



Providing security and justice for the people

Security Sector Reform in Zimbabwe

INTRODUCTION

On 15 September 2008, a power sharing agreement was brokered between the major political parties in Zimbabwe; namely, the Morgan Tsvangirai-led Movement for Democratic Change (MDC-T), the Arthur Mutambara-led Movement for Democratic Change (MDC-M) and the Zimbabwe African National Union-Patriotic Front (ZANU-PF). The Global Political Agreement (GPA) paved the way for the establishment of a Government of National Unity and the reconstruction of the society at large. Many obstacles delayed the swearing in of the new government and thus the implementation of the agreement; for example, disagreements on the allocation of ministries and the continued detention of MDC activists. The five months delay in the swearing-in of Morgan Tsvangirai as Prime Minister of Zimbabwe, on 11 February 2009 was evidently a consequence of these obstacles.

The formation of the new inclusive government provides an opportunity to consider fundamental reforms in the provision of security and justice services to the people of Zimbabwe. Over the past ten years, the Zimbabwean security sector has increasingly come into the spotlight for being unduly politicised and non-partisan, and for infringing on the human rights of the citizens. This paper considers the need for security sector reform (SSR) in Zimbabwe and highlights potential short-term and long-term priorities in this regard.

Following renewed interest in, and possibilities for, SSR in Zimbabwe, it has become apparent that a more focused and contextual understanding of the sector and its priorities is required. Of particular note is the fact that, although weakened, the public service, inclusive of the security sector, remains functional – Zimbabwe is not a classic failed state.

This paper is not a comprehensive overview of the security sector in Zimbabwe. It is the beginning of a conversation about the nature of this sector and what can realistically be remedied in the current conjuncture.

BACKGROUND

The socioeconomic and political crisis in Zimbabwe has been well documented and only the broad contours of the trajectory will be elaborated here. It will suffice to note that the crisis is rooted in the colonially inherited paradigm of uneven development, which centralised wealth in the hands of a white settler minority and a post-independence black political and economic elite at the expense of the majority of the population.

Zimbabwe began its downward spiral in 1987 when structural adjustment policies forced the downsizing of the public sector and the cutting of government subsidies. At the same time, on the heels of the Unity Accord between ZAPU and ZANU, an executive president, with wide-ranging powers, was ushered in. Zimbabwe effectively became a one-party state. Over the next decade, the convergence of these political and economic factors caused a fermentation of discontent, which found voice in student and labour unrest and a mushrooming of civil society organisations.

By the late 1990s there was an express desire for constitutional reform. The emergence of an opposition political party, the Movement for Democratic Change (MDC), in 1999, provided the political impetus for calls for change, and the ensuing concomitant defensive, increasingly authoritarian state practices.

The trounce of ZANU-PF during the constitutional referendum in 2000 saw the ruling regime resort to a discourse of heightened nationalism and anti-imperialism, and the increasing use of violence to maintain power. The state embarked on a land redistribution programme in order to garner support from its traditional rural constituency. However, 'land invasions' by 'war veterans', and the haste and zeal with which the redistribution programme was rolled out, marked the beginning of the country's plunge into political turmoil and an economic crisis.

These actions led to international condemnation, the imposition of targeted sanctions directed at amongst others prominent security personnel, international

isolation and the positing of Zimbabwe as a rogue state. Utilising the principle of state sovereignty to its political advantage, the Mugabe regime sought to paint itself as a victim of a western conspiracy aimed at regime change through the use of surrogate forces to be found in its civil society and political opposition movements. The Zimbabwean political society was essentially split between those asserting a human rights discourse to demand transformation and those emphasising a nationalist discourse to maintain the status quo.¹

From 2002, a series of questionable economic policies and decisions, such as unrealistic official exchange rates and commodity price fixing, further exacerbated the collapse of the Zimbabwean economy, and rampant, hitherto unheard of, inflation rates were recorded. The economic decline impacted upon the delivery of services, employment rates and the general social welfare of Zimbabwe's citizens. People essentially voted with their feet – millions of Zimbabweans migrated to neighbouring South Africa.

During this time the MDC was able to increase its popular support, as reflected in the results of the 2002 and 2005 elections. The growing popularity of the MDC merely served to reinforce the laager mentality that was developing around the ZANU-PF-controlled government. In response to the threat posed by the MDC, the beleaguered state closed off the democratic space in which civil society could operate. It cracked down on the media, detained and harassed scores of opposition party supporters and increasingly violated human rights. During this time, there was a marked securitisation of the political and economic sectors.

The formation of the new inclusive government provides an opportunity to consider fundamental reforms in the provision of security and justice services

In 2005, the Southern African Development Community (SADC) mandated former South African President Thabo Mbeki to act as mediator in the Zimbabwean crisis. South Africa's quiet diplomacy was perceived to attain very limited success, given the divergent views among southern African countries on the nature of the problem, which was compounded by the polarised positions of the key protagonists,

The March 2008 parliamentary and presidential elections proved to be a turning point for the country which had been held in the grip of a political stalemate for a decade. Both presidential hopeful, Morgan Tsvangirai, and the incumbent, Robert Mugabe, failed to get an outright majority in the elections. A run-off was scheduled but Tsvangirai refused to participate, citing incidences of violence (and the threat of further violence) against MDC supporters following the election.

Mugabe went ahead with the run-off and was by default re-elected unopposed. This election was widely perceived as having fallen short of international and regional standards characterising free and fair elections. It was against this background that SADC and the African Union (AU) were forced to step up their efforts to facilitate a negotiated settlement to the political crisis. On 15 September 2008, the GPA was brokered. The agreement would see the two MDC factions and ZANU-PF in a unity government, with Mugabe as president and Tsvangirai as prime minister.

Political tensions continued as the jockeying for ministerial positions began in earnest, especially in relation to the Ministry of Home Affairs, which is in charge of the police. As a compromise, this ministry was split between MDC-T and ZANU-PF. On 13 February 2009, the new cabinet was sworn in and the task of rebuilding the state began.

Notably absent at the swearing in of the prime minister were the defence and security chiefs. This gave rise to widespread concern at the possibility that the new unity government lacked support from within the security sector and faced the threat of a backlash from this sector. But why would the security sector pose such a threat to the new unity government? To find answers to this question, we now turn to a background of the security sector, teasing out the politicisation that has increasingly characterised its echelons, and which has resulted, in the eyes of Zimbabwean citizens, in the de-legitimisation of those tasked to protect them.

The nature of the security sector in Zimbabwe

The security establishment in Zimbabwe cannot be viewed in isolation of its broader internal and regional contexts. The nature of the Zimbabwean security sector is defined by the interplay between the country's colonial institutional heritage, the liberation culture that gave birth to Zimbabwe and the threat perceptions that emerged.

Postcolonial states inherited repressive state security apparatus geared towards the protection of the colonial regime. Many postcolonial governments' security agencies display a notable degree of continuity with the forms and practices of their predecessors.² In Zimbabwe, this led to the development of security structures at the core of state

power; structures that were assigned wide powers and were subject to little oversight or accountability. The executive dominated security functions, with the legislature and the judiciary playing largely decorative roles in the governance architecture. This concentration of power and unaccountability reinforced biases towards repressive policies.

The influence of the armed liberation struggle on the conduct of state security in Zimbabwe continues to be relevant. By their very nature, armed liberation movements operate underground in an environment of intense secrecy. Trust and loyalty form the basis of interactions. The shared experiences of those involved in the armed liberation struggle in Zimbabwe informed who became part of the postcolonial security structures, and to this day influences how these players interact with each other. The ideology of the armed struggle brought with it a sense of entitlement with regard to governing the state and to enjoying the benefits that accompany this status. During election campaigns, the leadership of the defence sector used the rhetoric of ‘liberation pedigree’ to indicate who they would accept as the commander in chief.

The manner in which security and threats have been interpreted in Zimbabwe have impacted on the nature and functioning of state security structures. At independence, internal threats emanated from a possible backlash by white former Rhodesians, as well as from the contestation between the former liberation movements, ZANU and ZAPU. Externally, South Africa

had embarked on a campaign of destabilisation within the region and Zimbabwe was at the frontline of that struggle. In addition to this, Zimbabwe’s initial socialist orientation in the midst of the Cold War played into the dichotomised logic of ‘friend and enemy’.

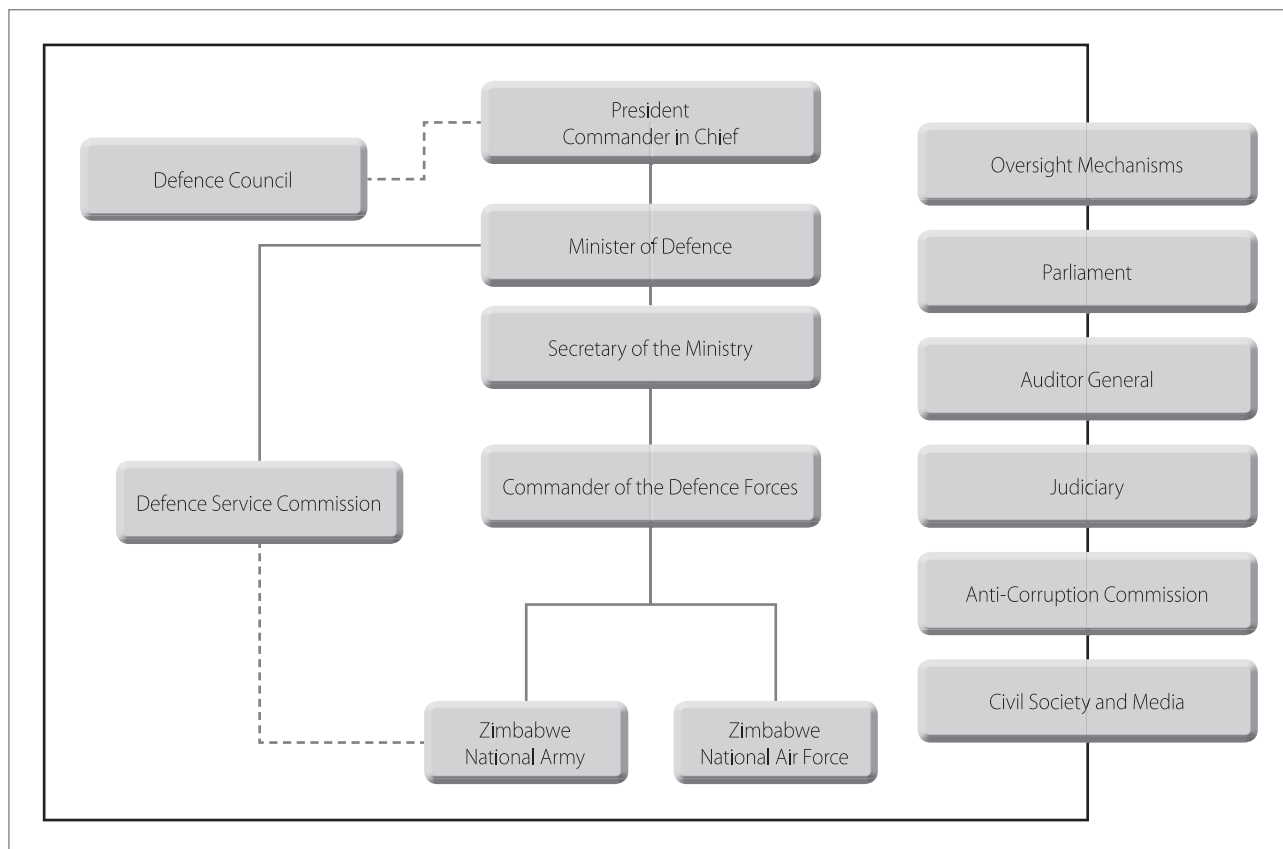
The convergence of these factors led to:

- The skewed orientation of the security establishment towards regime security
- An overemphasis on national security/regime security, to the detriment of human security and a culture of human rights
- The non-institutionalisation of accountability and transparency of the security sector towards the broader public
- The potential for the use of state security apparatus for political ends
- A willingness to use excessive force against perceived enemies

SECURITY SECTOR ACTORS IN ZIMBABWE

This section analyses the specific actors that make up the security sector in Zimbabwe, teasing out their roles, functions and practices. The roles and functions of the various security actors, with the exception of the intelligence sector, are outlined in law. However, in practice,

Figure 1 Structure and oversight of the Zimbabwe Defence Force



they have been alleged of operating above the law and of being partisan.³

The defence sector – Zimbabwe Defence Force

Legislative framework

For the purpose of defending Zimbabwe, the constitution provides for the establishment of defence forces – the air force and the army. Other than noting the defence of Zimbabwe, the constitution hardly addresses the role and function of the defence sector. Article 96 (2) notes that the president has the power to determine the operational use of the defence forces.⁴

According to the Defence Act,⁵ the army and the air force should both consist of a regular force and a reserve force. Furthermore, the Minister for Defence may '(a) establish such units of the army and airforce as he may consider necessary, (b) determine the style and designations of any unit (c) disband any unit.'⁶ The Commander of the Defence Forces, appointed by the president after consultation with the minister, is responsible for the management and functioning of the army and air force.⁷ The commander reports to the minister on the management and operation of the defence forces, but is accountable to the Secretary of the Defence Ministry for the efficient and economic use of funds and assets.⁸

The Defence Act defines roles for both a Defence Council and a Defence Service Commission. The role of the Defence Council is vague: it is tasked with performing 'such functions and duties as the president may determine'.⁹ The commission, however, has the potential to be an intricate part of the oversight system. The Defence Act defines the functions of the commission as:

- a) To make recommendations regarding salaries and conditions of service
- b) To inquire into and deal with complaints, other than complaints relating to disciplinary action, by any member of the Defence Forces
- c) To exercise any other functions conferred by law¹⁰

In order to fulfil this mandate, the act empowers the commission to conduct inquiries and investigations into administrative practices and financial procedures. This authority includes the power to summon witnesses and obtain information.¹¹ Furthermore, the commission is required to submit an annual report to the minister, which the minister tables before parliament.¹²

Practices and perceptions

Long considered one of the most educated and professional armed forces in southern Africa, the credibility of the Zimbabwean National Army (ZNA) has been

partially eroded by its involvement in the civil war in the Democratic Republic of Congo (DRC) and by its domestic activities in support of law and order.

The involvement of the military in law enforcement as evidenced in domestic deployments during protests, political rallies and student demonstrations, brings the military face-to-face with the civilian population. The intensity and highly political nature of these interactions between the military and the public has had a detrimental effect on civil-military relations and has resulted in the erosion of public trust. This is primarily because the domestic law enforcement deployment of the ZNA has been targeted at the control of the public during expressions of discontent with the government. Furthermore, as a result of the excessive use of force during such incidents, the ZNA is perceived by many as a force employed against local democratic expression and the exercise of civil rights.

The ZDF was formed in 1980 and merged three armed forces: the former ZANLA and ZIPRA units and the former Rhodesian army units. Although 65 000 soldiers were available at independence for integration, the national integrated army was only intended to be 35 000 strong.¹³ The remaining former combatants were to be demobilised. However, as noted by Chitiyo and Rupiya, disarmament and demobilisation, as in many countries, proved challenging in Zimbabwe.¹⁴

Chitiyo and Rupiya further note that, in 1991, about 19 000 ex-combatants formed the War Veterans' Welfare Organisation and demanded better support from the government.¹⁵ In 1997, the war veterans gained renewed momentum in Zimbabwean politics. They were able to pressurise the government into providing them with packages of US \$4 000 each, a government expenditure widely held to have negatively impacted the fiscus. The war veterans were widely cited as having been mobilised to actively participate in the land redistribution programme and electioneering campaigns for ZANU-PF.¹⁶ As a seemingly partisan armed grouping operating outside of the formal state security sector and outside of legislative boundaries on the use of force, the war veterans, if left unchecked, represent a potential threat to stability in the country.

In 1981, an agreement was reached with North Korea to provide weapons, equipment and training to establish the 5th Brigade and the Zimbabwe's People's Militia (ZPM).¹⁷ The 5th Brigade became notorious for activities in Matabeleland during Operation Gukurahundi. The Matabeleland massacres set a precedent for the use of the military to quell internal dissent. The 5th Brigade was active in Matabeleland from 1981–1985 and was disbanded in 1988 due to accusations of excessive use of violence.

The ZPM were conceived of as village defence militia to 'provide protection against the prevalence

of “dissidents” in the area who were targeting political opponents’ in the Midlands, Gokwe area.¹⁸ This was an area in which guerrilla armies from various liberation movements (both from within Zimbabwe and from neighbouring states) were active, inducing the perceived need for self defence units. The ZPM operated under the authority of a deputy minister within the Ministry for Defence and senior and middle-level officers were seconded from the army to ‘command, train and manage the militia.’¹⁹ The ZPM was disbanded in 1991 following the signing of the Unity Accord, changed regional security dynamics and economic reforms.²⁰

In August 1998, President Mugabe authorised the deployment of the ZDF in support of President Laurent Kabila in the DRC. This deployment had serious repercussions for the image of the ZDF and the Zimbabwean government. Firstly, the legitimacy of the deployment was questioned. Doubt was expressed over whether it was an explicit SADC directive or not.²¹ (Angola and Namibia also sent troops in support of Kabila.) Secondly, Zimbabwe’s motivations for entering the DRC were questioned and accusations of ill-gotten gains were made.²² Thirdly, the opposition within Zimbabwe criticised the use of state funds for this exercise, given the

The security apparatus began to play a supporting role in the unorthodox political campaign of ZANU-PF

dire economic conditions.

The DRC deployment led to external pressure being placed on the ZDF by the West through, for example, the sanctioning of ZDF officers being trained in staff colleges abroad²³ and the imposition of limitations on the procurement of equipment. The ZDF and ZANU-PF increasingly found common ground through the imposition of these external pressures. This resulted in the convergence of perceived threats and the concomitant politicisation of the ZDF. The ZDF began to be deployed internally more frequently, especially around election times.

According to Rupiya and Chitiyo, ‘from March 2000, the state began Operation Tsuro, in which military means were used for political ends.’²⁴ Under Operation Tsuro, the state recreated the Joint Operation Command (JOC) by combining the head of the ZDF, the Commander of Zimbabwe Republic Police, the Director

General of Central Intelligence Organisation and representatives of the War Veterans Association. The high-level decision-making body was formed to coordinate the activities of the security actors aimed at resolving the perceived crises stemming from both external and internal forces. The military began to organise internally along the lines of operational zones to control the spread of opposition to ZANU-PF.²⁵

The security apparatus, inclusive of the ZDF, began to play a supporting role in the unorthodox political campaign of ZANU-PF, inclusive of the provision of logistical support to the war veterans and the targeting of opposition movements in the operational zones. The domestic activities of the ZDF during 2000 were indicative of the increased militarisation of the state; a phenomenon that intensified between 2000 and 2008. The partisanship of the military was clearly evidenced before the controversial 2002 elections, when the commander General Vitalis Zvinvashe issued a thinly veiled threat of a military coup if opposition leader Morgan Tsvangirai were to win the elections:

Let it be known that the highest office in the land is a straitjacket whose occupant is expected to observe the objectives of the liberation struggle. We will, therefore, not accept, let alone support or salute anyone, with a different agenda that threatens the very existence of our sovereignty, our country and our people.²⁶

Gaps

The above indicates that serious oversight issues of the ZDF need to be addressed. At the executive level, the structures for command and control as exercised by the JOC have been revised through the creation of the National Security Council (NSC). This formalised structure consists of the president, vice presidents, prime minister, deputy prime ministers, ministers for defence, home affairs, finance and other ministers as per nomination requirements. The important difference between the new NSC and the JOC is that the operational heads of the security agencies are no longer the primary decision makers. The NSC is responsible for reviewing the national policies of the security sector, considering national security reports and recommending appropriate action.

There appears to be a general lack of an oversight system for the defence sector, in particular that relating to the public accountability of the ZDF. The primary oversight role is fulfilled at executive level. The public oversight mechanisms include the legislature, anti-corruption commission and the media. These institutions are important to guard against the misuse of power. The marginalised role of these structures in the Zimbabwe context, as previously alluded to, have facilitated the

politicisation of the ZDF, leading to a breakdown in civil-military relations.

There does not seem to be any legal prioritisation of parliamentary oversight nor of reporting requirements to, or consultation with, parliament (other than the Defence Service Commissions Reports). Furthermore, the role of the media has been curbed through the lack of media freedom and the secrecy that surrounds security matters. Given that the ZDF has been deployed internally and is perceived by some as a potential threat rather than a protector, the rebuilding of the relationship between the military and civilians is an urgent and crucial aspect of transforming the defence sector.

Policing – Zimbabwe Republic Police

*Pro lege, pro patria, pro populo
For the law, the nation, and the people²⁷*

Legislative framework

The constitution defines the function of the police force as ‘preserving the internal security of and maintaining law and order in Zimbabwe’.²⁸ According to the Police Act, the Zimbabwe Republic Police (ZRP) is composed of a regular force, a police constabulary (a reserve force) and ancillary members.²⁹ There is also a paramilitary police support unit, riot police unit and an intelligence division. The force consists of approximately 21 800 officers, yielding a ratio of one police officer to approximately 573 civilians.³⁰

The political and economic crisis in Zimbabwe has affected the ability of the police to fulfil its law enforcement mandate

The Commissioner for Police is appointed by the president in consultation with a board consisting of the chairperson of the Police Service Commission, the retiring commissioner and one other member. The commissioner fulfils functions related to command and control of the ZRP under the policy direction of the Minister for Home Affairs and the president. The attorney general may also task the commissioner with investigating any matter relating to any criminal offence or alleged or suspected criminal offence.³¹ In terms of reporting, the commissioner should submit an annual report to the minister,

which the minister then tables before parliament within a defined timeframe.³²

The Police Act makes provision for a Police Service Commission tasked with making recommendations regarding salaries and conditions of service and ‘to inquire into and deal with complaints, other than complaints regarding disciplinary action, by any member’.³³

The Police Act contains a detailed, four-page, schedule of offences that outlines more than 48 offences for which members of the ZRP can be sanctioned. Such offences include:

- Unnecessarily detaining any person in custody
- Using unnecessary violence, neglecting or ill-treating a person in custody or with whom he/she may be bought into contact in the execution of his/her duty
- Knowingly making a false entry into any official document
- Knowingly making any false report or statement or being privy thereto
- Acting in an unbecoming or disorderly manner or in any manner prejudicial to good order or discipline or likely to bring discredit to the police force
- Improperly using position within the ZRP for private advantage
- Actively participating in politics

‘Actively participating in politics’ is further defined as (a) joining or associating with an organisation or movement of a political character; (b) canvassing for support of an organisation or movement or actively assisting a organisation or movement; (c) displaying or wearing clothes, symbols, posters, placards or articles having political significance; and (d) attending political meetings or assemblies wearing uniform.³⁴ The Police Act therefore strives to create a non-partisan police force.

Practices and perceptions

Although the legislative framework is in place to ensure that the police force remains a neutral one within society and reports on its activities to parliament, in practice the ZRP have been implicated in acts of violence and political intimidation. Similarly to the ZDF, the ZRP have become embroiled in the political crisis. Julie Berg, for example, notes that ‘... the crisis in Zimbabwe has created a situation fraught with political violence and intimidation and the police have been used as a tool to implement repressive policies and legislation’.³⁵ They too, have a history of deployment for political ends as illustrated by their involvement in Matabeleland in the 1980s and in Operation Murambatsvina in 2005. According to the International Bar Association, the ZRP had ‘abdicated

its constitutional functions, responsibilities and obligations'.³⁶

The political and economic crisis in Zimbabwe has affected the ability of the police force to fulfil its law enforcement mandate. Its effectiveness in dealing with crime has been eroded 'due to resource limitations and politicisation of those in higher ranks and the recruiting of ZANU-PF supporters in lower ranks, regardless of training or qualifications'.³⁷

According to a report by the Zimbabwe Human Rights NGO Forum in 2003, the ZRP 'are the state agents most frequently reported as being responsible for gross human rights violations'.³⁸ The relationship between the police and citizens has been severely eroded, particularly since the 2000 referendum. The police have been accused of various human rights violations, including arbitrary arrest and illegal detention, torture, rape and brutality. The ZRP has been implicated in the excessive use of force, especially during clashes with opposition supporters and while controlling public rallies and meetings.

Realising the goal of a professional police service will involve considering the manner in which atrocities committed by police officers are dealt with

Although there are oversight mechanisms and legal provisions which govern the conduct of the police, the systematic decline of the state and the domination of a particular party agenda have rendered many of the oversight mechanisms obsolete.³⁹ As the ZRP has not been held to account for alleged abuses, it is perceived to operate with impunity and to be above the law.⁴⁰

The enforcement of law in Zimbabwe has thus acquired a selective and partisan flavour. This is particularly evident in the reaction (or lack of reaction) of the police to the farm invasions and the lack of prosecution for politically motivated crimes and violence committed by ZANU-PF supporters. According to the International Bar Association, 'Biased policing further polarises Zimbabwean society and heightens insecurity and political tensions'.⁴¹

The ZRP has contributed to the erosion of the rule of law in Zimbabwe through largely ignoring court orders.

The Report by the International Bar Association, noted that 'there is a rampant contempt for the courts and judicial decisions by police, to the detriment of those seeking redress for, or protection from, human rights violations'. Furthermore, 'the lack of enforcement of court orders is an impediment to justice and a further affront to citizens' access to justice and to the independence of the judiciary'.⁴² The practice of denying detainees access to lawyers, and the intimidation of lawyers representing 'political' detainees, as reported by the International Bar Association and Human Rights Watch, are further examples of the manner in which the ZRP has undermined the rule of law, behaving with disregard for due process.⁴³

Gaps

Policing in Africa is generally an under-resourced and highly politicised endeavour. Many of the challenges facing the reform of the police in Zimbabwe bear a striking resemblance to the issues raised under the defence sector. These challenges include overcoming the legacy of partisanship, ending impunity, enhancing mechanisms for accountability and bringing about professionalisation. In contrast to the defence sector, policing is the first and most basic level of interaction between state security actors and the people. In situations of internal instability and/or authoritarian inclination, the police often represent a narrower security preoccupation – narrower than regime security and largely centred on the presidential aspirations. In Zimbabwe, the police have come to embody the agenda of the leadership and they have used brutal tactics to quell dissent.

Particular units within the ZRP have become notorious for human rights violations. These include the Police Support Unit and the Criminal Investigation Division.⁴⁴ In order to prevent further abuse, the roles and functions of such units need to be re-evaluated in the changed political context as a matter of priority.

Mechanisms for accountability need to be enhanced so that the ZRP cannot operate as a force above the rule of law or serve partisan interests. This should include improved oversight at the legislative level, as well as the creation of mechanisms to ensure that police respect court orders, especially in relation to the rights of persons arrested and detained.

Interventions to improve the professional conduct of the ZRP should entail the institutionalisation of a code of conduct and a culture of respect for human rights. In this regard, the Southern African Police Chiefs Cooperation Organisation (SARPCCO) might be a useful forum, as all members of SARPCCO are bound by a regionally accepted code of conduct which obliges police officials to respect human rights, protect persons in custody and

respect the rule of law. Realising the goal of a professional police service will also involve considering the manner in which atrocities committed by police officers are investigated, and how offenders are held accountable for deeds committed.

The intelligence sector – Central Intelligence Organisation (CIO)

Legislation

Although the current constitution provides broad outlines on the nature and function of security service providers, it is notably silent on the intelligence sector. This lack of legislative boundaries is upheld throughout various pieces of legislation. The Central Intelligence Organisation (CIO) was created under the colonial administration through a prime ministerial mandate.⁴⁵ Under the post-colonial administration, the CIO remained intact and no legislation was promulgated to clarify the role, mandate and function of civilian intelligence. Thus, there is no legal foundation for operation of the CIO. With no legal boundaries to determine mandate and function, there is no access to recourse if abuses are committed.

Practices and perceptions

The CIO is the most notorious of the state security agencies. It is perceived to have successfully and pervasively infiltrated all levels of society and its work is surrounded by the cloak of secrecy that generally shrouds intelligence organisations. The CIO is the primary intelligence agency in Zimbabwe, responsible for internal and external security including foreign and domestic intelligence gathering, counterintelligence and presidential and senior leadership protection.⁴⁶

A system of checks and balances is urgently required to prevent the subversion of the state intelligence function to regime security

Brassey's International Intelligence Yearbook 2003, reports that the CIO has nine branches, namely:

- Branch One (former Special Branch Operations⁴⁷)
- Counterintelligence
- Internal Intelligence

- External Intelligence
- Military Intelligence
- Branch Six – Government facility protection
- State Security
- Technical (formerly the Government Telecommunications Agency)
- Administration⁴⁸

The CIO functions with relative autonomy – outside of legislative and judicial oversight. In terms of command and control, the CIO falls under the Minister of State for National Security within the office of the president. This arrangement means that the CIO is largely shielded from oversight mechanisms such as parliamentary scrutiny. Furthermore, due to the lack of legal requirement for judicial authorisation of the use of intrusive means of investigation (for example, the interception of communications), the activities of the CIO are shielded from judicial oversight, creating opportunity for the infringement on the right to privacy and civil liberties.

According to *Jane's Sentinel Security Assessments – Southern Africa (Zimbabwe)* updated in January 2007, since 2000 the CIO has been used to spearhead the ZANU-PF political-economic programme, including farm occupations and the suppression of opposition politicians and the media.⁴⁹ The CIO has also faced allegations of widespread abuses, including unwarranted detention, interrogation and torture, infringements on rights to privacy, freedom of association and freedom of movement.⁵⁰

Much like with the police and defence forces, the CIO has therefore been involved in major operations aimed at dealing with political opposition in Zimbabwe. This has been pursued through a combination of methods, which include the targeted use of force (such as kidnapping, interrogation and detention) and the control of internal and external flows of information.⁵¹

Gaps

A system of controls, checks and balances is urgently required in order to prevent further subversion of the state intelligence function to regime security. The issue of executive control needs to be addressed. The current system is centralised in the office of the presidency and has resulted in intelligence becoming an exclusively executive function.

Ideally, there should be a mechanism for legislative oversight, not only because of the democratic requirements of accountability, but also because the comprehensive reform of the intelligence sector that is required necessitates involvement beyond the executive – legislative reforms are also essential (such as, a legislative framework to govern the intelligence

sector). There are benefits to a parliamentary committee devoted only to the intelligence sector, as opposed to a broad security committee. For example, the committee could be empowered to have access to classified information. Issues that would need to be discussed include: the function of committee (budgetary oversight and operations reports); the level of access required; the vetting of committee members; its composition and party representation; and its powers (for example, subpoena).

In order to prevent further invasions of privacy and to create the space for media freedom and open communication, a provision requiring judicial authorisation for the interception and monitoring of communications is required. Furthermore, internal controls should be improved. They should require high-level authorisation for political and domestic covert operations. In conjunction with the establishment of a parliamentary oversight mechanism, such regulation would mean that the minister could be held to account by the legislature (and hence by the people) for politically sensitive operations and domestic spying.

As with both the military and the police, it is imperative to overcome the perceived impunity with which security personnel have operated. This could be done by enhancing mechanisms for public oversight and complaint. This could be achieved, for example, through the establishment of complaints directorates or inspectors general. Such mechanisms could be allocated special powers for investigation and could act as a channel for public complaints.

The judiciary has not been left untouched by the systemic erosion of non-partisanship within the public sector in Zimbabwe

The gaps in terms of creating a democratic governance system for the security sector are probably greatest within the intelligence sector because of the lack of legislation and oversight measures. The reform required for the intelligence sector in Zimbabwe is also probably the most comprehensive and most complex of that necessary in the country. Fundamental institutional reforms, which address issues such as options for vetting, dismissal and retirement, will be required. The most significant issue will be reorienting the activities of the CIO, reducing the potential for abuse, and institutionalising a system of checks and balances.

The judiciary

Legislation

Chapter 8 of the Constitution of Zimbabwe provides for the establishment of an independent judiciary and outlines the structure and jurisdiction of such a body. The Chief Justice is the head of the judiciary and the Supreme Court is the final court of appeal.⁵² Article 76 establishes the Office of the Attorney General, which is tasked with instituting and undertaking criminal proceedings before any court (the magistrates' courts, the High Court and the Supreme Court). The independence of the Office of the Attorney General is enshrined in the constitutional provision that 'the Attorney General shall not be subject to the direction or control of any person or group'⁵³. In the Constitution of Zimbabwe Act 5 of 2000, the principle of the independence of the judiciary is protected through Chapter 8 Article 79B which states that: 'In the exercise of his judicial authority, a member of the judiciary shall not be subject to the direction or control of any person or authority.'⁵⁴

Practices and perceptions

According to the World Bank Worldwide Governance Indicators 1996–2007, respect for the rule of law in Zimbabwe has steadily eroded in the past decade.⁵⁵

The aggregated data revealed that Zimbabwe ranks within the bottom ten per cent of countries worldwide in terms of the rule of law. Freedom House released a similar finding in the 2006 *Countries at the Crossroads* report. This report detailed that:

- Executive control over the judiciary was increasing
- Judges were resigning because the government could not guarantee their security
- High levels of judicial vacancies meant that trials lacked timeliness
- A number of judges had been charged with corruption⁵⁶

The judiciary has thus not been left untouched by the systemic erosion of non-partisanship within the public sector in Zimbabwe. For example, civilians brought into the criminal justice system through politically motivated cases, often find themselves challenged to access justice services and detainees are sometimes denied access to counsel.⁵⁷ According to Human Rights Watch, since 2000, the judiciary has been purged of impartial judges and prosecutors, who have been replaced by ZANU-PF loyalists. These replacements, it is alleged, often receive 'gifts' of land and goods to ensure allegiance.⁵⁸

On 21 December 2000, the Supreme Court ruled that the land reform programme was unconstitutional.

This ruling prompted President Mugabe to describe judges as guardians of ‘white racist commercial farmers’.⁵⁹ Pressure on the independence of the judiciary regarding the land reform programme mounted until, in 2001, Chief Justice Gubbay resigned and parliament passed a vote of no confidence in the Supreme Court.⁶⁰ An indication of intimidation and political interference in the judiciary is further outlined in the Human Rights Watch Report on the erosion of the rule of law in Zimbabwe, noted above.⁶¹

An alternative strategy employed to pervert equitable access to justice has been the legal ploy of reverting to delays to prevent detainees from being released from custody. According to the 2008 Human Rights Watch Report, ‘government prosecutors often invoke Section 121 of the Criminal Procedure and Evidence Act, which provides prosecutors with the opportunity to appeal against a bail ruling’.⁶² The report further indicates that by noting an intention to appeal, a magistrate or judge’s order to release a suspect on bail is suspended and the suspect remains in police custody for a further seven days.⁶³

Given the human rights violations alleged to occur in police custody, especially of persons held on politically related charges, the suspension of bail as provided for in Section 121 enables and legitimises arbitrary arrest and detention of antigovernment protestors and human rights activists. Delayed releases and the denial of bail in political cases has become commonplace as a substitute for due legal process. The legal norm is that a person is deemed innocent until proven guilty (a principle enshrined in Article 18 of the Zimbabwean constitution) and the use of the denial or delay of bail as a form of retribution is contrary to this principle.

Overcrowding has strained the prison infrastructure and put pressure on the ability to provide for even the most basic of the inmates’ needs

Gaps

The independence of the judiciary in Zimbabwe has to be strengthened as a central component of the reconstruction agenda. Access to justice is vital to rebuilding the relationship between citizens and the state, and the rule of law is imperative for a functioning democratic society.

An independent judiciary would also be a pillar of the oversight system for the security sector.

The independence of the judiciary would be served through improving the working conditions for judges and magistrates. In Zimbabwe, this would include guaranteeing the physical security of judges and magistrates and ending the manipulation of legal proceedings through the intimidation and coercion. Similar to the findings in other sectors, in the past decade the judiciary has become increasingly politicised and partisan. The creation of a judicial commission should be prioritised to provide recommendations on improving judicial independence and identifying priorities for judicial reform. It is encouraging to note that the operationalisation of a Judicial Services Commission has been one that has been identified as a target by the Ministry of Justice and Legal Affairs in the 100-day plan of the new government.⁶⁴

Legal reforms should be investigated to improve the efficiency of the criminal justice system in general, but also to enforce the principle of equality before the law. This would entail a review of certain legislation, including Section 121 mentioned above.

Judicial reform in Zimbabwe could draw on international norms and standards regarding judicial independence. Such a basis could, for example, include the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors.

The prison service

Legislation

According to Article 99 of the Constitution of Zimbabwe, the role of the prison service is the ‘administration of prisons for the protection of society from criminals through the incarceration and rehabilitation of offenders and their reintegration into society’.⁶⁵

Practices and perceptions

There are not many formal research reports into the prison conditions in Zimbabwe. There have, however, been a few explosive media exposés detailing the appalling conditions in Zimbabwean prisons, described by some as ‘death traps’.⁶⁶

In October 2008, the Zimbabwe Association for Crime Prevention and Rehabilitation of the Offender (ZACRO) published a report on prison conditions. The report noted that ‘experiences in the prisons reveal numerous human rights issues around the plight of inmates which demand intervention’.⁶⁷ The two primary and related issues of concern relating to prison conditions in Zimbabwe are overcrowding and the impact of the national economic crisis.

As with many of the other security sector agencies, prison conditions in Zimbabwe have been deteriorating steadily since 2000. The report notes that with 'a capacity of around 17 000, the country's 55 prisons including satellites are holding over 35 000 inmates ...'⁶⁸ The increase in prisoners is related to the declining political situation and weaknesses in the criminal justice system, which result in awaiting-trial detainees having to spend up to two years behind bars.⁶⁹

Overcrowding has strained the prison infrastructure and put additional pressure on the ability of the state to provide for even the most basic of the inmates' needs. Running water is seldom available, toilet facilities are inadequate, soap, clothing and food are often unavailable, and communicable diseases are rampant.⁷⁰ It appears that as national expenditure has decreased, prison services have received decreasing budget allocations while facing increasing numbers of inmates. The deteriorating national economy and severe food shortages, as the various reports suggest, have had a tremendous impact on the health and wellbeing of inmates as the government cannot provide basic food requirements – prisoners have become dependent on family and friends for sustenance.

The 100-day plan has prioritised the establishment of an Organ on National Healing and Reconciliation

In April 2009, the South African Broadcasting Commission aired a secretly filmed documentary on the prison conditions in Zimbabwe, which stunned the world. Images of skeletal inmates living in horrendous conditions highlighted the desperate plight of the unseen. This is the culmination of years of mismanagement, neglect and corruption. Since 2004, there have been regular reports on the deteriorating conditions. In 2004, it was reported that 'deaths from natural diseases had surged by 400 per cent since 1999'.⁷¹ In June 2006, the 'Prison Fellowship of Zimbabwe estimated that over 200 toddlers were in Zimbabwe's jails with their mothers'.⁷² There are, therefore, also no special arrangements for children in these prisons.

Although information about the conditions in prisons has been available and the horrifying statistics revealed, the 'correctional facilities' remain a humanitarian crisis and no concerted efforts have been made to intervene in order to provide basic goods and to protect human rights.

Gaps

Relieving the pressure on the prison system has to be a priority area of intervention. It can only take place if inmates are processed out of the system. The provision of food, clothing and basic health care needs to be urgently addressed as part of humanitarian interventions, and alternatives to incarceration need to be explored.

CONSIDERING OPTIONS FOR TRANSITIONAL JUSTICE

The consideration of transitional justice mechanisms for Zimbabwe is based on the recognition that widespread human rights abuses have taken place and that in order for peace and democracy to be fully realised, victims and perpetrators of such abuses should have access to some form of justice. Although the principle of access to justice cannot be questioned, the challenge will be to find a compromise between the moral right of access to justice and the political imperatives of building a transitional government and providing some sense of stability. One of the most complicating issues for Zimbabwe is that the state security forces have perpetrated human rights abuses and there is a continued fear that the securocrats pose a threat to the transitional government. The military, police and intelligence sectors are posited as potential spoilers of the new dispensation, and the manner in which the transitional government interacts with the security forces could risk the collapse of the fragile interim authority.

The nature of the future democracy and stability of Zimbabwe will rest, to a certain degree, on the manner in which impunity and human rights abuses perpetrated by state agents are addressed. It is not as straightforward as a decision between blanket amnesty and retribution. Any approach to the situation will need to be 'acutely balanced ... in terms of attempting to ensure justice for past wrongs without imperilling the possibility of a relatively peaceful transition'.⁷³ A further concern is that, given the debilitating criminal justice system and the crisis of the lack of impartiality faced by the judiciary, there is an added threat that victims might resort to retributive vigilante justice.⁷⁴

In the current transitional situation, it might not be practical or politically sensible to choose formal retributive justice, such as the prosecution of perpetrators in formal criminal proceedings. The history of ZANU-PF has indicated the danger of the perception of attack. Should another 'laager mentality' develop, it could threaten the transitional authority. In the short term (the next six to twelve months), the careful consideration of the notion of restorative justice should be central. As explained in du Plessis and Ford:

... the focus is beyond simply ensuring formal accountability for wrongs; the focus is on the vindication of the

victim, not the punishment of perpetrators. Restorative justice approaches also emphasise a need to focus on 'bottom-up' processes founded in ordinary people's experiences and concerned with taking steps that they feel would set things right.⁷⁵

The 100-day plan of the Government of Zimbabwe has prioritised the establishment of an Organ on National Healing and Reconciliation. This organ, in consultation with local and international experts, will determine the processes for national healing, reconciliation and integration.⁷⁶ This is an area in which regional experiences can be brought to bear and in which civil society groups can take the lead. The international community could play an important role in providing resources, and support from international non-governmental organisations could provide additional impetus and expertise.

The desire for, and design of, any transitional (restorative or retributive) justice mechanisms should be based on the justice requirements and necessities of the people. Giving victims the right to justice, restoring their dignity and rebuilding the relationship between citizens and state security agencies, will have to begin with an open and inclusive dialogue.

Any agenda for security sector reform should balance the requirements for stability with the needs and fears of the security establishment and the people

CONSIDERING AN AGENDA FOR SECURITY SECTOR REFORM IN ZIMBABWE

The reconstruction of Zimbabwe is crucial for the stability and development of the region. The economic crisis has generated millions of economic refugees seeking opportunities in neighbouring states. The increased strain placed on regional resources by the internal political crisis was epitomised by the outbreak of xenophobic violence in South Africa in 2008. The stability and development of the region is dependent on the successful implementation of the transitional government and the stabilisation of the political and economic space within Zimbabwe.

In the short term, any agenda for security sector reform in Zimbabwe should balance the requirements

for stability with the needs and fears of the security establishment and the people of Zimbabwe. Within the security sector, the initial concern would be to ensure that the military cannot play the role of determinant of political fate. In other words, the risk of a military coup needs to be removed. Realistic exit options to foster diversity and provide a secure environment for change must be thought through. One option would be to encourage and support the retirement of certain senior staff. Such measures might have to be accompanied by some form of immunity in exchange for retirement.

In terms of the middle- and lower-ranking military personnel, in the short term the emphasis should be on limiting the use of the military for domestic interventions. This will create the room initially required to rebuild the relationship between the defence force and citizens.

A third short-term imperative is to ensure that soldiers and security service personnel receive regular wages. Amidst the furore of demands that are emanating from the public service, there is a special need to ensure that the bearers of arms do not go hungry. This will undermine the potential for instability potentially caused by military personnel.

One of the consequences of the erosion of state structures is the lack of internal controls and basic management information. Ensuring that systems are in place to capture basic human resource information and pay security personnel will limit the 'ghost' worker phenomenon so common in transitional situations.

Similarly, in the short term, a strategy needs to be developed to prevent militias and war veterans from being able to destabilise the fragile situation. This will entail revising the policies and procedures for the compensation and use of war veterans. Moreover, a renewed disarmament, demobilisation and reintegration (DDR) programme needs to be considered for militia groups and war veterans, who have seemingly become re-armed in the course of the last decade.

Outside of the potential threat of unconstitutional change of government, the next imperative for the unity government will be to deal with de-legitimising influences caused by the perversion of justice and misuse of security service providers. The actions of both the police and the judicial system are crucial to realising the goals of the GPA – to make the ideal of building 'a society free of violence, fear, intimidation, hatred, patronage, corruption and founded on justice, fairness, openness, transparency, dignity and equality'⁷⁷ a reality. Unfortunately, it is these very institutions that have been at the heart of the battle for power and who continue to be implicated in attempts to derail the current government. This can be seen in for example, the continued detention of activists and MDC officials,

as well as through allegations of police involvement in the recent spate of farm invasions.

Ending the perceived impunity and partisanship, and rebuilding public trust in these institutions is a short-term imperative. As stipulated by the GPA, training for security sector personnel and law enforcement officials in human rights and international humanitarian law should be carried out soonest. Particular attention should be given to addressing gender-based violence. In rebuilding the criminal justice system and providing equitable and fair access to justice, the conduct of the ZRP when detaining suspects needs to be reformed. In the short term, as recommended by the International Bar Association, meetings between the ZRP and the Law Society of Zimbabwe can be convened to establish clear guidelines that will ensure that all detainees held by the police are permitted access to lawyers and that defence lawyers can conduct professional duties without unlawful interference from police.⁷⁸

Comprehensive and fundamental reform within the security sector in Zimbabwe at this point in time lacks political resonance

In the long term, an overhaul of the criminal justice system will be required, with highly controversial issues such as impunity, vetting and the restoration of judicial independence being addressed. Given the fragility of the current environment, and the potential for destabilisation that such measures would provide, the process of reforming the criminal justice system would have to proceed in an incremental manner. In the short and medium term, the focus should be on delivering justice services in a manner that is consistent with international standards and human rights. In addition to ensuring fairness and equity before the law, interventions should focus on ensuring that the human rights of accused and prosecuted offenders are respected from their arrest, through their detention, prosecution and imprisonment, to their release. In this regard, civil society can advocate for the ratification of the United Nations Convention Against Torture and its Optional Protocol. Ratification of this international instrument will assist the unity government 'to establish mechanisms that facilitate the elimination of torture through regular visits and inspections of places of detention by both national and international experts'⁷⁹

The conditions within Zimbabwean prisons must be urgently addressed: in the short term through the provision of basic supplies, and in the medium to longer term through developing a system for the processing and/or release of prisoners who cannot afford access to legal advice and those who have been detained while awaiting trial. Alleviating overcrowding will reduce the pressure on the penal system to deliver basic services, such as food, clothing and medical supplies.

Short- and medium-term interventions in the security sector in Zimbabwe will need to focus on maintaining interim stability and preventing the collapse of the unity government. A further imperative is to support processes, systems and mechanisms for accountability, most particularly to parliament, the auditor general and commissions (anticorruption and human rights commissions in particular). Opening the space for media and civil society engagement is a first step towards participatory governance.

Comprehensive and fundamental reform within the security sector in Zimbabwe at this point in time lacks political resonance. The changes that can be implemented in the current context will be based on negotiation and concession and may be more reflective of strategic accommodation of political pressures than widespread democratic reform. Long-term behavioural change and the institutionalisation of accountability, transparency and participation are premised on political commitment and will occur only when it becomes politically necessary to implement such reforms. Until then, the foundation can be laid for future reform through politically palatable, largely technocratic, interventions.

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ABOUT THIS PAPER

Over the past ten years, the Zimbabwean security sector has increasingly come into the spotlight for being unduly politicised and non-partisan, and for infringing on the human rights of citizens. The formation of the new inclusive government in 2009 provided an opportunity to consider fundamental reforms in the provision of security and justice services to the people of Zimbabwe. This paper considers the need for security sector reform (SSR) in Zimbabwe and highlights potential short-term and long-term priorities in this regard.

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