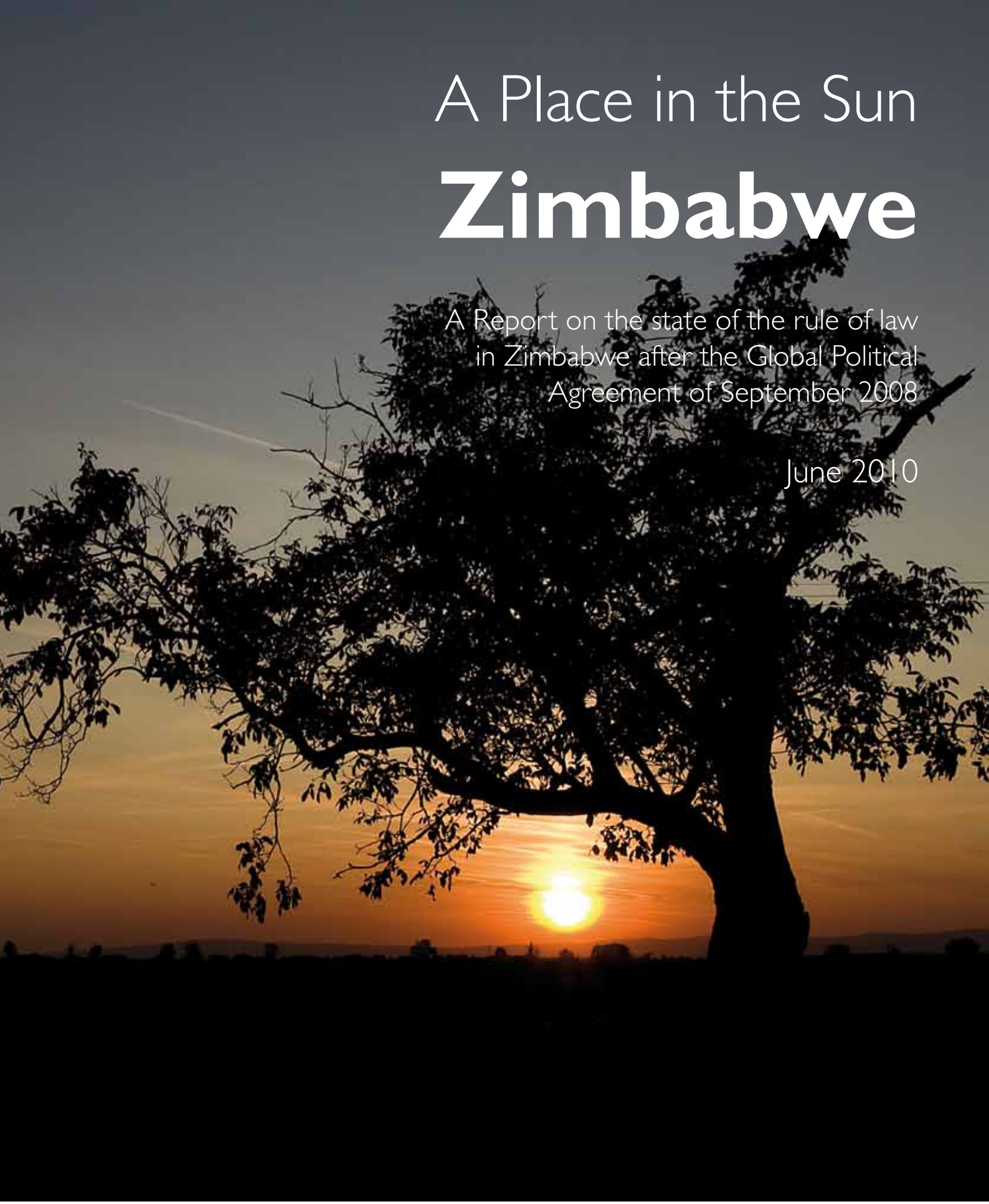

A Place in the Sun

Zimbabwe

A Report on the state of the rule of law in Zimbabwe after the Global Political Agreement of September 2008

June 2010

avocats sans frontières
advocaten zonder grenzen

THE GENERAL COUNCIL OF THE BAR
JUSTICE FOR ALL

BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

CLA
COMMONWEALTH LAWYERS ASSOCIATION

"At its end, STERP should have delivered more than the basic rehabilitation of our economy. ***STERP should lay the foundation of a basic African State that will find its place in the sun****, play its role in SADC, the African Union as well as the rest of the world."*

Article 11, Short Term Emergency Recovery Programme (STERP)
Zimbabwe Government, March 2009

Table of Contents

Acronyms

ACR	African Consolidated Resources plc
ASF	Avocats Sans Frontières
BHRC	Bar Human Rights Committee of England and Wales
CJ	Chief Justice
CLA	Commonwealth Lawyers Association
GPA	Global Political Agreement
IBA	International Bar Association
ICAB	International Council of Advocates and Barristers
ICCPR	International Covenant on Civil and Political Rights
J	Justice
JA	Justice of Appeal
MDC	Movement for Democratic Change
MDC-M	Movement for Democratic Change – Mutambara faction
MDC-T	Movement for Democratic Change – Tsvangirai faction
MP	Member of Parliament
NANGO	National Association of Non-Governmental Organisations
SADC	Southern African Development Community
STERP	Short Term Emergency Recovery Programme
UDI	Unilateral Declaration of Independence
UN	United Nations
WOZA	Women of Zimbabwe Arise
ZANU-PF	Zimbabwe African National Union-Popular Front
ZLHR	Zimbabwe Lawyers for Human Rights

Executive summary

1. The aim of the mission was to investigate and report back on the state of the rule of law in Zimbabwe since the signing of the Global Political Agreement on 15 September 2008.

2. The mission received a number of reports from persons it interviewed in Zimbabwe. The overwhelming weight of the reports was to the effect that rule of law issues had not improved in the course of the year since the signing of the Global Political Agreement and many interviewees expressed the view that the position had grown worse.

3. Incidents of extra-judicial killings, kidnapping, torture and other serious human rights abuses have been pervasive in Zimbabwe for years but assumed epidemic proportions during the Presidential run-off elections of June 2008. Such human rights abuses continue to occur. These abuses remain un-investigated by the authorities.

4. The culture of impunity on the part of the police and the state security forces (the army and central intelligence organisation), noted with dismay on many previous occasions over the course of the past ten years by many independent bodies, remains unchanged. In a negative development, the army even appears to have extended its operations to unlawful diamond extraction and trading in the diamond fields of Marange. This culture of impunity has not been addressed by the present government.

5. By far the majority of the senior judiciary remains fundamentally compromised by state patronage, grants of land and other gifts given to them by the former government. The present government has not sought to claw-back such inducements from the senior judiciary nor has there been any policy initiative directed at re-establishing the integrity of the senior judiciary in the eyes of the public.

6. The magistracy is under pressure as it has been for years and magistrates are subject to threats, intimidation, arrest and prosecution when they displease the authorities. In one notorious case referred to in the body of this report a magistrate in Eastern Zimbabwe was himself prosecuted by the authorities as a result of having granted bail to the Deputy Minister designate for Agriculture, Mr Roy Bennett. One interviewee described the magistracy as the unsung heroes of recent years.

7. The Law Society of Zimbabwe endeavours to represent its membership against a background of intimidation and harassment of, in particular, human rights lawyers. It reflects greatly to the credit of the Law Society that in the absence of government action in relation to the compromising of the senior judiciary, the Law Society has taken the initiative in seeking to open a dialogue with the judiciary. The Law Society stands out as an organisation prepared vocally and committed actively to oppose measures which are anathema to the rule of law and to support its membership in the discharge of their duties as lawyers.

8. Accounts of harassment and intimidation of lawyers are referred to in the body of the report. Two examples provide illustrations of what confronts the profession in Zimbabwe today. Whilst the mission was present in Zimbabwe a former President of the Law Society was arrested apparently for nothing more than having represented his client's legitimate interests. Lawyers in Manicaland, Eastern Zimbabwe, have been threatened with violence and, in one case, with lethal force by the police and the military in the course of seeking to discharge their professional obligations to their clients.

9. The physical infrastructure for the teaching of law is crumbling: the mission saw for itself the dilapidated state of the Law Faculty of the University of Zimbabwe. Glimpses of hope for the future of the teaching of law in Zimbabwe are to be found in the dedication of its staff. However, the mission was deeply disturbed by accounts it received that the Central Intelligence Organisation had infiltrated the student body in the Law Faculty with the result that the content of lectures and open debate in seminars was circumscribed by fear of the consequences of candour.

10. Access to justice is virtually non-existent. The legal aid system is so starved of funds that the Legal Aid Directorate is itself on the verge of collapse. Although small numbers of cases are taken on by certain independent organisations such as the Legal Resources Foundation and Zimbabwe Lawyers for Human Rights who need and deserve more financial support than they receive at present, the picture as regards access to justice is grim.

11. The mission concludes that there has been no improvement and quite possibly a further decline in respect for the rule of law since the signing of the Global Political Agreement (recently a former President of the Law Society of Zimbabwe, Beatrice Mtetwa, was quoted as saying *"it has never been as bad as it is now"*: *The Times*, 4 March 2010) and that significant concern remains in relation to all aspects of the rule of law in Zimbabwe.

12. Notwithstanding the prolonged and systematic assault on the rule of law by the authorities over the course of the past decade or more, it is a testament to the commitment and bravery of the Law Society of Zimbabwe, Zimbabwean lawyers, an honourable minority in the serving judiciary, certain retired judges, groups representing civil society and human rights defenders that Zimbabwe has retained the intellectual infrastructure in which respect for the rule of law will flourish in more propitious political conditions.

13. The mission considers that there are strong grounds for SADC in particular and the international community in general to increase targeted support for institutions and bodies concerned with the rule of law in Zimbabwe by urgently remitting financial and institutional aid to such institutions and bodies, for example, the Law Society of Zimbabwe, the Law Faculty of the University of Zimbabwe in Harare and organisations providing legal aid and other services to facilitate access to justice for the population.

(A) Introduction

1. This is a report on the state of the rule of law in Zimbabwe following the Global Political Agreement ("GPA") dated 15 September 2008 by a mission the membership of which comprised the Chairman of the General Council of the Bar of England and Wales, Desmond Browne QC, the President of the Commonwealth Lawyers Association, Mohamed Husain, a representative of *Avocats Sans Frontière*s, Lara Deramaix, a representative of the Belgian and Flemish Bars, Philippe De Jaegere, the Vice-President of *Avocats Sans Frontière*s, Netherlands, Hans Gaasbeek, the Chairman of the Bar Human Rights Committee, Mark Muller QC, the Project Coordinator of the Bar Human Rights Committee, Jacqueline Macalesher, and Ijeoma Omambala and Andrew Moran of the English Bar.

2. Members of the mission were present in Zimbabwe between Saturday 24 October and Wednesday 4 November 2009. The visit of the mission coincided with the disengagement by the Movement for Democratic Change (Tsvangirai faction) ("MDC-T") from the Transitional Government. It has been widely reported and was confirmed to the mission whilst it was in Zimbabwe that this disengagement occurred for a number of reasons amongst which were: the appointment by the President, Robert Mugabe, of the Governor of the Reserve Bank of Zimbabwe, Gideon Gono, and the Attorney-General, Johannes Tomana, without reference to either of the Movement for Democratic Change factions and the prosecution of a former Movement for Democratic Change (Tsvangirai faction) senator, Roy Bennett. The appointment of Johannes Tomana and his conduct as Attorney-General and the prosecution of Roy Bennett both raise serious rule of law issues and are discussed below.

3. The visit of the mission also coincided with the expulsion from Zimbabwe of the United Nations Special Rapporteur on Torture, Dr Manfred Nowak. Dr Nowak had originally been invited to Zimbabwe in February 2009 by the Minister for Justice and Legal Affairs, the right honourable Patrick Chinamasa, and that invitation had been subsequently reissued by the Prime Minister, the right honourable Morgan Tsvangirai. Dr Nowak landed at Harare airport on Wednesday 28 October to undertake an eight day visit to investigate what he described as *"credible and serious allegations of human rights violations"*. Upon arrival Dr Nowak was detained by immigration officials, kept under guard at the airport overnight and deported from Zimbabwe the next day. Dr Nowak stated *"This is totally unacceptable conduct of a government – of a member state of the United Nations – vis-a-vis a United Nations independent expert who is mandated by the human rights council to carry out fact-finding missions on the invitation of the government"*.[1]

4. Whilst in Zimbabwe, the members of the mission met with the Prime Minister, the Minister of Education, Sport, Arts and Culture, the right honourable David Coltart, the Minister for Constitutional and Parliamentary Affairs, the right honourable Eric Matinenga, former senior judges, senior civil servants, the President of the Law Society of Zimbabwe, Josephat Tshuma, representatives of the Law Faculty of the University of Zimbabwe, representatives of the Legal Resources Foundation, representatives of Zimbabwe Lawyers for Human Rights, representatives of the Crisis Coalition, representatives of the National Constitutional Assembly, members of the legal profession in Harare, Mutare and Bulawayo, representatives of the Delegation of the European Union to Zimbabwe, the United Kingdom Ambassador to

1 *New York Times*, 29 October 2009 (http://www.nytimes.com/2009/10/30/world/africa/30zimbabwe.html).

Zimbabwe, the Netherlands Ambassador to Zimbabwe, the Director of the British Council, journalists, doctors and various NGOs referred to below.

5. Some weeks prior to the departure of the mission for Zimbabwe letters requesting a meeting were sent to the Minister for Justice and Legal Affairs, Mr Chinamasa (ZANU-PF), the Attorney-General, Johannes Tomana, the Chief Justice of the Supreme Court, the honourable Justice Geoffrey Chidyausiku, the Judge President of the High Court, the honourable Judge Rita Makarau, the Minister for Home Affairs, the right honourable Kembo C.D. Mohadi, the Commissioner General of Police, Augustine Chihuri and the Commissioner of Prisons, retired Brigadier Paradzai Zimondi. No replies were received to any of these letters. Whilst in Zimbabwe the mission sought once again to make contact with these individuals as well as with their offices, but without success.

6. The aim of the mission was to seek to reach informed conclusions on the state of the rule of law in Zimbabwe under the Transitional Government and to assess whether there had been progress in the restoration of the rule of law such as would increase the prospect of Zimbabwe being able in the foreseeable future (in the words of Article 11 of the Transitional Government's *Short Term Emergency Recovery Programme* ("STERP")) to take *"its place in the sun"*.

7. Doubtless the Transitional Government has made real progress in certain areas, such as reviving Zimbabwe's education system. However, the Transitional Government appears to have no properly articulated or coherent policy for addressing seriously the rule of law issues referred to in this report. In the opinion of the mission it is self-evident that dealing with rule of law issues is of central importance to the revival of Zimbabwe's fortunes and to its ambition to take *"its place in the sun"*. It is widely recognised that respect for human rights is a good in itself (Zimbabwe's own Constitution bears witness to this). But even in purely economic terms the proper maintenance of the rule of law is not an optional extra for a modern society. No rational investor would consider investing substantial capital in a country where, for example, lawful performance of a contract depends not on what the parties agreed but on political interest in the transaction or where court orders are routinely disregarded by those who consider themselves politically immune from obedience to them. In such a climate businessmen cannot receive reliable advice as to their rights and obligations. Such a lack of certainty is anathema to the business community. As the former Chief Justice of Zimbabwe, the honourable Justice Anthony Gubbay, stated recently:[2]

> *"Zimbabwe's natural and human resources were once the envy of Africa; and they still could be. But no one will invest in a country until they are confident in the legal environment. It is simply basic economics. Capital is a coward, as the saying goes. Foreign investors, not to mention Zimbabwe businessmen, want to be assured that the rule of law will be observed and adhered to, and that their investments will be safe, before they put money into the economy. What this requires is positive political will to heal past wounds. It requires political leaders who place the interest of the people of Zimbabwe ahead of their own. Most of all it requires that all Zimbabweans stand up for their rights; and take responsibility for, and play a role in, the democratic changes and fundamental liberties they want to be able to enjoy."*

8. The mission would urge the Transitional Government to place the rule of law issues identified in this report at the very heart of its policy-making and legislative programme.

2 *The Progressive Erosion of the Rule of Law in Independent Zimbabwe*, The honourable Justice Anthony Gubbay, Third International Rule of Law Lecture: Bar of England and Wales, 9 December 2009.

(B) The justice system in Zimbabwe[3]

(1) The Zimbabwe Constitution

9. Talks held between nationalist groups and the then Zimbabwe-Rhodesia government in London between September and December 1979 culminated in the Lancaster House Agreement which provided for a cease-fire, new elections, a transitional period under restored British rule and a new Constitution implementing majority rule and protecting the rights of minorities.[4] The Constitution negotiated and agreed in 1979 between the various parties to the Lancaster House agreement has been subject to various constitutional amendments enacted since independence (nineteen in total) the cumulative effect of which has been, *inter alia*, the creation of a powerful, centralising executive presidency.

10. The political settlement reached in September 2008 between the Movement for Democratic Change (Tsvangirai and Mutambara factions; "MDC-T" and "MDC-M" as appropriate) and the then ruling Zimbabwe African National Union-Popular Front ("ZANU-PF") envisages the drafting of a new Constitution to replace the independence-era present Constitution.[5] As at the date of this report, some progress had been made towards achieving agreed constitutional change,[6] although it should be noted that reports in January 2010 indicated that the constitutional talks had stalled.[7]

11. The present Constitution is divided into twelve chapters. Chapter 3 contains the Declaration of Rights; Chapter 4 makes provision for the Executive; Chapter 5 sets out matters relevant to Parliament; Chapter 7 deals with the Public Service; Chapter 8 concerns the judiciary; and Chapters 9-10A set out the provisions relating to the Police Force, Defence Forces and the Prison Service.

3 The justice system in Zimbabwe is dealt with in greater detail in the following reports: *The State of Justice in Zimbabwe*, December 2004, a report to the International Council of Advocate and Barristers by five Common Law Bars into the state of Justice in Zimbabwe; *The Law in Zimbabwe*, February 2007, Otto Saki & Tatenda Chiware (http://www.nyulawglobal.org/globalex/zimbabwe.htm); *"Our Hands Are Tied", Erosion of the Rule of Law in Zimbabwe*, November 2008, Human Rights Watch.

4 U.K. S.I. 1979/1600.

5 Article VI to the *Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the two Movement of Democratic Change (MDC) Formations*, on resolving the challenges facing Zimbabwe, 15 September 2008, clause 6.1. A draft Constitution which had previously been agreed by the signatories of the Agreement at Kariba on 30 September 2007 (known as 'the Kariba draft') was annexed to the Agreement as Annexure B. The timetable for the formulation and drafting of a new Constitution is set by reference to the formation of the new Transitional Government. This government was eventually formed in mid-February 2009. The timetable for the new Constitution is as follows: (1) mid-April 2009: Select Committee of Parliament set up (clause 6.1(c)(i) of the Agreement); (2) mid-July: All Stakeholders Conference convened (clause 6.1(c)(ii)); (3) mid-November: public consultation completed (clause 6.1(c)(iii)); (4) mid-February 2010: second All Stakeholders Conference convened to consider the draft Constitution (clause 6.1(c)(iv)); (5) mid-March: draft Constitution and accompanying Report tables before Parliament (clause 6.1(c)(v)); (6) mid-April: Parliamentary debate on the draft Constitution and accompanying Report concluded (clause 6.1(c)(vi)); (7) mid-April to mid-July: the draft Constitution is to be gazetted (clause 6.1(c)(vii)); (8) mid-July: referendum on the draft Constitution (clause 6.1(c)(viii)); and (9) mid-October: (in the event the draft Constitution is approved by the referendum) introduction of the draft Constitution into Parliament (clause 6.1(c)(x)).

6 There is a lively debate within Zimbabwe as to the process by which the proposed Constitutional settlement should be reached and the nature of the proposed reforms. (For example, see the National Constitutional Assembly paper dated 15 April 2009, The Shortcomings of the Kariba Draft Constitution.)

7 BBC News report dated 21 January 2010, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/8473394.stm.

12. Section 3 of the 1979 Constitution provides that the Constitution is *"the supreme law of Zimbabwe and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void"*.

13. Chapter 3, Declaration of Rights, provides for, *inter alia*: the protection of the right to life at section 12; the protection of the right to personal liberty at section 13; the protection from inhuman treatment at section 15; the protection from arbitrary search or entry at section 17; the protection of freedom of expression at section 20; the protection of freedom of assembly at section 21; the protection from discrimination on the grounds of race, tribe, place of origin, political opinions, colour, creed or gender at section 23. Section 18 provides that *"every person is entitled to the protection of the law"* and section 24 provides that a person who alleges that the Declaration of Rights has been, is being or is likely to be contravened in relation to him then that person may apply to the Supreme Court for redress.

(2) International law obligations

14. In addition to the rights enshrined in the Declaration of Rights, Zimbabwe is subject to various international law obligations.

15. The UN *International Covenant on Civil and Political Rights* ("ICCPR"; the ICCPR entered into force on 23 March 1976) was acceded to by the Government of Zimbabwe on 13 August 1991. The ICCPR makes provision for, *inter alia*: the right to life at article 6; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment at article 7; the right to liberty and security of the person at article 9; the right to a fair and public hearing by a competent, independent and impartial tribunal established by law at article 14; the right to privacy at article 17; the right to freedom of expression at article 19; the right to peaceful assembly and association at articles 21 and 22; the right to participate in the conduct of public affairs, to vote in genuine periodic election held by secret ballot at article 25; and to be free from discrimination at article 26.

16. The *African (Banjul) Charter on Human and Peoples' Rights* ("the Banjul Charter"; the Banjul Charter entered into force on 21 October 1986) was acceded to by the Government of Zimbabwe on 30 May 1986. The Banjul Charter contains provisions for the protection of human rights similar to those found in the ICCPR. Further, article 26 provides expressly that *"State parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter"*.

17. The *Treaty of the Southern African Development Community* ("the SADC treaty"; the SADC treaty was signed on 17 August 1992 and entered into force the following year). The SADC treaty provides (at Article 6): "*SADC and Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture, ill health, disability, or such other ground as may be determined by the Summit"*. The treaty further provides (at Article 9) for the establishment of the SADC Tribunal. Article 16 provides: *"The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol, which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty, adopted by the Summit"*.

(3) Other international standards

18. Other standards, whilst not formally binding on Zimbabwe by way of treaty obligation, are nonetheless relevant as setting internationally accepted standards by which the conduct of States may be judged.

19. *The Harare Commonwealth Declaration, 1991*, was signed by the Commonwealth Heads of Government meeting in Zimbabwe on 20 October 1991. The *Declaration* stated and affirmed, *inter alia*, the commitment of the Heads of Government to: *"democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary, just and honest government"*. (Although Zimbabwe withdrew from the Commonwealth in 2003, the standards referred to in these paragraphs were adopted at a time when Zimbabwe was a member of the Commonwealth and a subscriber to these standards.)

20. The principles set out in the *Harare Declaration* were affirmed by the Commonwealth Heads of Government meeting at Millbrook, New Zealand, in November 1995 by the *Millbrook Commonwealth Action Programme on the Harare Declaration 1995*.

21. The *Latimer House Guidelines for the Commonwealth*, 19 June 1998, are guidelines for the further implementation of the *Harare Declaration* and the *Millbrook Commonwealth Action Programme* prepared by the representatives of four Commonwealth Associations (the Commonwealth Parliamentary Association, the Commonwealth Magistrates' and Judges' Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association) and which were endorsed by the Commonwealth Heads of Government at a meeting in Abuja, Nigeria, in December 2003 (paragraph 8 of the Abuja Communiqué). In relation to the judiciary, the *Commonwealth (Latimer House) Principles* state (at Chapter IV), *inter alia*: *"An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice"* and that *"Interaction, if any, between the executive and the judiciary should not compromise judicial independence"*.

22. Standards of conduct by States towards the judiciary and lawyers have also been set down by the United Nations. The 1985 UN *Basic Principles on the Independence of the Judiciary* (intended as an elaboration of Article 14 of the ICCPR) provide, *inter alia* (at Articles 1 and 4): *"The independence of the judiciary shall be guaranteed by the State ... it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary"* and *"There shall not be any inappropriate or unwarranted interference with the judicial process ..."*. The 1990 UN *Basic Principles on the Role of Lawyers* guarantee the independent exercise of their profession by requiring States to take various positive steps, *inter alia*: to *"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; (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics"*. The 1998 UN *Declaration on Human Rights Defenders* guarantees the right of individuals and associations of individuals, *inter alia*, to participate in peaceful activities against violations of human rights and fundamental freedoms and obliges states to take all necessary measures to ensure the protection of individuals and associations of individuals in the exercise of their rights under the *Declaration*.

(4) The Court system in Zimbabwe

23. The Court system in Zimbabwe comprises principally:[8] the Supreme Court; the High Court; and the Magistrates' Courts. In relation to all of these Courts, the Constitution provides (at section 79) that the judicial authority of Zimbabwe shall vest in them and that (at Section 79B): *"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"*.

24. Senior Judges (Supreme Court and High Court) are appointed by a Judicial Service Commission for which provision is made in sections 90 and 91 of the Constitution. Magistrates are not appointed by the Judicial Service Commission but are instead classified as civil servants and follow a separate dedicated career path to the judiciary. The membership of the Judicial Service Commission is comprised of: the Chief Justice or acting Chief Justice or most senior judge of the Supreme Court (section 90(1)(a)); the Chairman of the Public Service Commission (section 90(1)(b)); the Attorney-General (section 90(1)(c)); and not less than two or more than three other members appointed by the President (section 90(1)(d)) subject to various conditions. Both the Chairman of the Public Service Commission and the Attorney-General are appointed by the President (sections 74(1) and 76(2) of the Constitution respectively, in the case of the Attorney-General, after consultation with the Judicial Service Commission).

25. Of the possible six members of the Judicial Service Commission, three are directly appointed to the Commission by the President, one is directly appointed by the President to an office by virtue of which he is a member of the Commission (the Chairman of the Public Service Commission) and two are appointed to the Commission by virtue of being holders of offices to which they are appointed by the President after consultation with the Judicial Service Commission (the Chief Justice and the Attorney-General). There is therefore no representative on the Judicial Service Commission who is independent of the direct or indirect influence of the Executive.

26. The Supreme Court was established by section 80(1) of the Constitution which provides for the creation of a Supreme Court *"which shall be the superior court of record and the final court of appeal for Zimbabwe"*. Pursuant to subsections (2) and (3) the membership of the Supreme Court comprises the Chief Justice (currently Chidyausiku CJ), *"such other judges of the Supreme Court, being not less than two, as the President may deem necessary"* and any additional judge or judges appointed for a limited period by the Chief Justice (such judges to be serving High Court or former Supreme or High Court judges). At present there are five Supreme Court Justices.

27. Section 81(1) of the Constitution provides for the creation of a High Court as a superior court of record. Subsections (2) and (3) provide that the membership of the High Court shall comprise: the Chief Justice; the Judge President of the High Court (currently Makarau J); *"such other judges of the High Court as may from time to time be appointed"*; and any Supreme Court judge appointed as an acting High Court judge by the Chief Justice after consultation with the President. At present there are eighteen High Court Judges.

28. There are approximately 300 magistrates in Zimbabwe. The magistracy is a professional office with magistrates qualifying for the office by obtaining a law degree from the University

8 For a more detailed review of the Court system, see: *The State of Justice in Zimbabwe*, December 2004; and *The Law in Zimbabwe*, February 2007, Otto Saki & Tatenda Chiware, *op. cit.*.

of Zimbabwe or by graduating from the Judicial College of Zimbabwe. After qualification magistrates must apply to the Public Service Commission for employment. The Public Service Commission was created by section 73 and 74 of the Constitution which provide (under Chapter VII, *"The Public Service"*), *inter alia*, that the Public Service Commission *"shall consist of a chairman and not more than seven other members appointed, subject to the provisions of subsection (2), by the President"*.

29. Upon appointment by the Public Service Commission magistrates are civil servants and are assigned to the Ministry of Justice. Magistrates lack most of the basic protections afforded by the Constitution to members of the Supreme Court and the High Court including, arguably, that of independence of the judiciary contained in section 79B of the Constitution. There are no protections for tenure or against removal. The inapplicability of section 79B arises because magistrates are appointed pursuant to powers conferred on the Public Service Commission under Chapter VII of the Constitution (*"The Public Service"*) and not pursuant to the provisions under Chapter VIII (*"The Judiciary"*), it being arguable that the provisions of the latter do not apply to appointments made under the former. As civil servants, magistrates' conditions of service are fixed by the Public Service Commission and they serve, like any civil servant, *"at the pleasure"* of the Public Service Commission.[9]

30. Magistrates' Courts are the courts of first instance in criminal matters and, therefore, in most cases occupy the important position of deciding bail and remand of accused persons (subject to a right of appeal to the High Court). The importance of this position is highlighted when considering the large number of cases in which charges are not preferred or are eventually withdrawn.

(5) The office of the Attorney-General and public prosecutors

31. The office of the Attorney-General is created by section 76 of the Constitution which provides, *inter alia*, that the Attorney-General is appointed by the President after consultation with the Judicial Service Commission (section 76(2)). The Attorney-General's powers are set out in section 76 and include: (at subsection (4)) power to institute and undertake any criminal proceedings, to take over and continue criminal proceedings; and (at subsection 4a)) power to require the Commissioner of Police to investigate and report to him on any matter which, in the Attorney-General's opinion, relates to any criminal offence *"and the Commissioner of Police shall comply with that requirement"*.

32. The present Justice Minister, Patrick Chinamasa, occupied the office of Attorney-General until 2000 when he was appointed Justice Minister and replaced as Attorney-General by Andrew Chigovera who then retired aged 50 in April 2003. Mr Chigovera's deputy, Bharat Patel, was appointed acting Attorney-General and he was replaced by Sobuza Gula-Ndebele. Mr Gula-Ndebele was replaced as Attorney-General by acting Attorney-General Bharat Patel J (as he was by then) who was in turn replaced by Johannes Tomana in December 2008, after the signing of the Global Political Agreement in mid-September 2008, but before the formation of the Transitional Government in mid-February 2009. At the time of writing Mr Tomana was the serving Attorney-General.

9 *The Judiciary – open to abuse*, 1997, Augustine Deke, ANB-BIA Issue 37 (suppl't), 1 January 1998, http://ospiti.peacelink.it/anb-bia/nr337/e23.html, expresses the view that *"magistrates can be hired and fired at will"*. Magistrates may be removed from office if the Public Service Commission decides that they are unsuitable or that their removal will *"facilitate improvements in the Ministry"*; magistrates must accept promotions and may be transferred without their consent to any post in the public service, whether inside or outside Zimbabwe: *The Judicial Institution in Zimbabwe*, 2004, Karla Saller, pages 83-84.

33. The timing of Mr Tomana's appointment is of some significance to the lawfulness of the appointment. The MDC factions have contended that the terms of the GPA were breached by the appointment of Mr Tomana by the President, Mr Mugabe, in advance of the formation of the Transitional Government by which body the appointment ought to have been made (the same criticism is made, *inter alia*, of the appointment of the Governor of the Reserve Bank of Zimbabwe, Gideon Gono, in November 2008). In a paper entitled, *Appointments Under The Inclusive Government*, 2009, Derek Matyszak of the Research and Advocacy Unit, Zimbabwe, advances the view that as a matter of constitutional law the appointment of Mr Tomana was lawful when made, although it was an appointment made in breach of the Global Political Agreement. Mr Matyszak contends that *"this breach has political repercussions and requires a political rather than legal response"*.

(C) The degradation of the justice system in Zimbabwe: 2000 to 2008

34. In recent years the international community in general and international legal bodies in particular have expressed grave concern at the state of the rule of law and the justice system in Zimbabwe. Since 2000, there has developed an extensive and growing literature on the subject of the rule of law, the justice system and human rights breaches in Zimbabwe.[10] The most recent of these reports, *"Our Hands Are Tied", Erosion of the rule of Law in Zimbabwe*, November 2008, Human Rights Watch, concluded (at page 1, *Summary*):

> *"Over the past decade, Zimbabwe's ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), has progressively and systematically compromised the independence and impartiality of Zimbabwe's judiciary and public prosecutors, and instilled one-sided partisanship into the police. Since 2000 it has purged the judiciary, packed the courts with ZANU-PF supporters and handed out "gifts" of land and goods to ensure the judges' loyalty. It has provided instructions to prosecutors to keep opposition members in jail for as long as possible. It has transformed Zimbabwe's police force into an openly partisan and unaccountable arm of ZANU-PF."*

Similar conclusions, albeit with differing emphases and amplitude, have been reached since 2000 by every independent body which has examined critically the justice system in Zimbabwe. There have been no independent reports (or for that matter Zimbabwe Government publications) prepared over this period of which the authors of this report are aware which contend that the justice system in Zimbabwe has not been seriously compromised by the actions of ZANU-PF.

(1) The broader political context

35. Any discussion of the degradation of the justice system of Zimbabwe between 2000 and 2008 would, however, fail to portray a complete picture without some mention of the political context in which this degradation has occurred. ZANU-PF (and its surrogates the so-called 'war veterans'[11] and national youth militia)[12] has repeatedly used violence as an instrument of policy to enforce its will on the Zimbabwean population.

10 For example: *Report of Zimbabwe Mission 2001*, April 2001, International Bar Association; *Civil and Political Rights, including the questions of: independence of the judiciary, administration of justice, impunity*, March 2004, The report of the U.N. Special Rapporteur, Leandro Despouy (UNESC; E/CN.4/2004/60/Add.1); *The Legal Profession and the Judiciary as human rights defenders in Zimbabwe 2003*, July 2004, Arnold Tsunga; *Judicial Selection and Political Crisis in Zimbabwe (2000-2003)*, 2004, Derek Matyszak; *The State of Justice in Zimbabwe*, December 2004, a report to ICAB into the state of Justice in Zimbabwe, *op. cit.*; and *The Law in Zimbabwe*, February 2007, Otto Saki & Tatenda Chiware, *op. cit.*; *Partisan Policing: An obstacle to human rights and democracy in Zimbabwe*, October 2007, International Bar Association Human Rights Institute; and *"Our Hands Are Tied", Erosion of the rule of Law in Zimbabwe*, November 2008, Human Rights Watch.

11 Many of whom, it has been repeatedly pointed out by independent observers, were not born at the time of the struggle for independence in the 1970's.

12 Known colloquially in Zimbabwe as 'the green bombers', the national youth militia are part of the government-run National Youth Service Programme the aims of which include, according to the pre-Trasitional Government ZANU-PF government, training youths to be good citizens.

36. Human rights abuses in Matabeleland North, Matabeleland South and Midlands provinces in the 1980s conducted on a massive scale by Government forces have been the subject of a comprehensive report published in 1997 by the Catholic Commission on Justice and Peace and the Legal Resources Foundation, *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and the Midlands, 1980 to 1988.*[13]

37. Since 1999 and the emergence of the MDC as a political force in Zimbabwe, violence around elections has increased dramatically. In its report, *"Bullets for Each of You", State-Sponsored Violence since Zimbabwe's March 29 Elections*, June 2008, Human Rights Watch state (at pages 11-14) that the run-up to the parliamentary elections of June 2000 and the Presidential election of 2002, the aftermath of the parliamentary and Presidential elections of 2005 and the aftermath of the parliamentary and Presidential elections of March 2008 (leading up to the run-off Presidential election of June 2008) were scarred by appalling violence, perpetrated principally against the MDC.

38. The levels of violence directed by ZANU-PF at the MDC (it seems no distinction was made between the two factions) in the run-up to the Presidential run-off election of June 2008 were unprecedented and resulted in Mr Tsvangirai withdrawing from the run-off poll and Mr Mugabe winning unopposed.

39. Any account within the confines of this report of the violence leading up to and continuing after the Presidential run-off election in June 2008 cannot hope adequately to reflect the scale and intensity of that violence. However, it would be a significant omission were no extended reference to be made to the violence surrounding the run-off election. It has been estimated that approximately 200 people were murdered during the course of the run-off election, thousands more tortured or seriously assaulted and thousands displaced. No one has been brought to justice for the crimes committed during the period.

40. The pre-Presidential run-off election violence extended even to the families of MDC supporters. The following account of the murder of Abigail Chiroto, the 27 year-old wife of the Mayor of Harare, Emmanuel Chiroto, appears in *"They Beat Me like a Dog", Political Persecution of Opposition Activists and Supporters in Zimbabwe*, August 2008, Human Rights Watch (at page 13):

> *"Abigail Chiroto, 27, and her four-year-old son were abducted from their home by a group of alleged ZANU-PF militia on June 16* [2008]. *The alleged kidnappers later abandoned Chiroto's son at a nearby police station unharmed. Abigail Chiroto's body was eventually found on a farm in Borrowdale, Harare. Emmanuel Chiroto's nephew Jim Rudairo, who spoke to neighbours who witnessed the abduction of Chiroto's son, spoke to Human Rights Watch about the abduction and killing:*
>
> > *The ZANU-PF militia went to my uncle's house looking for him. When they failed to find him they petrol-bombed the house and took his wife and son. The abductors abandoned the boy at Borrowdale police station unharmed, but two days later Abigail's body was found at a farm in Borrowdale. My uncle is in hiding and was not even able to bury his wife as the people who killed his wife may still be looking for him. The police are not offering any protection; in fact they have been harassing well-wishers who came to bury Abigail. We buried Abigail on June 25. No one witnessed her murder but her skull was crushed and we have no idea what instrument was used."*

13 The report estimates that more than 3,000 extra-judicial executions, hundreds of 'disappearances' and more than 7,000 cases of torture or serious assault took place during this relevant period.

41. These accounts and scores like them speak eloquently of the criminal conduct of the then ZANU-PF government and its surrogates in the 'war veterans' and the youth militia. To date no police investigations, still less arrests made or charges laid, have been undertaken into the violence surrounding the run-off election and for years before.

(2) The compromising of the judiciary

42. The compromising of the judiciary in Zimbabwe was completed by ZANU-PF employing a combination of threats and intimidation on the one hand and the creation of a culture of corruption on the other.

43 The commencement of the compromising of the judiciary may be dated back to at least late 2000 and early 2001.[14] In November 2000 the Supreme Court was subjected to physical intimidation when a war veteran called Joseph Chinotimba led an invasion of the Supreme Court by approximately 200 'war veterans' who chanted *"kill the judges"* and occupied the Court room. The Supreme Court was prevented from sitting. The police responded much later. No government minister came forward to condemn the invasion. Chief Justice Gubbay has since stated that this invasion and occupation *"sent the clearest message that the rule of law was not to be respected"*.

44 After the invasion of the Supreme Court, in early December 2000, the Minister of Information announced that he had received information that war veterans were planning to attack judges in their homes to force them to resign.[15] Later in December, special protection from the Police Protection Unit was provided to all judges threatened with attacks on their homes.

45. The attacks on the Supreme Court stepped up in early 2001 when, in Bulawayo at the commencement of the judicial year, the Judge President of the High Court (and formerly Justice Minister) Geoffrey Chidyausiku launched a personal attack on Gubbay CJ accusing him, *inter alia*, of bias in favour of white farmers and the Supreme Court of bias against poor people. He described Gubbay CJ's rulings in earlier land reform cases as *"hardly tenable"* and *"boggling the mind"*. This unprecedented attack drew a public reprimand from Gubbay CJ.

46 The invasion of the Supreme Court by 'war veterans', the threats to the personal safety of the judiciary and invective directed at the judiciary by Government Ministers, ZANU-PF MPs and 'war veterans' both before and after the invasion of the Supreme Court should be viewed against the background of undeniable escalating violence during the year 2000 starting with the campaign on the referendum for the new constitution in February 2000, continuing through commercial farm invasions and then onto the parliamentary elections in June 2000. Cumulatively, these events led to an environment in which, entirely justifiably and reasonably, many judges were in real fear for their own safety and that of their families.

47 Gubbay CJ wrote to Vice-President Simon Muzenda on 19 January 2001 seeking the protection of the government for judges. At a meeting on 22 January between Gubbay CJ and Sandura JA and the Vice-President and two Cabinet Ministers, the Chief Justice was informed that the government had lost confidence in him and was accused of aiding and abetting racism. Gubbay CJ stated that he should perhaps resign if that was the attitude of the government. At the time this was not taken as an offer of resignation. Two weeks later, on 2 February, Gubbay CJ was

14 Prior to this time ZANU-PF had not restrained itself from vilification of the judiciary when the interests of the Government and decisions made by the Courts did not coincide: see *The State of Justice in Zimbabwe*, December 2004, a report to ICAB into the state of Justice in Zimbabwe, *op. cit.*, pages 43-45.

15 *Report of Zimbabwe Mission 2001*, April 2001, International Bar Association, para. 9.10.

visited by the Justice Minister and informed that his offer of resignation had been accepted by the President and would be announced that afternoon. It was 'agreed' that the Chief Justice would retire from his office on 30 June 2001 and would take a leave of absence from 1 March to 30 June.

48. The direct beneficiary of the the resignation of Gubbay CJ was the Judge President of the High Court, Chidyausiku J, who continues to occupy the office of Chief Justice.[16] Whilst the events surrounding the resignation of Gubbay CJ were unfolding, the Justice Minister had visited the remaining two non-black Supreme Court Judges, McNally and Ebrahim JJA and tried to persuade them to retire.[17] The Minister 'asked' McNally JA to resign because *"The President does not want you to come to any harm"*.[18] Ebrahim JA was given a similar message. Neither judge resigned. McNally JA retired later in 2001 and Ebrahim JA retired in 2002.

49. As mentioned above, Chidyausiku J was sworn in as acting Chief Justice in March 2001 and his appointment was confirmed in August of that year. In July 2001, three High Court judges were appointed to the Supreme Court: Ziyambi, Cheda and Malaba JJA. Of these judges, Chidyausiku CJ, Cheda and Malaba JJA had (at or about this time) accepted gifts of land from the government.[19] This land is held on leasehold with short notice to quit provisions.

50. As regards these notice to quit provisions, in so far as such provisions would be observed by the government in the event the government wished to terminate the lease prior to expiry of its term, the notice provisions should be regarded as purely formal: as has been demonstrated on numerous occasions in the recent history of Zimbabwe, if the government wishes to claim or reclaim land, no genuine notice is given. This is a fact of which the judges, more than most, would be acutely aware.

51. High Court Judge Hlatshwayo J learned the value of the notice provisions early in 2009. Hlatshwayo J was in possession of a commercial farm situated at Gwina in Banket, about 50 miles north of Harare, from which he had forced the previous owner, Vernon Nicol. In 2002 Mr Nicol had obtained a court order prohibiting Hlatshwayo J from seizing the farm but the Judge ignored it and seized the farm anyway. The Judge, unlike many beneficiaries of the land 'reform' programme, made a go of the farm and was successful in his venture. So much so that he held an open-day at Gwina in late 2008 which was attended by, *inter alios*, various State-run news feeds. It is not clear exactly how, but it seems that the success of Gwina came to the attention of the first lady, Grace Mugabe, who determined to seize the farm for her own purposes and proceeded to do so. Shortly before Christmas 2008, Hlatshwayo J sought an order from the High Court in Harare preventing the seizure of Gwina but was persuaded *"one way or another"* to drop the action before it was heard. (*The Daily Telegraph*, 3 February 2009; *The Zimbabwe Times*, 4 February 2009). The irony can be savoured without further comment.

---

16 At the time, Chidyausiku J was the High Court Judge with the greatest number of decisions overturned by the Supreme Court: *The Judicial Institution in Zimbabwe*, 2004, Karla Saller, page 25. Chidyausiku J was appointed ahead of numerous other, more senior judges and was the first appointment made directly from the High Court bench: *Judicial Selection and Political Crisis in Zimbabwe (2000-2003)*, 2004, Derek Matyszak, footnote 84.

17 This much was admitted by the Minister when asked about the subject by the IBA Mission in April 2001: *Report of Zimbabwe Mission 2001*, April 2001, International Bar Association, para. 10.18.

18 McNally JA was reported to have said: *"We were told very nicely and politely we should take our leave and go, otherwise anything could happen. They didn't want me to come to any harm"*, *The Namibian*, 12 February 2001.

19 Chidyausiku CJ is listed in a report prepared from various sources, including lists published by the Ministry of Lands and Agriculture in February and June 2002, as the owner of 895 hectares known as 'Estes Farm' in Mazoe (see *Confirmed VIP's Allocations – The Landless Poor?* – http://www.swradioafrica.com/pages/farms.htm). In *Land, Housing and Property Rights in Zimbabwe*, 2001, Centre for Housing Rights and Evictions, Geneva, COHRE, Annex 2, Cheda JA had by 1999 been allocated 2,039.50 hectares of commercial farmland referred to as 'Malaba 38' in Bualalima Mangwe District and Malaba JA was allocated 1,866.00 hectares referred to as 'Malaba 35' in the same District.

52. The acceptance of gifts of land by these judges of the Supreme Court in or about 2001 set the tone for subsequent appointments and for the conduct of the overwhelming majority of the High Court bench. It is now notorious that the senior judiciary, with a very small number of honourable exceptions,[20] has accepted land (typically commercial farms seized from others) from the government. Indeed in an interview with Prime Minister Tsvangirai, (29 October 2009) the Prime Minister admitted as much and told the mission that the judiciary were *"all beneficiaries of state patronage and farms"*.

53. Further, in August 2008, amid conditions of economic collapse and hyper-inflation, the government, through the Reserve Bank of Zimbabwe, announced in the State-run newspaper *The Herald* that it had purchased and delivered luxury cars, plasma television sets and electricity generators to all judges.[21]

54. The conclusion that through the acceptance of such gifts the senior judiciary has rendered itself profoundly compromised in the proper conduct of its duties is inescapable.

55. The position of magistrates differs from that of the senior judiciary in this regard. Magistrates have not, it appears, been the recipients of the largesse showered upon the senior judiciary. There is no evidence that the government has sought either to purge the magistracy of independent magistrates or to dilute it with ZANU-PF sympathisers. Instead, the government has relied upon the exercise of threats and intimidation against magistrates to bend decisions to its will.

56. For example, the mission was told by lawyers in Mutare that the government's strategy of threats and intimidation has been effective in smaller towns and rural areas, but the government's strategy has not been as successful in the two major cities of Harare and Bulawayo where magistrates still retain some independence. This is reflected in the reports of other organisations on this subject.[22]

(3) The office of the Attorney-General and public prosecutors

57. The view has been expressed[23] that *"in normal circumstances, such as where "non-political" cases are concerned, prosecutions in Zimbabwe are generally impartial"*, but that *"in "political" cases, there is clear evidence that some prosecutors abuse the law to persecute and harass perceived MDC supporters, particularly in applications for bail"*.

58. The reference to bail applications is to a practice which has arisen over the course of the past two to three years and about which the mission was told on numerous occasions during its visit to Zimbabwe whereby on applications for bail in 'political' cases (i.e., those involving the MDC) the Attorney-General and public prosecutors oppose bail regardless of the merits of the case and, in the event that a magistrate admits the accused to bail, avail themselves of the stay provisions of section 121 of the Criminal Procedure and Evidence Act (Chapter 9:07) to secure the detention of MDC accused for seven days.[24]

20 In *"Our Hands Are Tied", Erosion of the Rule of Law in Zimbabwe*, November 2008, Human Rights Watch, it is stated (at page 15): *"According to Eric Matinenga, a former judicial officer and MDC member of parliament who carried out an extensive study of the judiciary in Zimbabwe, up to 95 percent of judges have been allocated farms that were forcibly seized from white commercial farmers. A lawyer based in Harare told Human Rights Watch:* 'Information on how government allocated farms seized from commercial farmers is not readily available, but I know that an overwhelming majority of judges received farms from government.'.".

21 *The Herald*, 2 August 2008.

22 See, *"Our Hands Are Tied", Erosion of the Rule of Law in Zimbabwe*, November 2008, Human Rights Watch, (at pages 19-21) which records instances of attacks on Magistrates in towns such as Gutu, Masvingo Province, and Bindura, Mashonaland Central Province.

23 *"Our Hands Are Tied", Erosion of the Rule of Law in Zimbabwe*, November 2008, Human Rights Watch, page 21.

24 See further: *A critique of Section 121 of the Criminal Procedure and Evidence Act Chapter [9:07]*, 2009, Kudzayi S. Katupira.

59. Section 116 of the Criminal Procedure and Evidence Act provides for the general rule on bail applications:

> *"Subject to subsection (4) of section 13 of the Constitution, in any case in which the judge or magistrate has power to admit such person to bail, he may refuse to admit such person to bail if he considers it likely that if such person were admitted to bail he would-*
>
> (a) not stand his trial or appear to undergo the preparatory examination or to receive sentence; or
>
> (b) interfere with the evidence against him; or
>
> (c) commit an offence.
>
> *but nothing in this subsection shall be construed as limiting in any way the power of the judge or magistrate to refuse to admit an accused person to bail for any other reason which to him seems good and sufficient".*

60. Section 121 of the Criminal Procedure and Evidence Act provides:

> *"(1) Subject to this section and to subsection (5) of section 44 of the High Court Act [Chapter 7:06], where a judge or magistrate has admitted or refused to admit a person to bail-*
>
> (a) the Attorney-General or his representative, within seven days of the decision, or
>
> (b) the person concerned, at any time;
>
> may appeal against the admission or refusal or the amount fixed as bail or any conditions imposed in connection therewith.
>
> "(2) An appeal in terms of subsection (1) against a decision of-
>
> (a) a judge of the High Court, shall be made to a judge of the Supreme Court;
>
> (b) a magistrate shall be made to a judge of the High Court;
>
> "(3) A decision by a judge or magistrate to admit a person to bail shall be suspended if, immediately after the decision, the judge or magistrate is notified that the Attorney-General or his representative wishes to appeal against the decision, and the decision shall thereupon be suspended and the person shall remain in custody until-
>
> (a) if the Attorney-General or his representative does not appeal in terms of subsection (1) –
>
> (i) he notifies the judge or magistrate that he has decided not to pursue the appeal; or
>
> (ii) the expiry of seven days; whichever is the sooner; or
>
> *(b) if the Attorney-General or his representative appeals in terms of subsection (1), the appeal is determined…"*

61. Thus, the general rule is that bail should be granted unless there is evidence that the accused will abscond, interfere with witnesses (or other evidence) or commit other offences. In the event that a magistrate decides to admit an accused to bail, the Attorney-General or his representative may notify the magistrate that he wishes to appeal against the decision, whereupon the magistrates' decision is suspended for seven days and the accused remains in custody for that period of time.

62. In an article in *The Herald* (a State-run newspaper) dated 20 May 2008, deputy Attorney-General Johannes Tomana (as he was then) stated that all prosecutors were instructed to ensure, as a matter of policy and as a deterrent to other 'would-be offenders', that no person accused of committing or inciting political violence should be granted bail.

63. The practice is that public prosecutors use this instruction to oppose bail to MDC activists (but not to ZANU-PF activists) regardless of the merits of the individual case and, in cases where the magistrate has decided to admit the accused to bail, then to ensure their continued detention through reliance on the provisions of section 121 of the Criminal Procedure and Evidence Act irrespective of the merits of any possible appeal.

64. The result of this practice can be and frequently is the detention of an accused in custody where there are no grounds for not admitting him to bail and where there is no reasonable prospect of an appeal against the decision of a magistrate to admit him to bail being successful. This practice represents an especially egregious abdication of the responsibility of a prosecutor impartially to serve the interests of justice.

65. Furthermore, the mission was told that in many instances where bail is granted the sum is often set so high that prisoners and their families are unable to meet it. The mission was told that at times lawyers have put up their client's bond in order to secure their release from prison, often at great financial strain to members of the profession.

(D) The Global Political Agreement – September 2008

66. The economic and political chaos which culminated in the Presidential run-off election of June 2008 and continued thereafter brought the political parties together under the auspices of SADC to negotiate a new political settlement for Zimbabwe. On 15 September 2008, the parties signed the *Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the two Movement of Democratic Change (MDC) Formations, on resolving the challenges facing Zimbabwe* ("the Global Political Agreement" or "GPA"). The GPA is not a constitutional document in that it has no legal force (although pursuant to its provisions the Constitution was amended). However, it does reflect the will of the majority political parties and as such demands examination.

67. The GPA contains declarations of intent and agreements between the signatories for, *inter alia*: the restoration of economic stability and growth (Article III); the Land Question (Article V); the drafting of a new Constitution (Article VI; see above); the promotion of equality, national healing, cohesion and unity (Article VII); freedom of assembly and association (Article XII); security of persons and prevention of violence (Article XVIII); freedom of expression and communication (Article XIX); the framework for a new government (Article XX);[25] implementation measure (Article XXI); and interim constitutional amendments to bring into force certain parts of the GPA (Article XXIV).[26]

68. The provisions of the GPA relevant to rule of law issues are set out below.

> *"**PREAMBLE***
>
> *"...*
>
> *"**EMPHASISING** our shared commitment to re-orient our attitudes towards respect for the Constitution and all national laws, the rule of law, observance of Zimbabwe's national institutions, symbols and national events.*
>
> *"...*
>
> *"**RECOGNISING**, accepting and acknowledging that the values of justice, fairness, openness, tolerance, equality, non-discrimination and respect of all persons without regard to race, class,*

25 Article XX, entitled *"Framework for a New Government"*, provides for the structure of the new Transitional government, *inter alia*: the post of Prime Minister; two Vice-Presidents; two Deputy Prime Ministers; the National Security Council (intended to replace the Joint Operations Command); the Council of Ministers; 31 Ministers; and 15 Deputy Ministers. On the formation of the Transitionals government in mid-February 2009, President Mugabe purported to swear in 35 Ministers on 13 February and a further six on 19 February, bring the total to 41 Ministers. Further, also on 19 February 19 Deputy Ministers were sworn in. The view has been expressed that the appointment of ten Ministers and four Deputy Ministers in excess of the Constitutional limits was and is unlawful and those excess appointments are void: *Appointments Under The Inclusive Government*, 2009, Derek Matyszak of the Research and Advocacy Unit, Zimbabwe.

26 Constitutional Amendment No. 19, which received the President Mugabe's assent on 11 February 2009, incorporated the whole of Article XX of the GPA into the Constitution as Schedule 8, thereby rendering it part of the Constitution of Zimbabwe. In addition and by the same Amendment, Chapters 4 (citizenship) and 13 (Independent Commissions) and section 121 (provision for a parliamentary committee on standing rules and orders) of the Kariba draft Constitution (Schedule B to the GPA) were incorporated into the Constitution.

gender, ethnicity, language, religion, political opinion, place of origin or birth are the bedrock of our democracy and good governance.

*"**DETERMINED** to build a society free of violence, fear, intimidation, hatred, patronage, corruption and founded on justice, fairness, openness, transparency, dignity and equality.*

*"**RECOGNISING** and accepting that the Land Question has been at the core of the contestation in Zimbabwe and acknowledging the centrality of issues relating to the rule of law, respect for human rights, democracy and governance.*

"...

*"**DETERMINED** to act in a manner that demonstrates respect for the democratic values of justice, fairness, openness, tolerance, equality, respect of all persons and human rights.*

"...

*"**ARTICLE XI***

*"**RULE OF LAW, RESPECT FOR THE CONSTITUTION AND OTHER LAWS***

*"**11. Rule of law, respect for the Constitution and other laws***

*"**11.1** The Parties hereby agree that it is the duty of all political parties and individuals to:*

(a) respect and uphold the Constitution and other laws of the land;

(b) adhere to the principles of the Rule of Law

*"**ARTICLE XIII***

*"**STATE ORGANS AND INSTITUTIONS***

*"**13. State organs and institutions***

*"**13.1** State organs and institutions do not belong to any political party and should be impartial in the discharge of their duties.*

*"**13.2** For the purposes of ensuring that all state organs and institutions perform their duties ethically and professionally in conformity with the principles and requirements of a multi-party democratic system in which all parties are treated equally, the Parties have agreed that the following steps be taken:-*

(a) that there be inclusion in the training curriculum of members of the uniformed forces of the subjects on human rights, international humanitarian law and statute law so that there is greater understanding and full appreciation of their roles and duties in a multi-party democratic system;

(b) ensuring that all state organs and institutions strictly observe the principles of the Rule of Law and remain non-partisan and impartial;

(c) laws and regulations governing state organs and institutions are strictly adhered

to and those violating them be penalised without fear or favour; and

(d) ..."

69. After some delay caused by disagreements on the detail of the implementation of the GPA and other matters, *inter alia*, associated with the conduct of ZANU-PF in relation to various human rights abuses, the Transitional Government was formed in mid-February 2009. In March 2009, the Transitional Government published a document entitled *Short Term Emergency Recovery Programme* ("STERP"), an emergency short term stabilisation programme intended as part of the implementation of the GPA *"whose key goals are to stabilise the macro and micro-economy, recover the levels of savings, investment and growth, and lay the basis of a more transformative midterm to long term economic programme that will turn Zimbabwe into a progressive developmental State"* (Article 6). The relevant parts of this plan from the rule of law perspective are as follows:

*"**The Key Priority Areas***

"8. The key priority areas of STERP are;

a) Political and Governance Issues

i. The constitution and the constitution making processes

ii. The media and media reforms

iii. Legislations [sic] *reforms intended at:*

a) Strengthening Governance and accountability
b) Promoting Governance and the rule of law
c) Promoting equality and fairness, including gender equality"

*"**Expected Outcomes***

"11. At its end, STERP should have delivered more than the basic rehabilitation of our economy. STERP should lay the foundation of a basic African State that will find its place in the sun, play its role in SADC, the African Union as well as the rest of the world."

70. STERP is a plan which contains affirmations of the ambitions and aspirations expressed, in particular, in the Preamble to the GPA (see above), but is cursory as to how these may be realised.

71. On 28 April 2009, the Transitional Government Cabinet approved *The Government of Zimbabwe 100-Day Plan (29 April to 6 August 2009)*. The 100-Day Plan places little emphasis on rule of law issues. In particular there is no reference, even aspirational, to, *inter alia*: the de-politicisation of the police and security forces; the position of the senior judges and their ownership of land which has disputed title; the ending of the culture of impunity in the police and state security forces; the question of the independence of the judiciary; and the prosecution of the perpetrators of political violence in 2008 and before. Instead, the 100-Day Plan sets out the following opaque targets for the Ministry of Justice and Legal Affairs:

"Meet the needs of prisoners

"Operationalise the Judicial Services Commission.

"Meet the minimum standards, best practices and needs of justice delivery institutions."

(E) The position after the Global Political Agreement – September 2008 to October 2009

72. The position of Zimbabwe society after the GPA as regards the rule of law in general and the justice system in particular comprises a miscellany of continued and serious human rights abuses, a total failure to come to terms with the compromising of the integrity of the judiciary and the judicial system and the continuation of the culture of impunity and disrespect for the rule of law on the part of organs of the State.[27] The post-September 2008 picture is best illustrated by way of example.

(1) The position of the judiciary

73. There has been no substantive change to the position of the senior judiciary since the signing of the GPA. The senior judiciary were described to the mission[28] as remaining *"highly compromised through the land reform programme"*, pursuant to which *"judges were given controversially acquired land, that is land where the title was disputed"*. Judges also received *"cars, family inputs at low interest rates, if any, some of the inputs they received were also controversially acquired (e.g. tractors) so judges benefitted in that way. Judges to that extent have lost their moral standing as impartial arbiters. The perception by the public is that judges are functionaries of the Executive, in breach of the oath they took. That state of mind still persists – there are a few who try to be independent – but only on non-political matters and there's little that's non-political in Zimbabwe"*.

74. There are examples, however, of judges trying to act independently. The mission spoke on terms of anonymity to an individual involved in recording cases of torture and serious assaults. She said the magistrates themselves are terrified, but mentioned that some are really brave and stand up despite the pressures. She even said: *"Forget about the lawyers, some of the magistrates are the real heroes"*.[29] There are also examples of High Court judges making critical findings against the Executive (see footnote 28).

75. With a view to addressing the issue of the compromising of the judiciary, the Law Society of Zimbabwe ("the Law Society") organised a colloquium in September 2009 involving the senior judiciary and senior lawyers with the assistance of an external facilitator (it was estimated that

27 In contravention of the spirit of the GPA and STERP: see, for example, Article 13.2(b) of the GPA and Article 8 a) iii b) of STERP. An overall and comprehensive assessment of the successes and failures of the Transitional Government to date is outside the scope of this report. However, it was apparent to the mission that in some respects at least the Transitional Government is beginning to have some genuine and measurable beneficial effects (see, for example, the strides being made in education).

28 Interview with Josephat Tshuma, President of the Zimbabwe Law Society, 28 October 2009. Some judges have given judgments critical of the government: see the quoted passages from the judgment of Hungwe J in the *African Consolidated Resources plc* case below.

29 On 6 March 2009, police arrested magistrate Livingstone Chipadze in Mutare and charged him with criminal abuse of office. It was alleged that he had improperly ordered the release of MDC Senator Roy Bennett. Mr Chipadze was committed for trial and acquitted on 4 August 2009. Whilst the mission was in Zimbabwe it was reported in *The Zimbabwean* newspaper (27 October 2009) that a magistrate in Plumtree, a town on the Zimbabwe-Botswana border, south west of Bulawayo, had received death threats from suspected army officers after he denied bail to three soldiers who shot a policeman in a dispute over a woman.

80 *per cent* of the senior judiciary attended, the Attorney-General was also in attendance). The intention was to commence a dialogue with the judges with a view to reaching a solution to the problem of judicial independence. This colloquium involved a frank exchange of views between the judges and the profession on the subject of the compromising of the judiciary and other subjects.

76. It is to be applauded that the Law Society took the initiative in this regard, in doing so the Law Society demonstrated yet again (as it has done on many occasions over the past decade) that it is a force for progress and beneficial change in Zimbabwe. It is to be hoped that this dialogue between the two sides of the profession continues.

77. It is a matter of regret that the Transitional Government in general and the Ministry of Justice in particular appear not to have publicly acknowledged the compromising of the judiciary as a problem for Zimbabwe, still less attempted in any way whatsoever to come to terms with that problem. It is self evident that this is not how a responsible government should conduct its affairs.

(2) Disrespect for the rule of law

78. An example of disrespect for the rule of law bordering on the burlesque was drawn to our attention by Beatrice Mtetwa, former President of the Law Society of Zimbabwe. Ms Mtetwa represented fellow human rights lawyer Alec Muchadehama at a hearing on 22 October 2009 before Harare Magistrate Mutongi Chioneso. The prosecution was represented by Andrew Kumire and a Mr Muzivi.

79. In the course of the opening of the trial on the application of Ms Mtetwa the Magistrate made a number of rulings against submissions made by the prosecution. Notwithstanding these rulings, Mr Kumire continued to contest the substance of the rulings:[30]

> *"and made the clicking sound associated with annoyance (kuriza tsamwa). The magistrate immediately asked Mr Kumire what that sound was and adjourned court and called all counsel to her chambers. When we waited at the magistrate's reception, Mr Kumire explained that he involuntarily makes the clicking sound when his mouth is dry and that this had been the position and that he had not intended this as an insult to the magistrate. He repeated this explanation to the magistrate when she put the contempt allegation to him and he apologised to her. She made it very clear that given the sequence of events and Mr Kumire's general behaviour towards her throughout the trial, she did not accept his explanation and she determined that his conduct was contemptuous of the court and she would deal with it accordingly.*
>
> *"When court resumed, she indeed proceeded to deal with the matter as contempt and sentenced Mr Kumire to five days in prison."*

80. A court orderly was ordered to guard Mr Kumire pending the arrival of a prison officer to take him to the cells but by the time the officer had arrived Mr Kumire had left the building. Mr Kumire returned to court later that day and appeared before the Provincial Magistrate, Mr Guvamombe, who purported to preside over a bail application at which the Attorney-General was represented by a Mr Mutangadura. The Attorney-General through Mr Mutangadura consented to bail and Mr Kumire left the court without having spent any time in custody to purge his contempt.

30 The quoted passage is from a letter to the Secretary of the Law Society sent by Ms Mtetwa dated 23 October 2009.

81. By a letter dated 26 October addressed to Mr Guvamombe, Magistrate Chioneso recused herself from the trial of Mr Muchadehama. In her letter Magistrate Chioneso stated that she felt *"hugely compromised and hamstrung ... There has been so much interference from some* [quarters] *which I am not at liberty to disclose that I cannot pretend to ignore it"*. No disciplinary action has been taken against Mr Kumire as far as the mission is aware.

82. It is deplorable conduct by the Attorney-General's department to undermine the decision of a magistrate in the way described above. This episode epitomises the disregard for the rule of law and the disrespect for the judiciary which has been displayed by ZANU-PF over the years and does not augur well for the future.[31]

83. A further example of disrespect for the rule of law, this time in an international context, is provided by the treatment by the Transitional Government of decisions of the SADC Tribunal. As mentioned above, Zimbabwe is a signatory to the SADC treaty which makes provision at Article 9 for the establishment of the SADC Tribunal. Article 16 further provides: *"The Tribunal shall be constituted to ensure adherence to and the proper interpretation of the provisions of this Treaty and subsidiary instruments and to adjudicate upon such disputes as may be referred to it. The composition, powers, functions, procedures and other related matters governing the Tribunal shall be prescribed in a Protocol, which shall, notwithstanding the provisions of Article 22 of this Treaty, form an integral part of this Treaty, adopted by the Summit"*.

84. In the course of the past few years the SADC Tribunal has handed down judgments against the Government of Zimbabwe in a number of cases, most notably a multi-party case brought by dispossessed and uncompensated commercial farmers[32] and one brought against the government by the Zimbabwe Human Rights NGO Forum on behalf of twelve victims of violence and torture.[33] On 5 June 2009, the SADC Tribunal found the Government of Zimbabwe to be in contempt in respect of its judgment in the commercial farmers' case.

85. The government's response to the judgments of the SADC Tribunal has been to refuse to recognise them and, in September 2009, it purported to withdraw from the jurisdiction of the SADC Tribunal. As far as the mission is aware, no government minister has spoken out against this course of action and, it must be assumed, non-recognition and withdrawal are therefore government policy.

86. The Justice Minister, Patrick Chinamasa (ZANU-PF), has sought to defend this policy by reference to various arguments concerning the construction of the SADC treaty and Zimbabwe's ratification of the protocol bringing into effect the rules of the Tribunal. In an Opinion dated 18 September 2009, Mr Jeremy Gauntlett S.C. of the South African bar (who was instructed by the Claimants in the *Campbell* case), published his reasons for disagreeing with Mr Chinamasa's view of the law. Having considered Mr Gauntlett's Opinion in detail,

31 As noted above, the practice of invoking section 121 of the Criminal Procedure and Evidence Act to ensure the detention of MDC activists and others for at least seven days regardless of the merits of the bail decision made, articulated by Deputy Attorney-General Johannes Tomana in May 2008 has, it seems, been continued by Mr Tomana after his appointment as Attorney-General.

32 The *Campbell* case (*Mike Campbell (Pvt.) Ltd & Ors v. Government of Zimbabwe*, SADC T Case No. 2/2007), in which the SADC Tribunal handed down a ruling on 28 November 2008 effectively striking down constitutional amendment No 17 dealing with land 'reform' (the legal basis relied on by the Government for all acquisitions of white-owned commercial farms) on the grounds that it denied commercial farmers affected by land reform their fundamental rights to seek legal redress through the courts and not to be discriminated against on the basis of race.

33 *Zimbabwe Human Rights NGO Forum v. Government of Zimbabwe*, SADC T Case No. 5/2008.

it seems to the mission that the conclusions reached there are plainly correct and that the government is bound by the decisions of the SADC Tribunal.[34]

87. A failure by the Government of Zimbabwe to respect the decisions of the SADC Tribunal and to give effect to those decisions in circumstances where the government has participated in the SADC Tribunal hearings (through representation before the Tribunal) and more generally has recognised the SADC Tribunal (by nominating a judge to the panel of judges for the Tribunal) is deplorable conduct by the government.

(3) Continuing serious human rights abuses: the Marange diamond fields

88. Chiadzwa is a remote, dry and hilly area located in Marange District, close to the Mozambique border, and comprising approximately 30 villages with a total population of about 20,000 people divided into two administrative wards (Mukwada ward 29 and Chiadzwa ward 30). In June 2006 villagers in the Chiadzwa area discovered diamonds lying on and close to the surface. The diamond fields extend over about 26 square kilometres with the richest area being at the foot of the Shonje Hills. At the time the local population regarded the diamond strike as a godsend that would cushion them from the economic crisis enveloping the country at the time. It would not be long before this view required modification.[35]

89. Shortly after the discovery of the diamonds, ZANU-PF effectively encouraged a diamond-rush by declaring the fields open to anyone to mine. Predictably the area witnessed a huge influx of miners looking to strike lucky. Those who were attracted to the diamond fields to dig or buy diamonds came not only from within Zimbabwe and from neighbouring countries but also from as far afield as Equatorial Guinea, Lebanon, Pakistan and Belgium. By the time the scramble peaked it is estimated there were 35,000 people involved in the diamond trade in Marange.

90. At the time diamonds were discovered African Consolidated Resources plc ("ACR"; a company incorporated in England and listed on the London Stock Exchange) through its Zimbabwe subsidiaries was the beneficiary of exclusive exploration and prospecting rights. The government purported to 'cancel' ACR's title to those rights and the police forcibly removed ACR staff from accessing its claim.

91. ACR's claim was litigated in Zimbabwe. In *African Consolidated Resources plc and others v. (1) Minister of Mines and Mining Development, (2) Minerals marketing Corporation of Zimbabwe, (3) Zimbabwe Mining Development Corporation and (4) the Commissioner of Police*, HC1390/07, 24 September 2009, ACR and its subsidiaries ("the Applicants") sought orders protecting their

34 As a matter of *international* obligation, the government is bound by the rulings of the SADC Tribunal. A subsidiary question relates to the *domestic* effect of such decisions. Article 111B of the Constitution provides, *inter alia*: *"(1) Except as otherwise provided by this Constitution or by or under an Act of Parliament, any convention, treaty or agreement acceded to, concluded or executed by or under the authority of the President with one or more foreign states or governments or international organisations – (a) ...; and (b) shall not form part of the law of Zimbabwe unless it has been incorporated into the law by or under an Act of Parliament ..."*. The failure to pass legislation domesticating the decisions of the SADC Tribunal would be a breach of the government's obligation to give those decisions effect. However, in the absence of such legislation, it is unclear what jurisdiction a domestic court would have to give effect to decisions of the Tribunal: *"The mere fact that a treaty has been ratified does not mean that it has become part of the law of Zimbabwe. The passing of legislation giving internal effect to the provisions of the treaty is necessary"* (*Constitutional Law of Zimbabwe*, Greg Linington, Legal Resources Foundation, 2001).

35 For a comprehensive account of the Marange diamond fields and their exploitation, see *"Diamonds in the Rough", Human Rights Abuses in the Marange Diamond Fields of Zimbabwe*, June 2009, Human Rights Watch.

claims to prospecting rights over a sizeable part of the Marange diamond fields (Exclusive Prospecting Order 1523) and an order that the police return to them diamonds seized unlawfully from them.

92. In granting the Applicants' applications, Hungwe J stated,[36] *inter alia*:

> *"It is clear that the applicants' right to be heard was trampled in the most atrocious manner by the highest officials in the responsible Ministry and in all probability by the first respondent himself.*
>
> *"His behaviour in addressing a gathering encouraging lawlessness at the site is consistent with the inference any reasonable person can make.*
>
> *"What chance did an appeal to such a Minister stand? Probably that of an ice block in hell fire!!!"*

And

> *"The case for the applicants is established in the affidavits filed by the Assistant Mining Commissioner, the Mining Commission as well as by the first respondent's heads of argument.*
>
> *"Once it is established that the applicants claims were lawfully registered it follows that they are entitled to the diamonds which they extract'ed from their claims.*
>
> *"As they were legally entitled to prospect, it can hardly be argued that they could not lawfully possess diamonds. In my view the applicants are entitled to the diamonds which they found on their claims. I say so for the following reasons.*
>
> *"Serious allegations were leveled* [sic] *against the police by the applicants in respect of both their role at the Marange diamond area generally and more specifically in respect of the eviction of the applicants from their claim in the ACR claims area.*
>
> *"In Harare the applicants claim that the police took 129 400 carats of ? diamond from its offices without giving a receipt for it and claimed they were acting on the instructions of the first respondent.*
>
> *"This averment was not disputed by the fourth respondent. In fact the whole attitude of the police was to indicate that they will abide by the decision of this court.*
>
> *"The police have no business acting outside the law.*
>
> *"To do so would be to abdicate their constitutional duty.*
>
> *"Yet this is precisely what they did.To charge a person days later after dispossessing that person of valuables can only be conduct which should be condemned in the strongest terms.*
>
> *"Such conduct confirms perceptions, which abound of influential members of society who use the security establishment to further not the national interest, but personal interest.*

36 http://www.thestandard.co.zw/local/21657-acr-judgement-in-full.html.

"The courts cannot but speak loudly against such an abdication of responsibility for the duty to protect rights to property.

"The papers before me paint a gloomy picture for the duty to protect our national heritage by those constitutionally charged with that responsibility."

It remains to be seen whether the orders made by the judge will be respected by the government and the police.

93. After ACR were removed from the scene in 2006, the government took steps to assert control over the diamond fields in order to stop what had by late 2006 become a lawless, unregulated and, for some, highly profitable industry. On 21 November 2006 the government launched a nationwide police operation code-named *Chikorokoza Chapera* (end to illegal panning) which was aimed at stopping illegal mining across the country including at Marange. Some 9,000 illegal miners were arrested in Marange alone.

94. For the next two years police in the area operated checkpoints on the 100 kilometre stretch of road from Mutare to Chiadzwa to restrict access to the diamond fields and to extort bribes from those hoping to travel there to try their luck at mining. Travellers to and from Chiadzwa were also searched for diamonds. The police were in full control, but permitted illegal mining and trading to continue so that they could raise an unofficial private 'tax' on those activities. Police also formed 'syndicates' with illegal miners.[37] Groups of between two and five police would partner a large group of local miners under a loose arrangement whereby police would provide the miners with security and escort into the diamond fields in return for a share of the profits from the sale of any diamonds found.[38]

95. From November 2006 until about October 2008, the police committed numerous human rights abuses including killings, torture, beatings and harassment of local miners. Police evicting miners sometimes used live ammunition.[39]

96. Police also engaged in the arbitrary arrest and detention of members of the local population. The mission was told by lawyers from Mutare who worked on these cases throughout 2008 and into 2009 that such was the volume of arrests and detentions that *"the Magistrates were remanding so many that they couldn't fit into the courtroom"*. Detainees included many women from the local area some of whom, we were told by lawyers who represented them, had dog bite marks on their bodies for which they had been refused medical treatment and which had gone septic. We were told that some of the women had infants with them and some of the detainees were themselves minors. These lawyers told us that the experience on the ground was *"very harrowing, then police threatened to shoot us if we didn't leave ... dog bites were the most common atrocity, some* [victims] *were shot and one victim had to have his leg amputated"*. The mission was also told that tear gas and other chemicals were used on citizens in the Marange District. These lawyers represented approximately 1,000 people at the height of police activity in about May 2008. They also told us that in late 2008, after deployment of the military, the mortuary in Mutare began to overflow with bodies.

97. In about October 2008 a change in policy appears to have occurred. The government deployed to Zimbabwe Defence Forces (the army and the air force) to the Marange diamond

37 See *"Diamonds in the Rough", Human Rights Abuses in the Marange Diamond Fields of Zimbabwe*, June 2009, Human Rights Watch, page 21.
38 An activity which is illegal under the Police Act 1995.
39 *"Diamonds in the Rough", op. cit.*, June 2009, page 24.

fields in response to the lawlessness which had taken hold there.[40] The military engaged in a brutal campaign of suppression involving helicopters mounted with automatic weapons and the deployment of infantry using live ammunition against unarmed miners. In the first two weeks of November 2008 over one hundred bodies were brought to Mutare General Hospital from the Marange diamond fields the majority of whom were subsequently buried in a mass grave in Dangamvura cemetery in Mutare.

98. These human rights abuses were confirmed to us by the lawyers the mission met in Mutare on 29 October 2009. They described in addition how the Marange area had been cordoned off by the military and how civilians suspected of involvement in the illegal diamond trade were picked up, often by the police, taken to the militarised zone and tortured. Frequently the property of such detainees was appropriated by the military and no official account of assets was ever given. We were told of a local businessman, Maxwell Mabota, who was detained by the military in late December 2008 and beaten by soldiers for several hours. Mr Mabota's valuables were stolen by the military. Mr Mabota died of his injuries on 8 January 2009.

99. The situation has not improved in recent months. It seems that state security forces remain in control of the Marange diamond fields and that the wealth of the area has now attracted attention from the higher levels of ZANU-PF. In an article in *The Sunday Times* published on 29 November 2009, Jon Swain reported, *inter alia*:

> *"A fabulously valuable diamond field in Zimbabwe has fallen under the control of a select few at the top of the country's security forces. It is feared they intend to use the wealth to enrich themselves and entrench their power as the battle for succession to President Robert Mugabe, 85, heats up ...*
>
> *"Heavy mining machinery has arrived, capable of extracting thousands of carats of diamonds an hour. Valuations vary wildly but one source said: "It will be much more money than they have ever had. We could be talking about between $25m [£15m] and $100m a month. It is extraordinary what they can do with that. They will just close ranks and do what they want" ..."*

On 8 January 2010 the BBC reported that a large proportion of the Marange diamond fields remained under military control with the military still taking part in the exploitation, trading and smuggling of diamonds and the human rights abuses associated with the trade.[41]

100. On 16 February 2010 the Zimbabwe Supreme Court handed down a judgment by which it was ordered that all diamonds acquired from the Marange Claims Area (that is, the area of Marange with which the judgment of Hungwe J in the *African Consolidated Resources plc* case was concerned) should be surrendered to the Reserve Bank of Zimbabwe and that all mining activities on the Marange Claims Area should cease until the determination of the appeal against Hungwe J's judgment of 14 September 2009. In defiance of this order of the Supreme Court two companies, Mbada Diamond Investments and Canadile Miners, have undertaken and continue to undertake mining operations on ACR's claim area. These companies are reported to be joint ventures between various South African interests and the Minerals Marketing Corporation of Zimbabwe ("MMCZ").[42] It appears that the Minister of Mines and Mining Development, Obert Mpofu, was responsible for arranging these joint ventures. Mbada

40 *"Diamonds in the Rough", op. cit.*, June 2009, page 28.

41 BBC News report dated 8 January 2010, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/8448335.stm

42 *Disputes and uncertainty mar Zim's brilliant potential: Zimbabwe continues to both fascinate and frustrate*, MJ Morgan, African Business, 1 April 2010 (http://www.thefreelibrary.com/); Robert Mugabe's dirty diamonds, Great Indaba, 5 April 2010, vol. 11 (http://greatindaba.com/issue/april-2011/article.robert-mugabes-dirty-diamonds).

is chaired by a former Air Vice-Marshal of the Zimbabwe Air Force who is also Mr Mpofu's cousin and Canadile's registered director is a former Major in the Zimbabwe Army. On 16 March 2010 Mr Mpofu stated at a press conference in Harare that *"The Cabinet has endorsed Mbada and Canadile joint venture partnerships in Chiadzwa and has agreed that the joint venture partnerships are legitimately structured"*.[43]

It is almost too obvious to state, but the defiance of an order of the Supreme Court by the Zimbabwe law enforcement agencies is a further example of the contempt by the authorities for the rule of law in Zimbabwe. This example is made more alarming (if reports are accurate) by the apparent collusion of the Transitional Government in this defiance of an order of Zimbabwe's highest court.

(4) Continuing serious human rights abuses: the case of Roy Bennett

101. Roy Bennett was one of three white MDC parliamentarians elected during the 2000 Parliamentary elections. His constituency was Chimanimani, Manicaland, a former ZANU-PF seat and centre for resistance to the UDI government of Ian Smith. In 2004, the Justice Minister, Patrick Chinamasa, announced in Parliament, in the presence of Mr Bennett, that as part of the land reform programme Mr Bennett's Charleswood estate in Chimanimani was to be expropriated and taken into possession by the government for resettlement. Reacting to this announcement, Mr Bennett became involved in an altercation with Mr Chinamasa and another ZANU-PF minster, Didymus Mutasa, which resulted in Mr Bennett being charged with assault and tried on that charge by Parliament and sentenced to a period of fifteen months imprisonment. Mr Bennett was released in 2005 and sought refuge in South Africa and was granted asylum there in May 2007.

102. In early 2009 Mr Bennett returned to Zimbabwe to join the Transitional Government at Prime Minister Tsvangirai's invitation and as the Prime Minister's appointee as Deputy Minister for Agriculture. In early February 2009, on the day Mr Bennett was due to be sworn in as a deputy minister he was arrested on charges of treason, which were reduced to charges of conspiracy to buy arms in order to carry out acts of insurgency, sabotage, banditry and/or terrorism under the Public Order and Security Act. These charges carry a maximum sentence of life imprisonment.

103. Mr Bennett was remanded in custody. In early March 2009 on his application for bail Mr Bennett was granted bail by the senior Magistrate in Mutare, Livingstone Chipadza. The police refused to release Mr Bennett and subsequently arrested Magistrate Chipadza on charges of criminal abuse of office. The Magistrate was accused, *inter alia*, of improperly allowing Mr Bennett's lawyers to post bail of US$2,000. The High Court in Harare had, the previous week granted bail to Mr Bennett but the Attorney-General, relying on section 121 of the Criminal Procedure and Evidence Act (referred to above) appealed the grant of bail resulting in Mr Bennett remaining in custody. As a result of the arrest of Magistrate Chipadza other Magistrates in Mutare went on strike to show solidarity. Mr Bennett was eventually granted bail by Hungwe J in the High Court.

104. The mission was told that the key evidence in the case against Mr Bennett is based on a confession by a Mr Michael Hitschmann, a gun-dealer and alleged co-conspirator, who asserts that Mr Bennett bought weapons to be used in an anti-government plot. Previously, Mr Hitschmann had himself been tried on charges of treason but had been acquitted after confessions which he had allegedly made voluntarily had been ruled inadmissible because they were obtained under torture.

43 *The Herald*, 17 March 2010 (http://allafrica.com/stories/201003170072.html).

105. Mr Bennett's trial was due to commence in November 2009. Prior to the commencement of the trial, Mr Hitschmann's lawyer, Mr Mordecai Mahlangu (a former President of the Law Society of Zimbabwe) delivered to the Attorney-General's office an affidavit by Mr Hitschmann recanting his evidence on the grounds (as previously found by the High Court) that it had been obtained under torture. For his trouble Mr Mahlangu was then arrested by the police and spent a night in custody at Harare Central police station. (This incident is discussed in greater detail below.)

106. The prosecution of Mr Bennett is seen by the MDC as politically inspired. In his interview with the mission (on 29 October 2009) Prime Minster Tsvangirai stated:

> *"The crisis in the inclusive government was triggered by an incident that has everything to do with the rule of law. Roy Bennett is not only a senior member of our party but is being persecuted through prosecution for trumped-up offences but really dates back to the incident in parliament in which he was involved but he served his debt so we hoped that that should have been the end of the story but far from it. It appears it is politicized by President Mugabe and his ministers and ZANU-PF as a party ...*
>
> *"The crisis in government was really triggered by Roy Bennett – it's not really the individual who has caused the crisis. He just happens to be someone who triggered already the accumulated frustrations in government by the MDC but Roy Bennett's arrest was really a macro cause of the deeper stress and tension in the government ...*
>
> "[Q: what would happen if the Roy Bennett prosecution collapsed? That would be a humiliation for the Attorney-General not least because he has personalised the prosecution] *Well that's his problem. He's personalised it, without the facts. He's acting politically not legally. There is no legal basis why Roy Bennett should be charged with anything. We will see. But really there is no case. Even for me, a layman, I can see there is no case."*

107. The prosecution and trial of Mr Bennett was subject to several lengthy delays. Eventually, on 10 May 2010, Bhunu J dismissed all the charges against Mr Bennett stating (at page 10 of his judgment, lines 1-19), *inter alia*:

> *"In summary it is self evident that the state at the close of its case had failed to link the accused to the commission of any of the offences charged or any competent verdict arising therefrom because:*
>
> *1. (a) Its main state witness Michael Peter Hitschmann turned hostile to the state case leading to his impeachment.*
>
> *(b) His discredited evidence was therefore of no benefit to the state case as he did not implicate the accused at all but supported the defence case.*
>
> *2. The supposed expert witness Perekayi Denshard Mutsetse turned out to be an unreliable witness whose evidence was proven to be dubious and erroneous. As a result the accused could not scientifically or otherwise be linked to the commission of the offences through the recovered e-mails. There was therefore, no nexus between an* [sic] *the commission of the offences.*
>
> *3. The accused could not be linked to the commission of any of the offences through the confessions of his alleged co conspirator because:*

(a) *Of improper investigation tactics and procedures and*

(b) *By operation of law which prohibits the confession of one accused to be used against the other."*

Bhunu J also stated (at page 10, lines 20-21), inappropriately it might be thought given the result of the prosecution, *"In conclusion I must commend the state for having put up a brave fight under very difficult circumstances in defence and preservation of a constitutionally elected government"*.

108. Shortly after Mr Bennett's acquittal the Attorney-General, Johannes Tomana, filed an application for leave to appeal against Bhunu J's judgment. Such an application is made to a judge of the Supreme Court pursuant to section 198(4) of the *Criminal Procedure and Evidence* Act. It remains to be seen whether the President will swear Mr Bennett in as the Deputy Minister for Agriculture either at all or pending the determination of the Attorney-General's application for leave to appeal.

(5) Land reform and continuing lawlessness

109. As mentioned above, Article V of the GPA deals with land reform. Article 5.9 provides that the parties to the GPA agree to *"(a) conduct a comprehensive, transparent and non-partisan land audit ... for the purpose of establishing and eliminating multiple farm ownerships ... (c) ensure security of tenure to all land holders"*.

110. In a document dated as recently as 27 August 2009, the Ministry of Lands and Resettlement effectively resiled from these commitments relying on an expense problem. Instead the Ministry now recommends:

(a) land acquisition and redistribution should continue given the incremental demand for land;

(b) no foreigner should be allowed to own rural agricultural land;

(c) agricultural land should be excluded from the protection afforded by bilateral investment and promotion and protection agreements;

(d) prosecutions of farmers resisting moving off acquired land should continue.[44]

111. In 2009 alone more than 80 commercial farms were forcibly seized in accordance with the stated objective of ZANU-PF that every white farmer is to be removed from rural agricultural land.[45] Further, recent reports appear to confirm that the land audit has been obstructed by those members of ZANU-PF who benefitted from the redistribution of land and who have an interest in a continuing absence of scrutiny of the question of multiple land holdings.[46]

112. It is to be acknowledged that the question of land reform is one to be resolved by the people of Zimbabwe, however, it is a matter of regret that certain undertakings having been made in the GPA, these appear to have been breached by continuing land seizures, violence and intimidation against remaining commercial farmers and the failure to progress the land audit provided for by the GPA.

44 *The Progressive Erosion of the Rule of Law in Independent Zimbabwe*, The honourable Justice Anthony Gubbay, Third International Rule of Law Lecture: Bar of England and Wales, 9 December 2009.

45 *The Progressive Erosion of the Rule of Law in Independent Zimbabwe*, 9 December 2009, *supra*.

46 BBC News report dated 4 February 2010, http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/8492320.stm.

(6) Further continuing serious human rights abuses[47]

113. Since the signing of the GPA and the formation of the Transitional Government there has been continued political violence by ZANU-PF and its surrogates and the security forces (army and police) against MDC members and perceived sympathisers. Even during the relatively brief period of time the mission was in Zimbabwe the following acts of violence and harassment occurred.

114. On Tuesday 27 October 2009, there were two abduction attempts on MDC officials. In the first of these attempts, a female security guard with the MDC, Edith Mashaire, was approached by four men who purported to arrest her and tried to push her into a waiting car. She resisted these attempts to abduct her and was struck by the men with the butts of automatic weapons in an effort to render her compliant. She screamed out that she was a MDC member and passers-by went to her assistance eventually driving the men away. Members of the mission who attended a MDC press conference on the morning of 27 October saw for themselves the bruises caused by the assault on this security guard.

115. Also on Tuesday 27 October a MDC transport manager, Pascal Gwenzere, was dragged out of his township home by armed men in civilian clothes and abducted. Mr Gwenzere was later produced in court on charges of stealing guns from Pomona Barracks in Harare and was remanded in custody. Mr Gwenzere is represented by Alec Muchadehama who told the court that Mr Gwenzere was in need of medical treatment because he had been tortured in prison.

116. The Ministry of Justice organised a stakeholder conference which was scheduled to take place on 28-30 October at Victoria Falls on the challenges relating to access to justice and the justice delivery system in Zimbabwe. On Sunday 25 October, two delegates to the conference who were in Victoria Falls preparing for the conference were arrested by police, charged under the Public Order and Security Act and detained in custody. The delegates arrested and detained were Ms Dadirayi Chikewengo, the Chairperson of the National Association of Non-Governmental Organisations ("NANGO"), and Mr Cephas Zinhumwe, the CEO of NANGO. In a press release announcing their withdrawal from the conference as a result of these arrests, the participant organisations (*inter alios*, the Law Society of Zimbabwe, Zimbabwe Lawyers for Human Rights ("ZHLR"), Zimbabwe Human Rights NGO Forum, Legal Resources Foundation, NANGO) stated:

> *"Stakeholders from the civil society are committed to contributing to the restoration of the Rule of Law and ensuring access to justice for all in Zimbabwe. However, the selective targeting and harassment of non-governmental organisations and the arbitrary arrests and*

47 For a comprehensive survey of human rights abuses to August 2009, see *"False Dawn", The Zimbabwe Power-Sharing Government's Failure to Deliver Human Rights Improvements*, August 2009, Human Rights Watch. A number of individuals spoke to the Mission about this subject on terms of anonymity. Members of the Mission spoke to a representative of an organisation which deals with the victims of political violence and torture. This individual informed the Mission that in 2008 the organisation registered 10,000 cases of political violence and 244 deaths. Most of these victims were MDC members or supporters. Typically the violence was perpetrated by members of the armed forces with the assistance and collusion of the police.

detention of human rights defenders continues unabated. So too does the unwillingness or inability by the state and its agents to adhere to the Constitution and the laws of Zimbabwe.

"These are clear indicators that state institutions and actors involved in justice delivery remain insincere and lack commitment to meaningfully address the ongoing abuse of legal process and the very serious breakdown of the justice delivery system and the Rule of Law. Such perceptions and actions impact on the credibility of our institutions and further erode public confidence in the justice delivery system."

117. Lawyers have also been targeted by the government. For example, in early 2009 Kucaca Phulu, Chairperson of ZimRights and a member of Zimbabwe Lawyers for Human Rights, received threats that he would be abducted due to his representation of *"criminals and bandits"* from the MDC. At the time, Mr Phulu was representing Ms Jenni Williams and Ms Magodongo Mahlangu, leaders of Women of Zimbabwe Arise ("WOZA") who were charged with disturbing the peace as a result of their involvement in demonstrations in October 2008. On 19 January 2009 an unidentified man entered the ZLHR offices in Bulawayo enquiring about Mr Phulu. Later Mr Phulu received a number of telephone calls at his home threatening him and warning him to leave Bulawayo. The caller made clear that Mr Phulu was being watched. A further example is that of Alec Muchadehama, a well-known human rights lawyer and serial arrestee, who was arrested again in May 2009 together with a High Court judge's clerk (Constance Gambara) and charged with obstructing the course of justice. The charge relates to an allegation that Mr Muchadehama colluded with a judge's clerk to arrange improperly the release on bail of three MDC clients he was representing.

118. As mentioned above, a former President of the Law Society, Mr Mordecai Mahlangu, was arrested the week after the mission left Zimbabwe in the course of carrying out his duties as a lawyer. In late October 2009 Mr Mahlangu was consulted by Mr Michael Hitschmann who had been served with a *subpoena* to appear as a witness for the State in the trial of Roy Bennett. Mr Mahlangu determined that the *subpoena* was invalid because it required Mr Hitschmann to appear in Court on the wrong date and because it was not issued by the High Court (as is required by the relevant Rules of Court) but by the Attorney-General's office. Mr Hitschmann denied any involvement with Mr Bennett and a confession to the effect that he had been involved with Mr Bennett had been found by a Court to have been obtained under torture. Mr Mahlangu prepared an affidavit for Mr Hitschmann to make setting out these facts and a covering letter dated 2 November addressed to the Attorney-General explaining the the circumstances of the matter and why it was that the Attorney-General should not be calling Mr Hitschmann as a witness at the trial of Mr Bennett. This was the full extent of Mr Mahlangu's involvement.

119. The Attorney-General, instead of simply acknowledging receipt of Mr Mahlangu's letter and indicating whether he agreed with its contents or not, forwarded the letter to the Head of the Police who then instructed his officers to arrest Mr Mahlangu. Late on 2 November Mr Mahlangu was arrested at his office as he was preparing to go home for the evening. He was taken the Harare Central police station, charged with attempting to defeat the course of justice and detained overnight in the cells. On 3 November an urgent application was issued in the High Court for Mr Mahlangu's immediate release and for an order declaring his arrest and detention to be unlawful. Mr Mahlangu was eventually released on unopposed bail in the evening of 3 November.

120. The mission also saw for itself the dilapidated state of the infrastructure of legal training at the Law Faculty of the University of Zimbabwe. Reflecting the dramatic decline in the state of Zimbabwe's infrastructure in general, the Law Faculty is lacking in the basic tools by which law is taught in Faculties elsewhere: up to date law reports, textbooks, copying facilities etc. More

worryingly, however, we were also told that the Central Intelligence Organisation had in the past planted agents in the student body of the Law Faculty and that this was known to the staff and resulted in the content of lectures and debate by students and staff being inhibited. This is a deplorable and utterly unacceptable intrusion into academic freedom. The mission wishes to pay tribute to the members of the Law Faculty for having remained loyal to the student body in profoundly difficult circumstances.

121. There remains outstanding the fate of seven people kidnapped in 2008 by state security agents. The seven, who are all members of the MDC, were abducted around the same time dozens of other party and human rights activists including prominent rights defender Jestina Mukoko were abducted and tortured by state security agents. In a statement issued on Wednesday 30 September 2009, ZLHR said the MDC activists remain missing despite several court orders directing the police and other state security agents to produce the abductees. Ms Mukoko and the activists were accused of treason. Although the Supreme Court upheld an application by Ms Mukoko for a permanent stay of prosecution on the treason charges, ruling that police and other state agents had violated her rights when they abducted and tortured her, the whereabouts of the seven remaining activists is still unknown. ZLHR identified the missing activists as Gwenzi Kahiya, Lovemore Machokoto, Charles Muza, Ephraim Mabeka, Edmore Vangirayi, Peter Munyanyi, and Graham Matehwa.

122. Mention should be made of the state of Zimbabwe's prisons. Zimbabwe's prisons are hugely overcrowded and sanitary and other conditions are appalling. There are shortages of food, water, electricity, clothing, soap and other toiletries. Many prisoners are HIV positive and/or carrying drug-resistant strains of TB. People awaiting trial are held in group cells. Juveniles held in police custody are not necessarily held separately from adults.

123. The mission was told that in 2008 approximately one-fifth of the total prison population had died because of the effects of famine and cholera combined with the unsanitary conditions in prisons.

124. In 2005 the Supreme Court declared the condition of various police holding cells in Zimbabwe to be inhuman and degrading and laid down minimum conditions that should prevail in these and any other detention centres in Zimbabwe.[48] Conditions seem to have deteriorated since then. There have been reports of terminally-ill people being kept on remand, due to problems with the availability of transport some prisoners were not produced at court for bail hearings and even some mentally-ill individuals were held at prison instead of a health institution.[49] It has been reported that there were prisoners on remand who could have been given time to pay fines rather than incarcerated for what were relatively minor offences, such as assaults in bar-room brawls and so forth.

125. Finally, access to justice is in a parlous state in Zimbabwe. It was reported in the state-controlled *Herald* newspaper on 26 October 2009 that the Legal Aid Directorate, which was established to provide free legal services to the less well off facing prosecution, was on the verge of collapse. Organisations such as the Legal Resources Foundation and ZLHR endeavour to provide some level of representation for indigents and those involved in human rights cases and *ad hoc* associations of lawyers, such as that established in Mutare to assist detainees in 2008-09 also make an invaluable contribution, but demand for representation nonetheless far outstrips supply. There is a pressing and urgent need to keep organisations within Zimbabwe which fund and conduct defences of otherwise unrepresented individuals properly resourced. The work which

48 *Kachingwe v. Minister of Home Affairs* [2005] ZWSC 134.

49 Report by Brian Dube (of Mawarire & Partners, ZLHR and chairperson of NANGO, Midlands province) summarised in an article in *The Zimbabwe Telegraph*, 9 November 2009 -(http://www.zimbabwesituation.com/nov10_2009.html).

these organisations undertake is vital to the preservation of what is left of Zimbabwe's embattled rule of law.

126. Finally, access to justice is in a parlous state in Zimbabwe. Court and lawyers' fees are very high and constitute a real obstacle. It was reported in the state-controlled *Herald* newspaper on 26 October 2009 and confirmed by others involved in the provision of legal aid that the Legal Aid Directorate, which was officially established to provide free legal services, was on the verge of collapse due to a lack of funding and resources. (The Legal Aid Directorate even refers cases to the NGOs mentioned below.)

127. Organisations such as the Legal Resources Foundation, the Zimbabwe Women Lawyers Association, Justice for the Children Trusts and ZLHR endeavour to provide some level of legal aid and representation for specific categories of indigents and vulnerable people, such as those involved in human rights cases and *ad hoc* associations of lawyers, such as that established in Mutare to assist detainees in 2008-09, also make an invaluable contribution. However, demand for representation nonetheless far outstrips supply. There is a pressing and urgent need to keep organisations within Zimbabwe which fund and conduct defences of otherwise unrepresented individuals properly resourced. The work which these organisations undertake is vital to the preservation of what is left of Zimbabwe's embattled rule of law.

(F) Recommendations

128. The mission makes the following key recommendations to the Government of Zimbabwe with a view to the Government demonstrating its commitment to respect for the rule of law and the political parties comprising the Government complying with the obligations undertaken by them in the GPA and the applicable domestic and international standards set out in Section (B) of this Report.

(1) The culture of impunity on the part of the police and state security forces should be ended forthwith. Those suspected of having committed criminal offences should be investigated and if appropriate prosecuted regardless of their political affiliation.

(2) The Attorney-General and his representatives should discharge their duties fairly and impartially and in the interests of justice. In particular, the practice of automatic opposition to bail so as to secure a further seven days' detention under section 121 of the Criminal Procedure and Evidence Act should be ended.

(3) A Judicial Services Commission should be formed with a membership comprising, *inter alios*, retired Justices of the Supreme Court and senior lawyers. The Commission should be entirely independent of the Executive as to both its membership and its financing. A transparent nominations process should promote judicial appointments against agreed criteria based on merit.

(4) The Judicial Services Commission should be responsible for the appointment of all Judges, including Magistrates whose employment arrangements should be removed from the regime governing civil service appointments.

(5) The power of appointment of the Attorney-General should be removed from the Executive and vested in the Judicial Services Commission.

(6) A Code of Conduct for Judges should be introduced providing for, *inter alia*, full and frank disclosure of the assets of the Judges of the High Court and the Supreme Court over a certain value (to be set in consultation with the Judicial Services Commission). Judges having received property of any nature from the Government should be required to return that property forthwith.

(7) Responsibility for enforcing the Code of Conduct for Judges should be vested in the Judicial Services Commission which should have the power to discipline Judges including by suspension from office or dismissal in extreme cases such as serious misconduct or incapacity.

(8) The current remuneration of Judges and Magistrates should be reviewed to ensure that salary and benefits are commensurate with the status and responsibility of their office.

(9) Lawyers should be permitted to practise their profession without hindrance, harassment or intimidation.

(10) The Government should comply with its obligations under the SADC treaty and accept the jurisdiction of the SADC Tribunal and give full faith and credit to decisions of that Tribunal. If necessary, domestic legislation should be brought forward to ensure that decisions of the SADC Tribunal are enforceable directly in Zimbabwe.

(11) The Government should make provision for indigent persons subject to criminal proceedings to receive free representation by a properly qualified lawyer.

Find out more

The General Council of the Bar
289-293 High Holborn London WC1V 7HZ
Tel: +4420 7242 0082
www.barcouncil.org.uk

BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES

The Bar Human Rights Committee
Garden Court Chambers,
57-60 Lincoln's Inn Fields, London WC2A 3LJ
Tel: +44 20 7993 7755
www.barhumanrights.org.uk

CLA
COMMONWEALTH LAWYERS ASSOCIATION

Commonwealth Lawyers Association
17 Russell Square, London, WC1B 5DR, UK
Tel: +44 207 862 8824
www.commonwealthlawyers.com

avocats sans frontières
advocaten zonder grenzen

Avocats Sans Frontières
Rue de Namur 72, B-1000, Belgium
Tel : + 32 2 223 36 54
www.asf.be