

IN THEIR CAPACITY AS HUMAN RIGHTS
DEFENDERS: WOMEN

BY

ROSELYN HANZI

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Dedication

This publication is dedicated to the memory of Eileen Sawyer who, over the years of her human rights work, inspired many women human rights defenders to continue asserting their rights, the rights of their communities, and those of their loved ones for a future better Zimbabwe.

Foreword

Zimbabwe Lawyers for Human Rights joins the world in commemorating the United Nations International Women’s Day on 8 March 2015. This year the theme, “**Empowering women, empowering humanity: Picture it!**” is relevant to the situation that women find themselves in Zimbabwe. It is important to note the pivotal role that women human rights defenders play and the various challenges they continue to face in pursuit of their objective of defending the human rights of all in Zimbabwe. This publication celebrates the work and achievements of some women human rights defenders and recognises their important role in shaping the destiny of Zimbabwe.

The Constitution of Zimbabwe, for the first time, recognises the rights of women to dignity, equality and equal opportunities in economic, political and social activities. As the Government of Zimbabwe takes measures to realise these constitutional protections, and as the alignment of laws progresses, women must be afforded equal opportunities to participate in this critical national process. While carrying out the constitutional alignment agenda, government departments must empower women - who constitute 52% of the country’s population - to participate. In this way, they will be empowering all Zimbabweans to participate in national processes and become equal citizens.

The participation of women must not only be full, but also effective participation. This is only possible if there is a conducive operating environment where women human rights defenders are accorded the protection and respect they deserve. Zimbabwe has to move with the times, as it has done with the recognition of rights of women in the Constitution. So it must also embrace the resolutions of protection of rights of human rights defenders and pay particular attention to the needs of women human rights defenders, with their protection being prioritised. The Government of Zimbabwe is therefore urged to ensure that women HRDs are consulted and able to fully participate to influence the reform of laws and institutions.

PRECIOUS CHAKASIKWA

Vice Chairperson

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Finally, I would like to thank all the people who contributed their views throughout the research and writing. This assisted immensely in shaping this publication. ZLHR bears ultimate responsibility for the views expressed in this publication.

IRENE PETRAS

Executive Director

Zimbabwe Lawyers for Human Rights

About Zimbabwe Lawyers for Human Rights

Zimbabwe Lawyers for Human Rights (ZLHR) is a not for profit human rights organization whose core objective is to foster a culture of human rights in Zimbabwe as well as to encourage the growth and strengthening of human rights at all levels of Zimbabwean society through observance of the rule of law. ZLHR is committed to upholding respect for the rule of law and the unimpeded administration of justice, free and fair elections, the free flow of information and the protection of constitutional rights and freedoms in Zimbabwe and the surrounding region. It keeps these values central in its programming activities.

ZLHR is a national membership organization consisting of around 170 lawyers and law students, who voluntarily associate, pay a membership fee and carry out human rights promotion and protection activities due to their interest in human rights and the rule of law. A Secretariat of 36 people, 14 of whom are lawyers, are employed full time to implement the organization's objectives and the policy decisions of a Board of 11 members elected by, and reporting to, the general membership at an Annual General Meeting. ZLHR holds Observer Status with the African Commission on Human and Peoples' Rights (ACHPR), forms the Secretariat of the Human Rights Committee of the SADC Lawyers Association, and has affiliate status with the International Commission of Jurists (ICJ).

ZLHR's aims and objectives are:

1. To strive to protect, promote, deepen and broaden the human rights provisions in the Constitution of Zimbabwe.
2. To strive for the implementation and protection in Zimbabwe of international human rights norms as contained in important sub-regional, regional and international human rights instruments.
3. To strive for the adoption of a Southern African Development Community (SADC) Charter on Human Rights and to develop and/or strengthen the implementing mechanisms.
4. To endeavour to find common ground with and to work alongside other Zimbabwean groups, organisations, activists and persons who share a broadly similar concern for and interest in human rights.
5. To liaise and work with other human rights groups wherever situated but particularly in Southern Africa, and especially those closely linked to the legal profession.
6. To do all other things necessary to promote and protect human rights, the rule of law and separation of powers in Zimbabwe and the region.

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Acronyms used in this publication

CID	Criminal Investigation Department
CIO	Central Intelligence Organisation
CGH	Chitungwiza General Hospital
CSOs	Civil society organisation
GALZ	Gays and Lesbians of Zimbabwe
HRD	Human rights defender
IDP	Internally Displaced Persons
MDC	Movement for Democratic Change
MOA	Miscellaneous Offences Act
MOZA	Men of Zimbabwe Arise
NPRC	National Peace and Reconciliation Commission
POSA	Public Order and Security Act
PVO	Private Voluntary Organisation
SADC	Southern Africa Development Community
SADC-CNGO	Southern Africa Development Community Council of Non-Governmental Organisations
UN	United Nations
WOZA	Women of Zimbabwe Arise
ZANU PF	Zimbabwe Africa National Union Patriotic Front
ZBC	Zimbabwe Broadcasting Corporation
ZEC	Zimbabwe Electoral Commission
ZESN	Zimbabwe Election Support Network
ZHRC	Zimbabwe Human Rights Commission
ZINARA	Zimbabwe National Road Administration
ZLHR	Zimbabwe Lawyers for Human Rights
ZPP	Zimbabwe Peace Project
ZRP	Zimbabwe Republic Police
ZZZICOMP	Zimbabwe Peace Project, Zimbabwe Election Support Network, Zimbabwe Lawyers for Human rights Constitution Monitoring Project.

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CHAPTER 1

WOMEN HUMAN RIGHTS DEFENDERS IN ZIMBABWE

1. Introduction

The vision of contributing to attaining a democratic and prosperous Zimbabwe has motivated many women to advocate, through different means and in different ways, for their rights and the rights of others within their communities and beloved country. As such, in this capacity women are human rights defenders (HRDs). A human rights defender is:

“a person who on their own or collectively with others works to assert their economic, social, cultural, civil, political rights as enshrined in the constitution and human right instruments”¹

and this is done through “peaceful means”.²

The typical woman human rights defender (woman HRD) that this publication focuses on is one who asserts her rights as a human being first, and then as a woman, knowing full well that she bears the brunt of a breakdown of the human rights fulfilment matrix directly or indirectly. The typical woman HRD asserts her right to equality and freedom from violence and helps vulnerable members of society, such as children, to also assert their rights, be it to identity, family life, education and so on.

There are primarily three types of women HRDs in Zimbabwe. The first model are the “action-oriented” women HRDs, often versatile and forthright, who directly challenge the system. These women assert their rights and the rights of others (mainly their loved ones, or even their communities) through practical action. They are either willing to be litigants or, through their profession, assist others to assert their rights (see Chapter 3). The “supporter” women HRDs will not act on their own, but quietly support those asserting their rights directly or indirectly. They understand the cause that other HRDs are advancing and fully support the cause at any cost. The supporters will selflessly assist the action-oriented women, men, boys or girls who are asserting, or attempting to assert, their rights. The last women HRDs, and perhaps the least known, are “bystanders”, who neither actively participate nor support the cause, but associate or identify themselves with the cause.

In any society, HRDs play a vital role in the promotion and protection of fundamental social, economic, civil, political and cultural rights. HRDs working in Zimbabwe continue to face challenges, as their capacity to carry out their legitimate activities of promoting and protecting fundamental rights and freedoms continue to be severely curtailed. Executive excesses, impunity for human rights violations, erosion of the rule of law and the failure to promote, protect and fulfil human rights obligations voluntarily assented to by the government, continue to haunt HRDs. State agents continue to deny the critical positive role played by HRDs in the country. For women HRDs, the denial becomes multifaceted.

¹ Available at <<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>> [Last accessed 27 February 2015].

² As above, “peaceful means” is a criteria included by the Office of the High Commission on Human Rights (OHCHR).

According to the 2013 Zimbabwe Census report, there are 6 780 700 females as compared to 6 280 539 males in Zimbabwe. Therefore the demographics of Zimbabwe show that women constitute at least 52 per cent of the population. Due to their numbers, they naturally have a critical role to play in ensuring that their rights, as enshrined in the human rights instruments that the Government of Zimbabwe has voluntarily ratified or to which it has acceded, are not only promoted, but also protected and respected. Further, due to their caring role, they have a role in ensuring that rights of other vulnerable members of the community that look to them for protection and support are also upheld. They therefore find themselves calling on the government to not only protect and promote the rights of women, but also other rights in general.

In terms of enjoying mainstream human rights, and just like their male counterparts, women face various challenges. Key amongst them is their anatomy, their subordinate role because of patriarchy, their gender roles and their economic status as this group has generally been marginalised over the years.

1.1 Why women HRDs?

Although HRDs in Zimbabwe have been generally susceptible to harassment for exercising their rights and carrying out their legitimate activities in the past, the position of women HRDs has been and remains precarious. First, they are women – and then HRDs. They face challenges that are fuelled by perceptions, gender stereotypes, and gendered roles that society has ascribed to them because of their status as women. Due to the nature of rights that the majority of women advocate for, they often challenge these gender stereotypes, cultural norms and traditions. In some instances the rights they advocate for include change in the private sphere or homes (and communities) in which they live. In some cases men do not support these initiatives, as they are used to, and will do anything to maintain, their dominant position in society. Consequently, the peculiar nature of violations against women HRDs is multifaceted and often gruesome.

Women HRDs have also been the target of systematic direct and indirect state sponsored repression, attacks and general human rights violations. Heinous crimes that include but are not limited to sexual, physical, psychological and other despicable attacks are perhaps some of the reminiscences that will continue to haunt women HRDs day and night. The prevailing conservative and patriarchal views of the community in general towards women often disadvantage women who are defending human rights in the public sphere. Those working on women's rights or other gender related issues, such as equal representation in political spaces or other positions of power and combating domestic violence, are also not protected from further security and safety issues within the home or communities and during interactions with state actors in state institutions. For the women who are asserting other mainstream human rights, at times they are viewed as "busybodies"; "they want to act like men"; denigrating comments that "they are men pretending to be women" become commonplace.

While these attitudes are entrenched generally in society, there has been no distinction between public and private space for women who are on the frontline of protecting HRDs. As a result, the role of women in the home has been equated to the workplace with no distinction on the nature of space occupied, or activities carried out. Women are regarded as subordinate to men.

This unfortunate status is also heavily influenced by history, with some of the state institutions at the forefront of perpetuating violence against women being male dominated. This has reinforced the negative stereotypes and the prevalence of aggressive masculinities institutionalised in security structures. As a result, women HRDs have to prove their competencies to their male counterparts, leaving them with divided capacity to fully and effectively advocate for promotion and protection of their rights and freedoms. Women HRDs continue to some extent to suffer from inequalities and other gender based discriminations.

1.2 Human Rights framework supporting women HRDs

Zimbabwe has ratified numerous human rights instruments from the African and United Nations human rights architecture. It has also voluntarily become party to notable instruments and guiding principles from the Southern Africa Development Community (SADC). Instruments that specifically protect the rights of women include the United Nations Convention on the Elimination of All Forms of Discrimination Against Women³ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

The international human rights framework not only protects human rights, but also particularly recognises the special protection needs of women. Consequently, there are a number of human rights instruments that seek to protect the rights of women at the United Nations, African Union and SADC level. Other documents that specifically speak to the situation of HRDs and the obligations of states to uphold their liberties and ensure continued open space include the United Nations (UN) General Assembly, Resolution A/RES/53/144 of 1998, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (commonly referred to as the UN Declaration on Human Rights Defenders). In 2013, a group of countries pushed for the adoption of a United Nations resolution on "Protecting women human rights defenders". Norway was one of the countries that championed the tabling of this resolution. As a member of the UN, Zimbabwe must respect all resolutions of the UN, yet the government continues to exhibit lack of political will to abide by this important Resolution.

Due to the special concerns of safety and security of women HRDs, in 2010 the United Nations Human Rights Council General Assembly (UNHRC) recognised in *Resolution 13/13 on Protection of Human Rights Defenders* "the immediate need to put an end to and take concrete steps to prevent threats, harassment, violence, including gender-based violence", and encouraged states to strengthen mechanisms for consultation and dialogue with women HRDs. As stated in several articles of the UN Declaration on Human Rights Defenders and,

³ The other human rights instruments include: Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others; International Convention for the Suppression of the Trafficking in Women and Children; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Convention on the Nationality of Married Women; The Convention on the Political Rights of Women; Convention: Equal Remuneration for Men and Women Workers for Work of Equal Value; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa; and the Southern Africa Development Community Protocol on Gender and Development.

most notably in its article 12(2), the primary responsibility for developing such mechanisms, and indeed specific measures for the protection of women HRDs and HRDs in general, lies with the state. UN General Assembly Resolution 68/181 of 18 December 2013, *Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders*, specifically addresses issues of women HRDs and calls on UN member states to take appropriate, robust and practical steps to protect women HRDs. It also urges states to acknowledge publicly the important and legitimate role of women HRDs in the promotion and protection of human rights, democracy, the rule of law and development.

The acknowledgment of the particular situation and role of women HRDs and those defending women's rights or gender issues implies the upholding of the principles of gender equality and non-discrimination. This is essential to recognising the specific challenges and risks this group of defenders faces and to ensure their protection.

1.3 Overview of challenges faced by women HRDs

Over the years in Zimbabwe, and more particularly since the 2008 elections, HRDs have remained endangered when conducting their legitimate activities in the country, with their security and safety becoming more precarious before, during and after elections. The position of women HRDs was, and has also remained, very compromised.

Some of the challenges that have been faced by HRDs generally and women HRDs specifically include:

- Curtailed security of the person and protection of the law for HRDs through arbitrary arrests and detention and continued selective application of the law. Provisions of the Public Order and Security Act (POSA), Access to Information and Protection of Privacy Act (AIPPA) and some provisions of the Criminal Law (Codification and Reform) Act continue to be applied selectively against HRDs. This has been a tool of persecution, used in an effort to distract them from carrying out their legitimate activities of advocating for the promotion and protection of human rights. For women HRDs, the impact of such arrests and detention does not end upon release. They face further harassment by their family members who feel that they have acted way out of line. The removal of women HRDs from their gendered roles during the period of detention also leaves a vacuum, which at times may have to be filled by the spouse, partner or other male relative. This role of caregiving and taking responsibility for the family unit will be assumed, albeit grudgingly. When the woman HRD is finally released, her family and community may then subject her to, at the very least, a tongue-lashing and character assassination. "Who does she think she is? She was very irresponsible leaving the children to go and engage in such activities," becomes a common refrain.
- Abductions and enforced disappearances of HRDs that violate the rights to security and dignity and expose HRDs to torture, inhuman and degrading treatment have been experienced. Women HRDs who are disappeared are susceptible to being violated sexually as they are removed from the protection of the law. They can be raped or have other unlawful and degrading sexual acts performed on them whilst they are outside the protection of the law.

- The right to dignity of HRDs is violated when they are detained in conditions that are regarded as cruel, inhuman and degrading. In particular, women HRDs continue to be denied their dignity in police detention facilities where they are not afforded sanitary conditions, including the ability to shower or bath, wear or change their undergarments, and they are denied other basic necessities such as access to hygiene products such as sanitary pads.
- Denial of pre-trial rights, such as the right to access legal representation of one's choice, due to administrative actions and other practices of state and non-state actors continues, despite their constitutional guarantee. For women HRDs, it is not just about accessing lawyers, but also about receiving assurance that they have representation to guarantee their release so that they can go back to attend to their gendered role or nurturing their families.
- Threats to the right to fair trial for HRDs due to lack of resourcing of the justice sector and the poor conditions of service of public prosecutors, magistrates and other court officials may lead to lack of insulation of women HRDs from political and other manipulation and miscarriages of justice. A positive outcome in cases where women HRDs are targeted can be elusive, due to the lack of institutional and individual independence of the justice delivery system, and can be heightened due to the stereotypes and perceptions of women HRDs by justice sector actors. In some cases, the victims of prosecutions have actually been women in the prosecutorial and judicial sector. There is a reported case of a female prosecutor who was targeted and arrested whilst conducting her professional duties. This case is highlighted in more detail in Chapter 3.
- Continued violation of freedoms of assembly, association, expression and movement due to acts of omission and commission of state and non-state actors, who include but are not limited to the police, political figureheads and other citizens, are experienced. Illegal policy directives and other administrative practices are also utilised from time to time to curtail the operations of HRDs. Other administrative practices that are fuelled by patriarchy include the refusal to issue identity documents or even travel documents to women who want to act independently of the men who are supposed to "own" them, despite constitutional protections.
- Violations of privacy rights may occur through unjustified searches of the person of HRDs and their premises and seizure of their property by state actors under the guise of investigating purported offences. With women HRDs, such violations can become very intimate.
- Hate speech and other forms of abuse through the publicly owned but state-controlled print and electronic media can compromise the safety of HRDs. Character assassination for women HRDs is often escalated by the extreme hatred presented by men and sometimes other women. She will be called "man", or "pretending to be a man" as if she does not know her real role in society. She should be relegated to the kitchen, or simply go back to being a "full-time house technician".
- Threats to security of the person for HRDs are also exacerbated by acts of political violence and intolerance. For women HRDs security becomes even more compromised, as they are at risk of rape and other sexual or gender based violence.

- The culture of impunity for human rights violations persists due to the selective prosecution of (and sometime the complete failure to prosecute) perpetrators of human rights violations. State actors who refuse to act against those perpetrating violence against women also fuel this impunity. In cases which seem to be domestic in nature, the typical patriarchal police officer who remains untrained in terms of gender and special needs or action, will refuse to open a docket and investigate a complaint, rather telling the woman HRD to resolve the issue on her own.
- Entrenched patriarchal values also negatively impact on women office-bearers in state institutions. Some have adopted negative stereotypes and attitudes against women HRDs, leading to violations against their sisters. Female police officers have been identified at times as being in the forefront of attacking female members of the legal profession, a good example being the attack on the female President of the Law Society in 2007.

Of particular concern is the lack of timeliness and political will to embrace key recommendations made during the Universal Periodic Review of Zimbabwe by the UN Human Rights Council, aimed at taking measures to prevent enforced disappearances and ensure accountability for past human rights violations. Such measures would go a long way in challenging impunity and reducing civil and political rights violations.

Specifics of the situation of women HRDs include:

- They face possibilities of being victims of violence perpetrated in the private sphere that then limits their capacity to carry out their activities in the public sphere. Women HRDs are susceptible to violations of their bodily integrity by state and non-state actors, which then leads to prejudice, exclusion from society, and negation by their male counterparts. Further, the possibilities of violations against spouses, partners and family members of female defenders impede their capacity to fully advocate for their human rights. When arrested and detained, women HRDs sometimes do not get the necessary welfare assistance. Due to societal stereotypes, women who involve themselves in activities that challenge the political environment and executive excesses are perceived as challenging accepted socio-cultural norms, traditions, perceptions and stereotypes about femininity and the role and status of women in society and are then punished for this. Although the Government of Zimbabwe adopted a National Gender Policy, perceptions on equal status of men and women and the ability of men and women to participate in activities to protect rights have not yet been accepted by Zimbabwean society.
- Violations faced by women HRDs in Zimbabwe also take a gender specific form, ranging from verbal abuse based on their sex, to sexual abuse and rape. In cases where sexual violence occurs, due to fear of stigmatisation and rejection by male counterparts, women HRDs do not usually report such cases leading to further victimisation and impunity. Even where women HRDs are not victims of sexual violence they can be stigmatised and banished by community leaders, families and communities who consider them to be carrying out activities that do not conform with the cultural roles of women.
- Unlike their male counterparts, women also act as caregivers and are responsible for the welfare of the family and children. This may make it impossible for them to advocate for the defence of their rights, as they tend to concentrate on bread and butter issues.

Despite the numerous challenges and disadvantages confronting women HRDs in Zimbabwe, many have not been deterred from asserting their rights and the rights of others who cannot act for themselves. More and more women are taking up the mantle, encouraged by the courageous work of other women of steel who, despite daily setbacks, pick themselves up again and again with more zeal and strength to confront the next challenge.

CHAPTER 2

LITIGANTS AND LITIGATORS: WOMEN HRDs

Part A: Litigants

2.1 Introduction

Women lawyers have used their professional skills to encourage communities to use litigation as a non-violent means to reduce injustice. This they have done by representing victims of human rights violations in court. In some cases, women lawyers have become litigants themselves in order to pro-actively protect not only their rights, but also the rights of others. Zimbabwe Lawyers for Human Rights (ZLHR) has assisted women HRDs to litigate to enforce the rights of their communities, their own rights, and the rights of their families. In this manner, litigation has become one strong avenue that women lawyers use daily as a tool to advance human rights.

Through the provision of free legal support services, women HRDs whose rights have been violated have thus been encouraged to use courts of law to resolve their conflicts or, in some cases, to fight injustice. ZLHR has actively offered support as it seeks to foster a culture of human rights in Zimbabwe through litigation. Other organisations that have championed the cause of women's rights in Zimbabwe using law-based techniques include the Zimbabwe Women Lawyers Association, the Zimbabwe Human Rights NGO Forum, Musasa Project, and the Legal Resources Foundation. In this chapter, particular attention is paid to the cases that ZLHR has undertaken and some groundbreaking cases that have been initiated by women HRDs.

The "litigant woman HRD" takes action through the courts of law to seek redress for violations and to advance a wide array of rights. In this way, she challenges executive excesses, holds errant state actors accountable, and has sought to assert her right to equal protection of the law as a full citizen. Various cases have been filed in the courts of law to enforce the right to culture, the right to access water, freedom from arbitrary eviction, and the right to shelter. Fundamental rights to education, health, and the right to marry and found a family have also been asserted. Civil and political rights that the woman HRD has sought to protect include participation in the government of the country, the right to dignity, freedom from torture and the right to administrative justice. Others have pursued cases to protect freedom of expression and equality before the law, the right to identity and citizenship, to protection of the law and the right to liberty.

As a litigator the woman lawyer represents HRDs who advance their human rights and those of others. She also has a story to tell. The cases outlined below provide a snapshot of cases that ZLHR and its strategic partners have supported. They are by no means a complete list.

2.2 Women litigating social, economic and cultural rights

Right to access water: *Ambuya Leorcadia Sagwete*⁴ is a nonagenarian who, together with other members of her community, had spent seven months without running water in Harare's Old Marimba Park suburb. Ambuya Sagwete felt that she had been condemned her to the grave. "How can I survive without water at my age? They (council officials) wanted to send me to an early death", she said. It was not only Ambuya Sagwete's life which was at stake. There were more individuals in her age group who were being forced to scrounge for water, often travelling long distances to beg for water from those with boreholes at their homes. Elderly women in their eighties and nineties make up a significant population in Marimba Park and the regular supply of water is critical to their survival – a fact ignored by the Harare City Council until ZLHR lawyers took steps to institute legal proceedings to enforce the rights of the elderly to water as a socio-economic right. The situation was more complex, as these elderly people were mostly retired and living alone in their homes. They were all on medication of one form or another, as is common with people of this age, and they suffered from ailments that included high blood pressure and arthritis. These ailments required that they take medication and lots of water at any given time. As aged people, they also required the use of toilet and bathroom facilities on a frequent basis. The need for running water in their houses could therefore not be overemphasised. ZLHR intervened to assist by threatening legal action against the Harare City Council and the Harare City Council was forced to restore running water supplies to the community. The reconnection allowed community members such as Ambuya Sagwete to regain their dignity, protect their health, and also restart their vegetable and other horticultural projects.

Right to culture : In the case of *Mudariki v The Minister of Home Affairs and Ors*⁵ the applicant, Spiwe Mudariki, approached lawyers for assistance, complaining the police had been interfering with funeral arrangements of her late husband, Gift Tandare. Mr Tandare had been shot dead by law enforcement agents during a prayer meeting organised by the major opposition party in Zimbabwe. The state, through its intelligence officers, went to the extent of seizing the corpse from the morgue and secretly whisking it to the rural home for burial in order to prevent an independent post-mortem and inquiry into the death. This conduct violated the culture of the Shona people who tend to follow certain procedures during funerals. ZLHR assisted the widow to obtain an order from the High Court to stop the authorities from interfering with the funeral proceedings. Regrettably, the police defied the court order granted by the High Court, showing that even where the courts can be utilised successfully to assert cultural rights and protections, there is some way to go to ensure that the executive respects judicial orders and the rule of law.

Right to shelter: Two women litigated to protect their rights in the case of *Makani & 5 Ors v Epworth Local Board & 3 Ors*⁶ as some of the six applicants required to institute litigation against these state actors. The matter involved residents of the "Stoob" area of Epworth in

⁴ ZLHR's Public Interest Unit issued a letter of demand in this case in May and by early August the Harare City Council had reconnected water.

⁵ High Court Harare Urgent Chamber application filed by Gift Tandare's wife, *Mudariki v Minister of Home Affairs and others* High Court Harare unreported case 1324/07.

⁶ High Court Harare unreported case 8596/14.

Harare who had their homes destroyed by members of the Zimbabwe Republic Police and the Epworth Local Board in September 2014. The houses were destroyed in spite of the fact that there was a pending constitutional case against the same police and the Epworth Local Board. ZLHR filed an urgent application in the High Court seeking to have the demolitions declared a violation of several provisions of the Constitution's Declaration of Rights, including the right to food and water (section 77), freedom from arbitrary eviction (section 74), as well as seeking an award for constitutional damages. The High Court of Harare issued a provisional order banning the arbitrary destruction of the homes and declaring this conduct to be unconstitutional.

Another case taken up by women to protect their right to shelter was that of *Marange & 4 Ors v Chitungwiza Municipality & Anor.*⁷ Mavis Marange and the others were all members of Glory to Glory Housing Co-operative. They had purchased land from that housing co-operative for US\$1 500. When they purchased the land they were advised that cession of the property would be done after sub-division, in terms of the agreement of sale. The sub-division was not done, and they were advised that the Chitungwiza Municipality wanted to demolish the houses. ZLHR lawyers assisted the women to file a court application challenging this illegal action as a contravention of section 74 of the Constitution. The application preventing Chitungwiza municipality from evicting the residents without a valid court order was subsequently granted by the magistrates' court.

In 2004 Felistas Chinyuku, a community leader and human rights champion, asserted the rights of her community and her family to shelter. She was a resident of Porta farm. Porta Farm had basic amenities such as schools, clinics and even an orphanage.⁸ The residents, who were poor urban squatters from around Harare, were first settled there ahead of the Commonwealth Summit that was scheduled for October 1991. The government had pledged to provide them with proper housing later. By 2005, the population at Porta Farm had increased to about 12 000 people. The City Council later tried to evict and demolish the houses that had been constructed, after some had built brick houses. The courts prevented this. In August 2004 the Ministry of Local Government then attempted to evict the residents again. A High Court order was obtained against the Ministry to prevent the eviction in the case of *Chinyuku v Minister of Local Government & Ors.*⁹ Again, in September 2004, the Harare City Council tried to evict the residents of Porta Farm but the court refused to grant the order, saying the previously obtained High Court order of 1995 had not been discharged and was still operative.¹⁰ During the early morning hours of 27 June 2005, the police distributed flyers informing the residents that they would be moved to Caledonia Farm the following day and they had to pack up all their belongings. The next morning demolitions of shacks and houses started, an hour after lawyers representing residents had served the Government with a letter reminding it of the November 2004 court order. The police were shown copies of the 1995 and 2004 orders, but they ignored them. The residents reported that the police responded by

⁷ Chitungwiza Magistrates Court unreported case 106/ 14.

⁸ The description of the evictions from Porta Farm in this section was compiled by the Human Rights NGO Forum, and is reproduced from its website at <http://www.hrforumzim.com/frames/inside_frame_special.htm>.

⁹ *Chinyuku v Minister of Local Government* HH-10671 of 2004.

¹⁰ High Court unreported case 11041/04.

saying that “they were not in a classroom and that they could not read, and that they were not going to obey any court orders as they are acting on orders from above”. After the evictions started, an interdict was obtained from the Norton Magistrates Court to try to stop the evictions.¹¹ This interdict was also ignored. It is alleged that three, or possibly four, people died at the Porta Farm as a result of the evictions. A pregnant woman allegedly died when she fell from a truck which was taking her away, a five-year-old boy was allegedly run over by a truck, and a terminally ill woman allegedly died when being bundled into a moving truck.¹² After the police had acted in violation of the court orders, the lawyers for the residents sought to obtain an order holding the police and the City Council Commission and the Ministry of Local Government in contempt in yet another case *Chinyuku v Minister of Local Government, Minister of Home Affairs, Commissioner of Police & Chairperson, Harare Commission*. Without giving any reasons, the judge refused to grant this order.¹³ After the authorities bulldozed their houses, many of the evicted people had nowhere else to live so they started to return to Porta Farm, and a large number of people were living among the ruins of their demolished houses.

Right to education, freedom of religion: In March 2014, the High Court ordered a school headmaster to reverse the expulsion of an 11-year-old pupil who had been removed from John Cowie Primary School in Rusape for wearing long plaited hair in the case of *Madziva v Minister of Education*.¹⁴ Authorities had arbitrarily barred Ruwarashe Rebekah Madziva from attending lessons on the basis of her hairstyle, which they argued contravened the school’s rules and regulations. Ruwarashe had been enrolled at the school since Grade Zero and had never cut her hair. She belongs to Bible Believers Church, where female congregants grow their hair as a manifestation of the family’s religious beliefs. The High Court interdicted the school authorities, the headmaster Garikai Nyawo, and the Ministry of Primary and Secondary Education from negatively interfering in any way with Ruwarashe’s educational pursuits and ordered them to readmit Ruwarashe in order to enjoy her right to education unhindered.

Right to health: Between January and March 2014, ZLHR initiated interventions that would have eventually led to litigation to compel authorities of two of Zimbabwe’s largest referral hospitals to release three different patients who had been detained at the health centres for failing to settle medical bills. In the first case, authorities at Harare Central Hospital (HCH) had detained Cynthia Kunaka after she had given birth to her child. Kunaka was barred from leaving the hospital until she settled her \$512 medical bill. Following the intervention of Kunaka’s lawyer from ZLHR, challenging the detention,¹⁵ she was released after the hospital agreed to a monthly payment plan.

¹¹ Norton Magistrates Court case 376 of 2005.

¹² Report by Zimbabwe Peace Project 1 July 2005. See also *Zimonline* 8 July 2005. See also the appeal of the Zimbabwe Association of Doctors for Human Rights to other medical associations relating to Operation *Murambatsvina*.

¹³ *Chinyuku v Minister of Local Government, Minister of Home Affairs, Commissioner of Police and Chairperson*, Harare Commission High Court Harare unreported case 3225/05.

¹⁴ High Court Harare unreported case 1839/14.

¹⁵ A letter of demand for the release of Cynthia was delivered at the hospital which led to her release by authorities who then agreed on a payment plan.

In the second case, authorities at Chitungwiza General Hospital (CGH) in March 2014 refused to release Clara Mucheza for close to a week after she delivered her baby, on the basis that she had failed to settle her medical bills after being admitted at the government-run medical centre. The hospital insisted, without lawful cause, that Mucheza should first settle her medical bill amounting to \$546 before being discharged. This action prompted ZLHR lawyers to protest against her illegal detention and demand her immediate release. In a letter delivered to the CGH chief executive officer, lawyers demanded that hospital authorities immediately release Clara as they were arbitrarily and illegally detaining her. Lawyers protested that the detention and prohibition contravened section 49 of the Constitution as the hospital had no authority at law to restrict the personal liberty of Clara for non-payment of medical fees. Further, section 49 of the Constitution guarantees the right to personal liberty and outlaws the imprisonment of citizens merely on the ground of inability to fulfil contractual obligations. Resultantly, CGH authorities relented and released Muchezi before legal proceedings were initiated through the courts.

The third case, that of Nyarai Gwaze,¹⁶ was similar. In February 2014, Gwaze was detained at HCH for failing to settle her \$133 medical bill after she sought medical assistance for an ailment from the medical institution. The hospital authorities had even refused to consider Gwaze's offer to pay a down payment so as to secure her release. She was released after interventions by ZLHR lawyers threatening legal action.

Right to marry and found a family: Sister Berry filed an application in the Constitutional Court of Zimbabwe in the case of *Berry & Anor v Chief Immigration Officer & Anor*.¹⁷ She had been forced to leave Zimbabwe (her country of birth) to join her husband temporarily in South Africa after the Zimbabwean immigration authorities refused her husband, who was an American citizen, entry into the country. Sister Berry's husband had been declared a prohibited immigrant in June 2014 and he was forced to leave the country. An appeal against this notice that had been filed by the husband had succeeded, and on the strength of the court order the couple returned to Zimbabwe. At the point of entry the husband was denied entry by the immigration officials. Sister Berry was forced to leave the country to join her husband to maintain a married life. As a result, she was temporarily residing in South Africa awaiting the outcome of this application. It was very expensive for the couple to stay in South Africa indefinitely while awaiting the outcome of the court challenge. Immigration developments in South Africa also made it extremely unlikely that the couple would be granted permits for a long-term stay there. The Constitutional Court considered the application on 18 February 2015, and judgment is currently pending.

Child marriage is a pervasive problem in Zimbabwe. It is practiced by some religious sects and is also a customary practice, in violation of the Constitution of Zimbabwe. The practice was challenged in the case of *Mudzuru & Anor v Minister of Justice & 2 Ors*.¹⁸ Two women, Loveness Mudzuru and Ruvimbo Tsopodzi, who had been married off when they were minors were requesting the Constitutional Court to declare 18 years' of age as the minimum age for all marriages in Zimbabwe, in line with the new Constitution. This would strike down

¹⁶ In all three cases, letters of demand for the immediate release of the detained mother resulted in their release after a payment plan was agreed upon by the hospital authorities and the mothers.

¹⁷ Constitutional Court of Zimbabwe unreported case 53/14.

¹⁸ Constitutional Court of Zimbabwe unreported case 79/14.

provisions of the Customary Marriages Act that allows for marriage of girls who have reached the age of 16. The application was founded on the claim that a right to found a family at 18 years of age, in terms of section 78(1) of the new Constitution, amounts to a minimum age for marriage. This matter was argued before the full Constitutional Court bench on 14 January 2015 and judgment is currently pending.

Reproductive self determination: *Mapingure v Min of Home Affairs & Ors*¹⁹ is a case in which judgment was delivered on 25 March 2014. Mildred Mapingure was a victim of sexual violence who had been raped by robbers at her home. She had immediately lodged a report with the police and requested that she be taken to a doctor to be given medication to prevent pregnancy and any sexually transmitted infection. Later that day she was taken to hospital and attended to by a doctor. She repeated her request, but was only treated for her injured knee. The doctor could only administer preventive treatment for unwanted pregnancy in the presence of a police officer and that medication had to be administered within 72 hours of sexual intercourse. Mapingure failed to get the police officer dealing with her case in time and three days elapsed before she secured the presence of a police officer. A month after the rape, she was found to be pregnant and wanted to terminate the pregnancy. She was referred to the public prosecutor, who advised her to wait until the rape trial was completed. After four months, acting on the direction of the police, she returned to the prosecutor who advised that she required a pregnancy termination order but the magistrate said this could only be issued after the trial was complete. After six months a certificate was eventually granted, but the hospital matron felt that it was no longer safe to carry out the procedure and declined to do so, so Mapingure gave birth to her child. The applicant brought an action against the Ministers of Home Affairs, Health and Justice for damages for physical and mental pain, anguish and stress suffered and for maintenance for the child until the child turned 18. The basis of the claim was that the employees of the three Ministries concerned were negligent in their failure to prevent the pregnancy or to expedite its termination. The particulars of negligence were itemised. Her claim was dismissed. She appealed and wanted the court to determine whether or not the government employees were negligent in the manner in which they dealt with her predicament, whether she had suffered any actionable harm as a result of such negligence and, if so, whether the respondents were liable to the appellant in damages for pain and suffering and for the maintenance of her child. The court found that with the claim for damages for pain and suffering and maintenance she was entitled to proven general damages arising from the failure to prevent her pregnancy. However, because the responsibility for taking steps to terminate her pregnancy fell squarely upon the appellant's shoulders, and the capacity to do so also lay within her hands, the respondents could not be called to account for any subsequent pain and suffering endured by the appellant, whether arising from her continued pregnancy or the delivery of her child or the period thereafter. The appellant's claim for damages must be limited to the period between the date of her rape and the date of confirmation of her pregnancy. The matter was remitted to the trial court for assessment of the damages to which the appellant was entitled.

¹⁹ Supreme Court unreported case 22/14.

2.3 Women litigating civil and political rights

Right to dignity: In June 2014 the Constitutional Court heard a challenge that was filed by members of Women of Zimbabwe Arise (WOZA) in the case of *Williams & Ors v Co-Ministers of Home Affairs*.²⁰ ZLHR lawyers appeared in court to argue this case challenging the conditions of detention at Harare Central Police Station. Jennifer Williams and other WOZA members had been arrested a number of times for carrying out peaceful protests about service delivery as well as violation of economic and social rights. The application was filed following the arrest of the women in April 2010 after they had conducted a demonstration against appalling service provision from the Zimbabwe Electricity Supply Authority. As a consequence of the demonstration, they were arrested and detained at the Harare Central Police Station holding cells which were filthy and full to overflowing with human excreta. After the lodging of a constitutional application in 2011, the full Constitutional Court bench heard arguments and held an inspection of the cells at the police station. Judgment was only handed down on 5 June 2014. The Constitutional Court found that the right of the WOZA members to dignity and not to be discriminated against has been violated and made the following order against the police: That they [the police] take necessary measures within their power to ensure that Harare Central Police Station holding cells have clean and salubrious flushing toilets, with toilet paper and a washing bowl. That there is privacy with the flushing toilets being cordoned off; a good standard of hygiene maintained in the holding cells; and, further, that every person detained overnight has a mattress and adequate blankets, has access to adequate bathing facilities, and wholesome drinking water from a source other than the tap above the toilet. The Constitutional Court also ordered that women be allowed to keep their undergarments including brassieres and to wear suitable footwear when detained in police custody.

Freedom from torture: In the case of *Chimhutu v Minister of Home Affairs & 3 Ors*,²¹ Tsitsi Chimhutu, who had been assaulted during police investigations, sought compensation for the acts of torture perpetrated on her. The named police officers were investigating a theft case at Nyanga Police Station in February 2013 when the alleged violations occurred. ZLHR instituted summons on her behalf and she was awarded damages in the sum of US\$3 000. The Ministry of Home Affairs made an undertaking to pay the judgment debt, but thereafter failed to make payment. Lawyers intervened to bring to an end the culture of impunity within the security forces. In October 2014 a final letter demanding payment of the judgment debt was served on the Director of Legal Affairs for the Ministry of Home Affairs. The Ministry of Home Affairs has since honored its obligation to pay the \$3 000 damages as awarded by the court.

Right to protection of the law: In the case of *Mukoko v The Attorney-General*,²² Jestina Mukoko sought an order for a permanent stay of criminal prosecution due to the torture and inhuman and degrading treatment to which she had been subjected by state security agents prior to being brought to court. The matter was referred from the magistrates court on the grounds that the institution of criminal proceedings was rendered invalid by the ill treatment to which Mukoko was subjected. It was also argued that the conduct of the state security agents did not

²⁰ Constitutional Court of Zimbabwe unreported case 4/14.

²¹ Mutare Magistrates Court unreported case 1666/ 2013.

²² Supreme Court of Zimbabwe unreported case 11/2012.

exhibit the decent behaviour expected of law enforcement agents in the treatment of persons in their custody. It was contented that the court was obliged to refuse to bring any criminal prosecution in the circumstances. ZLHR lawyers argued that section 15(1) of the old Constitution had an absolute prohibition against torture that protected the dignity and physical integrity of every person regardless of their conduct. The lawyers also argued that there were no exceptional circumstances (such as the seriousness of the crime, or the danger the person is believed to pose to national security) that can justify torture, cruel, inhuman and degrading treatment. The court found that Mukoko had been tortured through repeated beatings on the soles of her feet with a piece of hosepipe and a metal object, was forced to kneel for a long time on mounds of gravel while being interrogated, and for prolonged periods was kept incommunicado in solitary confinement. She had also been kept blindfolded each time she was out of solitary confinement and not being interrogated. Although the judges found that ill treatment *per se* did not affect the validity of the decision to charge the victim with a criminal offence and institute proceedings against her, it was the use of the fruits of such ill treatment which affected the validity of the decision. The court therefore found that the infliction of torture affects an accused person's dignity and physical integrity. The court further held there was no evidence to found a charge in the absence of information extracted as a result of the ill treatment, and so the permanent stay of prosecution was granted.

Right to administrative justice and protection of the law: The Zimbabwe National Road Administration (ZINARA) was taken to court in the case of *Hanzi v ZINARA & 3 Ors.*²³ ZINARA is the regulatory authority charged with licensing all motor vehicles in Zimbabwe. Sometime in May 2012, it decided to convert its database into a computerised system and this exercise was lengthy. ZINARA failed to license the country's estimated 800 000 vehicles by 31 May 2012, which was also its deadline. On 31 May ZINARA announced an extension of the period – up to 30 June 2012 – in which individuals could license their vehicles. On 4 June ZINARA unilaterally and arbitrarily revoked the extension. As a result, Roselyn Hanzi was stopped and fined by the Zimbabwe Republic Police for not having displayed a valid vehicle license. The client then gave instructions to file an urgent chamber application to challenge the unilateral revocation of this extension. The contention was that the revocation violated the tenets of natural justice and the Vehicle Registration and Licensing statutes. The matter was heard before Justice Mutema in the High Court in Harare who dismissed the application. However, after the application was filed, police stopped arresting people for the failure to display their vehicle licences and advised that they resume doing so only after 30 June 2012.

Right to participate in the government of the country: In July 2013 Eulitah Govo was forced to approach the Electoral Court to challenge the patriarchal thinking within some offices of the Zimbabwe Electoral Commission (ZEC) that would prevent her from participating in elections. In the case of *Govo v Zimbabwe Electoral Commission & Anor*²⁴ Govo, who was an aspiring candidate for Ward 21, Chikomba District, challenged the rejection of her nomination papers. She had visited the offices of the ZEC Chief Executive Officer of the Chikomba Rural District Council for the purpose of filing her nomination papers. When she was about to submit her papers she was advised by the nomination officer that they were rejected on

²³ High Court Harare unreported case 260/2012.

²⁴ *Govo v Zimbabwe Electoral Commission & Anor* Electoral Court unreported case 7/13.

account of a discrepancy between the surname on her birth certificate and that on her national identity card. She explained that she had changed her surname when she got married and was then told to bring a copy of her marriage certificate, despite this not being a requirement in terms of the Electoral Act. Upon furnishing a copy of the marriage certificate, she was advised that she was out of time, and therefore her nomination papers had been rejected. This conferred an unfair advantage on the male contenders for political office who had not been asked to produce the same documentation. The appeal against the unlawful and discriminatory conduct of ZEC officials in refusing to accept the nomination papers was granted by the Electoral Court that declared that Govo was the duly nominated candidate for the concerned ward in Chikomba.

Freedom of expression:- The case of *Majome v Zimbabwe Broadcasting Holdings & 3 Ors*²⁵ is a constitutional challenge to the provisions of the Broadcasting Services Act, specifically, the sections requiring all members of the public with receivers to be levied a licence fee by the Zimbabwe Broadcasting Corporation (ZBC). This case sought to challenge the requirement to pay for a licence while programming and content was politically partisan and not in the public interest, as should be the case with a public broadcaster. The challenge also seeks to assert participation rights more broadly. Jessie Majome challenged the law based on the patently partisan programming of the ZBC which is not in line with constitutional provisions protecting equality before the law (section 56), freedom of association and assembly (section 58), freedom of conscience (section 60) and freedom of expression and freedom of the media (section 61). She also sought to assert her political rights under section 67 of the Constitution. The matter was finally argued on 12 November 2014 before the full bench of the Constitutional Court. Judgment was reserved after hearing from all legal representatives.

Right to identity: As a registered voter who wanted to participate in the 2013 elections by casting her vote, Primrose Matambanadzo discovered that her surname had been arbitrarily changed to that of her husband on the voters' roll. Although she had registered her name as Matambanadzo and had voted using this name since 2005, it had been changed to her husband's name upon her marriage, without her request, knowledge or consent. She discovered this upon inspecting the voters' roll on 20 June 2013 before the July 2013 national elections. Upon inquiry, she was advised that it was not certain that she would be able to cast her vote due to this disparity. After filing a court application in the High Court and a number of meetings between lawyers and the Registrar-General's Office Primrose's name was changed back to the original surname on the voters' roll.²⁶

Right to equality: In the case of *Dongo v Registrar-General & Anor*²⁷ that was supported by the Zimbabwe Women Lawyers' Association, Margaret Dongo, a married woman and the mother of a minor child Kudakwashe Norman, sought a court order against the Registrar-General's conduct described below. In January 2006, when Kudakwashe Dongo was still a minor, Margaret, like so many other women in Zimbabwe, approached the Office of the Registrar-General to apply for a passport for her son. She was turned away on the grounds that as the mother of a marital minor child, she could not sign the passport application form authorising

²⁵ Constitutional Court unreported case 67/13.

²⁶ ZLHR issued a letter of demand and drafted a court application that was eventually not finalised as the matter was resolved without the need to go to court.

²⁷ Supreme Court unreported case 6/2010.

the Registrar-General to issue the passport as she was not the guardian of the child. The common law in Zimbabwe relating to guardianship, as confirmed by the Guardianship of Minors Act, states that the father of a marital child is the legal guardian and his consent must always be sought for all juristic acts performed on behalf of the child. Through her lawyers, Dongo brought the matter before the Supreme Court to challenge whether section 3 of the Guardianship of Minors Act, in its effect and implementation concerning the rights of guardianship of a minor child, is discriminatory against women and in violation of the provisions of section 23(1) of the old Constitution which prohibits discrimination on the grounds of sex, gender and marital status, among others. Another issue for determination was whether the common law relating to the guardianship of marital children discriminates against women and violates the provisions of section 23 of the old Constitution. Dongo also wanted the court to decide whether African customary law relating to the guardianship of children born in a customary law union discriminates against women and violates the provisions of section 23 of the old Constitution. In June 2010 the Supreme Court of Zimbabwe handed down its judgment and highlighted that the refusal by the Registrar-General to allow Dongo and other women in her position the capacity to assist their minor children to obtain a passport was premised on the assumption that the acquisition of a passport for a minor child is a juristic act and, therefore, an act of guardianship. It found that under Zimbabwean law, the issuance of a passport is not a juristic act in as far as it does not confer any additional rights on the holder of a passport; It merely facilitates the exercise by its holder of right of freedom of movement which the child, like any other person, was already entitled to in terms of section 22 of the Constitution. The finding that the acquisition of a passport is not a juristic act led to the logical conclusion that the exclusive assistance of the minor child's guardian is not a legal requirement. On that basis, the Registrar-General was mistaken in refusing Dongo's application to assist her minor son to apply for a passport and in insisting that only the child's guardian could assist. Both parents individually can assist a child to obtain a passport.

Right to liberty:- In March 2009 Jennifer Williams and another member of WOZA submitted an urgent application to the Supreme Court of Zimbabwe under section 24(1) of the Constitution alleging that their arrest and prosecution was a violation of their constitutional rights. On 26 November 2010, in the case of *Williams & Anor v Msipha & 2 Ors*, the Supreme Court of Zimbabwe ruled that the prosecution of the two WOZA members under section 37 for their participation in the 16 October 2008 protest was a violation of their fundamental constitutional rights to personal liberty and to protection of the law.²⁸ The court found that the actions of the two applicants and other WOZA members at the gathering on 16 October 2008 were "wholly" protected under the old Constitution of Zimbabwe,²⁹ and that even if proved at trial, the facts of the 16 October 2008 demonstration could never constitute a crime under section 37 of the Criminal Law (Codification and Reform) Act. After the rendering of this ruling, the applicants had a legitimate expectation that they would henceforth be permitted to conduct peaceful demonstrations without hindrance. The two WOZA members had to file a direct application to the Constitutional Court after the magistrate had refused to refer their case to the Constitutional Court, where they wanted to challenge the legality of the charge they were facing on the grounds it did not constitute an offence.

²⁸ *Williams & Anor v Msipha, the Minister of Justice and the Attorney-General* Supreme Court unreported case 22/10.

²⁹ As above at p 28.

Right to property: An application was filed in the High Court in October 2012 by the chairperson of the Gays and Lesbians of Zimbabwe (GALZ) organisation, Martha Tholanah, who was seeking the release of property that had been seized by the police during a raid of the GALZ offices in August 2012 in Harare. The search at the GALZ offices was preceded by instances of police harassment of members of GALZ while some materials including computers and fliers were confiscated. Lawyers also argued that the seized property was not linked to the commission of any crime. The ZRP had opposed the application arguing that it would not release the property until the completion of their probe and because they wanted to use the items as exhibits in court. In the case of *Gays and Lesbians of Zimbabwe v Minister of Home Affairs*³⁰ the High Court ordered the Commissioner-General of Police and his officers to return the GALZ property. The judge also declared invalid and set aside the warrant of search and seizure issued by the police when they raided the GALZ offices.

Part B: Litigators

2.4 The last line of defence

Despite the fact that women lawyers are equal to their male counterparts, the “glass ceiling” still exists, regardless of the formers’ education and work experience. While women continue to enter law school, excelling in most cases, the legal profession broadly remains dominated by men. The judiciary, law firms, and the corporate world are still very much male dominated.

At the turn of the last century, Leila Robinson, Massachusetts’ first woman lawyer, advised her colleagues:

“Do not take sex into practice. Don’t be ‘lady lawyers’. Simply be lawyers and recognise no distinction between yourselves and the other members of the bar.”³¹

Women human rights lawyers find themselves in a unique position. For them, it is not just about “not being lady lawyers”, but it is also about being lawyers who are practising perhaps one of the most sensitive and risky areas of law. While it is generally accepted that women lawyers face unique challenges on account of their gender, the challenges grow when they are involved in human rights work as they place themselves in the frontline – and in the spotlight – in direct conflict with powerful, and at times well resourced, state institutions and actors, and sometimes with non-state actors who work on their own initiative, or at times in unholy alliances with state actors, to perpetrate human rights violations. Generally, there are fewer practising female lawyers than male lawyers; even fewer women lawyers are in private practice than those in the corporate world and other institutions. For those in private practice, a substantial number of women lawyers usually prefer to deal with civil law cases rather than criminal cases, where a lot of human rights issues arise.

This following section highlights the challenges faced by women human rights lawyers, the strategies they have used to counter these challenges, and the opportunities they have found.

³⁰ High Court Harare unreported case 1240/13.

³¹ Available at <http://www.wmdnh.org/Leila%20Robinson.htm> [Last accessed on 25 April 2013].

2.4.1 Challenges for women human rights lawyers

Patriarchy: The most commonly noted obstacle to women HRDs generally is patriarchy. Patriarchy subdues women as they are regarded as being unequal to men and thus are supposed to obtain guidance and/or direction from their male counterparts and relatives. In the legal profession, such patriarchy results in a misguided perception that male lawyers are more competent, more aggressive, braver, and that they are the go-getters. These qualities are often perceived to be essential in successful human rights work. In human rights cases some clients openly prefer that male lawyers represent them in criminal or even civil cases, although women lawyers may have comparable or greater experience and more success in similar cases.

This attitude is not confined to laypeople. A cursory analysis of the country's top law firms will reveal the disparity between the numbers of female partners compared to male partners and this is indicative of the extent to which the profession is still very male dominated. The disparity in numbers becomes even more glaring within the field of human rights law, as fewer female lawyers are attracted to this very dangerous and risky sphere of law. While others may have a desire and passion for such work, they are forced to forego it in favour of working hard to build a corporate and relatively "safe" practice which could build their chances of professional advancement and partnership.

Family/work balance: Women lawyers in general have to contend with balancing work and family and the gendered roles bestowed upon them. This is more difficult when they are single parents. In an ideal world, the fundamental responsibility to family and community should not be gendered but, in reality, women still bear a disproportionate share of the child-rearing and household responsibilities even whilst they struggle to maintain professional careers. A woman human rights lawyer often has to assist clients at odd hours; appear at police stations any time of the day and night; spend long hours drafting pleadings and visiting clients in police detention and prison; and be prepared to sacrifice her weekends and public holidays and forego other important family events or functions. As a human rights lawyer, she is perpetually "on call", and may need to attend to work at unconventional and mostly inconvenient times for her partner, husband and sometimes family members.

Perceptions: Despite their commitment to the cause, women human rights lawyers are at times not taken as seriously as their male counterparts. When they attend to business at police stations wearing their court attire they risk receiving chauvinistic comments and sexual innuendos from police officers, instead of being treated professionally and with the respect due to officers of the court. Typically, women lawyers are derided when they claim their space and assert themselves as professionals.

Indistinguishable from their clients: In addition to all the challenges stated above, women human rights lawyers, just like their male counterparts, have at times been closely associated with the cause of their clients. They have been harassed through physical assaults, threats of unspecified deadly action, verbal abuse, arrested for championing their client's cause and at times, even prosecuted.

The instances of these attacks are highlighted in chronological order below:

24 March 2003: Gugulethu Moyo, the legal counsel for the privately owned newspaper, *The Daily News*, attended at Glenview police station to represent the then *Daily News* photographer, Philimon Bulawayo, who had been arrested in Glenview on 18 March 2003

whilst travelling into the city centre, subsequently removed to Glenview police station, assaulted by police officers, and detained without charge. While Moyo was waiting outside the police station, Jocelyn Chiwenga, the then wife of the Commander of the Zimbabwe National Army, arrived at the police station accompanied by a personal "bodyguard", Kelvin Chadenyika, as well as riot police and soldiers. Chiwenga approached Moyo and, upon learning that she worked for the Associated Newspapers of Zimbabwe, began to assault her. Moyo was punched and fell backwards, hitting her head on a stone. Chiwenga then unlawfully searched her handbag. Various threats were made, including references to the Matabeleland atrocities that were "nothing compared to what will happen to you today" and insinuations that Chiwenga was able to do anything to the lawyer with impunity, due to her position in society and her influence over judges in the courts. The assault on Moyo continued unabated in the presence of some 60 police officers (some of whom had come out of their offices to witness the spectacle) and uniformed soldiers. Moyo was then locked up in a cell on the orders of Chiwenga, where she was detained for two hours. Moyo was then placed in a truck together with other arrested persons to be removed to Harare Central Police Station. On Chiwenga's instructions, five riot police continued to assault Moyo on the way to Harare Central. She was hit with baton sticks and booted feet and told by them that "police stations are not for lawyers". Chiwenga met them at the Law and Order Section, where the officers once again followed her instructions to lock up Moyo, together with her client Philimon Bulawayo. On the strength of a High Court order, Moyo and Bulawayo were taken to Parirenyatwa Hospital for medical attention at around 22:00. When their lawyer and employer, respectively, attempted to talk to them, the police removed the detainees from the hospital before a doctor could examine them. Moyo and Bulawayo were then detained at Harare Central police station, and were only released on the afternoon of Thursday 20 March 2003, after their lawyers had obtained a further High Court order and upon the intervention of the Attorney-General's Office. No charges were preferred.

10 January 2004: Blessing Gorejena, then a public prosecutor with the Ministry of Justice, was arbitrarily arrested and detained for three nights by members of the ZRP after she exercised her discretion in a judicious manner to consent to bail in a criminal case. Apparently this caused dissatisfaction to some elements within the state apparatus, leading to her arrest. After her arrest and detention the police struggled to come up with charges against her. Initially, they charged her with obstructing the course of justice in that she did not oppose a bail application by the accused person through his lawyers. Later the charges were changed to contravening a section of the Prevention of Corruption Act. By the time her case went to trial in April of that same year, she was facing a different charge of showing favour to the accused person. She was subsequently suspended from duty, following her arrest, on misconduct charges including the allegation she failed to seek authority from superiors before consenting to bail, despite her being qualified to handle such matters and having been granted the authority to prosecute by the state. Her team of lawyers from ZLHR successfully challenged both the criminal charges and the misconduct allegations, resulting in the discharge of her case and her subsequent re-instatement in April 2004.

10 February 2009: ZLHR lawyer, Roselyn Hanzi, was arrested at around noon for representing a male colleague, Tawanda Zhuwarara, who had been arrested by unidentified members of the ZRP as they were returning to their office (situated next to the Parliament building) after taking an early lunch. Initially Zhuwarara was arrested and accused of being a journalist. The police officer accused him of taking pictures of a demonstration which had occurred outside

Parliament and which had been disbanded by the police. When Hanzi insisted that they could not arrest him as he was innocent, she was initially ignored and then subsequently arrested, together with Zhuwarara and their clients who had been participating in the peaceful protest. With the complicity of Parliamentary staff, they were unlawfully detained in the Parliament Guard Room, until police details removed them to Harare Central Police Station. In contravention of constitutional protective provisions relating to detained persons, lawyers who attempted to get access to Hanzi at Harare Central Police Station were denied access by the police. Superintendent Chinhengo, the Officer in Charge of Operations at Harare Central, ordered the lawyers out of the police station's vicinity. Despite further attempts by ZLHR lawyers to have their colleagues released, the two were detained overnight at the police station without their lawyers being able to speak to them, or being told the charges against them. On 11 February 2009, ZLHR lawyers were finally able to access them. Despite members of the Law and Order Section acknowledging that the two were "caught in the crossfire", Detective Inspector Elliot Muchada instructed Detective Assistant Inspector Phiri (a female) and DC Musadamba to proceed to charge them, together with eight women who had also been arrested outside Parliament, with contravening section 37(1)(b) of the Criminal Law (Codification and Reform) Act. They spent a second night in custody. When the matter came before the court in May 2009, the lawyers and their clients were discharged at the end of the state case as the prosecutor had failed to prove his case beyond reasonable doubt.

19 April 2011: Police in Hwange obstructed and detained two women lawyers, Nosimilo Chanayiwa³² and Nikiwe Ncube³³, and their male colleague, Lizwe Jamela³⁴, who were travelling to Hwange Magistrates' Court in Matabeleland North province to represent the Co-Minister of the Organ on National Healing, Reconciliation and Integration, Hon Moses Mzila-Ndlovu and a Catholic priest, Father Marko Mabutho Mnkandla, who were due to appear in court on the morning of 19 April. The lawyers were eventually released after the court case had commenced and other lawyers had been forced to appear at short notice to represent the two clients.

20 May 2011: ZLHR lawyer, Irene Petras, was in the company of other civil society representatives at the SADC Extra-Ordinary Summit in Windhoek, Namibia. Some Zimbabwean state security agents, who refused to identify themselves, accompanied by some Namibian law enforcement agents, sought to interrogate them under unclear circumstances. The group of civic leaders had, the day before, shared their concerns about the road map to free and fair elections in Zimbabwe. This was done during a press conference organised by the Southern Africa Development Community Council of Non-Governmental Organisations (SADC-CNGO). Petras was interrogated by the state security agents for more than one hour, with the questions centring around her personal details, her mission in Namibia, place of residence in Namibia, and her residential addresses in Zimbabwe, while officials from the Zimbabwean embassy observed. Other civic leaders were subjected to the same type of interrogation. Petras was subsequently released without charge following the intervention of Namibian lawyer colleagues. The interrogations and detentions were intended to instil fear

³² Staff Member, ZLHR Bulawayo Office.

³³ ZLHR Member and legal practitioner with Webb, Low & Barry Legal Practitioners.

³⁴ Staff Member, ZLHR Bulawayo Office.

and stop the work of the civil society leaders in pushing for free and fair elections in Zimbabwe.

24 October 2011: ZLHR lawyer, Bellinda Chinowawa, appeared at Mbare Magistrates' Court in the matter of *State v Grezha & Another* in which the two accused were facing a charge of sodomy. Chinowawa was in the company of two other lawyers, Jeremiah Bamu and Kennedy Masiye. The matter concluded for the day, with the magistrate stating that ruling on the bail application would be delivered the following day. Upon leaving the courtroom the three lawyers were accosted by a large group of youths who began interrogating them about why they were "unpatriotic" and going against presidential pronouncements by representing homosexuals in Zimbabwe. Initially the lawyers tried to reason with them, stating that as lawyers it was their function and duty to represent anyone who sought legal services, but this only served to further incense the mob, which began hurling profanities and threats to assault the lawyers. At that point, Chinowawa and Masiye got into one of the vehicles and attempted to drive off, but they were ordered to stop by a man later identified as Jim Kunaka, the then ZANU-PF Youth Provincial Chairperson for Harare, who launched a tirade against them and threatened to stone their car if they defied him by continuing to drive. He threatened them with violence should they dare to return to the court for the ruling and, to this end, took down the registration numbers of both vehicles which they were driving. It is pertinent to point out that while these events unravelled, the prosecutors and police details stationed at the court could be seen watching from their offices, and at no point did they attempt to disperse the crowd, or otherwise come to rescue the lawyers. Despite the threats, the lawyers returned the following day to represent their clients.

17 March 2013: Lawyer Beatrice Mtetwa was arrested by the police whilst attending to a client whose home was being raided. She was placed under arrest after requesting the production of a valid search warrant and inventory list for materials that had already been removed from the home by the police. Police details unlawfully confiscated her mobile telephone, containing privileged lawyer-client communication, and handcuffed her when she protested. She was held in an unmarked police vehicle whilst the search proceeded at her client's home and at another office, in the absence of legal representation. Thereafter, she was subjected to several hours of waiting in police custody at the Law and Order Section at Harare Central Police Station before a warned and cautioned statement was recorded in which she was charged with defeating and/or obstructing the course of justice under the Criminal Law (Codification and Reform) Act - section 184(1)(g). Despite earlier promises to release her into the custody of her lawyers, she was lodged in cells at Rhodesville Police Station. Lawyers filed an urgent chamber application in the High Court and Justice Charles Hungwe ordered her immediate release. Lawyers served the order at Rhodesville Police Station at around 02:30, but the police refused to comply with the order. In defiance of the court order, therefore, the police continued to unlawfully detain Mtetwa at the police station. She eventually appeared in court at around 12:00 for the first time. Lawyers advised the magistrate that there was a High Court order authorising her release and the proceedings could only commence if she was not in the custody of the police. The magistrate - Mrs Gofa - said that the order related to the police only and did not bind her, therefore it was of no consequence. Since Mtetwa had appeared in her court she could therefore deal with the matter.

Mtetwa was placed on remand, with her lawyers advising that an application was going to be made at a later date to challenge this placement on remand. Complaints against the police

were also placed on the record. The prosecutor, Michael Reza, opposed the bail application and after Mtetwa's lawyers made submissions the prosecutor applied that the matter be postponed to 20 March. The magistrate similarly noted that the matter was not so urgent that it should continue that evening, and she postponed the state's response to the bail application to 11:15 on the following day, being 21 March 2013. Mtetwa was then moved to Harare Chikurubi female prison at around 17:30. On 21 March she was denied bail and was remanded to 3 April.

An appeal was filed at the High Court and was set down for hearing on 25 March 2013. Justice Musakwa agreed with Mtetwa's lawyers that Magistrate Gofa had erred and misdirected herself when she denied the human rights lawyer bail on 20 March 2013. Magistrate Gofa based her dismissal of the bail application on the basis that if released on bail, Mtetwa would interfere with police investigations which were reportedly in their "infancy", as well as cause "commotion" as she purportedly had done when she was arrested on Sunday 17 March 2013. The magistrate ruled that the said commotion would hinder the police from carrying out their investigations. Justice Musakwa said Mtetwa should not have been denied bail by the lower court and the police should have shed light on the nature and scope of the investigations that remained outstanding and, further, that the court should not have denied liberty to a legal practitioner of repute, like Mtetwa. On 5 April the prosecutor maintained the charges of obstructing the course of justice and also added new allegations.

Her trial commenced in May 2013 and she was discharged at the end of the state case on 27 November 2013. The state prosecutors filed an appeal against the discharge at the end of the state case on 2 May 2014, five months later, and well out of time. This appeal is still pending.

19 March 2013: Roselyn Hanzi, who was in the company of another lawyer, Harrison Nkomo, was advised by police officers led by Detective Assistant Inspector Maria Phiri that their client, another lawyer Beatrice Mtetwa, was being moved to the Law and Order Section at Harare Central Police Station from Rhodesville Police Station. The policewoman denied the lawyers access to Mtetwa and advised them that she would not hesitate to detain all lawyers who were at Rhodesville Police Station if they did not immediately leave the station and wait for them at Law and Order Section. The lawyers proceeded to Law and Order Section and were advised, after about 20 minutes, that Mtetwa had in fact been taken to the magistrates' court without them.

2.4.2 Asserting their role as lawyers and HRDs

There is no single or simple solution to the challenges of fostering a more nuanced understanding of the role of women human rights lawyers in an increasingly hostile and repressive environment.

To counter this hostility, women lawyers need to remain assertive and constantly demonstrate their worth and capabilities. Some proactive women human rights lawyers set up their own firms so that they can work on their own terms. This is a good coping mechanism, which is worthy of emulation. In addition, women lawyers simply work harder and longer in their existing firms, and have thus proven that they are just as good as – if not better and more tenacious than – their male counterparts.

Human rights work is also not restricted to criminal litigation, and women lawyers can also be effective by participating in human rights promotion and protection by assisting with

research, civil litigation, assisting in training and capacity building of HRDs, all activities which are less risky but no less important to the cause, not to mention very rewarding. Mentoring of young women lawyers is necessary to increase the number of women entering and remaining in the human rights sphere. The provision of a support network is also critical to the work of a women human rights lawyers.

In order for women lawyers to excel, it is also essential to create a work/life balance that includes paying attention to personal and family needs while also advancing one's career. Advances in technology mean that women lawyers do not always need to be in the office to work, and this can be a useful tool in the endeavour to balance work and family responsibilities. A human rights woman lawyer can therefore continue to work on cases at home, in instances where such work can be done remotely.

Women human rights lawyers have also found strategies to deal with potential attacks on themselves, such as attending police stations with other lawyers so that there is more safety in numbers, and reduced risk of attack.

Despite the bleak picture painted above, it is not all doom and gloom. Human rights work is in itself very rewarding. Advancing the rights and fundamental freedoms of others is its own reward. Human rights lawyers are not only working for the positive transformation of our society, but are fighting against impunity and thus have a crucial role to play. As a result, there is a great opportunity for women lawyers to support each other in doing human rights work. Despite the glass ceiling in the profession, there are long-serving women human rights lawyers such as Beatrice Mtetwa, Irene Petras, Sarudzayi Njerere, Perpetua Dube, to name a few. This is proof that women have the mettle for human rights work. Many women lawyers underestimate themselves but with confidence and devotion to the cause, anything is possible.

CHAPTER 3

AS DEMOCRACY ADVOCATES: WOMEN HRDs

3.1 Women HRDs and democracy

Women in Zimbabwe continue to bear the brunt of the impact of turbulent decades of economic and governance decline, which has contributed to violations of fundamental rights and freedoms. Outdated cultural practices and beliefs have further increased this burden. This has caused women HRDs to involve themselves more substantively in asserting their rights and participating in activities to challenge the manner in which they are governed, both at the community level (where they are forced to conform to conduct prescribed by informal state institutions and actors such as traditional leaders, including chiefs and village heads), and in national processes to demand political reform and improved governance, transparency and accountability.

Although orthodox democratisation debates have been said to omit women,³⁵ Zimbabwean women have moved with the times, embracing the Beijing Platform for Action, realising the need for them to mobilise ideologically and organisationally in order to benefit from transitional and democratisation processes broadly.³⁶ The capacity to do this has determined how much they benefit, as gender equality and equity principles are yet to be fully reflected in democratisation and transitional processes.³⁷

Since the late 1990s, Zimbabwean women have asserted their right to participate in national processes and to have their voices heard using various interventions and strategies. Their participation became more pronounced at the turn of the millennium, with more women involving themselves in community mobilisation and advocacy in their individual capacities, or working within human rights organisations and through national platforms. Others used the courts (as reflected in Chapter 2). A number of active civil society organisations concentrating on women's rights, pursuing objectives including social and economic, civil and political justice, were also established and strengthened.

Such participation in governance, democracy and accountability initiatives has seen women HRDs being targeted and exposed to systematic human rights violations by state and non-state actors – oftentimes more vicious than those received by their male counterparts. The law, in its patriarchal framework, has been used selectively against such women HRDs as punishment for their participation in such male dominated activities.

For women HRDs within civil society and political spaces, their challenges have increased as a result of the retrogressive patriarchal attitudes that have remained engrained among their male colleagues. Women leaders within civil society – just like women human rights lawyers

³⁵ Hassim S *From mother of the nation to rights bearing citizens' in women's organisations and democracy in South Africa: Contesting Authority* ' Pietermaritzburg: University of Kwazulu Natal Press p 131.

³⁶ As above 133.

³⁷ Thokozile R and Tiagha NH "The African gender and development index: An African response to the decade review of the Beijing platform for action" in *Gender instruments in Africa* van der Westhuizen (2005) Midrand: Institute for Global Dialogue p 31.

- have therefore had to work extra hard to dispel perceptions that their male counterparts are more strategic, more organised, more active and more intelligent. In several instances, they have had to ward off unwarranted competition, duplication of their work, and undermining of their efforts and leadership in contributing to democracy, rights and governance work that is already successfully underway.

A small number of men, however, have recognised and supported the efforts of women HRDs in the democracy sphere, and have actively championed women's rights and the right for women to participate and be at the forefront of such battles, both within their communities and at the national level.

The interventions, successes and challenges of women HRDs since the turn of the millennium, particularly those who assert their right to be heard on broader human rights issues, those who seek to hold state institutions and actors to account, and those who exercise their other participation rights, are highlighted - although not all efforts may be conclusively documented in this chapter.

3.2 Women HRDs and participation

Freedom of assembly

Women HRDs who have asserted their participation rights (freedom of assembly, association, expression and the right to participate in the government of the country) have been on the receiving end of retributive action by state and non-state actors alike. By far one of most turbulent periods to exercise the the right to freedom of assembly for women HRDs was the period March to September 2006, when ZLHR represented over 550 women HRDs. These women, often as a result of organising and participating in public gatherings and demonstrations to voice their governance and socio-economic concerns, were charged with various offences ranging from obstruction of traffic, to conduct conducive to public disorder. Not a single successful prosecution of these 550 women HRDs was recorded. Some of the documented incidents appear below.

10 May 2003: Forty-six women were arrested during a march to commemorate Mothers' Day in Bulawayo. They were detained at Bulawayo Central and Nkulumane Police Stations. ZLHR lawyers attended at both stations but were told that the Law and Order Section at Bulawayo Central was "closed" and that nobody knew where the women were being held. The lawyers were not allowed to have sight of the detention book, and the duty inspector advised them to see a senior police officer, who was equally unhelpful. As their right to lawyers of their choice was denied, and in order to avoid spending the night in custody in filthy cells, the women were forced to pay fines for contravening section 7(b) of the Miscellaneous Offence Act, essentially buying their freedom. The payment of the fines was subsequently successfully challenged in court, and overturned.

14 June 2004: Forty-three women, including some with breastfeeding babies, were arrested at a community hall in Bulawayo while discussing potential self-help projects. They were detained overnight at Bulawayo Central Police Station for contravening section 24 of the Public Order and Security Act, that criminalises the holding of public meetings without notifying the regulating authority. This, despite the fact that the meeting held was a private one for members only. The women were released after the magistrate ruled that meetings such as the one in which the women had participated were exempt from notification - an

indication of how women are harassed when attempting to meet and discuss their concerns and take action to improve their socio-economic situation.

31 March 2005: Over 300 women who had gathered in Africa Unity Square in Harare on the eve of the parliamentary elections to pray for a peaceful poll and post-polling environment were arrested and detained at Harare Central Police Station. The police informed ZLHR lawyers who were deployed to represent the women that they were not allowed access to their clients until the next morning. The following day the lawyers reported to the police station, where it was established that over 265 women had been arrested and were occupying the backyard parking lot of the police station. The officer commanding Police Internal Security Intelligence, Inspector Ndou, indicated that they had arrested the women for allegedly contravening section 3(2) of the Miscellaneous Offences Act, which provides that any person who encumbers or obstructs the free passage along a street, road, thoroughfare, sidewalk or pavement shall be guilty of an offence liable to a fine or imprisonment for a period not exceeding three months. The police, however, were not keen to take the women to court to answer to the alleged charges. After much consultation, the women detainees were forced into paying admission of guilt fines in order to buy their freedom. This position was agreed to by all the women as they had been subjected to cruel, inhuman and degrading conditions of detention such as the use of one toilet, sleeping in the open all night, and also being assaulted by law enforcement officers and then denied medical treatment. Some of the women were subsequently hospitalised and treated for various injuries. Complaints were lodged with the authorities in relation to their ordeal with the police and in the police cells. The payment of fines was later successfully challenged in court and overturned.

4 May 2006: Members of the organisation Women of Zimbabwe Arise (WOZA) staged a demonstration in Bulawayo protesting against the exorbitant increase in tuition fees for primary, secondary and tertiary institutions. Over 166 people were arrested, including 77 schoolchildren – the latter being released on the same day. The activists were detained at different police stations in and around Bulawayo (Bulawayo Central, Queenspark, Mzilikazi, Hillside, Donnington and Sauerstown). The recording of warned and cautioned statements only began on 6 May after the detainees had already spent two days in detention. The police intended to charge the women HRDs with contravening section 7C of the Miscellaneous Offences Act, which relates to any act that is likely to lead to a breach of the peace or to create a nuisance or obstruction. The docket was only taken to the Public Prosecutor on 8 May, whereupon he declined to prosecute and ordered the detainees to be released immediately. The women therefore were subjected to over-detention by the police in contravention of their constitutional rights and protections for the rights of accused persons. During their time in police detention the women reported death threats by police officers against the leadership of the women's group, and ZLHR lawyers delivered a formal letter of complaint to the police with a request to launch an investigation. The investigation remains pending to this date.

11 September 2006: A total of 107 WOZA members were arrested during a march to Town House in Harare. The women had been carrying objection letters and placards with them demanding better service delivery in Harare by the local authorities, more affordable rates, and the dissolution of the illegal commission that was then managing the affairs of the City of Harare. The women were met at the entrance to Town House by police and were arrested. Five police trucks ferried them to Harare Central Police Station where they were separated and taken to six different police stations in Harare (Braeside, Mbare, Glen Norah, Highlands,

Chitungwiza and Harare Central) in an effort to frustrate the efforts of their lawyers in locating them and securing their release. Some of the women were tortured during detention, while an expectant mother among those arrested went into labour and had to be rushed to Parirenyatwa Hospital where she later gave birth. Fifty-six women required medical treatment for bruises and skin diseases and upper respiratory tract disorders, which they acquired in detention due to the conditions of the cells. Many exhibited signs of mental distress. They were unsuccessfully prosecuted under the Criminal Law (Codification and Reform) Act.

8 May 2007: Beatrice Mtetwa and others senior members of the Law Society of Zimbabwe marched in protest following the arrest and detention of their fellow lawyers, Alec Muchadehama and Andrew Makoni. They were part of a group of at least 60 lawyers who gathered outside the High Court to conduct a peaceful march in solidarity against this arrest. When police arrived at the scene, they forced the lawyers to disperse. Whilst the lawyers were walking back to their offices, the police began assaulting them, causing some lawyers to run for cover into the building housing the offices of the Attorney-General and the Ministry of Justice. Inside the building, a group of plain clothes and uniformed police officers in riot gear forcefully removed the lawyers from the building. Their colleagues, who had been waiting outside, had already been attacked by riot police officers earlier on. The lawyers were severely assaulted with baton sticks indiscriminately all over their bodies. One of the victims was beaten on the head, whilst another elderly lawyer was shoved around. A third lawyer was beaten on the right arm several times with a baton stick. The lawyers that had succeeded in gaining entrance into the building were bundled into a police vehicle, including Mtetwa, who was the then President of the Law Society of Zimbabwe. Special force was meted out to her, together with the other lawyers who had been rounded up, after which the lawyers were dumped on the side of a main road. Successful cases were brought against the police in this matter for damages due to the bodily harm incurred.

7 August 2007: Sixteen members of WOZA were arrested at Mucheke Stadium where they had been playing soccer and netball. The arresting officers were both from the Central Investigation Department (CID). ZLHR lawyers were denied access to the detained persons who had been taken to a rural police post. The day of arrest was a particularly cold one and most of the women did not have warm clothes. No docket was opened and no charges were preferred against any member of the group. On the first day of the arrest the women HRDs informed lawyers that they had been assaulted in the cells by a female uniformed police officer who had not disclosed the reason why she was assaulting them. On the second night, all the 16 arrested activists were assaulted, one by one, in an office at the CID Section. The police officer in charge told lawyers openly that they would continue to assault WOZA activists until they got information as to the nature of WOZA activities and their objectives. One agent from the Central Intelligence Organisation (CIO) came and was briefed by the officer in charge on the arrests. Two more women were arrested on 9 August for bringing food for the 16 activists. The women were later released on the same day, with no charges preferred against them. Lawyers had to take the 16 women to hospital for treatment of their injuries suffered at the hands of the police.

28 May 2008: WOZA embarked on a peaceful procession seeking to bring awareness of the challenges which Africans faced as they marked the 25 May Africa Day celebrations. They had advocacy pamphlets which, among other things, raised disturbing issues about the of

escalation of poverty, the low mortality rate and the post-election violence in Zimbabwe. During this peaceful procession, armed members of the riot police pounced on the women HRDs and arrested 13 WOZA activists, including Jennifer Williams, Magodonga Mahlangu, Celine Madukani and one male (MOZA) activist, Mandlenkosi Moyo. They were assaulted and verbally abused by members of the Zimbabwe Republic Police (ZRP) during arrest and detention. They were eventually taken to court on 31 May 2008, where an application for bail was successfully made. However, in a disturbing and controversial trend, the state notified the magistrate of its intention to appeal the bail decision and consequently all activists remained in custody. They appeared in the High Court on 10 June 2008, and were eventually released after the state's appeal against bail was unsuccessful.

27 October 2008: The co-ordinator of the Women's Coalition, Netsai Mushonga, and 41 other members were arrested when they assembled near the venue where the inter-party political negotiations (following disputed national elections in 2008) were being conducted, in order to influence the process. Police did not follow proper procedures of dispersing people, making their actions and the subsequent arrest and detention arbitrary and unjustifiable. After three hours, the women were made to pay admission of guilt fines for disorderly conduct as they had been denied access to their lawyers and did not want to spend time detained in filthy cells.

14 February 2013: About 189 members of WOZA were arrested by the police whilst holding their annual Saint Valentine's Day March in Bulawayo on 14 February. During the peaceful procession, the members were giving people roses and messages of love and peace. Police disrupted the march and arrested the women HRDs. All, save for one woman who had removed all her clothes at the police station in protest against the ill treatment, were released without charge. The remaining woman HRD, Bertha Sibanda, was charged with "public indecent exposure" as defined in the Criminal (Law Codification and Reform) Act. The police refused to release her into the custody of her ZLHR appointed lawyers. Sibanda's trial was finally conducted, and she was acquitted of the charges she was facing.

Freedom of association

In 2008 – the year of bitterly contested and extremely violent national elections in Zimbabwe – a number of women HRDs who sought to assert their right to freely associate with a political party of their choice came under particular attack.

25 April 2008: ZLHR lawyers intervened in the case of *Evelyn Masaiti & Ors v Minister of Home Affairs and Ors*.³⁸ Police from Harare Central Police Station had raided the offices of the opposition Movement for Democratic Change (MDC) political party at Harvest House along Nelson Mandela Avenue in Harare, the location where internally displaced political activists were being sheltered and protected against further attacks which had been carried out against them in various constituencies throughout the country as retribution for them voting for the MDC. Most of them had become destitute following the burning of their houses and destruction of their property. The raid was conducted in terms of a search warrant allowing the police to "search for suspicious people", defined as "articles in the possession of or under the control of MDC." In this dragnet arrest, a total of 215 people, including women and children,

³⁸ High Court Harare unreported case 2381/08.

were arrested and detained at police stations within Harare. It was ironic that the ZRP were more prepared to arrest children, women and elderly people fleeing political violence, than the perpetrators of such violence. The arrested women, children and elderly people who had become internally displaced people (IDPs) were denied access to their lawyers, medical attention and food. They were not taken to courts within 48 hours as stipulated by the Criminal Procedure and Evidence Act. As a result, the High Court ordered the ZRP to release them or take them before the courts. The police released all the detained persons on 28 April, without any charges being preferred against them. The IDPs were dumped at Mbare bus terminus in Harare and ordered to return to their unsafe villages. It is clear that these people were subjected to detention and deprivation of their liberty for no reasonable cause other than their political affiliation.

31 October 2008 onwards: A number of MDC activists were abducted and subjected to the internationally proscribed crime of enforced disappearance. This followed their arrests by the police between 31 October and 4 November 2008. At least four of them were women, and one toddler who was with his mother at the time of her arrest.

Violet Mutemagau was taken from her home by two police officers under the pretext of investigating the ransacking of her home. She was abducted together with her son Nigel, who was two years' old at the time. Whilst in the detention of state security agents, she was forced to bath in scalding hot water; icy water was then poured on her private parts and she was forced to sleep in wet clothes. Her son was also forced in and out of a refrigerator in order to force her to confess. *Pieta Kaseke* was taken in a similar fashion and was tortured by state security agents who assaulted her on the head with booted feet, poured cold water on her and forced her to sleep in wet blankets. She only reappeared on 22 December at Marlborough Police Station in Harare. *Concillia Chinanzvavana* was in the company of Collen, her husband, when she was abducted. During her *incommunicado* detention, she was assaulted under the feet and accused of having recruited youth to undergo military training. She only reappeared on 23 December 2008. *Terry Musona* was abducted from her home in Banket. She was "disappeared" and later turned state's witness. The state acknowledged having her in its custody, together with other MDC supporters. She only reappeared on 10 March 2009.

Although lawyers successfully challenged the legality of their continued detention in the High Court, the women were not released; instead, they were handed over by the security agents into the custody of the ZRP. The police proceeded to arbitrarily place them under arrest and detained them, in defiance of the court order. They were later charged with insurgency, banditry and terrorism, as defined in the Criminal Law (Codification and Reform) Act. To date, not a single individual perpetrator of such heinous international crimes has been investigated, let alone held to account, despite the fact that these individuals have been identified and named in court pleadings.

4 October 2011: Peggy Tavagadza and Agnes Muzondo, project lawyers at ZLHR, had travelled to Chipinge to facilitate a workshop that ZLHR and its community-based partner had organised. The participants were 60 women HRDs who had requested ZLHR's legal assistance as well as the services of a professional counsellor. When they arrived at the venue, they were surprised to see some young men dressed in Border Gezi (youth militia) regalia, some adult men, and some older women over and above the 60 people they had invited. Although the meeting had been "cleared", the police officer who was present advised the lawyers to cancel the meeting saying that the intelligence he had gathered was that about 60

people had been bussed to the venue to disrupt the meeting. These people had also been provided alcohol to embolden them. The women HRDs were told to follow proper Ndau protocol by the youths and not behave like “the gay snakes from Harare”. They were advised that the Chief of the area had to be invited, that they should sing the national anthem, and then commemorate every national hero before having the meeting. As they tried to leave, the youths blocked all the exit points, locked the gate, and threatened the security guard with assault if he opened the gate to allow the women HRDs out. The youths threatened to make the women HRDs statistics like all the other victims. They also wanted to set their vehicle on fire and threatened to murder the women HRDs. The lawyers and the participants eventually managed to escape after another ZLHR lawyer arrived in the company of police officers.

These select cases on freedom of assembly and association handled by lawyers and members of ZLHR provide a shocking picture of the operating environment for women HRDs in Zimbabwe and the abuse to which they have been consistently subjected. There has been an overt intensification of repression by key state actors, and also some non-state actors, against women HRDs over the years, particularly during periods immediately before, during and after elections. This growing tendency to restrict political and social space has been consolidated with startling impunity, selective application of the law, and the continued promulgation of laws that inhibit the enjoyment, promotion and protection of fundamental rights by women HRDs. The accounts of the arrests, harassment, conditions of detention, assaults and torture exemplify the typical treatment meted out to women HRDs in Zimbabwe when they attempt to assert their rights, as well as the culture of impunity and disrespect by the law enforcement agents for the fundamental rights of the people they are obliged by law to protect. As can be seen from these cases, convictions are never secured by the state. This has confirmed the perception that laws are being used in Zimbabwe as a tool of persecution rather than of prosecution.

Participation in governance, voting and being voted into office

The Zimbabwe Election Support Network (ZESN) is a network established in 2000, with members drawn from civil society organisations (CSOs) that are involved in election related activities aimed at promoting democratic elections in Zimbabwe. Under the leadership of Rindai Chipfunde-Vava, over the years ZESN has observed electoral processes in Zimbabwe and has also successfully implemented programmes to enhance the capacity of women to participate in electoral processes. This capacity building has been provided to women across the political divide.

During a training held from 18–19 August 2014 on Gender and Elections, women representatives from political parties, the Zimbabwe Electoral Commission and civil society came together to discuss issues pertaining to women’s participation in elections. It was also an opportunity to strengthen relationships between women from political parties, the Zimbabwe Electoral Commission and CSOs working on women’s issues. Women who participated were capacitated on various election related thematic areas such as principles underpinning good electoral administration, women and the media, women in Parliament, gender responsive governance, and challenges and barriers encountered by women.

Although ZESN has recorded successes such as the co-operation highlighted above, its officers have also been subject to harassment as a result of their work in promoting democratic elections in Zimbabwe. The organisation’s offices have been raided, some staff

members have been arbitrarily detained and the general safety has been compromised during electoral periods. Some of these incidents appear below:

19 February 2013: Shortly before the national elections police officers from Harare Central Police Station, who were armed with a search warrant, raided the ZESN offices in Belgravia. They broke two panels of a security perimeter wall and gained access to the building to conduct a search. A number of documents were seized, including partner agreements and some project-related documents. The police failed to gain access to the office of the ZESN Director as she was away on business and her office was locked. The police indicated that they would post a 24-hour police detail to man the premises to ensure that the office was not entered in their absence. No one was arrested during the search and no further action was taken after this.

19 July 2013: Police officers from Avondale Police Station arrived at the ZESN offices demanding to meet with senior management. Upon attendance by ZLHR lawyers, the police officers stated that they wished to take a statement from ZESN regarding concerns the organisation had raised in relation to the Special Vote during the national elections. Lawyers advised that ZESN was not able or willing to make a statement, and the police officers left. It appeared they were fishing for information that ZESN may have collected on irregularities that had been observed during the Special Vote procedure.

23 July 2013: A few days before the elections, four police officers from Marlborough Police Station interrupted a workshop for election observers that was being conducted by ZESN in Harare. The police demanded to sit in on the meeting. Despite explanations by the lawyers that the meeting was a private meeting and did not require notification of the regulating authority, the police were adamant that they wanted to hear what was being discussed. The workshop proceeded in the presence of the police officers.

3.3 Women and peace building

Women HRDs have been involved in peace building initiatives throughout the various conflicts that Zimbabwean society has undergone. As peace champions, some women HRDs have led communities in projects that seek to eliminate incentives for violence. Projects that foster participatory democracy have also been undertaken to ensure that people are empowered to control the state's excesses and demand accountability, thus promoting peace. In spite of the restrictive environment, women HRDs continue to take centre stage in directing the activities of several national and community based organisations that aim to facilitate participatory democracy and peace building in Zimbabwe.

Women-led national organisations have collaborated on joint activities to advance the common objectives of peace building and state accountability. The Zimbabwe Peace Project (ZPP), the Zimbabwe Election Support Network (ZESN), and ZLHR collaborated in this manner in a constitution-monitoring project during the period of the Inclusive Government (2009-2013), which was known as ZZZICOMP [the acronym for ZPP, ZESN, and ZLHR Constitution Monitoring Project]. The three organisations had different areas of expertise to offer to each other in a mutually complementary manner: ZPP had a presence of monitors around the country; ZESN had the strength of many years of observation of national processes; while ZLHR offered the legal and technical expertise around constitution making.

Through this project, the three organisations were able to show that CSOs in Zimbabwe can work professionally, impartially and without being affiliated to any political party in order to build state accountability and promote peace. ZZZICOMP was able to provide credible and substantive information on progress and challenges facing the national constitution-making process. It was hoped that the three political parties involved in the constitution-making process (ZANU PF and the two MDC formations) would take corrective measures to ensure that the process complied with international best practices and standards, and that civil society would use the ZZZICOMP findings to press for greater accountability of political players during this process.

Being a patriarchal society, and with three women HRDs taking an initiative to influence national processes, some men within political parties and civil society were not very comfortable with this; nor were they happy that they had been excluded from the initiative. The three women leaders of ZZZICOMP thus gained a nickname – “*Sisis*” – being the plural of the singular Shona word, *sisi*. Ordinarily the word *sisi* is used in addressing the maid. In this case, it appeared like this word had been chosen to belittle the women HRDs who were leading this process, to continue to remind them that no matter what national processes they engaged with, they would still continue to be viewed as “lowly women” in a patriarchal manner. Despite these challenges, ZZZICOMP remains, to date, one of the few successful initiatives from civil society during the constitution-making process, and the only platform to produce substantive information from monitoring and research efforts and a written record of the national process from a non-political party perspective. Such monitoring efforts have been replicated as a best practice since that time.

It is worth recording that Jestina Mukoko, the director of ZPP, had been subjected to grave human rights violations in the past but nevertheless continued with her important monitoring and peace building work.

On 3 December 2008, Mukoko was abducted from her home in the early hours of the morning. During her enforced disappearance she was severely tortured. The Minister responsible for state security, whose agents are known as CIOs, acknowledged in court documents that his employees were responsible for her disappearance and that of other ZPP employees abducted around the same date. Mukoko was subsequently released into the custody of the police by her abductors and, despite the police acknowledging that Mukoko and others in her predicament had been kidnapped, she was detained on 22 December 2008 and was charged with violating provisions of the Criminal Law (Codification and Reform) Act. The prosecution was eventually stopped in 2010 after the Supreme Court ruled that the ill treatment Mukoko had suffered prevented the state from pursuing charges against her.

Other than the problems presented by non-state actors as highlighted above, state actors have remained very active in their harassment of ZPP.

On 6 February 2013, before national elections, at least six police officers from the Law and Order Section at Harare Central Police Station raided the ZPP offices. ZLHR lawyers who attended to represent ZPP’s interests were shown a search warrant that empowered the police to “search for articles for criminal use” as stipulated in section 40 of the Criminal Law (Codification and Reform) Act. Other charges included violating the Customs and Excise Act, as well as the Immigration Act. The police officers searched all the offices except the Director’s office (as she was away) and seized numerous documents that included incident reporting forms, files with activity information, radios and some mobile phone handsets. No employee

was arrested, either on that date or subsequently – once again highlighting the harassment faced by such organisations.

On 8 March 2013, barely a month after the previous incident of harassment arose, police summoned Mukoko to Harare Central Police Station where she was charged with contravening the Private Voluntary Organisation (PVO) Act, by managing an “unregistered” organisation. Police also charged her with further counts of contravening the Customs and Excise Act for allegedly smuggling solar-powered radios into the country, and with violating the Broadcasting Services Act by allegedly refusing or failing to register as a dealer. After recording a warned and cautioned statement in the presence of her legal team, Mukoko was released into the custody of her ZLHR lawyers and the police indicated that they would advise of any further action after assessing the docket. It is interesting to note that the police did not use orthodox methods of summoning her. The Commissioner-General of Police issued an announcement through radio and on television that Mukoko was a wanted person who the police were looking for, in relation to allegations of running an unregistered organisation. Such tactics, after her traumatising abduction, were meant to instil fear in Mukoko.

The intensity and persistence of harassment of women HRDs in leadership positions cannot be compared with that of their male counterparts. Apart from the violence inflicted by state actors, harassment of women HRDs can come from within their own sector or even within their organisations. The media has also been used as a tool to amplify patriarchal stereotypes and sometimes simply to demean the character and work of women HRDs. Numerous negative articles and opinion pieces have been written against women who assert their participation rights. The articles aim to assassinate the character of the women and to demobilise and discourage them from continuing with their important work. These articles have, at times, been highly inflammatory and in most cases have been published by state controlled media outlets. As previously noted, on 7 March 2013 there was an article in the publicly owned but state-controlled *Herald* newspaper indicating that ZPP Director, Jestina Mukoko, was on the run. Other than sensationalising the actual situation, this was a threat to Mukoko’s safety as she was presented as a criminal who was actually running away from police, yet she had not even been advised to appear at the police station.³⁹ When she did present herself the following day at the police station with her lawyer, *The Herald* published an article that falsely reported that she was facing charges of espionage and she had handed herself over to the police.⁴⁰ No attempts were made to correct the distortions or update the story.

Women HRDs have nevertheless continued to carry out their legitimate activities even in light of this repression. Indeed, they remain resilient and continue with their business as usual, even in the face of such persistent harassment from state and sometimes non-state actors.

³⁹ Razemba F “Mukoko on the run” *The Herald* 7 March 2013 available at <http://www.herald.co.zw/mukoko-on-the-run/> [Last accessed 2 March 2015].

⁴⁰ Razemba F “Jestina Mukoko turns self in” *The Herald* 8 March 2013 available at <http://www.herald.co.zw/jestina-mukoko-turns-self-in/> [Last accessed 2 March 2015].

CHAPTER 4

PROFILING THE WOMAN HRD IN ZIMBABWE

4.1 Why the woman HRD?

The story of the woman HRD is seldom told by herself, with few women being profiled in a positive manner. One of the first and perhaps last researches on women HRDs in Zimbabwe is the Amnesty International Report of 2007 that sought to increase awareness on the predicament of women HRDs at risk, what motivated them, and their objectives.⁴¹ In this chapter, ZLHR seeks to complete the picture with women HRDs saying, in their own words, what has and continues to motivate them to carry out human rights work in Zimbabwe in spite of the safety and security risks they take. The voice of the woman HRD is heard and celebrated. This selection of 32 profiles is not conclusive but a sample of the women HRDs that ZLHR has had the pleasure of interacting with over the years. There are also some guest profiles that are included, of men who have defied patriarchal ideologies and have actively, and without fear of being stigmatised as “women”, championed the causes of women HRDs in Zimbabwe over the years. The profiles of these HRDs are truly inspirational.

4.2 Community activists

Mbuya Felistas Chinyuku is a social justice activist and community builder. Chinyuku emerged as the face of resistance when the government embarked on its barbaric clean up exercise in 2005 – code named “Operation *Murambatsvina*” – that directly and indirectly affected millions of people. Aged 57 and a community social justice activist at the time, she confronted the government head-on and vigorously challenged the cruel and inhuman manner in which the destruction of homes was carried out. Leading a group of women, Chinyuku managed to secure several court orders against the government for its actions and raised the profile of the human rights violations by engaging the African Commission on Human and Peoples’ Rights. Chinyuku has continued rallying women to fight for social justice and currently is pushing the government to honour its promises to provide shelter for *Murambatsvina* victims. According to her “Men were insulting us during *Murambatsvina*, accusing us of inciting women to rise against the government but we showed them that we are made of steel. Chombo (local government minister) even personally threatened me.” Chinyuku believes women are more tenacious human rights defenders because they are the worst affected by rights violations.

Mbuya Leorcadia Sagwete is a community builder and social justice advocate. At 96 years of age and visibly frail, many would be inclined to just see out their retirement while quietly sulking about any injustice thrown at them. Not Leorcadia Sagwete, a retiree who has exhibited boundless energy in demanding constitutionally guaranteed rights, such as the right

⁴¹ Amnesty International Between a rock and a hard place – women human rights defenders at risk available at <<http://www.amnesty.ie/reports/zimbabwe-between-rock-and-hard-place-women-human-rights-defenders-risk>> [Last accessed 1 March 2015].

to water and the right to health, on behalf of her community in Harare's Marimba Park suburb. In 2014 members of her community – many of them over 90 years old – went for seven months without water supplies from Harare City Council, risking her health and that of her fellow community members. Feeling that the council was condemning her to the grave, Sagwete launched a fight to assert her rights that resulted in the council being forced to act. "How can I survive without water at my age? They wanted to send me to an early death but I am not too old to fight for my rights" she said. Sagwete rallied other community members, and after numerous, fruitless engagements with council officials, she approached ZLHR, whose intervention resulted in the council restoring water to the area. She continues to pay close attention to the rights of her community even as she battles ill-health.

4.3 Human rights/ democracy activists

Eileen Sawyer (31 March 1927–10 August 2012) was a social worker and founded the Citizens Advice Bureau and a free legal aid scheme thereunder. She was also a founder of the Legal Resources Foundation (LRF) and of the Zimbabwe NGO Human Rights Forum (the NGO Forum). It is with good reason that Eileen Sawyer is fondly remembered as the grandmother of human rights in Zimbabwe. Until her very last breath, she was in the trenches fighting for human rights – a passion that defined her life. Sawyer was often at the courts offering support to human rights defenders going through the legal tribulations that are frequently put in their way. After retiring as National Director of both the LRF and the NGO Forum, she worked as a consultant for the NGO Forum, an organisation she helped form after the 1998 food riots and which she served as its second director. Under her watch, the Forum grew from eight founder member organisations to an internationally reputable network with over 20 members. But this was just the later part of her work. After coming to the then Southern Rhodesia in the early 1960s, Sawyer set up the Council of Social Service and the Citizens Advice Bureau, which became an outpost of care in a growing climate of racial intolerance. Realising the need for legal assistance, she co-opted volunteer lawyers to give free legal assistance through the Citizens Advice Bureau in the early 1970s which later led to the establishment of the Legal Aid Clinic. After Independence she helped form the LRF in 1983. Under her guidance, the LRF worked with the Catholic Commission on Peace and Justice to unearth the extent of the *Gukurahundi* massacres. Tony Reeler, a researcher and human rights advocate, described her thus: "Eileen was instrumental in ensuring the *Gukurahundi* report was published, mostly against the inclination of the Catholic bishops at the time. Eileen always described herself as a backroom person. She was not a public speaker but she was tireless behind the scenes."

Jennifer Williams is a struggle woman. Bold, fearless and determined, Jenni Williams combines grassroots activism, street protests, petitioning and litigation to press for political, social and economic rights. Women of Zimbabwe Arise (WOZA), a women's civic organisation she founded in 2002, has grown to become one of the country's landmark human rights organisations. The word "WOZA", is an Ndebele word meaning "come forward" and, under her stewardship, thousands of women have come forward and are part of a countrywide membership of over 90 000. The firebrand activist often leads from the front, resulting in numerous arrests and beatings by the police. As a frequent guest in police detention cells, it is probably fitting that Williams was involved in a court case that resulted in the condemnation of Harare Central Police Station holding cells. She has also taken a case to the African Commission on Human and People's Rights to press for full enjoyment of the

right to protest and to expose police brutality in this regard. Many of the socio-economic rights she continues fighting for, such as the right to water, education and shelter, are covered in the new Constitution. Yet they remain rights on paper. "While we are very grateful for the inclusion of social and economic rights, the challenge is that if we look at the actual actions of government and councils, they are shredding the Constitution. For example, we have a right to water yet they are coming up with the introduction of prepaid meters, which essentially affects my right to water" she says. Her work has been recognised internationally through numerous awards, including the United States' 2007 International Women of Courage Award, the French National Order of Merit and, in 2009, US President Barack Obama presented Magodonga Mahlangu and WOZA with the Robert F Kennedy Human Rights Award.

Jestina Mukoko is a peace advocate. She is the Director of Zimbabwe Peace Project (ZPP). Celebrity television personality turned peace advocate, Jestina Mukoko is one of Zimbabwe's leading human rights defenders. She was abducted from her home in nightwear, held incommunicado, tortured and then charged as a terrorist in 2008. Yet she got the most satisfying moment in/of her human rights career in the midst of that ordeal: acknowledging Mukoko's diligence, her captors asked her how ZPP always manages to get accurate information even when some of the incidents happen at 2 am. "It was a trying time but when that was said I felt a feather being pinned in my cap" she said. Today she remains resolute in her quest to bring peace to grassroots communities, as well as to monitor and document human rights violations, despite continuing harassment. Mukoko's city office is often empty, as she trudges rural bush paths to transform both attitudes and behaviours of communities ravaged by political violence and other human rights violations. Her organisation has built a corps of peace monitors in almost every community. According to her "The state is particularly shaken by the fact that they are not aware of the number of eyes and ears that ZPP has on the ground who watch and record the breaches of peace."

Magodonga Mahlangu is a former sports administrator turned social justice activist with Women of Zimbabwe Arise (WOZA) where she found a home for her activist spirit. She has played a crucial role in building WOZA to the strong mass movement it is, practising the unique brand of non-violent methods seen during the annual Valentine's Day Love Protests. Magodonga Mahlangu along with founder Jenni Williams have formulated a brand of non-violent protest called "Tough Love". WOZA describes this guiding principle as its secret weapon of mass mobilisation. "Tough Love is the disciplining love of a parent; women practise it to press for, and to bring back, dignity to Zimbabweans. Tough Love is a 'people power' tool that any community can use to press for better governance and social justice, especially Zimbabweans. Political leaders in Zimbabwe need some discipline; who better to dish it out than mothers!" Presenting her with the Robert F Kennedy Human Rights Award in 2009, United States President Barack Obama said of Mahlangu "By her example, Magodonga has shown the women of WOZA and the people of Zimbabwe that they can undermine their oppressors' power with their own power ... that they can sap a dictator's strength with their own. Her courage has inspired others to summon theirs."

Rindai Chipfunde-Vava is an elections specialist and the Director of the Zimbabwe Elections Support Network. Her core work is a minefield. Elections in Zimbabwe are fraught with violence, vote rigging and a skewed playing environment. It is in this minefield that Chipfunde-Vava, the ZESN director for over a decade, has invested a significant part of her life to fulfil the organisation's vision of a Zimbabwe where a democratic electoral

environment and processes are upheld. With more than 30 member organisations, ZESN is Zimbabwe's largest independent elections monitoring body, a position that has resulted in frequent clashes with the government over the credibility of the electoral system. "The raids by the police, arrests of staff and security threats that we have experienced are the lowest point because as a human rights defender one is caught in between working towards a democratic society and one's own personal safety as well as that of the family. It's very difficult having to balance those two aspects." Remarkably, Chipfunde-Vava and ZESN's work has borne some fruit despite the hostility. Though piecemeal, government has been forced to put in place some electoral reforms following ZESN's continued advocacy and lobbying. However, her work is far from done due to the continued treachery that characterises Zimbabwe's elections. Having observed numerous elections in SADC as well as in Asia, North and South America, Chipfunde-Vava has a firm grasp of the deficiencies of Zimbabwe's electoral system.

Yvonne Musarurwa is a political and social justice activist. For many young female human rights defenders, Musarurwa is a symbol of resilience. She spent over two years languishing in remand prison on trumped up murder charges but she has refused to be broken down by a skewed justice system that she says is tailored to punish and scare human rights defenders. Her experiences in prison, where she was kept in isolation, were traumatic. But those permanent scars have not slowed her down. Musarurwa says "It was hell. It is life threatening torture to be forced to spend more than 23 hours confined to a prison cell, locked up and all alone. I was tormented physically and physiologically.. It was so hard that if I had not dedicated myself to the struggle for change I could have died in there. I could have committed suicide but I dedicated myself to achieving democracy. I want to change the nature of politics in Zimbabwe."

Abel Chikomo is the Executive Director of Zimbabwe Human Rights NGO Forum, a network of 21 Zimbabwean human rights NGOs. Chikomo has used this position to push for the promotion and protection of all human rights across the gender divide. He has been an active human rights defender for 15 years now. Chikomo believes that we all can be "women human rights" defenders; everyone can defend women HRDs. He is convinced that much of what has been gained with regards to human rights in general, and to women's rights in particular, is thanks to the work of women themselves. They risk imprisonment, harassment, violence, torture and even death. As women, they are also exposed to gender specific risks and are targets of gender based violence. Over the years, Chikomo has supported the cause of women human rights defenders through active contribution to initiatives like ZZZICOMP. He has also campaigned for the freeing of detained women human rights defenders and observed the trials of those hauled before the courts. Chikomo is dismayed by the targeting of women HRDs simply because of who they are and for what they do. His passion and support for the work of women human rights defenders has earned him the title "sisi" (sister).

Lucky Ncube joined WOZA in 2006 and became a facilitator of civic education. He was impressed by the objectives of WOZA in mobilising, encouraging and empowering women with knowledge of their rights, as well as their dignity in carrying out this work to claim full enjoyment of women's rights by demanding social justice from their leaders. Ncube had witnessed the suffering of women; that also affected him. After joining WOZA he became aware of the human rights duties and obligations of the state and wanted to support the women of WOZA to help foster the courage that women possess, even in very difficult times.

Ncube thinks that society must understand their rights and responsibilities for abuse of women in all spheres of life to stop and feels that women of WOZA are very strong and can overcome many situations because of their form of resistance – Tough Love – as well as their dream of an end to the harassment and intimidation of women HRDs by the police.

4.4 Human rights Lawyers

Their activities centre around litigation and they are the last line of defence for community members, CSOs and other HRDs who have suffered rights violations. They also capacitate communities to be able to assert their rights.

Agnes Muzondo is a legal practitioner who has worked in human rights for over nine years. She was inspired to become a human rights defender after observing the injustices faced by vulnerable persons including women, children and those with limited resources to access justice through the country's justice delivery system. It is her intention to be an advocate for positive social change through the use of progressive legislation and policy through awareness raising and litigation. Muzondo is currently employed at ZLHR as Project Lawyer where she focuses on accountability of institutions and the alignment of laws to the new Constitution. She is part of a team that has been critically analysing laws and presenting policy briefs and positions papers to Parliament with a view to playing a part in crafting laws that protect all citizens including the most vulnerable. She has also been responsible for conceptualising and implementing education programmes for a cross-section of stakeholders including HRDs and government institutions and assisted in organising regional symposia to formulate guidelines of best practices for effective administration of justice in Zimbabwe and the SADC region.

Beatrice Mtetwa is a human rights lawyer: she is loved by human rights activists and hated by perpetrators of human rights abuses in equal measure. The numerous awards she has won for her work, and the frequent arrests and harassment she has endured for the same work, are testament to her tenacity. Starting off as a prosecutor in Swaziland after graduating from law school in 1981, Mtetwa moved to Zimbabwe in 1983 and continued as a prosecutor until 1989. Today, she is a partner in Mtetwa and Nyambirai Legal Practitioners and is one of the world's most recognisable human rights defenders. For Mtetwa all human rights are equally important, hence her involvement in a myriad of cases and issues ranging from civil and political rights to the rights of the vulnerable – children, women and prisoners. But her good work has also attracted hostility from state agents and she has been arrested, detained and even imprisoned for conducting her professional duties. One of her most horrendous experiences was being sent to remand prison after her arrest on 17 March 2013 for representing a political client. The harassment took a sinister and personal turn during the same year. "My personal life was dissected in all respects. Police were sent to look at files that had nothing to do with the case; going to the Law Society to see if my file had complaints from clients, going to the High Court to look at my divorce files, going to my ex-husband to dish out dirt on me, going to ZIMRA to see if I had smuggled anything into the country" she recalled. Yet, despite all this, she remains unwaveringly committed to human rights work.

Bellinda Chinowawa is a Projects Lawyer at ZLHR. She is a litigator with a special interest in strategic impact litigation. Using ZLHR's unique position as a vanguard for the downtrodden, Chinowawa has played a role in the use of the law to advance social justice and she strives to protect the rights and dignity of those who find themselves at the mercy of the state. When

asked what motivates her, she said “what spurs me on is a heightened sense of injustice, and the firm belief that the coercive power of the state should only be used to protect all its citizens, and not just a select few.” As a result of the work Chinowawa has done, the Constitutional Court has issued judgments mandating a more dignified system of detention for female detainees, while the African Commission on Human and Peoples’ Rights has urged the Zimbabwean government to extend the right to participate in political processes to Zimbabweans based abroad.

Blessing Gorejena is a human rights lawyer and currently the Projects Co-ordinator at Zimbabwe Human Rights NGO Forum. For the past decade, Gorejena has been pursuing perpetrators of torture and other heinous human rights abuses through every legal channel available. Since joining the Forum in 2004, she has been fighting impunity by litigating against perpetrators of human rights violations in local and regional courts. Gorejena has successfully raised attention to the Zimbabwean situation internationally through litigation and engagement at forums such as African Union meetings, the SADC Tribunal, the African Commission on Human and Peoples’ and the UN Human Rights Council Universal Periodic Review of Zimbabwe. In Zimbabwe, she travels extensively across the country to raise awareness on the Constitution and human rights, as well as to engage with diverse key stakeholders such as the government ministries, parliament, the judiciary and the police. The organisation she works for is a regular target of state harassment and Gorejena acknowledges she sometimes fears for her safety: “Our work brings tension because government is not appreciative of what we do. But hearing the testimonies of people like Jestina Mukoko and Beatrice Mtetwa; the way they have remained unshaken in their work despite the kidnapping, torture and imprisonment they have gone through, gives me strength.”

Connie Nawaigo-Zhuwarara is the Project Manager at Zimbabwe Lawyers for Human Rights. She has been involved in human rights and gender work for the past 12 years in both Uganda and Zimbabwe. Through her work Nawaigo-Zhuwarara has pushed for gender equality and the promotion and protection of human rights. “My continued involvement in human rights has been motivated by a simple realisation that it is possible to contribute meaningfully toward the realisation of women’s rights in Zimbabwe. I have actively been participating in fostering the reform, change and transformation seriously needed in the area of gender and rights in Zimbabwe. I have also advocated for gender equality in the SADC region when serving in the gender committee of the SADC Lawyers Association,” says Nawaigo-Zhuwarara. She has worked in the field of human rights for a considerable time and has been involved in human rights training, in Zimbabwe and the wider SADC region under the auspices of both ZLHR and the SADC Lawyers’ Association. She is currently involved in work around human rights in the region, including carrying out a needs assessment research on challenges and inequalities faced by women in the legal profession. Nawaigo-Zhuwarara has also been involved in various community development initiatives in which she is a strong advocate for the development and enhancement of women’s social entrepreneurship with the aim of improving women’s rural livelihoods.

Irene Petras is the Executive Director of Zimbabwe Lawyers for Human Rights – a position she has held since January 2008. Prior to joining ZLHR, Petras, a lawyer by profession, spent several years working for a leading human rights law firm in Harare. This was when her passion for human rights promotion and protection was stirred, through interaction with leading human rights lawyers and rights activists who were represented by the law firm. Her

work now focuses on how to walk the tightrope of holding government accountable for their actions through litigation and promoting respect for the Constitution, whilst encouraging legal and institutional reform through policy engagement and advocacy. “I believe in active citizenship and in using my professional skills to contribute in my own small way to promoting accountability and fighting impunity. I am constantly filled with admiration for the resilience and courage of those on the margins of our society who, nevertheless, put themselves on the line to improve their situation and that of those around them. If they can do it, who am I to shy away from my responsibilities?”

Jessie Majome is a human rights lawyer and also a member of the National Assembly for Harare West Constituency. Majome is one of the most prominent figures on Zimbabwe’s human rights scene. Since her days as a young lawyer based in Hwange, Majome has been in the forefront of Zimbabwe’s democratisation agenda. She was part of the National Constitutional Assembly from its formative years and later became its spokesperson at a time when the organisation was the face of the country’s struggle for a new democratic Constitution. She later became involved in the drafting of Zimbabwe’s current Constitution as a member and deputy co-chairperson of the Parliamentary Select Committee on Constitutional Reform and Information and Publicity Sub-committee chairperson. Majome tenaciously fought for many of the progressive political, social and economic rights to be included in the current Constitution, which was adopted in 2013. A proponent of free speech, she is in regular touch with members of her constituency and the wider public using social media platforms. Majome is also frequently involved in community human rights awareness programmes. For her, awakening citizens to their rights helps drive them to demand their rights with more vigour. “Who are the owners of this Constitution? Is it government? Is it us?” she asks. “As citizens we don’t seem to be exhibiting the will to push and demand. There is definitely no political will but I also want to bring it to the citizenry of this country that they too have a responsibility as owners of the Constitution.” Majome matches her words with action. She has refused to pay the state broadcaster’s (ZBC Holdings) car radio listeners’ licence and has taken up the matter with the Constitutional Court.

Kudakwashe Chitsike is a researcher, human rights lawyer and the Director of the Research and Advocacy Unit (RAU). Kuda Chitsike has been involved in human rights work for the past 15 years. Her biggest motivation is the bravery of the unrecognised women human rights defenders who endure political violence in rural areas but have remained defiant. According to Chitsike “They speak out in order to ensure that their stories are heard and documented for posterity; for example, the research we did with women in 2009 who are still connected to us and who were and still are prepared to speak about politically motivated violence they suffered.” In 2009, Chitsike told the Zimbabwean story to the world in a big way when she led a team that produced a documentary entitled *Hear Us: Zimbabwean Women Affected by Politically Motivated Violence Speak Out*. Shown throughout the world, the documentary highlighted the gallantry of Zimbabwean women human rights defenders who often have to endure violent reprisals. Since her appointment as RAU director, she has taken the organisation through a strategic change, focusing on encouraging citizens, especially women, to be more involved in governance issues.

Maureen Sibanda Shonge is a Project Lawyer at ZLHR and has eight years of extensive work experience in human rights work and research. Her main focus has been on the protection of human rights for vulnerable and marginalised groups such as women, children and prisoners.

She has been involved in training lawyers and other sector specific groups such as members of parliament. From the years 2008–2011 she worked as a researcher at RAU. She has experience in video advocacy and has been involved in the production of two documentaries on political violence against women. Shonge says: “In a world where many injustices are being perpetrated for various reasons, human rights reflect the standard that we want to live up to, changes in behaviour, values and attitude that we want to see. They are a universal language, spoken by rich and poor alike. Human rights work is the vehicle through which I make my own small contribution to building a society that I want my children to grow up in. Through human rights work I can also ensure that my fellow citizens are treated in the best human way possible. I can assist to create mechanisms that make my government account for its actions, provide services that it should, and act in a manner that ensures that the lives of its citizens become better. Therefore through research, policy analysis, trainings and documentary making I do human rights work to make a difference!” Shonge has been motivated in her human rights work by women such as Justice Amy Tsanga and Kudakwashe Chitsike who have a passion for women’s human rights and access to justice.

Nosimilo Chanayiwa is a human rights lawyer with ZLHR in Bulawayo. She is driven by a strong desire to use the law to bring about positive social change. “Poverty, marginalisation and inequality in society is in most part brought about by policies and laws that are not pro-poor; as such, human rights lawyering contributes towards the shaping of laws and policies for the benefit of the general public.” Chanayiwa’s work is rooted in assisting the poor and vulnerable attain and defend their socio-economic rights. She is currently working with Bulawayo residents to defend their right to water, which is under threat from the Bulawayo City Council’s plans to introduce pre-paid water meters. Her work has also resulted in improved access to healthcare for women, evicted families returning to their shelters, and children illegally chased away from school regaining their right to education. Political and civil rights are equally important for Chanayiwa; hence she is regularly in court defending political activists and human rights defenders. When she is not in court or at the office, she travels throughout the Matabeleland region conducting mobile legal clinics to raise awareness on human rights issues.

Precious Chakasikwa is a human rights lawyer and also the ZLHR board vice-chairperson. She is a Councillor of the Law Society of Zimbabwe and also a board member of the Voluntary Media Council of Zimbabwe. Chakasikwa is a strong advocate for and of children’s rights, women’s rights and media freedom, as well as human rights defenders’ rights to carry out their legitimate work unhindered. She believes Zimbabweans should treat human rights as part of their culture and has vigorously fought for the protection of these rights as the ZLHR board vice-chairperson and in her own individual capacity, as well as being vocal in her condemnation of the government’s lethargic enforcement of constitutionally guaranteed rights. Chakasikwa has also been pushing for more effective parliamentary oversight over state institutions to improve service delivery. Despite safety concerns over her human rights work, she says: “We can’t all sit back or scurry. The work has to be done. When you see the success that organisations such as ZLHR continue to score, not only in the courts but generally in educating people and bringing awareness about human rights, you want to be part of it and it gives one satisfaction that the work has not been in vain. Further, when you see those colleagues who have been victims of torture, arbitrary arrests and harassment such as Beatrice Mtetwa and Jestina Mukoko continue to do the work, you are motivated.”

Peggy Mapfumo-Tavagadza is a human rights lawyer at Zimbabwe Lawyers for Human Rights. Mapfumo-Tavagadza's greatest satisfaction from her work comes in the form of a cow named "lawyer" in tribute to her work – which is testimony to her dedication to helping downtrodden rural people to stand up to institutionalised impunity. She is based in Mutare and travels extensively to raise constitutional awareness among grassroots communities in urban and rural Manicaland. So vigorous has Mapfumo-Tavagadza been in helping villagers fight institutionalised impunity that one of her Honde Valley clients – a victim of police assault – used part of her compensation to buy a cow she called "lawyer" as a tribute to her. Mapfumo-Tavagadza is aware that human rights work, despite the dangers involved, is no ticket to riches. "The desire to make a change and promote human dignity motivates me a lot. When you get to a police station and you see your client soaked in blood and human waste, you just can't stand and do nothing. At that same station within earshot you hear someone screaming in pain, the least you can do is to do something. I have a strong support system in ZLHR, an institution that is just passionate about using the law to make a difference in people's lives."

Sarudzayi Njerere is a human rights lawyer and women's rights advocate. Njerere, who started her career as a public prosecutor in 1997, is a crusader of women's rights and her name is synonymous with landmark women's emancipation cases. Her work challenging customary laws and practices, as well as a guardianship system rooted in patriarchy, has left a lasting mark in the struggle for women to be regarded as equal citizens with full rights. In 2010 the Supreme Court passed a groundbreaking ruling allowing women to obtain passports for their children in the absence of the child's father after she challenged sections of the Guardianship of Minors Act. The Act recognised only the father of children born in wedlock as the natural guardian of such children who exercise this right in "consultation" with the mother. The Supreme Court agreed with Njerere that the law was discriminatory against women. Thanks to her efforts, Registrar-General Tobaiwa Mudede can no longer force married women to change their surnames as a condition for acquiring birth certificates for their children, after she sought a court order barring the practice. Currently, she is among human rights defenders campaigning for the amendment of the Termination of Pregnancy Act so that abortion can become every woman's option.

Sheila Jarvis: The story of human rights defenders in Zimbabwe will never be complete without mention of Sheila Jarvis. She has been involved in electoral issues, defence of human rights defenders, institutional reform and anti-impunity campaigns, as well as vigorous lobbying for the rule of law and a democratic Constitution. "The new Constitution is an excellent document, except that transitional provisions added by politicians defer all hope of headway on democracy and other vital rights for another decade, at least." Jarvis has been successfully involved in some of the most significant legal challenges on electoral issues as a lawyer and campaigner for peaceful and credible elections. Her dedication to social justice has also seen her fighting for children's rights. Between 2005 and 2008 she was instrumental in keeping schools open when the government arrested some school authorities and was moving to close some private learning institutions over a fees' row. Jarvis is a forceful human rights defender who aggressively combines litigation, advocacy and street protests to keep the spark against tyranny alight. In 2008 she was one of the human rights defenders who risked life and limb to conduct street marches and distribute leaflets demanding the release of Jestina Mukoko, who had been kidnapped and held *incommunicado* at the time. Mukoko was released after the march. Yet Jarvis refuses to take the credit for the works she does with so much

passion, saying. "The credit goes to the courage of decent ordinary people who keep risking everything for freedom. They motivate me."

4.5 Media practitioners

Thelma Chikwanha is a journalist by profession and is the political editor of *The Daily News*. Chikwanha is one of the few women holding a senior editorial position in Zimbabwe's male dominated media industry. As political editor of one of the country's largest newspapers, she has used her position to push for the promotion and protection of human rights across the gender divide. Like most human rights work, journalism is fraught with dangers and brings with it enemies, particularly for journalists like Chikwanha tackling human rights issues. "That does not deter me" she says. "Journalism is not a popularity contest. It is about taking the side of the weak, those vulnerable people whose rights are constantly violated by powerful actors. The biggest motivating factor is being a voice of the voiceless. When I bring human rights issues to the fore, it gives me an opportunity to influence policy at the highest level." In 2013 Chikwanha spent time with female prisoners. A series of stories she wrote on their plight not only brought her an award but also resulted in more humanitarian support to prisons from organisations and individuals, as well as a commitment by prison authorities to improve the situation.

Debra Duduzile Silibaziso Mabunda is the Executive Director of Radio Dialogue and a human rights advocate. She is a registered nurse by profession and has always been a person who wants to see justice for all. Mabunda believes everyone has a right to exercise their potential but the suffering of so many people, particularly women and children, has been her biggest motivation to continue this work. Most satisfying moments for her have been hearing women demanding their rights and talking about issues that affect them daily. She believes the best tool for human rights is knowledge and information. When people start talking and demanding service from their leaders, she really feels good. The low points have been the lack of rule of law and the continued acts of police harassment – even after these have been exposed – because there is no one to police the police. However, she has seen some improvement in the attitude of the police towards citizens at an individual level and believes we are going in the right direction. "Zimbabwe will improve its human rights record when there is full rule of law. This will only come about when the ordinary citizen is able to hold its leadership to account. Empowering the citizenry is the way forward."

4.6 Medical practitioners

Dr Rutendo Bonde is a medical doctor by profession. She is the current chairperson of Zimbabwe Doctors for Human Rights and has been a board member of CEDAS Trust (HIV Orphan protection) since 2007, where she is also chairperson of the programmes committee. Dr Bonde took over as ZDHR chairperson in 2011, a period when health rights activists suffered political prejudice. "It was difficult for stakeholders to distinguish this work from politics," she recalls. Her organisation has been in the crosshairs of state and non-state actors angered by its assistance to political violence victims. Yet it was a public health crisis that drove Bonde into activism. "When almost 4 000 people died of cholera in 2008/9, it really spurred me on to say I cannot keep quiet, I am compelled to speak up for the sake of the people." Since then, she has been advocating for the health rights of prisoners and impoverished rural women, who have little or no access to health care, and the improvement

of the public health sector. As a passionate advocate of children's health rights, Bonde has been encouraging religious sects that deny children access to healthcare to abandon the practice. She believes lack of political will is undermining progressive health rights embraced in the new Constitution: "It's time to walk to the talk."

Dr Frances Lovemore is Medical Director of the Counselling Services Unit (CSU) which provides medical and rehabilitative services for victims of violence and torture. The United Nations Convention against Torture mandates that all victims of torture have the right to restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Over the last 15 years, CSU has developed an integrated and holistic service encompassing all rights for all victims of torture in Zimbabwe. The development of this service has required vision and commitment – and often professional isolation – as the definition of torture is not easily accepted by the state or health professionals, who consequently are not committed to the rights of the victims. Dr Lovemore says "I have a team of professional and support staff who are dedicated to all aspects of the rights of victims and give their all to deliver these rights, and this, coupled with the resilience of the human spirit as evidenced in survivors who are able to continue with their lives and the privilege of working with extraordinary people, is what keeps me dedicated to the work."

4.7 Sexual and reproductive rights activists

Martha Tholanah's everyday work is to fight for the rights of marginalised groups: a mission she has pursued with bravery in the face of arrests, prosecution and adversity from Zimbabwe's patriarchal society. A trained family therapy counsellor, she works with young women living with HIV to assert their rights and challenge political and social stereotypes imposed by Zimbabwe's male dominated political leadership. At Gays and Lesbians of Zimbabwe (GALZ), Tholanah is involved in health programmes and advocacy work to create a safe space for the lesbian, gay, bisexual, transgender and inter-sex (LGBTI) community, whose members are a constant target for/of harassment by state and non-state actors spurred by a political leadership that routinely spews hate language against the LGBTI community. The GALZ office is regularly raided and members are subject to regular harassment.

According to Tholanah: "By honouring my work we recognise the human dignity and spirit of every person. My wish is that the violence and discrimination in Zimbabwe finally stop, and that all people will come together to end discrimination against marginalised communities." Tholanah's activism is a powerful example of a straight ally standing in solidarity with LGBTI people despite threats to her own safety and security. She also demonstrates extraordinary leadership on behalf of other marginalised communities, fighting for women's rights, disability rights and sex worker's rights, both locally and internationally. General homophobia and restrictive laws make it difficult for LGBTI people in Zimbabwe to feel safe about being open about their sexuality in public spaces and so the community is not yet ready to march onto the streets in numbers and celebrate "gay pride".

Winnet Shamuyarira is a sexual and reproductive rights activist. Shamuyarira knows how it feels to be arrested just for being a woman. In her own words: "I have been arrested twice, allegedly for loitering for the purposes of prostitution. And the only reason I was arrested on both occasions is because I am a woman. The incidents stirred in me an awareness that in Zimbabwe, as a woman, I am still treated as a minor with no control over my body. The events showed me how patriarchy works and how it needs to be challenged." As programmes

manager of Katswe Sistahood, Shamuyarira is intimately involved in sexual reproductive rights campaigns with college students, young mothers and young professional women. Campaigns by Katswe Sistahood, such as the mini-skirt march to protest the harassment of women, have grabbed global attention. Shamuyarira, who started human rights work as a first year university student in 2002 after realising inequalities between male and female students, closely works with commercial sex workers to protect and promote their rights. Her line of work has often exposed her to negativity (she was once shunned by a boyfriend who fled after learning the nature of her work) and she constantly gets “advice” to stop helping sex workers. According to Shamuyarira “The work we do is deemed controversial because we are trying to break barriers. Sex is a taboo and we are breaking that taboo.”

4.8 Women’s/ Children’s rights activists

Netty Musanhu is a women’s rights advocate. She is currently the Director of Musasa Project. Since the time she left university in 1999, Musanhu has known no work other than protecting and promoting human rights, having worked with Zimbabwe Women Lawyers Association and Action Aid before joining Musasa Project in 2010. In most communities, Musasa Project is synonymous with women’s rights because of its spirited fight against domestic violence. Musanhu says an entire community suffers when women suffer domestic violence. The 40-year-old’s work entails more than fighting domestic violence: she is actively helping rural and urban women access services such as counselling, legal aid, shelter and life skills. Musanhu spends a lot of her time “on the ground” in rural communities engaging women. Their stories have not only been a motivating factor but have helped her conduct effective, evidence-based advocacy. Her line of work doesn’t always bring friends in a patriarchal society, still uncomfortable with the concept of empowered women. “Some want to associate Musasa [Project] with breaking up marriages and influencing women to disrespect their husbands. We have to endure negative labels; being called dirty names every day for trying to empower women.” Her fightback strategy has been to engage community leaders within institutions such as churches and the traditional leadership who are often her foes; a strategy that has helped deepen the appreciation of women’s rights and empowerment.

Sylvia Chirawu is a lawyer by training and the National Director of the Women and Law in Southern Africa Research and Education Trust (WILSA). She is currently undertaking doctoral studies focusing on the impact of migration on family law in Zimbabwe. Chirawu is the deputy chairperson of the Anti-Domestic Violence Council of Zimbabwe and also sits on the Estate Administrators Council of Zimbabwe. Through her work Chirawu has focused on access to justice by indigent women by the provision of legal aid and services to such women. She has a passion for the rights of the marginalised in society and strives to enhance the rights of women through strategic impact litigation, such as the recent filing of a case before the Constitutional Court concerning a woman who was discriminated against on the basis of her HIV status. Chirawu has been involved in much work related to law reform and participated keenly in the promulgation of the Domestic Violence Act. In the constitutional reform process, she advocated for the inclusion of gender equality and women’s rights by providing constitutional literacy to communities. She also sat in the G20 group comprising civil society members and the Women’s Parliamentary Caucus that shadowed the process to ensure that gender and women’s rights were taken into account. Chirawu has contributed as an international expert on gender, women’s property and inheritance rights, access to justice and domestic violence. She has also travelled the world and presented papers on gender and

women's rights. Chirawu teaches the law of succession and family law at the University of Zimbabwe, where she imparts knowledge from a practical point of view.

For as long as Zimbabwe continues to move very slowly towards a culture of human rights for all, women HRDs will continue to contribute to this evolution. They will indeed remain resilient, as they know that they bear the greatest burden of the impact of this slow transition. The struggle is to ensure that all people living in Zimbabwe are afforded their entitlement to be treated as human beings, and as full and equal citizens.

CHAPTER 5

TOWARDS A CONDUCTIVE ENVIRONMENT FOR WOMEN HRDS

5.1 Why the need to create an enabling environment?

Several resolutions have been adopted by the United Nations and within the African human rights system to strengthen the protection of HRDs. In spite of such efforts at the international and continental level, women HRDs in Zimbabwe have continued to be on the receiving end of abuse and violations.

Over the years, as highlighted in the cases presented in this publication, ZLHR has intervened through litigation and other activities and has documented information on the experiences of, and challenges facing, women HRDs. The nature of their interaction with state institutions – particularly from primary sources such as legal records, affidavits and court process collected and utilised by lawyers representing the women HRDs – provides a clear evidence base of the level of abuse and tactics to which women HRDs are exposed. These challenges can begin to be addressed when state actors become willing to comply with their obligations and where there is transformation in attitudes, policies and practices of state institutions. Improved protection will also depend on law reform as well as the will of society to embrace such changes in both private and public spheres.

There has been some movement by some governments from around the world (including Latin America and some Asian countries) to give effect to the rights of HRDs. In such progressive countries a number of laws, policies and institutions have either been transformed, or created where they did not exist, as protection of HRDs begins to be taken more seriously. These reforms have been influenced by the United Nations as set out in Article 12 of the Declaration on HRDs, which guarantees the right of everyone, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms. Governments are also obliged to take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in the UN Declaration on HRDs. This obligation means that everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to states that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights.

Of particular interest to women HRDs is UN General Assembly Resolution 68/181 of 18 December 2013 - *Promotion of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: protecting women human rights defenders*. This resolution calls on UN member states to take appropriate, robust and practical steps to protect women HRDs. It also

states that women HRDs must participate in the development of effective policies and programmes related to their protection, recognising their independence and expertise with regard to their own needs, and the need to create and strengthen mechanisms for consultation and dialogue with women HRDs. Zimbabwe is also urged to adopt and implement policies and programmes that provide women HRDs with access to effective remedies.

5.2 Recommendations for institutional reform

To Independent Constitutional Commissions

Zimbabwe Human Rights Commission

- Create awareness on the rights, roles and responsibilities of HRDs and the particular special situation of women HRDs.
- Support and ensure the documentation and investigation of violations against women HRDs in Zimbabwe, including provision of remedies where such violations are confirmed.
- Integrate a gender dimension into the planning and implementation of all programmes and other interventions related to human rights promotion and protection to ensure that there is equal access to, and benefit from, the ZHRC by both men and women HRDs.
- In its role of advising government on whether laws comply with its human rights obligations, consult women HRDs to identify laws with an impact on their activities, and to obtain their views on how they have been affected and what steps can be taken to ensure legislative reform and non-recurrence.
- Ensure full participation in consultations of all women HRDs including those in rural communities, marginalised women (living with disabilities, or from minority groups) in order to make necessary reform recommendations that promote the rights of all women HRDs.
- Investigate all cases of violations of rights of women HRDs and ensure perpetrators are brought to book, in order to fight stigma and the culture of impunity.
- Frequently visit women HRDs in detention to ascertain their condition to minimise incidence of torture as well as other violations against them.
- Work with traditional chiefs, headmen and community leaders to enhance understanding on the role of women HRDs in the private and public sphere, in order to contribute effectively to changing negative attitudes and practices.

National Peace and Reconciliation Commission

- In its processes, once established, ensure that there is effective participation of women HRDs in all initiatives, including transitional justice processes, to secure accountability and redress for previous violations and abuses.
- Ensure that there is gender mainstreaming in the planning and implementation of its programmes for women HRDs to allow them to fully participate and benefit therefrom; including gender-specific programmes to address violations that have been perpetrated on women as a specific group (such as women subjected to rape and other forms of gender-based violence in the political sphere).

- Through its activities, work towards ensuring that the guarantee of non-recurrence incorporates overcoming the root causes of gender-based violations and abuses in everyday life and in public institutions.

Gender Commission

- In its programmes, create awareness on the need for gender equality for HRDs to ensure that women HRDs are treated with respect even from their male counterparts.
- Ensure that its programmes target for redress the challenges and violations facing all women in both the private and public sphere.
- Work with traditional chiefs, headmen and community leaders to enhance understanding on the role of women HRDs in the private and public sphere, in order to contribute effectively to changing negative attitudes and practices.

To Justice delivery actors

The Zimbabwe Republic Police

- Include as a core component in its training and education curriculum the provisions protecting the rights of women in the new Constitution, other national laws, as well as the contents of regional and international human rights instruments to which Zimbabwe is bound; and to incorporate the contents of the various UN resolutions on women HRDs in order to build respect for the law and reduce the persecution of legitimate women HRDs.
- Set up a gender desk that receives complaints from women HRDs and efficiently and effectively deals with such complaints in order to stamp out the culture of impunity in cases of violations of the rights of women HRDs.
- Investigate first and only arrest women HRDs where there is compelling evidence of commission of real crimes: not arrest to investigate even where there is no evidence.
- Cease the selective application of provisions of the law against women HRDs, including but not limited to the Criminal Law (Codification and Reform) Act, the Public Order and Security Act and the Miscellaneous Offences Act.
- Investigate all outstanding cases of violations of fundamental rights of women HRDs that are criminal offences and complete dockets for prosecution.
- Take urgent measures to comply with the Constitutional Court's ruling in relation to the conditions of detention for women in all police stations, holding cells and other places of detention.

The National Prosecuting Authority

- Refrain from prosecuting women HRDs without clear evidence of the commission of a crime; exercise effective and diligent prosecutorial discretion.
- Through the prosecutorial discretion, prevent criminalisation of the work of women HRDs by not instituting unfounded prosecutions.
- Institute and vigorously pursue prosecutions in past and future cases of violations that affect women HRDs without fear or favour, even in instances where state security agents or high profile government people are involved, so as to counter impunity and reduce the recurrence of violations against women HRDs.

The Attorney-General

- Diligently advise all state institutions and actors on their role in promoting and protecting the rights of women HRDs and refuse to defend any state actor and institution violating such rights.
- Urgently pursue the legislative reform processes necessary to ensure that all laws relevant to women (including women HRDs) are aligned with the Constitution of Zimbabwe and regional and international instruments that promote and protect the rights of women HRDs.

The Judiciary and Judicial Service Commission (JSC)

- In all courts, exercise its function as the third arm of government independently, without fear or favour, in order to protect the rights of women HRDs who are victims of human rights violations, ensure effective remedies, and fight the culture of impunity for such violations.
- The JSC must put in place training programmes to improve understanding of violations against women HRDs and create awareness on the important role they play; and to strengthen capacity of the judicial role, through the adjudication process, in preventing and addressing such violations.
- Expeditiously deal with cases of violations of rights of women HRDs and hold the perpetrators to account in criminal and civil matters.

Zimbabwe Prisons and Correctional Services

- Ensure that where women HRDs are detained in its facilities, they are treated with dignity and respect and in accordance with the rights afforded them in the Constitution, whether they are awaiting trial detainees, or convicted prisoners.

Parliament of Zimbabwe

- Ensure that all proposed new legislation and amendments to existing legislation, comply with the Constitution of Zimbabwe and regional and international human rights instruments in relation to the protection and promotion of the rights of women, and particularly women HRDs.
- Raise questions and pursue motions that will improve the protection of women HRDs and hold perpetrators of crimes against them accountable.
- Through the work of various portfolio and thematic committees involved in human rights, women's rights and justice delivery, seek to ensure that the issues raised in this publication are debated and investigated, and that there is regular interface with organisations and individual women HRDs on their situation and what can be done to improve it.

5.3 Recommendations for law reform

- Women HRDs must be fully consulted and their views must be taken into account in the law reform process that is taking place to harmonise all laws with the Constitution of Zimbabwe.
- All law reform initiatives in the future must be fully accessible to women HRDs.

5.4 Recommendations to CSOs

- Continue to monitor and document the challenges faced by women HRDs in the private and public spheres and provide recommendations for reform and other action points to influence positive change.
- Continue to provide the necessary safety nets – legal, psychosocial - and welfare support to women HRDs in order to allow them to continue their critical work.
- Carry out comprehensive awareness programmes within the broader civil society, and within CSOs themselves, to ensure that women HRDs within these institutions are accorded the respect and non-discriminatory treatment they deserve as equal partners in the struggle for democracy, rule of law and development.
- Develop programmes to address patriarchal stereotypes of women HRDs, particularly at the community level, in order to contribute to changing attitudes and practices at all levels of society.

5.5 Recommendations to the media

- The Voluntary Media Council of Zimbabwe must act decisively against journalists and media houses publishing articles that qualify as hate speech against women HRDs, both public and private media and whether print or electronic.
- Editorial policy at media houses should ensure that gender is mainstreamed and their policy and content specifically addresses the challenges, successes and programmes of women HRDs, who have been much marginalised in such coverage.
- There is a need to distill the patriarchal ideologies that result in negative articles being written about women HRDs who challenge their prescribed roles. In this regard, the media must ensure their capacity building initiatives address such issues and improve understanding and linkages with women HRDs and those who work on human rights and women's rights issues.

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7. *Hanzi v ZINARA & 3 Ors* High Court Harare unreported case 260/2012
8. *Madziva v Minister of Education* High Court Harare unreported case 1839/14
9. *Majome v Zimbabwe Broadcasting Holdings & 3 Ors* Constitutional Court unreported case 67/13
10. *Makani & 5 Ors v Epworth Local Board & 3 Ors* High Court Harare unreported case 8596/14
11. *Mapingure v Min of Home Affairs & Ors* Supreme Court unreported case 22/14
12. *Marange & 4 Ors v Chitungwiza Municipality & Anor* Chitungwiza Magistrates Court unreported case 106/ 14
13. *Masaiti & Ors v Minister of Home Affairs and Ors* High Court Harare unreported case 2381/08
14. *Mudariki v Minister of Home Affairs and others* High Court Harare unreported case 1324/07
15. *Mudzuru & Anor v Minister of Justice & 2 Ors* Constitutional Court of Zimbabwe unreported case 79/14
16. *Mukoko v The Attorney-General* Supreme Court of Zimbabwe unreported case 11/2012
17. *Williams & Anor v Msipha, the Minister of Justice and the Attorney-General* Supreme Court unreported case 22/10
18. *Williams & Ors v Co-Ministers of Home Affairs* Constitutional Court of Zimbabwe unreported case 4/14
19. *Gays and Lesbians of Zimbabwe v Minister of Home Affairs* High Court Harare unreported case 1240/13