

REDRESS

Seeking Reparation for Torture Survivors

ZIMBABWE

**TORTUOUS PATTERNS DESTINED TO
REPEAT THEMSELVES IN UPCOMING
ELECTION CAMPAIGN**

**Preliminary Study of Trends and
Associations in the Pattern of Torture
and Organised Violence in Zimbabwe,
July 2001 - December 2003**

November 2004

The photographs featured in this report show Zimbabwean's tortured at the hands of the Zimbabwe Republic Police and other State agents during the period under review.

Background

The Redress Trust (REDRESS) is an international human rights organisation with a mandate to assist torture survivors seek justice and reparation. Its national and international programmes are aimed at ensuring that the rights of torture survivors, whoever they are, and wherever they are located, are realised in practice. REDRESS continues to actively follow the situation in Zimbabwe. Over the past few years, it has published a number of reports on the prevalence of torture in Zimbabwe and the prospects for Zimbabwean victims to obtain justice and reparation nationally and internationally.¹ This current Report follows on from previous ones, and looks particularly at the patterns of torture and other forms of organised violence over the past three years, and the strong correlation they have with elections.

A consistent picture of torture and other serious violations of human rights in Zimbabwe during the last four years is beginning to emerge from the many reports recently published.² The crisis in Zimbabwe reflected in these reports has resulted in a number of responses from the international community. These have ranged from the exclusion of Zimbabwe from the Commonwealth Ministerial Councils, suspension of foreign assistance (apart from humanitarian assistance), and targeted personal sanctions against high-ranking members of the Zimbabwe Government. However, opprobrium about the crisis in Zimbabwe has not been universal and a number of countries continue to hold cordial relations with the Zimbabwe Government while maintaining that the human rights violations are exaggerated and a consequence of the unpopular (with the West) land reforms of the Zimbabwe Government. This divided position has undoubtedly led to human rights violations not being accorded the serious attention they deserve.

¹ See, for example, *Zimbabwe: From Impunity to Accountability: Are Reparations Possible for Victims of Gross and Systematic Human Rights Violations?*, March 2004; *The Case of Henry Dowa: The United Nations and Zimbabwe Under the Spotlight*, January 2004; and *Reparation for Torture: A Survey of Law and Practice in 30 Selected Countries (Zimbabwe Country Report)*, May 2003. These reports are available on REDRESS' website at: http://www.redress.org/country_zimbabwe.html.

² See for example, reports from the Zimbabwe Human Rights NGO Forum, Amnesty International, Human Rights Watch, and the International Rehabilitation Council for Torture Victims (IRCT).

Zimbabweans themselves have considered the human rights violations in some depth, and, at a symposium held in Johannesburg in 2003 representatives of Zimbabwean organisations arrived at unequivocal conclusions.³

- *All available evidence indicates that the Government has engaged in a widespread, systematic, and planned campaign of organised violence and torture to suppress normal democratic activities, and unlawfully to influence the electoral process;*
- *The Government has also created, and the law enforcement agencies have vigorously applied, highly repressive legislation;*
- *These measures were directed at ensuring that the Government retained power rather than overcoming resistance to equitable land redistribution and correcting historical iniquities.*

The clear meaning of the expression above, "*a widespread, systematic, and planned campaign of organised violence and torture*" indicates that the organisations involved are making a *prima facie* claim that crimes against humanity have been committed by the Zimbabwe Government. These views have not been accorded the serious consideration that they deserve.

Currently, Zimbabwe is heading for an election, probably in March 2005. The analysis in this Report demonstrates a strong correlation between reports of torture and other forms of organised violence and the lead up to elections. There is little sign that the Zimbabwe Government now intends to create a climate in which free and fair elections can take place and consequently there is serious concern that patterns will be repeated in the months leading to the upcoming elections. Serious attempts must now be made to address the situation.

In 2001 the African Commission on Human and Peoples' Rights decided to undertake a Fact-Finding Mission to Zimbabwe following widespread reports of human rights violations. The Mission subsequently visited the country from 24 to 28 June 2002, i.e. some three months after the disputed presidential election. Two years later the executive summary of the report of the Fact-Finding Mission has reached the public domain and is incorporated in this REDRESS Report as an appendix.

³ See the Johannesburg Declaration and the Summary of the Johannesburg symposium, reported in *Themba Lesizwe (2004), Civil Society and Justice in Zimbabwe, Proceedings of a symposium held in Johannesburg, 11-13 August 2003, PRETORIA: THEMBA LESIZWE.*

The report was tabled at a meeting of foreign ministers at the Third African Union summit held in Addis Ababa, Ethiopia early in July 2004, but was stopped from being presented to the heads of state after Zimbabwe's Foreign Minister Mudenge claimed that it had never been properly furnished in advance to the Zimbabwe Government. In fact it had been sent months before.

The executive summary is highly critical of the Zimbabwe Government. It states:
"The Mission is prepared and able to rule, that the Government cannot wash its hands from responsibility for all these happenings...By its statements and political rhetoric, and by its failure at critical moments to uphold the rule of law, the government failed to chart a path that signaled a commitment to the rule of law."⁴

The significance of the Commission's report cannot be over-emphasised. The Zimbabwe Government has responded to the report with unrestrained fury, branding the African Commission as a tool of the West and blaming local civil society organisations for the submissions they made to it. Ironically, the very things which the African Commission has recommended, such as opening space to create an environment conducive to democracy and human rights, has galvanized the Government into doing precisely the opposite. Thus the Commission called for the review of "legislation that inhibits public participation by NGOs in public education, human rights counseling."⁵ Within days the Government made clear it was going to rush through parliament law that will effectively outlaw local NGOs from carrying out human rights activities, with any foreign funding of local NGOs to be made a criminal offence.

Non-governmental Organisations Bill

This legislation will be used as a weapon against non-governmental organisations the Zimbabwean Government does not like. The main target of this legislation is organisations that have been critical of the human rights and democratic governance record of the Government. These organisations will either be closed down or subjected to such stifling restrictions that they will not be able to operate.

⁴ Appendix p. 17, para 5.

⁵ Appendix p.18.

A politically partisan Council will probably refuse to register these organisations. Even if it does register them, it will be likely to impose such stringent conditions on their operations that it will be impossible for them to operate effectively. In any event as these organisations are not able to raise locally the large amounts of money needed to provide medical and legal assistance to victims, the cutting off of foreign finance will prevent them from operating effectively.

Additionally no foreign non-governmental organisation may operate in Zimbabwe if its principal objects include human rights and governance issues.

These measures will mean that:

- many victims of human rights assistance will be deprived of medical and legal assistance, and will be left without any protection;
- without the legal assistance organisations, many people are likely to be taken into custody, and to be held for long periods and brutalised, and no lawyers will be engaged to do whatever they can to try to protect the rights of these victims.
- without the medical assistance organisations, many victims of torture and violence will be left without any medical treatment and psychiatric counselling. Government health personnel are already reluctant to treat such victims, especially when government supporters threaten reprisals if they render treatment, and private doctors will be either too frightened to give treatment or will be unprepared to provide it without payment.
- human rights abuses perpetrated on behalf of the ruling party by security agencies, war veterans, youth brigade members and ruling party supporters are likely to increase because these abuses are far less likely to be reported and documented;
- opposition to the movement towards dictatorial rule is likely to be further stifled by the closing down or hobbling of NGOs advocating the restoration of democracy in Zimbabwe and this will be a further devastating blow to the cause of democracy in Zimbabwe.

The end result will be that Zimbabwe will become even more of a closed society than it is presently and this will allow the Government more leeway to engage in human rights violations and anti-democratic activities with less internal and external scrutiny.

Many of the provisions in the NGO Bill are taken from the existing Private Voluntary Associations Act (PVO Act). The PVO Act was already potentially a highly repressive piece of legislation. The new Bill contains additional provisions that make it even more threatening.

The Zimbabwean authorities view human rights and governance NGOs as the enemy and are intent on either suppressing these organisations or grossly interfering with them on a political basis. In so doing, the Zimbabwean authorities will be in flagrant violation of the United Nations Declaration on the Rights and Responsibilities of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Rights and Freedoms. Amongst other things, this Declaration provides that human rights defenders have the right

- to seek the protection and realisation of human rights at national and international levels;
- to conduct human rights work individually and in association with others;
- to form NGOs;
- to seek, obtain and hold information relating to human rights;
- to offer professionally qualified legal assistance and other assistance in defence of human rights;
- to effective protection under national law in reacting against or opposing human rights violations by the state.

At its 35th Ordinary Session held in Banjul, Gambia 2 May to 4 June 2004, the African Commission on Human and People's Rights reaffirmed the UN Declaration. It also adopted a resolution on human rights

- recognising "the crucial contribution of the work of hrs defenders in promoting hrs, democracy and the rule of law in Africa";
- expressing serious concern "about the persistence of violations targeting individuals and members of their families, groups and organisations working to promote and protect human and people's rights and by the growing risks faced by human rights defenders".

Coverage of NGO Bill

The Bill encompasses just about every conceivable organisation or association involved in civic work, including humanitarian assistance, social assistance and legal aid. It also covers organisations set up as trusts.

An organisation is only a local organisation if it consists exclusively of citizens or permanent residents of Zimbabwe domiciled in Zimbabwe. If a local organisation has only one non-Zimbabwean on its board or a Zimbabwean who is not domiciled in Zimbabwe, it will be treated as a foreign NGO.

Principal target

The main target of this legislation is NGOs whose activities involve promotion & protection of human rights and issues of governance.

No local NGO can receive foreign funding or donations to carry out activities involving or including the promotion and protection of human rights and issues of political governance.

No foreign NGO can be registered if its sole or principal objects involve or include these activities. Most foreign NGOs such as Konrad Adenaur and Friedrich Ebert Foundation will have to close down as they are all deeply involved in human rights and governance issues.

An NGO can only lawfully operate if the Council registers it. An NGO must renew its registration annually. It is a criminal offence for persons to take part in management or control of an NGO knowing it is operating without being registered. (The maximum sentence is 3 months in prison).

NGOs registered under the old Act are deemed to be registered under the new Act.

An NGO not previously registered can only continue to operate if it obtains registration under the new legislation in respect of the objects for which it was constituted.

Only a relatively small number of NGOs are presently registered under the present Act. Organisations like the Amani Trust, Zimbabwe NGO Human Rights Forum, Crisis Coalition are not registered.

The Council can refuse registration on the wide and vague ground that it appears to the Council that the applicant organisation will not be genuinely operating in furtherance of its proposed objects.

When the Council registers an NGO it may impose whatever conditions it sees fit and at any stage it may impose further conditions. It could thus register a human rights organisation but then impose restrictions that make it impossible for it to operate.

At any time Council can cancel registration on such vague grounds as that:

- NGO ceased to operate genuinely in furtherance of objects for which registered;
- NGO failed to comply with any conditions imposed;
- NGO has ceased to operate as NGO;
- Council considers that the objects for which it was registered are merely incidental to its other objects.

Council

14 members appointed by Minister.

- 9 under-secretaries or above from various Ministries; and
- 5 persons selected by Minister as being representative of NGO community.

The 9 civil servants are likely to be hostile to human rights organisations and the 5 from the NGO community are likely to be drawn from NGOs set up by ZANU (PF). (The NGOs selected will be asked to nominate persons but the Minister does not have to appoint the persons nominated. If no nominations are received he can appoint anyone even if that person cannot represent the organisation concerned.)

(Under the PVO Act, the Board had 23 members, 17 of which were drawn from the NGO community and only 6 of which were members representing specified Ministries.)

The members of the Council are completely under the Minister's control. The Minister sets their conditions of service and he can fire any of them on the vague ground that they have engaged in conduct rendering them unsuitable. The sacked members are only entitled to make representations to the Minister.

Powers of Council

The Council exercises control not just over finances to prevent misappropriation of donor funds. It can investigate what is called maladministration which includes improper conduct justifying cancellation of registration. It can investigate any aspect of the affairs or activities of any NGO. At the instigation of the Council the Minister can appoint an inspector to carry out this investigation and the Minister can suspend some or all of the executive committee for maladministration. If this suspension is not lifted within 30 days, these persons cease to be executive committee members.

The Council will also formulate and apply a code of conduct for NGOs. When formulating this code it is not obliged to seek the views of the NGO community. This code is likely to contain further stifling restrictions.

The methods used in this Torture Report

The analysis in this Report is based on the data contained in the Monthly Violence Reports of the Zimbabwe Human Rights NGO Forum. Since July 2001, the Forum has been reporting monthly totals of cases of organised violence and torture. These are given as gross statistics, with monthly totals of the number of cases reported under a number of categories: e.g., murder, attempted murder, torture and rape. The reports are mainly based on personal testimonies to members of the Forum, and are frequently accompanied by medical reports or medical examinations are subsequently undertaken. Additional data comes from the public domain, mainly from the national newspapers. This information provides a preliminary baseline from which certain conclusions may be drawn, however as soon as conditions allow, an independent public inquiry into all allegations of torture and other serious human rights violations should take place.

There were some minor difficulties in compiling the data, since some categories were either changed during the course of the reporting period or were not reported from earlier periods. These monthly totals were nonetheless compiled into an overall spreadsheet, and various analyses were carried out. Where the categories had changed or there were no reports, this data was excluded from the analysis.

This present analysis can only attempt to examine a number of broad hypotheses. The most obvious of these is to test the assertions that the human rights violations represent a systematic campaign rather than random events. Here the relationship with key events over time is crucial, and the most noteworthy events are those to do with elections, which have drawn the most comment domestically in Zimbabwe as well as internationally. Another obvious event is their potential association with land disturbances, which has been a frequent claim of the Zimbabwe Government.

Three hypotheses can be put forward:

1. If the human rights violations are part of a systematic campaign, there should be a non-random pattern of incidents (victims and perpetrators);

2. If the human rights violations are connected to the land disturbances, reported incidents again should be random since the land disturbances have been going on since February 2000;
3. If the human rights violations are connected to elections, then one might expect to see an increased number of reported incidents corresponding to the times of elections.

Overall results

There is considerable variation in the numbers of reports over the reporting period. For example, as can be seen from Table 1, there are very few cases of rape reported, but this may not indicate that rape was infrequent since there are many factors that result in low rates of rape reporting. Again, although the number of torture cases is considerably higher than any other form of violation, one cannot make any inference about the actual number of cases of torture in the period studied.

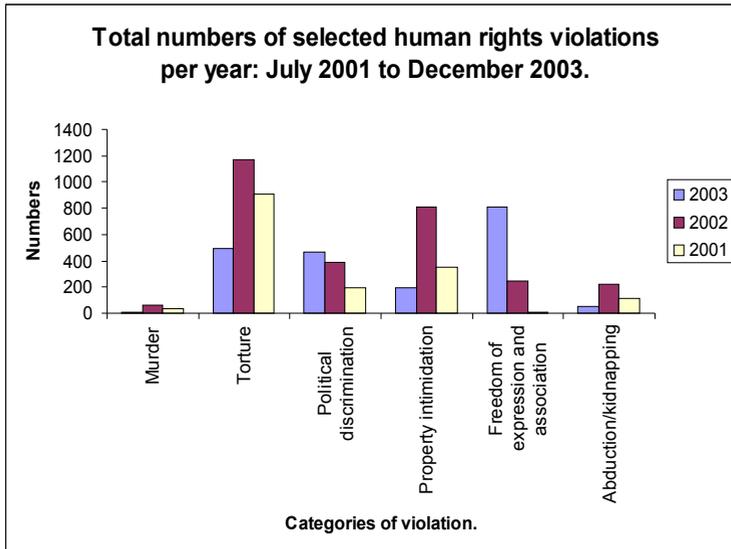
Table 1
Numbers and percentages of human rights violations reported between
July 2001 and December 2003

Category	Number	Percentage
Torture	2572	29
Property intimidation	1316	15
Political discrimination	1048	12
Unlawful detention	1041	12
Freedom of expression and association	860	10
Unlawful arrest	650	7
Assault	474	5
Abduction/kidnapping	391	4
Displacement	219	3
Murder	105	1.2
Death threats	92	1.1
School closure	46	0.52
Disappearance	32	0.36
Rape	13	0.15
Attempted murder	12	0.13
Total:	8871	

It is important here to point out that the violation categories used in the reports changed over time, partly because of refinement in reporting and partly because the types of violations themselves changed, as will be seen later. However, the changes do not alter some of the major findings, such as the continuous reporting of torture over the three years.

The data, despite the limitations about prevalence, still allow the testing of a number of hypotheses, as indicated earlier. As can be seen from Figure 1, there are decided differences between the numbers of violations between the three years, as well as differences in the numbers of particular violations over the same period. The first obvious conclusion – supported by the statistical analysis – is that 2001 and 2002 had many more violations reported than was the case in 2003.

Figure 1



However, the picture becomes more remarkable if the total numbers of reports are plotted against dates. As can be seen from Figure 2 [see over], there are decided associations with events over the past three years, and the most compelling of these is the massive number of cases in March 2002, the timing of the Presidential Election, with the steady rise of cases up to the March Presidential Election and the consequent drop off of reports after the election was over.

Furthermore, when events are associated with the peaks and troughs in the graph, a picture begins to emerge as suggested by the statistical analysis. Apart from the association of increased reporting of violations with the Presidential Election during 2002, the following months and events would also seem to be significant:

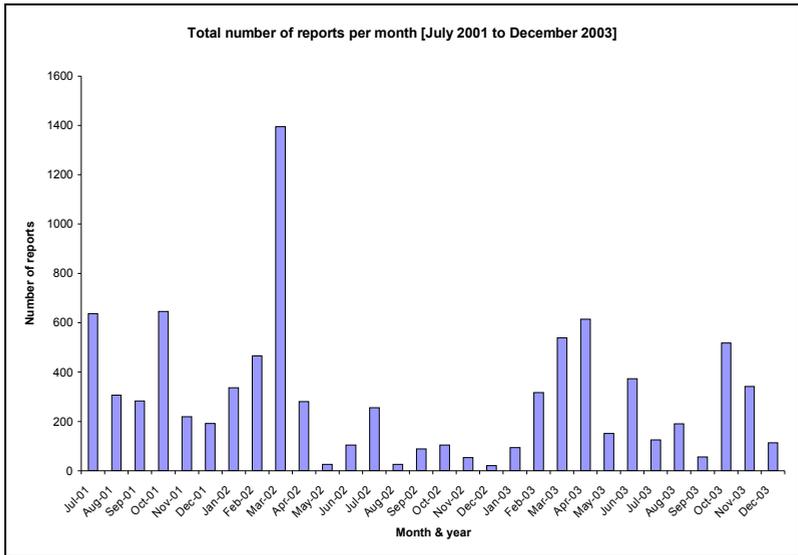
- **July 2001:** National stay away on 2 and 3 July. Bye-election in Bindura constituency on the weekend of 27-28 July, following the death of Border Gezi.

- **October 2001:** A spate of incidents from Guruve, the murder of Cain Nkala and the subsequent disturbances in Bulawayo, and a large number of cases from the commercial farms in Marondera were features of October 2001.
- **July 2002:** This was mostly associated with the continuation of cases being reported from the violence in Buhera. This seemed almost to be a pogrom, and most of these cases suffered violence and torture at the hands of the ZRP⁶.
- **March 2003:** MDC mass stay away on 18 and 19 March, as well as The Parliamentary bye-elections held in Kuwadzana and Highfield on 29 and 30 March 2003.
- **April 2003:** ZCTU called for mass stay away on 23, 24, and 25 April 2003.
- **June 2003:** Mass action called for by the Movement for Democratic Change (MDC) from 2 to 6 June 2003.
- **October 2003:** Zimbabwe Congress of Trade Unions (ZCTU) on 8 October 2003 demonstrating over high taxation and violations of trade union and human rights. NCA demonstration on 22 October 2003 to call for a new democratic constitution. Mayoral Elections in Bindura, Chinoyi, Chegutu, Kadoma, Kariba, Marondera, Masvingo, and Mutare.
- **November 2003:** The Kadoma Central by-election was held from 29-30 November 2003. ZCTU members and leadership and civic leaders were arrested on 18 November 2003 in Harare on allegations of holding a demonstration without notifying the police.

As can be seen, there is generally a significant public event behind each peak in the number of cases reported. However, this does not hold true for the month of October 2001, where there were a high number of violations reported across the country without there being evidence of any significant event. For the remainder, elections, bi-elections, strikes, stay-aways, and demonstrations are all associated with increases in organised violence and torture.

⁶ See Zimbabwe Human Rights NGO Forum (2003), *Torture by State Agents in Zimbabwe: January 2001 to August 2002*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

Figure 2



These observations support the view in the third hypothesis above that the human rights violations are not random and are associated with significant political events, particularly, but not exclusively, elections.

Victims and perpetrators

The assertion, by Zimbabwean civil society organisations, that there has been a *widespread, systematic, and planned campaign*, would suggest that there was a non-random distribution of victims and perpetrators. The view put forward by the Zimbabwe Government that there has been significant political violence involving inter-party conflicts, would suggest that there would be victims and perpetrators drawn from the supporters of all the main political protagonists.

As can be seen from Table 2, the perpetrators identified in the human rights reports appear to be overwhelmingly supporters of the Government or Government officials. Members of the MDC or unknown perpetrators are slightly more than a single percentage, and hence there is very little to support the contention that the violence was a result of inter-party conflicts.

Table 2

Percentages of different categories of perpetrators reported to human rights organisations in the Parliamentary and Presidential Elections (taken from Reeler. 2003)⁷

	2000 (n=648)	2002 (n=704)
Member of Parliament	3.4	0.57
Central Intelligence Organisation	1.39	0
Zimbabwe Republic Police	2.01	6.68
Zimbabwe National Army	0	0.85
Zimbabwe Prison Service	0	0.28

⁷ See here Reeler, A.P. (2003), *The Perpetrators of Gross Human Rights Violations in Zimbabwe from February 2000 to March 2003*, Paper presented to "Civil Society and Justice in Zimbabwe: A Symposium", organised by the Zimbabwe Human Rights NGO Forum, Themba Le Sizwe and the International Bar Association, Holiday Inn, Johannesburg, 11-13 August 2003; see also Zimbabwe Human Rights NGO Forum (2001), *Who was responsible? A consolidated analysis of pre-election violence in Zimbabwe*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; Zimbabwe Human Rights NGO Forum (2003), "Are They Accountable?: Examining alleged violators and their violations pre and post the Presidential Election March 2002", HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; Zimbabwe Human Rights NGO Forum (2003), *Torture by State Agents in Zimbabwe: January 2001 to August 2002*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

Zimbabwe National Liberation War Veterans Association	19.8	23.6
ZanuPF supporter	67.4	63.9
ZanuPF (Youth)	3.7	0.14
ZanuPF (Officials)	0.93	0.14
Movement for Democratic Change [MDC]	0.15	0.28
Government Official	0.46	0.14
Unknown	0.77	3.27

As is seen in Table 2, the number of non-government parties involved is insignificant, and, more importantly for the assertion that the violence has been inter-party, the numbers of the MDC mentioned is wholly insignificant. Hence, the probability - that there should be a non-random pattern of victims and perpetrators, if the human rights violations are part of a systematic campaign – is borne out by the evidence that shows Government officials and supporters as the major perpetrators.

As can be seen from Table 3 [over], Government officials – MPs, police, CIO, soldiers, etc - comprise a significant percentage of those mentioned in human rights reports: 13% of all perpetrators, 24% if one includes the war veterans, are identified as perpetrators.

Table 3

Total numbers of times persons in each category identified as a perpetrator

Category of Perpetrator	Nos.	Nos. of times mentioned	Percentage
Member of Parliament	26	58	4.2
Central Intelligence Organisation	7	9	0.65
Zimbabwe Republic Police	56	88	6.31
Zimbabwe National Army	3	9	0.65
Zimbabwe Prison Service	1	0	0
Zimbabwe National Liberation War Veterans Association	25	150	10.8
ZanuPF PF (Supporter)	464	1045	74.9
ZanuPF PF (Youth)	6	13	0.93
ZanuPF PF (Official)	8	7	0.5
Government & local government officials	12	15	1.08
Total:	608	1,394	

Human rights and land disturbances

The Zimbabwe Government has asserted, and supported recently by President Thabo Mbeki, that the violence is mainly due to the conflicts over land. Since the land redistribution process has been continuous since February 2000, one would expect to see a continuous number of cases of violence over the period: essentially, a random distribution of reports, and, additionally, a preponderance of reports involving farmers, farm workers, and re-settled people, taking into account seasonable or other local variables.

There has been an enormous amount of reporting around the land invasions and a substantial amount of this reporting has focused on human rights violations experienced by farmers and farm workers. However, it is not apparent that these violations were in fact related to land re-distribution and it has been instead

suggested that they relate to elections.⁸ Below we examine the data relating to summary and extra-judicial executions and torture as they relate to the second of these two hypotheses.

Summary and extra-judicial executions

The number of summary and extra-judicial executions has been relatively small in Zimbabwe in comparison to some countries, but the number of deaths is not the only indication of the seriousness of a problem: the pattern is also important, and, when taken together with other forms of human rights violations, can be indicative of a planned strategy.

⁸ Here see Reeler, A.P. (2003), *The Perpetrators of Gross Human Rights Violations in Zimbabwe from February 2000 to March 2003*, Paper presented to "Civil Society and Justice in Zimbabwe: A Symposium", organised by the Zimbabwe Human Rights NGO Forum, Themba Le Sizwe and the International Bar Association, Holiday Inn, Johannesburg, 11-13 August 2003.

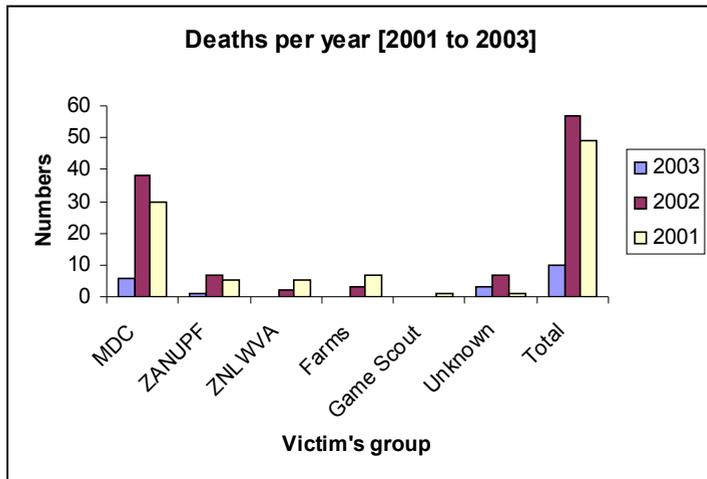








Figure 3



As can be seen from Figure 3, the number of deaths has risen and declined over the three- year period. The worst year was 2002, with the Presidential election being the period in which most deaths occurred (see Figure 4 over). The changes in the numbers of deaths apart, it is evident that the major victims have been members of the MDC: in each year under consideration, MDC members have comprised over 60% of the summary and extra-judicial executions. Only 14% of the deaths in 2001 were farm-related, and these types of deaths represented only 5% of the deaths in 2002 and declined to nothing by 2003.

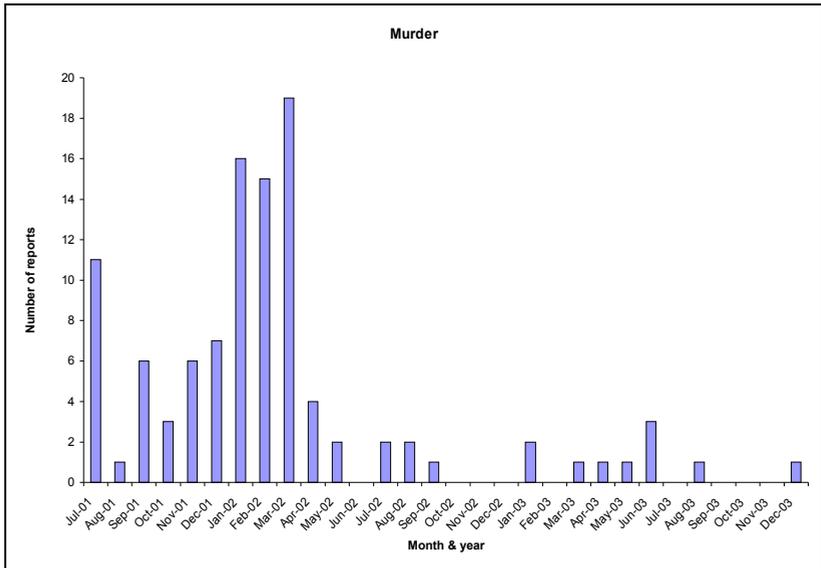
Figure 4 [see over] shows the distribution of deaths over the survey period, and, as indicated above, reaches a peak in March 2002, with a steady rise towards the Presidential Election.

Overall, the statistics on summary and extra-judicial executions show a pattern congruent with the general theory being elaborated: deaths are more related to elections than any other form of political or social event, and are not randomly distributed. There are, additionally, important cases that substantiate the thesis being advanced, and one of the most important of these concerns the extra-judicial killings of Chiminya and Mabika in Buhera during the 2000 Parliamentary

elections. The High Court, in hearing the election petition on the Buhera South election, indicated that the facts around this killing required further investigation and ordered the Office of the Attorney-General to institute an investigation into Joseph Mwale, the CIO officer alleged to have committed the murder with an accomplice. To date, the Office of the AttorneyGeneral has been unable to get the Zimbabwe Republic Police to comply with the High Court's instructions⁹.

⁹ It is noteworthy here that the Office of the Attorney-General has recently returned the docket on the ZRP investigation of Joseph Mwale back to the ZRP as incomplete [see the Zimbabwe Herald, Thursday, 25 March 2004]. This return is described as "merely procedural", but does not alter the fact that no public investigation has yet taken place, more than 3 years after the incident.

Figure 4



The data on summary executions/extra-judicial killings does not support the theory that land redistribution is a significant factor, at least based on the data provided by reports to the Human Rights Forum. Rather, the data supports the view that these violations are related to elections.

Torture

Torture has been argued to be the mainstay of the current campaign of terror, both around elections and other events. It is also said to be the rationale for deployment of the youth militia around the country. Several reports have made this point,¹⁰ but it is worth commenting that torture has not been unique to the

¹⁰ See Reeler, A.P (2003), *The role of militia groups in maintaining ZanuPF's political power*, Report prepared for ZWNEWS, March 2003; see also Peace Solidarity Trust (2003), *Youth militia in Zimbabwe, November 2001 – July 2003: "Shaping youth in a truly Zimbabwean manner"*, ZIMBABWE & SOUTH AFRICA: PEACE SOLIDARITY TRUST.

current historical period, and has been a feature in several other periods in Zimbabwe's history.¹¹

The Convention Against Torture definition provides that torture is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”

This definition is widely used by health professionals in the diagnosis of torture, and is the basis for the examination of torture victims outlined in the Istanbul Protocol, which is now the standard protocol for examination of torture victims accepted by the United Nations High Commission for Human Rights. The methods described in the Protocol have already been in use for several decades, and have been basis of much work in the Zimbabwe context.¹² This definition has been employed by Zimbabwean human rights groups over the period under survey, and the applicability of this definition has been independently verified by a number of international observer missions to Zimbabwe over the same period.¹³

¹¹ See, REDRESS. *Reparation for Torture: A Survey of Law and Practice in 30 Selected Countries (Zimbabwe Country Report)*, May 2003.

¹² See Reeler, A.P., & MUPINDA, M. (1996), *Investigation into the sequelae of Torture and Organised Violence amongst Zimbabwean War Veterans*, LEGAL FORUM, 8, 12-27; see also AMANI (1998), *Survivors of Torture and Organised Violence from the 1970 War of Liberation*, HARARE: AMANI.

¹³ Here see Amnesty International (2000), *Zimbabwe: Terror tactics in the run-up to the parliamentary elections, June 2000*, LONDON: AMNESTY INTERNATIONAL; Amnesty International (2002), *Zimbabwe: The Toll of Impunity*, LONDON: AMNESTY INTERNATIONAL; Human Rights Watch (2003), *Under a Shadow: Civil and Political Rights in Zimbabwe*, A Human Rights Watch Briefing Paper, NEW YORK: HUMAN RIGHTS WATCH; IRCT (2000) *Organised Violence and Torture in Zimbabwe*, 6th June 2000, Copenhagen and Harare, COPENHAGEN & HARARE: IRCT & AMANI TRUST; IRCT/RCT (2001), *Organised election violence in Zimbabwe 2001*, COPENHAGEN: IRCT & RCT; IRCT (2001) *Organised Violence and Torture in Zimbabwe*, 24th May 2001, Copenhagen and Harare, COPENHAGEN & HARARE: IRCT & AMANI TRUST; Physicians for Human Rights (2002), *Zimbabwe 2002. The Presidential Election: 44 days to go*. Physicians for Human Rights, Denmark, 24

Torture itself was the largest category of human rights violations reported to the members of the Forum in the reporting period. Cases of torture that occurred during the Parliamentary Election are specifically excused by the Presidential Clemency Order of October 2000. This order did not excuse murder, rape, or crimes involving corruption, but did specifically exclude from prosecution, assault, assault with intent to commit grievous bodily harm, and crimes against property. Given the number of reports indicating State complicity in torture during the period covered by the amnesty, it can only be concluded that the State has sought to avoid exposure through the amnesty. Of course the Clemency Order cannot avoid civil liability for the acts committed, but it is clear that very few of the victims will have the resources to follow such a course of action. Furthermore, given the numbers involved – one estimate put the probable number of torture victims in 2000 alone at 200,000 – the sheer scale of the problem precludes civil litigation as a sensible course of action.

Secondly, in a small number of cases there has been an attempt to demonstrate legally that torture has occurred and that the State has been involved, or, more properly, that State officials have been involved.¹⁴ The most notorious of these cases involves Chief Inspector Henry Dowa, whose involvement in torture has been documented in considerable detail in an attempt to obtain international justice.¹⁵ Dowa was seconded to the Civilian Police Unit of the United Nations Interim Administration in Kosovo (UNMIK), and an attempt was made by REDRESS, representing several of Dowa's alleged victims, to persuade UNMIK to try Dowa for the alleged acts of torture. In the final event, the United Nations declined to accept any responsibility for trying Dowa, and eventually returned Dowa to Zimbabwe, with a request that the Zimbabwe authorities undertake "a prompt and full investigation into the allegations against him, with a view to his possible prosecution". It is noteworthy that no such investigation has taken place, and indeed that Chief Inspector Dowa has been reported several times since his return as having been party to further human rights violations.

January 2002; Physicians for Human Rights (2002), Zimbabwe: Post Presidential Election – March to May 2002. "We'll make them run". Physicians for Human Rights, Denmark, 21 May 2002.

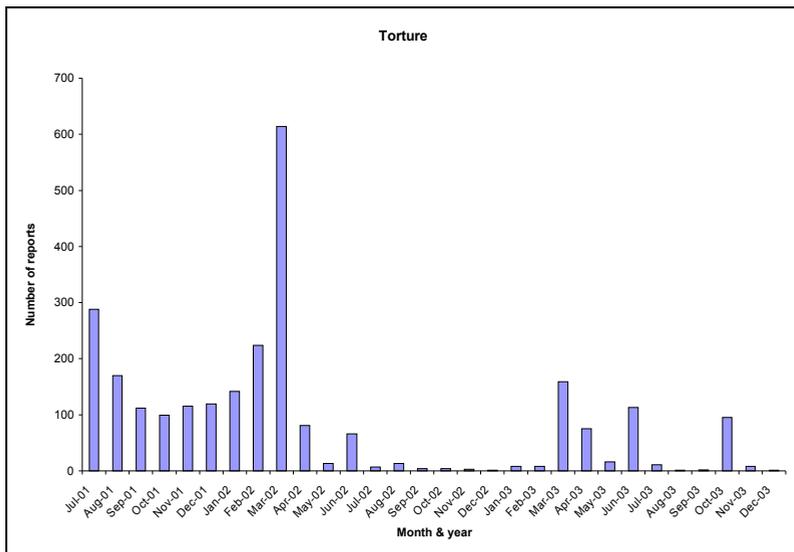
¹⁴ See here the recent judgement of Justice Mungwira in the Cain Nkala murder trial, where the Judge concluded unequivocally that the accused warned and cautioned statements had been extracted under conditions of duress or torture.

¹⁵ See REDRESS. *The Case of Henry Dowa: The United Nations and Zimbabwe under the spotlight*, January 2004.

Overall, it is also evident that much the same pattern is seen for torture as was observed in respect of summary and extra-judicial executions. There is a steady rise up to the Presidential Election in March 2002, and the number of cases observed during the election period rockets upwards. Subsequently, it can be observed from Figure 5 that small peaks are seen during the MDC stay away in March 2003, the ZCTU mass action in April 2003, the MDC “final push” in June 2003, and the various events in October 2003 [see above].

So it seems evident that there is a relationship between the prevalence of torture and summary executions/extra-judicial killings. Furthermore, the extent of reports of torture gives further support to the view that there is a systematic campaign of violence against particular groups in Zimbabwe. This view is further bolstered by all the evidence showing the involvement of State agents in the perpetration of gross human rights violations, and especially torture.

Figure 5.



Rape

As was seen in Table 2 (see above), there are very few cases of rape - only 13 in all reporting to human rights groups, and this is in contra-distinction to the many reports in the press, especially the association between rape and the youth militia. It is also well-known that rape is under-reported in general, and even more greatly under-reported in conditions of political instability. This is likely to be the case here. Forced concubinage has been the form of sexual abuse that has produced the greatest outcry in the press, and even a number of demonstrations by outraged parents, but no estimate of its prevalence can be made currently.¹⁶

There is no clearly observed pattern to the reports of rape, and hence no conclusions can be drawn from this data. Considerably more research is needed on this issue, and particularly in rural areas where the rapes are reported to be most common.¹⁷

Abductions and kidnappings

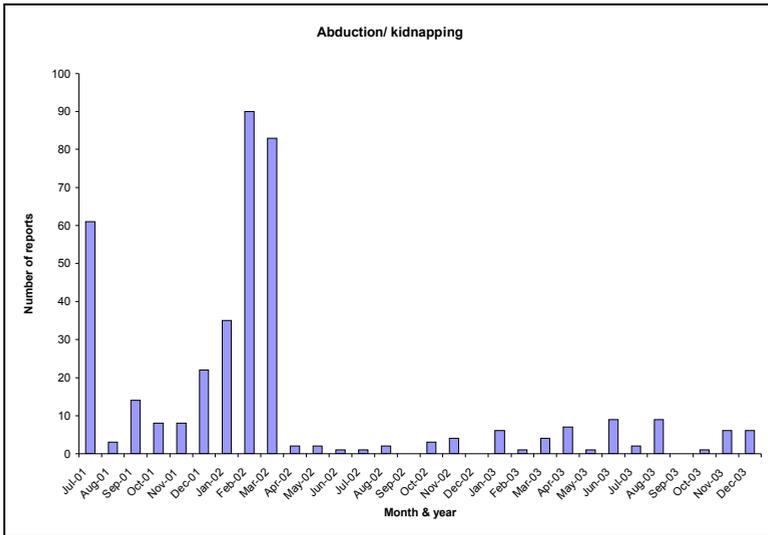
Abductions and kidnappings seem to be strongly related to murder, torture, property intimidation, and political intimidation. This reflects the explanation, given in many reports, of being taken forcibly to a militia base, or being arrested by the ZRP or CIO.

It is immediately evident from Figure 6 that the trend in abductions and kidnappings has changed over time. In much the same way as the trend seen for torture and summary executions/extra-judicial killings, with a rise leading up to and including the Presidential Election. Thereafter there is a discernible difference, with abductions and kidnappings becoming far less common. However, as shall be seen from the section below dealing with unlawful arrest and detention, there is the replacement by the use of so-called "legal" methods of detention.

¹⁶ The issue of rape and its association with the youth militia has recently been given new impetus with the publication of the BBC's Panorama programme on the youth militia.

¹⁷ For a discussion of the problems in documenting rape, see *Reeler, A.P (2003), The role of militia groups in maintaining ZanuPF's political power, Report prepared for ZWNEWS, March 2003.*

Figure 6



The data in the reports of the Human Rights Forum also covers an array of other violations of human rights. The frequency of reports of unlawful arrests and detentions rose dramatically in October 2001, March 2002 and January to April 2003. Similarly, reports of threats to persons because of their political or civic affiliations were highest in July 2001, March 2002 and March-April 2003. The most notorious reports of breaches of freedom of expression included the arrests following the various stay-aways during 2003 by the MDC, the ZCTU, and the NCA, but also the arrests and detention of ZCTU and other civic leaders in October 2003¹⁸.

¹⁸ The use of POSA in restricting the basic rights of freedom of expression and association have recently been demonstrated by the Solidarity Peace Trust in their report –*Solidarity Peace Trust (2004), “Disturbing the peace”: An overview of civilian arrests in Zimbabwe: February 2003 – January 2004, SOLIDARITY PEACE TRUST-*” – where it was shown that no single prosecution under POSA, in 1225 cases, had been successful. A more compelling demonstration of the use of legislation to harass and intimidate cannot be given.

Conclusions

While the results of this analysis are taken from the publicly reported data and hence do not allow for detailed statistical analysis, even this relatively crude data allows us to examine associations with temporal events, such as elections.

Taken as a whole, these data present a very disturbing picture, and add depth to the numerous reports of human rights violations in Zimbabwe during the period July 2001 to December 2003. The analysis clearly indicates that human rights violations in Zimbabwe over this period cannot be described as random acts of political violence between political parties, nor as clashes due to problems over land. The strongest association is between human rights violations and elections, and this confirms the views of all reports by human rights groups, both Zimbabwean and international. It also confirms the views of the various reputable observer groups: that, elections in Zimbabwe are accompanied by significant levels of violence.

There is no evidence that the violence is significantly related to either inter-party or land conflict. As was seen in Figure 3, the members of the MDC are overwhelmingly those who have been killed, and the numbers of victims who might plausibly be connected with the land invasions – game scouts, farm workers, etc – decline dramatically through 2002 and 2003. Furthermore, the pattern of deaths is more strongly associated with elections than any other factor. The same comments can be made for all the other types of human rights violations.

All types of human rights violations, apart from infringements of freedom of association and expression, show a very strong relationship to the Presidential Election in 2002. We have not presented data prior to July 2001, so it is not possible to make the same analysis for the Parliamentary Elections in 2000, but it is worth noting that similar assertions were made about the relationship between violence and that election,¹⁹ and, furthermore, these assertions were upheld in a

¹⁹ Here see, for example, *Amani (2002), Organised Violence and Torture in the June 2000 General Election in Zimbabwe*, HARARE: AMANI TRUST; *Zimbabwe Human Rights NGO Forum (2000), Who is responsible? A preliminary analysis of pre-election violence in Zimbabwe*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM; *Zimbabwe Human Rights NGO Forum (2001), Who was responsible? A consolidated analysis of pre-election violence in Zimbabwe*, HARARE: ZIMBABWE HUMAN RIGHTS NGO FORUM.

number of the election petitions held during 2001.²⁰ There are significant peaks associated with the strikes, stay-aways, and protests during 2003.

This Report raises the important question of whether the violations represent a strategic and systematic campaign. These matters have been discussed by Zimbabweans themselves, and, as both the Declaration and the Summary of the Johannesburg Symposium clearly state, Zimbabweans require the setting up of a Truth, Justice and Reconciliation Commission.²¹ The issue of justice and reparations has been discussed elsewhere by REDRESS in its follow up report on the Johannesburg Conference.²²

The most pressing conclusion of this Report is that there is a clear association between serious violations of human rights violations and elections, and especially national elections. With the announcement that parliamentary elections will be held in March 2005, addressing the problem of organised violence and torture in Zimbabwe becomes a matter of urgency.

In this context it is important to remember several of the conclusions of the Johannesburg Declaration:

- *That there be an immediate end to political violence and intimidation, an immediate disbanding of the militia, and an immediate return to non-partisan police, army and intelligence services and nonselective application of the law;*

²⁰ Here see *Amani (2002), Neither Free nor Fair: High Court decisions on the petitions on the June 2000 General Election, HARARE: AMANI TRUST*. Following the June 2000 parliamentary elections, the MDC challenged the results in 37 constituencies. Not only did clear evidence emerge of Zanu-PF violence in many of these, leading to the results in several constituencies being set aside, but the petition processes themselves lead to further violence directed at opposition witnesses who wished to testify in the petition hearings. This is further evidence of the link between elections and violence: see *Politically Motivated Violence in Zimbabwe 2000-2001*, Zimbabwe Human Rights Forum NGO Forum, Harare, August 2001, pp.37-41.

²¹ Here see *Themba Lsizwe (2004), Civil Society and Justice in Zimbabwe: Proceedings of a symposium held in Johannesburg, 11-13 August 2003, PRETORIA: THEMBA LESIZWE*.

²² See *REDRESS Trust (2004), Zimbabwe: From Impunity to Accountability. Are reparations possible for victims of gross and systematic human rights violations? LONDON: REDRESS*.

- *That there be an immediate repeal of all repressive legislation and unjust laws such as the Public Order and Security Act, the Access to Information and Protection of Privacy Act and the Broadcasting Services Act and charges brought before the repeal of these laws should be withdrawn and sentences previously imposed be annulled;*
- *That there be an immediate opening up of political space, including the immediate and complete overhaul of electoral laws and institutions to enable all elections to be held under free and fair conditions.*

REDRESS urges the international community to take the necessary preventive steps to forestall torture and other acts of political violence and intimidation as part of the election campaign.

Annex I

*Executive Summary of the Report of the
Fact-finding Mission to Zimbabwe⁵
24th to 28th June 2002*

INTRODUCTION

Following widespread reports of human rights violations in Zimbabwe, the African Commission on Human and Peoples' Rights (African Commission) at its 29th Ordinary Session held in Tripoli from 23rd April to 7th May 2001 decided to undertake a fact-finding mission to the Republic of Zimbabwe from 24th to 28th June 2002.

The stated purpose of the Mission was to gather information on the state of human rights in Zimbabwe. In order to do so, the Mission sought to meet with representatives of the Government of the Republic of Zimbabwe, law-enforcement agencies, the judiciary, political parties and with organised civil society organisations especially those engaged in human rights advocacy. The method of the fact-finding team was to listen and observe the situation in the country from various angles, listen to statements and testimony of the many actors in the country and conduct dialogue with government and other public agencies.

FINDINGS

1. The Mission observed that Zimbabwean society is highly polarised. It is a divided society with deeply entrenched positions. The land question is not in itself the cause of division. It appears that at heart is a society in search of the means for change and divided about how best to achieve change after two decades of dominance by a political party that carried the hopes and aspirations of the people of Zimbabwe through the liberation struggle into independence.
2. There is no doubt that from the perspective of the fact-finding team, the land question is critical and that Zimbabweans, sooner or later, needed to address it. The team has consistently maintained that from a human rights perspective, land reform has to be the prerogative of the government of Zimbabwe. The Mission noted that Article 14 of the African Charter states "*The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws*". It appears to the Mission that the Government of Zimbabwe has managed to bring this policy matter under the legal and constitutional system of the country. It now means that land reform and land distribution can now take place in a lawful and orderly fashion.
3. There was enough evidence placed before the Mission to suggest that, at the very least during the period under review, human rights violations occurred in Zimbabwe. The Mission was presented with testimony from witnesses who were victims of political violence and others victims of torture while in police custody. There was evidence that the system of arbitrary arrests took place. Especially alarming was the arrest of the President of the Law Society of Zimbabwe and journalists including Peta Thorncroft, Geoffrey Nyarota, among many others, the arrests and torture of opposition members of parliament and human rights lawyers like Gabriel Shumba.
4. There were allegations that the human rights violations that occurred were in many instances at the hands of ZANU PF party activists. The Mission is however not able to find definitively that this was part of an orchestrated policy of the government of the Republic of Zimbabwe. There were enough assurances from the Head of State, Cabinet Ministers and the leadership of the ruling party that there has never been any plan or policy of violence, disruption or any form of human rights violations, orchestrated by the State. There was also an acknowledgement that excesses did occur.

5. The Mission is prepared and able to rule, that the Government cannot wash its hands from responsibility for all these happenings. It is evident that a highly charged atmosphere has been prevailing, many land activists undertook their illegal actions in the expectation that government was understanding and that police would not act against them – many of them, the War Veterans, purported to act as party veterans and activists. Some of the political leaders denounced the opposition activists and expressed understanding for some of the actions of ZANU (PF) loyalists. Government did not act soon enough and firmly enough against those guilty of gross criminal acts. By its statements and political rhetoric, and by its failure at critical moments to uphold the rule of law, the government failed to chart a path that signalled a commitment to the rule of law.
6. There has been a flurry of new legislation and the revival of the old laws used under the Smith Rhodesian regime to control, manipulate public opinion and that limited civil liberties. Among these, the Mission's attention was drawn to the Public Order and Security Act, 2002 and the Access to Information and Protection of Privacy Act, 2002. These have been used to require registration of journalists and for prosecution of journalists for publishing "false information". All these, of course, would have a "chilling effect" on freedom of expression and introduce a cloud of fear in media circles. The Private Voluntary Organisations Act has been revived to legislate for the registration of NGOs and for the disclosure of their activities and funding sources.
7. There is no institution in Zimbabwe, except the Office of the Attorney General, entrusted with the responsibility of oversight over unlawful actions of the police, or to receive complaints against the police. The Office of the Ombudsman is an independent institution whose mandate was recently extended to include human rights protection and promotion. It was evident to the Mission that the office was inadequately provided for such a task and that the prevailing mindset especially of the Ombudsman herself was not one which engendered the confidence of the public. The Office was only about the time we visited, publishing an annual report five years after it was due. The Ombudsman claimed that her office had not received any reports of human rights violations. That did not surprise the Mission seeing that in her press statement following our visit, and without undertaking any investigations into allegations levelled against them, the Ombudsman was defensive of allegations against the youth militia. If the Office of the Ombudsman is to serve effectively as an office that carries the trust of the public, it will have to be independent and the Ombudsman will have to earn the trust of the public. Its mandate will have to be extended, its independence guaranteed and accountability structures clarified.
8. The Mission was privileged to meet with the Chief Justice and the President of the High Court. The Mission Team also met with the Attorney General and Senior Officers in his office. The Mission was struck by the observation that the judiciary had been tainted and even under the new dispensation bears the distrust that comes from the prevailing political conditions. The Mission was pleased to note that the Chief Justice was conscious of the responsibility to rebuild public trust. In that regard, he advised that a code of conduct for the judiciary was under consideration. The Office of the Attorney General has an important role to play in the defence and protection of human rights. In order to discharge that task effectively, the Office of the Attorney General must be able to enforce its orders and that the orders of the courts must be obeyed by the police and ultimately that the professional judgement of the Attorney General must be respected.

9. The Mission noted with appreciation the dynamic and diverse civil society formations in Zimbabwe. Civil society is very engaged in the developmental issues in society and enjoys a critical relationship with government. The Mission sincerely believes that civil society is essential for the upholding of a responsible society and for holding government accountable. A healthy though critical relationship between government and civil society is essential for good governance and democracy.

RECOMMENDATIONS

In the light of the above findings, the African Commission offers the following recommendations -:

On National Dialogue and Reconciliation

Further to the observations about the breakdown in trust between government and some civil society organisations especially those engaged in human rights advocacy, and noting the fact that Zimbabwe is a divided society, and noting further, however, that there is insignificant fundamental policy difference in relation to issues like land and national identity, Zimbabwe needs assistance to withdraw from the precipice. The country is in need of mediators and reconcilers who are dedicated to promoting dialogue and better understanding. Religious organisations are best placed to serve this function and the media needs to be freed from the shackles of control to voice opinions and reflect societal beliefs freely.

Creating an Environment Conducive to Democracy and Human Rights

The African Commission believes that as a mark of goodwill, government should abide by the judgements of the Supreme Court and repeal sections of the Access to Information Act calculated to freeze the free expression of public opinion. The Public Order Act must also be reviewed. Legislation that inhibits public participation by NGOs in public education, human rights counselling must be reviewed. The Private Voluntary Organisations Act should be repealed.

Independent National Institutions

Government is urged to establish independent and credible national institutions that monitor and prevent human rights violations, corruptions and maladministration. The Office of the Ombudsman should be reviewed and legislation which accords it the powers envisaged by the Paris Principles adopted. An independent office to receive and investigate complaints against the police should be considered unless the Ombudsman is given additional powers to investigate complaints against the police. Also important is an Independent Electoral Commission. Suspicions are rife that the Electoral Supervisory Commission has been severely compromised. Legislation granting it greater autonomy would add to its prestige and generate public confidence.

The Independence of the Judiciary

The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure; appointments to the bench could be done in such a way that they could be insulated from the stigma of political patronage. Security at Magistrates' and High Court should ensure the protection of presiding officers. The independence of the judiciary should be assured in practice and judicial orders must be obeyed. Government and the media have a responsibility to ensure the high regard and esteem due to members of the judiciary by refraining from political

attacks or the use of inciting language against judges and magistrates. A Code of Conduct for Judges could be adopted and administered by the judges themselves. The African Commission commends to the Government of the Republic of Zimbabwe for serious consideration and application of the *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa* adopted by the African Commission at its 33rd Ordinary Session in Niamey, Niger in May 2003.

A Professional Police Service

Every effort must be made to avoid any further politicisation of the police service. The police service must attract all Zimbabweans from whatever political persuasion or none to give service to the country with pride. The police should never be at the service of any political party but must at all times seek to abide by the values of the Constitution and enforce the law without any fear or favour. Recruitment to the service, conditions of service and in-service training must ensure the highest standards of professionalism in the service. Equally, there should be an independent mechanism for receiving complaints about police conduct. Activities of units within the ZRP like the law and order unit which seems to operate under political instructions and without accountability to the ZRP command structures should be disbanded. There were also reports that elements of the CIO were engaged in activities contrary to international practice of intelligence organisations. These should be brought under control. The activities of the youth militia trained in the youth camps have been brought to our attention. Reports suggest that these youth serve as party militia engaged in political violence. The African Commission proposes that these youth camps be closed down and training centres be established under the ordinary education and employment system of the country. The African Commission commends for study and implementation the *Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa* (otherwise known as The Robben Island Guidelines) adopted by the African Commission at its 32nd Ordinary Session held in Banjul, The Gambia in October 2002.

The Media

A robust and critical media is essential for democracy. The government has expressed outrage at some unethical practices by journalists, and the Access to Information Act was passed in order to deal with some of these practices. The Media and Ethics Commission that has been established could do a great deal to advance journalistic practices, and assist with the professionalisation of media practitioners. The Media and Ethics Commission suffers from the mistrust on the part of those with whom it is intended to work. The Zimbabwe Union of Journalists could have a consultative status in the Media and Ethics Commission. Efforts should be made to create a climate conducive to freedom of expression in Zimbabwe. The POSA and Access to Information Act should be amended to meet international standards for freedom of expression. Any legislation that requires registration of journalists, or any mechanism that regulates access to broadcast media by an authority that is not independent and accountable to the public, creates a system of control and political patronage. The African Commission commends the consideration and application of the *Declaration on the Principles on Freedom of Expression in Africa* adopted by the 32nd Ordinary Session of the African Commission in Banjul, October 2002.

Reporting Obligations to the African Commission

The African Commission notes that the Republic of Zimbabwe now has three overdue reports in order to fulfil its obligations in terms of Article 62 of the African Charter. Article 1 of the African Charter states that State Parties to the Charter shall “recognise the rights, duties and freedoms enshrined in the Charter and *shall undertake to adopt*

legislative or other measures to give effect to them.” Article 62 of the African Charter provides that each State Party shall undertake to submit every two years “a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.” The African Commission therefore reminds the Government of the Republic of Zimbabwe of this obligation and urges the government to take urgent steps to meet its reporting obligations. More pertinently, the African Commission hereby invites the Government of the Republic of Zimbabwe to report on the extent to which these recommendations have been considered and implemented.