

## *Annex II*

### *Executive Summary of the Report of the Fact- finding Mission to Zimbabwe<sup>5</sup> 24th to 28th June 2002*

---

<sup>5</sup> A complete report of the Fact-Finding Mission to Zimbabwe can be obtained from the Secretariat of the African Commission on Human and Peoples' Rights.

## INTRODUCTION

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

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

## FINDINGS

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

moments to uphold the rule of law, the government failed to chart a path that signalled a commitment to the rule of law.

6. There has been a flurry of new legislation and the revival of the old laws used under the Smith Rhodesian regime to control, manipulate public opinion and that limited civil liberties. Among these, the Mission's attention was drawn to the Public Order and Security Act, 2002 and the Access to Information and Protection of Privacy Act, 2002. These have been used to require registration of journalists and for prosecution of journalists for publishing "false information". All these, of course, would have a "chilling effect" on freedom of expression and introduce a cloud of fear in media circles. The Private Voluntary Organisations Act has been revived to legislate for the registration of NGOs and for the disclosure of their activities and funding sources.
7. There is no institution in Zimbabwe, except the Office of the Attorney General, entrusted with the responsibility of oversight over unlawful actions of the police, or to receive complaints against the police. The Office of the Ombudsman is an independent institution whose mandate was recently extended to include human rights protection and promotion. It was evident to the Mission that the office was inadequately provided for such a task and that the prevailing mindset especially of the Ombudsman herself was not one which engendered the confidence of the public. The Office was only about the time we visited, publishing an annual report five years after it was due. The Ombudsman claimed that her office had not received any reports of human rights violations. That did not surprise the Mission seeing that in her press statement following our visit, and without undertaking any investigations into allegations levelled against them, the Ombudsman was defensive of allegations against the youth militia. If the Office of the Ombudsman is to serve effectively as an office that carries the trust of the public, it will have to be independent and the Ombudsman will have to earn the trust of the public. Its mandate will have to be extended, its independence guaranteed and accountability structures clarified.
8. The Mission was privileged to meet with the Chief Justice and the President of the High Court. The Mission Team also met with the Attorney General and Senior Officers in his office. The Mission was struck by the observation that the judiciary had been tainted and even under the new dispensation bears the distrust that comes from the prevailing political conditions. The Mission was pleased to note that the Chief Justice was conscious of the responsibility to rebuild public trust. In that regard, he advised that a code of conduct for the judiciary was under consideration. The Office of the Attorney General has an important role to play in the defence and protection of human rights. In order to discharge that task effectively, the Office of the Attorney General must be able to enforce its orders and that the orders of the courts must be obeyed by the police and ultimately that the professional judgement of the Attorney General must be respected.
9. The Mission noted with appreciation the dynamic and diverse civil society formations in Zimbabwe. Civil society is very engaged in the developmental issues in society and enjoys a critical relationship with government. The Mission sincerely believes that civil society is essential for the upholding of a responsible society and for holding government accountable. A healthy though critical relationship between government and civil society is essential for good governance and democracy.

## **RECOMMENDATIONS**

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

### ***On National Dialogue and Reconciliation***

Further to the observations about the breakdown in trust between government and some civil society organisations especially those engaged in human rights advocacy, and noting the fact that Zimbabwe is a divided society, and noting further, however, that there is insignificant fundamental policy difference in relation to issues like land and national identity, Zimbabwe needs assistance to withdraw from the precipice. The country is in need of mediators and reconcilers who are dedicated to promoting dialogue

and better understanding. Religious organisations are best placed to serve this function and the media needs to be freed from the shackles of control to voice opinions and reflect societal beliefs freely.

### ***Creating an Environment Conducive to Democracy and Human Rights***

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

### ***Independent National Institutions***

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

### ***The Independence of the Judiciary***

The judiciary has been under pressure in recent times. It appears that their conditions of service do not protect them from political pressure; appointments to the bench could be done in such a way that they could be insulated from the stigma of political patronage. Security at Magistrates' and High Court should ensure the protection of presiding officers. The independence of the judiciary should be assured in practice and judicial orders must be obeyed. Government and the media have a responsibility to ensure the high regard and esteem due to members of the judiciary by refraining from political attacks or the use of inciting language against judges and magistrates. A Code of Conduct for Judges could be adopted and administered by the judges themselves. The African Commission commends to the Government of the Republic of Zimbabwe for serious consideration and application of the *Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa* adopted by the African Commission at its 33<sup>rd</sup> Ordinary Session in Niamey, Niger in May 2003.

### ***A Professional Police Service***

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

### ***The Media***

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

### ***Reporting Obligations to the African Commission***

The African Commission notes that the Republic of Zimbabwe now has three overdue reports in order to fulfil its obligations in terms of Article 62 of the African Charter. Article 1 of the African Charter states that State Parties to the Charter shall “recognise the rights, duties and freedoms enshrined in the Charter and *shall undertake to adopt legislative or other measures to give effect to them.*” Article 62 of the African Charter provides that each State Party shall undertake to submit every two years “a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.” The African Commission therefore reminds the Government of the Republic of Zimbabwe of this obligation and urges the government to take urgent steps to meet its reporting obligations. More pertinently, the African Commission hereby invites the Government of the Republic of Zimbabwe to report on the extent to which these recommendations have been considered and implemented.

## COMMENTS BY THE GOVERNMENT OF ZIMBABWE ON THE REPORT OF THE FACT FINDING MISSION

### Introduction

1.0 The Government of Zimbabwe is a member of the African Union and is a State Party to the African Charter on Human and People's Rights in terms of which the African Commission on Human and Peoples Rights (the Commission) is constituted. The Government of Zimbabwe is committed to the implementation of its obligations under the African Charter on Human and Peoples Rights. It fully recognizes, respects and supports the mandate of the Commission to promote and protect the enjoyment of human rights by the people of Africa. The Government of Zimbabwe therefore commends the African Commission for sending its Fact Finding Mission to Zimbabwe as this showed concern over the situation in our country and commitment to discharge its mandate.

### 2.0 Backe:round to the mission's visit

2.1 Since the year 2000, up to the present, allegations of violations of human rights by the Government of Zimbabwe are being peddled in various ways, including print and electronic media and at various international, regional and domestic fora. The level and magnitude of the Reports of the alleged violations however intensified during the period between February 2000 and June 2002. During this period the referendum on the draft Constitution took place, followed by the Parliamentary elections of June 2000 and the Presidential elections of March 2002. More importantly, the land reform programme was in progress and had reached its peak around the same time.

2.2 The request to send a Fact Finding Mission was premised on allegations of violations of human rights received by the Commission. The violations were said to be widespread, and committed at a time when, according to the Report of the Fact Finding Mission, "passions were inflamed"<sup>1</sup>. In light of these Reports, the Commission approached the Government through the Ministries of Foreign Affairs and Justice and was granted approval to send a fact-finding mission to Zimbabwe.

- 2.3 It must be noted that prior to the request to send a fact finding mission, no communication had been formally made by the Commission to the Government of Zimbabwe regarding the alleged human rights situation, and no specific information regarding the nature of the violations were made before the Mission's arrival in the country. In this situation, the Government of Zimbabwe was confronted with two problems, namely that there had been nondisclosure on the part of the Commission as regards the source of the allegations and secondly there were no specific details regarding the nature of the violations allegedly perpetrated directly, or indirectly, by the Government of Zimbabwe. Notwithstanding the lack of such information, the Government of Zimbabwe, in a spirit of openness and oneness with the Commission, conceded to the Commission's request, as this would enable the Commission to assess the situation on the ground for itself.
- 2.4 The Government of Zimbabwe believes that the Non governmental organisation community operating in Zimbabwe, in collaboration with their counterparts outside the borders of the country, made the allegations. This presumption was confirmed by the identities of the persons and organizations the Fact Finding Mission specifically requested to meet during the 4 days the Mission met stakeholders, and also those whom the mission made its own arrangements to meet outside of the official programme.
- 2.5 It should be stated that the Government of Zimbabwe did express disquiet to the Mission over the limitation of their visit to Harare only as this was not representative enough of the situation and the population of Zimbabwe. Further, the Mission only had 4 days to search for the truth in Zimbabwe. Given the nature, seriousness and adverse implications of the allegations, four days for the Fact Finding Mission to conduct the necessary investigations were not adequate.

<sup>1</sup> Page 3 para graph 1 of the Fact Finding Mission's Report.

### **3.0 Time frame of mission's visit**

- 3.1** The fact finding mission came to investigate allegations that had been highly publicized internationally. Considering the international image of Zimbabwe, one would have hoped that more time would have been dedicated to unraveling the human rights situation in the country. However, the mission only spent four working days conducting its investigations which were only confined to Harare. It should be stated that the Government of Zimbabwe did express disquiet to the Mission over the limitation of their visit to Harare only as this was not representative enough of the situation and the population of Zimbabwe. Further, the Mission only had 4 days to search for the truth in Zimbabwe. Given the nature, seriousness and adverse implications of the allegations, four days for the Fact Finding Mission to conduct the necessary investigations were not adequate.
- 3.2** The mission's report states that the time spent in the country was limited by lack of resources. As acknowledged in the mission's report, from the date of arrival in the country, up to the date of departure, the Government of Zimbabwe extended its hospitality and placed resources at the disposal of the fact finding mission. The Government of Zimbabwe was prepared to make additional resources available had the request been made. It must be pointed out that such assistance would have been provided, not with the intention to influence the process but to ensure that the mission suffered no constraints and met a wide cross section of the entire Zimbabwean population, and more particularly visit those areas in which violations had been alleged. Thus to the Government of Zimbabwe, more particularly given the seriousness and adverse implications of the allegations, four days for the fact finding mission were highly inadequate, and the issue of lack of resources is not a justifiable excuse. It should be stated that the Government of Zimbabwe did express disquiet to the Mission over the limitation of their visit to Harare only as this was not representative enough of the situation and the population of Zimbabwe. Further, the Mission only had 4 days to search for the truth in Zimbabwe. Given the nature, seriousness and adverse implications of the allegations, four days for the Fact Finding Mission to conduct the necessary investigations were not adequate.

#### 4.0 The Mission's Programme

- 4.1 The Government of Zimbabwe had anticipated a nationwide investigative mission, in which a wide cross section of Zimbabwe's population, both rural and urban, would be met as the allegations were said to be widespread. In light of this anticipation, the Government of Zimbabwe had prepared a draft itinerary that included visits to rural areas, to farming areas as well as meeting the people of Harare. As indicated in the Fact Finding Mission's Report the Government of Zimbabwe, following requests from the public for audience with the fact finding mission, and in consultation with the Secretariat of the Commission, drew up the Mission's final itinerary. At the end of the day, however, the final programme belonged to the Commission, and the Government's role was merely being facilitatory. In fact, the Commission at times met stakeholders not included in the itinerary. As desired by the Mission, the visit was eventually confined to Harare.
- 4.2 The Fact Finding Mission met His Excellency the President of the Republic of Zimbabwe, (together with the Minister of Foreign Affairs), the Vice President of Zimbabwe, the Chief Justice of Zimbabwe (together with the Judge President), the Speaker of Parliament, the Commissioner of Police, the Commissioner of Prisons, the Ombudsman, the Attorney-General (for less than 15 minutes and the visit appeared to have been a courtesy call as the Mission kept on making reference to their next appointment), the Minister of State Information And Publicity, the Deputy Minister of Justice, Legal and Parliamentary Affairs, the Minister of Home Affairs together with the Minister of State Security. Even though there were allegations against the youth militia, the Fact Finding Mission declined our request that they meet the Minister responsible for the national youth training programme. The only Minister on the programme who was unable to meet the Fact Finding Mission due to prior commitment is the Minister of Land, Agriculture and Rural Resettlement. The Mission met a total of 16 non-governmental organisations and 8 human rights activists/defenders. It, in short, met 23 civic organizations compared to 15 government institutions. The Fact Finding Mission also met some of the non governmental organizations and human rights defenders outside the programme. However, the generality of the Zimbabwe population, the key persons whose rights were allegedly violated, were not seen and spoken to. The Mission, therefore, did not meet the wide spectrum of stakeholders to justify their visit and Report.
- 4.3 The Mission, due to limitations expressed in its Report, gave audience to representatives of persons against whom the violations were allegedly committed and these were mainly representatives of Non governmental organisations that made the initial Reports to the Commission. The Mission should have conducted a verification exercise and hence met the allegedly affected persons. Getting first hand information from them about what happened was critical. Meeting the representatives of the same institutions who made the report casts doubt on the integrity of the mission.

- 4.4 The Fact Finding Mission states in its Report that they saw persons who had been abused and these people were brought to them by members of the non governmental organisation community. However, according to their list of persons and organizations they interviewed annexed to the report they only saw one alleged victim of torture brought by Amani Trust!. It is actually on record that the mission only saw the ordinary citizen, Ephraim Chapwanya cited as a victim of torture whose interview is referred to in the Report and whose name is cited in the Annexure as having been brought by Amani Trust, a non governmental organisation.
- 4.5 The fact finding mission claims that it received documentary evidence of the alleged violations. However, the Mission did not have an opportunity to verify the authenticity of the video tapes that they received and the credibility of the witnesses who brought the video tapes and the other documentary evidence. It is an undisputed fact that videos can be stage managed and manipulated and the Mission should, therefore, have been concerned with seeing and hearing the persons' accounts of their ordeal so as to buttress the video tapes. This was not done.

## **5.0 Procedural irregularities**

- 5.1 Zimbabwe is concerned with the procedure which the Commission adopted in conducting the fact finding mission and in the adoption of the report.
- 5.2 The Mission did not physically verify what they were told. Some of the statements which non governmental organisations made did not only lack substance but they were never brought to the attention of the Government of Zimbabwe for comment. There was no proper verification of the accuracy, or otherwise, of the evidence upon which the Fact Finding Mission based its report because the bulk of the people or organizations that the Mission met are the very persons or organizations that made the allegations in the first place.
- 5.3 In addition to oral statements that were made to the Commission in the absence of the Government of Zimbabwe, the report alleges that the Mission was furnished with documentary evidence of the violations. The report does not state what is precisely on the said documents. The report itself is a summary of what the Mission was told. The Government of Zimbabwe regards such information, being the basis of the Commission's Report, to be pertinent and, therefore, ought to have been made part of the Report. This position is founded on the internationally accepted rules of fact finding missions which prescribe that the State should have all information submitted for its comments. The Government of Zimbabwe states that to date the vital source of information and the documentary evidence received by the Fact Finding Mission<sup>2</sup> have not been presented to the Government of Zimbabwe to enable it to comment on the veracity of the evidence. .

5.4 According to Rule 79 of the Rules of Procedure of the African Commission on Human and Peoples' Rights as provided in the African Charter on Human and Peoples' Rights, the report should only have been released to the public after the Assembly of Heads of State and Government had considered it. Until such time, the report remains a private document. However, the report on Zimbabwe was released to members of the non governmental organisations community in 2003. These organisations held discussions over the report in South Africa in or about October 2003, and there were press reports in the independent media in Zimbabwe over the same which the Government of Zimbabwe brought to the attention of the Commission. No remedial action was taken. Instead, the report was again released through the electronic media before the June 2004 Summit of Heads of States. It is immaterial how the report got out but it is the responsibility of the Commission to ensure that there are no leaks in its rank and file, and that the highest level of security for documents is maintained.

5.4 Further, we note that the Commission adopted the Fact Finding Mission at its 34th Ordinary Session and sought Zimbabwe's response after the adoption. The Fact Finding Mission saw the Head of State and Government representatives first before seeing other stakeholders. The Mission was able to seek comments from the stakeholders on the representations made by the Government. In light of this, the Mission should, therefore, have sought the Government's response before even adopting the Fact Finding Mission's Report. We are of the view that the rules of natural justice require that the Commission should have sought the comments of the Government of Zimbabwe before its adoption of the report. The adoption of the report before seeking the comments of the government of Zimbabwe means that the Commission was convinced on the contents thereof. Seeking the comments of the government of Zimbabwe after the adoption was therefore a mere formality and these comments are irrelevant to the Commission.

<sup>2</sup> Page 3 paragraph I of Report. Note should be taken that the documentary evidence given to the Mission by the government of Zimbabwe is ignored through out the Report.

## 6.0 Land Question in Zimbabwe

- 6.1 The land issue is central to the problems bedeviling the country. The story of Zimbabwe cannot be told, or be complete without the story of the land, and neither can the land issue be separated from the alleged human rights violations. For this reason it is important that the land issue be put into its proper context. In this regard we refer you to the words of wisdom in the letter from the President of South Africa in ANC Today Volume 3 No. 18 of 15 May 2003 where he says:

*Contrary to what some in our country now claim, the economic crisis currently affecting Zimbabwe did not originate from the desperate actions of a reckless political leadership or from corruption. It arose from a genuine concern to meet the needs of the black poor without taking into account the harsh economic reality that in the end we must pay for what we consume.*

*The longer the problem of Zimbabwe remains unresolved the more entrenched poverty will become. The longer this persists, the greater will be the degree of instability as the poor try to respond to the pains of hunger. The more protracted this instability, the greater will be the degree of polarization and generalized social and political conflict.*

- 6.2 Writing to the Prime Minister of Australia, Rt. Honourable Mr. J. Howard, President Obasanjo of Nigeria - a member of the *troika* had this to say on the matter of Land:

*"In many of our previous meetings it has been admitted that the issue of land is at the core of the current crisis in Zimbabwe and that an appropriate solution to this problem would go a long way in bringing to early conclusion other associated issues. "*

It is pertinent to note that the Commonwealth appointed a troika of three Heads of State to look into the situation of Zimbabwe and make appropriate recommendations to the Commonwealth on whether, or not, sanctions should be lifted on Zimbabwe. The *troika* group comprised:

- . President Thabo Mbeki of South Africa,
- . President Olusegun Obasanjo of Nigeria, and
- . Prime Minister, the Rt. Honourable Mr. John Howard of Australia.

The first two members of the *troika* identified the issue of land as having been the substantive cause of Zimbabwe's problems. The Fact-Finding Mission, therefore, missed the point when it found, as it did, that land was not the effective cause of Zimbabwe's problems.

- 6.3 The land and the land reform programme in Zimbabwe is a socioeconomic and political imperative. It is an undisputed fact that the land issue was actually one of the primary reasons for the protracted war of liberation and that up to 1999, the unequal distribution of land had remained a serious concern, whose implications had a potential to destabilize the post colonial Zimbabwe. Zimbabwe's economy is agriculturally based and, out of a total land area of 39 million hectares, 33.3 million is suitable for agriculture. Half of this land was, up to 1999 occupied by 6 000 white commercial farmers while 840 000 communal farmers (blacks) occupied the other half. The uneven distribution of land between the large scale commercial sector and the communal areas also extended to the suitability of land for agricultural purposes. The commercial farms were largely located in the high rainfall areas, found in regions I, II and III while the communal lands are concentrated in regions IV and V which are characterized by very poor soils and low rainfall patterns. Out of the land in the fertile regions, I, II and III, some belonged to absentee landlords and was either not being put to use at all or was being managed from abroad, some was under-utilised, and other prime agricultural land had been converted to safari hunting while the majority of the black people either had no land or were overcrowded on over-utilised and often barren rural land.
- 6.4 As is the case in all matters which are covered in this Report, it is unfortunate that the Fact Finding Mission did not find time to see for themselves the conditions under which the rural black persons live, nor did the Mission see the cramped, pathetic and squalid conditions of the black farm workers compared to the grandiose lifestyle in which their white masters lived and, in some cases, still live some 23 years after independence. Up until the implementation of the land reform programme, none of the non governmental organizations and human rights defenders saw the need to put the issue of the living conditions of farm workers on the agenda of the African Commission on Human and Peoples' Rights and this is a question the Commission still did not consider in its Report. Even the trade unionists did not regard the farm worker befitting their representation until the emergence of the agrarian reform.<sup>3</sup>
- 6.5 As all parties in Zimbabwe now concede (the opposition doing so reluctantly), land reform was necessary in order to address the imbalances in land, which were created by the colonial Governments, thereby achieving equitable land distribution and decongesting over populated rural areas. Land reform was also necessary to meet the land needs of indigenous citizens and successful smallholder farmers who wanted to enter into commercial agriculture for the economic development of the country. In fact, Article 22 of the Charter recognizes the right of all peoples to economic, social and cultural development. It is in the spirit of that article and other economic considerations that Zimbabwe embarked upon the land reform programme.

- 6.6 It is not correct that the issue of land redistribution is a problem today due primarily to the absence of good governance. The observations by the executive director of SAHRITS are, to all intents and purposes, factually incorrect.<sup>4</sup> It should be pointed out that, during the first ten years of independence, the Government of Zimbabwe was not able to acquire land enmasse to settle the people as the constitutional and legislative framework inhibited the quick acquisition of land for resettlement. The first inhibition was the provision in the Lancaster House Constitution of 1979. The Commission should be reminded that the Lancaster House negotiation nearly collapsed because of the land issue, with the liberation groups insisting on immediate resettlement of its people and the whites opting for protection of land rights. The Lancaster House negotiations were concluded with an agreement that the privileged land rights of the white population would be protected for 10 years and, during this period, Britain and the USA would provide funds for the acquisition of land by the incoming Government from the white farmers on a willing buyer willing seller basis. The programmes that were put in place during the period that extends from 1990 to 1999 were equally not able to place adequate land at the disposal of Government. This was due particularly to lack of resources, as well as lack of suitable available land for acquisition as white farmers were offering land they had exhausted and had, therefore, become infertile and Britain, on the other hand, was unwilling to fund the exercise.
- 6.7 Accordingly, following unfulfilled promises by Britain and her allies to fund the acquisition of land for resettlement purposes, Zimbabwe embarked on the land reform programme in 2000. The cause for such a programme was not a desire on the part of ZANU (PF) to hold onto power.<sup>5</sup> The cause was, and remains, the correction of colonial imbalances in the ownership of land, and the advancement of economic rights to the people of Zimbabwe as a whole. This was done following demonstrations by both the land hungry rural peasants and war veterans who spontaneously occupied commercial farms throughout the country as far back as 1999. Such actions caused hue and cry both within and beyond our borders. These developments necessitated the amendment of our Constitution to provide for the compulsory acquisition of land, without compensation except for improvements. It is unfortunate that these provisions were found by some to be offensive.<sup>6</sup> Of concern is the fact that the Mission also considered the amendment to be offensive.<sup>7</sup> This constitutional provision was enacted in the Land Acquisition Amendment Act. We hasten to state that the constitutional amendment, and the accompanying legislation was not put in place to pave way for Government's acquisition of the white farmer's land, but to provide the legal environment within which Government equitably carried out land reform while at the same time obligating Britain to honour her previous undertakings. The amendment was also in conformity with Article 14 of the Charter regarding the allowable encroachments on the right to property. The acquisition was in the interest of the public and due and fair compensation was, and is, still being paid for improvements made on the land.

<sup>3</sup> Page 3 of Report paragraphs 4 to end.

- 6.8 Government acknowledges the role played by some few members of the white commercial farming community who supported the land reform programme and, in the process, showed willingness as well as commitment to working with Government for the betterment of the black Zimbabweans. However, the overall pursuit of this land reform programme was resisted by many quarters in and outside Zimbabwe, more particularly by the opposition MDC party, the majority of the members of the white commercial farmers, Non governmental organisations, the British Government, and their allies. They carried out a well-orchestrated campaign to disrupt the programme. They did everything in their power to demonise the Government of Zimbabwe.

Some of the British nobility in Britain and whites who migrated to such countries as Australia, New Zealand and South Africa were owners of some of the land acquired under the land reform programme. Some farmers pretended to collaborate with Government by offering for resettlement land that had already been acquired, others gave land that has always belonged to the State and which they illegally annexed to their farmland, while another category gave land that was not suitable for resettlement purposes. There were scuffles and acts of violence at the farms, there were evictions of settlers and counter evictions of the commercial farmers, disruption of production, destruction of property, there was loss of lives and injury to persons. This went on, notwithstanding Government's calls for peaceful coexistence. The enactment in 2001 of the Rural Land Occupiers (Protection from Eviction) Act, and the deployment of police to maintain peace, law and order at the farms were measures which Government took to keep the situation under control.

- 6.9 The land issue has put Zimbabwe on the international scene since the year 2000 and has had other adverse consequences against the Government of Zimbabwe, which include its suspension from the Commonwealth, from which it eventually pulled out, of smart sanctions and the imposition of travel bans against its leadership. The enactment of the Zimbabwe Democracy and Economic Recovery Bill by the United States Government is a direct response to the land reform programme. All these are pressures intended to bear on Zimbabwe, to bring about political and socio-economic instability and to force Zimbabwe to reverse the land reform programme. However, the approach has since changed and momentum has increased with the introduction of alleged human rights violations in order to bring about a regime change. Indeed, Mr. Blair of Britain has, as recently as this year, told the whole world that his Government was working with the MDC to effect regime change in Zimbabwe. When this statement is viewed in its proper context, it is not hard to see that:

<sup>4</sup> Fact Finding Mission's Report page 5 paragraph 2. It should be noted that throughout the Report the statements of the executive director of SAHRITS are used as the yardstick of assessing the situation in Zimbabwe, and constitute in many respects the mission's findings.

- Britain and her allies in the Western World withdrew the financial support which they were, in the past, giving to Government
- encouraged non-patriotic Zimbabweans to form themselves into Non Governmental Organisations particularly those dealing with human rights issues
- channeled all the funds to the mentioned organisations, and
- used them to demonise the Government of Zimbabwe both from within and from outside the country's borders - all in the name of regime change.

6  
7

Statement of Law Society of Zimbabwe page 5 of Mission's  
Report. Report page 3 para.3  
ibid

## **7.0 Zimbabwe's General comments on the Report**

- 7.1 We reiterate that four days of searching for the truth was totally inadequate and the Mission confined itself to Harare which was not representative of the views of the entire Zimbabwean population and therefore, not at all reflective of the prevailing situation in the country.
- 7.2 We reiterate further that the Mission's statement that they did not have sufficient resources to cover a wider spectrum of the people Zimbabwe than they did is not a justifiable excuse as Zimbabwe would have provided additional resources for the Commission's work.
- 7.3 The Fact Finding Mission's Report is in many respects lacking in specific detail and it is, therefore, not possible for the Government of Zimbabwe to comment on some of the issues that were raised. The Government of Zimbabwe concedes that there were problems in Zimbabwe, especially during the period 1999, to 2002. The Government of Zimbabwe regrets the loss of lives, the injury to persons and destruction of property that took place during this period. While some of the activities were spontaneous, some were manipulated and others were pre-arranged in order to give weight to the allegations of abuse. For instance in Chinhoyi, farm workers were manipulated by their employer to act as war veterans and made to loot their employers' property while aerial photographs were taken as they made away with the property. The events were reported by the British Broadcasting Corporation well before it was even known in Harare that such acts had taken place. The fact that when the alleged war veterans were "looting" the farms the British Broadcasting Corporation was on the scene taking aerial photographs in a helicopter or small plane should not be regarded as a mere coincidence. When the farm workers were arrested, the white farmers whose property had been 'stolen', and who had made the reports paid bail for the employees. Their conduct in paying bail for "war veterans" who looted their property was contradictory, and raised eyebrows, and supports indications that the whole thing had been stage managed in order to discredit the land reform exercise and the Government of Zimbabwe.

7.4 The Government of Zimbabwe acknowledges the rights of the people to elect a government of their choice. The fact that ZANU (PF) has been the ruling party since the time that Zimbabwe attained her independence does not necessarily mean that with the emergence of the MDC there should have been a change of government. Change is achieved through an expression of will by the majority of the electorate. There was no such expression in favour of the MDC party by the Zimbabwean majority. Rather, the majority of the electorate showed that they wanted no change by voting for, and retaining a ZANU (PF) government. <sup>8</sup> Opposition political parties are formed with the object of forming a new government. However, such a government cannot be imposed on the people. It is the wish of every opposition leader to bring forth a new government, and always undoubtedly put blame on the winner of any election for his or her own misfortune. This has become the trend in Africa where elections won by the ruling party are invariably challenged by the opposition yet when the opposition wins the elections any allegations of manipulation of the elections fall away. However, it is not correct that opposition parties in Zimbabwe have been suffering harassment at the hands of the government since independence. The only party that can claim to have been exposed to, and taken part in, violence is the MDC. For this reason, the statement of the Democratic Party, alleging harassment, and intolerance by Government is materially incorrect.<sup>9</sup>

7.5 The Government of Zimbabwe concedes that there was an economic decline and that inflation had reached an all time high during the relevant period. It has been suggested that the cause for the decline is the land reform programme.<sup>10</sup> The allegation is that Government gave land to persons who are not proper farmers hence the wastage of land.<sup>11</sup> The correct position is that skilled persons originating from the rural and urban sector, former farm workers who have been conducting the actual farming activities, as well as persons who can command resources for agriculture were allocated land. In the first year of the land reform, people were making preparations to work the land. They, therefore, did not fully utilize the land. Government played a significant role in the recapitalization of the agricultural sector and this improved the situation. Contrary to the expectations of those opposed to it, the land reform programme has not failed. It, if anything, is gathering momentum for the benefit of the country's hitherto impoverished people.

7.6 It is, not correct that the land reform programme was the sole cause of the country's economic decline. Events on the ground indicate that there were more factors, including the financial institutions which engaged in activities like money laundering, externalization of foreign currency, and fuelling the parallel market thereby crippling the economy. The institutions in question were ostensibly working with Government when in actual fact they had formed a broad - based alliance with the MDC in an effort to topple the Government. The economic sanctions imposed by countries such as Britain and United States of America contributed in a large measure to the decline of the economy. The Zimbabwe Democracy and Economic Recovery Bill called for sanctions by international financing institutions and as a result Zimbabwe has not received any support for balance of payment from the Bretton Woods institutions. The bad publicity orchestrated by the Western media has resulted in the flight of foreign investors and a decline in tourism as Zimbabwe has been portrayed as a country which is at war with herself where no security is provided for human life and property.

7.7 Considering the challenges which the country went through, the resistance and the sabotage which the people of Zimbabwe experienced during the land reform programme, as well as the two years of successive droughts that the region suffered during the same period, it was only natural that there would be a decline in agricultural production. However, the position has since changed and this year the country has sufficient produce to, hopefully, take us to the next harvest.

8 Fact Finding Mission Report page 10 para. 2

9 Supra page 15 para 5 and 6

10 Fact Finding Mission Report page 5 para. 4

11 (\*\*\*\*\*input from Lands And Agriculture on among other information, success of the programme on production, statistics on the fact that the white farmers had moved from grain production to met the food requirements of Zimbabwe and moved to tobacco, wildlife management, safari operations, horticulture and forestry from which they earned foreign currency and externalized. Considering the development in those sectors in the past 3-4 years and the foreign exchange realized in those activities it is surprising that Zimbabwe could have run out of foreign exchange. Their maize was for their cattle feed and the communal farmers were producing 60% of the food requirements and only 40% from the commercial and small scale farmers. \* \* \* \* \*)

7.8 The Government of Zimbabwe acknowledges and recognizes the role which civil society plays in the advancement of human rights. She, therefore, accepts non governmental organisations' presence in the country, and welcomes constructive criticism coming from them. The Government of Zimbabwe sees non governmental organisations as partners in development and has, therefore, always maintained an open door policy for them. The Government of Zimbabwe is equally aware of the status of non governmental organisations within the African Commission on Human and People's Rights. They constitute the Commission's technical partners in the advancement and monitoring of the enjoyment of rights. However, Zimbabwe has learnt that not all non governmental organisations consider themselves as partners in a positive development of the country, and in her case, in some instances, the allegations being made against the Government are not correct. Most of the non governmental organisations got themselves embroiled in the national politics against the Government. They resorted to whatever means they could employ to bring about the downfall of the Government. They fuelled and collaborated with the opposition parties to effect what they termed regime change in Zimbabwe. It is those non governmental organisations which, realized the folly of their actions, and either closed operations in Zimbabwe claiming that the government was hostile to them or intensified their efforts to unseat the Government.

7.9 The Private Voluntary Organisations Act has always been in our statute books. The problems which Zimbabwe faced regarding the operations of non governmental organisations were that they were not all being registered under this Act. Some were registering as Trusts, while others were registering with the Ministry of Foreign Affairs. In such a chaotic environment it was easy for some to abandon the activities they had laid down in their constitutions and proceed to embroil themselves in the politics of Zimbabwe. What the Government of Zimbabwe has, therefore, done is to amend the Private Voluntary Organisations Act, so that all such organisations are registered under one body. The amendment which was drafted with the involvement of non governmental organisations themselves and other stakeholders is meant to create an enabling environment for the operations, monitoring and regulation of the work of all non governmental organisations. It will enable them to stick to their core business for which they sought registration in the first place.

7.10 The general trend of non governmental organisations is to pick upon an isolated event and portray it as the common position in the country and to dwell on issues that have long since been rectified in order to perpetuate their unfounded allegations and, in the process, justify their existence. This position is observed through out the Report. Another practice of the non governmental organisations is to simply quote events out of context. For instance:

- The Mission found that there had been a flurry of new legislation and the revival of old legislation to control and manipulate public opinion and, in the process, limit civil liberties.<sup>12</sup> The term flurry conotes flooding with legislation yet the only pre-Zimbabwe legislation that was "revived" is the Public Order and Security Act. It was not revival as such. That is so as the mentioned Act is materially different from the Law and Order Maintenance Act in that all the provisions of the latter that had been ruled to be unconstitutional were not reproduced. Zimbabwe actually drew inspiration on her enactment of the Public Order and Security Act from the British Public Order and Security legislation. The Access to Information and Protection of Privacy Act (AIPPA) is the only new enactment, which was passed to regulate the profession of journalists, and its provisions are within the parameters of the Constitution. The Access to Information and Protection of Privacy Act (AIPPA) was moulded along the lines of Canada's laws on the same subject. The Private Voluntary Organisation Act has always been in force since the 1960s.
- The General Laws Amendment Act was found to be unconstitutional due to the procedures adopted in passing the Bill into an Act of Parliament.<sup>13</sup> The Court did not make a pronouncement on the substantive provisions of the Bill, as more fully appears in the attached case of *Biti v Minister of Justice, Legal and Parliamentary Affairs*. It should be emphasized that the court did not declare any of the provisions of the Bill including the prohibition of non governmental organisations from carrying out voter education to be unconstitutional. The Court's ruling was based on the procedures which the House adopted when passing the Bill in Parliament. The provision in the Presidential Powers (Temporary Measures) Act was lawful. The Presidential Powers Act enables the President, in situations of emergency, to enact regulations when there is no law governing the situation. It was necessary and urgent that non governmental organisations be prohibited from conducting voter education as they had been found to be conducting disinformation education and confusing the rural voters.

- Representatives of chiefs have always been members of parliament since time immemorial yet the impression created is that this was resorted to in order to increase the number of members who represent the ruling party in Parliament. This provision dates back to the pre independence era in which chiefs were appointed to the Senate, an upper chamber of Parliament and since we now have a single chamber house, chiefs are nominated by their constituencies to represent them in Parliament. 14
- Both ZANU (PF) and the MDC challenged the results of the 2000 parliamentary elections. Some of the applications have long since been heard, in some instances the election results were confirmed, while in others they were nullified. In some cases there have been appeals to the Supreme Court. We forward herewith to the Commission a list showing what took place in respect of each Petition which the opposition MDC had filed with the court.
- Learnmore Jongwe, a Member of Parliament from the opposition MDC party, died while in remand prison for the brutal murder of his wife. The legislature was not arrested for political reasons. He did not die at the hands of the State. He committed suicide as was revealed by both the State appointed, and independent, pathologist(s).
- Job Sikhala is the only Member of Parliament of the opposition party who is alleged to have been arrested and tortured by the police. His arrest followed the violent demonstrations and stay away which his party organized. He torched a bus. The Report alleges rampant arrest of other opposition supporters as well as journalists without stating who they were, how many arrests were made, and for what reasons the people were arrested. This creates the impression that as long as one professes to be a member of the opposition party, he should not be arrested for any offences committed. Many members of the opposition party made effort to transgress the law and get arrested to give the picture that Government was not tolerant of any opposition.

- It is conceded that some of the incidences of violence that occurred were politically motivated. In this regard, both ZANU (PF) and the MDC were responsible for these activities and it is improper to try and apportion the extent of each party's liability because violence is violence. IS Some such violence occurred as resistance to the land reform programme. The violence did not target institutions of learning as alleged.<sup>16</sup> The commercial farmers were not as innocent as the Report portrays them to have been considering that some of their lot did commit serious offences like murder as well as some of the looting attributed to war veterans.
- In terms of the General Amnesty of October 2000, persons arrested for political violence were released. The general amnesty was a political measure, aimed at calming down the volatile situation that preceded it. The period was characterized by unprecedented violence and the amnesty was considered as one of the best ways to ensure national stability and security. It was not a backhand method which was calculated to save supporters of the ruling party from imprisonment. <sup>17</sup> Members of both political parties benefited under the amnesty and it is not proper to claim that this was for the benefit of ZANU (PF) members. Perpetrators of offences are arrested, and dealt with according to law, irrespective of their political affiliation.
- At the time of the Fact Finding Mission, the leader of the opposition MDC party and two other senior party officials were standing trial not because they are MDC activists but because of the treasonous offences they had allegedly committed. Two of them, have since been acquitted, but the President of the party still has a case to answer and his matter is awaiting judgment.

15 Report page 15 para 4, statement of W. Ncube  
 16 Page 13 para 5  
 17 Page 11 para. 1

## 8.0 The Report's Inaccuracies And Inconsistencies

8.1 The Report of the Fact Finding Mission is fraught with inconsistencies, inaccuracies and, at times, deliberate distortions of fact, which were made in order to further tarnish the image of the Government. For instance:

- The Registrar General has been the elections registrar since 1985<sup>18</sup> yet the Report implies that he was made the elections registrar for the 2000 elections. His office does not unilaterally alter or delete a person's name from the voters roll. In fact, before any election takes place, the office of the Registrar - General of elections opens the voters' roll for inspection and any errors that would prejudice a person's right to vote are corrected.
- The limit on the number of observers from non governmental organisations to a maximum of three was enacted in a statutory instrument and was not a mere administrative decision as is inferred in the Report.<sup>19</sup> In the election petition by the MDC leader Morgan Tsvangirai, the Statutory Instrument in question was ruled to be constitutional.
- During both the parliamentary and presidential elections, police officers did not supervise or monitor the electoral process<sup>20</sup>. They provided the required security during the elections.
- During the parliamentary and presidential elections, it is not true that monitors and observers were not allowed to accompany the ballot boxes.<sup>21</sup> The position was, and still is, that the monitors and observers could not fit into the vehicle that was transporting the boxes. The boxes were ferried in open trucks and the monitors and observers were allowed to follow the boxes as they were being transported.
- The security of the ballot box was never lax and the police officers provided round the clock tight security. In fact, as proof of this point no ballot box was ever found to have been tampered with.

..

18 Page II of the fact finding Report  
19 ibid  
20 ibid, also comment on page 17 last  
21 paragraph ibid

- There was no legislation providing that the ballot boxes should not be sealed and, in fact, throughout the elections, as is always the practice, ballot boxes were and are sealed at the end of each polling day, and party officials' signatures as well as the signature of the constituency registrar were and are affixed onto the seal itself.<sup>22</sup> Before the commencement of each polling day, the seals were checked and found not to have been tampered with. Further, through the verification exercise, the number of ballot papers in the boxes tallied with the number of ballot scripts that had been used for each polling station.
- The amendment of the Citizenship Act<sup>23</sup> was intended to prevent dual citizenship, which is prohibited by the Constitution of Zimbabwe. Zimbabwe, like any other sovereign State has the right to decide whether to allow dual citizenship or not and, in our case, we allowed persons of SADC parentage special procedures for the renunciation of their foreign citizenship. The procedures are less cumbersome to enable them to renounce with ease the citizenship of their country of origin.
- The MDC was founded from the ranks of the Zimbabwe Congress of Trade Unions. In fact at the formation of the party, the party president, and his deputy were within the leadership of the labour movement<sup>24</sup> and they used the position they had gained as trade unionists to garner support for the MDC.
- Incidences of sexual violence and rape<sup>25</sup> allegedly perpetrated by war veterans and graduates of the national youth training service programme were never reported to the authorities. The practice in Zimbabwe, as in all other criminal jurisdictions, is that the victim or other concerned person can report the matter so that it can be dealt with according to law. The Mission itself did not receive, or hear any testimony from persons who claimed to have been raped.

22       ibid

23       ibid and page 12 of the fact finding Report paragraph 1 further comment on paragraph 2 page 12 required.

24       Page 12 paragraph 5 & 6

25       Page 13 last paragraph page 14 paragraph 4, page 25 paragraph 2. NB role in elections requires comment

- Reference is made to the so called hate speeches<sup>26</sup> made against the opposition MDC. It is not clear which of the President of the Republic of Zimbabwe's speeches falls within the internationally accepted definition of hate speech. During the fact finding mission's visit to Zimbabwe, the government of Zimbabwe showed the Mission video tapes of the MDC president Mr. Tsvangirai agitating for the violent removal of the President of the Republic of Zimbabwe from office if he did not heed Tsvangirai's call to vacate office. This constitutes hate speech within the internationally accepted definition, yet there is no reference to it whatsoever in the Mission's report. Among other video clips shown to the Mission was also one of Mr. Tsvangirai campaigning for sanctions to be imposed on Zimbabwe to force the President out of office, Mr. Mhashu's promise during an interview on the BBC Hard Talk programme which he made to his white community forks in Britain promising to return land to them in the event that an MDC government came to power, Morgan Tsvangirai's plea to South African to impose sanctions on Zimbabwe, cut the supply of electric power and/or fuel from Zimbabwe. There is no reference whatsoever to this material in the Mission's Report thereby giving the impression that anything that came from the Government was unacceptable as long as it destroyed the credibility of the non governmental organisations and opposition political parties' position. One of the clips showed Mr. Tsvangirai with a group of white farmers who were writing cheques and placing huge sums of money into some container whereupon one of the white farmers stated that he supported MDC as, according to him, it was that party which would return his land which Government had acquired to him. Given that farmer's statement, it remains evident that the Mission missed the point when it stated, as it did, that:

- land was not at the centre of Zimbabwe's problems, and
- the MDC, which Government has all along viewed as a front for the whites' neo-colonialist policies, was or is a genuine government- in-waiting.

The President of the Republic of Zimbabwe, in his capacity as the party leader of ZANU (PF) responded to the statements made by his political opponent which are on the videos referred to above. The opposition leader's statements were highly inflammatory and President Mugabe did not provoke the statement.

<sup>26</sup> Page 15 paragraph 2. Note the absence of reference to any documentation and video tapes relating to inflammatory speeches by the MDC leadership

The President's statement, it must be emphasized, was a response to all the derogatory remarks the opposition leader made, and it is however not treated as such in the Report. The selective treatment is again prevalent not just within our non governmental organisations community only, but also in the Report of the Mission itself and this is a cause of concern considering that the Commission should have been unbiased and impartial.

## **9.0 Comments on the Findings on the allegations of human rights violations**

- 9.1 As stated above, and as acknowledged by the Fact Finding Mission, during the five days that the Commissioners were in Zimbabwe, the team was confined to Harare and contrary to their statement, the Mission did not meet a wide cross section of the Zimbabwean community, or even anyone critical for the visit to be a success.<sup>27</sup> Further, the mission, as stated above, largely met the same organisations or representatives of those who had made the initial complaints and hence their findings are a rhetoric of what they were told.
- 9.2 The team probed on the situation in Zimbabwe during the period 1999 to June 2002. It should be noted that at the time the Mission came to Zimbabwe, the people of Zimbabwe were living peacefully. During that time, there were no reports of political clashes, or politically motivated crimes which the Mission witnessed, or even heard of, a fact which is not acknowledged anywhere in the Report. In fact, law and order was well in place and in those instances where wrongs had been committed against the people, necessary measures had been taken to ensure a remedy for the wrongs.
- 9.3 It has never been categorically denied that there was violence in Zimbabwe, but at the time the mission visited Zimbabwe, the Government was thoroughly in charge of her people's affairs. There was, in fact, peace, law, order and tranquility in the country at the time of the Mission's visit to Zimbabwe. Government makes the following comments to the Mission's findings:

~ **Polarization of the Society**

In Zimbabwe there are two main political parties namely the MDC and ZANU (PF) and it is admitted that the country is polarized. The said polarization is, however, not as intense as is portrayed in the Report and neither is everyday life in Zimbabwe run along political lines. People are free to express their political opinions. During the run up to the Presidential elections in 2002, His Excellency the President and cabinet ministers made public appeals to the people of Zimbabwe to be tolerant and to accept political differences.

~ **Militarized society**

The Mission's Report states that the Zimbabwean society was being militarized and that a law and order special unit had been established in the police force and this has induced fear in the non governmental organisations community.

Both the militarization and the establishment of a special unit within the police as alleged by the non governmental organisations is denied. Zimbabwe has a professional police force which effects arrests without fear or favour, and this includes members of, or sympathetic to, the ruling party as well as war veterans. There never was a specialized unit -set up to deal with political matters.

~ **Torture at the hands of state agents**

The CIO, the police, the militia and the army were reported to be torturing and attacking people suspected of being opponents of the Government with impunity. Such conduct was alleged to have been prevalent in the country. The Government of Zimbabwe denies implementing a policy of torture and victimization of supporters of the opposition by State agents. The Government does not deny receiving reports of assault and injury to the people. Where such were received, investigations were carried out and those responsible were not only apprehended but were also brought to book. No one in Zimbabwe is above the law. The police and the army were deployed in situations of national emergency, especially when the MDC called for demonstrations and stay aways that became violent. The police and the army were called in to prevent injury to persons and loss of lives, as well as looting and destruction of property that became rampant during such activities and was associated with all the demonstrations and stay aways called by the MDC and ZCTU.

~ **Lack of agreement on the land reform within civil society**

The Report states that although the land question is critical, there was no agreement, even within the civil society on the land issue. The importance of the land question as stated above cannot be over emphasized. However, the Government is incompetent to comment on the lack of agreement amongst civil society membership save to say that to any Zimbabwean who is aware of the history of the country, land is such a central issue that there cannot be any proper enjoyment of human rights as long as the land matters remain unresolved.

~ **Politicisation of land**

The Mission observed, and quite correctly so, that the issue of land has been politicized and that there has been violence in the wake of the land reform programme. Considering that this was the primary cause of the war of liberation, land has always indeed been a political issue. The acts of violence that were perpetrated during the period of the land reform programme are regretted. Such acts were never Government's policy and Government took the necessary measures to bring the situation under control as well as to bring the culprits to book.

~ **The Press**

The Report states that there is violation of freedom of expression, independence of the press, and freedom of political association. The Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act have been cited as instruments used to further such violation of rights. The Access to Information Act was enacted to *inter alia* regulate the hitherto unregulated profession of journalists some of whom resorted to publishing articles that were, and are, intended to misinform the public in an effort to tarnish the image of Government and destabilise the country with the ultimate objective to unseat the Government.

~ **Prevalence of torture and political violence**

The Mission found that torture and political violence were prevalent, found that ZANU (PF) party activists committed violence and that the Government was/is liable for such violence, as it did not act soon enough and firmly enough against those who committed the offences. The Government of Zimbabwe does not deny the existence of violence and unsanctioned torture during the period between 2000 and 2002.

The Government reiterates that it took all necessary measures and at the right time to arrest the situation and dealt with members of the ruling party as well as the opposition without any discrimination. The fact that the Mission carried out its fact finding exercise in a peaceful Zimbabwe is testimony of the success of the Government's measures considering that the country had just concluded the Presidential elections which were said to have been violent.

~ **Breakdown of the rule of law**

Zimbabwe denies that there ever was breakdown in the rule of law. There never was a time that the system failed to address the situation in the country.

~ **Monitoring of police actions**

The Mission accepts in paragraph 7 of its Report that there are two institutions entrusted with the responsibility of ensuring that the Police carry out its responsibilities effectively and efficiently, that is the Office of the Attorney General and the Office of the Ombudsman. The Mission, however, states in the same paragraph that there is only the Attorney General's Office. The capacity of the Office of the Ombudsman does not make it a lesser institution but only compromises its effectiveness to some degree.

~ **Conditions in prison**

The Report states that prison conditions in Zimbabwe are horrible. Zimbabwe's prisons do not claim to be akin to those of a five star hotel. However, although there is overcrowding, the standards are not below the internationally prescribed minimum. Further there is a distinction between the prisons and places of detention in terms of the Prisons Act and the holding cells referred to by Ms Thorncroft. The impression given by her statement regarding opposition members opting to pay the admission of guilt fines instead of being imprisoned is incorrect because the option of paying a fine has always been available at police stations country wide for anyone who commits minor transgressions of the law. Yet the statement gives the impression that the opposition members are in a class of their own. This is not the position.

## 10.0 Comments on the Commission's Recommendations

10.1 By being a signatory to the African Charter on Human and Peoples Rights, the Government of Zimbabwe undertook to be bound by the decisions and recommendations of the African Commission. As indicated above, the problems that the Government of Zimbabwe experienced and the accusations that the Government suffered are all intricately related to the land issue. Since the land reform exercise is almost over, and Government is now carrying out mop up operations, there has been restoration of peace and order. There are no incidences of violence. People have reverted to, and are concentrating on, improving their lifestyles in a peaceful and orderly environment that is conducive to development. The Government takes her responsibilities towards her people seriously and comments on the recommendations made by the Commission as follows:

~ **Creating an environment conducive to democracy and human rights**

Although there are some decisions that the government took issue with, generally and as a matter of principle, the government of Zimbabwe abides by the decisions of her courts, the Supreme Court, in particular. She has, following the ruling of her constitutional court, repealed provisions of AIPP A that were found to be unconstitutional. Non governmental organisations under the auspices of the Electoral Supervisory Commission are able to conduct voter.

~ **National dialogue and reconciliation**

The Government of Zimbabwe is aware of the need for mediation on the case of Zimbabwe. However, the only lasting solution to our problems and challenges can only come from Zimbabweans themselves. So far, the greatest help anyone can give to Zimbabwe is to encourage ZANU (PF) and the MDC to get together and talk about the challenges facing Zimbabwe. In the past the efforts of regional and church leaders have been welcome and they are still welcome to do so.

> **Independent national institutions**

The Government of Zimbabwe has already made headway in the establishment of the Anti Corruption Commission. The enabling legislation is before Parliament. Further, Government is conducting research towards the establishment of a Human Rights Commission. This will entail streamlining the functions of the office of the Ombudsman, which currently has that mandate. To complement the human rights monitoring functions of the Ombudsman's office, there is an Inter-Ministerial Committee on Human Rights and International Humanitarian Law and a Human Rights Secretariat housed within the Ministry of Justice. As far as the Electoral Supervisory Commission is concerned, it already enjoys autonomy in the supervision and/ monitoring of elections and it has its own separate budget. The electoral reforms which are currently under way are aimed at establishing an independent election commission.

> **The independence of the judiciary**

The independence of the judiciary in Zimbabwe is protected both constitutionally and in practice. The President in consultation with the Judicial Services Commission makes the appointments to the High Court and Supreme Court bench while magistrates are civil servants. Currently a Bill which is aimed at placing magistrates under the Judicial Service Commission is being considered.

> **A professional police force**

Zimbabwe has a professional police force that enforces the law without fear or favour. The police force already enforces high standards in all respects. It has never been Government policy to politicize the police. In fact both the police and the army owe their allegiance to the Government of the day, not to the ruling party, ZANU (PF) and are precluded from becoming members of any political party as this would compromise the discharge of their duties. The statements made by the leaders of the uniformed forces were misconstrued to mean that they were professing allegiance to ZANU (PF) and not the Government. There is no unit in the police force that operates under strict political instructions. As for an independent mechanism to receive complaints against the police force, the Government placed this responsibility on the office of the Ombudsman.

~ **The media**

The media has never been restrained from voicing their opinion freely and as can be witnessed in Zimbabwe, only the Associated Newspapers Group has been prohibited from publishing until such time that they are registered according to the law of Zimbabwe.

~ **Repeal of POSA and AIPP A**

The Mission recommended a repeal of both PO SA and AIPP A, notwithstanding the objective and the merits of the legislation. The Government of Zimbabwe has already caused the amendment of AIPP A regarding press freedom to ensure its compliance with the Constitution. Some of the provisions of POSA have already been ruled by the Supreme Court to be constitutional.

It appears that the Commission has not read the two Acts in order for them to appreciate their respective contents and the fact of whether, or not they are offensive. As indicated earlier, POSA is similar to the British and Australian legislation on public order and security. AIPP A is similar to the Canadian legislation. The Commission should have identified provisions in the two Acts that it considers to be offensive and supplied the reasons why the provisions are offensive. AIPP A is a very noble Act in that it has given the people of Zimbabwe access to information held by governmental institutions. The opposition party MDC has, for instance, relied on the Act in their request to the Reserve Bank for information on the use of foreign exchange by the Government.

What the Commission is recommending is that the Government of Zimbabwe denies its people the right to access public information held by government departments. The Government finds this to be contradictory to the mandate of the Commission to ensure the enjoyment of rights of the people of Zimbabwe, their right to participate in the governance of their country and the right to information.

The recommendation by the Commission to repeal the two Acts is a parroting of the statements by the opposition and partisan non governmental organisations. This leaves the unpalatable impression that the Commission did not give itself adequate time to consider the legislation and merely relied on the statements of the opposition and partisan non governmental organisations. This clearly reflects the bias of the Commission in favour of the opposition party and partisan non governmental organisations.

~

### **Reporting obligations under the African Charter**

The Government of Zimbabwe acknowledges that it has delayed in submitting the State Party Reports in accordance with the African Charter. Submission of the Reports for consideration by the Commission is a human rights monitoring mechanism, which enables the Commission to assess compliance with the State Party's obligations in terms of the charter. As acknowledged by the Commission, the Government of Zimbabwe since 1986 timeously submitted its Reports in terms of Article 62 of the Charter. Due to the problems that Zimbabwe experienced after 1998, the Government of Zimbabwe had to divert all resources to critical areas hence it fell into arrears in its Reporting obligations. The Government of Zimbabwe is in the process of preparing a combined Report for the period 1999 to 2003. The position is being remedied and the Reports will be submitted to the Commission in due course.

Although this is not justification for the delays in submitting the outstanding reports, the Commission is very much aware that there are other State Parties who have not submitted any report since they ratified the Charter in the early 1980s. Statement that has been deleted from paragraph 7.1 bullet No. 10 relating to hate speeches