



# **Anti-Impunity Litigation by Zimbabwe Lawyers for Human Rights 2022 – 2024:**

Successes, Challenges  
& Recommendations

**Anti-Impunity Litigation by  
Zimbabwe Lawyers for Human Rights  
2022 – 2024:  
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Recommendations**

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## **About ZLHR**

Established in February 1996, Zimbabwe Lawyers for Human Rights (ZLHR) is a not-for-profit law based human rights organisation. ZLHR works towards fostering a culture of human rights in Zimbabwe by encouraging the growth and strengthening of human rights at all levels of Zimbabwe society through observance of the rule of law. ZLHR is committed to upholding respect for the rule of law and unimpeded administration of justice, free and fair elections, free flow of information and the protection of constitutional rights, human rights and freedoms enshrined in human rights instruments in Zimbabwe and the surrounding region. We keep these values central to our programming activities. ZLHR holds observer status with the African Commission on Human Rights and People's Rights. We participate actively in the work of the committees of SADC Lawyers' Association and have affiliate status with the International Commission for Jurists.

# CHAPTER ONE

## The Historical Context of Impunity in Zimbabwe

Zimbabwe has a pronounced history of impunity and grave human rights abuses. Impunity has been endemic to the country and can be traced back to the colonial era.<sup>1</sup> In the 1970s, the civil war for independence between the Rhodesian African Nationalists (guerrillas) and the Rhodesian government resulted in widespread human rights violations and the abuse of civilians. During this period, civilians were exposed to extrajudicial executions, enforced disappearances, torture and other grave human rights violations perpetrated by the army, police and members of the liberation armies,<sup>2</sup> all of which were never accounted for or resolved.<sup>3</sup> Instead, Rhodesian security forces and liberation fighters were granted a blanket amnesty following deliberations at the Lancaster House constitutional conference in 1979.<sup>4</sup> Before this, the Indemnity and Insurance Act 45 of 1975 had granted amnesty to members of the security services, civil service and the Central Intelligence Organisation (CIO) for acts committed in “good faith” to protect the state’s security.<sup>5</sup> Additionally, the government seemed to condone and perpetuate impunity further by allowing senior Rhodesian officials who participated in serious human rights violations during this period to retain their posts in the newly independent Zimbabwe.<sup>6</sup>

With the advent of independence, State-sponsored repression, human rights abuse and impunity became the norm in Zimbabwe. Specifically, in 1983 the Mugabe-led government

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<sup>1</sup> Amnesty International, Zimbabwe: Toll of impunity, 25 June 2002, AFR 46/034/2002, available at: <https://www.refworld.org/docid/3d199ed54.html>. [Accessed on 8 November 2024].

<sup>2</sup> Zimbabwe Lawyers for Human Rights, “Anti-Impunity Litigation by Zimbabwe Lawyers For Human Rights from 2018 - 2019: Successes, Challenges And Recommendations”, available at: <https://www.zlhr.org.zw/wp-content/uploads/2022/07/Anti-Impunity-Litigation-by-ZLHR-from-2018-2019-Successes-Challenges-and-Recommendations.pdf> [Accessed on 8 November 2024].

<sup>3</sup> Human Rights Watch, “Perpetual Fear, Impunity and Cycles of Violence in Zimbabwe”, available at: <https://www.hrw.org/report/2011/03/08/perpetual-fear/impunity-and-cycles-violence-zimbabwe> [Accessed on 7 November 2024].

<sup>4</sup> Amnesty Ordinance 3 of 1979 and Amnesty (General Pardon) Ordinance 12 of 1980.

<sup>5</sup> The Act gave the Minister of Justice unfettered powers to terminate any actions for damages pending at the High Court in relation to both offences committed in the past and those in the future. See Zimbabwe Lawyers for Human Rights, “Anti-Impunity Litigation by Zimbabwe Lawyers For Human Rights from 2018 - 2019: Successes, Challenges And Recommendations” <https://www.zlhr.org.zw/wp-content/uploads/2022/07/Anti-Impunity-Litigation-by-ZLHR-from-2018-2019-Successes-Challenges-and-Recommendations.pdf> [Accessed on 7 November 2024].

<sup>6</sup> Amnesty International “Zimbabwe: Drawing a line through the past” in “Disappearances” and political killings: Human rights crisis of the 1990s– A manual for action (1993), available at: <https://www.amnesty.org/download/Documents/188000/afr460041993en.pdf> [Accessed on 7 November 2024].

deployed the 5th Brigade, a military unit of the Zimbabwe National Army to Matabeleland and Midlands provinces under the guise of quelling a “dissident” movement.<sup>7</sup> It is estimated that between 10 000 and 20 000 civilians were killed by these state security agents in Zimbabwe.<sup>8</sup> In addition to mass murder, the 5th Brigade committed various crimes including torture, rape and other sexual offences, genital mutilations, assault, and arson. These crimes have come to be known as the “Gukurahundi”.<sup>9</sup> The Gukurahundi atrocities came to an end in December 1987 following the Unity Accord signed by the then two major political parties, Zimbabwe African National Union-Patriotic Front (ZANU-PF) and Patriotic Front Zimbabwe African People’s Union (PF-ZAPU).<sup>10</sup> The Unity Accord remained silent on the Gukurahundi atrocities but however extended a blanket immunity to security forces involved.<sup>11</sup> Since then, no legitimate efforts have been made to reconcile the events and hold perpetrators accountable.<sup>12</sup> Instead, the Gukurahundi atrocities are treated as a taboo that is not openly discussed, mainly because some of the perpetrators continue to wield power and authority in Zimbabwe.<sup>13</sup>

Under international pressure, the government set up a commission of inquiry to investigate reports of atrocities by the army.<sup>14</sup> The Chihambakwe Commission of Inquiry was tasked with investigating the widespread massacres of civilians and political dissidents and gathering testimonies from villagers.<sup>15</sup> However, consistent with the culture of impunity that is apparent in Zimbabwe, the report on the inquiry was never made public. It is widely reported that the government argued that the publication of the report could spark violence over past wrongs.<sup>16</sup> In response to this injustice, the Zimbabwe Lawyers

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<sup>7</sup> Ndlovu M “Facing History In The Aftermath Of Gukurahundi Atrocities: New Media, Memory And The Discourses On Forgiveness On Selected Zimbabwean News Websites,” *Peace and Conflict Studies*: Vol. 24: No. 2, Article 3. Available at: <https://nsuworks.nova.edu/pcs/vol24/iss2/3> [Accessed on 8 November 2024].

<sup>8</sup> Killander M & Nyathi M “Accountability for the Gukurahundi atrocities in Zimbabwe thirty years on: prospects and challenges, available at: [https://repository.up.ac.za/bitstream/handle/2263/52719/Killander\\_Accountability\\_2015.pdf?sequence=1&isAllowed=y](https://repository.up.ac.za/bitstream/handle/2263/52719/Killander_Accountability_2015.pdf?sequence=1&isAllowed=y) [Accessed on 8 November 2024].

<sup>9</sup> As above.

<sup>10</sup> As above.

<sup>11</sup> Ndebele Z “Politics and Memory: The Case of the Gukurahundi in Zimbabwe”, available at: <https://thefunambulist.net/magazine/against-genocide/politics-and-memory-the-case-of-the-gukurahundi-in-zimbabwe> [Accessed on 8 November 2024].

<sup>12</sup> Erasmus M “Creating a Culture of Impunity in Zimbabwe: A case for philosophical input in development issues.”, Available at: [https://jsd-africa.com/Jsda/Vol13No4\\_Summer2011\\_B/PDF/Creating%20a%20Culture%20of%20Impunity%20in%20Zimbabwe1.pdf](https://jsd-africa.com/Jsda/Vol13No4_Summer2011_B/PDF/Creating%20a%20Culture%20of%20Impunity%20in%20Zimbabwe1.pdf) [Accessed on 14 November 2024].

<sup>13</sup> As above.

<sup>14</sup> Ndebele Z “Politics and Memory: The Case of the Gukurahundi in Zimbabwe”, available at: <https://thefunambulist.net/magazine/against-genocide/politics-and-memory-the-case-of-the-gukurahundi-in-zimbabwe> [Accessed on 8 November 2024].

<sup>15</sup> United States Institute of Peace “Commission of Inquiry: Zimbabwe”, available at: <https://www.usip.org/publications/1983/09/commission-inquiry-zimbabwe>, [Accessed on 14 November 2024].

<sup>16</sup> As above.

for Human Rights (ZLHR) and the Legal Resources Foundation (LRF) filed an application in the Supreme Court, seeking an order compelling then-President Robert Mugabe to publicise the findings of the Chihambakwe Commission of Inquiry relating to the 1980s Matabeleland massacres (Gukurahundi).<sup>17</sup> Unfortunately, the court held that as long as the President declined to publish the reports based on the interests of the state and the safety of other persons, he could not be compelled to publish them.<sup>18</sup> A similar outcome was recorded in the Dumbutshena Commission (which carried out an Inquiry into the Entumbane clashes) as the report or findings were never published.<sup>19</sup> Moreover, no evidence suggests that the constitution of the two commissions of inquiry was lawfully and duly considered.<sup>20</sup> It is reported that the commissions were severely limited in the number of interviewees and areas covered.<sup>21</sup> For mechanisms that are designed to uncover truths, address conflict and usher justice as regards human rights violations, the two commissions can be said to have fallen short of the standards of an effective truth commission.<sup>22</sup> Inevitably, the government's failure to deliver justice and reparations in the Gukurahundi matter sent a clear message that the commission of human rights violations in Zimbabwe would go unpunished.<sup>23</sup>

In the years which followed, then President Mugabe exercised his presidential powers of amnesty for politically motivated crimes. The use of a general amnesty following elections had become a partisan tool which the regime benefited from.<sup>24</sup> Unfortunately, this practice further entrenched impunity as it had been repeatedly used to deny redress for victims and provide protection to perpetrators of heinous crimes.<sup>25</sup> Particularly, in 1996,

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<sup>17</sup> Zimbabwe Lawyers for Human Rights & Anor v President of the Republic of Zimbabwe 2000 (1) ZLR 274 (S).

<sup>18</sup> Zimbabwe Lawyers for Human Rights & Another v President of Zimbabwe & Another 2003 (2) ZLR 444 (H).

<sup>19</sup> As above

<sup>20</sup> Erasmus M "Creating a Culture of Impunity in Zimbabwe: A case for philosophical input in development issues.", available at: [https://jsd-africa.com/Jsda/Vol13No4\\_Summer2011\\_B/PDF/Creating%20a%20Culture%20of%20Impunity%20in%20Zimbabwe1.pdf](https://jsd-africa.com/Jsda/Vol13No4_Summer2011_B/PDF/Creating%20a%20Culture%20of%20Impunity%20in%20Zimbabwe1.pdf) [Accessed on 14 November 2024].

<sup>21</sup> As above.

<sup>22</sup> Mbaku J "International Law and the Struggle Against Government Impunity in Africa" International Law and the Struggle Against Government Impunity in Africa 42 Hastings Int'l & Comp.L. Rev. 73 (2019), available at: [https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1832&context=hastings\\_international\\_comparative\\_jaw\\_review](https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1832&context=hastings_international_comparative_jaw_review) [Accessed on 18 November 2024].

<sup>23</sup> Amnesty International, "ZIMBABWE Terror tactics in the run-up to parliamentary elections, June 2000", available at: <https://www.amnesty.org/en/wp-content/uploads/2021/06/afr460142000en.pdf> [Accessed on 14 November 2024].

<sup>24</sup> Zimbabwe Lawyers for Human Rights "Zimbabwe Lawyers for Human Rights, "Anti-Impunity Litigation by Zimbabwe Lawyers For Human Rights from 2018 - 2019: Successes, Challenges And Recommendations" available at <https://www.zlhr.org.zw/wp-content/uploads/2022/07/Anti-Impunity-Litigation-by-ZLHR-from-2018-2019-Successes-Challenges-and-Recommendations.pdf> [Accessed on 18 November 2024].

<sup>25</sup> As above.

through General Notice 362A amnesty was extended to those sentenced for politically motivated crimes.<sup>26</sup> Through this amnesty, ZANU PF supporters who had engaged in politically motivated assaults and burning of opposition members' homes during the run-up to the 1995 general elections escaped prosecution.<sup>27</sup> In 2000, General Notice 457A pardoned persons who were liable to criminal prosecution for any politically motivated crime committed during the period 1 January 2000 to 31 July 2000. As with previous amnesties, it benefited "ZANU PF supporters who were implicated in unleashing politically motivated violence, arson, and the intimidation of opposition supporters".<sup>28</sup> The names of those pardoned were never published.<sup>29</sup> Pertinently, the African Commission on Human and Peoples' Rights (ACHPR) referred to this amnesty in *Zimbabwe Human Rights NGO Forum v Zimbabwe* and held that:<sup>30</sup>

*"[B]y enacting Decree 1 of 2000 which foreclosed access to any remedy that might be available to the victims to vindicate their rights, and without putting in place alternative adequate legislative or institutional mechanisms to ensure that perpetrators of the alleged atrocities were punished, and victims of the violations duly compensated or given other avenues to seek effective remedy, the respondent state did not only prevent the victims from seeking redress, but also encouraged impunity, and thus reneged on its obligation in violation of articles 1 and 7(1) of the African Charter. The granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy."*

However, the State wholly disregarded these sentiments through the issuance of Clemency Order No. 1 of 2008 (GN 85A2008) in which President Mugabe pardoned those responsible for politically motivated crimes committed before and after the 29 March 2008 elections, up to 16 June 2008.<sup>31</sup> Summarily, the pattern of violations which was supported by amnesty decrees enacted by the authorities of the State continued to create a longstanding climate of impunity for rights violations in Zimbabwe.

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<sup>26</sup> GN362A was a general amnesty for life sentences before 31 January 1981, infanticide offenders and determinate sentences.

<sup>27</sup> As above.

<sup>28</sup> As above.

<sup>29</sup> Accord, "The Place for Amnesty in Zimbabwe's Transitional Justice Process" available at: <https://www.accord.org.za/conflict-trends/place-amnesty-zimbabwes-transitional-justice-process/> [Accessed on 18 November 2024].

<sup>30</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128, (ACHPR 2006) par 215.

<sup>31</sup> Zimbabwe Lawyers for Human Rights "Zimbabwe Lawyers for Human Rights, "Anti-Impunity Litigation by Zimbabwe Lawyers For Human Rights from 2018 - 2019: Successes, Challenges And Recommendations" available at <https://www.zlhr.org.zw/wp-content/uploads/2022/07/Anti-Impunity-Litigation-by-ZLHR-from-2018-2019-Successes-Challenges-and-Recommendations.pdf> [Accessed on 18 November 2024].

## *Impunity in the wake of the 2013 Constitution*

The promulgation of the 2013 Constitution of Zimbabwe was premised on the need to protect and fulfil human rights and therefore usher in a new constitutional dispensation.<sup>32</sup> The provisions of this law in all its forms were founded on the value of the supremacy of the Constitution.<sup>33</sup> As such, the adoption of a new Constitution provided an opportunity to break away from the culture of impunity emanating from the political impasse of the 2000s.<sup>34</sup> However, the pattern of human rights violations and terror tactics since the enactment of the Constitution reflects the unrelenting nature of impunity in Zimbabwe.

According to section 208 of the Constitution, state security services have an obligation to protect and secure the lives of citizens in the exercise of their functions.<sup>35</sup> They are mandated to uphold the fundamental rights and freedoms of all people. Additionally, section 68 of the Constitution considers a pathway for redress for victims of rights violations.<sup>36</sup> The provision provides for the right to administrative justice for every person that is “lawful, prompt, efficient, reasonable, proportionate, impartial and both substantively and procedurally fair.”<sup>37</sup> Furthermore, section 85 provides for the enforcement of fundamental rights and freedoms by extending locus standi (the right or capacity to bring an action or to appear in a court) to any person whose rights have been or are likely to be infringed to seek relief.<sup>38</sup> Moreover, section 53 of the Zimbabwean constitution states that “no person may be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment”, while section 51 stipulates that “every person has inherent dignity in their private and public life, and the right to have that dignity respected and protected”. While such provisions should have deepened democracy and averted the recurrence of human rights violations and impunity in Zimbabwe, the opposite has ensued.<sup>40</sup>

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<sup>32</sup> Raoul Wallenberg Institute “Selected aspects of the 2013 Zimbabwean Constitution and the declaration of rights” available at: <https://rwi.lu.se/wp-content/uploads/2021/04/Selected-Aspects-of-2013-Zimbabwean-Constitution-and-the-DoR.pdf> [Accessed 18 November 2024].

<sup>33</sup> As above.

<sup>34</sup> Amnesty International “New Zimbabwe constitution can usher in a new culture of human rights” available at: <https://www.amnesty.org/en/latest/news/2013/05/new-zimbabwe-constitution-can-usher-new-culture-human-rights/> [Accessed on 19 November 2024].

<sup>35</sup> Section 208(1) of the Constitution of Zimbabwe Amendment (No. 2) Act 2013.

<sup>36</sup> Zimbabwe Lawyers for Human Rights, “Zimbabwe Lawyers for Human Rights, “Anti-Impunity Litigation by Zimbabwe Lawyers For Human Rights from 2018 - 2019: Successes, Challenges And Recommendations” available at <https://www.zlhr.org.zw/wp-content/uploads/2022/07/Anti-Impunity-Litigation-by-ZLHR-from-2018-2019-Successes-Challenges-and-Recommendations.pdf> [Accessed on 19 November 2024].

<sup>37</sup> Section 68 of the Constitution of Zimbabwe Amendment (No. 2) Act 2013.

<sup>38</sup> As above.

<sup>39</sup> Section 85 of the Constitution of Zimbabwe Amendment (No. 2) Act 2013.

<sup>40</sup> As above.

Since the promulgation of the 2013 Constitution, the toll of impunity in Zimbabwe is characterised by the violation of fundamental human rights by state security services which include the police force, the army, and other members of the security sector who are mandated with enforcing law and order.<sup>41</sup> In the course of these violations, impunity has become pervasive as a result of the government’s failure and unwillingness to bring perpetrators of human rights violations to account for their crimes.<sup>42</sup> The context and nature of state security services involvement have evolved. For instance, the police and the courts have now become a tool used to crack down on freedom of expression, assembly and association, through the application of arbitrary and malicious arrests, lengthy pre-trial detentions, and trial proceedings which are injudicious and impartial.<sup>43</sup> In the past decade alone, impunity has been constant in the context of elections, and human rights violations have transcended through military involvement in civilian affairs.<sup>44</sup> Fuelled by impunity, instances of torture and other cruel, inhuman or degrading treatment or punishment, extrajudicial executions, enforced disappearances and abductions by alleged state security services have become more pronounced.<sup>45</sup> Additionally, the political landscape coupled with state repression has made it difficult for survivors to pursue redress for human rights violations.<sup>46</sup> Regrettably, some of the developments and impunities have ensued after the introduction of a progressive Constitution. The discussion above spotlights an array of constitutional provisions that should have aided Zimbabwe in the fight against impunity. It depicts the gravity of human rights violations that are still apparent irrespective of a progressive constitution that presents ample safeguards for victims and avenues for obtaining justice and redress.

### *The trajectory of Human Rights and Impunity under the “Mnangagwa Administration”*

This publication spotlights a compendium of ZLHR’s anti-impunity cases from the period dating back from 2022 to date. As such, this calls for a reflection of impunity under

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<sup>41</sup> Zimbabwe Lawyers for Human Rights, “Public Interest Litigation and Social Change in Zimbabwe” available at: <https://www.zlhr.org.zw/wp-content/uploads/2022/08/Public-Interest-Litigation-and-Social-Change-In-Zimbabwe.pdf> [Accessed on 19 November 2024].

<sup>42</sup> Mbaku J “International Law and the Struggle Against Government Impunity in Africa” Available at: [https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1832&context=hastings\\_international\\_comparative\\_law\\_review](https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1832&context=hastings_international_comparative_law_review) [Accessed on 19 November 2024].

<sup>43</sup> Zimbabwe Lawyers for Human Rights “Anti-Impunity Litigation by Zimbabwe Lawyers For Human Rights from 2018 - 2019: Successes, Challenges And Recommendations” available at <https://www.zlhr.org.zw/wp-content/uploads/2022/07/Anti-Impunity-Litigation-by-ZLHR-from-2018-2019-Successes-Challenges-and-Recommendations.pdf>

<sup>44</sup> As above.

<sup>45</sup> Human Rights Watch “Zimbabwe: Joint statement calling on authorities to investigate the escalation of abductions, torture and killing of political activists”, available at: <https://www.hrw.org/news/2023/11/15/zimbabwe-joint-statement-calling-authorities-investigate-escalation-abductions> [Accessed on 19 November 2024].

<sup>46</sup> As above.

the new dispensation led by President Emerson Mnangagwa. Under the Mnangagwa administration, the trajectory of human rights violations and impunity has built on the elements portrayed in earlier years. As such, it has consisted of, the prevention of those responsible for human rights violations from being brought to justice; the obscuring or prevention of the identification of the state security agents who perpetrate human rights violations; concealing of evidence by preventing investigations and publishing of accounts of human rights violations; undermining the judicial system and encouraging the police to serve the political dictates of the government rather than the law.<sup>48</sup> The administration has not taken adequate steps to demonstrate a commitment to accountability, justice for human rights abuses or respect for the rule of law. Therefore, impunity has remained prevalent in the country often with human rights defenders, activists, journalists and political opponents being routinely targeted to suppress the regime's critics and any political opposition in the pre and post-election periods.<sup>49</sup>

Specifically, the upsurge of state-sponsored violence and the systematic human rights violations during the 2018 harmonised elections revealed this.<sup>50</sup> Wide-ranging promises of political reform and democratic observance were trampled following a wave of post-election violence that broke out immediately after the results were released. There was rapid deployment of the military in response to demonstrations that ensued on 1 August 2018.<sup>51</sup> The protests were triggered by the delays in the announcement of the results and a lack of trust in the integrity of the electoral body, the Zimbabwe Electoral Commission (ZEC) which was suspected to be manipulating the electoral outcome.<sup>52</sup> There was overwhelming evidence that the army and the police had used live ammunition targeting unarmed civilians. The latter resulted in the deaths of seven people from gunshot wounds, another twenty-three people were injured as a result of gunshots and hundreds of people were indiscriminately assaulted by the army and police.<sup>53</sup> The military is reported to have used sjamboks, baton sticks and rifle butts to assault members of the public.<sup>54</sup> Regrettably, as with many cases of rights violations in Zimbabwe, the brutal crackdown

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<sup>47</sup> The Constitution of Zimbabwe Amendment (No. 2) Act 2013

<sup>48</sup> Amnesty International, "The toll of Impunity" available at: <https://reliefweb.int/report/zimbabwe/zimbabwe-toll-impunity> [accessed on 21 November 2024].

<sup>49</sup> London School of Economics, "Zimbabwe's 'New Dispensation' destroys hope on human rights", available at: <https://blogs.lse.ac.uk/africaatlse/2020/02/28/zimbabwe-new-dispensation-hope-human-rights-violence/> [Accessed on 21 November 2024].

<sup>50</sup> Zimbabwe Human Rights NGO Forum "Organised violence and Torture and Elections in Zimbabwe", <https://kubatana.net/wp-content/uploads/2021/07/OVT-and-Elections-final-26-June-2021.pdf> [Accessed on 26 November 2024].

<sup>51</sup> As above.

<sup>52</sup> Zimbabwe Human Rights NGO Forum, "Guns Run Amok" available at: <https://www.hrforumzim.org/wp-content/uploads/2023/09/Guns-Run-Amok.pdf> [Accessed on 26 November 2024].

<sup>53</sup> As above.

<sup>54</sup> As above.

by security apparatus in the 1 August 2018 shootings has gone unaccounted for in spite of a commission of inquiry into the matter.<sup>55</sup> Incidentally, one of the recommendations made by this commission of inquiry is the need to ensure accountability in respect of the perpetrators.<sup>56</sup> Subterfuge was also perceived at play, particularly because the president was said to have overridden the constitutional mandate of the Zimbabwe Human Rights Commission by setting up the Motlanthe Commission of Inquiry.<sup>57</sup>

Similarly, following the announcement of sharp fuel price hikes in January 2019 by President Mnangagwa, civic movements, labour bodies and activists called for a national stay-away which subsequently erupted into protests.<sup>58</sup> Civilians clashed with members of the police force and the army was deployed to quell the protests. The State deployed the army together with other state agents and committed widespread human rights violations targeting the civilian population. Amongst the violations recorded by civic groups were, abductions, rape, assault, torture and other cruel, inhuman and degrading treatment including dog bites, and arbitrary arrests and detention.<sup>59</sup> Findings reveal that members of the police force and members of Zimbabwe National Army perpetrated systematic human rights violations.<sup>60</sup> As in many other cases like this, this ruthless crackdown on the freedom of assembly and freedom of expression has also gone unanswered and further entrenched impunity for human rights violations in Zimbabwe.<sup>61</sup>

In the period preceding and succeeding the August 2023 harmonised elections, Zimbabwe was marred with violence, a surge in enforced disappearances, abductions, extrajudicial killings, and a crackdown on the freedom of assembly and association.<sup>62</sup> In a similar fashion to other election cycles in Zimbabwe, impunity for rights violations

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<sup>55</sup> The findings and recommendations of the Motlanthe Commission of Inquiry on the 1 August 2018 shootings are yet to be considered and implemented. Moreover, the developments are scanty and no perpetrators have been held accountable for the gross human rights violations.

<sup>56</sup> See Zimrights, “The Motlanthe Report: What Next for Victims and the Nation: An Analysis of the Recommendations of the Motlanthe Report Two Years Later”, [https://www.veritaszim.net/sites/veritas\\_d/files/The%20Motlanthe%20Report.pdf](https://www.veritaszim.net/sites/veritas_d/files/The%20Motlanthe%20Report.pdf)

<sup>57</sup> Section 243 (1) of the Constitution of Zimbabwe Amendment (No. 2) Act 2013; Zimbabwe Human Rights NGO Forum, “Organised Violence and Torture and Elections in Zimbabwe” <https://kubatana.net/wp-content/uploads/2021/07/OVT-and-Elections-final-26-June-2021.pdf> [Accessed on 26 November 2024].

<sup>58</sup> Section 243 (1) of the Constitution of Zimbabwe Amendment (No. 2) Act 2013; Zimbabwe Human Rights NGO Forum, “Organised Violence and Torture and Elections in Zimbabwe” <https://kubatana.net/wp-content/uploads/2021/07/OVT-and-Elections-final-26-June-2021.pdf> [Accessed on 26 November 2024].

<sup>59</sup> Zimbabwe Human Rights NGO Forum “Guns Run Amok”, available at: <https://www.hrforumzim.org/wp-content/uploads/2023/09/Guns-Run-Amok.pdf> [Accessed on 26 November 2024].

<sup>60</sup> As above.

<sup>61</sup> J Burke & N Chingono “Zimbabwe police fire live rounds during general strike protests” The Guardian 14 January 2019 available at: <https://www.theguardian.com/world/2019/jan/14/zimbabwe-police-clash-protesters-first-day-general-strike> [Accessed on 26 November 2024].

was the order of the day. Specifically, between 2022 and 2024 widespread abuses by state security services and ruling party officials were recorded.<sup>63</sup> State security agents and political elites were catalysts of grave human rights violations that stemmed from excessive use of force, intimidation, and harassment.<sup>64</sup> Of particular concern in the past two years is the surge in cases of enforced disappearances, abductions, torture and other cruel, inhumane and degrading treatment to stifle dissent.<sup>65</sup> Civic organisations catalogued and reported on abductions and incidents of extreme torture targeted at opposition party members and human rights defenders (HRDs) by alleged state security agents.<sup>66</sup> Unfortunately, such deplorable practices have remained systematic and widespread in both settler and contemporary Zimbabwe and have contributed widely to the culture of impunity.

During the period under review, the unprecedented surge in acts of enforced disappearances by state security services contributed to the toll of impunity. As Zimbabwe commemorated 42 years of its independence on 18 April 2022, an attempt to abduct human rights activist Makomborero Haruzivishe by suspected state security agents was underway.<sup>67</sup> The incident was disguised as an arrest, and was captured on Facebook live before Makomborero was saved by members of the public.<sup>68</sup> The abduction and subsequent murder of Citizens Coalition for Change (CCC) activist, Moreblessing Ali which followed marked the unfolding of a pattern of gross human rights violations in Zimbabwe.<sup>69</sup> On 26 August 2023, opposition activist Nelson Mukwenha was forcibly abducted by about four unidentified men from his residence in Highfield. Nelson Mukwenha was only located on 28 August 2023 after he was severely tortured and dumped in Mashonaland

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<sup>62</sup> Amnesty International, “Zimbabwe: Ruthless crackdown on freedom of assembly exposes intolerance for dissent”, available at <https://www.amnesty.org/en/latest/news/2019/02/zimbabwe-ruthless-crackdown-on-freedom-of-assembly/> [Accessed on 26 November 2024].

<sup>63</sup> Human Rights Watch “Zimbabwe: Repression, Violence Loom over August Election Abusive Laws, Partisan Government Agencies Undermine Free, Fair Vote” available at: <https://www.hrw.org/news/2023/08/03/zimbabwe-repression-violence-loom-over-august-election> [Accessed on 26 November 2024].

<sup>64</sup> As above.

<sup>65</sup> Human Rights Watch “Crush them like lice - Repression of Civil and Political Rights Ahead of Zimbabwe’s August 2023 Election” available at: <https://www.hrw.org/report/2023/08/03/crush-them-lice/repression-civil-and-political-rights-ahead-zimbabwes-august-2023> [Accessed on 26 November 2024].

<sup>66</sup> Amnesty International, “Zimbabwe: Authorities must investigate the disappearance and torture of political activist”, available at: <https://www.amnesty.org/en/latest/news/2023/08/zimbabwe-authorities-must-investigate-abduction-of-political-activist/> [Accessed on 26 November 2024].

<sup>67</sup> As above.

<sup>68</sup> Zimbabwe NGO Forum “Submission to the Working Group- Enforced Disappearances” available at, <https://www.ohchr.org/sites/default/files/documents/issues/development/session24/subm-preparation-visit-cso-zimbabwe-hr-ngo-forum.pdf> [Accessed on 26 November 2024].

<sup>69</sup> ZimEye, “Mob Saves Makomborero Haruzivishe From Abduction”, available at: <https://www.zimeye.net/2022/04/20/makomborero-haruzivishe-escapes-abduction-attempt/> [Accessed on 26 November 2024].

West province.<sup>70</sup> The distressing trend escalated in the post-election period with the abduction of opposition Member of Parliament, Takudzwa Ngadzire, on 1 November 2023.<sup>71</sup> The assailants who were state security agents were captured brandishing an AK-47 rifle in the abduction video, moments before capturing Takudzwa. Although the state security agents were known, they were not immediately apprehended. Through assistance from the ZLHR, Takudzwa has since instituted legal proceedings against the state security agents who abducted and tortured him.<sup>72</sup> Similarly, on 13 November, Citizens Coalition for Change (CCC) activist and church leader Tapfumanei Masaya's body was found dumped in Mashonaland East Province.<sup>73</sup> Other human rights defenders who were victims of abductions, enforced disappearances and torture sponsored by state security agents during this period include, Jeffrey Kalosi, Namatai Kwekweza, Robson Chere, Womberaishe Nhende, Sanele Mkhuhlane, and James Chidhakwa, amongst others.<sup>74</sup> Unfortunately, the State failed to effectively respond to, and investigate reports of such abuses at the hands of state security agents which exacerbated the culture of impunity in Zimbabwe. In almost all instances where perpetrators were purported to be state security agents, no one was held accountable and victims and families of enforced disappearances were not provided effective recourse or redress. Despite the long history of impunity stemming from enforced disappearances and torture dating back to the liberation war, the State has yet to implement laws that safeguard against enforced disappearances and torture in Zimbabwe.<sup>75</sup> Furthermore, Zimbabwe has not ratified the International Convention for the Protection of all Persons from Enforced Disappearance which has been in force since 23 December 2010; and the Convention Against Torture

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<sup>70</sup> T Garusa "Zimbabwe: Biti Condemns Haruzivishe Abduction Bid - Says Mnangagwa Regime 'Incorrigible'" *New Zimbabwe* 20 April 2022, available at: <https://www.newzimbabwe.com/bit-condemns-haruzivishe-abduction-bid-says-mnangagwa-regime-incorrigible/> [Accessed on 26 November].

<sup>71</sup> Amnesty International Zimbabwe: Authorities must do more to stop the culture of abductions and killings", available at: <https://www.amnesty.org/en/latest/news/2022/06/zimbabwe-authorities-must-do-more-to-stop-culture-of-abductions/> [Accessed on 26 November 2024].

<sup>72</sup> Zimbabwe Lawyers for Human Rights "ZLHR Statement on International Day of the Victims of Enforced Disappearances" available at <https://www.zlhr.org.zw/?p=3102> [Accessed on 26 November 2024].

<sup>73</sup> Human Rights Watch, "Zimbabwe Opposition Parliament Member Allegedly Abducted, Tortured", available at: <https://www.hrw.org/news/2023/11/03/zimbabwe-opposition-parliament-member-allegedly-abducted-tortured> [Accessed on 26 November 2024].

ZLHR, "Ngadzire Sues Abductors, Torturers", available at: <https://www.zlhr.org.zw/?p=3277> [Accessed on 26 November 2024].

<sup>74</sup> Amnesty International "ZIMBABWE: AUTHORITIES MUST INVESTIGATE THE ESCALATION OF ABDUCTIONS, TORTURE AND KILLING OF POLITICAL ACTIVISTS" available at: <https://www.amnesty.org/en/wp-content/uploads/2023/11/AFR4673862023ENGLISH.pdf> [Accessed on 27 November 2024].

<sup>75</sup> ZLHR "Zimbabwe Lawyers for Human Rights, "Anti-Impunity Litigation by Zimbabwe Lawyers For Human Rights from 2018 - 2019: Successes, Challenges And Recommendations", available at <https://www.zlhr.org.zw/wp-content/uploads/2022/07/Anti-Impunity-Litigation-by-ZLHR-from-2018-2019-Successes-Challenges-and-Recommendations.pdf> [accessed on 1 December 2024].

and Other Cruel or Inhuman and Degrading Treatment or Punishment, which has been in force since 27 June 1987.

Moreover, during the period under review, the new dispensation used the criminal justice system and repressive legislation such as the Criminal Law (Codification and Reform) Act and the Maintenance of Public Order Act (MOPA) as political weapons to violate fundamental freedoms and to further shield perpetrators of human rights violations from prosecution.<sup>76</sup> Just over one month before election day, the president signed into law the Criminal Law (Codification and Reform) Amendment Act, 2022.<sup>77</sup> This amendment, which is commonly referred to as the ‘Patriot Act’, heightened the risk of arbitrary detention against those who expressed dissenting views since it contains overly broad provisions that curtail and criminalise the freedom of association and assembly.<sup>78</sup> Moreover, provisions of the MOPA which cater to public demonstrations and gatherings were exploited by state security services to impose arbitrary restrictions on freedoms of expression, assembly, association and movement and personal liberty in Zimbabwe.<sup>79</sup> For instance, members of the police force repeatedly banned opposition party campaign rallies without justification.<sup>80</sup> Additionally, members of the main opposition party, the CCC continued to be threatened through the use of repressive laws especially during the general election period.<sup>81</sup> The latter often led to arbitrary detention and unfair trials of the targeted individuals.<sup>82</sup> The State continues to compound impunity which has resulted in the erosion of the rule of law and disregard for constitutional principles. It serves that, during the period under review, State security services in Zimbabwe were not subject to the supremacy of the Constitution and impunity prevailed.

Furthermore, the State displayed no intention to comply with section 210 of the Constitution which requires that there be an Act of Parliament providing for an “effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services, and for remedying any harm caused by such misconduct”.<sup>83</sup> The “security services” include

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<sup>76</sup> As above.

<sup>77</sup> ZLHR “ZLHR Condemns Passing of Patriotism Provisions in Criminal Law (Codification and Reform) Amendment Bill in National Assembly” available at: <https://www.zlhr.org.zw/?p=3051> [Accessed on 1 December 2024].

<sup>78</sup> As above

<sup>79</sup> Sections 8, 10, 12, 13, 15 and 16 of the Maintenance of Peace and Order Act [Chapter 11:23]

<sup>80</sup> VOA, “Zimbabwean Police Block Another Opposition Rally” available at: <https://www.voaafrica.com/a/zimbabwean-police-block-another-opposition-rally/7171568.html> [Accessed on 1 December 2024].

<sup>81</sup> Amnesty International, “Zimbabwe 2023” available at: <https://www.amnesty.org/en/location/africa/southern-africa/zimbabwe/report-zimbabwe/> [Accessed on 1 December 2024].

<sup>82</sup> As above.

<sup>83</sup> Section 210 of the Constitution of Zimbabwe.

the Defence Forces (army and air force), the Police Service, the intelligence services and the Prisons and Correctional Service.<sup>84</sup> Consequently, in November 2023, ZLHR wrote to the President of Zimbabwe on instructions from their client protesting delays in implementing Section 6 of the Zimbabwe Independent Complaints Act.<sup>85</sup> Specifically, the Zimbabwe Independent Complaints Commission (ZICC) Act was promulgated in October 2022, but there were no commissioners appointed to assume the various responsibilities enunciated in the Act which include, receiving complaints about the conduct of security forces and adjudicating over them.<sup>86</sup> ZLHR argued that the failure and delay in appointing ZICC commissioners rendered the essence of the protection of members of the public as provided for in section 210 of the Constitution nugatory as President Mnangagwa’s Office had not fulfilled its statutory mandate of appointing Commissioners to deal with complaints filed against delinquent members of the security services.<sup>87</sup> At the time of writing, the ZICC commissioners have now been appointed; however, its operationalisation and effect remain to be seen.<sup>88</sup> Nevertheless, chapter 3 of this publication discusses the Zimbabwe Independent Complaints Mechanism at large and proffers best practices to alleviate some of the challenges emanating from impunity in Zimbabwe.

This chapter provides an overview of the historical context of impunity in Zimbabwe from the 1970s to the 2000s. It spotlights the foundation and context of impunity through human rights violations at the hands of the State and state security services in Zimbabwe. Moreover, it reveals the disregard for redress despite progressive legislation that provides safeguards for victims of rights violations by state security services. The chapter provides an outline of the toll of impunity beyond the political impasse of the 2000s, specifically drawing attention to the trajectory of human rights under the new dispensation. Moreover, it illuminates the course of impunity in the period under review dating from 2022 to 2024.

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<sup>84</sup> Section 207 of the Constitution of Zimbabwe.

<sup>85</sup> Section 6 of the Zimbabwe Independent Complaints Commission Act [CHAPTER 10:34] empowers the President to appoint members of the Commission.

<sup>86</sup> Section 5, Zimbabwe Independent Complaints Commission Act [CHAPTER 10:34].

<sup>87</sup> Zimbabwe Lawyers for Human Rights “ZLHR Jolts Parliament into action over ZICC” available at: <https://www.zlhr.org.zw/?p=3176> [Accessed on 2 December 2024].

<sup>88</sup> Chronicle “President Mnangagwa swears in members of the Independent Complaints Commission” available at: <https://www.chronicle.co.zw/president-mnangagwa-swears-in-members-of-zimbabwe-independent-complaints-commission/> [Accessed on 2 December 2024].

# CHAPTER TWO

## ZLHR's notable cases from 2022 - 2024: successes and challenges

### *Introduction*

Throughout the years, ZLHR has been known for its track record in anti-impunity litigation, representing victims of police brutality and other state security services. For over 25 years, ZLHR has assisted thousands of victims of human rights violations in asserting their rights.<sup>89</sup> These cases have been taken up from walk-in clients or referrals from the organisation's various partners including the Zimbabwe Human Rights Commission. Some of the referrals are received from organisations ZLHR is in consortium with such as the Zimbabwe Peace Project (ZPP). The anti-impunity campaign has assisted victims from across the country, and the spotlight cases chosen for purposes of this publication will highlight the geographical diversity of the cases taken up. This publication will spotlight cases that were finalised between 2022 and 2024.

However, an aspect to note is that some of these cases have causes of action that commenced in 2017 up to 2020, an indictment of the bureaucratic red tape of the judicial system. The latter is one of many challenges that will be explored further in the chapter. The types of damages claimed under the anti-impunity campaign range from damages for loss of support, loss of amenities of life, general damages for medical expenses, loss of property, contumelia, nervous shock, and pain and suffering. However, sometimes monetary damages do not suffice as they are either devalued due to the fluctuating and volatile monetary regimes in Zimbabwe, or the violation may be such that no amount of money will suffice as a form of reparation. Without any tangible legal and institutional reforms, this state of affairs is most likely to continue, a situation that perpetuates impunity without much deterrent effect and at the cost of the taxpayer's money.

### *Spotlight cases by ZLHR from 2022-2024*

The following list spotlights cases undertaken by the Zimbabwe Lawyers for Human Rights under the anti-impunity campaign:

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<sup>89</sup> Zimbabwe Lawyers for Human Rights "Anti-Impunity Litigation by Zimbabwe Lawyers For Human Rights from 2018 -2019: Successes, Challenges And Recommendations", available at: <https://www.zlhr.org.zw/wp-content/uploads/2022/07/Anti-Impunity-Litigation-by-ZLHR-from-2018-2019-Successes-Challenges-and-Recommendations.pdf> [Accessed on 14 November 2024].

### *Amos Siska v Minister of Home Affairs and Cultural Heritage*

A Gweru citizen, Amos Siska was assaulted by police officers on 26 April 2020, during the COVID-19 National Lockdown. He was queuing outside Stanbic Bank in Gweru. While movement was restricted during the COVID-19 pandemic, people were allowed to seek essential services, including banking. However, Amos became a victim of overzealous uniformed police officers who approached him and assaulted him and other individuals who were in the queue with him. The police officers assaulted Amos with baton sticks, booted feet and open hands all over his body. As a result of these wanton and savage attacks, he suffered serious injuries, including a fractured arm. An attempt to report the case at Gweru Central Police Station was rendered futile as he was turned away. Amos approached ZLHR lawyers, who assisted him in drafting and serving notices of intention to sue and all pleadings relevant to the case. The trial commenced on 5 October 2021 and after a full trial, Siska was awarded damages on 17 March 2022. The Defendants, including the Commissioner General of Police, were ordered to pay ZWG140 000 in damages. Regrettably, the defendants did not comply with the order of the court which prompted ZLHR lawyers to institute contempt of court proceedings and threaten to cause the arrests of the two officials. The Minister of Home Affairs and Cultural Heritage and the Commissioner General of Police were compelled to comply with the order and subsequently paid ZWG143 368 to Siska as compensation for damages for the violation of his rights arising from police brutality.<sup>90</sup>

### *Felix Mafondokoto v Minister of Defence and War Veteran Affairs & Another*

Felix Mafondokoto is a victim of gruesome police brutality in Zimbabwe. He is one of the victims of the infamous January 2019 anti-government protests over massive fuel price hikes that led to mass dragnet arrests, fast-tracked trials and grave human rights violations.<sup>91</sup> Felix was shot by members of the Zimbabwe National Army on 14 January 2019 when they were dispersing protestors who were protesting in Chitungwiza. However, Felix was not participating in the anti-government protests but was caught in the crossfire. As a result of this unfortunate incident, Felix approached ZLHR lawyers who assisted him in filing and issuing summons against the Minister of Defence and War Veteran Affairs and the Commander of the Zimbabwe National Army. Lawyers filed all the necessary pleadings. However, due to the devaluation of the amount initially claimed for

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<sup>90</sup> Zimbabwe Lawyers for Human Rights “Covid-19 National Lockdown era Victim Compensated” available at: <https://www.zlhr.org.zw/?p=3355> [Accessed on 14 November 2024].

<sup>91</sup> Amnesty International “Zimbabwe: Crackdown intensifies escalates on protests over massive fuel price hikes, hundreds arrested” available at <https://www.amnesty.org/en/latest/news/2019/01/zimbabwe-crackdown-escalates-on-protests-over-massive-fuel-price-hikes-hundreds-arrested/> [Accessed on 25 November 2024].

damages suffered, lawyers were compelled to amend the summons for the benefit of Felix. The process of exchanging pleadings took a significantly longer period due to the National Lockdown imposed due to the Coronavirus pandemic which led to the closure of courts and suspension of most services except essential ones. The hearing for this application was only set down for 14 March 2024 due to the incessant delaying tactics by the Defendants. The claim was subsequently amended to reflect United States Dollars on the summons. When the relevant issues were rectified, lawyers attended court on 8 April 2024 for the Pre-Trial Conference. Eventually, the trial commenced on 29 April 2024 and was postponed to 2 May 2024. At the end of the trial, the court directed parties to file closing submissions on or before 9 May 2024. On 20 May 2024, the Court handed down its judgment in favour of Felix Mafondokoto. The Defendants were ordered to pay the total sum of US\$29 182.00 broken down as follows: \$3 182 being special damages, \$10 000 being damages for pain and suffering, \$9 000 being damages for contumelia and \$7 000 being damages for loss of earnings. The Defendants were aggrieved with the outcome of the case and on 24 June 2024, they served an appeal against the decision of the magistrate. On 6 August 2024, lawyers filed their heads of argument in preparation for the appeal hearing. The appeal was set down for hearing on 12 September 2024. On 20 September 2024, the appeal was dismissed by the High Court. Although it took over five years, an order was obtained to the effect that the Defendants are obliged to pay the damages owed to Felix Mafondokoto.

*Muchademba Muponde v Minister of Defence and War Veterans Affairs and Commander of the Zimbabwe National Army*

In a relatively similar fashion, Muchademba Muponde was also subjected to abuse by members of the Zimbabwe National Army. He is also one of the victims of the January 2019 anti-government protests. On 16 January 2019, members of the Zimbabwe National Army were deployed in low-income communities of Harare to suppress anti-government protests against the hike in fuel prices.<sup>92</sup> The uniformed soldiers were chasing the protestors and Muchademba fled to avoid any altercation with them. However, one soldier, noticing him, gave chase and caught up with him. He assaulted him on his back and neck using the back of the firearm.<sup>93</sup> Despite running away to seek refuge in a nearby homestead, the soldier continued to pursue him and when he found him, continued assaulting him, inflicting several injuries. Muchademba sustained serious injuries on both legs including internal injuries on his left leg as a result of the assault and he could not walk. The soldier's actions were unwarranted and disproportionate to the extent that he even lifted his gun, threatening to shoot Muchademba Muponde.

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<sup>92</sup> M Taruvinga "Defence Minister, Army boss ordered to pay Zig40k to torture victim" New Zimbabwe 11 April 2024 available at <https://www.newzimbabwe.com/defence-minister-army-boss-ordered-to-pay-zig40k-to-torture-victim/> [Accessed on 5 December 2024].

Muchadamba approached ZLHR lawyers and subsequently filed summons against the Minister of Defence and War Veterans and Commander of the Zimbabwe National Army claiming for the payment of damages in the sum of ZWL\$250 000.00 being damages for pain and suffering, nervous shock, contumelia, affront to dignity and humiliation. The matter was subjected to the necessary legal pleadings with lawyers exchanging the necessary court papers as required by the rules of the court. Meanwhile the local currency was significantly devalued which necessitated an amendment of the summons. On 18 November 2022 lawyers attended court and applied that the matter be removed from the roll to enable a finalisation of the amendments. On 24 April 2023, lawyers wrote to the Minister of Defence and Commander of the Zimbabwe National Army's lawyers enquiring if they were consenting to the amendments. On 26 April 2023, the Commander of the Zimbabwe National Army and the Minister of Defence's lawyers responded to the lawyers' letter and indicated that they are not opposed to the amendment of the amounts reflected in the summons. They also indicated that they intend to amend the Defendants' plea by stating that the soldiers who assaulted Muchadamba Muponde were not under the control of the Zimbabwe National Army Commander but of the Zimbabwe Republic Police as they had been deployed to assist the police in restoring law and order. On 1 February 2024, lawyers applied that the matter be set down for trial and the matter was set down for trial on 9 February 2024. On 9 February 2024 trial commenced and lawyers applied that the quantum of damages be amended to ZW 52 million dollars for pain and suffering and a further ZW 52 million dollars for contumelia, embarrassment, and affront to dignity. The application for amendment was successful and the amendments were duly effected. A full trial was conducted and thereafter the matter was postponed to 26 March 2024 for judgment. On 26 March 2024 lawyers attended court to note the judgment, but the magistrate was not available. The matter was postponed to 10 April 2024. On 10 April 2024, lawyers attended court and the judgment was delivered. The Defendants were ordered to pay ZIG41 000.00 being damages for pain and suffering, embarrassment, humiliation and affront to dignity Muchadamba Muponde suffered during and following the attack.

*Joseph Tambu v Minister of Home Affairs and Cultural Heritage & Commissioner General of Police*

Joseph Tambu's case exhibits the overzealous nature of police officers and how they can be heavy-handed in instances where it is unwarranted. On 15 June 2021, Joseph Tambu was summoned to Bulawayo Central Police Station and subsequently arrested on allegations of having failed to deliver goods he had ordered for Gwanda State University (GSU). GSU had paid the purchase price into Tambu's company bank account and Joseph Tambu proceeded to order the goods from South Africa. On 17 June 2021, an official of

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<sup>93</sup> As above.

GSU appeared at the police station and confirmed that the goods were the ones they had bought, and he was finally released. Lawyers filed a letter of complaint against the conduct of the police. On 20 January 2022, lawyers filed summons on behalf of Joseph Tambu at the Bulawayo Magistrates' Court, claiming damages for his unlawful arrest and detention. The Defendants filed their plea raising a point in limine that the arrest was lawful. The pleadings were closed and on 17 August 2022, lawyers filed their Pre-Trial Conference papers. The matter was partially delayed as the Defendants had made indications that they had intentions to amicably settle the claim out of court. However, this was not successful. The trial was set for 13 July 2023. On 13 July 2023, the trial started, and evidence was led by the Plaintiff with minimal challenge to the evidence adduced. Plaintiff's case closed thereafter, and the Defendant led evidence from two witnesses with the last witness set to testify on 27 July 2023. On 27 July 2023, the witness for the Defendant failed to attend court and Magistrate Ncube opted to close their case. On 10 August 2023, lawyers filed closing submissions and served the Magistrates' court with the same. On 25 August 2023, the court stated that the ruling was not ready, and the matter was postponed to 8 September 2023. The matter was then postponed to 13 October 2023 as the judgment was not ready. The matter was subsequently postponed several times from 27 October 2023, 3 November 2023 and to 9 January 2024 at the instance of the court. Lawyers were ultimately able to uplift the judgment on 17 January 2024, and damages in the amount of US\$10,000 were granted as claimed in the summons and particulars of claim. On 19 March 2024, a letter was written to the Civil Division asking that the Defendants pay the Plaintiff as per the order of the court.

Police officers have been regarded as the authors of impunity, yet in most instances, they have been the machinery deployed to perpetuate impunity on civilians by the government.<sup>94</sup> In addition, high-ranking government officials have used state security agents, specifically police officers in personal matters outside the scope of their designated work. The following "Arnold Farm" cases depict this as they involve victims of police brutality and anti-impunity at the instance of Mrs. Grace Mugabe, the wife of the late former President Robert Mugabe in 2015 and 2017. During this period, anti-riot police harassed, beat and evicted around 200 families off Arnold Farm in Mazowe, a farm that Mrs. Mugabe was alleged to have set her sights on.<sup>95</sup> In March 2017, police officers descended on the Mazowe residents, leaving behind a trail of rubble and chaos. The police officers demolished their homes, forced them on trucks and dumped them by the roadside in an area 40 kilometres away from their homesteads. The following cases

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<sup>94</sup> UNHCR "Zimbabwe: Toll of impunity" available at: <https://www.refworld.org/reference/countryrep/amnesty/2002/en/21623> [Accessed on 6 December 2024].

<sup>95</sup> Human Rights Watch "Zimbabwe: Evictions, Beatings at Mugabe-Linked Farm", <https://www.hrw.org/news/2017/05/23/zimbabwe-evictions-beatings-mugabe-linked-farm> [Accessed on 6 December 2024].

are only a sample of the several cases ZLHR lawyers took up on behalf of the Arnold Farm residents.

*Tendai Chinzenza v Minister of Home Affairs & 2 Others*<sup>96</sup>

Tendai Chinzenza was forcibly evicted from his homestead in Arnold Farm on 20 March 2017 by police officers. He was ordered to vacate the premises and his property was destroyed. Lawyers filed summons in the Bindura Magistrates' Court on 9 November 2017. Defendants filed an appearance to defend on 29 November 2017. Lawyers filed a notice to plead on 13 March 2018. Defendants filed their plea and lawyers replied on 23 May 2018. On 1 February 2019, a notice of set down for the Pre-trial Conference together with all other relevant documents were filed. After the Pre-Trial Conference, the matter was set down for trial on 7 May 2019. Because this case was a part of about 48 cases that had been set down for trial under similar circumstances with the same Defendants, all plaintiffs' cases were heard consecutively and the defence case was scheduled to be heard at the end. Regrettably, on 28 July 2020 when lawyers attended court for the defence case, they were advised that the matter had to be postponed for an unspecified period because the magistrate handling the matter had been transferred to another town. The matter was also affected by the national lockdown necessitated by the COVID-19 pandemic.

Lawyers wrote several letters asking about the availability of the magistrate so that the matter could be finalised since it was a partly heard case. The matter was subjected to several postponements and delays from the Defendants' legal practitioners. At one point, the Defendants' legal practitioners sought a postponement on the basis that they could not locate their witnesses. Lawyers opposed the application citing that the Defendants' legal practitioners had a week to locate their witnesses. In any event, it was argued that the defence had three witnesses and ought to have brought the ones who were available. Lawyers proceeded to apply for default judgment on the basis that the Defendants had failed to appear. The magistrate dismissed the application for default judgment and granted the application for a postponement of the matter to 25 February 2022. On 25 February 2022, lawyers attended court for the defence case. The Defendants' lawyers led evidence from one witness and lawyers cross-examined him. The Defendants proceeded to close their case. Lawyers committed to filing their closing submissions on 4 March 2022 while the Defendants' legal practitioners committed to doing so on 11 March 2022. On 4 March 2022, lawyers attended at Bindura Magistrates Court for purposes of filing Plaintiff's closing submissions. The matter was postponed to 14 April 2022 for

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<sup>96</sup> ZLHR "Tormented Mazowe Villagers Win Us\$30 000 Compensation after Govt-Backed Demolitions" available at: <https://www.zlhr.org.zw/?p=2783> [Accessed on 6 December 2024].

judgment. On 14 April 2022, lawyers attended court for judgment but were advised that it was not ready which prompted the matter to be postponed to 27 May 2022. On 27 May 2022, the judgment was still not ready and the matter was postponed to 24 June 2022. On 24 June 2022, lawyers attended court and the judgment was still not ready. The matter was postponed to 4 July 2022. On 4 July 2022, lawyers attended court and the judgment was still not ready. On 13 July 2022, lawyers received communication that the judgment was ready for collection. On 15 July 2022, Tendai Chinzenza was awarded damages as follows: US\$800 for pain and suffering, US\$500 for property damaged and US\$500 for contumelia. On 9 December 2022, lawyers wrote enforcement letters to the Commissioner General of Police, the Civil Division of the Attorney General's office and the Minister of Home Affairs attaching the court order so as to effect payment. Tendai Chinzenza's judgment debt has since been paid.

*Givemore Tsaratse v Minister of Home Affairs & 2 Others*<sup>97</sup>

Givemore Tsaratse was forcibly evicted from his homestead in Arnold Farm on 20 March 2017 by police officers. He was ordered to vacate the premises and his property was destroyed. ZLHR lawyers filed summons on 1 November 2017. Defendants filed an appearance to defend on 28 November 2017. Lawyers filed notice to plead on 13 March 2018. Defendants filed their plea on 3 April 2018 and lawyers replied on 23 May 2018. On 26 March 2019, a notice of set down for Pre-trial Conference together with all other relevant documents were filed. On 16 April 2019, Defendants adopted the Plaintiff's issues and the court gave leeway to apply for a trial date. The matter was set down for trial on 6 June 2019. On this day, the Plaintiff opened his case and called one other witness. The Plaintiff's case was closed. On 28 July 2020, lawyers attended court for the defence case but the matter was postponed to an indefinite date as the designated Magistrate was transferred to another town. On 7 April 2021 lawyers wrote a letter to the Provincial Magistrate to follow up on the availability of the magistrate so as to finalise the matter. On 26 November 2021, lawyers wrote another follow-up letter to the Resident Magistrate of Bindura Magistrates Court as the matters could not be finalised due to the COVID-19 situation which necessitated lockdowns. On 18 January 2022, lawyers attended at Bindura Magistrates Court to follow up on the status of the case. They were advised to attend court from 25 January to 28 January 2022. On 19 January 2022, lawyers wrote a letter to the Defendants' legal representatives notifying them of the same. On 25 January 2022 lawyers attended court at Bindura Magistrates Court in order to continue the defence case. The matter was postponed at the instance of the Defendants to 28 January 2022.

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<sup>97</sup> As above.

On 28 January 2022, lawyers attended court for trial continuation. However, the Defendants' legal practitioners sought a postponement on the basis that they could not locate their witnesses. Lawyers opposed the application citing that the Defendants' legal practitioners had a week to locate their witnesses from the time the letter written on 19 January 2022 was delivered. In any event, they indicated that they had three witnesses and ought to have brought them. Lawyers proceeded to apply for default judgment in terms of Order 34 Rule 4 Sub rule 2 of the Magistrates Court (Civil) Rules, 2019 on the basis that the Defendants had failed to appear. The magistrate granted the application for a postponement and the matter was postponed to 25 February 2022. On 25 February 2022, lawyers attended court for the defence case. The Defendants' lawyers led evidence from one witness and lawyers cross-examined him. The Defendants proceeded to close their case. Lawyers committed to filing their closing submissions on 4 March 2022 while the Defendants' legal practitioners committed to doing so on 11 March 2022. On 4 March 2022, lawyers attended at Bindura Magistrates Court for purposes of filing Plaintiff's closing submissions. The matter was postponed to 14 April 2022 for judgment.

On 14 April 2022, lawyers attended court for judgment but were advised that it was not ready which prompted the matter to be postponed to 27 May 2022. On 27 May 2022, the judgment was still not ready and the matter was postponed to 24 June 2022. On 24 June 2022, lawyers attended court and the judgment was still not ready. The matter was postponed to 4 July 2022. On 4 July 2022, lawyers attended court and the judgment was still not ready. On 13 July 2022, lawyers received communication that the judgment was ready for collection. On 15 July 2022, Givemore Tsaratse was awarded damages as follows: US\$800 for pain and suffering and US\$500 for contumelia. On 2 December 2022, lawyers wrote enforcement letters to the Commissioner General of Police, the Civil Division of the Attorney General's office and the Minister of Home Affairs attaching the court so as to effect payment. Givemore Tsaratse's judgment debt has since been paid.

### *Chenai Muchererwa v Minister of Home Affairs & 2 Others*<sup>98</sup>

Chenai Muchererwa was forcibly evicted from her homestead in Arnold Farm on 20 March 2017 by police officers. She was ordered to vacate the premises and her property was destroyed. Lawyers filed summons on 1 November 2017. Defendants filed an appearance to defend on 20 November 2017. Lawyers filed a notice to plead on 22 May 2018. Defendants filed their plea on 27 June 2018 and lawyers replied on 23 May 2018. On 6 February 2019, a notice of set down for the Pre-trial Conference and all other relevant documents were filed. On 26 February 2019, Defendants adopted the Plaintiff's issues

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<sup>98</sup> M Taruvinga "Evicted Manzou villagers get US\$30k compensation" NewZimbabwe 19 July 2022 available at: <https://www.newzimbabwe.com/evicted-manzou-villagers-get-us30k-compensation/> [Accessed on 6 December 2024].

and the court gave leeway to apply for a trial date. The matter was set down for trial on 10 May 2019. The Plaintiff opened her case on this day and called one other witness. The Plaintiff's case was closed. On 28 July 2020, lawyers attended court for the defence case but the matter was postponed to an indefinite date as the designated Magistrate was transferred to another town. On 7 April 2021, lawyers wrote a letter to the Provincial Magistrate to follow up on the availability of the magistrate to finalise the matter.

On 26 November 2021, lawyers wrote another follow-up letter to the Resident Magistrate of Bindura Magistrates Court as the matters could not be finalised due to COVID-19, which necessitated lockdowns. On 18 January 2022, lawyers attended at Bindura Magistrates Court to follow up on the status of the case. They were advised to attend court from 25 January to 28 January 2022. On 25 January 2022 lawyers attended at Bindura Magistrates Court to continue the defence case. The matter was postponed at the instance of the defendants to 28 January 2022.

On 28 January 2022, lawyers attended court for trial continuation. However, the Defendants' legal practitioners sought a postponement because they could not locate their witnesses. Lawyers opposed the application citing that the Defendants' legal practitioners had a week to locate their witnesses from when the letter written on 19 January 2022 was delivered. In any event, they indicated that they had three witnesses and ought to have brought them. Lawyers subsequently applied for default judgment in terms of Order 34 Rule 4 Sub-rule 2 because the Defendants had failed to appear. The Magistrate granted the application for a postponement and the matter was postponed to 25 February 2022.

On 25 February 2022, lawyers attended court for the defence case. The Defendants' lawyers led evidence from one witness and lawyers cross-examined him. The Defendants proceeded to close their case. Lawyers committed to filing their closing submissions on 4 March 2022 while the Defendants' legal practitioners committed to doing so on 11 March 2022. On 4 March 2022, lawyers attended at Bindura Magistrates Court for filing the Plaintiff's closing submissions. The matter was postponed to 14 April 2022 for judgment.

On 14 April 2022, lawyers attended court for judgment but were advised that it was not ready which prompted the matter to be postponed to 27 May 2022. On 27 May 2022, the judgment was still not ready and the matter was postponed to 24 June 2022. On 24 June 2022, lawyers attended court and the judgment was still not ready. The matter was postponed to 4 July 2022.

On 4 July 2022, lawyers attended court and the judgment was still not ready. On 13 July 2022, lawyers received communication that the judgment was ready for collection.

On 15 July 2022, Chenai Muchererwa was awarded damages as follows: US\$800 for pain and suffering and US\$500 for property damage. On 2 December 2022, lawyers wrote enforcement letters to the Commissioner General of Police, the Civil Division of the Attorney General's office and the Minister of Home Affairs attaching the court to effect payment. Chenai's judgment debt has since been paid.

### *Ennie Mutizwa v Minister of Home Affairs & 2 Others*

Ennie Mutizwa was forcibly evicted from her homestead in Arnold Farm on 20 March 2017 by police officers. She was ordered to vacate the premises and her property was destroyed. Lawyers filed summons on 1 November 2017. The Defendants failed to enter their appearance to defend and a request for default judgment was filed on 13 March 2018. Default judgment was granted on 26 March 2018. On 12 July 2018, the lawyers received an application for rescission of default judgment from the Defendants. On 24 July 2018, lawyers made submissions to the application for rescission of default judgment and the Magistrate reserved her ruling for 26 July 2018. On 26 July 2018, the magistrate granted the application for rescission of the default judgment. On 5 September 2018, lawyers filed the Plaintiff's replication after receiving the Defendants' notice of entry of appearance to defend and the Defendant's plea on 1 August 2018. After these processes, the matter was set down for trial on 3 June 2019. The Plaintiff opened his case on this day and called one other witness. The Plaintiff's case was closed. On 28 July 2020, lawyers attended court for the defence case but the matter was postponed to an indefinite date as the designated Magistrate was transferred to another town. On 7 April 2021, lawyers wrote a letter to the Provincial Magistrate to follow up on the availability of the magistrate to finalise the matter. On 26 November 2021, lawyers wrote another follow-up letter to the Resident Magistrate of Bindura Magistrates Court as the matters could not be finalised due to COVID-19, which necessitated lockdowns. On 18 January 2022, lawyers attended at Bindura Magistrates Court to follow up on the status of the case. Lawyers were advised to attend court from 25 January to 28 January 2022. On 19 January 2022, lawyers wrote a letter to the Defendants' legal representatives notifying them of the same. On 25 January 2022 lawyers attended court at Bindura Magistrates Court to continue the defence case. The matter was postponed at the instance of the Defendants to 28 January 2022. On 28 January 2022, lawyers attended court for trial continuation but the Defendants' legal practitioners sought a postponement. Lawyers opposed the application citing that the Defendants' legal practitioners had a week to locate their witnesses from the time the letter written on 19 January 2022 was delivered.

In any event, they indicated that they had three witnesses and ought to have brought them. Lawyers proceeded to apply for default judgment in terms of Order 34 Rule 4 Sub rule 2 of the Magistrates Court (Civil) Rules, 2019 on the basis that the Defendants had failed to appear. The Magistrate granted the application for a postponement and the

matter was postponed to 25 February 2022. On 25 February 2022, lawyers attended court for the defence case. The Defendants' lawyers led evidence from one witness and lawyers cross-examined him. The Defendants proceeded to close their case. Lawyers committed to filing their closing submissions on 4 March 2022 while the Defendants' legal practitioners committed to doing so on 11 March 2022. On 4 March 2022, lawyers attended at Bindura Magistrates Court for filing the Plaintiff's closing submissions. The matter was postponed to 14 April 2022 for judgment. On 14 April 2022, lawyers attended court for judgment but were advised that it was not ready which prompted the matter to be postponed to 27 May 2022. On 27 May 2022, the judgment was still not ready and the matter was postponed to 24 June 2022. On 24 June 2022, lawyers attended court and the judgment was still not ready.

The matter was postponed to 4 July 2022. On 4 July 2022, lawyers attended court and the judgment was still not ready. On 15 July 2022, Ennie Mutizwa was awarded damages as follows: US\$300 for pain and suffering, US\$1 430 for property damaged and US\$300 for contumelia. On 2 December 2022, lawyers wrote enforcement letters to the Commissioner General of Police, the Civil Division of the Attorney General's office and the Minister of Home Affairs attaching the court to effect payment. Due to bureaucratic red tape and delays by the Defendants and their legal practitioners, the payments for the Arnold Farm clients were still trickling in at the time this publication was written.

### *Fanny Gora v Mike Patyavazungu (formerly Chief Nemangwe) & Milton Mazhambe*

This case shows that impunity is not only an issue identified with the state security agents but individuals who wield a certain level of authority in Zimbabwe.

Fanny Gora is a resident of Zharare village in Gokwe. On different occasions, from July 2022 to September 2022, Mike Patyavazungu and his aides descended on his homestead and took cattle and goats, alleging that he had committed incest. The property taken was valued at US \$1350.00. Fanny Gora was not summoned to any hearing nor was any court order produced which sanctioned the confiscation of his livestock as is required in terms of the law. Fanny Gora's numerous follow-ups to recover his property were unsuccessful as the police were also reluctant to investigate and arrest Mike Patyavazungu and his aides. Lawyers intervened and on 17 October 2023, they wrote a letter to the Minister of Local Government to obtain official communication on the status of the Nemangwe chieftainship and whether Mike Patyavazungu was indeed appointed Chief Nemangwe in terms of the law. On 31 October 2023, the Ministry of Local Government responded to the letter stating that Peter Muchabeta was appointed as the substantive Chief Nemangwe on 29 March 2023.

On 22 September 2023, lawyers prepared letters of demand against Mike Patyavazungu and Milton Mazhambe demanding payment of the value of the confiscated cattle valued at US\$1350.00. On 13 October 2023, lawyers prepared and issued summons in the small claims court against Mike Patyavazungu and Milton Mazhambe for payment of the sum of US\$1350.00. The matter was set down for trial on 2 November 2023. On 2 November 2023, lawyers attended court for trial. The claim was granted and former Chief Nemangwe was ordered to pay the sum of US \$1350.00. On 31 January 2024, the Messenger of Court attached and removed property belonging to the Defendants to satisfy the judgment debt. On 15 February 2024, the Messenger of Court issued an interpleader summons in which Ashford Chikuni was claiming the attached property. On 27 February 2024, the interpleader summons were struck off. Lawyers instructed the Messenger to proceed with the sale in execution. Lawyers also instructed the Messenger of Court to attach additional household goods so that they would be sold in the execution to satisfy the debt. On 16 March 2024, Mike Patyavazungu and Milton Mazhambe filed a court application for rescission of the judgment granted against them in this matter and the application for rescission was set down for hearing on 25 March 2024. This matter is still pending as an application for rescission was filed by the Defendants. However, it is a good example of how state security agents and other individuals who wield power due to their political associations act with impunity because of these ties, to the detriment of citizens.

### *Challenges with anti-impunity litigation*

The discussion of a few spotlight cases above has shown a certain pattern associated with anti-impunity cases. These are as follows:

(a) *Lengthy proceedings*

Anti-impunity claims are categorised as civil cases. Civil cases, in comparison with criminal cases, generally take longer to complete. The civil court route has several processes and pleadings that are required to be filed in compliance with the rules of the various courts.<sup>99</sup> The exchange of pleadings is determined by how compliant with the court rules both parties are. In some instances, lawyers are forced to bar the Defendants or apply for default judgment as was the case in the Ennie Mutizwa case above. The Defendants failed to file their notice of entry of appearance to defend timeously and lawyers made an application for default judgment which was granted. However, the Defendants subsequently filed for rescission of default judgment over 6 months later and their application was granted at the court's discretion. This set the case back

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<sup>99</sup> See Magistrate Court (Civil) Rules, 2018; High Court Rules, 2021.

and had to proceed as other relevant pleadings had to be filed. A case which commenced in April 2017 was affected by these delays and was only finalised in July 2022, more than five years after it commenced.

The contribution of other factors beyond the parties' control cannot be ignored.

(b) The Coronavirus pandemic was a vis major event that no one had anticipated which affected court processes due to the National Lockdown that was imposed. A vis major is defined as a superior force or an act of God.<sup>100</sup> In addition to the lengthy court processes, courts were briefly suspended from operating as they were deemed to be non-essential services. Only remand processes were carried out in the criminal courts and postponements in civil courts. Lawyers had also been excluded from the list of essential services until an application was filed to the High Court which prompted the government to gazette an updated Statutory Instrument citing lawyers as essential services.<sup>101</sup> Hence, for the greater part of 2020, courts were not adjudicating on any matters and pleadings could not be filed.

(c) Dilatory tactics by the Defendants and their legal practitioners - this also contributes to the duration a case takes to be determined. This can be in the form of filing frivolous and vexatious pleadings when there is no tangible defence to the claim. After the 2019 anti-government protests, lawyers filed summons against the perpetrators and their employers, that is to say, the Minister of Home Affairs and the Commissioner General of Police in respect of the police and the Minister of Defence and War Veterans and the Commander of the Zimbabwe National Army in respect of the army. No challenges were faced with cases involving the police only as the Civil Division of the Attorney General's Office handled these matters. However, in cases where members of the Zimbabwe National Army were cited, they decided to instruct private lawyers who filed frivolous pleadings to prevent these cases from going to trial. For example, in the Felix Mafondokoto case, the Defendants' legal practitioners of record filed a special plea to the effect that lawyers did not give notice in terms of section 60 of the State Liabilities Act. In some cases, they filed requests for further particulars or exceptions, alleging that the cause of action was not clear, unnecessarily so. In some instances, they took these

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<sup>100</sup> Investopedia "Vis Major: What it is, how it works, exceptions" available at: <https://www.investopedia.com/terms/v/vis-major.asp#:~:text=What%20is%20Vis%20Major%3F,care%2C%20diligence%2C%20or%20prudence>. [Accessed on 9 December 2024].

<sup>101</sup> Kubatana "Government buckles to lawyers' demands, exempts lawyers from national lockdown" available at: <https://kubatana.net/2021/01/08/govt-buckles-to-lawyers-demands-exempts-lawyers-from-national-lockdown-restrictions/> [Accessed on 9 December 2024].

dilatory cases up to the Supreme Court to avoid going to trial.

At some point, the Arnold Farm cases were delayed because the Defendants' witnesses were unavailable, which prompted the Defendants to seek a postponement. Defendants' legal counsel have also appealed where there is no merit. Despite clear and tangible evidence being adduced in court on behalf of Felix Mafondokoto and a judgment being awarded in his favour by the court, an appeal was filed by the Defendants. Fortunately, the appeal was dismissed and the judgment of the court of first instance was upheld.

- (d) Bureaucratic red tape - Anti-impunity claims are usually against the police, the members of the Zimbabwe National Army and the relevant ministries that oversee them. In Zimbabwe, to institute an action against the State, including government officials, a 60-day notice period must be given in terms of the State Liabilities Act notifying the relevant department of the intention to sue.<sup>102</sup> The 60-day period excludes weekends and public holidays. Bureaucratic red tape is also experienced when a judgment is obtained against a particular government official and litigants are required to get vendor numbers for the amount granted in damages to be deposited into their account. This is especially frustrating where a case has several litigants on it such as the Arnold Farm residents. The payments are also processed in batches, which also increases the time and effort taken to complete a case. The lengthy payment process is usually triggered into motion by writing several letters to the relevant ministry and in extreme circumstances, filing an application for contempt of court for failure to comply with the court order awarding damages.
  
- (e) Inconsistent monetary policies and inadequate redress - Due to the dire economic situation in Zimbabwe, the country has undergone several monetary regimes. Zimbabwe operated under the multi-currency system from 2009 until February 2019 when it was replaced by a virtual currency called the RTGS dollar.<sup>103</sup> The virtual currency was also substituted by a new Zimbabwe Dollar in June 2019. A Statutory Instrument was gazetted which outlawed the multi-currency system and rendered all debts that were in United States Dollars "one as to one" with the Zimbabwe Dollar. However, inflation heightened and this necessitated amendments to summons in instances where the inflation had devalued the claim for damages.<sup>104</sup> The inconsistency in the ever-changing

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<sup>102</sup> Section 6, State Liabilities Act [Chapter 8:14].

<sup>103</sup> PwC "Zimbabwe: Exchange Control" available at <https://taxsummaries.pwc.com/zimbabwe/corporate/other-issues#:~:text=Zimbabwe%20operated%20a%20multi%2Dcurrency,effective%20from%2020%20February%202019.> [Accessed on 9 December 2024].

<sup>104</sup> Presidential Powers (Temporary Measures) (Amendment of Reserve Bank of Zimbabwe Act and Issue of Real Time Gross Settlement Electronic Dollars (RTGS Dollars)) Regulations, Statutory Instrument 33 of 2019.

monetary policies poses challenges for litigants who sometimes end up with an insufficient and inadequate remedy. This is also exacerbated by the State Liabilities Act which renders state property ineligible for attachment in any claim against the state. In April 2024, Zimbabwe introduced a new currency called the Zimbabwe Gold (ZiG)<sup>105</sup> and judgments under the old currency regime, the Zimbabwe Dollar (ZWL) are now delivered in the Zimbabwe Gold value. While one may get a favourable judgment, the experience is that by the time the government complies with the judgment, the amount would have been devalued.

- (f) Vicarious liability - The doctrine of vicarious liability dictates that an employer is liable for all the wrongdoings of an employee (who is not an independent contractor) conducted within the course and scope of employment.<sup>106</sup> Vicarious liability poses more advantages than disadvantages because, in circumstances where the specific name of the perpetrator is unknown, if their employer is known, a litigant has recourse. Financially, it is to the claimant's advantage to sue the employer as they can easily follow up on the payment for damages and can get a once-off payment unlike if it is a garnishee order against any employee. However, the deterrent effect that damages ought to have, becomes ineffective here. Perpetrators are aware of this and they continue to act with impunity, as they know that the employer will bear the brunt of the damages. In other cases, the employer reallocates police officers from their usual police station in a bid to frustrate the claimant's case.
  
- (g) Defiance of Court Orders - In addition to the troubles stemming from vicarious liability, the endemic defiance of court orders by state institutions has entrenched a culture of impunity. Open defiance of the law through the refusal to comply with court orders has presented major challenges in anti-impunity litigation. Specifically, the contemptuous disregard of the court's authority results in victims of human rights violations struggling to enforce orders for compensation due to the refusal by the state and some state actors to pay judgment debts. ZLHR has sadly noted a worrying and growing tendency in several cases in which the state and some state actors have wilfully defied complying with court orders granted by judicial officers in courts across the country. In these cases, they would have been ordered to pay judgment debts to victims of human rights violations, who would have instituted litigation processes to obtain redress. Unfortunately, human rights defenders continue

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<sup>105</sup> S Nyoka "Zimbabwe launches new gold-backed currency - ZiG" BBC 5 April 2024 available at: <https://www.bbc.com/news/world-africa-68736155> [Accessed on 9 December 2024].

<sup>106</sup> Feltoe G A Guide to the Zimbabwean Law of Delict (2018).

to struggle to enforce orders for compensation to victims of human rights violations due to the defiance of court orders.

- (h) Attitude of the judiciary - Due to the nature of anti-impunity claims, lawyers sometimes experience hostility from judicial officers. The lack of judicial independence affects the adjudication of cases that may have political connotations. While the instances may be few, they are not unheard of and this sometimes has a bearing on the outcome of anti-impunity cases. A lack of judicial impartiality precludes assurances of an effective legal remedy to victims of human rights violations, and by extension, acts of impunity by state security agents.<sup>107</sup>
- (i) Resources - There are monetary constraints and concerns associated with anti-impunity litigation. This is especially true in a situation where the case is outsourced to a member lawyer due to the effort and time it takes to attend court and file papers. Even without engaging a member lawyer, civil cases are generally resource demanding which is challenging, especially for self-actors who may not be aware of the services of human rights lawyers.
- (j) Death of complainant or victim - Another challenge faced by lawyers due to the lengthy periods of anti-impunity trials is the death of the victim or complainant. In such cases, it becomes increasingly difficult to proceed with a case where the person who can positively give evidence in their case is no longer there to do so. In cases where the client is deceased after trial and an award of damages has been granted in their favour, it may be difficult to enforce the award unless a beneficiary does so through his estate.<sup>108</sup> However, the circumstances are different where the case is filed on behalf of the beneficiary from the first instance flowing from the death of a victim as a result of impunity by state security agents.<sup>109</sup>

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<sup>107</sup> L Chiduzwa "Towards the Protection Of Human Rights: Do The New Zimbabwean Constitutional Provisions On Judicial Independence Suffice?" 17 (2014) Potchefstroom Electronic Law Journal available at <https://www.saflii.org/za/journals/PER/2014/17.html> [Accessed on 10 December 2024].

<sup>108</sup> ZLHR represented Tapiwa Dhaisi, a victim of the Arnold Farm evictions and he died before the judgment was handed down and it has been quite challenging to recover the judgment debt.

<sup>109</sup> See Varaidzo Chiyanike & Julius Choto v Commissioner-General of Police, Minister of Home Affairs & Cultural Heritage and Rachid Siri, High Court Harare, 25 November 2020 (HC 6409/19; 20-HH-999); C Nkomo "January 2019 protests: Judge orders \$4,3 million compensation for slain footballer" New Zimbabwe 20 November 2020, available at: <https://www.newzimbabwe.com/january-2019-protests-judge-orders-43-million-compensation-for-slain-footballer/> [Accessed on 13 December 2024].

## *Conclusion*

This chapter has discussed ZLHR's spotlight cases during the period 2022 to 2024. The chapter highlighted the challenges that lawyers faced when handling these cases as most of them commenced way before the period under review. In the same vein, the chapter also highlighted the challenges associated with anti-impunity litigation, despite the recorded successes experienced by ZLHR. These include the duration it takes to complete the cases and the resources required to do so. Additionally, the behaviour of opposing counsel also determines the trajectory a case takes, depending on whether they elect to act in good faith, without filing frivolous pleadings. However, it is prudent to point out that not all these challenges are within the control of lawyers. Some emanate from bureaucratic red tape imposed by laws and practices of the State. In extenuating circumstances, some challenges are not foreseeable. As such, this chapter lays the basis for the next chapter where an alternative means of getting redress is explored and analysed.

# CHAPTER THREE

## The Independent Complaints Mechanism and Best Practices in the Region

Chapter 2 spotlights the anti-impunity cases done by ZLHR and in addition, explores the challenges associated with anti-impunity litigation. However, as ZLHR lawyers have been litigating against impunity since its inception, the challenge persists to date. Therefore, a necessary intervention had to be introduced as a means to support efforts by relevant stakeholders in curbing rampant impunity in Zimbabwe. The 2013 Constitution of Zimbabwe introduced the concept of the Independent Complaints Mechanism through section 210. Its purpose is to receive and investigate complaints from the public concerning members of the security service and to remedy any harm occasioned by their actions.<sup>110</sup> While the Constitution provided for this mechanism since its promulgation in 2013, the Independent Complaints Mechanism did not immediately take effect. This chapter will explore how this mechanism may alleviate the challenges faced by victims of impunity such as lengthy court processes and inadequate remedies. In addition, the chapter seeks to highlight best practices in the region that may be adopted in implementing the work of the Independent Complaints Mechanism from countries such as South Africa, Rwanda and Sierra Leone.

### *The Zimbabwe Independent Complaints Commission*

The Independent Complaints Mechanism was created in terms of Section 210 of the Constitution of Zimbabwe. Section 210 of the Constitution reads as follows:

*An Act of Parliament must provide an effective and independent mechanism for receiving and investigating complaints from members of the public about misconduct on the part of members of the security services, and for remedying any harm caused by such misconduct.*

Flowing from this provision, a specific law needed to be promulgated to operationalise the mechanism in the form of the Independent Complaints Commission. However, this did not happen until about seven years after the Constitution was promulgated. The Cabinet only approved the formulation of the Zimbabwe Independent Complaints Commission Bill H.B. 5, 2020 on 3 November 2020.<sup>111</sup> Subsequently, the Bill was gazetted in the Extraordinary Government Gazette on 24 November 2020. Its purpose was to establish

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<sup>110</sup> Section 210 of the Constitution of Zimbabwe, 2013.

<sup>111</sup> ZLHR “Summary Analysis of the Independent Complaints Commission Bill 2020” available at: <https://www.zlhr.org.zw/wp-content/uploads/2021/06/ZLHR-Summary-Analysis-of-the-Independent-Complaints-Commission-Bill-2020.pdf> [Accessed on 11 December 2024].

the Independent Complaints Commission and to establish the mandate and objectives of the Commission.<sup>112</sup> The Bill also catered for the appointment of the commissioners to the Commission. The Bill was assented to and became law on 21 October 2022.<sup>113</sup> However, despite the Act being passed, the commissioners were only appointed almost two years later on 19 September 2024. Furthermore, the Commission is still to be operationalised as its regulations are still to be promulgated.

ZLHR played an invaluable role in ensuring that commissioners to the Independent Complaints Commission are appointed. This was necessitated by the challenges faced by human rights defenders in the pre and post-2023 election period which was marred with violence by state and nonstate agents.<sup>114</sup> In light of section 210 of the Constitution, this would have been an ideal time to have the Independent Complaints Commission in operation, to effectively deal with the challenges faced including arbitrary arrests, detention, assaults, torture and enforced disappearances.<sup>115</sup> For example, Takudzwa Ngadziore was abducted by suspected state security agents in November 2023 and he managed to record the incident.<sup>116</sup> While this incident could have easily been dispensed with through investigations and disciplinary hearings, this could not happen due to the non-operationalisation of this Commission. This prompted Takudzwa Ngadziore to approach the courts to remedy this.

### *Takudzwa Ngadziore v Parliament of Zimbabwe & Another*

Takudzwa Ngadziore is a Member of Parliament under the youth quota. He represents the Citizens Coalition for Change political party. On 1 November 2023, in Mabelreign, Harare, Takudzwa was abducted by suspected state security agents who were armed and wearing balaclavas. Immediately before the men abducted him, he recorded his ordeal on his Facebook Live showing two men wielding guns assailing him. He was taken to

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<sup>112</sup> Zimbabwe Independent Complaints Commission Bill 2020 available at: [https://www.veritaszim.net/sites/veritas\\_d/files/Zimbabwe%20Independent%20Complaints%20Commission%20H.B.%205%2C%202020.pdf](https://www.veritaszim.net/sites/veritas_d/files/Zimbabwe%20Independent%20Complaints%20Commission%20H.B.%205%2C%202020.pdf) [Accessed on 11 December 2024].

<sup>113</sup> Veritas Zimbabwe “BILL WATCH 51-2022 - Zimbabwe Independent Complaints Commission Act Gazetted But is Not Yet Operative” available at: <https://www.veritaszim.net/node/5959> [Accessed on 11 December 2024].

<sup>114</sup> Amnesty International Zimbabwe “Zimbabwe Human Rights under attack -A review of Zimbabwe’s Human Rights Record under period 2018-2023” 21, available at: <https://www.amnesty.org.zw/wp-content/uploads/2023/10/Human-Rights-Under-Attack-A-review-of-Zimbabwes-Human-Rights-Record-in-the-period-2018-2023-3.pdf> [Accessed on 11 December 2024].

<sup>115</sup> US Department of State “2023 Country Reports on Human Rights Practices: Zimbabwe” available at: <https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/zimbabwe> [Accessed on 11 December 2024].

<sup>116</sup> I Nassah “Zimbabwe Opposition Parliament Member Allegedly Abducted, Tortured” Human Rights Watch 3 November 2023 available at: <https://www.hrw.org/news/2023/11/03/zimbabwe-opposition-parliament-member-allegedly-abducted-tortured> [Accessed on 11 December 2024].

Christon Bank where he was tortured by these men. He suffered injuries as a result of the torture. It later turned out that two of his assailants were state security agents and were positively identified as Nicholas Kajese and Abraham Pasi. Takudzwa was hospitalised for two weeks. With the help of lawyers, he filed a police report against his ordeal. Takudzwa sought to lodge a complaint against the state security agents who abducted and tortured him with the Independent Complaints Commission established in terms of section 210 of the Constitution of Zimbabwe. However, at the time, the commissioners had not been appointed. The Parliament of Zimbabwe had not set in motion the process for the appointment of commissioners to the Complaints Commission. Parliament had not furnished the President with a list of nominees for appointment to the Commission.

On 5 December 2023, lawyers filed a constitutional application in the Constitutional Court for an order declaring that Parliament had failed to fulfil its constitutional obligation as set out in section 237 (1) (a)(e) of the Constitution. Lawyers further argued that Parliament had failed to fulfil its constitutional obligation to ensure that provisions of the Constitution were upheld. The failure by Parliament to initiate the process for the appointment of commissioners rendered the constitutional protection afforded by section 210 of the Constitution nugatory as victims of indiscretions by state security agents had no recourse to the complaints mechanism. On 14 January 2024, the Parliament of Zimbabwe published a notice in the media calling for the nomination of members to the Zimbabwe Independent Complaints Commission. This was in response to the application filed by lawyers on behalf of Takudzwa Ngadziore. On 14 June 2024, lawyers wrote a letter to the Parliament following up on the appointment of the commissioners. Lawyers committed to reinstate the case if there were no appointments within the next six months.

Following the intervention of the lawyers, thirty-five candidates were shortlisted for interviews to become commissioners for the Independent Complaints Commission.<sup>117</sup> The interviews were conducted on 4 April 2024 and among the interviewees were two former judges.<sup>118</sup> As a result of a notice by Parliament that the interviews had been scheduled, the Takudzwa Ngadziore matter was removed from the role of the Constitutional Court. As lawyers had committed to making a follow-up in the event there had not been any action, the Parliament of Zimbabwe complied with its commitment. On 19 September 2024, the commissioners of the Independent Complaints Commission were appointed in terms of section 210 of the Constitution.<sup>119</sup> The five commissioners who were appointed are: Justice Webster Nicholas Chinamora as the Chairperson; Elizabeth Rutsate, a lawyer

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<sup>117</sup> J Madzimore “35 shortlisted to serve on the Independent Complaints Commission” *The Herald* 29 March 2024 available at <https://www.herald.co.zw/35-shortlisted-to-serve-on-the-independent-complaints-commission/> [Accessed on 13 December 2024].

<sup>118</sup> As above.

<sup>119</sup> Veritas Zimbabwe “COMMISSIONS WATCH 03-2024 - Appointment of Commissioners of the Zimbabwe Independent Complaints Commission (ZICC)” available at <https://www.veritaszim.net/node/7195> [Accessed on 13 December 2024].

and an academic; Andrew Mataruse, a medical doctor; Oliver Mandipaka, from security services and Kudakwashe Muchena, a psychologist, a step towards the operationalisation of the Commission.<sup>120</sup>

### *Nesbert Munyuki v The President of Zimbabwe*

Before this intervention, ZLHR lawyers had written to President Emmerson Mnangagwa on behalf of a client, Nesbert Munyuki. Nesbert expressed his concerns that President Mnangagwa had spent more than one year since the enactment of the Independent Complaints Commission Act in October 2022, without appointing Zimbabwe Independent Complaints Commission commissioners as required by section 6 of the Independent Complaints Commission Act. This rendered the essence of the protection of members of the public as provided for in section 210 of the Constitution nugatory, as the Commission was compromised by the President's failure to fulfil his statutory mandate of appointing commissioners to deal with complaints filed against delinquent members of the security services.

However, the Zimbabwe Independent Complaints Commission is still to be operationalised as it requires regulations and rules of procedure to do so effectively.<sup>121</sup>

### *The Import of the Independent Complaints Commission Act*

The objects of the Independent Complaints Commission Act [Chapter 10:34] are as follows:

- (a) *to give effect to section 210 of the Constitution by providing for an independent and impartial mechanism for the investigation of misconduct committed by members of security services and to ensure independent oversight of the handling of complaints against them;*
- (b) *to make disciplinary recommendations in respect of members of the security services resulting from investigations conducted in terms of this Act;*
- (c) *to ensure the grant of appropriate remedies in respect of any harm caused by any misconduct by members of the security services and;*
- (d) *to enhance accountability and transparency by the security services and their members in accordance with the principles of the Constitution.*

Therefore, as a general rule, the Commission is responsible for receiving and investigating complaints from the public about misconduct on the part of members of the security

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<sup>120</sup> As above.

<sup>121</sup> F Munyoro "ZICC dismisses opposition MPs' claim of budget neglect" The Herald 9 December 2024 available at <https://www.herald.co.zw/zicc-dismisses-opposition-mps-claims-of-budget-neglect/> [Accessed on 16 December 2024].

services, and for remedying any harm caused by such conduct. However, the Commission has only just been established to become operational and has missed opportunities to effect tangible change in society. Since the Constitution of Zimbabwe came into force in 2013, several incidents of violence and impunity by state security agents have been recorded. These include the 2018 post-election violence,<sup>122</sup> the 2019 anti-government protests against fuel hikes,<sup>123</sup> the August 2019 protests<sup>124</sup> and recently the 44th Session of the Southern African Development Community (SADC) Summit.<sup>125</sup> While the 2018 post-election violence grievances were somewhat addressed under the Post-Election Violence Commission of Inquiry 2018 chaired by Former President of South Africa Kgalema Motlanthe also known as the Motlanthe Commission,<sup>126</sup> it was short-term and the recommendations have never been implemented. The other incidents mentioned did not have individual or specific commissions set up to investigate the conduct of state security agents involved despite loss of life in some cases.

### *Advantages of the Independent Complaints Commission*

The Independent Complaints Commission was created to alleviate the challenges faced by victims in cases of wrongdoing by state security agents. The Commission has several advantages over the court process including those highlighted below:

- (a) *The process is less cumbersome compared to the court process* - The Act provides that complaints will not be declined solely on the grounds of not adhering to the prescribed form provided for purposes of filing a complaint, or in any way fails to comply with any of the prescribed requirements.<sup>127</sup> The Act also states that a complaint may be made by such other means as the Commission may allow with a view to making its services accessible to all persons.<sup>128</sup> This is starkly different from the civil court process where objections by way of points in *limine* may be

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<sup>122</sup> Human Rights Watch “Zimbabwe: At Least 6 Dead in Post-Election Violence” 3 August 2018 available at <https://www.hrw.org/news/2018/08/03/zimbabwe-least-6-dead-post-election-violence> [Accessed on 14 December 2024].

<sup>123</sup> J Burke & N Chingono “Zimbabwe police fire live rounds during general strike protests” The Guardian 14 January 2019 available at <https://www.theguardian.com/world/2019/jan/14/zimbabwe-police-clash-protesters-first-day-general-strike> [Accessed on 14 December 2024].

<sup>124</sup> “Police beat protesters in Zimbabwe” DW 16 August 2019 available at <https://www.dw.com/en/zimbabwe-police-beat-protesters-as-economy-tanks/a-50058203> [Accessed on 14 December 2024].

<sup>125</sup> K Nyangani “SADC summit crackdown: Over 200 people arrested” The Standard 18 August 2024 available at <https://www.newsday.co.zw/thestandard/news/article/200031110/sadc-summit-crackdown-over-200-people-arrested> [Accessed on 14 December 2024].

<sup>126</sup> Veritas “Post-Election Violence Commission of Inquiry 2018” available at <https://www.veritaszim.net/node/3225> [Accessed on 14 December 2024].

<sup>127</sup> Independent Complaints Commission Act [Chapter 10:34], section 13(4).

<sup>128</sup> As above.

raised for failure to comply with the correct form, which may result in the matter being dismissed, depending on the court's discretion and the circumstances of each case.<sup>129</sup>

- (b) *Representation is allowed if the victim is deceased* - The Independent Complaints Commission Act allows a representative to file a complaint in circumstances where the person who initially filed a complaint is deceased or if they are unable to act for themselves.<sup>130</sup> The Act does not prescribe any additional requirements which makes the process easy to navigate.
- (c) *No fee is required for investigations to be carried out* - Unlike court processes that require payments upfront in the form of court fees for pleadings, the Commission does not require a payment before services can be rendered. Commission staff members must render services and assist any victim free of charge to allow a victim to make a complaint.<sup>131</sup>
- (d) *Hearings are not bound by strict rules of evidence* - During inquiries into a complaint, the Commission is not bound by strict rules of evidence. The Commission has the discretion to ascertain any relevant fact by any means it considers appropriate, being guided by the rules of natural justice.<sup>132</sup> This makes the Commission more favourable compared to the civil court process which abides strictly by the rules of evidence and failure to do so may render evidence inadmissible and the matter unsuccessful.<sup>133</sup>

### *Challenges emanating from the Independent Complaints Commission*

The Independent Complaints Commission has several challenges, some emanating from its delayed operationalisation and others from the provisions of the Act which determine how it will function. These are:

- (a) *Failure to appoint commissioners* - The Commission faced its existential crisis due to the failure to appoint commissioners timely, which played a part in delaying its operationalisation, seven years after the idea was introduced in 2013 and two years after its enabling Act was promulgated.
- (b) *Lack of independence* - The President appoints a Minister to administer the Act.<sup>134</sup> Before the President elects to do so, the administration of the Act is

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<sup>130</sup> Independent Complaints Commission Act [Chapter 10:34], section 13(6).

<sup>131</sup> As above, section 13(5).

<sup>132</sup> As above, section 15(7).

<sup>133</sup> Civil Evidence Act [Chapter 8:01], section 2(1).

<sup>134</sup> Independent Complaints Commission Act, section 2(1).

solely within his purview.<sup>135</sup> This erodes the independence of the Commission especially because the President is both the Commander in Chief of the Defence Forces and the Head of State.<sup>136</sup> His role as the Commander in Chief of the Defence Forces which includes the army<sup>137</sup> has grave implications on the impartiality of the Commission in instances where the army is involved in cases of impunity against citizens. The army has been instrumental in grave human rights violations including the post-election violence in 2018. Additionally, the Commission's independence is put in jeopardy through the appointment process of commissioners. Furthermore, the Act provides for "advisors" who are drawn from the security sector, a position that is counterintuitive as objectivity cannot be expected from members of the security sector in cases involving their fellow members. The President is heavily involved in the appointment of the commissioners.<sup>138</sup> This will cast doubt and make the public lose confidence in the process of the Commission. There is no guarantee of transparency and accountability as the Executive is heavily involved in the functions of the Commission and commissioners. An example of this is when President Emmerson Mnangagwa appointed Justice Chinamora as the Chairperson of the Commission after he had recently retired as a judge. Justice Chinamora retired as a judge after the President had set up a tribunal to inquire into his suitability to hold office due to allegations of gross misconduct.<sup>139</sup> Therefore, his appointment to the Commission in this case seems improper. Thus, lawyers are challenging the appointment of Justice Chinamora to the Independent Complaints Commission.

- (c) *Matters to be held in camera*<sup>140</sup> are not specifically defined - The Act provides that there are complaints that may be held *in camera* on the "grounds of public interest." There are no clearly defined parameters on what constitutes "public interest."<sup>141</sup> While this may seem in favour of victims, there is a likelihood that this may be open to abuse and may be used to avert accountability by perpetrators.
- (d) *Prescription* - All complaints taken up by the Commission should be handled within three years from the time the cause of action arises.<sup>142</sup> This includes

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<sup>135</sup> As above, section 2(2).

<sup>136</sup> Section 89 of the Constitution of Zimbabwe.

<sup>137</sup> Section 211 of the Constitution of Zimbabwe.

<sup>138</sup> Independent Complaints Commission Act, section 6(1).

<sup>139</sup> F Munyoro "Justice Chinamora quits" The Herald 18 November 2023 available at <https://www.herald.co.zw/justice-chinamora-quits/> [Accessed on 15 December 2024].

<sup>140</sup> An *in camera* hearing is a legal proceeding held before a judge in private chambers which are excluded from the courtroom.

<sup>141</sup> Independent Complaints Commission Act, section 15(9).

<sup>142</sup> As above, section 13(2)(a).

violations such as rape which have to be dispensed with in three years. Ideally, criminal cases in Zimbabwe, except murder, prescribe after twenty years.<sup>143</sup> This poses challenges as rape victims do not always come forward immediately after an incident occurs. In extreme cases such as wars, the three-year period is still not ideal as wars tend to take longer and usually, violations such as rape by state security agents tend to be rampant during those times.

- (e) *There is no clear relationship between this Commission and other independent Commissions.* The Independent Complaints Commission, while defined as independent, is not part of the institutions provided for in Chapter 12 of the Constitution.<sup>144</sup> Its objectives differ from the Chapter 12 institutions as these objectives include supporting and entrenching human rights and democracy; and protecting the sovereignty and interests of the people<sup>145</sup> whereas the primary objective of the Independent Complaints Commission is to investigate complaints by citizens. Nonetheless, there seems to be a conflation of duties with the Zimbabwe Human Rights Commission which also has a mandate to receive and consider complaints from the public and investigate human rights violations, including those by state security agents.<sup>146</sup>
- (f) *Measures taken after hearing or inquiry* - The Independent Complaints Commission Act articulates that the Commission shall make an order or recommendation in a matter as it considers appropriate in the circumstances for the redress of the misconduct after a hearing or inquiry has been conducted.<sup>147</sup> The Commission may make recommendations including for redress and compensation through the courts.<sup>148</sup> It seems the Commission makes recommendations on issues of importance yet a recommendation is but a suggestion or proposal as to the best course of action. An order is a written direction or mandate directing that something be done or that there is a prohibition against some act. Issues relating to compensation and redress should be given as an order, not a recommendation.<sup>149</sup> It can be deduced from this that an order has more power and carries more legal weight than

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<sup>143</sup> Criminal Procedure and Evidence Act [Chapter 9:07], section 23(2).

<sup>144</sup> Zimrights “Unpacking the Zimbabwe Independent Complaints Commission Bill” available at <https://www.zimrights.org.zw/understanding-the-zimbabwe-independent-complaints-commission-bill/> [Accessed on 10 December 2024].

<sup>145</sup> Section 233 (a) and (b) of the Constitution of Zimbabwe.

<sup>146</sup> Section 243 (1)(d) and (f) of the Constitution of Zimbabwe.

<sup>147</sup> Independent Complaints Commission Act, section 16(7).

<sup>148</sup> ZLHR “Summary analysis of the Independent Complaints Commission Bill, 2020, available at: <https://www.zlhr.org.zw/wp-content/uploads/2021/06/ZLHR-Summary-Analysis-of-the-Independent-Complaints-Commission-Bill-2020.pdf> [Accessed on 10 December 2024].

<sup>149</sup> As above, p 4-5.

a recommendation because a recommendation can simply be accepted or rejected which is not ideal considering the ever-increasing culture of impunity in our country. The Act also provides no clarity on the measures that should be taken when the recommendations are rejected.<sup>150</sup> Ideally, the Act should make provisions for a procedure to register orders for compensation with the High Court to enable execution.

- (g) *Funding* - The Commission relies on funding from donations from individuals and organisations and funds appropriated for this purpose by an Act of Parliament and the Commission can accept these funds upon consultation with the Minister.<sup>151</sup> The Act does not indicate whether the Commission has the authority to fundraise independently. Relying on the Minister and donations from individuals, organisations and governments exposes the Commission to interference which also affects its independence. The lack of adequate funding will potentially limit the Commission as far as the scope of its work and effectiveness is concerned. To ensure its effectiveness, the government should make considerations to fund the Commission through the Consolidated Revenue Fund, while still allowing for donations from the public.

### *Best practices from the region*

Although the Zimbabwe Independent Complaints Commission has several advantages over the civil court process, it is yet to stand the test of time once it has received complaints and proven to have a track record of protecting victims of impunity. Since it is yet to be operationalised, it is too soon to pass any judgement on its effectiveness or lack thereof. It is also acknowledged that the Zimbabwe Independent Complaints Commission is somewhat different from the commissions and tribunals to be discussed below as these were created for a specific incident and period, similar to Zimbabwe's National Peace and Reconciliation Commission. However, these commissions and tribunals that have been set up in various parts of the continent in response to grave human rights violations can serve as best practices to emulate for the Independent Complaints Commission and help improve its efficiency and effectiveness.

### *The International Criminal Tribunal for Rwanda (ICTR)*

Following the Rwanda Genocide of 1994, the United Nations Security Council established the International Criminal Tribunal for Rwanda. Its purpose was to prosecute individuals responsible for the genocide and other serious violations of human rights

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<sup>150</sup> As above.

<sup>151</sup> Independent Complaints Commission Act, section 20(1)(a) and (b).

and humanitarian law in and around Rwanda in 1994.<sup>152</sup> The Tribunal indicted 93 individuals considered to be responsible for the grave violations including high-ranking military and government officials, politicians, businessmen, as well as religious, militia, and media leaders.<sup>153</sup> The ICTR contributed to curbing impunity as it prosecuted the most high ranking individuals who were involved in the genocide. Sixty-one individuals were convicted while fourteen were acquitted.<sup>154</sup> The ICTR withdrew two indictments, and three individuals died before the conclusion of their trials before the ICTR. The ICTR transferred five cases to national courts in Rwanda and France.<sup>155</sup> Worth noting are the contributions of the Gacaca courts to resolving cases arising from genocide during this period.<sup>156</sup> The establishment of the Gacaca courts was an ingenious way of drawing upon the customary system of community hearings to resolve local disputes. In June 2012, the Gacaca courts closed after processing almost 2 million cases of crimes of genocide.<sup>157</sup> Although the ICTR yielded positive results, it was beset by limited funding while the Gacaca courts benefited from extensive funding from donors.<sup>158</sup> As such, the Gacaca courts were a novel way of dealing with genocide as they ushered a new era of reconciliation and transitional justice.

One clear advantage of the ICTR is the issue of prescription. While the Zimbabwe Independent Complaints Commission has put a threshold of three years, including on cases involving rape, the ICTR gave its last judgment in 2012, whereas the cause of action for these cases arose during the genocide that occurred in 1994. The ICTR closed its doors twenty years after it was operationalised.<sup>159</sup> However, since it was established that there are fugitives who evaded the course of justice, the United Nations Security Council introduced the International Residual Mechanism for Criminal Tribunals in 2010 to conclude the remaining work of the ICTR and to locate and arrest indicted individuals who are still at large; hearing appeals against judgments and sentences issued by the ICTR.<sup>160</sup> The Tribunal prioritised giving an effective remedy to victims and in turn, metering

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<sup>152</sup> United Nations International Residual Mechanism “The ICTR in brief” available at: <https://unictir.irmct.org/en/tribunal> [Accessed on 16 December 2024].

<sup>153</sup> As above.

<sup>154</sup> International Justice Resource Center “ICTR” available at: <https://ijrcenter.org/international-criminal-law/ictir/> [Accessed on 16 December 2024].

<sup>155</sup> As above.

<sup>156</sup> Penal Reform, “The contribution of the Gacaca jurisdictions to resolving cases arising from the genocide Contributions, limitations and expectations of the post-Gacaca phase”, available at: [https://cdn.penalreform.org/wp-content/uploads/2013/06/Gacaca\\_final\\_2010\\_en.pdf](https://cdn.penalreform.org/wp-content/uploads/2013/06/Gacaca_final_2010_en.pdf) [Accessed on 18 February 2025].

<sup>157</sup> Thomson S, “Rwanda’s Gacaca Courts” *Témoigner. Entre histoire et mémoire*, 121 p. 143-144, available at: <https://journals.openedition.org/temoigner/3537> [Accessed on 18 February 2025].

<sup>158</sup> As above

<sup>159</sup> International Justice Resource Center “ICTR” available at: <https://ijrcenter.org/international-criminal-law/ictir/> [Accessed on 16 December 2024].

<sup>160</sup> As above.

out appropriate deterrent sentences to the perpetrators despite the passage of time. A prescription period of three years will not give room for this to happen in Zimbabwe.

### *The Sierra Leone Truth and Reconciliation Commission*

The Sierra Leone Truth and Reconciliation Commission was set up in 2002 after the brutal civil war in the 1990s to address the impunity that resulted from the war.<sup>161</sup> This war was ignited after President Joseph Saidu Momoh amended the constitution of Sierra Leone to allow multiple political parties to participate in elections, but the Revolutionary United Front (RUF), led by Foday Sankoh, vehemently opposed multiparty politics and fought for control of the government and control of the country's diamond industry.<sup>162</sup> The conflict put tremendous stress on the entire political and social system and grave human rights violations such as physical mutilations, rape, and the recruitment of child soldiers were recorded.<sup>163</sup> A comprehensive report was done and prosecutions were conducted. The Commission recommended a payment of reparations and the government of Sierra Leone launched the Victims' Trust Fund for this.<sup>164</sup>

The critical aspect to note about the Sierra Leone Truth and Reconciliation Commission is that its recommendations were legally binding. Instead of giving recommendations that may be ignored, the Independent Complaints Commission should give its recommendations the same weight as orders such that they are legally binding and there are repercussions for not complying with them. Additionally, the Commission should consider setting up a fund which will compensate victims of impunity by state security agents instead of using tax payer's money as reparations. The Sierra Leone Truth and Reconciliation Commission also prioritised the involvement of civil society actors, a factor that is missing from the Zimbabwe Independent Complaints Commission, which would improve its effectiveness to adequately handle issues of impunity by state security agents.<sup>165</sup>

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<sup>161</sup> WA Schabas "The Sierra Leone Truth and Reconciliation Commission" (2006) Cambridge University Press 21 available at: <https://www.cambridge.org/core/books/abs/transitional-justice-in-the-twentyfirst-century/sierra-leone-truth-and-reconciliation-commission/27970FD-7B68E9C76AEDF507257B35F35> [Accessed on 16 December 2024].

<sup>162</sup> United States Institute of Peace "Truth Commission: Sierra Leone" available at <https://www.usip.org/publications/2002/11/truth-commission-sierra-leone> [Accessed on 16 December 2024].

<sup>163</sup> As above.

<sup>164</sup> As above.

<sup>165</sup> ICTJ "Challenging the Conventional: Case Studies - Sierra Leone" available at: [https://www.ictj.org/sites/default/files/subsites/challenging-conventional-truth-commissions-peace/sierra\\_leone.html](https://www.ictj.org/sites/default/files/subsites/challenging-conventional-truth-commissions-peace/sierra_leone.html) [Accessed on 16 December 2024].

## *The South Sudan Transitional Justice Laws*

In September 2024, South Sudan took a step in the right direction through the enactment of the Commission for Truth, Reconciliation, and Healing Bill, 2024; and the Compensation and Reparation Authority Bill, 2024.<sup>166</sup> The laws establish the Commission for Truth, Reconciliation and Healing (CTRH) and the Compensation and Reparations Authority (CRA) which seek to address issues related to accountability, compensation, and reparation to the victims or survivors of atrocities in South Sudan.<sup>167</sup> Of paramount importance are the complimentary roles between these two mechanisms in that, the truth commission is tasked with documenting abuses, breaches of rule of law committed by state and non-state actors, while the CRA will facilitate the process for compensating the victims.<sup>168</sup> Although their successes are yet to be recorded, such developments spotlight the opportunities available to address accountability for rights violations, atrocities and further usher in an era of effective transitional justice within the region.

## *The South African Truth and Reconciliation Commission*

The South African Truth and Reconciliation Commission was established by the South African government in 1995 following the apartheid regime and atrocities that had occurred during this period that largely affected the natives of the country.<sup>169</sup> It was established to investigate human rights violations perpetrated during the apartheid regime from 1960 to 1994, including abductions, killings and torture. The South African Truth and Reconciliation Commission was forced to establish a body to implement the recommendations emanating from the hearings after pressure from civil society organisations.<sup>170</sup> In the case of the Zimbabwe Independent Complaints Commission, the Zimbabwe Human Rights Commission may monitor its implementation of the recommendations instead of the Commission doing so on its own as it is allowed to do under its enabling Act.

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<sup>166</sup> The Radio Community, "Parliament passes Transitional Justice bills", available at: <https://theradiocommunity.org/parliament-passes-transitional-justice-bills-3049> [Accessed on 24 February 2025].

<sup>167</sup> ICTJ, "Justice and Democracy Are Taking Root in South Sudan", available at: <https://www.ictj.org/latest-news/justice-and-democracy-are-taking-root-south-sudan> [Accessed on 24 February 2025].

<sup>168</sup> Human Rights Watch, "South Sudan: Parliament Approves Transitional Justice Laws", available at: <https://www.hrw.org/news/2024/09/09/south-sudan-parliament-approves-transitional-justice-laws> [Accessed on 24 February 2025].

<sup>169</sup> United States Institute of Peace "Truth Commission: South Africa" available at: <https://www.usip.org/publications/1995/12/truth-commission-south-africa> [Accessed on 16 December 2024].

<sup>170</sup> As above.

## *Conclusion*

This chapter discussed the Zimbabwe Independent Complaints Commission and the efforts made in attempting to operationalise it, two years after the Act was passed and seven years after the Constitution of Zimbabwe was promulgated. The chapter also highlighted how the Independent Complaints Mechanism is a welcome substitute to civil court processes in cases where there is impunity by state security agents due to its informal procedures, and its flexible rules of evidence. Additionally, the Independent Complaints Commission allows for representation in the event a victim has passed away. However, the Independent Complaints Commission has disadvantages because of its lack of independence as a result of severe interference by the Executive, especially the President and the prescription period including on rape cases that ordinarily prescribe after twenty years in terms of the Criminal Procedure and Evidence Act. The chapter also explored some best practices in the region which could be adopted by the Independent Complaints Commission to ensure its effectiveness such as creating a fund for reparations instead of using tax payer's money.

# CHAPTER FOUR

## CONCLUSION & RECOMMENDATIONS

This analysis of ZLHR's anti-impunity cases in the period between 2022 and 2024 reveals that State institutions in Zimbabwe such as the Zimbabwe National Army, the Police Service and the political elites continue to violate citizens' rights with impunity. The publication features a historical background of the trajectory of human rights and impunity in Zimbabwe, dating back to the colonial period. It details the toll of impunity in Zimbabwe in the period considered which has been exacerbated by repressive laws and judicial prejudice that inhibit accountability, justice or any form of redress for victims of gross human rights violations. ZLHR's anti-impunity caselaw portrays the prevailing culture of impunity and the scourge in cases of enforced disappearances, extrajudicial killings, torture and other cruel, inhuman or degrading treatment or punishment prior to the August 2023 harmonised elections and in the period leading up to 2024. Additionally, it discusses the numerous stumbling blocks that litigators and litigants continue to face in the course of seeking justice in anti-impunity cases; and reveals how the Zimbabwe Lawyers for Human Rights has navigated through these hurdles to ensure redress for their clients.

The publication also details the essence of the Zimbabwe Independent Complaints Mechanism. Primarily, it spotlights the critical role that might be played by the Zimbabwe's Independent Complaints Commission in alleviating the challenge of impunity emanating from gross human rights violations by state security agents in Zimbabwe. It further details the challenges that the Independent Complaints Commission is likely to be seized with and prone to as it initiates its operations. Correspondingly, the publication tracks the operations of the truth commissions in other jurisdictions and draws best practices from the region which Zimbabwe's Independent Complaints Mechanism can emulate to ensure justice, peace and reconciliation for past injustices and address the rampant practice of impunity.

In light of the pervasive nature of impunity in Zimbabwe in the period under review, the Zimbabwe Lawyers for Human Rights puts forward the following recommendations in the interest of upholding the rule of law and ensuring respect for fundamental freedoms in Zimbabwe:

## *Recommendations to the State*

Recognising that impunity stems from the State abdicating its duties and obligations to investigate violations, and to take appropriate measures against the perpetrators of human rights violations, the Government of Zimbabwe is encouraged to:

- Uphold the right to access to information for all and publicise the findings of the Chihambakwe Commission of Inquiry on the Gukurahundi massacres.
- Establish and commence restorative justice programmes for victims of State-sponsored violations including, victim-offender mediation, erecting memorial sites and plaques, setting up victim-impact panels, and affording reparations, and restitution for victims.
- Urgently implement the recommendations of the Report of the Motlanthe Commission of Inquiry into the 1 August 2018 Post-Election Violence.
- Commit to eradicating impunity in Zimbabwe by ratifying and domesticating the UN International Convention for the Protection of All Persons from Enforced Disappearance and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Investigate, prosecute and hold to account perpetrators of human rights violations including those who give the orders to violate human rights, those who carry them out; and any accomplices who aid in the violation of fundamental freedoms

## *Recommendations to State Security Services*

- Comply with their constitutional mandate and duty to protect all citizens and respect fundamental rights and freedoms of all persons in accordance with sections 208, 211, 219, 44, 45 and 3(2)(b) of the Constitution.
- Discharge their constitutionally enshrined duty in a non-partisan manner, and conduct themselves professionally, patriotically and subordinate to the civilian authority alone.
- Accord with the authority and supremacy of the Constitution and desist from malicious arrests, arbitrary detentions, excessive use of force, enforced disappearances, and extrajudicial killings.
- Abide by a code of conduct, professional ethical standards, and discharge your duties with integrity and further adhere to the highest moral principles.
- Adopt and observe international rules, best practices and standards for policing. Specifically, members of the Zimbabwe Republic Police and the Zimbabwe National Army should note the freedom to participate in peaceful assemblies, whether political or non-political, subject only to very limited restrictions imposed in conformity with the law and consistent with a pluralistic society.

## *Recommendations to the Judicial System*

It is difficult to combat impunity and ensure justice for victims without judicial authority. Diminution and the absence of independence have undermined the impartiality of the judiciary in Zimbabwe. The judiciary is integral to prosecuting perpetrators of human rights violations and confronting the toll of impunity in Zimbabwe. As such, the judiciary is therefore encouraged to:

- Maintain judicial independence, freedom from executive authority and influence, and separation of powers in accordance with sections 164 and 165 of the Constitution.
- Ensure non-discrimination, equal protection of the law, access to justice and appropriate relief for victims of human rights violations, avoiding the use of procedural technicalities to restrict access, in accordance with section 85(3) of the Constitution, and the African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.<sup>171</sup>
- Observe and implement the International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, including the Basic Principles on the Independence of the Judiciary;<sup>172</sup>
- Regulate the issuance of amnesties; and denounce them where the decree equals impunity or stands to violate regional and international principles on crimes against humanity.

## *Recommendations to the Human Rights Commission*

The Zimbabwe Human Rights Commission (ZHRC) is an important ombudsman in the protection and promotion of human rights. In accordance with section 233 of the Constitution, the ZHRC is mandated with securing “the observance of democratic values and principles by the State and all institutions and agencies of government, and government-controlled entities; and to ensure that injustices are remedied”. As such, ZLHR encourages the ZHRC to:

- Execute its watchdog role without reservations, fear or favour and investigate cases of human rights violations by state security services, and where necessary refer them to courts for judicial pronouncement.

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<sup>171</sup> See The Constitution of Zimbabwe Amendment (No. 2) Act 2013 Section 85 (3); African Commission Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003 <https://www.achpr.org/legalinstruments/detail?id=38> [Accessed on 16 December 2024].

<sup>172</sup> OHCHR, Basic Principles on the Independence of the Judiciary, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary> [Accessed on 18 February 2025].

- Operate independently, without bias and in the interest of upholding justice, constitutionalism and public service.

### *Recommendations to the Zimbabwe's Independent Complaints Commission*

Section 210 of the Constitution gives effect to the Zimbabwe Independent Complaints Commission. The body is motivated by the need to promote accountability of members of the security services in their engagements with citizens. In the fight against impunity, it is imperative for the Zimbabwe Independent Complaints Commission to be committed to carrying out independent and impartial investigations of misconduct committed by security service. To that end, ZLHR recommends that the Zimbabwe Independent Complaints Commission:

- Finalises regulations and rules of procedure necessary to expedite its operationalisation.
- Executes its investigatory and adjudicatory role between members of the security services and the citizens, and carry out investigations into any misconduct and provide remedies to the aggrieved individuals.
- Conduct proper investigations and offer redress to victims of human rights violations in unresolved and pending cases of impunity by state security services.
- Ensure that its recommendations are legally binding and carry the same weight as orders for the benefit of victims.
- Set up a reparations fund for compensation to alleviate the strain on the taxpayer's money.





