. Reginald Chidawanyika and Dumisani Kufaruwenga's case

On 2 June 2003 Chidawanyika and Kufaruwenga, two Gweru based human rights lawyers were subjected to abuse and manhandled by the police merely for attempting to represent their detained clients. Chidawanyika

⁹ Associated Newspapers of Zimbabwe are the publishers of The Daily News and The Daily News on Sunday independent newspapers that the government has forcibly closed following a controversial Supreme Court ruling of September 11, 2003.,

and Kufaruwenga, filed a complaint against the assailant police detail at Gweru Central police station. They were allegedly manhandled by one D/Sgt Masango who is reported to have grabbed the lawyers by the arms and “pulled [them] out of the charge office”. D/Sgt Masango further allegedly grabbed Chidawanyika by the waist to push him out of the charge office where he had gone to try and locate his detained clients. D/Sgt Masango also “physically manhandled [Mr. Kufaruwenga] by the jersey and pushed his back against the wall. This harassment of the lawyers took place in front of their “clients numbering about eleven” and members of the police force manning the charge office. Relatives of the detainees and other members of the public also witnessed this public humiliation of lawyers by the police. When the lawyers tried to raise a complaint with Detective Woman Assistant Inspector Mapinge they advise that “she immediately went into a barrage in unprintable words” accusing the lawyers of not being human beings and that the treatment to which D/Sgt Masango had subjected them (the lawyers) is what they deserved.

The police ultimately refused to let the lawyers have access to their clients and forced the detainees to pay admission of guilt fines under the Miscellaneous Offences Act to secure their release from custody. This was contrary to the lawyers’ advice that their clients had no reason to pay any fines.

5 June 2003. Kossam Ncube and Travor Ndebele’s case

On Thursday 5 June 2003 two Bulawayo human rights lawyers, Kossam Ncube and Travor Ndebele, were detained at Bulawayo Central police station for some time together with their clients, Jenni Williams and Sheba Dube-Phiri, of the civic group Women of Zimbabwe Arise (WOZA). The two civic leaders were attempting to provide food for detainees held at Bulawayo Central police station who had not received nourishment for some days, in contravention of their rights under the Zimbabwean Constitution and international human rights instruments. Due to fears that the two women might themselves face arrest and detention, Ncube and Ndebele had escorted the two WOZA leaders to the police station in their capacity as their legal representatives. All four were escorted to the courtyard where they were interrogated by a named police officer, who relieved the two lawyers of their Law Society practising certificates. They were told that “If you are supporting [Williams and Dube-Phiri] then you must go inside with them”. The four were then removed to the Law and Order section where, in the presence of at least five police officers, they were subjected to verbal insults and threats of abduction and murder. The lawyers were accused of fuelling the behaviour of civilians during the mass protests and wanting to promote anti-state sentiment. Another named officer then ordered that all four be detained. They were later released after the two lawyers began telephoning their colleagues to attend and represent them.

15 August 2003. Mpokiseng Dube’s case

A human rights lawyer Mpokiseng Dube of Victoria Falls was assaulted by members of the Zimbabwe Republic Police stationed at the Victoria Falls Camp. The assault took place on 15 August 2003, at about 1700 Hrs. According to the report received Mr Dube was assaulted whilst he was attempting to represent his client who was also being subjected to assaults by the same police officers. Mr Dube witnessed his client being hauled head long down the stairs at his (the lawyer) offices where he “rolled and tumbled to the basement”. He also witnessed the officers taking turns to kick him all over the body with booted feet. This was in full view of members of the public who had gathered at the lawyer’s offices due to the commotion caused by the police.

As the assault on his client continued unabated Mr Dube summoned enough courage to identify himself to the police as the lawyer for the suspect. The lawyer was immediately subjected to verbal abuse and assault for identifying himself as such by the police. The lawyer was immediately accused of obstructing the course of justice and ordered to accompany the police to the charge office. The assault on the lawyer was with a booted foot and an open hand. This was also in full view of the public. Meanwhile his client was still being assaulted and was now bleeding through the nose and above one of his eyes, which by now had a cut.

At the charge office Mr Dube allegedly demanded to see the Officer in Charge to get an explanation on the police conduct. A certain junior police detail manning the office later identified as Constable Kasipe allegedly uttered the following abusive remarks in shona, “*Magweta munoda kuonererwa. Munofunga kuti munotonga nyaya pese...Iwe urigweta chete pa Court. Panapa hausi chinhu. Get away...get out of the charge office. Katshana... yenda kuCourt kwako*” whose fair translation is as follows “*You lawyers, you want to show off. You think you can just interfere in matters anywhere...You are only a lawyer at court. Here you are nothing. Get away...get out of the charge office. Far away!... Go to your court.*” The constable allegedly further uttered the following remarks, “*Panapa tinoita zvatinoda uchatiitei*” whose translation is as follows “*here we do*

what we want. What will you do to us?" Constable Kasipe allegedly refused to allow Mr Dube unimpeded access to his client insisting that the two must only meet at court. At that point Mr Dube's client was allegedly detained and during detention the police allegedly uttered the following remarks in Ndebele *"Awukuwazi ukuthi thina siyanhlanya? Siyakutshaya ufe kungela muntu oza kuthini. Nguwe otshaya amapholisa? Ulenhlanhla ufile I-temper yami iright Ufile le appetite yami yokutshaya iphansi"*. The fair translation of these remarks is as follows *"You don't know that we are mad? We can beat you and no one will say a thing; you are the one who assaults policemen? You are lucky you found me with a correct temper, you found my appetite for assaulting low."* The police never disclosed to Mr Dube why his client was being arrested.

12 October 2003. Mrs Mtetwa's case

Mrs Beatrice Mtetwa a leading human rights lawyer was assaulted by a member of the Zimbabwe Republic Police stationed at Borrowdale police station in Harare. The assault took place on 12 October 2003 at night. According to the report, the attack on Mrs Mtetwa by a policeman who was in the company of other police details was unprovoked. Other police details at the police station who witnessed the assault did not intervene. The police are alleged to have further refused to pursue a group of possible carjackers who had tried to dispossess Mrs Mtetwa of her vehicle but instead chose to victimise her. It is understood that her plea to be taken for blood tests in order to rebut the malicious suggestions by the police that she was under the influence of alcohol at the time of her assault was ignored. According to the human rights lawyer "The assault continued right up to Borrowdale police where he kicked me all over my body in addition to the blows he had inflicted on my face. The assault was in full view of the other details who were at the charge office and who refused to intervene... My attempts at lodging a formal complaint of assault failed as none of the duty details were prepared to take the report"

Mrs Mtetwa has been one of the leading human rights lawyers in Zimbabwe having handled many high profile human rights and other cases such as the ones involving the Harare Mayor Engineer Mudzuri, Brian Kagoro the coordinator of the Crisis Coalition, John Makumbe the Chairman of Transparency International Zimbabwe and Andrew Meldrum the journalists who was deported in violation and contempt of a High Court Order by the police and immigration officials in May 2003.

25 November 2003. Attack on the Administrative Court Judge Mr. Majuru

The Herald¹⁰ newspaper of 25 November 2003 contained a headline titled "Judge under probe- Majuru accused of making pre-determined judgments in ANZ, MIC legal wrangle" The paper thereafter went on to give a report that cast serious doubt about the professionalism of the President of the Administrative Court Mr. Majuru in his dealing with the case involving the Associated Newspapers of Zimbabwe (ANZ) (publishers of the Daily News) and the Media Information Commission (MIC) purportedly relying on an affidavit of the MIC lawyer complaining of bias on the part of Mr. Majuru. The paper went on further to state that the judge was under investigation for the improper conduct by a number of investigative and security organs of the state. The following day, the Herald carried another headline story that "Judge Quit" whose body showed that Judge Majuru had recused himself from the case on account of the Herald report of the previous day.

The attack on the Administrative Court and on Mr. Majuru by the government-controlled newspaper was contemptuous, unwarranted and calculated to bring the administration of justice into disrepute. ZLHR suggested that "it [was] also part of a wider, deliberate, systematic and sustained general attack on the judiciary to manipulate it, reduce its independence and weaken national institutions of protection that are vital for the restoration of the rule of law and democracy."

Background information

The ANZ are the publishers of the Daily News, which is the only independent daily newspaper in Zimbabwe. The other daily newspapers in Zimbabwe are The Herald and The Chronicle, which are owned and controlled and are generally believed to churn out government propaganda. For some time the Daily News has been the target of attack by the state organs.¹¹

¹⁰The Herald Newspaper is a government of Zimbabwe owned and controlled newspaper. www.theherald.co.zw

¹¹The Daily News premises have been bombed before. The Daily News printing press has been bombed before. The Minister of Information in the President's Office has been on record attacking the Daily News as oppositional and British funded. The journalists of The Daily News have been arrested more than any other paper in Zimbabwe in Zimbabwe. For more information on media harassment contact MISA at misa@mweb.co.zw

On 11 September 2003 the Supreme Court of Zimbabwe made a ruling in the matter involving ANZ and MIC. Based on the controversial doctrine of “dirty hands” it refused to give ANZ audience on its constitutional challenge, instead ordering that the ANZ first comply with the challenged law before seeking judicial protection against it. This resulted in the ANZ failing to enjoy its constitutional right to the due protection of the law. See the Supreme Court ruling SC 20 /03 which has been widely criticised by the legal profession and human rights defenders as wrong and unsustainable at law and in a democracy.

On 12 September 2003 the police forcibly forced the ANZ to stop publishing the Daily News and the Daily News on Sunday, its two publications.

On 15 September 2003 the ANZ submitted its application for registration as a media house with the MIC in compliance with the Supreme Court ruling.

On 16 September 2003 the police forcibly closed the ANZ offices, stopped management and workers entry into ANZ premises, occupied the ANZ premises (including the news room), forcibly occupied the premises housing the printing press and uplifted virtually all ANZ computer equipment to some undisclosed location.

On 17 September 2003 in a very legally sound and brave judicial decision a High Court judge Justice Omerjee ruled that the police conduct of forcibly occupying the premises of ANZ and seizing their equipment without a Court order was illegal and that there was nothing at law to prevent the ANZ from publishing the Daily News. The police were ordered to return the seized equipment and not to interfere with the ANZ. In particular Justice Omerjee ruled that the police “ have no legal right to prevent the applicant or its employees from gaining access to the premises of the applicant and carrying on the business of publishing a newspaper.”¹³ The MIC appealed against this decision to the Supreme Court in a determined effort to prevent the Daily News from being published.

On 19 September 2003 the MIC predictably refused to grant ANZ a licence to operate as a media house. The ANZ took this decision on review to the Administrative Court. This is where Mr Majuru who is the President of the Administrative Court first entered the scene.¹⁴

On 24 October 2003 Mr Majuru made a ruling setting aside the decision of the MIC on three grounds namely that, the MIC was improperly constituted and could not in its current composition issue out any valid licences or decisions, the MIC had acted outside its powers when it turned down the ANZ application, and that the MIC was biased especially through its Chairman against the ANZ. Mr Majuru also made a ruling that as far as the court was concerned ANZ had to be issued with a certificate of registration. The operative part of the judgment reads as follows:

“ Given the finding of bias that we have made, the unjustifiable delays that might be occasioned to the Applicant by a re-determination, and the fact that we are in as good a position to make the decision ourselves, we order that the Appellant be issued with a certificate of registration on by the Respondent ”

Mr Majuru’s judgment was brave and well reasoned and contrary to some superior courts judgments, showed a marked degree of judicial activism in protecting the bill of rights and universally recognised human rights and fundamental freedoms. The position of the Administrative Court had therefore been always very clear in terms of the judgment quoted above. The over riding motive in attacking Judge Majuru in the way that the Herald newspaper did was of maintaining and prolonging the closure of the Daily News and sustaining the institutional attack on the right to freedom of expression hook or crook. This was achieved since Mr Majuru was left with no alternative but to recuse himself from the matter. The recusal of Mr Majuru from the matter

¹³ See High Court case no HH 157/03

¹⁴ Judges of the Administrative Court are referred to in the statute creating that court as Presidents.

prolonged the matter and placed the next president to deal with the matter under undue pressure. The attack on Mr Majuru was a deliberate reminder to the judiciary by those forces within the state that do not believe in the rule of law, that they are at risk if they make rulings that are seen to be against the state or the ruling party.¹⁵

8 December 2003. Z.M. Kamusasa's case

On 8 December 2003 Mr. Z M Kamusasa a lawyer with Messrs Nduna and Partners accompanied his client one Constable Ngoni Marowa to Harare Central Police Station where his client was wanted for some unspecified allegations of robbery. Mr. Z M Kamusasa advises that upon arrival at the police station in the company he was referred to the office of one Inspector Ganyata. Upon entry into the office of Ganyata, Kamusasa advises that Ganyata gave instructions for his client to be detained without offering an explanation for such an instruction. When Kamusasa sought an explanation from Ganyata, he was ordered out of the office. Kamusasa insisted on being given an explanation why his client was being detained. Thereafter Ganyata assaulted Kamusasa using clenched fists and booted feet. In a fit of rage Ganyata threw Kamusasa's file into the corridor where the confidential notes were strewn all over the place. This assault allegedly took place in the presence of other police officers and humiliated the lawyer.

19 December 2003. Administrative Court Judge Nare's case

ZLHR notes with regret that Judge Nare presided over the case involving the ANZ and the MIC in an environment where his security and that of his family was of concern. Subtle and open pressure was brought to bear upon him. ZLHR in particular recalls a report in The Herald newspaper of 25 November 2003 containing a headline titled **"Judge under probe- Majuru accused of making pre-determined judgments in ANZ, MIC legal wrangle"** The paper thereafter gave a report that cast serious aspersions about the professionalism of the President of the Administrative Court Mr Majuru in his dealing with the case involving the ANZ and the MIC. Judge Majuru was consequently forced to recuse himself from the matter. ZLHR criticised the Herald report on Majuru as contemptuous and unwarranted and predicted that the next judge to deal with the case was likely to be under undue pressure.

Predictably on the morning before Judge Nare delivered his judgment on 19 December 2003, the Herald Newspaper which is state owned and controlled published a story on the front page titled "Government to resist backdoor approach in ANZ case- Moyo". The body of the story contained an attack on Judge Nare that, inter alia, he was using back door methods to administer justice and that he was being political in his dealings. In particular the Minister of Information and Publicity Professor J Moyo is quoted in the Herald as follows "We are seriously perturbed by this development which in our respectful and considered view is outrageously political...The reopening of the same matter relying on the same facts and in the same court in order to get a new and different judgment is scandalous and totally unacceptable in terms of the law...This is as clear as daylight and any backdoor approach is clearly political and will be resisted by all available legal means in the interest of upholding the rule of law" The Herald further reported that "One source said 'in a letter Mr Nare wrote to the Registrar of the Administrative Court in Harare, he echoed almost word for word the claims of the ANZ lawyers'"

The Herald report was clearly another unfounded and unwarranted public attack on a judicial officer by the state. Judge Nare was not being asked to issue a new and different judgment. He was being asked to make a simple ruling whether to enforce the administrative court judgment pending appeal or not. Such applications are permissible in terms of the law and there is nothing political about them. The state must be presumed to know this legal position and the remarks cited in the Herald and attributed to the Minister of Information and Publicity, besides being completely devoid of merit, showed a serious lack of appreciation of the law.

¹⁵ Last year in August 2002, Chipinge magistrates Mr. Nkomo and Walter Chikwanha were attacked by war veterans and ZANU PF supporters within the Court premises for making a ruling in a bail application that was seen as against the interests of the ruling party. Mr Chikwanha was dragged from the court premises and flogged in town while being brutally assaulted. He suffered a broken rib. 3 police officers were said to have been in attendance at all material times including one Inspector Sibanda. The culprits were identified and are known but no arrests have been made to date. The Minister of Justice has never condemned the attacks on the magistrates and has in fact transferred Mr. Chikwanha from Chipinge to Mutare. Another magistrate Mr. Douglas Chikwekwe was attacked in Gokwe in 2001 for making a ruling that did not please the ruling party supporters. A public prosecutor Mr. Chikafu was threatened in Mutare at the Governor's office in April 2003 for agreeing to bail in a case involving MDC accused persons. A magistrate Wilbert Mandinde was forced to leave his job after he made rulings on bail conditions involving Justice Blackie and Raymond Manjongwe the Secretary General of the labour movement The Progressive Teachers Union.

One issue of grave concern to ZLHR were very credible reports that, besides the above-mentioned pressure, Judge Nare also received death threats to himself and his family to the effect that any “bad” judgment would result in the judge personally and his family suffering serious bodily harm. The threat read in part, “any such bad judgement by you tomorrow will result in serious suffering by you personally and members of your family. Take this as a mere threat at your own peril. Signed- War Liberators and sons and daughters of the soil.” It cannot be overemphasised that in a constitutional democracy, the judiciary must be independent. The responsibility to protect and secure judges and other judicial actors falls with the state. Unfortunately Judge Nare has joined a growing list of judicial officers who have been subjected to undue pressure and threats merely for practising their profession. The threats against judges, magistrates, lawyers, public prosecutors and other legal actors remain an issue of concern to ZLHR.

OTHER CASES

In January 2003 in Harare, Advocate Selemani was arrested and/or obstructed from doing his job as a lawyer representing Hon Member of Parliament Job Sikhala. Jacob Mafume, a human rights lawyer, was also obstructed and denied access to Gabriel Shumba during the time that Shumba was detained by the Law and Order section of Harare Central police station.

On 14 February 2003 human rights lawyers Perpetua Dube, Ndabezinhle Mazibuko, Thembelani Mkhwananzi and Kucaca Phulu, practising in Bulawayo and deployed on official business, were refused permission to access their detained clients at Bulawayo Central police station. They complained that the police officers, including the officer in charge, were generally obstructive and verbally and physically abusive. They were denied access into the police station and were physically pushed out of the police station by a group of about 20 riot policemen who shouted in the process that the police station belonged to the police and not to lawyers.

Riot police chased Andrew Makoni, a human rights lawyer, away from Glen Norah police station when he attended to represent detained clients on 18 March 2003. The police falsely accused him of aiding and abetting the commission of offences by MDC supporters.

On 20 March 2003 a Mutare lawyer, Chris Ndhlovu, drove to the rural Marange police station to attend to his detained client, the Hon MP Giles Mutseyekwa, but was denied access to him by the officer in charge. The lawyer intended to take instructions and to give him food and medication for a chronic condition. He and another Mutare lawyer, Trust Maanda, were denied further access to about 17 other clients by the police in Manicaland who refused to cooperate with the lawyers about the places where various clients were detained after the mass stay away in March 2003.

On 21 March 2003 Obey Matizanadzo, a Harare lawyer, and Mr. Muchineripi, a Chinhoyi lawyer, were denied access by CID Chinhoyi from seeing their detained clients and were made to wait for long hours before being attended to by the police. One of the accused persons languished in jail for a long time after bail was refused based on a statement that was extracted from him during the time that he was denied access to his lawyer in violation of his constitutional rights.

On 31 March 2003 Obey Matizanadzo was again denied access to see his clients by Chinhoyi police despite spending the whole day at the police station where his clients were detained. During this period the police were interrogating his clients and threatening to stop the interrogation and detain them indefinitely if they insisted on their lawyer being present in the room where the interrogation was taking place.

The other case of concern that was reported in the press is that of the Bulawayo lawyer Kossam Ncube who is reported in The Daily News of 5 June 2003 (p7) to have been threatened with arrest merely for trying to ascertain the whereabouts of his clients at Western Commonage Police Station in Bulawayo.

CONCLUSION

It is critical that the principle of separation of powers be adhered to if democracy is to work in Zimbabwe. What has been demonstrated in this article is that there is an unhealthy level of political interference with the judiciary and the justice delivery system in Zimbabwe. Judges and lawyers need to operate in a safe and free environment so as to strengthen justice delivery and improve the integrity of the courts. The responsibility to ensure the safety of judges and lawyers rests with the authorities. It is regrettable that the authorities in some cases are at the forefront of the attack of the legal profession. With an administration of justice system that is not effective and can not offer real remedies to aggrieved parties, the rule of law is violated and lawlessness creeps in. The country ceases to be attractive to investors both local and foreign as business confidence reduces. Citizens also lose confidence in the rule of law and the courts and cannot in this environment produce the best in themselves for nation's good. An environment where there is still hope for remedies is the least that the people of Zimbabwe deserve. The politicians must therefore leave the judiciary and lawyers alone. It is important that leaders of Africa like President Thabo Mbeki must be careful not to compromise the security of human rights defenders on the continent. President Thabo Mbeki runs a big risk of compromising his own credibility as a responsible leader on the African continent and in particular in the eyes of the majority of Zimbabweans. The consequences on NEPAD will be fairly predictable given its impression of being rooted in the observance of human rights, good governance and the rule of law.

ANNEXURE I

Constitution of Zimbabwe

CHAPTER VIII

The Judiciary

79 Judicial authority

- (1) The judicial authority of Zimbabwe shall vest in—
 - (a) the Supreme Court; and
 - (b) the High Court; and
 - (c) such other courts subordinate to the Supreme Court and the High Court as may be established by or under an Act of Parliament.
- (2) The provisions of subsection (1) shall not be construed as preventing an Act of Parliament from—
 - (a) vesting adjudicating functions in a person or authority other than a court referred to in subsection (1); or
 - (b) vesting functions other than adjudicating functions in a court referred to in subsection (1) or in a member of the judiciary.

[Section as substituted by section 10 of Act 30 of 1990 - Amendment No. 11]

79A Judiciary

The judiciary of Zimbabwe shall consist of—

- (a) the Chief Justice, who shall be the head of the judiciary; and
- (b) the judges of the Supreme Court; and
- (c) the Judge President and the other judges of the High Court; and
- (d) persons presiding over other courts subordinate to the Supreme Court and the High Court that are established by or under an Act of Parliament.

[Section as inserted by section 10 of Act 30 of 1990 - Amendment No. 11]

79B Independence of judiciary

In the exercise of his judicial authority, a member of the judiciary shall not be subject to the direction or control of any person or authority, except to the extent that a written law may place him under the direction or control of another member of the judiciary.

[Section as inserted by section 10 of Act 30 of 1990 - Amendment No. 11]

80 Supreme Court

(1) There shall be a Supreme Court which shall be a superior court of record and the final court of appeal for Zimbabwe and shall have such jurisdiction and powers as may be conferred upon it by or in terms of this Constitution or any Act of Parliament.

[Subsection as amended by section 11 of Act 30 of 1990 - Amendment No. 11]

(2) The Supreme Court shall consist of—

- (a) the Chief Justice;
- (b) such other judges of the Supreme Court, being not less than two, as the President may deem necessary;
- (c) such other judges as have been appointed under subsection (3).

(3) If the services of an additional judge are required for a limited period, the Chief Justice may appoint a person who holds the office of judge of the High Court or who has held office as a judge of the Supreme Court or the High Court to act as a judge of the Supreme Court for such period as may be specified by the Chief Justice.

(4) An Act of Parliament may provide for the conferring, by way of rules of court, upon a registrar of the Supreme Court, duly appointed thereto, of the jurisdiction and powers of the Supreme Court in civil cases in respect of—

- (a) the making of orders in uncontested cases, other than orders affecting status or the custody or guardianship of children;
- (b) deciding preliminary or interlocutory matters, including applications for directions but not including matters affecting the liberty of the subject:

Provided that any such Act of Parliament shall provide for the right of any person who is aggrieved by the order

or decision of any such registrar to have the order or decision reviewed by a judge of the Supreme Court who may, on such review, amend, vary, set aside or confirm the order or decision concerned or give such other order or decision as he deems fit.

[Subsection as inserted by section 8 of Act 1 of 1983 - Amendment No. 3]

[Section as substituted by section 3 of Act 25 of 1981 - Amendment No. 2]

81 High Court and criminal jurisdiction of other courts

(1) There shall be a High Court which shall be a superior court of record and shall have such jurisdiction and powers as may be conferred upon it by or in terms of this Constitution or any Act of Parliament.

[Subsection as amended by section 12 of Act 30 of 1990 - Amendment No. 11]

(2) The High Court shall consist of—

- (a) the Chief Justice;
- (b) the Judge President of the High Court who shall, subject to the directions of the Chief Justice, be in charge of the High Court;
- (c) such other judges of the High Court as may from time to time be appointed.

(3) The Chief Justice may, from time to time, after consultation with the Judge President of the High Court, appoint a judge of the Supreme Court to act as a judge of the High Court.

(4) No law, other than a disciplinary law, shall confer jurisdiction in criminal matters upon a court or other adjudicating authority, other than the Supreme Court or the High Court, which did not have such jurisdiction before the appointed day:

Provided that the provisions of this subsection shall not apply to a law which confers any such jurisdiction on a court in terms of which the only penalty that may be imposed by the court is a monetary one.

(5) An Act of Parliament may provide for the conferring, by way of rules of court, upon a registrar of the High Court, duly appointed thereto, of the jurisdiction and powers of the High Court in civil cases in respect of—

- (a) the making of orders in uncontested cases, other than orders affecting status or the custody or guardianship of children;
- (b) deciding preliminary or interlocutory matters, including applications for directions but not including matters affecting the liberty of the subject:

Provided that any such Act of Parliament shall provide for the right of any person who is aggrieved by the order or decision of any such registrar to have the order or decision reviewed by a judge of the High Court who may, on such review, amend, vary, set aside or confirm the order or decision concerned or give such other order or decision as he deems fit.

[Subsection as inserted by section 9 of Act 1 of 1983 - Amendment No. 3]

[Section as substituted by section 3 of Act 25 of 1981 - Amendment No. 2]

82 Qualifications of judges

(1) A person shall not be qualified for appointment as a judge of the Supreme Court or the High Court unless—

- (a) he is or has been a judge of a court having unlimited jurisdiction in civil or criminal matters in a country in which the common law is Roman-Dutch or English, and English is an official language; or
- (b) he is and has been for not less than seven years, whether continuously or not, qualified to practise as a legal practitioner—
 - (i) in Zimbabwe;
 - (ii) in a country in which the common law is Roman-Dutch and English is an official language; or
 - (iii) if he is a citizen of Zimbabwe, in a country in which the common law is English and English is an official language.

[Subsection as amended by sections 4 and 13 of Act 25 of 1981 - Amendment No. 2]

(2) In computing, for the purposes of subsection (1)(b), the period during which any person has been qualified to practise as a legal practitioner—

- (a) any period during which he was qualified to practise as an advocate or attorney in Zimbabwe shall be included; and
- (b) any period during which he has held judicial office, whether in or outside Zimbabwe, after having so qualified as a legal practitioner shall be included;

and the reference in subsection (1)(b) to a legal practitioner shall include a reference to persons in other jurisdictions who have comparable functions or who have been admitted to practise the profession of law as advocates or attorneys by whatever name they may be called.

[Subsection as substituted by section 4 of Act 25 of 1981 - Amendment No. 2]

83 Oath of office

A judge of the Supreme Court or the High Court, including an acting judge, shall, before entering upon his office, take and subscribe before the President or some person authorized by the President in that behalf the oath of loyalty and the judicial oath in the forms set out in Schedule 1:

Provided that where a person is appointed in terms of section 80(3) or 81(3) to act as a judge of the Supreme Court or the High Court, as the case may be, it shall not be necessary for such person to take and subscribe the oaths referred to in this section in respect of such appointment.

[Section as substituted by section 5 of Act 25 of 1981 - Amendment No. 2]

84 Appointment of judges

(1) The Chief Justice and other judges of the Supreme Court and the High Court shall be appointed by the President after consultation with the Judicial Service Commission.

[Subsection as substituted by section 12 of Act 23 of 1987 - Amendment No. 7]

(2) If the appointment of a Chief Justice or a judge of the Supreme Court or the High Court is not consistent with any recommendation made by the Judicial Service Commission in terms of subsection (1), the President shall cause Parliament to be informed as soon as is practicable.

[Subsection as substituted by section 12 of Act 23 of 1987 - Amendment No. 7
and as amended by section 13 of Act 31 of 1989 - Amendment No. 9]

(3) The appointment of a judge in terms of this section, whether made before, on or after the date of commencement of the Constitution of Zimbabwe Amendment (No. 4) Act, 1984, may be made for a fixed period and any judge so appointed may, notwithstanding that the period of his appointment has expired, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceedings commenced or heard by him while he was in office.

[Subsection as inserted by section 2 of Act 4 of 1984 - Amendment No. 4]

85 Acting judges

(1) If the office of the Chief Justice is vacant or the Chief Justice is for any reason unable to perform the functions of his office, the President may, after consulting the Judicial Service Commission, appoint some person holding the office of judge of the Supreme Court or Judge President of the High Court to act as Chief Justice.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2
and by section 20 of Act 23 of 1987 - Amendment No. 7]

(2) If the office of a judge of the Supreme Court or the High Court other than the Chief Justice is vacant or such judge is appointed to act in some other judicial capacity or is for any reason unable to perform the functions of his office, or if the services of an additional judge of the High Court are required for a limited period, the President may, as the case requires and after consultation with the Judicial Service Commission, appoint some person qualified for appointment as a judge of the Supreme Court or the High Court to act in that office.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2,
by section 7 of Act 4 of 1984 - Amendment No. 4
and by section 20 of Act 23 of 1987 - Amendment No. 7]

(3) A person appointed to act under subsection (2)—

(a) shall, subject to the provisions of section 87, continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the President, after consultation with the Judicial Service Commission; and

[Paragraph as amended by section 7 of Act 4 of 1984 - Amendment No. 4
and by section 20 of Act 23 of 1987 - Amendment No. 7]

(b) may, notwithstanding that the period of his appointment has expired or that his appointment has been revoked, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceedings commenced before or heard by him while he was so acting.

86 Tenure of office of judges

(1) Subject to the provisions of section 87, a judge of the Supreme Court or the High Court shall retire when he attains the age of sixty-five years unless, before he attains that age, he has elected to retire on attaining the age of seventy years:

Provided that—

(a) an election under this subsection shall be subject to the submission to, and acceptance by, the President, after consultation with the Judicial Service Commission, of a medical report as to the mental and physical fitness of the judge so to continue in office;

(b) the provisions of this subsection shall not apply to an acting judge or a judge who has been appointed for a fixed period of office;

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2,
by sections 3 and 7 of Act 4 of 1984 - Amendment No. 4
and by section 20 of Act 23 of 1987 - Amendment No. 7]

(2) A judge of the Supreme Court or the High Court may at any time resign his office by notice in writing to the President.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2]

(3) The office of a judge of the Supreme Court or the High Court shall not, without his consent, be abolished during his tenure of office.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2]

(4) A judge of the Supreme Court or the High Court may, notwithstanding that he has attained the age at which he is required by subsection (1) to retire, sit as a judge for the purpose of giving judgment or otherwise in relation to any proceedings commenced before or heard by him while he was in office.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2]

87 Removal of judges from office

(1) A judge of the Supreme Court or the High Court may be removed from office only for inability to discharge the functions of his office, whether arising from infirmity of body or mind or any other cause, or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2]

(2) If the President considers that the question of the removal from office of the Chief Justice ought to be investigated, the President shall appoint a tribunal to inquire into the matter.

[Subsection as amended by section 20 of Act 23 of 1987 - Amendment No. 7]

(3) If, in the case of a judge of the Supreme Court or the High Court other than the Chief Justice, the Chief Justice advises the President that the question of removal from office of the judge concerned ought to be investigated, the President shall appoint a tribunal to inquire into the matter.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2,
by section 6 of Act 4 of 1985 - Amendment No. 5
and by section 20 of Act 23 of 1987 - Amendment No. 7]

(4) A tribunal appointed under subsection (2) or (3) shall consist of not less than three members selected by the President from the following—

- (a) persons who have held office as a judge of the Supreme Court or the High Court;
- (b) persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil or criminal matters in a country in which the common law is Roman-Dutch or English, and English is an official language;
- (c) legal practitioners of not less than seven years' standing who have been nominated under subsection (5);
- (d)

[Paragraph repealed by section 6 of Act 25 of 1981 - Amendment No. 2]

one of whom shall be designated by the President as chairman.

[Subsection as amended by sections 6 and 13 of Act 25 of 1981 - Amendment No. 2]

(4a) In computing, for the purposes of subsection (4)(c), the period during which a person has had standing as a legal practitioner, any period during which he has had standing as an advocate or attorney in Zimbabwe shall be included.

[Subsection as inserted by section 6 of Act 25 of 1981 - Amendment No. 2]

(5) It shall be the duty of the association which is constituted under an Act of Parliament and which represents legal practitioners practising in Zimbabwe to nominate a panel containing the names of not less than three duly qualified legal practitioners for the purposes of subsection (4)(c) when so required by the President.

[Subsection as amended by section 6 of Act 25 of 1981 - Amendment No. 2]

(6) A tribunal appointed under subsection (2) or (3) shall inquire into the matter and report on the facts thereof to the President and recommend to the President whether or not he should refer the question of the removal of the judge from office to the Judicial Service Commission, and the President shall act in accordance with such recommendation.

(7) The provisions of the Commissions of Inquiry Act [*Chapter 80*] as in force at the time or any other law substituted for the same shall, *mutatis mutandis*, apply in relation to a tribunal appointed under subsection (2) or (3) as they apply to commissioners appointed under that Act.

(8) If the question of removing a judge of the Supreme Court or the High Court from office has been referred to a tribunal under subsection (2) or (3), the judge shall be suspended from performing the functions of his office until

the President, on the recommendation of the tribunal or the Judicial Service Commission, revokes the suspension or the judge is removed from office in accordance with subsection (9).

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2]

(9) If the question of the removal of a judge has been referred to the Judicial Service Commission in accordance with subsection (6) and the Commission advises that the judge be removed from office, the President shall, by order under the public seal, remove the judge from office.

88 Remuneration of judges

(1) There shall be charged upon and paid out of the Consolidated Revenue Fund to a person who holds the office of or is acting as Chief Justice, a judge of the Supreme Court, Judge President of the High Court or a judge of the High Court such salary and allowances as may from time to time be prescribed by or under an Act of Parliament.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2]

(2) The salary and allowances payable to a person under subsection (1) shall not be reduced during the period he holds the office concerned or acts as holder thereof.

89 Law to be administered

Subject to the provisions of any law for the time being in force in Zimbabwe relating to the application of African customary law, the law to be administered by the Supreme Court, the High Court and by any courts in Zimbabwe subordinate to the High Court shall be the law in force in the Colony of the Cape of Good Hope on 10th June, 1891, as modified by subsequent legislation having in Zimbabwe the force of law.

[Section as amended by section 13 of Act 25 of 1981 - Amendment No. 2]

90 Judicial Service Commission

(1) There shall be a Judicial Service Commission which shall consist of—

- (a) the Chief Justice or, if there is no Chief Justice or acting Chief Justice or the Chief Justice is not available, the most senior judge of the Supreme Court who is available;
- (b) the Chairman of the Public Service Commission;
- (c) the Attorney-General;
- (d) no less than two or more than three other members appointed, subject to the provisions of subsection (2), by the President.

[Paragraph as amended by section 20 of Act 23 of 1987 - Amendment No. 7]

(2) One of the members appointed under subsection (1)(d) shall be a person who—

- (a) is or has been a judge of the Supreme Court or the High Court; or
- (b) is and has been for not less than five years, whether continuously or not, qualified to practise as a legal practitioner in Zimbabwe; or
- (c) possesses such legal qualifications and has had such legal experience as the President considers suitable and adequate for his appointment to the Judicial Service Commission;

and the other members shall be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment.

[Subsection as amended by section 13 of Act 30 of 1990 - Amendment No. 11]

(3) In computing, for the purpose of subsection (2)(b), the period during which any person has been qualified to practise as a legal practitioner, any period during which he was qualified to practise as an advocate or attorney in Zimbabwe shall be included.

[Section as substituted by section 4 of Act 4 of 1984 - Amendment No. 4]

91 Functions of Judicial Service Commission

The functions of the Judicial Service Commission shall be to tender such advice and do such things in relation to the judiciary as are provided for by this Constitution or by or under an Act of Parliament.

[Section as substituted by section 14 of Act 30 of 1990 - Amendment No. 11]

92 Persons presiding over special courts

(1) The power to appoint persons to preside over a special court shall vest in the President, after consultation with the Judicial Service Commission:

Provided that Parliament may provide that the Chief Justice may, after consulting the Judicial Service Commission, appoint a person holding the office of judge of the High Court to preside over a special court for such period as he may specify.

[Subsection as amended by section 13 of Act 25 of 1981 - Amendment No. 2,
by section 7 of Act 4 of 1984 - Amendment No. 4
and by section 20 of Act 23 of 1987 - Amendment No. 7]

(2) During the term of office of a person appointed to preside over a special court his conditions of service shall not be amended and his office shall not be abolished without his consent.

(3) Notwithstanding the provisions of subsection (2), an Act of Parliament may—

(a) vest the functions of a special court in another special court if such Act provides that any person who has been appointed to preside over the first-mentioned court shall be deemed to have been appointed to preside over the second-mentioned court; and

(b) effect a change in the designation of the person referred to in paragraph (a).

(4) In this section, “**special court**” means—

(a) the Administrative Court established by section 3 of the Administrative Court Act [*Chapter 7:07*];
(Paragraph as substituted by section 2 of Act No. 10 of 1998 - Amendment No. 15.)

(a1) the Fiscal Appeal Court established by section 3 of the Fiscal Appeal Court Act [*Chapter 23:05*];
(Paragraph as inserted by section 2 of Act No. 10 of 1998 - Amendment No. 15.)

(a2) the Special Court for Income Tax Appeals established by section 64 of the Income Tax Act [*Chapter 23:06*];
(Paragraph as inserted by section 2 of Act No. 10 of 1998 - Amendment No. 15.)

(a3) any court or other adjudicating authority established by law which exercises any function that was vested in a court referred to in paragraph (a), (a1) or (a2) on the date of commencement of the Constitution of Zimbabwe Amendment (No. 15) Act, 1998;
(Paragraph as inserted by section 2 of Act No. 10 of 1998 - Amendment No. 15.)

(b) any court or other adjudicating authority established by law, other than—

(i) a local court; or

(ii) a court established by or under a disciplinary law; or

(iii) a court established by or under an Act of Parliament for the adjudication of small civil claims; if there is no right of appeal, directly or indirectly, from a decision of that court or adjudicating authority to the Supreme Court or the High Court;

[Paragraph as substituted by section 12 of Act No. 14 of 1996 - Amendment No. 14]

(c) any court or other adjudicating authority established by law which is declared by that law to be a special court for the purposes of this section.

ANNEXURE II

Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,
Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,
Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,
Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,
Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,
Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,
Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,
Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,
Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,
The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

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5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
 6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
 7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.
13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.
14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.
16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing.

The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.
19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.
20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

ANNEXURE III

Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.
2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.
3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.
4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.
6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.
7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.
8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.
10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.
11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational

institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
13. The duties of lawyers towards their clients shall include:
 - (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
 - (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
 - (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.
14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.
15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.
17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.
19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.
20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.
21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.
22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

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23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.
25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.
27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.
28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.
29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles

ANNEXURE IV

Guidelines on the Role of Prosecutors

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts undertaken to translate them fully into reality,

Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime,

Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions,

Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors, Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas, in resolution 7 of the Seventh Congress the Committee was called upon to consider the need for guidelines relating, inter alia, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses,

The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.
2. States shall ensure that:
 - (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex. Language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
 - (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.
4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.
5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.
6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.
7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.
9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.
11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

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12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
 13. In the performance of their duties, prosecutors shall:
 - (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
 - (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
 - (c) Keep matters in the* possession confidential, unless the performance of duty or the needs of justice require otherwise;
 - (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
 14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
 15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.
 16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.
19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special considerations shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.
22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.
24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

ANNEXURE V

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We will resist the upside-down view of Africa

The 2003 Commonwealth Heads of Government Meeting (CHOGM) opened in Abuja, Nigeria at the close of this past week. Its substantial agenda included the controversial issue of Zimbabwe. Contrary to false reports peddled by some, CHOGM dealt with all matters on its agenda, including Zimbabwe.

Its longest session considered a Report entitled "Making Democracy work for Pro-poor Development", prepared by a Commonwealth High-Level Expert Group on Development and Democracy. This Report was commissioned pursuant to the Fancourt Declaration adopted by CHOGM when it met in our country in 1999. By the time the Abuja CHOGM concluded, it had continued the suspension of Zimbabwe from the councils of the Commonwealth. Zimbabwe had left the Commonwealth, rendering this decision meaningless. The SADC countries, supported by Uganda, had decided to express their strong disagreement with the CHOGM decision. Time will tell what impact all of this will have on the Commonwealth. But it is necessary to recall some of the history that has led us to this situation.

When it met in Coolumberr, Australia in 2002, CHOGM charged a Troika made up of the Chair of the Commonwealth, the Prime Minister of Australia, and the Presidents of Nigeria and South Africa, to take action on Zimbabwe, in the event that the Commonwealth Elections Observer Team made a negative finding about the 2002 Zimbabwe Presidential elections. This was the full extent of the mandate given to the Troika. This Observer Team concluded, "the conditions in Zimbabwe did not adequately allow for a free expression of will by the electors." On this basis, the Troika decided to suspend Zimbabwe from the councils of the Commonwealth for one year, which should have meant the conclusion of its mandated mission.

However, the Troika also decided that it would meet again in a year's time to consider the evolution of the situation in Zimbabwe, in the context of various policy decisions taken earlier by the Commonwealth. Nevertheless, later, the then Chair of the Commonwealth, Australian Prime Minister Howard, insisted that the Troika should meet six months earlier than it had decided, which it did out of respect for his position as Chair of the Commonwealth. The reason he insisted on this otherwise unscheduled meeting was that he wanted the Troika to impose additional sanctions on Zimbabwe, for which it had no mandate. The two other members of the Troika told him as much and argued that the Troika should meet at the end of the one-year, as originally agreed. Nevertheless, the Chair was determined to have his way.

Accordingly, contrary to all normal practice, he decided to announce to the world at a press conference, that he disagreed with his colleagues in the Troika and wanted more Commonwealth sanctions imposed on Zimbabwe. At one stroke, this both destroyed the Troika and put in question the democratic principle of decisions by majority. The majority on the Troika then advised the Chair that if he wanted additional sanctions, he, and not the Troika, would have to get a mandate from all the Heads of Government of the Commonwealth. They also indicated their opposition to the continuation of the suspension beyond the one-year that had been agreed earlier. Nevertheless, the Chair requested the Secretary General to consult these Heads. In his report, after this process of consultation, the Secretary General said: "Some member governments take the view that it is time to lift Zimbabwe's suspension from the councils of the Commonwealth when the one-year period expires on March 19 2003. Some others feel that there is no justification for such a step and that there is in fact reason to impose stronger measures. However, the broadly held view is that Heads of Government wish to review matters at CHOGM in Nigeria in December 2003 and that the suspension of Zimbabwe should remain in place pending discussions on the matter at CHOGM. The members of the Troika have now concluded that the most appropriate approach in the circumstances is for Zimbabwe's suspension to remain in place until CHOGM in December 2003."

Unfortunately, the Secretary General has never explained what he meant by "the broadly held view", especially in the light of the fact that some Heads of Government were not consulted, and others were wrongly led to believe that we supported the continuation of the suspension. The statement that we had expressed ourselves in favour of the continuation of the suspension was false. We must also make the point that the Zimbabwe government has never been given the possibility to respond to the report of the Commonwealth Observers, contrary both to the principles of natural justice and the rules of the Commonwealth itself.

This is especially important in the light of the fact that other Election Observer Groups, such as our own, made determinations about the Zimbabwe Presidential elections that differ from the finding of the Commonwealth Observers. For instance, the largest of our Observer Teams, made up essentially of representatives of civil society found as follows:

"It appears that the will of the people was demonstrated to a degree reflected by the number of people who came out to vote and who did get an opportunity to vote. The turnout at the polls and the number of people who voted was second only to the first election following the liberation of Zimbabwe. This view must be seen in the context of the obstacles and problems that characterised the pre-election period that is described boldly and frankly in the body of this report. The (Observer) Mission is, therefore, of the view that the outcome of the elections represents the legitimate voice of the people of Zimbabwe."

We accepted this determination and have no reason to conclude that the eminent South Africans who came to this conclusion were wrong, whereas the Commonwealth Observers were correct. This is particularly so given the fact that they spent a longer period of time in Zimbabwe than the Commonwealth Observers, and did more than any other group to help ensure that the elections were free and fair.

In addition, to ensure the continuous coverage of all parts of Zimbabwe, it worked together with the other South African Observer Teams, as well as the Cabinet Ministers we sent to Harare to ensure the effective access of our Observer Teams to the Zimbabwe government to deal quickly with any problems that could arise.

We have also studied and taken seriously the observations and recommendations contained in the 42-page Report of our Observer Mission. These observations include issues of political violence, legislation and state institutions relevant to the elections, the role of the media, and the general political situation. Those who present themselves to the public as experts would do well to study this Report.

When we met in London as the Commonwealth Troika, we were restricted solely and exclusively to the findings of the Commonwealth Observer Report. We also had no mandate to consider the substance of this Report and never did. Neither did the Abuja CHOGM, though it decided to continue the suspension of Zimbabwe, on the untested assumption that the Commonwealth Observer Report was correct in its conclusion.

At its March 19, 2002 meeting in London, at which it suspended Zimbabwe for a year, the Troika reiterated a critically important statement made by the Coolum CHOGM. It said that the land question was at the core of the crisis in Zimbabwe and could not be separated from other issues of concern. At the Abuja CHOGM, the land question in Zimbabwe was not discussed. Indeed, the land question has disappeared from the global discourse about Zimbabwe, except when it is mentioned to highlight the plight of the former white landowners, and to attribute food shortages in Zimbabwe to the land redistribution programme.

The current Zimbabwe crisis started in 1965 when the then British Labour Government, under Prime Minister Harold Wilson, refused to suppress the rebellion against the British Crown led by Ian Smith. This was because the British Government felt that it could not act against its white "kith and kin", in favour of the African majority. At the constitutional negotiations in 1979, the British Conservative Government insisted that the property and other rights and privileges of this "kith and kin" had to be protected. It therefore ensured that Zimbabwe's independence constitution had entrenched clauses, valid for ten years, which, among other things, protected the property rights of the white settler colonial "kith and kin", including the landowners. The large sums of money promised by both the British and US governments to enable the new government to buy land for African settlement never materialised. The land dispossession carried out by the settler colonial "kith and kin" through the barrel of the gun had to be sustained, despite the fact that even in 1979, the British government recognised the fact that land was at the core of the conflict in Zimbabwe, as did the 2002 Coolum CHOGM. In 1998 we intervened to help mediate the growing tension between Zimbabwe and the UK on the land question. This, and other factors, led to the international conference on the land question held in Zimbabwe that year.

At that conference, the international community, including the UK, the UN, the EU and others agreed to help finance the programme of land redistribution that had been an essential part of the negotiated settlement of 1979, which, in return for introducing majority rule, guaranteed the privileges of the white settler colonial "kith and kin". Nothing came of these commitments. Later, the British government could not find a mere £9 million to buy 118 farms, which purchase had been agreed at the international conference. These would have been used

to resettle the war veterans who had begun to occupy farms owned by the white “kith and kin”, continuing a struggle for the return of the land to the indigenous majority, which had started at the end of the 19th century. Again we intervened to help solve the Zimbabwe land question. We managed to get pledges from various countries, other than the UK, to provide this £9 million. Having handed this matter over to the UN, it collapsed in the intricacies of the UN bureaucracy. Though there were willing sellers and willing buyers, and the necessary funds, the 118 farms were not bought.

With everything having failed to restore the land to its original owners in a peaceful manner, a forcible process of land redistribution perhaps became inevitable. Though we were conscious of the frustration that had built up in Zimbabwe, we urged the government of Zimbabwe both privately and publicly to act against the forcible seizure of white farms and other violence in the country. On one of these occasions, at Victoria Falls and in the presence of President Mugabe, I told the world press that, together with Presidents Nujoma and Chissano, we had raised this matter with President Mugabe.

For the record, we must mention that our national broadcaster did not record my comments on this matter. The SABC television team that covered this press conference later explained that at that point it did not have the necessary cassette to record these comments. Soon after this press conference, the BBC interviewed me to confirm the remarks I had made. And yet afterwards, many worked hard to propagate the blatant untruth that we had said nothing about any of the contentious issues in Zimbabwe.

In his book, “Decolonising the Mind”, the Kenyan writer, Ngugi wa Thiongo, writes about the consternation among some Europeans that he had started writing in his native language, Gikuyu. He says: “It was almost as if, in choosing to write in Gikuyu, I was doing something abnormal. The very fact that what common sense dictates in the literary practice of other cultures is questioned in an African writer is a measure of how far imperialism has distorted the view of African realities. It has turned reality upside down: the abnormal is viewed as normal and the normal is viewed as abnormal. Africa actually enriches Europe: but Africa is made to believe that it needs Europe to rescue it from poverty. Africa’s natural and human resources continue to develop Europe and America: but Africa is made to feel grateful for aid from the same quarters that still sit on the back of the continent. Africa even produces intellectuals who now rationalise this upside-down way of looking at Africa.” For example, those who fought for a democratic Zimbabwe, with thousands paying the supreme price during the struggle, and forgave their oppressors and torturers in a spirit of national reconciliation, have been turned into repugnant enemies of democracy. Those who, in the interest of their “kith and kin”, did what they could to deny the people of Zimbabwe their liberty, for as long as they could, have become the eminent defenders of the democratic rights of the people of Zimbabwe. During the Abuja CHOGM, those accustomed to the practice of disinformation, described as “spin”, did everything to communicate false reports to the media. They campaigned and lobbied to ensure the continued suspension of Zimbabwe. We deliberately avoided engaging in any of these activities. We fed no stories to the media. We did not campaign. We lobbied nobody. Yet the story is put out that we lobbied, blocked agreements, and dismally failed to achieve our objectives. We are not, and should not be surprised at this kind of behaviour and the turning of reality upside down on the part of those that Ngugi wa Thiongo described as those “that still sit on the back of the continent.” The tragedy is that there are some among us, those that have the possibility to occupy the media spaces, who claim that they are Africans, among them intellectuals, “who now rationalise this upside-down way of looking at Africa”, according to which “the abnormal is viewed as normal and the normal is viewed as abnormal”.

In his book “Diplomacy”, Dr Henry Kissinger discusses the place of the issue of human rights in the East-West struggle during the Cold War. He writes that:

“Reagan and his advisers invoked (human rights) to try to undermine the Soviet system. To be sure, his immediate predecessors had also affirmed the importance of human rights. Reagan and his advisers went a step further by treating human rights as a tool for overthrowing communism and democratising the Soviet Union. At Westminster in 1982, Reagan, hailing the tide of democracy around the world, called on free nations ‘to foster the infrastructure of democracy, the system of a free press, unions, political parties, universities, which allows a people to choose their own way, to develop their own culture, to reconcile their own differences through peaceful means’. America would not wait passively for free institutions to evolve.”

In time, and in the interest of “kith and kin”, the core of the challenge facing the people of Zimbabwe, as identified by the Cologan CHOGM, has disappeared from public view. Its place has been taken by the issue of human rights. Those who have achieved this miracle are not waiting passively for free institutions to evolve.

It is clear that some within Zimbabwe and elsewhere in the world, including our country, are following the example set by “Reagan and his advisers”, to “treat human rights as a tool” for overthrowing the government of Zimbabwe and rebuilding Zimbabwe as they wish. In modern parlance, this is called regime change.

In its statement after the Abuja CHOGM, SADC and Uganda said: “We also wish to express our displeasure and deep concern with the dismissive, intolerant and rigid attitude displayed by some members of the Commonwealth during the deliberations. The Commonwealth has always operated on the basis of consensus. We fear that this attitude is destined to undermine the spirit that makes the Commonwealth a unique family of nations. This development does not augur well for the future of the Commonwealth.”

But, once more, some Africans have turned things upside down. They argue that, internationally, we face some trouble or other because we confirmed positions at the Abuja CHOGM that we have explained before, publicly. They will not say that the Commonwealth is faced with an impending crisis because of the positions it took, which have very little to do with the urgent task to encourage the entire political leadership of Zimbabwe to act together to resolve the political, economic and social problems facing the people of this sister country.

In its Report, having made its determination about the 2002 Zimbabwe Presidential elections, the Commonwealth Observer Team said:

“We call on all Zimbabweans to put aside their differences and to work together for the future of their country. We believe national reconciliation is a priority and that the Commonwealth should assist in this process.”

Our own Observer Mission said: “The Mission recommends an urgent programme of political reconciliation and economic restructuring and transformation that places the people and country of Zimbabwe first and transcends the differences that were demonstrated in the election process.” This is also what the Heads of Government from Uganda and the SADC countries said to their colleagues at the Abuja CHOGM, arguing that the continued isolation of Zimbabwe would not facilitate the achievement of this goal. Unfortunately, others had already made public statements that one of the principal outcomes of this meeting would be, not a Commonwealth commitment to this goal, but the continuing suspension of Zimbabwe from the councils of the Commonwealth. For them, it was important that this objective should be achieved, to maintain their credibility especially with the media, whatever else was decided that might actually relate to the future of the people of Zimbabwe.

Many things have gone wrong in Zimbabwe leading, among other things, to a high degree of polarisation in the country and a serious economic crisis. Together with the rest of the SADC countries, we have discussed these negative developments with the government and people of Zimbabwe, and will continue to do so. At the same time, we have made a commitment to work with the people of Zimbabwe, represented by both the ruling party and the opposition, to arrive at the situation in which “all Zimbabweans put aside their differences and work together for the future of their country”.

Whatever happened at the Abuja CHOGM, and perhaps because of what happened at the Abuja CHOGM, the outcome visualised by the Commonwealth and South African Election Observers will be realised, regardless of the negative speculations made by some that so-called quiet diplomacy has failed. This outcome demands of us that, regardless of the fact that we are poor and need the support of others richer than ourselves to overcome our problems, we should always refuse to “rationalise the upside-down way of looking at Africa.

Our poverty and underdevelopment will never serve as reason for us to abandon our dignity as human beings, turning ourselves into grateful and subservient recipients of alms, happy to submit to a dismissive, intolerant and rigid attitude of some in our country and the rest of the world, towards what we believe and know is right, who are richer and more powerful than we are.