

Racial Discrimination and Repression in Southern Rhodesia



ICJ Report

Racial Discrimination and Repression in Southern Rhodesia

A Legal Study by the
International Commission of Jurists

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PREFACE

When the April 1974 revolution in Portugal brought about the downfall of the Portuguese African empire, the situation in Southern Africa was transformed. In particular, new possibilities opened up for the liberation of Southern Rhodesia (Zimbabwe), either by negotiation if the white ruling minority could be induced to see reason, or by armed struggle if no other way was open.

In 1971, when the Pearce Commission was preparing to visit Southern Rhodesia, a number of pamphlets and articles were published in Great Britain outlining the system of radical discrimination and repression in Southern Rhodesia, which served to alert public opinion about the issues at stake and the changes which would have to be made to enable a settlement to be reached on the basis of the "six principles".¹ Since then, relatively little has been published on the further developments within Southern Rhodesia, attention having focussed primarily upon the liberation of the Portuguese occupied territories. In particular, the intensification of the repression and the growing adoption by Southern Rhodesia of the laws and values of the *apartheid* system in South Africa has largely passed unnoticed. This led the International Commission of Jurists to decide at the end of 1974 to undertake an up-to-date and comprehensive study of the relevant laws in Southern Rhodesia and their application in practice, with particular reference to the developments since the illegal Unilateral Declaration of Independence in 1965.

This study has taken longer than usual to complete, in part due to the difficulty in obtaining reliable recent information. This difficulty was largely overcome when the Secretary-General paid a visit to Southern Rhodesia at the invitation of the Catholic Commission for Justice and Peace in October, 1975.

The International Commission of Jurists wishes to thank all those who have assisted in the preparation of this study. Most of the research and preparation were undertaken by four research students from the University of California, Berkeley, working at the headquarters of the Commission in Geneva: Kathryn Burke, Gail Cardenas, Frank Russo and Howard Vogel. A number of statements have been supplied by Africans either in Rhodesia or in exile abroad with relatives in Rhodesia, who for obvious

¹ For example, E. E. M. Mlambo, *Rhodesia: The British Dilemma*, International Defence and Aid Fund, London, 1971; G. C. Grant, *The Africans' Predicament in Rhodesia*, Minority Rights Group Report, No. 8, London, January 1972. For the "six principles" see p. 6 below.

reasons wish to remain anonymous. Where quoted, these are referred to in the text as statements by "an African witness".

At the time of going to press the much-delayed and long drawn out talks between the Rhodesian Front regime and some African leaders led by Joshua Nkomo have just been broken off. It is to be hoped that this study will help lawyers and others outside Southern Rhodesia to understand the complex system of discrimination and repression imposed by the white minority, and why it is that no settlement can be acceptable to the Africans which denies them majority rule.

Geneva
March, 1976

NIALL MacDERMOT,
Secretary-General.

PART I — HISTORICAL BACKGROUND

Rhodesia first aroused the interest of European explorers during the latter half of the 19th century when reports circulated of fabulous mineral wealth in Mashona land and Matabele land. Gold had been worked and exported by the Africans from this area since early times and, even though the ancient mines had been abandoned, the fact of their existence was taken by the European explorers as evidence of extensive mineral deposits which could not have been exhausted by the primitive methods of the ancient prospectors and miners.¹

In 1884, Bechuanaland (Botswana) was annexed by a British expeditionary force and put under the control of Sir Sidney Shippard who was also impressed with the reports of mineral wealth. He wrote to the British High Commissioner in the Cape saying that Mashonaland contained "some of the richest deposits of alluvial gold in the world", and suggested the annexation of both Matabeleland and Mashonaland.²

The principal authority in the land at this time was Lobengula, who ruled Matabeleland and who held much of the Mashona territory. When Sir Sidney Shippard arrived in his official capacity as Deputy Commissioner of the Bechuanaland Protectorate to establish friendly relations with Lobengula, the agents of Cecil Rhodes, Messrs Rudd, Maguire and Thompson had already begun to negotiate with Lobengula. Shippard assured Lobengula as to the standing and influence of Rhodes' group. With the help of Shippard's persuasion/influence and through the use of misrepresentation, threats, and negotiation, Rhodes and his agents secured from Lobengula the Rudd Concession which gave the Concessionaires and their assigns exclusive mineral rights covering, according to subsequent interpretation, the whole of what is now Southern Rhodesia. In return, Lobengula was promised £100 per lunar month, a thousand breech-loading rifles, and an armed steamboat for use on the Zambezi.³

On the strength of the Rudd Concession, Rhodes proceeded to obtain a Royal Charter for his British South Africa company. By exercising discreet influence through his contacts in high positions in England, he succeeded in obtaining a Charter which empowered his company to settle

¹ Leys, C., *European Politics in Southern Rhodesia*, Oxford University Press, 1959, p. 5.

² Quoted in Sprack, J., *Rhodesia, South Africa's Sixth Province*, International Defence and Aid Fund, London, 1974, p. 10.

³ Palley, C., *The Constitutional History and Law of Southern Rhodesia, 1888-1965*, Oxford University Press, 1966, p. 29.

and administer an area of unspecified northward extent.⁴ The Charter was in fact granted upon a misconception because the Rudd Concession did not give the concessionaires any governmental powers and there was no delegation in it by Lobengula of legislative or administrative functions.⁵ Moreover, it was understood by Rhodes that the Concession was far from being permanent or secure since Lobengula did in fact reserve the right to cancel any grants within his territory. Rhodes realized that Lobengula would be less likely to revoke the Concession once the British crown was involved, and so he sought Imperial recognition of the Concession through a Royal Charter. Lobengula did in fact repudiate the Concession on a number of occasions, alleging that the effect of the Concession and its extent were misrepresented to him. However, his objections were summarily dismissed.

Although the Rudd Concession granted no right of settlement or administration, the British South Africa Company nevertheless took a military force into Mashonaland, where the African population was sparse, and established the first European settlement at Salisbury in 1890.⁶ The settlement of Mashonaland proceeded rapidly; within three years there were 3,000 settlers. After the settlement of Mashonaland, attention turned to Matabeleland which was still under the rule of Lobengula. After an incident in 1893 between settlers and a body of Matabele warriors around Fort Victoria, a force was raised by the Company. A further incident on the Bechuanaland Border led to the Matabele War of 1893 in which Lobengula died and which resulted in the conquest of Matabeleland. The Company's rule was extended to include this territory. In March 1896, when the bulk of the Company's military forces were absent for the abortive Jameson Raid in the Transvaal Republic, the Matabele rose in rebellion against the settlers, being joined a few months later by the Mashona. For several months Bulawayo and Salisbury were virtually besieged. Eventually the "rebellion" was suppressed with heavy losses.⁷

In the years before 1900 the Company's plans for expansion reflected its continued hope that the output of gold would justify a large outlay in administration and development. However, it became increasingly clear that the hopes placed in gold-mining had been ill-founded. The Company consequently was faced with acute financial difficulties. Up to 1900 revenue had balanced expenditure in only one year and a dividend had yet to be paid to shareholders.⁸ In an effort to recoup its heavy outlay of capital, the Company concentrated on promoting European settlement and agricultural development with the object of bringing in revenue and increasing the value of the land.

More than any other legacy of company rule, this new policy determined

⁴ Sprack, *op. cit.*, p. 11.

⁵ Palley, *op. cit.*, p. 31.

⁶ Leys, *op. cit.*, p. 5.

⁷ *Ibid.*, p. 7.

⁸ *Ibid.*, p. 8.

the future of the African population. Implementation of the new policy required that the best available land be provided in order to attract settlers and this meant that the inhabitants would have to be dispossessed still further. Moreover, "cheap and abundant native labour had also to be provided to attract settlers from kinder environments and this meant creating artificial inducement to the Africans to leave their own farming, on an even larger scale than was already necessary to provide labour for the mines".⁹ This supply of labour was achieved largely by the "native hut tax". First imposed in 1896 this was increased in 1904 to £1 per hut (equivalent to a labourer's earnings for 1 to 3 months) and 10 shillings for each polygamous wife. In 1902 the hut tax was reinforced by a pass law to get the labour to go where it was wanted.¹⁰

From these early policies favouring land expropriation and the creation of a manual labour force grew the vast network of contemporary legislation which is in force in Southern Rhodesia today. Its primary purpose is to formalize and maintain a division between the races—a division which largely dictates the range of jobs open to a man, the education his children will receive, that wages he is paid, where he can live, how he may behave to his fellows and to members of another race, and what civil and political freedoms he may be permitted to enjoy.

⁹ *Ibid*, p. 9.

¹⁰ The Natives' Pass Ordinance No. 10 of 1902, extending the Natives Registration Ordinance No. 16 of 1901.

PART II — CONSTITUTIONAL DEVELOPMENTS AND THE ILLEGALITY OF THE PRESENT REGIME

Constitutional History

As has been seen, the first white government in Southern Rhodesia was established under the Royal Charter granted to Cecil Rhodes' British South Africa Company in 1889. Although the ruler, King Lobengula, had ceded only mineral rights, the British government expected the commercial company to "discharge and bear all the responsibility of Government".¹ From its beginning the white Rhodesian government was virtually free of British interference in its internal affairs. The few controls that Britain did retain were seldom exercised, for the same reasons that led to the granting of the Charter: fear lest action might antagonize South African opinion (vital for continued use of the Cape route and for a future federation in Southern Africa); and financial concern lest Britain be forced through intervention to take over administration of the territory.² From the start, this more or less unfettered government by its legislative and administrative actions laid the foundations of a discriminatory society.

In 1922, when the mandate of the Charter Company was about to lapse, the voters of Southern Rhodesia (nearly all white)³ were asked to decide in a referendum whether the territory should become a fifth province of the Union of South Africa. The proposal was rejected and Southern Rhodesia then became technically a British colony. However, the Constitution provided for such a high degree of internal autonomy that Southern Rhodesia held a very special position among British dependencies. Its official description, "self-governing colony", is an expression "for which no precise legal significance can be claimed", an authority on colonial law has stated.⁴ Rhodesian affairs were handled not through the Colonial Office but through the Dominions Office (later the Commonwealth Relations Office). From 1933 on, the head of government was called the Prime Minister, and was invited to attend Commonwealth meetings as an observer. The major control retained by Britain was the power to veto legislation, as a safeguard

¹ From a Colonial Office minute of 1888, quoted in Robert C. Good, *UDI: International Politics of the Rhodesian Rebellion*, London, 1973, p. 31; and in International Defence and Aid Fund (IDAF), *Rhodesia: Why Minority Rule Survives*, London, 1969, pp. 3-4.

² IDAF, *op. cit.*, p. 3; Claire Palley, *op. cit.*, pp. 30, 39.

³ The franchise qualifications established in 1898 and revised in 1912 ensured that few Africans would be entitled to vote. An annual salary of £100, and an ability to write 50 words from an English dictation were the major requirements. Palley, *op. cit.*, pp. 136, 203 n. 4.

⁴ Kenneth Roberts-Wray, *Commonwealth and Colonial Law*, London, 1966, p. 749.

of African rights. That power was never exercised, but the British government did exercise a limited restraining influence. It is understood that there was a constitutional practice (which was not made public) under which a Bill concerned with 'African subjects' was not introduced in the Legislative Assembly by the Rhodesian government until it had been cleared by the Commonwealth Secretary of the United Kingdom government. Steps were taken by the Rhodesian government to ensure that no amendments were moved in the Assembly which would make the legislation unacceptable to the British government. Nevertheless, it was during this period as a Crown colony under the 1923 Constitution that Rhodesia developed its system of discriminatory and repressive legislation, and that the expectation arose among the white minority to progress to full independence and dominion status while still exercising minority rule.

In 1953 Britain formed a federation of Southern Rhodesia with the two northern territories of Northern Rhodesia and Nyasaland, both of which, unlike Southern Rhodesia, were administered as colonial protectorates. The constitutional status of each territory was not affected. The federation failed, due to the conflict between the growing African nationalism in the north and the hesitant white reformism of the south. In 1963 it was dissolved. The two northern territories soon became the independent black-ruled countries of Zambia and Malawi. Southern Rhodesia remained a "self-governing colony" ruled by the white minority, which had elected a party of conservative reaction to power.

A new Constitution had been granted by the British parliament in 1961. In it, Britain relinquished its veto power over legislation in return for a Declaration of Rights and a multiracial Constitutional Council to review subsequent legislation in the light of the Declaration. The Constitution also gave the Southern Rhodesian legislature the power to make certain laws having extra-territorial effect. Nevertheless, formal colonial status deprived Southern Rhodesia of the freedom to operate its own foreign policy, in particular in relation to Portugal and South Africa.⁵ In addition, as with all its dependencies, Britain retained the formal legal right to interfere in internal affairs, chiefly by virtue of the Colonial Laws Validity Act of 1865.⁶ The British government publicly recognized a convention that the British parliament would not legislate on any matter within the competence of the Southern Rhodesian Legislative Assembly, including the amendment of the Constitution of 1961, without the approval of the Southern Rhodesian government. This convention, however, did not have the force of law.⁷

⁵ Palley, *op. cit.*, pp. 724-730; IDAF, *op. cit.*, p. 14.

⁶ This Act provided that any colonial law repugnant to an Act of Parliament extending to the colony should be void and inoperative. See Palley, *op. cit.*, pp. 230, 703-04.

⁷ Palley, *op. cit.*, p. 703. See pp. 702-711 for the argument that, even without a breach of the convention, the British parliament could make major amendments to the Southern Rhodesian Constitution.

The ruling white minority in Southern Rhodesia were aware of this formal legal authority of Britain to intervene in internal affairs and to restrict freedom in establishing foreign alliances. In the climate of internal polarization of politics and race and international pressure on Britain, the whites feared a British intervention which would cause them to lose their economic and political control. The Southern Rhodesian government demanded independence, which Britain refused to grant without guarantees of progress toward majority rule.⁸ Several rounds of negotiations failed to achieve an agreement. A Unilateral Declaration of Independence (UDI), threatened⁹ and planned¹⁰ since 1964, was declared on November 11 1965, by the Prime Minister, Ian Smith, and a new Constitution was issued.

Rhodesia at first purported to remain in the Commonwealth, with the Queen as head of state, and the government appointed an Officer Administering the Government to replace the Governor as representative of the Queen. Finally, in 1970, Rhodesia officially declared itself a republic.

At the time of the UDI the Rhodesia Parliament purported to adopt a new Constitution declaring Rhodesia's independence. It altered the provisions for amending the Constitution to the detriment of the Africans by removing the requirement of a racial referendum, which was the main safeguard for African interests in the 1961 Constitution.

In 1966 and 1967 some further changes were made by the Constitution Amendment Act (1966) and the Electoral Amendment Act No. 7 of 1967. The latter resulted in a substantial reduction in the already derisively small

⁸ In 1963/64 the British government, with the conservative party in power, set forth five principles as the basis for granting independence:

- (i) that there would be unimpeded progress to majority rule;
- (ii) that there would be no retrogressive amendments to the Constitution to retard African advancement;
- (iii) that there would be immediate improvement in the political representation of Africans;
- (iv) that racial discrimination must end; and
- (v) that the basis of independence was acceptable to the people of Rhodesia as a whole.

In 1966, the Prime Minister of the Labour government, Harold Wilson, added a sixth principle:

- (vi) that, regardless of race, there would be no oppression of majority by minority or minority by majority.

⁹ Harold Wilson, "Rhodesia: Unilateral Independence", *Vital Speeches of the Day*, October 15, 1965, p. 39.

¹⁰ For example an economic, political, and military alliance had been developing with South Africa and Portugal, especially in the months just preceding UDI. See IDAF, *op. cit.*, pp. 19-24. Other preparations included making the political climate ready for independence through a referendum and a general election, crushing the African nationalist movements, training a propaganda unit, and bringing the Rhodesian Broadcasting Corporation under political control. Good, *op. cit.*, pp. 48-49. The government also took certain contingency measures in preparation for the sanctions anticipated after unilateral independence. B. E. M. Mlambo, *Rhodesia: The British Dilemma*, IDAF, London, 1971, p. 26.

number of Africans on the electoral roll. In 1969 a completely new Constitution was introduced which substantially altered the legislature. Whereas the 1961 and 1965 Constitutions had provided for an eventual, even if much delayed, transition to majority rule, the new Constitution provides at best for an eventual equality in government participation.

Further information on the provisions of the various Constitutions will be found in Appendix A.

The British Reaction to UDI

The British government immediately declared the 1965 UDI to be an illegal act of rebellion against the Crown. Parliament asserted its authority under the Colonial Laws Validity Act of 1865, and passed the Southern Rhodesia Act of 1965 giving the British government the authority to make any Order in Council regarding Rhodesia thought to be necessary in consequence of the illegal action. The Southern Rhodesian Order of 1965 then declared void the rebel constitution, revoked the legislative power of the Southern Rhodesian Legislative Assembly, enabled the British government to legislate for Rhodesia, and conferred executive power in Rhodesia upon the Secretary of State for Commonwealth Relations. In fact, however, Britain has exercised no authority within the colony and its orders have been ignored by the present regime.

Attitude of the Rhodesian Courts

The Rhodesian courts have recognized the new regime as valid. In 1966 and 1968, the General Division and the Appellate Division of the High Court, respectively, ruled that although the UDI and the 1965 Constitution were illegal, the revolution had achieved internal success and the Smith regime was the only effective government in Rhodesia; therefore necessity demanded that the *de facto* government be endowed with all the powers of its predecessors under the 1961 Constitution.¹¹ In another decision in late 1968 the High Court finally gave the regime *de jure* recognition, based on the theory that the government was not only in effective control but there were no prospects that any actions by the mother country would alter that condition.¹²

¹¹ *Madzimbamuto v. Lardner-Burke, N.O. and Others; Baron v. Ayre N.O. and Others*, Judgment GD/CIV/23/66 in the General Division, and Judgment AD1/68 by the Appellate Division. On the General Division opinion, see: Alex C. Castles, "Law and Politics in the Rhodesian Dispute", 21 *Australian Outlook* 165, August, 1967; R. S. Welsh, "The Constitutional Case in Southern Rhodesia", 83 *Law Quarterly Review* 64, January, 1967. On both Madzimbamuto opinions, see: Good, *op. cit.*, p. 245; Leslie J. Macfarlane, "Pronouncing on Rebellion: The Rhodesian Courts, and UDI", *Public Law*, p. 325, Winter, 1968; Chris N. Okeke, *Controversial Subjects of Contemporary International Law*, Rotterdam, 1974, pp. 81-105.

¹² See Good, *op. cit.*, p. 250.

This doctrine that the effectiveness of a revolution determines its legality was applied by the Pakistan Supreme Court in 1958 when it upheld General Ayub Khan's revolution of 1956.¹³ In 1972, the Pakistan Supreme Court overruled that decision¹⁴ and held that the military seizure of power was illegal and unconstitutional. The doctrine of effectiveness may describe how men behave when a successful revolution occurs, but it should not be taken to require obedience to the new regime. Otherwise, in the words of one critic, "it would even be possible for the courts to be required to assist the authorities to find 'legal' reasons for establishing the guilt of innocent men, if this was one of the 'norms' of the new order. In such circumstances for judges to uphold the decrees of those in power in the name of law and *de jure* authority is to mock and undermine ordinary men's confidence in the rule of law".¹⁵

Reaction of the International Community

The United Nations has consistently denounced UDI as illegal and has encouraged actions to put an end to the Smith regime. The General Assembly had already assumed jurisdiction over the Rhodesian situation in 1962, on the basis of the Declaration of 1960 on the Granting of Independence to Colonial Countries and Peoples as well as the threat to the peace which was involved.¹⁶ It urged the United Kingdom to take steps toward the territory's independence based on universal adult suffrage, as did the Security Council a few years later.¹⁷ Just before UDI, the Assembly called on Britain to prevent a unilateral declaration of independence which would be incompatible with the principle of equal rights and self-determination of peoples proclaimed in the Charter and the Declaration of 1960.¹⁸ After UDI, both the Assembly and the Security Council condemned it as a rebellion by unlawful authorities.¹⁹ The Assembly called on the United Kingdom as the administering power to use force to put an end to the illegal racist regime.²⁰ The Security Council resolutions, however, called only for economic sanctions: voluntary at first,²¹ then selective

¹³ *State v. Dosso*, PLD SC (Pak)533ff., 2 Pakistan Sup.Ct.Rpts. 180.

¹⁴ *Malik Ghulam Jilani and Altaf Gauhar v. Province of Sind and others*, as reported in *Dawn Newspaper*, Karachi, April 23, 1972.

¹⁵ Leslie J. Macfarlane, "Pronouncing on Rebellion: The Rhodesian Courts and UDI", *Public Law*, Winter, 1965, pp. 334-335.

¹⁶ John H. Howell, "A Matter of International Concern", *American Journal of International Law*, vol. 63, p. 771 (October, 1969); G.A. Res. 1747 (XVI) 28 June 1962.

¹⁷ G.A. Res. 1747 (XVI), 28 June 1962; G.A. Res. 1760 (XVII), 31 October 1962; G.A. Res. 2022 (XX), 5 November 1965; S.C. Res. 202, 6 May 1965.

¹⁸ G.A. Res. 2012 (XX), 12 October 1965.

¹⁹ G.A. Res. 2024 (XX), 11 November 1965; S.C. Res. 216, 12 November 1965.

²⁰ G.A. Res. 2151 (XXI), 17 November 1966.

²¹ S.C. Res. 217, 20 November 1965.

mandatory²² and finally comprehensive mandatory sanctions.²³ Chapter VII of the Charter authorized the Council to decide on such measures in response to a threat to the peace; in 1966 the Council determined that a threat to the peace did in fact exist in the assertion of independence without provision for majority rule and in the continuing violations of human rights in Rhodesia.²⁴ In 1970 the Assembly and the Security Council condemned the declaration by Rhodesia that it was a republic²⁵ and then called for continued sanctions and reaffirmed Britain's primary responsibility to end the secession.²⁶ At every session since UDI, the General Assembly has reiterated its position and has asked for the widening of sanctions to put an end to the illegal regime.²⁷

The effect of the economic sanctions has been limited, due to the cooperation of South Africa and the former Portuguese government in overcoming them, as well as the various systems devised by international corporations to circumvent the trade barriers.²⁸ Nevertheless, the sanctions have severely checked the growth of the Rhodesian economy.²⁹ The closing of the borders of liberated Mozambique in March 1976, raises the threat of sanctions having a severe affect on the Rhodesian economy. This and other pressures may bring the Smith regime to a negotiated settlement with the British and the African majority. Until then, it is important to remember that under both United Kingdom and international law the UDI and the current regime are entirely illegal, and all the legislative and administrative acts of that government, many of which are described below, are invalid.

²² S.C. Res. 232, 16 December 1966.

²³ S.C. Res. 253, 29 May 1968. In S.C. Res. 221, 9 April 1966, however, the Security Council did call on the United Kingdom to use force to stop vessels carrying Rhodesia-bound oil from arriving at Beria, and in particular to detain an oil tanker already there.

²⁴ Myres S. MacDougal and W. Michael Reisman, "Rhodesia and the UN: The Lawfulness of International Concern", *American Journal of International Law*, vol. 62, p. 1, January, 1968.

²⁵ G.A. Res. 2652 (XXV), 3 December 1970; S.C. Res. 277, 18 March 1970.

²⁶ S.C. Res. 288, 17 November 1970; G.A. Res. 2652 (XXV), 3 December 1970.

²⁷ See, for example, in addition to those resolutions cited above: G.A. Res. 2262 (XXVII), 3 November 1967; G.A. Res. 2383 (XXVIII), 7 November 1968; G.A. Res. 2508 (XXIV), 21 November 1969; G.A. Res. 2652 (XXV), 3 December 1970; G.A. Res. 2769 (XXVI), 22 November 1971; G.A. Res. 2945 (XXVII), 7 December 1972; G.A. Res. 3115 (XXVII), 12 December 1973; G.A. Res. 3297 (XXIX), 13 December 1974.

²⁸ See the yearly reports of the UN Sanctions Committee established by S.C. Res. 253 (1968): for example, S/8954 (1968); S/9252 (1969); S/9844 (1970); S/10229 (1971); S/10408 (1971); S/10852 (1972); S/11597 (1975).

²⁹ See Reginald Austin, *op. cit.*, p. 98.

PART III — RACIAL DISCRIMINATION

Introduction

Both the 1961 Constitution of Southern Rhodesia, enacted by the British Parliament, and the present pretended Constitution of 1969 passed by the illegal regime, contain Declarations of Rights which proclaim in very similar language the right of every person to enjoy the fundamental rights and freedoms of the individual without distinction as to race, tribe, political opinion, colour or creed. Both Constitutions contain exceptions and derogation provisions which render these supposed guarantees of little, if any, value.¹ This is hardly surprising, since the purpose of the Constitutions and the laws made under them has been to maintain the ascendancy and privileged position of the white minority, of now 277,000 whites ruling over 6 million Africans.² To ensure this a whole paraphernalia of discriminatory laws has been devised, the broad outlines of which will be considered in this Part.

The essential areas of discrimination relate to the ownership and occupation of land, so as to ensure physical separation of the races as far as possible, and the fields of education, labour and political activity, so as to restrict the development of the Africans in such a way as not to threaten the interests of the Whites.

As Reginald Austin states in *Racism and Apartheid in Southern Africa*³—“The basic themes in the process by which white power was consolidated were as follows:

1. White land control through unequal tenure and allocation of land.
2. White executive and administrative (as opposed to representative) government of the African majority, combined with government responsibility to an exclusively white electorate.

¹ The great weakness of the 1961 Constitution was that it exempted all pre-existing laws from the need to comply with the Declaration of Rights. Consequently all the existing machinery of repression and discrimination was safeguarded. The Declaration under the 1969 Constitution is even more ineffectual, since the question whether any law, either existing or future, is consistent with the Declaration is not justiciable. See Appendix A.

² Monthly Digest of Statistics, January, 1976, Salisbury, Table 1. A little appreciated fact is that there had by the end of 1975 been a total of 111,272 European immigrants into Southern Rhodesia since UDI in 1965 (*ibid* Table 4). Even allowing for the death or subsequent re-emigration of some of these immigrants, these figures mean that between 35% and 40% of the present European population are post-UDI immigrants. These include several thousand Portuguese who came from Mozambique and Angola in the last two years.

³ UNESCO 1975.

- 3
3. White control over the potential economic power of labour. This was ensured by white monopoly of skills by restricting training and education to whites, combined with control over bargaining power through trade union legislation which discriminated against the organization of black workers.
 4. White retention of political power (referred to as 'responsible' by white Rhodesian politicians) to ensure the continuity of (1) to (3)."

The general policy of the Rhodesian Front government towards Africans is reflected in the qualification to the declared, but unenforceable, protection against racial discrimination contained in the Declaration of Rights in the Second Schedule to the 1969 Constitution. Paragraph 10(11) provides:

"Every person is entitled to the enjoyment of the rights and freedoms set forth in this Schedule without *unjust* discrimination on the grounds of race, tribe, political opinion, colour or creed." (Emphasis added.)

However, sub-paragraph (2) provides that a law is not to be construed as unjustly discriminating

". . . to the extent that it permits different treatment of persons or communities if such treatment is fair and will promote harmonious relations between such persons or communities by making due allowance for economic, social or cultural differences between them."

Sub-paragraph (3) goes to the heart of the matter by declaring that a law is not to be construed as being inconsistent with the Declaration of Rights, to the extent that it provides, *inter alia*, for "restrictions on the ownership, occupation or use of land".

Like all other items in the Declaration of Rights, paragraph 10 is non-justiciable. Section 84 of the 1969 Constitution provides that:

"No court shall inquire into or pronounce upon the validity of any law on the ground that it is inconsistent with the Declaration of Rights."

Instead, according to Article 43, all Bills except money bills or constitutional amendments are to be sent to the Senate Legal Committee which is required to report whether or not any provision is inconsistent with the Declaration of Rights. Under Article 44, the Senate is not bound by the Legal Committee's decision. However, even if they do concur that a Bill would be inconsistent with the Declaration of Rights, they may nevertheless pass it if they decide that it is "necessary in the national interest" (Art. 44 (3)). Many Bills have been pronounced inconsistent with the Declaration but none of them have been rejected by the Senate on that account.

Land Allocation/Housing

The initial expropriation of African land⁴ was consolidated by the subsequent Rhodesian land settlement legislation. This provided for the allocation of land by race accompanied by policies of residential separation and other discriminatory practices. As will be seen, its objective is to strengthen

⁴ See Part I.

white dominion over the most fertile and economically important land and to maintain the African population as a labouring class.

Land Apportionment Act 1930

Native reserves were established by the British South Africa Company as early as 1894 and 1895. They were later greatly increased in 1898 and 1904. However, the first legislative sanction to the division of the whole country between blacks and whites was contained in the Land Apportionment Act 1930. This Act has now been superseded by the even more inequitable Land Tenure Act of 1969. It is nevertheless relevant to consider the earlier Act since its provisions were the first to provide for the racial allocation of land. According to one authority, it "paved the way in 1969 for the introduction of racial policies resulting in the enforced racial segregation of all the peoples of Rhodesia by law".⁵

The Land Apportionment Act of 1930 divided Rhodesian territory into four sections: the Native Purchase or African Areas, the European Areas, the Forest Areas, and Unassigned Land which was to be allocated at a later time. The African Areas included the Tribal Trust Lands which were sections reserved for the sole use and occupation of tribesmen. The land distribution broadly followed the division of land which had been made in the 1890s. The mineral resources and major transport networks, including all the railways and metalled roads, were carefully confined to the European Areas as was a large part of the fertile land with good rainfall. In short, those areas with geographical and economic advantages were concentrated in the "White Area".

No African was allowed to purchase or occupy land in an area reserved for non-blacks (euphemistically called "Europeans", a term which included Asians and coloureds). Section 42(1)(a) of the Land Apportionment Act of 1930 provided that:

"(a) No African shall acquire, lease or occupy land in the European Area;

(b) No owner or occupier of land in the European Area, or his agent shall

(i) dispose or attempt to dispose of any such land to an African;

(ii) lease any such land to an African;

(iii) permit, suffer or allow any African to occupy any such land."

Some exceptions were made: the principal one was to enable whites to have resident black domestic servants. Section 43(d) permitted occupation if the African was employed by the person who owned or lawfully occupied the land (usually a European) but only for so long as his employment necessitated his presence upon the land. Under Section 44(3) an African was permitted to occupy European land if he was undergoing instruction

⁵ R. H. Randolph, *Segregation of Land and People in Rhodesia*, Salisbury, p.10.

at an educational institution established for Africans and situated on European land, or if he was receiving treatment at a hospital or clinic situated on such land. These exceptions themselves illustrate how rigidly the policy of segregation was enforced.

African occupation of European land was restricted to these sharply delineated exceptions, and the purchase of European land by Africans was expressly prohibited. The reverse, however, did not apply. Section 17(1) of the Act permitted Europeans to purchase land in areas reserved for Africans as security for moneys expended on the development of such land. Section 14(1)(c) allowed Europeans to occupy African areas for purposes of establishing hotels and places of lodging for travellers or for trading. In short, it was lawful for Europeans to purchase or occupy land in the African areas for purposes of economic exploitation, but Africans were not permitted to do the same in white areas.

The institution of "African Areas" under the Land Apportionment Act affected the African population by crowding them together in areas where it was impossible to earn an adequate livelihood. In many instances, the Rhodesian government had to use direct force in order to resettle Africans in these areas.

An outstanding recent case is that involving the Tangwena Tribe.⁶ It illustrates the brutal methods employed by the Rhodesian Front government to implement its policies of racial separatism under the Land Apportionment Act. Another example of forced resettlement was the removal in 1967 of 5,000 Africans to the area of Gokwe, which is infested by tse-tse fly, producing debility in cattle and human beings.⁷

Land Tenure Act, 1969

The latest land division is to be found in the Land Tenure Act of 1969 which supersedes the Land Apportionment Act. Under this Act, 45 million acres are designated as European areas and 45 million acres as African areas. The remaining 6 million acres, in which the major tourist attractions may be found, are set aside as "national" land. Occupation of this land by a member of any race is allowed only upon the granting of government permission.

The Land Tenure Act of 1969 was bluntly described by an African witness as having "divided the land in two between the one quarter of a million white population and the more than five and a half million Africans—with the half given to the Africans as that which is most unproductive". A 1972 study by Kay⁸ backs up this assertion with more detailed statistics.

⁶ See Appendix C.

⁷ U.N. Document E/CN.4/1020/Add./p.49.

⁸ G. Kay, *Distribution and Density of African Population in Rhodesia*, Hull University, Department of Geography, Miscellaneous Series 12. See also discussion in Murphree, ed., *Education, Race and Employment in Rhodesia*, Artea Pubs., Salisbury, 1975.

Using agro-ecological regions as recognized in a 1960 government study, he shows that the best farming lands are almost exclusively within the European region. He also demonstrates that the African areas are further away from railways and existing main roads, thereby making transport to markets difficult, while the European farms are adjacent to road, or rail transport or both. Similarly the African areas are further away from urban centres, 82 per cent being more than 50 miles away.

Zimmerli has stated that "the unequal distribution of land [has] led to over-crowding, over-cropping and over-grazing of the African farm lands, while a great amount of [fertile] European land [has gone] completely unused".⁹ The grossly different populations that these qualitatively different areas of land must support led an African witness to conclude that:

"Even under a properly managed farming system with fertilizers and correct tillage methods, the present area cannot support more than one-half of the African population at a reasonable standard of living."

Over two-thirds of the African population¹⁰ live in the African rural areas, mostly in the Tribal Trust Lands, where land is communally owned and farming is predominantly on a subsistence basis. Only about 8,400 African farmers individually own small holdings in the African Purchase Areas, relatively small areas set aside by the government for private purchase of land by Africans. The remainder of the Africans, with such exceptions as domestic servants, live in the townships on the outskirts of the towns or in the compounds for agricultural labourers and their families on the whites' farms.

Primitive farming methods result in the rapid deterioration of the land in the Tribal Trust Lands. Officially, the government adheres to a policy of developing the Tribal Trust Lands, both agriculturally and industrially. This is to be done under a scheme of community development or self-help aided by governmental assistance. However, as Dr. Morris Hirsch has pointed out in *A Decade of Crisis*, this scheme has failed due to lack of realistic capital expenditure in these areas by the government, and due to political policies which have prevented the scheme from being viably pursued.

The opening of the Tribal Trust Lands for purposes of exploitation to predominantly white companies has reduced even further the land space available for African occupation. The Tribal Trust Lands had been vested in a Board of Trustees by the Rhodesian Constitution for the sole use and occupation by tribesmen. Now, under Section 4 of the Tribal Trust Land Development Corporation Act, No. 47 of 1968, it is possible for white controlled companies to come into these previously protected areas, and run

⁹ C. H. Zimmerli, *Human Rights and the Rule of Law in Southern Rhodesia*, 20 Int. and Comp. L.Q. 239.

¹⁰ An African is defined in Section 2 as a "member of the aboriginal races or tribes of Africa" or "any person who has the blood of such tribes or races and who lives as a member of an aboriginal native community" (emphasis added).

commercial, industrial and agricultural undertakings. Section 4 of the Act reads as follows:

“4. Subject to the provisions of this Act and of any other law, the objects of the Corporation shall be to plan, promote, assist and carry out in all spheres, for the benefit of the inhabitants of Tribal Trust Land, the development in Tribal Trust Land of its natural resources and of industries and any other undertakings and, in particular, but without derogation from the generality of the foregoing

- (a) to plan, promote, establish and carry on mining, industrial, agricultural, forestry and commercial (including banking) undertakings;
- (j) to investigate, plan, co-ordinate, inaugurate and carry out schemes for the exploitation, development or utilization of the natural resources of Tribal Trust Land and such development projects as are intended to benefit the inhabitants of the Tribal Trust Land;
- (m) to investigate, plan, co-ordinate, manage, undertake and carry on schemes for the marketing of any product derived from Tribal Trust Land. . . .”

Although the language of Section 4 appears to promote the “benefit of the inhabitants of Tribal Trust Land”, its effect is that the Africans lose more of their land and do not share in whatever profits result from the commercial undertakings. As a result the Africans are forced to live on a continually decreasing land area which is already insufficient to support them at a reasonable standard of living.

Father R. H. Randolph, S.J., has concluded from the scheme of the Land Tenure Act that:

“It automatically follows that all the people in the country have been compulsorily segregated on a racial basis, since no other land is available for non-racial occupation. . . . It is in this point that the reasoning of the Land Tenure Act differs radically from the meaning of the Land Apportionment Act, although it sometimes uses much the same terminology.”¹¹

The arbitrary way in which this policy is applied is seen from the fact that nowhere in the Land Tenure Act is the critical term “occupation” defined. Instead, Section 3 of the Land Tenure Act provides:

“Notwithstanding the provisions of any other law the Minister may prescribe that *presence for a specified purpose at a specified place or premises or class of places or premises to which members of the public are admitted shall constitute occupation* for the purposes of this Act, and any person who is present for such purpose at such place or premises or class of places or premises irrespective of the period for which he is present shall be regarded for the purposes of this Act as occupying the land concerned.” (Emphasis added.)

¹¹ Randolph, *op. cit.*, p. 26.

Thus, mere physical presence, for however short a period, at the prescribed premises can be an offence. Without government permission both the owner and occupier are subject to a £1,000 fine or one year's imprisonment or both. The owner's personal willingness to receive the person of another race does not matter. Such moves are by law forbidden unless the appropriate Minister of government considers them to be "in his opinion" desirable.

The determination of the present regime to use its land policies to prevent any real co-operation or partnership developing between the races is clearly illustrated by the history of the Cold Comfort Farm Society. This was a non-racial co-operative farming enterprise, which began in 1965, and which was entirely within the law. It became internationally famous and the authorities recognised it for what it was, a challenge to the values upon which their regime was based. The Society was eventually declared an unlawful organisation in January 1971, and of its two leading spirits, Mr. Didymus Mutasa was detained under the Emergency Regulations and Mr. Guy Clutton-Brock was deprived of his citizenship and then deported. The story is outlined in Appendix B.

Even the field of employment has been affected. Under the Land Apportionment Act, an African employee was permitted to occupy land in the European area with a permit that bore only his employers signature. Now that the Land Tenure Act governs, a white employer must first obtain official permission from the local authorities before allowing an African employee to reside in a white area for purposes of employment. Sections 16 and 17 of the Land Tenure Act set forth an elaborate set of conditions and requirements for obtaining such permission. Often the African is restricted to specified lodgings. Much of the accommodation provided in the township areas does not allow the inhabitants to have their wives and families with them. This also often applies to the accommodation attached to European houses for African servants. Frequently a man's family has to remain in the Tribal Trust Land whilst the husband pursues the only employment available in the towns. Prosecutions for offences against regulations made under the Africans (Urban Areas) Accommodation and Registration Act are very frequent. In 1971, 3,120 Africans were prosecuted in the Salisbury area alone, of whom 1,730 were imprisoned. This happened despite the fact that insufficient housing is provided for all the Africans who have come to Salisbury to seek employment and many, both employed and unemployed, have had to lodge illegally with relatives or sleep in the bush surrounding the township. These individuals have been subject to frequent raids and many have lost their jobs as a result of being jailed. Some attempts are now being made to increase African housing facilities in Salisbury.

Under the Africans (Registration and Identification) Act (Cap. 109), all Africans are required to be in possession of a pass book in the form of a registration book, registration certificate or identity card. Every employer of an African must endorse his service on the pass book (Section 12) and

no-one may employ an African without a pass book (Section 13). It is an offence for an African to fail to produce his pass book to a police officer or other authorized official, punishable with a £10 fine or three months' imprisonment (Section 21). The offender may be arrested without warrant (Section 25). Any person harbouring an African without a pass book is liable to a similar penalty (Section 23).

These laws are reinforced by the provisions of the Vagrancy Amendment Act S.1 of 1972 which, although theoretically aimed at members of all races, in practice affects only the Africans. Under this Act the definition of a vagrant was extended to include:

“Any person who is idle or disorderly, or any person found within an urban area who

- (i) has no lawful place of residence in that urban area, and
- (ii) is not employed by a person lawfully resident in that urban area or self-employed in connection with the carrying on of any *bona fide* lawful business or occupation in that urban area.”

These laws are used to drive unwanted unemployed Africans back into the Tribal Trust Lands.

The Land Tenure Act policies are also supported in the urban European areas by so-called ‘petty apartheid’ practices, which are in fact highly degrading to Africans. One witness statement explains that “there are several places, especially centres for entertainment, hotels and restaurants where Africans may not enter. Usually such places are marked ‘Right of Admission Reserved’ or in some similar manner. I have personally been thrown out of a number of such places—for once you are inside you are told categorically that Blacks are not allowed”. The statement goes on to describe another incident. “While in Bulawayo in 1973, some friends and I went to the City Hall to hear Mr. Savoury’s speech as he campaigned for the impending elections. But as this was in the European area we were told, and clearly, that as it was a white man addressing an audience of whites, we could not be allowed entrance. We were told that should Mr. Savoury himself be interested to address us (Blacks), then he should make arrangements for a meeting in the African area.”

The Municipal Amendment Act of 1964 codified existing discriminatory practices in public amenities located in the European areas. Its provisions are now incorporated in the Urban Councils Act, Chap. 214. Sections 3 and 19 empower the local authority to restrict certain facilities according to ‘class’ (which must include class by race). Recreational, sporting and bathing facilities, camping and caravanning sites, parks and public conveniences are among the facilities which can be restricted on this basis. The powers to restrict ‘occupation’ of premises under the Land Tenure Act have been used to ensure segregation of social activities. For example, regulations have been passed which prohibit Africans from drinking in

European areas after 7 p.m., and prohibit access by Africans to European swimming pools.¹²

One African witness describes this form of 'petty' discrimination: "Public facilities are not open for public use in actual fact. For a visitor the impression that discrimination does not exist can easily be developed because they no longer put posters telling Africans to keep away, but they employ someone to keep the Africans away. In some cases they use such sentences as 'Right of Admission Reserved' which in actual fact means 'No Kaffirs admitted'. This applies to places like restaurants and toilets and many others."¹³

As the Minority Rights Group have pointed out,¹⁴ racial discrimination in Rhodesia dates back to the arrival of the first white settlers in 1889. Sexual relations between a black man and a white woman were made a criminal offence by the Immorality Suppression Act in 1903.

The discriminatory provisions in the Land Tenure Act are augmented by a number of other pieces of legislation. The Rhodesian Constitution distinguishes Africans from Europeans, but includes Asians and Coloureds in the European category. This caused complications as, under the provisions of the Land Tenure Act, Coloureds and Asians were entitled to the same privileges as Whites. In order to separate the Asians and Coloureds from the Europeans, the government published the Property Owners (Residential Protection) Bill in 1967. The aim of the Bill was described by the Minister of Local Government and Housing as being to prevent "racial friction and the depreciation of property in mainly European areas infiltrated by coloured or Asian persons".¹⁵ Under the terms of the Bill the President could declare any areas occupied by one race as an "exclusive area", in which other races could not live, if he was petitioned by 15 property owners of the predominant race. The clear objective of this Bill was to keep Asians and Coloureds from encroaching on European property and areas. In face of considerable criticism within Rhodesia and abroad, the Bill was not proceeded with. Its objective has in part been achieved by an amendment to the Deeds Registries Act allowing for the registration of restrictive covenants. This is used to prevent Coloured, Asian and even Jewish "infiltration" into European residential areas.

Another little publicised provision is Section 36 of the General Laws Amendment Act of 1972. This ensures that the licensing laws shall not be used to prevent or restrict racial discrimination:—

¹² Land Tenure (Swimming Baths) (Prescription of occupation) Regulations (R.G.N. 18/73) and Land Tenure (Licenced Premises) (Prescription of occupation) Regulations (R.G.N. 19/73). The original regulations restricting drinking in European areas were held *ultra vires* in *Van Heerden v. Queen's Hotel*, 1973(2) S.A. 14 (R.A.D.) but while the case was still being heard an amending Act (Act 53/72) was passed to overcome the objection.

¹³ "Kaffir" is a derogatory term for Africans used by Whites, especially farmers.

¹⁴ G. C. Grant, *The Africans' Predicament in Rhodesia*, Minority Rights Group Report, No. 8, 1972, p. 4.

¹⁵ *Times* (London), 27.11.1970; *Rand Daily Mail* (Johannesburg), 27.11.1970.

“36. (1) Unless otherwise specifically provided in any Act, the right of a person who sells or supplies goods or services or provides services:

- (a) to make separate or different provision for the sale or supply of goods to, or for facilities for, or for services for, different classes of persons; or
- (b) to make no provision for the sale or supply of goods to, or for facilities for, or services for, a particular class of persons; or
- (c) to refuse to sell or supply goods to, or provide services for, any particular class of persons; or
- (d) to exclude any particular class of persons from the use of facilities provided;

shall not be regarded as being restricted in any way by a licensing law, whether enacted before or after the date of commencement of this Act, and no licensing authority shall:

- (i) refuse to issue or renew a licence on the grounds that the applicant for the licence or the licensee intends to do or is doing, as the case may be, any one or more of the things specified in paragraphs (a) to (d); or
- (ii) make the issue or renewal of a licence conditional on the applicant for the licence or the licensee ceasing to do or not doing any one or more of the things specified in paragraphs (a) to (d), as the case may be.”

“Class” in terms of this Section is defined as class “by race, colour or otherwise”.

Education

The education policy is geared to the economic, social and political policies aimed at maintaining the ascendancy of the white minority. While making a show of racial equality it is carefully designed to educate Africans only to the level where they will be able to serve the labour needs of the white minority without threatening the privileges of the white working class, and without enabling the Africans to qualify for the electoral register in numbers which would threaten the whites politically.

Apartheid is a conspicuous feature of the educational system. The public schools are totally segregated. Members of another race are not even permitted to enter these school grounds for sports events.¹⁶ In private European schools in 1972, there were only a token of 400 African students.¹⁷ Classes in private schools in European areas are limited to a maximum of 6% Africans. There have been public complaints that schools run by Church groups have exceeded this figure.

At present the amount spent on the education of each African child is less than one-twelfth of that spent on his “European” counterpart. In 1975,

¹⁶ Murphree, *op. cit.*, p. 53.

¹⁷ Annual Education Report, 1972.

approximately R\$30 million was spent on educating the children of six million Africans while R\$25.74 million was spent on the children of 307 thousand whites, Asians and coloureds.

Expenditure on school education in 1975 ¹⁸

	<i>Africans</i>	<i>Europeans</i>
Expenditure on education (in R\$1,000's)	30,044	25,743
Enrolments (less unaided schools)	811,926	59,108
Expenditure per pupil (in R\$)	37	451

All African school education is fee paying. The Minister of Education imposes and prescribes fees under the African Education Act of 1969. The result is that thousands of African children fail to get or hold a place at school because the parents, earning subsistence wages or less, cannot afford the fees. By contrast, non-payment of fees does not preclude a European child from attending school.

The figures for school enrolments in 1975 published in the January 1976 Monthly Digest of Statistics show the marked contrast between the education of Africans and Europeans (including Asians and Coloureds).

School Enrolments, 1975

	<i>African</i>		<i>European</i>	
Primary	Grade 1	158,322	Infants 1st year	4,843
	2	145,294	2nd "	4,674
	3	132,608	Standard 1	4,618
	4	118,584	2	4,666
	5	104,618	3	4,523
	6	83,133	4	4,775
	7	68,652	5	4,851
	Physically handicapped	715		
	Unaided farm schools	12,955		
	Total Primary	824,881	Total Primary	32,950
Secondary	Grade 8	12,600	Form I	5,088
	9	12,126	II	5,079
	10	7,352	III	5,211
	Form IV	4,863	IV	4,846
			V	1,962
	VI Lower	417	VI M	1,181
	VI Upper	373	VI Lower	995
	Unaided Secondary	2,271	VI Upper	771
Total Secondary	40,002	Total Secondary	25,133	

¹⁸ Monthly Digest of Statistics, Salisbury, January 1976, Tables 12 and 59.

A number of points should be noted:—

- (1) African primary school enrolments represent 51.5 pupils per 1,000 of population; "European" enrolments represent 118 per 1,000;
- (2) African secondary schools enrolments represent 2.5 pupils per 1,000 of population; European enrolments represent 90.3 per 1,000.

(The privileged position of the white pupils is even greater than these figures indicate owing to the higher proportion of children of school age in the African population compared with the European population.)

- (3) There is a continuous drop out rate among Africans, which is particularly heavy at the end of primary school and at the end of the second and fourth years of secondary school. There is no significant drop out among European children until the end of the fourth year of secondary education.

According to a recently published book, *Education Race and Employment in Rhodesia*, the drop out rate of African students is not due to their disinterest in education. The book describes the Africans' attitude to education:

"With the expansion of European settlement and influence it became apparent to the African people that education was the only medium through which the younger generation would be able to understand and cope with the new society that had been introduced to the country. Education provided the main avenue to European type occupations and ways of living which became increasingly valued among the African people as traditional conceptions of social status were replaced by criteria of occupation, education and the extent to which one had adopted European patterns of living. The African expected education to enable him to obtain a job in the European community and to enjoy a standard of living different from that of his father. Any education which did not purport to do so was viewed with dismay and a suspicion that he was being purposely consigned to an inferior status. Even the government, when it began its first school for Africans in 1920 and 1922, specifically to give Africans industrial and agricultural training (which they felt was lacking in mission education), found they had to give in to African student demands for increases in academic instruction."

The authors conclude that:

"The dual educational system which evolved parallels and reflects Rhodesia's overall social structure with a gulf dividing Africans and Europeans. A very few Europeans believed that it was in the best interests of the country and everyone in it to reduce the social and economic gap between the races but the majority preferred a type of education which would inculcate a bare literacy "without breeding inconvenient ambitions", thus ensuring them a mass of unskilled labour to form the basis of their pyramid."¹⁹

¹⁹ Murphree, *op. cit.*, p. 35.

In April of 1966 the Government made extensive modifications to Rhodesia's already discriminatory educational structure. As from that date, the local African communities became financially responsible for future African educational development,²⁰ with minimal government subsidizing. Forthcoming government assistance would be derived solely from taxes levied on African produce (Europeans were not equivalently levied on their produce)²¹. Furthermore, African education would be allocated no more than 2% of the Gross National Product. No formal ceiling of this kind was imposed on Europeans, and in practice they were allocated an approximately equal sum. Considering the disparity in the country's racial make-up, and the number of Africans who can afford the fees, the extent of the racial discrimination is obvious.

In 1966, only 13 new secondary schools had been established, none providing learning levels equal to the "junior certificate" standard (completion of "form 2") and leaving the African unqualified for A Roll registration (see Appendix A). A specific example of the deliberate truncating of the African educational process at the secondary level is the case of Highfield Community School in one of Rhodesia's major African Townships. In 1967, this school petitioned for permission to extend the period of existing secondary education by the addition of further "forms". Though the revenues for such additional classes would be derived strictly from African parents, the Ministry of Education (which employs not one single African in a senior position) refused to grant its approval.

Another aspect of the new policy was that expenditures on African education were to be channelled largely to primary rather than secondary institutions. This policy directs Africans away from academic endeavours, leading them toward some sort of vocational training. With the implementation of a two-year vocational course following requisite attendance at a primary school, estimates were that by 1974, 37.5% of those leaving primary school would enter vocational training, with only 12% going on to receive secondary school education.²²

Prior to 1969, one of the major achievements of the Churches had been the creation of new African facilities for secondary-level training. Under the "new plan" in education, all missions and other charitable organisations were prevented from implementing any plans for future construction. Nor were they allowed to extend the levels of scholastic achievement in those schools already in existence. Mission schools instruct approximately 85% of the African children of primary-school age, and with this decision, African adolescents were deprived of opportunities in education which might have been provided by the Churches. In 1970 the Churches received a further blow—the government grant for salaries of teachers employed by mission schools was diminished by 5%, leaving those controlling these

²⁰ Retroactively formalized in the Land Tenure Act, 1969, No. 82, Schedule 5.

²¹ African Development Fund Act (1949), as amended.

²² *Rhodesia Parliamentary Debates*, Vol. 72, Col. 1172.

schools with four alternatives: (1) to raise fees; (2) to obtain monies from other sources, (3) to impose on teachers a 5% salary cut, or (4) to transfer these schools to the control of African local councils (as the government would prefer).

Discriminatory educational policies have a direct impact on employment opportunities. The Apprenticeship Act of 1959, which covers the majority of skilled trades, requires that an African possess the Junior Certificate (indicating 10 years of schooling) as a minimum requirement for apprenticeship.²³ This requirement excludes most young Africans because only a small percentage of them are able to go to secondary school due to financial and other handicaps. No breakdown of registered apprentices has been published on a racial basis since 1969. The earlier figures for 1962-69 were as follows:²⁴

<i>Year</i>	<i>Total registered</i>	<i>Africans</i>
1962	436	10
1963	371	9
1964	378	8
1965	445	7
1966	373	9
1967	396	5
1968	498	17
1969	531	49

The African apprenticeship programmes have for the most part been abandoned because African students were not taken into industry, due to the prejudice of employers, even after completing three years of instruction.²⁵ In addition, many white unions have successfully exerted pressure on the government to close African technical colleges.²⁶

Dr. M. Hirsch says "the core of the problem . . . lies in the White Rhodesian dilemma in which economic conditions dictate the necessity for African advancement while our politics are geared to limiting it."²⁷ He points out that reluctance to accelerate African education geared to production of skilled personnel for economic development in the Tribal Trust Lands is attributable to political fears about African advancement. The provision of the vital infra-structure in these areas would divert national investment and would thus bring White reaction. Also the much needed injection of European entrepreneurship, capital and skills in the tribal areas, cuts across the emerging concept of apartheid contained in the com-

²³ E. Mlambo, *Rhodesia: The British Dilemma*, London, 1971, p. 12.

²⁴ Reginald Austin, *op. cit.*, p. 49.

²⁵ Mlambo, *op. cit.*, p. 18.

²⁶ Sprack, *op. cit.*, p. 21.

²⁷ M. Hirsch, *A Decade of Crisis*, Salisbury.

munity development scheme and in the Land Tenure Act. Finally, industrial development in these areas would speed the disintegration of the tribal system, which the government is politically committed to strengthen and preserve.

University Education

The University of Rhodesia constitutes a remarkable exception to the racial segregation which prevails in the educational system. Both staff and students are racially mixed, including in the student residences on the campus. Academic standards are high and academic freedom exists within the limitations imposed by the general law. In 1972, the 978 students comprised 510 European, 400 Africans and 78 'other races'. In 1975 the figures were as follows:—

	<i>Students</i>	<i>Europeans</i>	<i>Africans</i>	<i>Asians</i>	<i>Others</i>
Full-time	1,355	707	555	75	18
Part-time	540	420	97	11	12
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	1,895	1,127	652	86	30
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>

In spite of the expansion of the university the proportion of African full-time students remained constant at about 41%. These figures do not give the whole picture, since a large number of white Rhodesians (1,908 in 1972) receive government assistance to study at South African white universities. This means that approximately 50% of qualified white school-leavers receive state-aided university education, one of the highest figures in the world.²⁸ The privileged position of the white students is thus maintained.

The most serious problem for African graduates is their lack of employment opportunities. As the Principal of the University, the Rev. Professor Robert Craig, D.D., said in his Annual Report in May 1975:

“The most difficult area in the past has always been, and remains, African entry into posts apart from education and medicine, particularly into the Civil Service, Commerce and Industry. The position, as I understand it, is that the Public Service offers appointment to African graduates as professional officers normally where they will be providing services to Africans. A small number in addition are employed on Research Stations, mainly by the Ministry of Agriculture. To the best of my knowledge the Public Service does not recruit African graduates for the general administrative grades, e.g. in the Ministry of Commerce and Industry, or the Treasury. . . .

. . . we must conclude that there is in the African graduate a very great source of knowledge and of expertise which is largely untapped. No country can afford this situation, and least of all the Rhodesia of today.”

²⁸ Reginald Austin, *op. cit.*, p. 51.

Labour

As has been seen, expropriation of African land serves a dual explosive purpose. The land is used by white Rhodesians to develop agricultural and industrial enterprises, and its expropriation helps to create a constant, abundant and cheap migrant labour pool. This is done by forcing the African population off their land into "African Areas". The African Areas are for the most part agriculturally unproductive and the land space too small to support the number of inhabitants at a reasonable standard of living. As a result, most Africans are compelled to go into the white controlled cash section of the economy in order to earn a living.

Nevertheless, white protectionist politics have influenced official attitudes towards African urbanization. Recent government actions evince the feeling that this trend towards African urbanization should be minimized. The separate development policy stresses that unemployed Africans should be absorbed into the Tribal Trust Lands, despite the fact that Africans have originally left the Tribal Trust Lands due to lack of employment opportunities there. With the population explosion, however, unemployment amongst the Africans has increased at an alarming rate and it is believed that there are now at least a million Africans unemployed.²⁹ Despite the fact that the actual numbers employed in the towns have risen considerably over the last decade, the proportion of Africans in employment has fallen from 17% to 14%. A questionnaire directed towards those Africans who had finished Ordinary and Advanced level examinations six months earlier showed that 11.6% were employed, 25.6% were continuing in school and 50.2% were unemployed, the remainder failing to reply to the questionnaire.³⁰ Performance in school did not matter: a "high unemployment rate at all aspirational and achievement levels was found to exist."³¹

If he is able to secure employment, the African worker must contend with a vast network of discriminatory labour practices. Chief among these is the wide disparity in average earnings between blacks and whites. On average, whites in employment earned almost eleven times as much as the average industrial black worker in Rhodesia during 1972.³²

In 1974 there were 927,000 Africans employed in the European areas, representing 88.7% of all employees. They earned R\$372,100,000, representing only 41.3% of total earnings. Their average earnings were R\$401 a

²⁹ The African population has one of the highest growth rates in the world 3½% per annum.

³⁰ Murphree, *op. cit.*, p. 150.

³¹ *Ibid.*, p. 152.

³² Peter S. Harris, *Black Industrial Workers in Rhodesia*, Mambo Press, 1974, p. 11. This is nevertheless substantially better than the earnings of non-industrial blacks in Rhodesia. Cf. Murphree, *op. cit.*, p. 38: "Although income inequality between the European sector and the African emergent sector has declined markedly since 1946, nevertheless in 1970 European incomes per capita were still 20 times greater than those found in the emergent African sector . . . and fifty times greater than those in the subsistence level".

year (or R\$33.42 a month) compared with R\$4,480 a year for the 118,200 'European' employees (including Asians and coloureds). In the mining and quarrying industry the contrast is even greater. African earnings averaged R\$437 a year. European earnings were $14\frac{1}{2}$ times greater at R\$6,370 a year.³³

The poverty datum line (PDL) for the average family in municipal accommodation was estimated in January/February 1974 at R\$73.52 a month in Salisbury, R\$70.04 a month in Bulawayo and at R\$76.19 a month in Fort Victoria, and the PDL for a man living singly in rented accommodation at R\$17.79 to R\$18.93 a month.³⁴ Most men living singly had families elsewhere to support. The average African earnings of R\$33.42 a month are thus seen to fall far short of the minimum necessary consumption needs of the average family.

Employment opportunities for Africans are severely restricted. Their principal areas of employment are as unskilled labourers, as agricultural workers on European farms, as domestic servants, as unskilled workers in manufacturing, construction, mining and quarrying, and in distribution, restaurants and hotels. In 1975, of an African population of 6,000,000, only 927,000 Africans were reported to be employed.³⁵ This is an increase of 25% over the 1965 figure, but as the African population increased in this period by 40%, it shows how unemployment among Africans has increased since UDI. Of those employed 357,700 were agricultural workers on European owned farms and forestry workers earning an average income of R\$156 per annum. The next largest groups of Africans in employment were domestic servants (130,900), earning an average of R\$322 per annum, and those employed in manufacturing (130,800) earning an average of R\$632 per annum.³⁶ A growing number of blacks are performing semi-skilled work but these employees cannot command wages in excess of R\$70 per month. In contrast, white semi-skilled workers, who do not perform significantly different tasks from the black semi-skilled labourers, have "occupationally protected" jobs and earn much higher wages than blacks. The government ensures that white semi-skilled Rhodesians will not have to compete directly with similarly skilled blacks for employment by maintaining reserved (or occupationally protected) jobs at "European" wage rates, including within the lower echelons of the civil service and within statutory bodies such as the Rhodesian Railways.³⁷

Discrimination is evident in employment conditions and personnel relations as well. One African witness explained his experiences:

"In 1974 I worked at a newspaper company. To work at this place, I

³³ Monthly Digest of Statistics, Salisbury, January 1976, Tables 14-17.

³⁴ V. S. Cubitt and R. C. Riddell, *The Urban Poverty Datum Line in Rhodesia*, University of Rhodesia, June 1974.

³⁵ Excluding the small number employed by Africans in African rural areas.

³⁶ Monthly Digest of Statistics, January, 1976.

³⁷ Harris, *op. cit.*, p. 15. Job reservation is achieved administratively, not by law.

was chosen from the labour exchange. As the qualifications required were "A" level only, I had to hide my identity as a former university student. I was given R\$46 a month for work in the capacity of a library clerk or assistant. In that library were two white ladies working with me who I am certain had quite lower qualifications than mine and who were getting around R\$140 a month. I eventually discovered there was not a lot of work in the place because after two months of working there I could almost do three-quarters of the work alone while they loitered around and wanted me to clean up the place and get them tea from the canteen. My salary was never increased despite the fact that I was capable of doing anything those ladies could do. I was never allowed to have my tea in the canteen which was a privilege for whites. The same policy [of discrimination] applied to the use of toilets and similar facilities."

A school leaver described his search for employment as follows:

"During working days, i.e. from Monday to Friday, I would wake up early in the morning, I would walk from home in Highfield to where I am now working. I would wait outside the fence near the gate of the factory starting at about seven o'clock to five in the afternoon. Occasionally other fellows waiting with me would be chosen by the personal assistant for the vacant post. He usually went for the tough guys who he explained could do the tough work efficiently. I being of medium build was left waiting for the change of a job appropriate to my toughness. After three months of waiting, luck struck as a sweeping job became available. (Form IV male.)"³⁸

A recent study concluded:

"It is not surprising that a substantial number of employed school leavers were dissatisfied with their jobs which were considerably below the status of their aspirations and which were on the whole poorly paid."³⁹

Trade Union activities

The avenues open to Africans to improve their labour conditions through trade union activities are very limited. There are two outstanding restraints. These are the defensive attitude of the white labour force against African competition, supported by the determination of the whole white community to maintain their ascendancy, and the exclusion of trade union rights from a very large area of African employment.

The first has been well summarised by a Rhodesian economist, Peter Harris. In discussing the principles of the Industrial Conciliation Act of 1959 (I.C.A.), which contains the current trade union legislation, he says:

"It is necessary to record that certain aspects of these principles have had the effect of segregating the industrial labour movement on the basis of level of skill within particular industries.

³⁸ Murphree, *op. cit.*, p. 160.

³⁹ Murphree, *op. cit.*, p. 163.

The "skilled" unions are most effective when they are able to ensure that certain categories of work are reserved for workers with an officially certified skill. The membership of the 'skilled' unions is predominantly white, the unions are white led, are organizationally strong, enjoy active sponsorship from the governing political group and participate actively in continued negotiation with employer groups under the auspices of the I.C.A. Rapid advances in wages of skilled workers are best secured not by negotiated wage minima, but by the creation of a shortage of supply of this by the dual expedient of influencing the rate at which additional workers gain the necessary skills and of preserving categories of work for white capital and white labour that both these groups perceive to be in their long-term political interests, but are weakened by the short-term cost advantages that white employers are able to reap from a short-term alliance with black labour.

These unions must therefore not only mount the traditional offensive of organized labour against capital, but at the same time are forced to fight a rearguard action against potential competitors of a lower order of skill. In many ways, the two battles are inter-related, since the competing worker category often does not exist, and would have to be deliberately created by employer sponsorship in the event of their being able to "fragment" skill categories.

On the other hand the 'unskilled' unions, almost exclusively African in terms both of membership and leadership, organizationally and financially weak, competitively disabled both by the hostility of the political power structure and the debilitating effects of the industrial negotiating machinery, struggle for unity and membership and at the same time are required to oppose not only organized employer groups, but also workers of a higher order of skill who view the development of African trade unionism as a potential threat to the stability of the white working class. Thus, the concept of a single worker movement is inapplicable in the Rhodesian context, and any study of industrial relations has to recognise that this movement is fragmented, its objectives multi-directional and its tactics variable.⁴⁰

The second restraint results from the limited application of the I.C.A. to Africans. Under the earlier Industrial Conciliation Act of 1934 Africans were excluded completely from trade union protection by the simple expedient of including in the definition of an 'employee' the words "but shall not include a native". The Act of 1959 relates only to workers in the commercial and industrial sectors. The majority of African workers who are employed in domestic service, mining and agriculture, are excluded from all trade union activities and their labour relations are governed by the remarkable provisions of the Master and Servant Act of 1901.

The Master and Servant Act does not provide for wage setting

⁴⁰ Peter S. Harris, *Industrial Relations in Rhodesia*, South African Journal of Economics, Vol. 42, No. 1, March 1974.

machinery or for any collective bargaining apparatus. It permits the determination of wage rates by "market forces" in the context of highly structured institutional arrangements. No minimum wages or conditions have been regulated under the Act, except for the provision of one day leave per week and a maximum daily work load of 10 hours.⁴¹ By contrast there are no less than 11 classes of misconduct by servants which constitute criminal offences punishable on a first offence by a fine of £4 or up to one month imprisonment in default 'with or without spare diet'; on a subsequent conviction the maximum penalty is raised to two months' imprisonment (without the option of a fine) 'with or without spare diet or on spare diet with or without solitary confinement'. These offences include absence without leave, intoxication, careless or improper performance of work, disobedience, abusive or insulting language, or quitting his master's service without lawful cause.⁴² On discharge from prison, if he fails to resume his service, he can be sentenced to successive sentences of one month imprisonment under similar conditions until he consents to and does resume his service.⁴³ Thus, the conditions of service of the mass of the African labour force are backed up by criminal sanctions, a practice akin to slavery, and they are excluded from the limited protection and relatively favourable provisions of the Industrial Conciliation Act.

Even though African workers who qualify for trade union membership under the Industrial Conciliation Act are in a relatively better bargaining position than workers who come under the Master and Servant Act, these African workers find that their efforts to combat exploitation are thwarted by a process of "controlled unionization" created by provisions in the Industrial Conciliation Act. Specifically, Section 47 of the Act states that the constitution of a trade union shall not contain any provision whereby any person is excluded from membership on the grounds of race or colour. However, this provision is countered in its application by a provision in sub-section (3)(b) authorizing that membership be divided into branches on the basis of "class of work . . . or the race or colour of the members". Sub-section 4 of Section 47 empowers the Registrar to order unions to amend their constitutions in such a manner as to ensure better protection of 'skilled and minority interests', in other words so as to ensure that the voting strength of the white minority shall control the decisions of the union at all times. The Registrar may, for example, weight the votes in favour of the skilled workers and then provide that if there is still a preponderance of the unskilled (who are usually Africans) over the skilled (usually whites) the votes of the unskilled must never count for more than one-third of the skilled members vote.⁴⁴

⁴¹ Master and Servants Act, Chap. 247, section 5.

⁴² *Ibid.*, Section 30.

⁴³ *Ibid.*, Section 46.

⁴⁴ Cf. F. M. Nehwati, *The Effect of Racial Discrimination on the African Worker in Rhodesia*, cited in Mlambo, *op. cit.*, pp. 16-17.

As has been pointed out already, although unions may not restrict membership on the basis of race, the division of the unions on the basis of skills and the weighted rights given to the whites ensures the protection of the white interest. The white dominance of skilled employment is assured by the limited educational training and apprenticeship facilities available to Africans and by the energetic steps taken to increase white skilled immigrants to meet the increasing demands of industry and commerce.

'Right to strike'

Other provisions of the Act make the lawful strike or lock-out a remote weapon in employment disputes. Strikes and lock-outs are illegal in services that are deemed essential and in non-essential services where employers and employees are bound by an unexpired industrial agreement or set of employment regulations.⁴⁵ Strikes or lock-outs are also deemed illegal until all conciliation procedures have been completed.⁴⁶ By these means, the most effective tool of trade union activity—the strike—is largely nullified for Africans. Moreover, if union leaders take the initiative in organizing illegal strikes they run the risk of criminal prosecution, which, if successful, automatically debars them from holding union office.

In 1960 the Law and Order Maintenance Act was passed. Although its main purpose was to regulate African political activities, its provisions embraced trade union activities as well. Under Section 31 it is a criminal offence punishable with up to five years' imprisonment for anyone to incite strike action in "essential services". This Section also places the burden of proof on accused workers to prove beyond a reasonable doubt that they did not "intend" to endanger, interrupt or interfere with the carrying on of any essential service in Rhodesia. "Essential services" are defined to include:

- (a) any hospital service;
- (b) any transport service;
- (c) any service relating to the generation, supply or distribution of electricity;
- (d) any service relating to the supply and distribution of water;
- (e) any sewerage or sanitary service;
- (f) any service relating to the production, supply, delivery or distribution of food, fuel and coal;
- (g) any fire brigade;
- (h) coal mining;
- (i) communications;

and any other service declared by the President by notice in the 'Gazette' to be an essential service for the purposes of this Act." (Emphasis added.)

Section 32 makes it a criminal offence to jeer at anyone who has not joined a strike:

⁴⁵ Industrial Conciliation Act, Chap. 246, section 122.

⁴⁶ *Ibid.*

- “32. Any person who uses any opprobrious epithet or any jeer or jibe to or about any other person in connection with the fact that such other person has
- (a) undertaken, continued, returned to or absented himself from work or refused to work for any employer; or
 - (b) undertaken any duties as a member of any police reserve or of any government department;
- shall be guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a period not exceeding one year.”

The practice of boycotting strike breakers is outlawed by Section 28 which makes it an offence punishable with up to 10 years' imprisonment to advise, encourage, incite, command, aid or procure the boycotting of any person.

Under Section 26 of the Act, it is an offence known as “intimidation” punishable with up to 10 years' imprisonment if a person “without lawful excuse, the proof whereof lies on him . . . does any act or behaves in a manner which is likely to compel or induce some other person to do some act which [he] is not legally obliged to do” or “to refrain from doing some act which [he] is legally entitled to do”. This is another powerful weapon to be used against persons seeking to organise a strike.

Section 29(3)(c) makes it a criminal offence simply to make a statement that would imply the desirability of “unlawfully” ceasing work. The language of the Section reads as follows:

- “29(3) Any person who, without lawful excuse, the proof whereof lies on him, makes any statement indicating or implying that it would be incumbent or desirable
- (c) unlawfully to cease work or to refrain from going or returning to work, shall be guilty of an offence and liable to imprisonment for a period not exceeding seven years.”

A further restriction on the right to strike is contained in Section 48A(1) of the Act. It provides

- “48A(1) Any person who, on or after the fixed date, with intent to endanger the maintenance of law and order in Rhodesia or any part of Rhodesia or in a neighbouring territory—
- (b) commits any act of terrorism or sabotage shall be guilty of an offence and shall, subject to the provisions of sub-section (3), be liable to be sentenced to death or to imprisonment for life.”

The reader may wonder what this had to do with the right to strike. The explanation lies in sub-section 8(c) of the same Section which defines an act of terrorism or sabotage as “an act which has or is likely to have any of the following results, namely . . . (c) to endanger, interrupt or interfere with the carrying on of any essential service as defined in sub-section

(3) of Section 31. . . .” Thus, under this Section African workers who strike in essential services may be sentenced to death or imprisonment for life.

One of the longest and most effective strikes in Rhodesia was called by the Transport and Allied Workers' Union in 1972. About 400 African bus drivers in Salisbury and 138 in Bulawayo went on strike to support demands for an allowance of a dollar a day for drivers running "one-man operator" buses. Under the previous industrial board agreement, the drivers received an allowance of only 45 cents. During and after the strike large numbers of drivers were dismissed, and some were arrested and charged under the Law and Order Maintenance Act for inciting strike action. A few days after the strike, mass arrests of leading trade unionists followed. Sixty-five trade union leaders were sent to government detention camps at Wha Wha and Gonkudzingwa. Forty members of the African National Council were detained for questioning under provisions of the Law and Order Maintenance Act.

The strike ended in June 1972 when emergency transport services operated by army drivers in military vehicles went into operation. The Rhodesian government cleared the way for military drivers to break the strike by introducing emergency regulations which augmented provisions in the Industrial Conciliation Act and the Law and Order Maintenance Act prohibiting such strikes.

Another strike at Shabani mines was brutally broken when armed police and troops killed 13 striking workers and forced other workers back to work at gunpoint.

Political participation: Voting rights

The figures quoted above in relation to education and land ownership take on further significance when looked at in the light of the franchise qualifications contained in the 1969 Constitution. Under the African roll a voter must either (a) have an income of R\$900 per annum or own property worth R\$3,600 or (b) have an income of R\$600 or own property worth R\$2,400 and additionally have four years of secondary school education.

Under the 1969 Constitution there are only sixteen African members as compared with fifty European members in the Lower House. Of the sixteen African members only eight are elected by popular vote, the remaining eight being elected by the four tribal colleges, which are composed of Chiefs and other tribal leaders. The eight popularly elected African members in fact received a sum total of only 2,279 votes in the election in April 1970. (It is of interest to note that under the 1965 franchise, which is very similar to the 1969 one, it was estimated that more than 150,000 Africans were eligible to vote, but less than 5,000 were registered as voters on the African roll in February 1969.)

Increases in numbers of African members are pegged to proportional income tax contributions of the Africans relative to the Europeans. It is provided by the Constitution that additional members will be elected both

by popular vote and by the tribal colleges, the first two additional African members being popularly elected, the next two by the tribal colleges, and so on. However, it is further provided that African membership is not to increase further after the so-called stage of parity has been reached, that is equal African and European membership in the Lower House. The Upper House consists of ten Europeans elected by an electoral college of European members of the Lower House, ten Chiefs elected by an electoral college of Chiefs, and three members appointed by the President.

In 1971 proposals for a constitutional settlement were worked out between the British Government and the Rhodesia Front regime. These provided for some advance in the African franchise qualifications. However, even under these proposals majority rule would have been deferred until the 21st century. In the event the proposals were abandoned when the Pearce Commission reported that they were overwhelmingly rejected by African opinion.

PART IV — REPRESSION

Introduction

As has been seen, white supremacy in Southern Rhodesia is founded upon practices which discriminate against and exploit the African population. These practices have necessitated a remarkable collection of security legislation. In the name of maintaining law and order, much of it is designed to prevent any protest or other political expression or activity by Africans directed against the system of racial discrimination and exploitation. This legislation operates as the primary instrument of political repression and under its aegis, vast inroads have been made into individual liberties.

In the ten years preceding U.D.I. there were six declarations of a state of emergency, each of three months' duration. Since U.D.I. in 1965 there has been a continuous state of emergency. The effect of an emergency is to grant wide additional powers to the government. The present law is governed by the 1969 Constitution. Under Section 61 the President may declare that a state of public emergency exists or that a situation exists which, if allowed to continue, may lead to a state of public emergency. If approved by the House of Assembly such a declaration is valid for a period of one year from the date of its proclamation. It may be extended an indefinite number of times for periods of up to one year.

During the period of a state of emergency many of the basic protections of the Declaration of Rights (found in the Second Schedule to the Constitution) become inoperative in law to the extent that inconsistent laws are "reasonably justifiable for the purpose of dealing with any situation which has arisen or may arise during that period"; (para 11 of the 2nd Schedule).

Among these protections are: —

- the right to personal property,
- protection from search and entry,
- protection of law,¹
- freedom of conscience,
- freedom of expression, assembly and association, and
- protection from unjust discrimination.

¹ This includes the right to a fair hearing within a reasonable time by an independent and impartial body to determine civil rights and criminal charges, the right to a public trial, the assumption of innocence, protection against prosecution for an act not a crime when committed or imposition of a more severe sentence than existed at the time of the act, and protection from being tried for a crime for which one has already been acquitted or pardoned.

Upon a declaration of emergency the President may, in the terms of Section 4 of the Emergency Powers Act,

“make such regulations as appear to him to be necessary or expedient for the public safety, the maintenance of public order, the maintenance of any essential service, the preservation of the peace, and for making adequate provision for terminating the state of emergency or for dealing with any circumstances which have arisen or in his opinion are likely to arise as a result of such state of emergency”.

Broad powers of search, arrest, detention and restriction are given to the Minister of Law and Order, to use if he considers them to be expedient in the public interest.

Since 1965 there has been a spate of amendments to the Emergency Powers Act and a proliferation of regulations passed in terms of the Act. As the security situation has worsened more stringent emergency powers have followed. If the security situation deteriorates further, this trend is likely to continue. These emergency powers have in effect supplemented and strengthened extensive pre-existing security laws such as the Law and Order (Maintenance) Act which dates back to 1960, and which applies whether or not a public emergency exists.

Many writers have commented upon the possible corrupting effect that a prolonged state of emergency can have upon governmental methods and institutions in a democratic society. Mr. Justice Schreiner has put it in this way: “A country cannot lightly accept the position that it is to live for an indefinite period in a state of emergency. Unless the idea of returning to normality is kept freshly before the people, the latter are likely to lose their zeal to regain full supremacy of the law. . . . An emergency should not be allowed to become permanently embedded in the country’s life merely because it is easier to deal with subversive activities by sharp executive action than by following the ordinary process of law”.² Professor Mathews puts the matter slightly differently when he says departures from legality such as detention and internment have “the tendency, in the long perspective, to produce lowered standards of public administration and morality. Such depressed standards will frequently survive changes of government. For new governments frequently cannot resist the advantages of bad laws, for the consolidation of political power.”³

Freedom of Expression

The right to free speech is initially guaranteed in the 1969 Constitution in these terms:

“. . . no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinion and to receive and

² O. D. Schreiner: *The Contribution of English Law to South African Law: and the Rule of Law in South Africa* (Stevens, 1967), p. 101.

³ Professor A. Mathews: Detention without trial, 1972, *Quis Custodiet* 3, at p. 18.

impart ideas and information without interference and freedom from interference with his correspondence.”⁴

After this broad guarantee, however, there are a series of qualifications which render it virtually worthless. No law is to be deemed to be inconsistent with the guarantee if, for instance, it is considered necessary in the interests of defence, public safety and public order, or if it makes provision for the censorship of broadcasting, television, newspapers or other publications, public exhibitions or public entertainments.

Freedom of Assembly

The cornerstone of security legislation in Rhodesia is the Law and Order (Maintenance) Act of 1960 and subsequent amendments. Part I of the Act deals with processions, gatherings and meetings. Section 4 declares that freedom of public assembly does not confer “a right to be at any place situated on land belonging to or vested in the President or a local authority or any other person”, and that roads, streets, lanes, paths, sidewalks, thoroughfares and the like do not exist “for the exercise by any individual of the Freedom of Public Assembly”. The provisions of this Act effectively deny to Africans the freedom of assembly. Subsection 2 of Section 6 of the Act states that any person who wishes to form a procession must apply to the regulating authority of the area in which the procession is to be formed and, “if *such authority is satisfied* that such procession is unlikely to cause or lead to a breach of the peace or public disorder, he shall, subject to provisions of Section 10, issue a permit in writing authorizing such procession” and specifying as well the conditions attaching to the holding of the procession. The manner in which this Section is written gives the regulating authority what amounts to a complete discretion whether to issue a permit or not. He may also control, in detail, the manner in which the procession is to be held.

Section 7 of the Act prohibits the convening of a public gathering in respect of which the Minister has granted a permit. The Act defines a public gathering to include a “gathering of twelve or more persons in a public place”, any public meeting (i.e. one held in public or “which the public or any section thereof are permitted to attend, whether on payment or otherwise”), and any gathering of more than 200 persons whether in public or otherwise. This Section effectively curtails the political activities of Africans who cannot hold meetings on weekdays as they must work by day and evening meetings are completely banned. Sundays and holidays are therefore the only free days to hold political meetings but meetings on these days are illegal under Section 7 unless a specific permit has been granted.

Apart from the general provisions governing permits, District Commissioners may make orders prohibiting public processions (Section 10) or

⁴ Paragraph 9(1)(a) of the Second Schedule to the 1969 Constitution.

public gatherings and public meetings (Section 11) in particular circumstances.⁵ Moreover, under Section 12 the Minister of Law and Order may at any time by order prohibit a particular public gathering, or all public gatherings as specified in the order for up to 12 months, or restrict the hours during which they may be held, or impose conditions relating to them. A gathering in contravention of such an order is an unlawful gathering and any person present is liable to R\$100 fine or 6 months imprisonment.

In August 1975, Mr. Lardner Burke, Minister of Law and Order, issued an order making it illegal to hold any meeting in a Tribal Trust Land without the permission of a district commissioner. Hitherto meetings of less than 12 Africans did not require permission, but now even gatherings of less than 12 Africans in the Tribal Trust Lands without permission are illegal if they are thought to be of a political nature.

Section 17 of the Act enables a police officer, "for the proper exercise of his preventive powers" to forbid any person from addressing a gathering and "to enter and remain on any premises, including private premises, at which three or more persons are gathered whenever he has reasonable grounds to believing that a breach of the peace is likely to occur or that a seditious or subversive statement is likely to be made". The term "premises" does not include a private domestic residence, but the term "private premises" is defined as "premises to which the public have access (whether on payment or otherwise) only by permission of the owner, occupier, or lessee of the premises". Under this Section, therefore, police are able to invade African political discussions in private premises.

Freedom of Association

The government have almost unlimited powers to ban any organisation at will. The Unlawful Organisations Act No. 55 of 1971 declared ten named organisations to be unlawful, including all the African Liberation Movements and Parties (ANC, ZAPU, ZANU, etc), the Zimbabwe African Congress of Unions and the Cold Comfort Farm Society (see Appendix B). In addition, the Act gives the President power to declare any other organisation unlawful if it appears to the President (which in practice means the government) that

- (a) the activities of the organisation or of any of its members are likely to endanger, disturb or interfere with defence, public safety or public order, or
- (b) the organisation is controlled or affiliated to, or participates in the activities of, or promotes the objects or propagates the opinions of any organisations specified in Part II of the Schedule. These organisations (which are the World Federation of Trade Unions, the World Peace Council, the World Federation of Democratic Youth, the Women's

⁵ These powers are additional to those given to District Commissioners under the African Affairs Act, Chap. 228, s.l., to prohibit or control the holding of meetings.

International Democratic Federation, the International Union of Students and the African National Congress of South Africa) may be added to at any time by the President.

A proclamation under the Act is not 'open to question in any court of law' (Section 3 (3)). It requires confirmation by resolution of the House of Assembly within 21 days.

Any person who in any way carries on the activities of a banned organisation (including by shouting or painting its slogans, or possessing any document, banner or insignia relating to it) is guilty of an offence and liable to a fine of R\$2,000 and/or 5 years' imprisonment (Section 11).

Freedom of the Press and Publications

Part II of the Act concerns printed publications. Section 18 gives the President power to order that printed publications or series of publications, or all publications published by any person or association of persons be declared prohibited publications if he is "of the opinion that the printing, publication, dissemination or possession of any publication is likely to be contrary to the interests of public safety or security".

On August 26 1964, the *African Daily News* (the only daily paper widely read among the African people) was banned under an order issued in terms of Section 18.⁶ More recently under this Section, *Moto*, an African weekly newspaper, was banned permanently as was *Mambo* magazine. In September 1975, the government seized 700 copies of the Johannesburg *Sunday Times* "in the interests of public safety".

Section 19 makes it a criminal offence to print, publish, disseminate, sell, offer for sale or reproduce a prohibited publication or to possess one "or any extract therefrom" without lawful excuse, subject to a R\$200 fine or one year's imprisonment or both. Under Section 44 (2) (f) it is a criminal offence to possess a "subversive" publication.⁷ Section 53 deems as persons responsible for publishing such publications, officers of an organisation whose statement is published and persons referred to in the publication as editor, assistant editor or author.

Sections 11 and 12 of the Censorship and Entertainments Control Act No. 37 of 1967 allow a Censorship Board (as opposed to a court of law) to declare publications to be undesirable on the grounds, *inter alia*, that they are indecent, obscene, likely to give offence to religious convictions or feelings, harmful to public morals, likely to harm relations between any sections of the public or likely to be contrary to the interests of public safety or public order. An appeal from the decision of the Board lies only to a higher administrative tribunal and not to a court of law (except on a

⁶ Leo S. Baron, "Southern Rhodesia and the Rule of Law, *Journal of the International Commission of Jurists*, Winter 1965, Vol. VI, No. 2, p. 239.

⁷ For the definition of a "Subversive" publication see p. 40 below.

point of law).⁸ Under an amendment to Section 12 of the Act,⁹ the Censorship Control Board is now empowered to prohibit a publication that it has previously declared to be undesirable, and "it is an offence punishable with a £500 fine and/or 2 years imprisonment to import, print, publish, manufacture, make or produce, distribute, display, exhibit or sell or offer or keep for sale any prohibited publication".¹⁰

Under Section 11(4)(d) it is specified that the provisions of Section 11 shall not apply to "any publication of a technical, scientific or professional nature *bona fide* intended for the advancement of or for use in any particular profession or branch of arts, literature or science". Under Section 11 (5) the Board has a general power to grant exemptions.¹¹

In September 1975, new controls of publications were introduced by new Emergency Powers Regulations which modified Section 42 of the Defence Act, 1972, so as to give the Minister of Law and Order, upon the recommendation of a "Publications Advisory Committee" selected by himself, the power to:

- "(a) prohibit or regulate the printing or publication within Rhodesia or any part of Rhodesia of any publication; or
- (b) prohibit the possession, sale or distribution within Rhodesia or any part of Rhodesia of any publication; or
- (c) prohibit the importation into Rhodesia of any publication or class of publications."¹²

The regulations give wide discretionary powers over publications to certain police and other officials. If such a person feels that there is a reasonable possibility that an order may be made in relation to any publications, he may seize them. In light of the standards for such an order, i.e. that the Minister of Law and Order considers it "to be necessary in the interests of public safety or public order", the police officer is, for all practical purposes, unrestrained. As "publication" is defined to include any

⁸ Sections 15-17 of Act No. 37 of 1967.

⁹ See Section 3 of Act No. 52 of 1972.

¹⁰ Sections 11 (1) and 22 of Act No. 37 of 1967.

¹¹ However, these provisions must be read in the light of the case of *S. v. Brand*, 1973 (2) S.A. 469 (R.A.D.), where the publications imported had already been declared to be undesirable in terms of Section 12. The accused contended that the Censorship Board's declaration was *ultra vires* insofar as the publications could not be regarded as undesirable at all, or in any event, not for educational purposes for which he required them. Nevertheless, he was convicted of unlawfully importing these publications and his appeal against this conviction was dismissed. It was held that a person who wishes to import any publication which the Board has declared to be undesirable must apply for exemption from the order in terms of Section 11 (5) of the Act; he cannot ignore the Board's declaration and raise a defence in terms of Section 11 (4) (d) of the Act that no such declaration should have been made.

¹² Emergency Powers (Maintenance of Law and Order) (Amendment) Regulations, 1975 (No. 4), Rhodesia Government Notice (R.G.N.) No. 903 of 1975.

written matter or recording, these powers can be used to seize manuscripts or tapes and ban them in advance of printing or distribution.

The national press (i.e. the Argus company) is severely curtailed in its freedom to publish material. After U.D.I. there was direct press censorship for a time and blank spaces appeared in the pages of the press where the government censors cut out various items. Later it was made illegal to leave blank spaces. The position now is that the press submits all materials to the Ministry of Information in advance of publication, and if this Ministry advises against publication the press will apparently abide by this indication. Additionally no security information will be printed without the authorization and verification of the Ministry of Defence. Radio and Television are government controlled and only broadcast commentary which is in support of government policies.

The effects of this censorship are described in an unpublished paper written by a Rhodesian in 1973:

“. . . To some extent all reflections written down by someone living in Rhodesia must be subjective. In daily life a person may keep fairly well informed about events on the basis of his own activities, by studying newspapers, Hansards and radio reports, and by discussing topical subjects with business associates and friends. But official censorship and the effect of seeing much through the eyes and words of other people inevitably distort the realities of the situation. Nobody can rely completely on reports about anything not witnessed personally. In attempting to reach an overall impression it is often necessary to guess at missing details on the basis of personal experience or deduction. Inadvertent errors creep in.

“Nevertheless, the piecing together of a broad picture is essential. Only a small clique of politicians has access to comprehensive facts as they emerge from the information-supplying departments of the state. The clique uses its privileged position to perpetuate its tenure of office, easily turning aside the criticisms of opponents on the ground that they are not based on ‘facts’. The ‘facts’, however, are withheld in the interests of so-called ‘national security’. As the Minister of Internal Affairs said recently in Parliament, they are ‘security matters and can do nothing to assist the situation of the country if aired here’.¹³ Needless to say, much potentially embarrassing information is suppressed under this convenient formula. Thus, if the initiative is not to be left in the hands of the clique, the opposition must obtain all the information available, collate and interpret it, and use the results whenever possible to obstruct and demoralize the clique.”

Subversive Statements

Section 44 of the Law and Order (Maintenance) Act, found in the Part III

¹³ Parliamentary Debates, House of Assembly, 28 June 1973, Col. 562.

provisions on miscellaneous offences, deals with subversive statements, the writing, printing, possession, displaying, or uttering of which constitute criminal offences punishable with 5 years imprisonment. Under Section 44 (1) a subversive statement is defined to include eight categories of statement, namely:

“. . . a statement which is likely

- (a) to bring the President in person into hatred or contempt;
- (b) to excite disaffection against the President in person or the government or Constitution of Rhodesia as by law established or the administration of justice therein;
- (c) to incite any person to attempt to procure otherwise than by lawful means the alteration of any matter by law established in Rhodesia;
- (d) to incite any person to commit a crime in disturbance of the public peace;
- (e) to engineer or promote feelings of hostility to or expose to contempt, ridicule or disesteem any group, section or class in or of the community of a particular race, religion or colour;
- (f) to induce any person to resist either actively or passively any law or lawful administrative measure in Rhodesia;
- (g) to incite any person to resist or oppose the government or any Minister or official or police officer, otherwise than by lawful means, in the maintenance of public order or safety or the application of any law;
- (h) to lead to public disorder or to the disturbance, disruption, hindering of or interfering with any undertaking, industry, trade or occupation or the carrying on thereof.”

The defence in the “exciting disaffection” cases under Section 44 (1) (b) often try to draw a distinction between exciting disloyalty or discontent towards a particular political party as such (and not the system under which that party holds office) and statements likely to excite persons to overthrow or undermine a government in power by unconstitutional means. The former does not run foul of the law but the latter constitutes a serious offence. This distinction is often difficult to sustain, especially as it has been ruled that an attack upon a political party can be couched in such wide terms that it can be deemed that it is really the governmental system which is being assailed.¹⁴

The result is to make it extremely difficult for African leaders to condemn the present system by which government institutions are controlled by Europeans without committing an offence. Moreover, any attack on the ruling minority as such may result in a prosecution under Section 44 (1) (e) for promoting feelings of hostility towards the white race or exposing it to contempt, ridicule or disesteem.

Section 44 has been used extensively by the Rhodesian authorities. It is

¹⁴ See for instance *S. v. Mutasa*, 1970 (4) S.A. 610 (R.A.D.) and *S. v. Chikwanha*, unreported judgement A-155-71.

the law under which The Rev. N. Sithole was convicted and sentenced to a term of imprisonment before the 1962 general election for publishing "subversive" statements in a circular letter. Relevant parts of the statement read as follows:

"Sir Edgar Whitehead is a European leader. He looks after the interests of whites only. Those Africans who think Sir Edgar Whitehead cares for their interests might as well think that a leopard cares for the interests of a goat. Sir Edgar was chosen by whites and he is therefore responsible only to whites. . . . Sir Edgar has never tried to remove the political grievance of the franchise which worried the Africans so much. Europeans do not want the majority of Africans to have the vote and therefore their leader acts accordingly. . . . The European minority led by Sir Edgar is the 'real enemy of law and order' since they do not want the vote to be extended to the 4,000,000 Africans in Southern Rhodesia. They want it to remain the monopoly of only 250,000 whites."¹⁵

The offices of *Umbowo*, a newspaper run by the United Methodist Church, were raided by police and the editor was made to face charges relating to material he had published on the ousting of the Tangwena Tribe. The editor was charged under Section 44 for publishing a poem about the Tangwena eviction which read in part:

"We are hunted down like slip-springers with dogs on our scent . . . We got locked up . . .

Our homes have been destroyed . . . our cattle have been grabbed . . . our schools have been grabbed . . ."

The presiding magistrate, Mr. H. P. Duncan, stated that the poem was "basically an attack upon whites as a group" and that the word "grab" strongly suggested an unjustifiable and dishonest taking away which was likely to engender feelings of hostility. Accordingly, he sentenced the editor, Mr. Everson Chikwanda, to six months hard labour conditionally suspended for three years. The poet, an American missionary, was deported.¹⁶

On 27 February 1973, a Catholic priest, Fr. Bruno Planger, received a five months jail sentence (suspended) for publishing what the prosecution called an "extravagant and rabble-rousing" article in *Moto*, a Catholic newspaper. The article, by the Catholic Bishop of Umtali, described the Rhodesian Constitution as a "mockery of law". Planger subsequently lost an appeal. The judge criticized the article for not offering "practical solutions". "It cannot be emphasized too strongly", he said, "that to harp upon the known problems without offering concrete and practical solutions to them can only exacerbate the situation and such conduct, if subversive, might well lead to the breakdown of law and order."¹⁷ Within a few days, Mr. S. P. Hlongwane, Deputy National Organizing Secretary of the A.N.C.,

¹⁵ Quoted in Claire Palley, *The Constitutional History and Law of Southern Rhodesia, 1888-1965*, Oxford, 1966), p. 605, note 6.

¹⁶ Judith Todd, *The Right to Say No* (London, 1972), p. 21.

¹⁷ *Rhodesia Herald*, 28 February and 24 March 1973.

received an identical sentence under the same Act in a Gwelo court for making a subversive statement. "The only white colour in my skin is under my foot", he told a rally, "and that is where the white man belongs."¹⁸ Hlongwane was the general secretary of the United Chemical and Allied Workers Union from 1965 and vice-president of the National African Federation of Unions for about five years. Because of his conviction he was automatically debarred for ten years under the Industrial Conciliation Act from "participating as an official" of a trade union organisation.¹⁹

Prior to an amendment passed in 1974,²⁰ one thing which slightly mitigated these very extensive provisions was the fact that the accused could defend himself in respect of having made any of the eight species of subversive statements mentioned in Section 44 (1) of the Act (quoted above) by showing in effect that he was only exercising his right of fair criticism in a moderate fashion. This defence under Section 44 (2) (a) applied to statements made with the intention:

- (i) of showing that the President or the Government has been misled or mistaken in any measure; or
 - (ii) of pointing out errors or defects in the Government or constitution of Rhodesia as by law established or in the administration of justice therein with a view to the reformation of such alleged errors or defects; or
 - (iii) of urging any person to attempt to procure by lawful means the alteration of any matter in Rhodesia by law established; and that it was made fairly, temperately, with decency and respect and without imputing any corrupt or improper motive.
- provided that the statement
"was made in good faith and was made fairly, temperately, with decency and respect and without imputing any corrupt or improper motive".

Even this cautious safeguard has now been swept away in respect of seven of the eight species of statements. Since the 1974 amendment this defence can now only be raised in respect of the "exciting disaffection" provision in paragraph (b).

In supporting the Amendment in Parliament, the Minister of Law and Order stated that he was particularly concerned about subversive statements engendering racial hatred and antagonism, and to prevent those accused escaping conviction in respect of these types of statement by raising the defence of fair and temperate criticism. This is to say the least ironic in the light of the fact that the whole policy of the government, and frequent statements made in support of it, are likely to be highly offensive to members of the African race and therefore likely to lead to racial

¹⁸ *Rhodesia Herald*, 28 March 1973.

¹⁹ *Moto*, 2 June 1973.

²⁰ Section 3 of Act 43 of 1974.

antagonism. Be that as it may, by criticizing the government in respect of its racial policies, depending on how the criticism is phrased, the critic may well run foul of the law. Moreover, the Minister was not correct in saying that it was very difficult to obtain convictions because the proviso which sets out the defences open to an accused was worded in very wide terms. Convictions were by no means difficult to obtain.²¹

The seriousness of a contravention of Section 44 (2) is to be seen from the fact that it can be punished by up to five years imprisonment and no alternative of a fine is provided. In addition, the amendment of 1974 makes it mandatory for the court when convicting a person of an offence under Section 44 to make an order prohibiting that person from attending any public meeting within Rhodesia for a period, being not less than one year and not more than three years. It also places the person under a blanket of silence by making it a criminal offence to print, publish or disseminate any of his statements made during the period of the order. (The Senate Legal Committee ruled that these provisions contravened the declaration of rights, but they were as usual passed by the Senate on the basis that it was nonetheless in the national interest.)

There are also wide-ranging provisions in the Emergency Powers regulations making it a criminal offence to communicate to any other person orally or in writing any statement, rumour or report relating to a matter connected with national defence, public safety or public order which is likely to cause alarm or despondency.²²

False Statements

In addition to "subversive" statements, to make, publish or reproduce any false statement, rumour or report which

- (a) is likely to cause fear, alarm or despondency among the public or any section of the public; or
- (b) is likely to disturb the peace; or
- (c) is likely to encourage any person to do any act which may endanger the public safety, disturb or interfere with public order or interfere with the maintenance of essential services,

is under Section 48, an offence punishable with up to seven years' imprisonment unless the person publishing it satisfies the court that he took reasonable measures to verify its accuracy and, in the case of (c) above, had reasonable cause to believe that it was true.

The very wide wording of this Section constitutes a considerable further restriction upon freedom of the press and freedom of expression.

Freedom from Arbitrary Arrest

Any police officer may, under the Emergency Powers Regulations, arrest without warrant any person he reasonably suspects

²¹ For the full debate see *Hansard* of 14 November 1974.

²² See Regulation 42 of R.G.N. 689 of 1974.

- (a) has acted or is about to act in a manner prejudicial to public safety, the maintenance of public order or the termination of the state of public emergency, or
- (b) has committed or is about to commit any offence under any law relating to the preservation of public safety or the maintenance of public order,

and may detain him for 30 days.²³ It is to be noted that under paragraph (a) the police need not even suspect that an offence has been or is about to be committed. The phrase "act in a manner prejudicial to . . . the termination of the state of public emergency" is unbelievably wide and vague and can cover almost anything.

Freedom from Arbitrary Search

Section 4 of the Criminal Procedure and Evidence Amendment Act, 1975, gives the state very wide powers to seize any article which is "*believed to be concerned in the commission or suspected commission of an offence*" or "*which may afford evidence of the commission or suspected commission of an offence*" or which is "*believed to be intended to be used in the commission of an offence*" (emphasis added). There are normal procedures for the issue of a search warrant by a magistrate, but very wide powers are given to the police to search without warrant any person, container or premises for the purpose of seizing any article, including "if he on reasonable grounds believes that a warrant *would be issued to him . . . if he applies for one . . .* and that the delay in obtaining a warrant would prevent the seizure or defeat the object of the search". Equally, a policeman may enter any premises without warrant for the purpose of interrogating and obtaining a statement from any person who may furnish information about a suspected offence (there is proviso that the policeman must have the consent of the occupier, but as very few Africans are the legal "occupier" of a premises this proviso has little effect in relation to Africans).

Under the Emergency Powers Regulations, any police officer may stop and search any person or vehicle and enter and search any land or premises or any person found there and seize anything which there are reasonable grounds for believing will afford evidence as to the commission of an offence.²⁴

Detention Orders

30-Day and 60-Day Orders

Under the normal criminal procedure a suspected person can be arrested without a warrant and detained for only 48 hours (or in some cases for up

²³ R.G.N. 689 of 1974, Regulation 50 (1). This power is separate from, and to be distinguished from, the power to arrest without warrant for 30 days pending enquiries with a view to an indefinite detention order. See "Detention Orders", below.

²⁴ R.G.N. 689 of 1974, Regulation 51 (1).

to 96 hours) without being brought before a judge.²⁵ However, under Regulation 23 of the Emergency Powers Regulations,²⁶ a police officer can arrest a person without warrant and detain him for up to 30 days pending enquiries where he has reason to believe that there are grounds which would justify the person's indefinite detention by the Minister of Law and Order or where that person on being questioned fails to satisfy the police officer as to his identity. The failure to satisfy as to identity provision does not appear to be limited by the nature of the offence, i.e., the person failing to satisfy as to identity would not necessarily have to be a person suspected of being engaged in the type of conduct envisaged by the Emergency Powers Regulations. Under an amendment to this Regulation made in 1974, a police officer can apply to the Minister for authority to detain the person for a further thirty days (i.e. 60 days *in all*) if the police officer is satisfied that the continued detention of the person is necessary and that his investigations will not be completed within 30 days. A person detained under these provisions for up to 30 or 60 days is not eligible for bail.²⁷

The Emergency Powers Regulations provide that a commissioned police officer can prevent communications to and from restricted and detained person,²⁸ including persons detained under 30 or 60 day orders. One provision in the Regulations is of particular note in restricting communication between a detained person and his lawyer. Under this, a commissioned police officer "shall not prohibit a restricted person or detained person from communicating with or receiving any communication from his legal representative unless the (police) officer is of the opinion that hindrance is reasonably likely to be caused to the processes of investigation or administration of justice" if he permits such a communication.²⁹ Access to the lawyer is to be allowed as soon as this ground falls away.³⁰ As there is no procedure for appeal from this decision, the provision places an extraordinary and dangerous power in the hands of the police.

Indefinite Detention

In addition to these powers of temporary detention by the police, the

²⁵ Section 30 (1) of the Criminal Procedure and Evidence Act (Chapter 31).

²⁶ Regulation 23 of R.G.N. 689 of 1974.

²⁷ A general limitation on the powers of the courts to grant bail is introduced by Section 12 of the Criminal Procedure and Amendment Act of 1975, which provides that the Minister of Law and Order may on any application for bail by a person sentenced by the General Division certify that a grant of bail would be likely to prejudice public security or, on an application by a person sentenced by a magistrate in respect of a currency offence, that it would be likely to prejudice the administration of justice. The court is then bound to refuse the application for bail.

²⁸ Regulation 43 (1) of R.G.N. 689 of 1974.

²⁹ Regulation 43 (3) of R.G.N. 689 of 1974.

³⁰ Regulation 43 (4) of R.G.N. 689 of 1974.

Emergency Powers (Maintenance of Law and Order) Regulations allow for the indefinite detention of a person if it appears to the Minister that such detention is "expedient in the interests of public safety or public order".³¹ The Minister of Law and Order has stated that it is his policy to release detainees on parole subject to certain restrictive conditions where he is satisfied that *bona fide* undertakings of good conduct have been given by them,³² but it is not known how many, if any, have been released on these terms.

Official figures are no longer published of the number of persons subject to detention or restriction orders. In 1965 it was stated in the *Rhodesia Herald* that there were 1,716 people in detention or restriction. It is believed that about two thirds of these were in detention. In 1972 these numbers had been considerably reduced. According to the annual report for 1972 of the Secretary for Law and Order there were 90 detainees at the end of that year. No official figures have been issued since then, but the number is known to have increased again substantially. The latest figure available comes from Christian Care, a Rhodesian organisation that helps the families and dependants of people imprisoned or detained for political offences. It stated in September 1975 that it had 664 detainees on its books, and pointed out that this did not include an unknown number of people being held incommunicado. David Ennals, Britain's Minister of State for Foreign and Commonwealth Affairs, stated in Parliament on 31 October 1975, that there were 800 Africans in detention. It is understood that this included persons held under 30 or 60 day orders. Since then, it has been announced that a number of detainees have been released; but other arrests have taken place.

Detainees are kept in ordinary prisons, but apart from the other prisoners, or in detention camps. The conditions of their detention are governed by the Emergency Powers Regulations and the Special Branch of the police apparently dictate conditions for detainees rather than the prison authorities. Allegations of maltreatment have been made. In 1973 it was reported in the London *Guardian*³³ that an African detainee had died in a Gwelo detention after the authorities had failed to give him proper food, clothing and medical attention, and that another detainee was feared to be dying of tuberculosis. Judith Todd reported the death of another detainee in 1970.³⁴ Some insight into detention without trial conditions for Europeans is gained from the books of Judith Todd and Peter Niesewand about their detention experiences and both these writers make

³¹ Regulation 19 (1), Emergency Powers (Maintenance of Law and Order) Regulations 1974, R.G.N. 689 of 1974.

³² 1972 Report of Secretary for Law and Order, p. 4. No later reports have been published.

³³ *The Guardian*, 2 February 1973.

³⁴ J. Todd, *op. cit.*

serious allegations about the conditions for African detainees.³⁵ Further information on the ill-treatment of Africans in detention is given in Part V.

Review Tribunals

Within the first three months of his detention a detainee may apply to have his case reviewed by a detainees' Review Tribunal. The Tribunal consists of three persons appointed by the President. The Chairman must be a present or former High Court judge, or a person qualified for appointment as a High Court judge.³⁶

Cases of detainees are reviewed annually by the detainees' Review Tribunal. The Review Tribunal is called upon to submit reports about detainees to the Minister "concerning the necessity or expediency of continuing the detention of the detained person" and shall make therein such recommendations in regard to the detained person as it thinks fit, whether as to the variation or revocation of the detention order reviewed or otherwise.

It is further provided that "the Minister is obliged to give effect to the recommendations of the Review Tribunal except if the President directs him not to act in accordance with it". The Minister can refer the matter to the President where "having regard to the paramount necessity of preserving public safety and public order in Rhodesia" he believes that effect should not be given to the recommendation. This is a typical piece of hypocritical legislation. It purports to make the Tribunal's recommendations binding, but then provides a procedure for ignoring them if the Minister does not like them.

A detainee may appear personally before the tribunal or may submit written representations.³⁷ Although it does not appear in the regulations, the tribunal has customarily allowed legal representation for the detainee. Proceedings are held *in camera* and the tribunal is not bound by the laws of evidence or procedure applicable to any legal proceedings whether civil or criminal.³⁸ The Minister must appoint a person to be responsible for laying before the Review Tribunal a memorandum containing:

- (i) a copy of all the papers which were considered by the Minister before making the detention order;
- (ii) any other information concerning the detained person which amplifies the information contained in the papers considered by the Minister or which has subsequently been received by the Minister.

The tribunal is entitled to:

- (a) cause the oath to be administered to and may examine any other person who is called by the Secretary to the Review Tribunal to clarify

³⁵ P. Niesewand, *In Camera* (London, 1973); and J. Todd, *op. cit.*; see also Part V below.

³⁶ Regulation 29, R.G.N. 689 of 1974.

³⁷ Regulation 36, R.G.N. 689 of 1974.

³⁸ Regulation 32 (2) and (3), R.G.N. 689 of 1974.

or explain matters referred to in the memorandum or representations which have been laid before the Tribunal, and

- (b) require the detained person concerned to appear before it and may cause the oath to be administered to and examine him.

The regulations do not specifically state that the detainee has the right to call witnesses if he appears.

In its Annual Report for 1971 the Tribunal stated:

“In every case reviewed the Tribunal was satisfied on the evidence before it that the making of the initial detention order by the Minister was soundly based and in the public interest. Where the Tribunal has recommended continued detention it has done so because the evidence before it has established satisfactorily that the detainee concerned has indulged in subversive activity of one kind or another prior to detention and was likely to resume such activity if released. Having regard to the overall security position the Tribunal was, accordingly, satisfied in those cases that continued detention was necessary in the public interest.”³⁹

The attitude of the current chairman of the Tribunal, Mr. Justice Davies, was made clear in a recent Rotary address.⁴⁰ In this he stated that he thought that Rhodesia might not have survived without preventive detention which he felt was an unfortunate but real necessity. He said that detainees fell into three main categories. Those sentenced by the courts and due for release, those who have not been tried and those acquitted by the court. He drew attention to the difficulty in obtaining convictions in court of persons known to be committing subversive activity because of intimidation of witnesses. In the mid-sixties, many terrorists trained in other countries had come before the courts. Scores of these were due for release and it would have been irresponsible for Government to allow these men to roam about freely on release. Detention was thus inevitable. The Review Tribunal had taken the proper approach and each case of detention had been carefully examined. It might seem unfair that having served his sentence he should be further detained, but the Tribunal had to be certain in every case that if such a person was released, he would not pose a danger. Where persons had served short term prison sentences for assisting terrorists it may be necessary to detain them to prevent such further assistance.⁴¹

Finally, said the Judge, in certain cases, even where persons have been acquitted on charges of subversion experience proved that it was sometimes necessary to detain such persons because the acquittals may have resulted from intimidation of witnesses by members of banned associations.

³⁹ Annual Report, 1971.

⁴⁰ *Rhodesia Herald*, 26 November 1973.

⁴¹ It would seem that short terms of imprisonment are likely to be rare in the light of the fact that Section 48B of the Law and Order (Maintenance) Act now specifies life imprisonment or death for this offence.

Such witnesses may have originally made statements to the police but later suddenly refuse to give evidence in court. This latter argument, i.e. that convictions could not be secured because of witness intimidation, has been frequently used by successive Secretaries for Law and Order. Until the fear of intimidation could be removed and the personal safety of witnesses and their families guaranteed, public safety required resort to detention. Secret information might be given about terrorists but people would not give evidence in court. The danger, of course, in this line of reasoning is that it assumes that the original witness statements to the police are made freely and voluntarily, whereas there is abundant evidence that many of these statements are obtained under duress (see Part V below).

In 1971 and 1972 the Tribunal reviewed a total of 255 cases. In 219 of these it recommended that the detentions remain unaltered. In 34 cases variations in the orders were recommended. In only 2 cases were releases recommended, subject to certain conditions.

In spite of the apparent attempt by the Review Tribunals to bring an element of impartiality into these review proceedings, the fact remains that the nature of the proceedings makes them almost wholly dependent upon the evidence of the Special Branch, which appears to be accepted in all cases. As in Northern Ireland, the tribunals have signally failed to secure the confidence or cooperation of the population.⁴² Few detainees avail themselves of the opportunity to make representations. For example, in 1968 only 7 out of 175 made representations. In 1972 only 26 out of 93 appeared personally and the majority of the remainder failed to make representations. As one detainee put it through his relative,⁴³ he believed that no matter how honestly the members of the Tribunal may approach their duties there are aspects of the machinery of review which inhibit the Tribunal from arriving at a fair and just conclusion. He stated that the proceedings are *in camera* and if the detainee appears personally it is an offence under the Emergency Regulations to reveal the nature or details of the allegations made against the detainee, or even to reveal the reply the detainee would make. The detainee, he said, is thus denied the opportunity of having grounds of the detention aired before the "Court of Public Opinion".

The detention and review procedures have been the subject of debate within Rhodesia. Sir Robert Tredgold, the former Chief Justice of the Federation, has argued that the original decision should not be that of the Minister in respect of detentions and most certainly it should not be his sole decision in respect of restrictions. In 1967⁴⁴ he said that it was altogether wrong that decisions in regard to detainees should rest with one man, and that man a political opponent of the man detained. Sir Robert

⁴² Report of the Committee to Consider the Problems of Terrorism and Subversion in Northern Ireland, London H.M.S.O., 31 January 1975.

⁴³ *Rhodesia Herald*, 27 February 1972.

⁴⁴ *Rhodesia Herald*, 27 July 1967.

Tredgold also stated that a review tribunal should not be composed of civil servants and should be widely representative and contain people of more independent positions. The only specification in the current regulations is that the chairman should be legally qualified. As there are three persons on the Tribunal and as the decision is a majority one, it is possible that the legally qualified person could be overridden by the other two members (although a *quorum* is two and the chairman has a casting vote).

Restriction Orders

In addition to indefinite detention powers, the Minister of Law and Order possesses powers under both Section 50 and Section 51 of the Law and Order (Maintenance) Act to impose restrictions upon a person for up to five years.

Under these Restriction Orders the Minister may under Section 50 exclude a person from a particular area, or order him to remain in a specific area, or require him to notify the authorities as to his movements or, under Section 51, forbid him to convene, attend or address a public gathering for up to five years. Restrictions can be imposed under Section 50 where the Minister considers "that for the purpose of maintaining law and order in any part of Rhodesia it is desirable to do so". He may impose restrictions in terms of Section 51 if a person has committed an offence under the Law and Order (Maintenance) Act, the Unlawful Organisations Act or an offence which, in the Minister's opinion, is associated with public violence, unlawful gathering, riot, tumult or other public disorder.

Sections 50 and 51 of the Law and Order (Maintenance) Act have been used by the Rhodesian authorities to restrict large numbers of people in various parts of the country. These Sections have especially been used to remove African political leaders and organisers from contact with their fellows.

One instance illustrating the use to which these Sections were put is the case of Michael Holman who, in 1969, was a student at the University College of Rhodesia. He described his arrest and restriction as follows:

"I entered the College in 1965 to take a BA degree in English. I was removed from the campus in August 1967 . . . for my activities on student councils, for demonstrating against the regime on several occasions, and for being an editor of a part-satirical, part-serious magazine called "Black and White", critical of the regime's policy. "Black and White" had been appearing since September 1966, disregarding the censorship regulations, which we considered both illegal and immoral. On 13 March 1967, I and a co-editor, a lecturer, were arrested and questioned about the magazine. My room, and his office and home were searched and papers confiscated. In July I appeared in the Salisbury Magistrate's Court charged with contempt of Court arising out of a poem printed in the April issue of "Black and White", which criticized the judgment given in the first of Rhodesia's post—U.D.I. Constitutional

wrangles. . . . I was due to appear in Court on 11 August to hear judgment.

"On the morning of 10 August members of the Special Branch, that section of the Rhodesian Police which deals with political affairs, entered my room and served me with a restriction order based on the belief that I had actively associated myself with activities prejudicial to the maintenance of law and order in Rhodesia. I was brought before the magistrate the next day and, ironically, found not guilty of the charge of contempt of court. I was nevertheless escorted from the court to a waiting police car. A few hours later I was in Gwelo (a restriction area).

"On 22 March 1968, I made application in the High Court of Rhodesia for the restriction order to be declared invalid and for the court to direct Lardner-Burke (Minister of Law and Order) to disclose the grounds on which the order was made. . . . Three months later judgment was given. The Minister has declined to give his reasons for making the order. He is under no obligation to do so.

"I was due to end my restriction period on 12 August 1968. On 10 August again came an early morning knock and two plainclothed Special Branch officers. . . . I was served with an order restricting me to Gwelo for another year. . . . That same day I received permission to leave for Britain to continue my studies. My lawyer, however, lodged an appeal against the second order. The appeal was turned down, with the reminder added: '. . . if your client should return at any time during the validity of the restriction order, the order will still be operative'. I, like the many Rhodesian students who left their restriction areas to take up study opportunities overseas, plan to return to Rhodesia. But Mr. Lardner-Burke was not making an idle boast when he stated: 'I can restrict (a person) for 15 years. . . . Every time he comes out I can restrict him again for no reason whatsoever under Section 51'."⁴⁵

It appears to be the official policy to use restriction orders instead of detention orders when the person involved is considered less of a security risk. The largest number of restrictions occurred in 1967. From 1969 the number dropped progressively until at the end of 1971 there were only two restrictees. Since 1971 no official figures are available but it is believed that in 1973 restrictions were again readily resorted to because of the security situation. Certainly in 1973 following upon the August riot at the University in Salisbury the Minister imposed mass restriction orders upon over 120 students who were involved in the riot and who had already been sentenced by the courts and had served their terms of imprisonment.

In regard to Sections 50 and 51 it should be noted that paragraph 2 (5) of the Declaration of Rights in the 1969 Constitution provides that if a law authorises the detention or restriction of a person to or from a specified place or area,

⁴⁵ *The Scotsman*, 9 April 1969.

“it shall also provide that the case of such person should, if so requested within three months of the imposition of the order, be submitted to an impartial tribunal.”

However, no tribunal has ever been established to review cases of restrictees as opposed to detainees. The Declaration of Rights is being ignored in this regard.

Deprivation of Citizenship and Deportation

Where a person is a citizen by registration, he may be deprived of his citizenship by the Minister in terms of Section 15 of the Citizenship of Rhodesia Act, No. 11 of 1970. Section 15 (1) (b) (ii)⁴⁶ provides that the Minister may deprive a citizen of his citizenship if:

“... the person has shown himself to be disloyal or disaffected towards Rhodesia or has acted in a manner prejudicial or likely to be prejudicial to public safety or public order or likely to engender or promote feelings of hostility towards or to expose to contempt, ridicule or disesteem any group, section or class of the community.”

The Minister is not to deprive anyone of their citizenship unless he is satisfied that it is not conducive to the public good that a person continues as citizen (Section 15 (1)). Before an order may be made the person must be informed of the grounds for the proposed removal and informed as to his right to have the case referred to a commissioner appointed by the Minister (Section 15(3)).

After the person has been deprived of his citizenship he may then be deported, as happened in the case of Guy Clutton-Brock.⁴⁷

A non-citizen may be declared to be a “prohibited immigrant” in terms of the Immigration Act of 1966. Section 5 lists the many grounds for such a declaration. In particular, Section 5 (1) (b) declares to be a prohibited immigrant

“... any person who, from information received from any source is deemed by the President to be an undesirable inhabitant or an undesirable visitor to Rhodesia.”

Under Section 10 (1) no appeal is allowed against such decision. The deportee is merely allowed to make a representation within 24 hours to the Minister. No information is to be given for a decision reached under Section 5 (1) (b) if the Minister certifies that it is not in the public interest to make such a disclosure. No court of law may question the adequacy of grounds for such a decision.

The effect of these provisions is to give the Executive an unrestricted power to deprive any person of his citizenship and deport him from the country.

⁴⁶ Included in the Act by Section 7 of the Act 49/72.

⁴⁷ See Appendix B.

“Anti-Terrorist” Measures

The armed struggle of the national liberation forces has given rise to a considerable number of repressive laws. Some are directed against acts of “terrorism” and against cooperation with “terrorists”, as the guerrilla fighters of the national liberation forces are always called. Others are designed to restrict and control civilians in order to make the activities of the guerrilla fighters more difficult. The application of these measures will be considered in the next Part of this study. At this stage, the nature of these laws and their interpretation and application by the courts will be briefly examined.

Failing to Report Terrorists

Under Section 48 B of the Law and Order (Maintenance) Act, all people are required to report as soon as reasonably practical, and in any event within 72 hours, any information they come to possess concerning the presence of terrorists in Rhodesia. The reporting requirement applies even when the person has only “reason to believe” a person to be in such a class. Under this Section a terrorist is “a person who has committed or attempted to commit an offence specified in the Third Schedule”.⁴⁸ This includes, *inter alia*, any person who “commits any act of terrorism or sabotage with intent to endanger the maintenance of law and order”. Sub-Section 8 of Section 48 A of the Law and Order (Maintenance) Act defines terrorism and sabotage in terms going far beyond the normal meaning of the terms:

- “(8) In this section “act of terrorism or sabotage” means an act which has or is likely to have any of the following results, namely
- (a) to further or encourage the achievement, by violence or forcible means, of any political aim, whether within Rhodesia or in a neighbouring territory, including the bringing about of any social or economic change; or
 - (b) to cause, encourage or further an insurrection in, or forcible resistance to the government or armed or police forces of, Rhodesia or a neighbouring territory; or
 - (c) to endanger, interrupt or interfere with the carrying on of any essential service as defined in Sub-Section (3) of Section 31 within Rhodesia; or
 - (d) to cause serious bodily injury to or endanger the safety of any person within Rhodesia; or
 - (e) to cause substantial financial loss within Rhodesia to any person or the Government of Rhodesia; or
 - (f) to obstruct or endanger the free movement within Rhodesia of any traffic on land or water or in the air.”

The most usual contact between the African tribesmen and the guerrillas occurs when the guerrillas call at night demanding food. In some cases

⁴⁸ Section 48B(1)(a).

they tell the tribesmen to report the fact the next day for their own protection. When this is not done, the tribesmen are placed in a dilemma. If they are suspected of informing by the guerrillas they are liable to be shot or maimed by them in retaliation. The Rhodesian security authorities allege that terrorists have murdered nearly 300 civilians, most of them Africans.⁴⁹ On the other hand, if the security forces suspect that a tribesman has information which he has failed to report, he is arrested and interrogated. There is abundant evidence that these interrogations are accompanied by torture and ill-treatment if the suspects do not readily supply the information they are suspected of possessing (see Part V below). As one victim expressed it: "If we report to the police, the terrorists kill us. If we do not report, the police torture us. Even if we do report to the police, we are beaten all the same and accused of trying to lead the soldiers into a trap. We just do not know what to do."⁵⁰ The consequence of confession will be, at the least, a long term of imprisonment. The maximum penalty for failing to report information was formerly 20 years imprisonment but since 1973 it has been increased to a sentence of death or imprisonment for life.

The present Acting Chief Justice, Mr. Justice MacDonald, expressed the dilemma faced by Africans in the Tribal Trust Lands and the limitations of existing law in the recent case of *M.C. and Other v. S.*⁵¹

"The appellants must have been aware that, for a report to be of maximum value to the Security Forces, it must be made at the earliest opportunity. Unhappily the earliest opportunity of reporting frequently occurs when the persons under the duty to do so have been unnerved by a recent encounter with the terrorists. Human frailty is such that persons unnerved and intimidated by terrorists, and aware that they are in no way responsible for the predicament in which they find themselves, will almost invariably fail to comply with the statutory duty to report. They will fail to do so because they are afraid that their action in reporting might become known to the terrorists and because they believe there is little risk that the authorities will become aware of their omission to do so. An unlikely and remote prospect of being found out and prosecuted will not out-weigh a present and real fear recently instilled by terrorists.

"The imposition of heavy, even draconian sentences by the courts will not have the effect of arming such persons with the courage to report. A campaign against terrorists will not be assisted by punishing the innocent victims of terrorism who, under the threat of reprisals by the terrorists, lack the necessary courage to report and the provision of Section 48 B (c) must always be applied with the greatest circumspection

⁴⁹ *To The Point*, 24 October 1975, p. 8.

⁵⁰ *The Man in the Middle*, Catholic Commission for Justice and Peace in Rhodesia, April 1975, p. 1.

⁵¹ Unreported Judgment A-191.

if more harm than good is not to be done to our campaign against terrorism.”

In spite of these wise and humane words, an examination of the summary of reported cases in Appendix D shows that the courts have regularly imposed long prison sentences on African tribesmen for failure to report the presence of terrorists.

Assisting Terrorists and Possessing Arms

Apart from failing to report terrorists, the following are the principal offences under the Law and Order (Maintenance) Act in respect of which Africans are prosecuted for acts of terrorism or for assisting terrorists:

- under Section 48 A any person committing an act of terrorism or sabotage as defined in sub-section (8) (see above), is liable to death or life imprisonment;
- under Section 48 B it is an offence punishable by death or life imprisonment to
 - (a) harbour, conceal or assist a person he knows or has reason to believe is a terrorist,
 - (b) refuse to disclose information relating to a terrorist he has harboured, concealed or assisted;
- under Section 36 it is an offence punishable with death or life imprisonment to possess any arms of war (as defined in the Section), and an offence punishable with up to 20 years imprisonment to possess any other offensive weapon or offensive material.

When tried for such offences, it is difficult for the defendants to establish that they acted under duress or compulsion unless they have escaped from the terrorists and reported the facts to the authorities at the earliest opportunity. Many examples will be found in the summary of reported cases in Appendix D. One illustration is the case of *S. v. K.* 1974 (1) S.A. 344 (R.A.D.) in which the appellant had been convicted of three offences. He was sentenced to death on counts of murder and possessing arms of war, and to twenty years imprisonment for an act of terrorism. He appealed against the death sentences and the appeal succeeded to the extent that the sentences on these two counts were reduced to life imprisonment. According to the Report, the accused had been abducted from his kraal by terrorists and forced to undergo training at a terrorist camp in Mozambique. It was accepted that at this stage he had no opportunity of escaping. The appellant was forced to return to Rhodesia with an infiltrating group of terrorists. During this infiltration, an engagement took place leading to the death of a member of the security forces but the appellant did not fire any shots in this engagement. In fact he had immediately run away when the shooting started and had later surrendered to the authorities and had cooperated with them to the maximum possible extent. His cooperation had led to the discovery of an arms cache and to the killing of a terrorist and to the detection of a number of tribesmen who had rendered assistance

to the terrorists. The Appeal Court appeared to accept that if the appellant had been under continual compulsion and had had no opportunity to escape then the compulsion might have provided a complete defence.⁵² However, Beadle, C. J., found that "When his (the appellant's) band came into Rhodesia . . . and especially when it came into the tribal area, he (the appellant) might well have shown more resolution than he did and he might well have tried to escape".⁵³ Finally, the Chief Justice held that notwithstanding the extenuating circumstances his offence was a very serious one and he should be sentenced to life imprisonment.

Another revealing case is *S. v. C. and Others* (C.R.B. 135-49 in which judgment was given on 8 January 1975). Three accused were convicted in the case of having contravened Section 48 A of the Law and Order (Maintenance) Act. All three accused had taken part in an attack upon Madziwa police post during which mortar and rifle fire had been directed at the police camp. The first and third accused had fired their rifles in this attack, but it was not proven that the second accused had fired any shots. The first and third accused were therefore convicted as principal offenders and the second as a *socius criminis*. No one had been injured in the attack and little material damage was done. There was, however, a potential risk of grave injury, especially from a mortar shell that had landed inside the police camp but had failed to explode. All accused were abductees who had originally been forced to join the terrorist cause. The second and third accused had surrendered to the security forces, the second after having read a government surrender pamphlet dropped by the security forces.

The defence raised on behalf of all the accused, namely compulsion, was rejected. It failed in respect of the first accused because it was found that after his abduction he had become a wholehearted supporter of the terrorist cause. In respect of the second and third accused it failed because, although it was accepted that they were reluctant terrorists, the court held that they had had ample opportunity to escape. They had been later operating in an area in which they had grown up and with which they were very familiar.

The facts in relation to the second accused are of particular significance. The Chief Justice reconstructed what had happened. This accused was a simple tribesman who was about sixteen or seventeen when he had been abducted. He was told that he would be shot if he did not join up and had good reason to fear that this threat would be carried out if he did not comply. When he was later forced to infiltrate with the terrorists he was under the command of a notorious terrorist leader, who was one of the most ruthless in the area and who had been known to shoot tribesmen out of hand if he considered that they were assisting the authorities in any

⁵² The terrorist camp was in "a remote area and it was completely under the control of the terrorists, so he cannot be blamed for not attempting to flee at this stage", per Beadle, C.J., p. 347 N.

⁵³ *Ibid.*, p. 347 F.

way. The accused had been with the terrorists for only a week or two before he had been coerced into joining the attack upon the police post. This attack had broken down immediately when fire was returned from the post and the terrorists had fled in disarray. In the resultant confusion, following upon bombing of the terrorists from an aeroplane, he had escaped to a kraal, but was later again abducted by the same terrorists when his presence in another kraal had been disclosed to them. He later escaped again and made his way to another police camp. He apparently told the authorities only about his abduction and escape and not about his participation in the attack on the police post. He returned to his home but was abducted for a third time by the terrorists. The gang was later bombed again. The accused, who had earlier read a government surrender pamphlet, surrendered at this stage to the security forces but was wounded in the leg in the process of surrendering.

The Chief Justice held that it was only timidity and lack of resolution which had caused the accused to remain with the terrorists, and that he had merely been an accomplice. Nevertheless, he was sentenced to five years imprisonment.

In the case of *The Nine Appellants v. S.* (Unreported Judgment A-78-74), the ninth appellant had been convicted under Section 36 (1) of possessing arms of war and was sentenced to death by the trial court. He appealed against this sentence. The facts disclosed that the appellant was "a simple untutored tribesman" of about forty years of age. He had been abducted and forced to join the terrorist cause against his will and had probably been brainwashed by the terrorists. He had remained with the terrorist gang for a considerable period of time during which the gang had engaged in various terrorist activities including two engagements with the security forces and the abduction of some African girls. There was no evidence, however, that during this time the appellant was responsible for the death of anyone in Rhodesia. The appellant had eventually surrendered to the security forces and had shown repentance.

The Chief Justice giving the majority judgment dismissed the appeal against the death sentence. He stated that "the proper judicial approach" to adopt in this case was to assess the moral blameworthiness of the appellant and also to consider the factor of deterrance. Whilst the appellant's surrender and repentance was "a most cogent mitigating factor" it did not necessarily mean that the death penalty should not be imposed. He considered that "in this case the deterrent aspect of punishment overrides the other consideration. An accused, who has already committed heinous acts of terrorism, should not be encouraged to think that provided he ultimately surrenders and repents, he will not be punished to the full extent of the law, for acts he has already committed." MacDonal, J.P., in his dissenting judgment said: "I confess that I am dismayed that a sentence of death should be thought to be appropriate in the case of the ninth appellant. In my judgment, the appropriate sentence is life imprisonment. It would be

permissible under such a sentence to release the ninth appellant on licence if he clearly showed by his conduct that he had undergone a lasting change of heart, and I would hope that this course would be followed within a reasonable time.”

Recruiting for or Undergoing Terrorist Training

Under Sub-Section (1) of Section 23 A of the Law and Order (Maintenance) Act it is an offence to recruit or encourage any person to undergo terrorist training within or outside Rhodesia. This is defined as training “for the purpose of furthering a political object by the use of physical force, violence, sabotage, intimidation, civil disobedience, resistance to law or other unlawful means within Rhodesia”, a definition which is wide enough to cover, for example, many forms of strike action.

This offence is subject to a mandatory death sentence except where the defendant is a pregnant woman, or is a child under 16, or “satisfies the court that special circumstances exist”. Examples of what are or are not considered special circumstances will be found in Appendix D.

Under subsection (2) it is an offence punishable with death or imprisonment for life to undergo any such training.

Under both subsections the burden of proof is upon the defendant to prove that the training in question was not “for the purpose of furthering a political object”.

Curfews

Section 49 of the Law and Order (Maintenance) Act gives a very wide power to impose curfews. Any regulating authority (i.e. any command officer of police or administrative officer appointed as such by the Minister of Law and Order) may “whenever public disorder occurs or is apprehended” impose a curfew between specified hours. No person may then be out of doors during the curfew without written permission. The maximum penalty for this offence is a R\$100 fine or up to 6 months imprisonment for a first offence and up to 1 year’s imprisonment for a subsequent offence. “In the operational areas the maximum legal penalty is 2 years imprisonment”.⁵⁴ In practice the maximum penalty is death, since the security forces have orders to shoot curfew breakers on sight if they do not respond to an order to halt. Between March 1975 and February 1976 twelve Africans were officially reported shot dead while breaking the curfew.⁵⁵

Collective Fines

There are other provisions in the legislation to punish tribesmen for not cooperating with the security forces in their fight against terrorism. The

⁵⁴ R.G.N. 689 of 1974, Regulation 14 (2).

⁵⁵ See also p. 67 below.

Emergency Powers (Collective) Fines Regulations⁵⁶ allow for the imposition of a collective fine (or confiscation of property) upon all inhabitants of an area if the particular offenders who have rendered assistance to the terrorists cannot be discovered. On 19 January 1973, the government imposed collective fines on many of the inhabitants of the Chiweshe and Mzarabani TTLs and the Chesa Purchase Land, arguing that communal societies should suffer as a community for the crimes of its individual members.

Under the regulations all those living in a disaffected area were deprived of cattle to pay the fine. The government selected the best animals and disposed of them without telling the owners what they were worth.⁵⁷ Men employed in Salisbury who were absent from their homes when the outbreak occurred nevertheless lost some of their beasts.⁵⁸ This disrupted the plans of those working to accumulate wealth and buy cattle for "bride price". Soldiers were used to drive away the cattle although the fines are supposedly of a judicial nature and should be collected by the courts.⁵⁹ Some of the animals were shot.⁶⁰ African MPs warned the government that its policy would backfire: "If you want to touch the African from the bottom of his heart, go and take one of his animals. Then you will never get cooperation from him."⁶¹ It seems that the government have heeded the warning as less use has been made since then of these powers. There seems little doubt that the collective fines, like the hardships caused by the resettlement policy (see Part V below), have added to the resentment of the Africans and to the support they have given to the guerrillas. According to the Rhodesian Financial Gazette of 30 January 1976, cattle thefts from white farmers have recently reached "alarming proportions", particularly in the "disaffected areas". This may well be an answer to the expropriations of Africans' cattle.

Other Measures

Other measures have been used to intimidate the population. In the case mentioned above, all senior and junior schools, clinics, churches, shops, beer-halls, petrol stations and grinding mills were closed.⁶² Members of the Catholic Church alleged that the purpose of this exercise was not to facilitate military operations but to "pressurize the local Africans".⁶³ The government freely admits this. Leaflets dropped in the Chesa Purchase Land tell the Africans to report on infiltrators: "The speed with which you inform the police and soldiers is the speed with which your schools,

⁵⁶ R.G.N. 101 of 1973.

⁵⁷ *Parliamentary Debate*, 26 June 1973, col. 376.

⁵⁸ *Ibid.*, 29 March 1973, cols. 1096-7.

⁵⁹ *Ibid.*, 29 March 1973, col. 1122.

⁶⁰ *Ibid.*, 30 March 1973, col. 1173.

⁶¹ *Ibid.*, 29 March 1973, col. 1144.

⁶² *The Rhodesia Herald*, 8 and 24 February, 1 March 1973; *Moto*, 21 April 1973.

⁶³ *Ibid.*, 24 March 1973.

grinding mills and beerhalls will be re-opened.”⁶⁴ An African MP stated in Parliament that several pregnant women had died in the affected areas for want of treatment at clinics. The Minister of Health replied:

“Surely the honourable Member is aware that the closure of these services was not the fault of this Ministry, or indeed of this Government. It was the fault of the vermin who made it impossible to continue running these services and of the local people who supported these vermin. When these vermin are exterminated, as they will be, the health services will be restored and expanded, and this will be all the sooner the more the people of these areas themselves assist in the process of extermination.”⁶⁵

Other penalties have also been imposed. For instance over two hundred tribesmen were moved 500 miles from a TTL south of Mount Darwin to new homes in the Beitbridge area as a punishment for assisting terrorists.⁶⁶

In the African Times of 28 August 1974 it was reported that three groups of tribal leaders from the Eastern Districts had been flown to Bindura to see the mutilated bodies on display of eight guerrillas who had been killed during an engagement with security forces. This practice has been repeated in other areas.

Monetary rewards have been offered for information leading to the death or capture of guerrillas or their weapons, ranging from R\$5,000 for a ‘senior terrorist leader’ to R\$300 for a rifle, or a box of ammunition, grenades or anti-personnel mines.

Whipping

The final part of the Law and Order (Maintenance) Act contains a provision in Section 60 that *any court* convicting a person under the Act may, in addition to any other punishment prescribed by the Act, sentence the person to receive a whipping not exceeding 10 strokes. This penalty is, in practice, imposed only upon Africans. (For some reason an exception is made in the case of certain offences against persons and property under Section 37. These offences carry a maximum penalty of death or life imprisonment, but so do many other offences under the Act.)

⁶⁴ *Ibid.*, 1 March 1973; cf. speech by Minister of Internal Affairs in *Parliamentary Debate*, 30 March 1973, col. 1174.

⁶⁵ *Parliamentary Debate*, 28 June 1973, col. 600.

⁶⁶ *Rhodesia Herald*, 6 April 1974.

PART V — TREATMENT OF AFRICANS BY POLICE AND SECURITY FORCES

III—Treatment in Detention Centres

Experience in many parts of the world indicates that when political suspects are able to be detained for long periods without trial there is a serious risk that they will be subjected to ill-treatment, often amounting to severe torture. This is particularly the case when the security police or security intelligence authorities are able to hold them in their own custody in special interrogation centres apart from other prisoners or detainees. Southern Rhodesia is no exception.

The existence of torture in Rhodesia has been known for many years to members of the African political movements and their families and friends, and to international human rights organisations. In recent years these practices have received wider attention and publicity, largely due to reports published within Rhodesia itself by the Church leaders who have been deeply shocked by information they have received of the treatment of ordinary African tribesmen under interrogation in the operational areas in the north-east of the country.

The risk of torture and ill-treatment of suspects to obtain confessions is increased by a new provision in Section 28 of the Criminal Procedure and Evidence Amendment Act of 1975 which abolishes the requirement for corroboration of a confession, providing there is other evidence to prove that the offence has actually been committed (but not to prove that the defendant was implicated). The danger of convicting on uncorroborated confessions was recognized as early as Magna Carta in 1215 A.D. (“No official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.”)

A detailed account of torture practices since the mid-1960s was given by Mr. N. J. C. Mukanganga-Nyashanu in his impressive testimony to the U.N. Commission on Human Rights' *Ad Hoc* Working Group of experts on Southern Africa on 17 July 1974.¹

Mr. Mukanganga-Nyashanu is a social worker who studied at the Oppenheimer College of Social Service of the University of Zambia from 1961 to April 1964. During this period he visited Rhodesia frequently in connection with research he was carrying out on African marriages under a project sponsored by the Girl Guides' Association and requested by the Social Service of Southern Rhodesia. On his return to Rhodesia he was arrested

¹ UN Doc. E/CN.4/AC.22/RT.153, dated 17 December 1974.

in Salisbury on 22 April 1964, on the order of the Commissioner of Police. He was served with a restriction order confining him within a 12 mile radius. From October 1964 he was restricted to Gonakudzingwa for 12 months. During that period he was moved to a "farm detention prison" at Beatrice, then to Marendellas, and then back to Gonakudzingwa. After UDI in November 1965, he was again arrested and detained. He was held at various centres as follows: Salisbury remand prison, 1965-1966; Goromonzi police lock-up (which he describes as "a post-UDI torture centre") for three months in 1966; again Salisbury remand prison, 1966-67; Gwelo detention prison, 1967-1972; Gonakudzingwa detention camp, 1972-74. He was released on 31 March 1974, almost 10 years after his first arrest, on the grounds that he had been offered a place at Birmingham University, England. During this period he was not tried or even charged with any offence.

It appeared from his interrogation that the security authorities suspected him of having received military training in Zambia and, during his visits to Rhodesia, of having smuggled arms and ammunition into the country. He was subjected to severe torture in an attempt to extract a confession to this effect from him. "As I see it," he said in answer to a question, "their aim in brainwashing me was destruction of my personality . . . because if I was mentally deranged, the idea was that once I lost my sense of reasoning I would behave like a tape to sort of replay back all that I did and all that I saw. . . . This is what they wanted."

He said that his experience of torture was mainly at Beatrice and at Goromonzi. He summarized his torture experiences as follows:

"At Beatrice and Goromonzi I was forced to undergo several exercises intended to make my muscle system strained. At Beatrice I was made to do exercises which caused pain, also standing in one position looking at a white wall throughout a lengthy interrogation. At Goromonzi I experienced electric currents applied to my head behind my ears, flashing electric lamp on my eyes, rubber hammer, needle piercing right through the left wrist, which remained paralysed for three years or more, until 1969. This was a needle—I would like to expand on that—this was a needle measuring 18 inches, very sharp and was silver with a line which appeared to be a curve. It pierced my wrist and it penetrated to the arm, and the scar is still visible. This was applied by Detective Chief Freeman of the Sabotage Department in Salisbury."

Other types of torture experienced by fellow prisoners included incarceration in specially constructed cells which could be chilled, heated or wetted by seepage through the floors and walls, half burial and threats of shooting, and beating on the feet and buttocks.

After his torture at Goromonzi he became mentally ill and was no longer responsible for his behaviour. He was detained in solitary confinement. He hit his head against the wall in an attempt to try to leave his cell. He was taken to a prison for mentally deranged prisoners and later transferred

back to the remand prison. He could not sleep for a week, did not eat, and drank only water and orange juice. At Gwelo prison he raised with a doctor the question of his ill-treatment by his interrogators, "and the doctor said well I needed to get a letter from the superintendent in order for me to be attended to, so I was turned back".

All prisoners were subjected to indignities and near starvation. The cells were overcrowded. At Goromonzi there were six cells in a row each less than six feet square. The prisoners were given their food in rotation, and sometimes it was thrown at them. As soon as the warders reached the end of the row they went back to collect the plates, whether or not the prisoners had finished. They slept on a thin mat on a cold concrete floor, with three blankets and no pillows. At Gwelo there were 8 to 10 prisoners in a cell 24 feet square. There was no toilet, only a bucket. "You can imagine a tin of excrement, to mention it, full of water." These conditions naturally had an adverse effect on the health of the prisoners. Mr. Mukanganga-Nyashanu suffered from malnutrition, glaucoma and rheumatism.

At Goromonzi detainees were not allowed any visitors. At Gwelo and Salisbury remand prisons, many visitors were frightened to come as they had to get a permit from the Special Branch and at times this led to the applicants being arrested for interrogation about their relations with the prisoner. At Gonakudzingwa prisoners were separated from their visitors by glass screens and had to speak through a telephone, which was listened into by the security authorities. Conversation was limited to personal matters. (The same practice is to be found in Uruguay.)

Racial discrimination is to be found in its extreme form in prisons and detention centres. The matter was summarized succinctly by another witness on the same occasion, Mr. Innocent Xavier Nkomo, who explained that the whites have the following privileges denied to blacks:

"(1) They have wireless receivers to provide them with music and the news; (2) they have chairs and tables in the cells; (3) they sleep in beds with soft mattresses; (4) they eat the type of food you find in posh hotels; (5) they wear long trousers, boots, socks, jerseys, and underwear and corduroy jackets when it is very cold; (6) supervision by prison guards is minimal; (7) they are not involved in pick and shovel work, but they are engaged in skilled duties (that is, those who are skilled) and those who are not skilled are given the chance to learn a trade whilst they are in prison; (8) they receive visitors in the normal way, that is, they have physical contact (I do not want to be rude, but I wish to mention here that one European convict impregnated his wife while he was in prison—that is true!); (9) African prison guards exercise no power over them. You will notice that these rights are at the disposal of any convict who, by virtue of the colour of skin, qualifies for this grade, irrespective of the crime he might have committed. There are rapists, murderers given preferential treatment to political detainees."

Confirmation of this type of racial discrimination and of the conditions

in Rhodesia prisons is to be found in the books of Judith Todd, "The Right to Say No",² Peter Niesewand, "In Camera",³ and Didymus Mutasa, "Rhodesian Black Behind Bars".⁴

Anti-Terrorist Measures in the Tribal Trust Lands

Introduction

Following the intensification of guerrilla activities along the north eastern border of Rhodesia since the end of 1972, the situation involving the human rights of Africans in the Tribal Trust Lands and African Purchase Areas⁵ has steadily deteriorated. The guerrillas operate widely through these areas. They have been able to penetrate deep into the country to the point of attacking farms only 40 miles north of Salisbury. In response to these attacks, the Rhodesian government has taken measures similar to those of an occupying army in the tribal trust territories, treating the Africans living there as if they were citizens of another country whose army they were fighting. As happens all too often with modern military operations it is the civilian population who suffer the most.

A shroud of secrecy covers both the military operations and the steps taken to eradicate civil disaffection in the Tribal Trust Lands. They have been "sealed off" and only officials or security force personnel are permitted to enter them. Under Section 45 of Chapter 92, Europeans must, except in certain circumstances, obtain permission from the District Commissioner before entering a Tribal Trust Land. In addition, any person, African or non-African may be prohibited from entering or remaining in any Tribal Trust Land if in the opinion of the Minister or Secretary for Internal Affairs his presence in such an area is undesirable in the public interest. This can apply to Africans whose home is in that tribal area, in which case he loses his grazing and farming rights to occupy land or a dwelling in that area. Under Emergency Powers Regulations the reporting of security related news is prohibited. In April 1975, the Rhodesian Government announced that in the future no public announcements would be made when executions of convicted prisoners took place because this was "an emotive" issue.⁶ Under Section 403A of the Criminal Procedure and Evidence Act trials can be held in complete secrecy, and must be if a Minister certifies that it would not be in the public interest for any matter to be publicly disclosed.

This secrecy serves various purposes. Infiltrators require regular information about measures being taken against them or the activities of their

² Sidgwick and Jackson, London, 1972.

³ Weidenfeld and Nicholson, London, 1973.

⁴ Mowbrays, Oxford, 1974.

⁵ In this section reference to the Tribal Trust Lands (TTLs) is to be taken to include the rural African Purchase Areas.

⁶ *Rhodesia Herald*, 22 April 1975.

comrades elsewhere in Rhodesia. Radio and press reports are the most convenient sources for their purpose. The government therefore suppresses the news or releases it in garbled form at irregular intervals, hoping to disrupt the infiltrators' planning or even to fool them into a mistake which will lead to their capture or death. Secrecy also hides the unpalatable aspects of "pacifying" black civilians which might—if published—produce an unfavourable reaction in the white electorate or result in bad publicity overseas.

Much stricter controls have been imposed upon the population of African tribespeople in the "operational area" in the north-east. At first a narrow strip, approximately five miles wide, was evacuated completely and became a "no-go" area in which the military had orders to shoot on sight. In other parts of the operational area a curfew was imposed, all inhabitants had to carry an identity document (situpa), and in due course the African tribesmen were removed from their traditional villages into military camps euphemistically called "protected villages".

Upwards of 100,000 Africans have been forcibly moved to other areas of Rhodesia as punishment for collaboration with guerrillas, or into "protected villages", or "consolidated villages" to prevent their contact with them. "A 'protecting authority' (i.e. a police officer appointed as such or his deputy) may 'if it appears to him to be necessary in the interests of public safety or the maintenance of public order' order Africans living in the area to do any building work, road work or other work specified in the order."⁷ Many have had their possessions confiscated to pay for "collective fines" or had their houses destroyed as retaliation. Under the provisions of an "Indemnity and Compensation Act", security forces operating in the area have been exempted from liability for any of their acts taken to combat terrorism. Certain policemen in the Tribal Trust Lands have been given the power to order a whipping of up to eight cuts of any youth who has exposed him to "contempt, ridicule or disesteem".⁸ It has been reported in November 1975 that "so many people are facing charges in terms of the Law and Order (Maintenance) Act that an additional Regional Court has been established to hear the cases".⁹ In addition, as has been pointed out, many more are held in detention without trial.

In June 1975, Edison Sithole, publicity secretary of the ANC, claimed that executions were being carried out secretly and at night in Salisbury prison. He cited the case of two men who had recently been hanged at 7 o'clock in the evening. Formerly, he said, people who were to be executed were given advance notice and allowed a last opportunity to see their relatives and friends. This practice had now been abolished so that

⁷ R.G.N. 689 of 1974, Regulation 16.

⁸ R.G.N. 689 of 1974, Regulation 57(1). In 1975 this power was extended to those chiefs so authorized by the Minister of Internal Affairs under R.G.N. 220 of 1975.

⁹ Focus on Political Repression in Southern Africa, *News Bulletin of the International Defence and Aid Fund*, No. 1—November 1975, p. 9.

now prisoners were being told only an hour or so before their impending deaths. (Edison Sithole has now mysteriously disappeared. He was seen being arrested by men in plain clothes outside a hotel in Salisbury on the evening of 15 October 1975, but the police deny all knowledge of his whereabouts.)

Some aspects of the treatment of Africans by the security authorities, particularly in the operational areas, will now be considered in greater detail.

Curfew breakers

The curfew operates typically from between 5 and 6 p.m. to between 6 and 7 a.m., and the areas affected include Centenary, Mrewa, Mtoko, Mount Darwin, Mudzi, Shamva and Rushinga. The curfew is imposed in parts of the Tribal Trust Lands and African purchase areas in these districts. The security forces have orders to fire at anyone failing to halt when called upon to do so.

This has led to the death of many innocent tribesmen. Africans returning home in the evening from their fields or from visiting neighbouring towns and villages will seldom have watches and are only able to estimate the time. On occasions they may have had too much to drink. When called upon to stop they may take fright and run, or sometimes do not even understand what is being said to them, as the patrol commander will not always know the local language.

As far back as 1967 the Minister of Law and Order admitted that some civilians had been shot by mistake. In one case a mentally disturbed man named Michael Henry Kimbo was shot by troops near Mtoko for behaving "in a suspicious manner". (Hansard 2 May 1973; cols. 1461-70). The problem has increased since then, as the following examples of incidents during the last year will indicate.

On 12 December 1974, Cosmas Chiwandire (18) and his brother Kudakwashe (9) died at Shopo protected village in the Chiweshe TTL following a shooting incident. Their brother Weston, aged 15, was taken to hospital with a gunshot wound. A government spokesman alleged that the shooting was accidental, saying that an African district assistant's rifle fired as he picked it up. According to eye-witness accounts from villagers, the youths were killed during an identity check as they left the village to return to their fields. While giving their particulars, one of the boys leant against a bench, against which a gun was leaning. The gun fell to the ground. The District Assistant picked up the gun, pointed it at the boys and cocked it and the gun went off and a bullet passed through the abdomen of the first victim and the hip of the second and hit the injured youth's leg. Relatives of the children were reported to be seeking legal advice. The District Commissioner for the area offered to make a payment of R\$100 for each of the dead boys "to offset funeral expenses and any inconvenience caused to the parents", the funds coming from the Terrorist Victims Relief Fund. Arising

from this incident a man appeared in the Magistrate's Court in Salisbury, but all the proceedings were held in camera.¹⁰

On 28 March 1975, the *Rhodesia Herald* carried a security force communiqué reading "One African male was killed and another wounded by security forces on 20 March 1975. A group of three Africans was breaking a curfew at night by walking along a route known to be used by terrorists. Next-of-kin have been informed and the wounded African is now in hospital. Police inquiries are continuing. While Security Force Headquarters sincerely regret this incident it should be clear that the local population have been warned continuously that movement and the contravention of the curfew may result in an accident such as this." Neither the names of the victims nor the place where the incident occurred were reported.

On 17 April 1975, another similar announcement said that "An African man was killed by security forces while breaking a curfew in the operational area on Sunday night".

On 16 July 1975, Security Force Headquarters announced that an African male curfew-breaker was killed during the night of July 11/12 and that an African woman was wounded in the same incident and was in hospital (*Rhodesia Herald*, 17/7/1975). It was also said that another curfew-breaker had been killed since July 4. A fuller account of the first incident was given in the *National Observer* on 19/7/1975. The dead man was a school teacher, Mr. Makaya, who had gone on a drinking spree with a friend. As they were walking home the friend passed out. Mr. Makaya decided to go home and fetch the help of his wife. On the way back to the friend they were challenged by a security force patrol. Mr. Makaya and his wife began running and the security force opened fire, killing Mr. Makaya immediately. His wife, who was eight months' pregnant, was shot through the stomach. At the hospital a caesarian operation was performed. The bullet had perforated her uterus, shattering the baby's thigh and lodged in its stomach. The child's condition was described as critical, but the mother was expected to pull through.

An announcement published in the *Sunday Mail* on 17 August 1975, said that during the week 8-16 August two curfew-breakers and seven terrorists had been killed by the security forces.

In a debate in Parliament on 31 July 1975, Mr. Sadomba (Ind. Nema-konde) said he thought soldiers should not suddenly open fire on curfew-breakers. He knew of one incident where a man had been killed when he was returning home in the operational area after dark soon after leaving a bus. In reply the Minister of Defence, Mr. P. K. Van der Byl, said he had no intention of changing the attitude to curfew-breakers in the operational area, adding:

¹⁰ *Sunday Mail*, 5/1/75, and "The Man in the Middle", Catholic Justice and Peace Commission, April 1975.

“As far as I am concerned, the more curfew-breakers that are shot the better and the sooner that is realized everywhere the better.”

Recruiting guerrilla fighters

In face of such a heartless and revealing comment from a senior Minister, it is not difficult to believe the reports of those observers who say that the Rhodesians are clearly losing the “battle for the hearts and minds of the Africans”, and that the sympathy of the tribesmen is overwhelmingly on the side of the guerrilla forces of the liberation movements.

After the end of 1972 the guerrilla operations have intensified considerably, especially the forces operating in the north-eastern area from bases in Mozambique. It is believed that there were never more than about 200 to 300 guerrillas operating at any one time, but their operations continued regularly for at least 2½ years. The official Rhodesian casualty figures for this period were that “nearly 650 insurgents” had been killed by their security forces, with the help of the South African police. The security forces, it was said, had lost 73 men in action and the terrorists had murdered nearly 300 civilians, mostly African (TO THE POINT, 24 October 1975). The Liberation Forces put the casualties of the Rhodesian security forces much higher.

From August 1975 to February 1976 there were no guerrilla operations. It may be that the lull was the result of pressure from the Presidents of Mozambique, Tanzania, Zambia and Botswana in order to facilitate the constitutional talks. Be that as it may, it is clear that a very substantial increase in recruiting occurred during 1975, and that many thousands of guerrillas went for training to the neighbouring countries.

Many of the recruits were pupils at schools near the frontier, and the headmasters reported that the missing boys were from among the best of their pupils. Examples published in the *Rhodesia Herald* include 30 boys aged 17 and over from Hartzell Secondary School at Old Umtali Mission (9/4/1975), seven from St. Faith's mission school near Rusape (21/4/1975), 12 sixth-form pupils from an African Methodist Church school near Plumtree, the Tegwani Training Institute (4/7/1975), 57 boys and girls, aged 17 to 20, from the Honde Industrial Mission School in the Mutasa North TTL near Penhalonga (13/7/1975), 80 senior pupils, including six girls, from the Mount Selinda mission school in the Chipinga district (15/7/1975), 18 more pupils from the Tegwani Training Institute near Plumtree and six from Gwanda African Secondary School (22/7/1975), “about 100” pupils from the Chikore Mission School and 19 from St. Augustine's Anglican Mission at Penhalonga, near Umtali (24/7/1975).

In an attempt to stem this flow a night curfew was imposed on 25 July 1975, along the entire eastern border and upon 23 named mission schools near the frontier. Nevertheless the flow continued. On 27 July 1975, a *Sunday Mail* reporter said that a visit to schools in the eastern zone showed that more than 600 pupils had disappeared and that the missionaries

believed that the true figure was over 1,000. The headmasters could do little to stop the exodus which was caused by "internal political unrest". Thirteen more absconded from the Roman Catholic Regina Coeli Missionary School near Umtali (1/8/1975), 86 from Mutambara Mission School near Cashel and 20 from St. Augustine's School, Penhalonga (2/8/1975). On 23/8/75 the *Rhodesia Herald* reported that six Rhodesian African police constables had gone absent without leave. On 23/9/75, in an interview published in Mozambique, Dr. Hugo Yadayaga, representative of the United Nations High Commissioner for Refugees, said that "refugees" were arriving at the rate of 100 a day and that more than 10,000 had fled to Mozambique.

Facilities to provide for such a large influx were lacking in Mozambique. It is known that some returned to Rhodesia and others were taken to Tanzania for training. Altogether, it is believed that between 10,000 and 16,000 guerrillas are trained or in training in Mozambique, Tanzania and Zambia and are being armed with highly sophisticated modern weapons, including rocket missiles. The withdrawal of the South African forces from Rhodesia has already imposed a heavy burden on the Rhodesian white population, and some reservists have been called up as many as three times for periods of up to six weeks during 1975. Now that the guerrilla fighting has been resumed, it is likely to be on a scale far exceeding anything experienced hitherto and to cover a large area of the country. There are persistent reports that the chiefs of the Rhodesian security forces warned the government during 1975 that white Rhodesia could not withstand a prolonged guerrilla war involving the 8,000 or more black Rhodesians then training in camps abroad.

"Protected" Villages

Since the end of 1972 the guerrillas or, as they are called on all sides in Rhodesia, the "terrorists", have operated from their bases in Mozambique widely throughout the Tribal Trust Lands and have attacked neighbouring European farms deep into the territory. Some farms have been attacked little more than 40 miles north of Salisbury.

The guerrillas have received widespread support from the African tribesmen, in spite of the heavy risks involved. Attempts were made to stop the support by a mixture of punishments and inducements. Cash rewards were offered for persons giving information about "terrorists". Collective fines were imposed on villages believed to have harboured and assisted them, cattle were confiscated and sold, schools, mills, stores and churches were closed. These measures served only to increase the political consciousness of the tribesmen and many disappeared to join the guerrillas. In September 1973, it was made a capital offence to fail to report the presence of guerrillas.

As these measures all proved ineffective the Rhodesian authorities decided, in order to try to prevent the African tribesmen giving assistance to the guerrillas to begin removing tribesmen from their villages and resettle

them in crowded camps euphemistically styled "protected villages".

The first stage in the "resettlement" of Africans began early in 1973 when tribesmen were evacuated from the "no-go" areas in the Zambezi valley and their villages destroyed. The purpose of this operation was, of course, not the protection of the tribesmen but to make it easier for the security forces to combat the guerrillas. Anyone found in a "no-go" area is suspected of being a "terrorist" and is liable to be shot at sight without warning.

By the end of 1973, 8,000 had been moved from the "no-go" areas, and of these over 6,000 had by December 1973 passed through a notorious transit camp established at Gutsa, 150 km. north of Salisbury. Conditions in the camp were such that disease was rife and at one time four or five children were dying every day from cholera and measles. There were only three water taps, and only two African orderlies for medical attention. Each family was allotted one hut irrespective of the size of the family and age of the children. From Gutsa camp those tribesmen who had friends or relatives in other areas who could help them were allowed to settle with them. Others were resettled in neighbouring villages under the tribal authorities. At the end of the year, 1,315 were being settled in protected villages built by the Ministry of Internal Affairs, and 2,939 were still "accommodated temporarily in the Gutsa encampment."¹¹ The scale of the human suffering lying behind these bare statements can easily be imagined, with the uprooting and destruction of village communities, the loss of their fields, their crops, and many of their animals and belongings, and then becoming refugees in their own country.

On 8 April 1975, it was announced that more than 200 tribesmen had been moved a distance of 750 km. from their homes in Madziwa TTL south of Mount Darwin to the Beitbridge area on the southern border "as a punishment for assisting terrorists". It was alleged that they had actively helped a terrorist group to take over the kraal as a base for terrorist operations. In consequence, the security forces had destroyed their crops and huts and sold their cattle "to stop terrorists getting food and shelter". Following this the government spokesman said that "another reason for resettling the tribesmen was rehabilitation". It turned out later that the tribesmen concerned comprised 21 men, 47 women and 187 children. The group was moved under a section of the Emergency Powers (Maintenance of Law and Order) Regulations which permits the removal of the public or any section of the public out of an area "in the interests of public safety or public order".

After the creation of the "no-go" areas in the north, the programme of concentrating the population in "protected villages" began in the Chiweshe and Madziwa TTLs. Government spokesmen sought to suggest that they were being moved for their own protection, but the real military reasons

¹¹ *Rhodesia Herald*, 8/12/73 and 10/1/74.



Aerial view of part of a "protected village", showing the Internal Security Keep in the centre.

Close-up view of the Internal Security Keep of another "protected village".



for the move were made abundantly clear by a staff officer of the Security Forces: "Insulating the population from the terrorists would deny them supplies and information, and inhibit recruitment for terrorist training. The villages would provide protection for the tribespeople reducing their susceptibility to fear and intimidation, and would enable identification of infiltrators by the effective registration of all inhabitants.¹² Both Chiweshe and Madziwa TTLs were regarded by the government as being "hotbeds of terrorism" which had been used as bases from which to attack neighbouring "European" farms.

Early in 1974 sites of approximately 100 acres were selected in the Chiweshe TTL and were surrounded by a high chain link fence with barbed wire at the top and by strong electric lamps on poles, facing outwards. When they were completed, the entire population was ordered to move from their villages into these camps and to construct huts for themselves within the fenced area. In some cases materials were provided. In others the tribesmen had to go and collect wood for poles as best they could from neighbouring woods. The whole operation involving the resettlement of 49,960 tribesmen in 21 "protected villages" was completed "exactly to schedule" within three weeks.

The suffering caused to the people by this precipitate and ill-prepared move has been extensively documented and was reported in the *Rhodesia Herald*. The immediate problems included lack of proper toilet facilities, inadequate or dirty water supplies, lack of drainage and lack of storage facilities. In one of the camps a doctor reported: "There is no water, no sanitation, shelters or poles for them to build the huts they need. . . . It is like picking up animals and moving them from one field to another." The sanitation was terrible. In some camps 3-foot concrete pipes were provided for defecation. In other camps a pit was dug and covered with sticks with a narrow opening. As one tribesman described it, they had to live and eat within sight of their defecation. Much of the food they brought with them was spoilt and rotted by rain for lack of any bags or other storage. Some camps were sited on low land and during the rainy season water percolated inside their houses. Some mothers had to get up and hold their babies on their backs during the night to keep them dry. These conditions brought mosquitoes and flies, and outbreaks of typhoid, diarrhoea and malaria occurred. The camps were sited astride the main roads, so as to serve as check points. The traffic passing through the camps along these dirt roads raised clouds of dust in dry weather and people living near them had their homes, food and clothes covered by dust.

Curfews were imposed from 6 p.m. to 6 a.m. The traditional pattern of work for the Africans is to tend their fields from 4.30 or 5 a.m. until 10 a.m., to rest during the heat of the day, and to return to their fields about 3 p.m. and work until nightfall. Owing to the curfew and to the distance

¹² *Rhodesia Herald*, 8/9/1974.

to their fields from the "protected villages" they now often have to remain in the fields during the heat of the day and the hardship this causes, particularly to elderly people, is aggravated by the fact that they are not allowed to take food or water with them for fear that they might give it to terrorists.

The lay-out of the camps raises the question who is being protected in these "protected villages". The tribesmen's huts are sited immediately within the perimeter fence. In the centre of the camp is an open space, surrounded by a fence, and in the middle of this is a small fortified area surrounded by an embankment or sandbags known as the Internal Affairs Keep. In this central enclosure, which has its own double fence, are the European District Officer who controls the camp and his African Assistants. It is obvious from the lay-out that the only persons who are protected from attacks by terrorists are the District Officer and his Assistants. In fact, guerrilla fighters have penetrated into the camps and succeeded in obtaining food from the tribesmen.

In the long term perhaps the greatest suffering caused by the resettlement in these camps is the disruption of the tribespeople's traditional way of life. These traditions were described by the Catholic Commission for Justice and Peace in their publication "The Man in the Middle: Torture, Resettlement and Eviction" as follows: "Life in a rural kraal follows set patterns and the social position of each person is well-defined. Customary observances relate to men, women, children of different ages, strangers, visitors, males and females, young and old in a complex interplay which by its very richness has produced an identifiable culture giving meaning to every aspect of their daily lives. Courtesy, hospitality and respect for the aged are only some of the marks of this culture. The traditional way of life is conservative and conformist in every aspect and follows certain patterns. Thus, for example, a family will consist of a house for the man and his wife and a separate house for the young boys will be available, and a separate house for the young girls. The older people will also be separately housed and then there will be ancillary buildings for grain storage, small livestock, bathing and possibly toilet facilities and also, perhaps, accommodation for visitors. These buildings are grouped together but probably cover an area of between a quarter and one half an acre. In addition, there are certain essential communal facilities, the most important of which would be the men's meeting place—known as a dare (pronounced dah-ree)—where the men meet together for social purposes or to deal with important matters of common interest. It can be appreciated, therefore, that the social contentment of rural African people is completely bound up with their deep need to observe these norms of privacy, relationships and customary structures which make up the everyday pattern of their lives. Anything disruptive of this structure will not be readily accepted and indeed may be fatal to their psychological well-being. . . ."

When herded into the camps, each family is allotted an area of about

15 meters square on which to live. Whatever the size of the family or ages of the children, they often have to live in one hut. The lack of privacy deeply offends their traditions and highly developed sense of morality. The traditional villages are spread out over a wide area and each family enjoys considerable privacy from its neighbours. This social pattern has been violently disrupted by the concentrations of not one but several villages into the cramped space of a militarized camp with its disturbing effects upon the life and ethic of the population. There have been numerous complaints of sexual immorality resulting from these conditions and from attempts made by the African guards to seduce the young women in the camp.

Some six months after the resettlement of the Chiweshe TTL (the southern portion of which is only a little over 40 miles north of Salisbury), the authorities proceeded to move 16,500 tribesmen from the Madziwa TTL into 10 camps or "keeps". Recognizing the disruption which had occurred by the sudden move in Chiweshe, the authorities gave somewhat longer notice of the move and urged the tribespeople to start building their huts within the newly constructed camps. Being reluctant to accept that they would have to move, they refrained from doing so—until the last moment, and the same conditions and suffering prevailed. The following are extracts from a report made by a visitor to six of these camps in 1975 about six months after the move was completed and when conditions had settled down.

"The set up of all the keeps is uniform. The huts are built in lines according to kraal-heads, each family having a space of about one eighth of an acre. On this space, it is supposed to stand basic accommodation like a kitchen, a bedroom and a granary. If a man had many grown-up children who needed separate huts and also if he had a big harvest to store, his stand would become crowded.

"In the middle of each keep there is a fenced pit where Internal Affairs staff of several district assistants stay. These are Africans and a European D.A. who acts as an officer, in administering the keeps. There are pole lights right round the keep fence. The lights face outwards. In other words they are security lights. The inside where the huts are is completely dark at night. There are also pole speakers everywhere in between the huts. These provide recorded and radio music. But usually when it is time for Shona news, the radio is switched off and replaced by recorded music. The loudspeakers are used for passing information to the people from the administration pit. Outside the keep is a separate fence for cattle and goats.

"In each keep there are two gates for entrance and exit. Here, armed District Assistants strictly search for weapons and food and register and examine visitors. The gates are open from 7.00 a.m. to 6.00 p.m. every day. If there is an incident like a landmine blast around the keeps,

the people are allowed to go anywhere they want during the day. . . .”

“Most of the fences are very far from the water centres. People walk up to six miles to wash their clothes in rivers and about three miles to fetch water for drinking and cooking. There are cases where people walk ten miles to their fields. Some families had their crops destroyed by cattle during the evening or early morning when they were still locked in the fences. One young wife whose husband works in town had all her crops destroyed by cattle. She had to go back to town to join her husband because there was nothing to reap nor to eat. Another man’s cotton (three acres) was totally destroyed. He subsequently left the keep for town to look for a job. There is only one hospital in the whole area. It is a government run rural hospital. Some keeps are so far from it that with the 6.00 p.m. curfew people find it hard to walk to and from hospital. If a relative is detained in the hospital, there has to be enough money to buy food from the nearby township around the hospital to feed the patient and the person who takes care of him or her because other members of the family are not allowed to carry food out of the keeps. The main effect of the keeps is new accommodation. When the people left their homes, it was during the rain season and naturally ploughing time. Therefore, there was too much to be done within a short time. The villagers were given one week to put up huts in the fences. They spent a month staying in small huts made of grass throughout, some in the open air. Their belongings were heaped in the open. Now that ploughing and harvesting are over, people are busy building better pole and dagga huts and granaries.

“The villagers still long for their old homes which are all built of bricks and much bigger. There are some European-styled houses standing in these old homes. In fact people did not destroy their old homes neither did they take away grass for building in the keeps. Everyday they see these old houses either from the keeps, for the keeps are situated at high ground overlooking the old homes, or when they walk around during the day. There are some people who took their furniture to town where they work when the keeps were introduced. Schooling is normal except for one school that was closed but the pupils were transferred to other nearby schools. The teachers, too, stay in the keeps. The council built them small huts.”

In some cases complaints have been made by the villagers of ill-treatment by the District Officers and their African Assistants, including allegations that the District Assistants exploit their position to take advantage of the women. On 13 December 1975 the *Rhodesia Herald* reported that a 22 year old District Officer, Sean Hundermark, and four African District Assistants had been convicted of assaulting another African District Assistant in May 1975 at Keep 20 in the Chiweshe TTL. Hundermark, who was described by the magistrate as sadistic and cruel, said he was punishing the victim

for being absent without leave, for assaulting tribesmen and for seducing their wives, though none of these allegations had been proved. The victim had been kicked, punched, struck with a belt and hosepipe and made to crawl on the ground with sandbags tied to his shoulders, and made to put a finger on the ground and run around it until dizzy. These assaults lasted most of the day, continuing until the victim lost consciousness. He was treated in hospital for 10 days. For this offence Hundermark was fined R\$250 and given a six months' suspended prison sentence. The African Assistants were each fined R\$30. The description of the assault in this case tallies with other complaints by inhabitants of protected villages, but it is rare for such cases to come to court. Perhaps in this case it did so because the victim was a District Assistant.

The attitude of the Rhodesian authorities towards these camps is ambivalent. At times it is suggested that they are a temporary military necessity, at others that they are intended as a permanent and progressive social development. These camps have been described as "growth points". It is said that medical services, schools and other facilities can be provided in these areas whereas this is not feasible when tribespeople live far apart. The example of the Tanzanian Ujaama village programme is cited in support of this policy together with the fact that the Mozambique government has retained the "aldeamentos" camps for ease of administration and has not returned the population in the Tete area to their traditional villages. There would be more force in these arguments if adequate space was provided for each family and if the facilities described, such as schools, clinics, training centres, stores, electricity, water, sanitation, etc., were in fact provided. But this is not the case. On the contrary, churches, schools and African businesses, as well as stores and beer halls have been closed down as a consequence of the resettlement. In the Chiweshe TTL alone 30 missions and African council schools were closed, including the training college, theological college, and secondary and junior schools of the Salvation Army's Howard Institute.

Altogether about 100,000 tribespeople had been removed to "protected villages" by 1975 and when the present programme is completed there will probably be double that number.

The "protected villages" have not been accepted by the Africans who look back with longing at their former homes and long for the day when they can return to them. It is true that some people feel safer in the camps. As one person put it, "There were many deaths caused by both soldiers and terrorists. Personal hatred could make one lose one's life. A person could report someone he disliked to terrorists for being a sell-out (an informer) or to security forces for harbouring terrorists and the result was death or torture or both." In spite of this factor of greater security, the conditions in the camps are deeply resented. They have added to the longing of the population to see the ending of white minority rule, and accordingly increased the sympathy and support for the guerrilla fighters.

Consolidated Villages

In June 1975 a "new concept in the fight against terror" was announced.¹³ This is a variant on "protected villages", known as "consolidated villages".

In certain areas in the Tribal Trust Lands where the risk of penetration by guerrilla fighters was thought to be less grave (known as areas of "incipient insurrection"), the authorities, instead of forcing the tribespeople into camps surrounded by a wire fence, made them move to, and build themselves new huts along either side of a road which could be, and was, patrolled by vehicles of the security forces.

All the same problems of building new homes, of congestion, of lack of privacy, and lack of sanitary facilities etc. have arisen, and the problems are increased by the fact that everyone is now housed alongside a dusty road. The same curfew regulations apply, and the same checks and controls. The only difference is that there is no surrounding fence and no pretence of protection.

In June 1975 about 7,500 tribespeople were moved into consolidated villages in the Mrewa district.

Brutality by the Security Forces

The ordinary Rhodesian police force, curiously still known as the "British South Africa Police", rightly enjoys a high reputation for its fair and humane conduct towards the civil population. Unfortunately the same reputation does not extend to the special security branch. As has been stated earlier, African political prisoners have for many years complained of ill-treatment under interrogation by the Rhodesian special branch security police. With the intensification of the guerrilla warfare from the end of 1972, these methods have been employed extensively against ordinary African tribesmen. Once again the offenders are the security police. As Rhodesia is not in a state of war, and no proclamation of martial law has been made, the role of the military forces in law is to assist the police in the maintenance of law and order and in apprehending offenders. Terrorists are tried under the ordinary law of the land for murder and for offences under the Law and Order (Maintenance) Act. Accordingly when arrested by military forces terrorists are handed over to the security police for interrogation. Similarly, civilians who are suspected of harbouring or assisting terrorists or of failing to report terrorists are handed over to the security police. Normally this would mean that they would be entitled to the ordinary rights of arrested and accused persons, including the right to silence, and the right of access to lawyers for advice. In practice, they enjoy no such rights. The suspects are held under 30 and 60 day orders (see Part IV above) and are completely at the mercy of the security police when taken to their police stations or to the special interrogation camps which have been established.

¹³ *Rhodesia Herald*, 3 June 1975.

In many cases persons who have suffered ill-treatment make no official complaint, either because they are fearful of doing so, or because they believe it will serve no useful purpose. However, numerous complaints have been made, particularly through the intermediation of church authorities. The Minister of Law and Order claims that all such complaints have been investigated and found to be without foundation. He has, however, constantly refused any impartial investigation and many people believe that the knowledge that they are effectively immune from prosecution has encouraged the security authorities to continue to use brutal methods to further their enquiries. When security forces know themselves to be beyond the reach of the law, they seldom hesitate to violate the law themselves.

On 27 March 1974 one of the African members of parliament, Mr. Sadomba (Nemakonde) introduced a motion on alleged atrocities and injustices by the security forces proposing "that this House urges Government to appoint a commission of inquiry to investigate alleged incidents of atrocities and injustices being perpetrated by security forces and the administration on the tribesmen of the places affected by terrorism". He instanced the case of two white South African policemen who interrogated an African woman on 14 December 1973 about the whereabouts of some terrorists and, when she said she did not know, cut the throat of the baby she was carrying on her back. The policemen were identified and detained at Bindura. Since no public trial took place in Rhodesia, it was assumed that they had been sent back to South Africa under escort. "For sanity's sake and justice and fairness," said Mr. Sadomba, "let us have this commission (of inquiry) appointed. I think this would clear the government's position, and perhaps help once more to restore the confidence of the people. If the truth has been found, then government will have a chance to rectify the matter and perhaps deal accordingly with the people involved." (*Hansard* A.68: 327-329.) He also gave accounts of other cases of persons under interrogation being beaten and subjected to torture by electric shock and by having their head repeatedly dipped in a bucket of water, and by being told "If you do not speak out then you will die here and you will die for nothing. You will never be prosecuted."

In advising rejection of the motion the Minister of Justice, Mr. Lardner Burke, said that it was "designed to embarrass the government, but far worse than that, it is an attempt to bring our security forces into disrepute. I would go further and say it is a thinly disguised attempt to affect adversely the morale of our security forces who are doing such sterling work in the north-eastern border area." He added later "It is the usual ploy of those who are indoctrinated by the communist code." The motion was negatived by 35 votes (all white) to 15 (all black).

A few days later, on 2 April 1974, the Catholic Justice and Peace Commission inserted an advertisement in the *Rhodesia Herald* making "an urgent appeal" to the Minister of Justice to institute a full and impartial enquiry into the widespread accusations of brutality by members of the

police and army against African civilians. It stated that where specific evidence was available it had been forwarded to the Minister. It said that the Minister's refusal to submit the grave and widespread accusations to public and impartial scrutiny was causing a crisis of confidence.

Once again, in refusing the enquiry the Minister of Justice resorted to smear tactics against the Church leaders. Replying in Parliament on 4 April 1974, he said "The people responsible for the advertisement are determined to do all they can to embarrass the government and to embitter the security forces. . . . They have no word of condemnation for the terrorists and the bestial atrocities they perpetrate." This latter assertion was untrue. For example, in a letter to the *Rhodesia Herald* as early as 14 January 1973, Bishop Lamont, while saying that it was more important to eradicate the racial discrimination which was the cause of terrorism than "merely to denounce the thing itself", added, "Concerning the acts of violence which have taken place recently, and particularly the brutal murders of government officers, such acts are wholly and entirely reprehensible. I cannot too strongly condemn them and those people who, either immediately or remotely, are responsible for them." The *Rhodesia Herald* reported similar denunciations of terrorist violence by the Anglican Bishops Burrough and Wood on 3 January 1973, by Archbishop Markall, S.J., on 4 January 1973, and by Bishop Muzorewa on 14 January 1973. A further public condemnation of terrorist atrocities was made by the Justice and Peace Commission on 16 May 1974.

"An Appeal to Conscience"

On 21 August 1974, an "*Appeal to Conscience by Christian Leaders*" was sent to 500 influential people in Rhodesia signed by Bishop Burrough, Bishop Patrick Chakaipa, Father Joseph Elsener, Bishop Donal Lamont, Archbishop Francis Markall, Bishop Patrick Murindagomo, Reverend Andrew Ndhlela, Bishop Ignatius Prieto, Reverend Fred Rea, Monsignor Helmut Reckter and Bishop Mark Wood, representing all the principal denominations.

The appeal read as follows:

"During the past 18 months we have received numerous reports of assaults upon innocent people by members of the investigating authorities of the security forces in the North-East.

The public has been made fully aware of the assaults by the armed insurgents and we too deplore the atrocities committed. What they are not aware of is the frequency and seriousness of assaults committed by some members of the security forces and the effect that these are having upon the civilian population in the tribal areas, caught as they are between the two contending forces and menaced by both.

We have attempted, without success, to bring these matters to the attention of the Prime Minister and the Minister of Justice, and of Law and Order. They have rejected our evidence and our plea for an open

enquiry and they appear to consider that such incidents as may have happened amount to nothing more than the mistakes and misadventures that are inevitable in any military campaign.

Our concern is not with such misadventures: we fully realise that unfortunate incidents are difficult to avoid. Our information points to something much more serious, namely the deliberate use of illegal and inhumane acts of force when questioning civilians, even those against whom there is no prior evidence of complicity with the enemy.

We set out ten instances of assaults which we feel satisfied do contain substantial and serious allegations of misconduct by the Police or other armed forces and which no appeal to military urgency or national interest could justify. These cases are not exhaustive, but they reveal a pattern of persisting and deliberate illegal conduct by certain members of the security forces. They include examples of prolonged and brutal assaults upon innocent people, beatings on the face and body with sticks, kicking with boots and the use of electric shocks. In none of the cases quoted was the victim subsequently detained or charged with giving support to the insurgents. The severe beating revealed nothing but the victim's innocence.

We are disturbed by the fact that complainants and their families in a number of instances have expressed fear of reprisals from the authorities should their identities become known. For this reason fictitious dates, names and places are used in the enclosed reports to conceal their identities.

Although we have urged the necessity for an enquiry, we have sought to avoid unnecessary publicity, for we have no wish to bring discredit upon those who are charged with the task of protecting our land and its people.

It is for this reason that we are sending out this letter with the accompanying dossier to a chosen group of responsible citizens who are leaders in the community. We ask you to use your influence to secure an immediate termination of the inhumane methods that are being used to elicit information from the civilian population. Not only are they unworthy of our country, but they are also alienating the people upon whose support we depend for success in the campaign against terrorism. We also urge the necessity for redress and compensation for those who have suffered unjustly."

Ten detailed statements particularising specific cases were appended to the appeal.

On 24 August 1974, the Rhodesian Bar Council issued a statement saying that "Citizens who have suffered assault and damage by servants of the State are not without remedy. If a person is unable to meet the costs of court action it is possible for him to proceed *in forma pauperis*, that is without having to pay the costs of the action. A citizen can lay a complaint for a criminal prosecution against any civil servant who has acted

illegally. If the Attorney-General decides not to prosecute a private prosecution can be initiated. The courts of law are there to investigate and pronounce on complaints and in this way protect anyone who has been injured whether by servants of the state or anyone else." The same theme was adopted by the Minister of Justice, Mr. Lardner Burke, who said in Parliament on 17 September 1974, "My decision that a judicial enquiry is not necessary does not in any way interfere with or restrict the remedies that are open under our law to anyone who has been wronged." He added that "the due process of law *is still and always will be* open to those who are aggrieved by official actions" (italics added).

As a public and independent enquiry was refused, it was decided to accept this challenge and to try to bring the matter before the courts by way of civil actions for assault, even though it would be more difficult to establish facts in this way than by an independent enquiry with full powers of investigation. On 25 January 1975, a spokesman for the Justice and Peace Commission confirmed that three actions had been brought by eight Africans against the Minister of Justice and Law and Order, Mr. Lardner Burke, claiming damages for assault by members of the security forces. An outline of the cases was given as follows:

"1. Mr. Tawandirwa (Warinda), a farmer in the Chesa Purchase Area, Mount Darwin, together with his two grown-up daughters and two young sons is claiming damages in the High Court against the Minister of Law and Order for assaults alleged to have been committed on them by a European Section Officer and two African Policemen in the British South Africa Police. The assaults are alleged to have taken place in September 1974, at the Nyamahoboko Base Camp, Mount Darwin, and are alleged to have involved the use of shackles, blindfolds, prolonged beatings with an instrument and the application of some other instruments with electrical effects. None of the members of this family have been detained or charged.

2. Mrs. Monica Deka, the wife of a farmer also in the Chesa African Purchase Area, Mount Darwin, and her daughter are claiming damages in the High Court against the Minister of Law and Order for assaults committed on them by a European Section Officer and an African Policeman in the British South Africa Police. The assaults are alleged also to have occurred at Nyamahoboko Base Camp, Mount Darwin, during August 1974, and are alleged to have involved kicking and striking, shackling, blindfolding and the application of an instrument with electrical effects. Neither Mrs. Deka nor her daughter have been charged or detained.

3. Mr. J. M. Jairosi, a school teacher, is claiming damages in the High Court against the Minister of Law and Order for assaults committed on him by members of the British South Africa Police. It will be alleged that these assaults were committed during January 1973, at the premises of the Centenary Police Station and it will be alleged that the assaults

involved beating with fan belts, kicking, dropping on the ground, banging of head on the ground, beating on the soles of feet. It will be alleged that the assaults involved both European and African Policemen. Mr. Jairoso has neither been charged nor detained."

On 8 March 1975, it was reported that a fourth action had been brought against the Minister by a tribesman from the Mtoko area, Mr. Anthony Zuina Murungu alleging assault by members of the security forces.

On 14 May 1975, a report by the Justice and Peace Commission entitled "*The Man in the Middle: torture, resettlement and eviction*" was published in Rhodesia and overseas alleging brutalities by members of the security forces in the operational area, and condemning the policy of protected villages and the treatment of the Tangwena People. Particulars were given of 12 instances of "deliberate assaults and of gross disregard for the life and property of inhabitants in the operational areas by members of the Security Forces." One case was stated to be of "politically motivated assault of a particularly brutal kind by a government appointed Chief and Senator, who has found government assistance in inhibiting a prosecution". Again, a demand was made for an impartial commission of enquiry.

Faced with this mounting pressure, and the prospect of having these matters aired before the courts, the government announced on 24 June 1975 that it would propose a Bill to protect servants of the state from criminal and civil proceedings as a result of *bona fide* actions and to provide compensation for innocent persons damaged by servants of the state as a result of *bona fide* action. A few days later, one of the rare cases in which police officers were accused of assault came before a court on 2 July. Two police officers pleaded guilty to assaulting a witness (not even a suspect) under interrogation at a police station in Salisbury by striking him on the withers with a piece of wood and a rifle sling. In imposing a R\$100 fine on each of them the Magistrate, Mr. W. Cutler, said "This case comes as near to imprisonment as it could get. You abused your authority while carrying out an interrogation." Perhaps the Magistrate in giving this lenient sentence was influenced by the government announcement.

Indemnity and Compensation Act, 1975

In introducing the Bill in parliament on 28 August 1975, the Minister of Justice, Mr. Lardner Burke, resorted once again to smear tactics in seeking to justify it. "We are living," he said, "in unusual times giving rise to unusual problems which require unusual remedies. We have to cope not only with the direct communist threat, but also with those people—some sincere and some not so sincere—who lose no opportunity to attempt to embarrass the government by assisting or even persuading others to bring proceedings in the courts against the government." In an obvious allusion to the Justice and Peace Commission he added: "There is a fifth column at work which on the face of it appears to stand for justice and peace and so forth but which in reality has much more sinister objectives. . . ."

(*Hansard*, A.91: 1437). That the Minister should have descended to such arguments indicates that he knew he was arguing a bad case.

The Bill he was introducing is, with one ignoble exception in South Africa, unprecedented. It effectively deprives the courts of jurisdiction over all proceedings, civil or criminal, against the government or its servants for any harm caused by the military, police or security authorities. It was, of course, made retroactive in order to prevent the actions already brought from coming to trial. So much for the Minister's assurance that "the process of law *is still and always will be* open to those who are aggrieved by official actions". The Bill was passed into law without amendment, and on 3 October 1975 was published as the Indemnity and Compensation Act, No. 45 of 1975.

The main purpose of the Act is made abundantly clear in the Preamble: ". . . whereas it is expedient that the President, Ministers, Deputy Ministers, the commanders and members of the military and other Security Forces of Rhodesia and certain other persons should be indemnified and protected from harm in respect of actions associated with the suppression of terrorism or the maintenance of public order".

The Act prohibits courts from hearing cases based on acts committed after 1 December 1972, if done "in good faith for the purposes of or in connection with the suppression of terrorism" (s. 4(1)). No remedy is provided where the injury is caused in bad faith, whatever that term might mean in this context. The Senate received from its legal committee a report that the Bill contravened the Declarations of Rights in the Constitution, but nevertheless passed the Bill due to what they conceived to be its necessity. The Act applies to both civil and criminal proceedings. Rather than allowing the court, an impartial tribunal, to weigh the evidence and determine whether the above requirements of section 4(1) are met, the Statute provides that a certificate in writing by the Minister of Justice that an act was done for or in connection with the suppression of terrorism "shall be conclusive proof" of the fact (s. 4(2)). Additionally the President (which in practice means the cabinet) may stop any proceedings already launched if he believes this to be in the national interest and that the act was done in good faith for the purposes of or in connection with the suppression of terrorism or the maintenance of public order (s. 4(3)). This power has already been used to terminate the actions which had been brought against the Minister of Justice and Law and Order in respect of the torture of suspects. Nowhere in the Statute are such critical terms as "good faith", "terrorism" or "the maintenance of public order" defined. Their interpretation is left to the unchecked discretion of the President and Minister of Justice. This applies even when they are defendants in the suit in question.

Neither the President nor the Minister are required to state their reasons. The courts are specifically forbidden to question the validity of either the President's or Minister's decision (s. 4(6)). Moreover they may not order

the government to pay legal costs incurred by the plaintiff. They can, however, order the plaintiff to pay the defendants' costs if they consider that the action was instituted frivolously or vexatiously.

If legal proceedings are terminated under s. 4, the sole recourse is for the claimant to apply for compensation to a Board composed of members chosen by the Minister of Justice. The Statute merely provides that the Board "may . . . taking into account such matters as it thinks fit, direct that compensation in such form and for such amounts as it thinks fit, be paid" (s. 6(2)). Unless it chooses otherwise the Board sits in private (s. 7(6)(b)). It is not bound by the rules of procedure or evidence (s. 7(6)(a)) and the claimant has no right to appear before the Board and argue his case (proviso to s. 7(6)). The Board is not required to explain its reasons for its decisions to the claimant or the public (s. 8(5)). The only appeal of a Board decision is to the Minister of Justice.

Attempts have been made to justify this Act on the basis of an obscure doctrine under the English common law to the effect that the civil courts will not entertain civil actions against the military authorities during a state of war. They will only do so, it is stated, after hostilities have ceased, and then the complainant may be met by an Act of Indemnity. This Bill by giving him a right to immediate compensation affords him, it is suggested, a better protection. In fact, this limitation on the powers of the civil courts is very rarely invoked and was never invoked in Rhodesia before this Act was introduced. It applies only in a situation where martial law exists and in an area where "war is still raging" (*Marais v. General Officer Commanding*, 1902 AC 109). The doctrine has not been invoked in the actions which have been brought by civilians against the armed forces in recent years in Northern Ireland, in some of which damages have been awarded against the security authorities. The level of terrorist activity in Northern Ireland has been at least as great as that in Rhodesia. Moreover, when replying to the debate on the Indemnity Bill, the Minister of Justice and Law and Order, Mr. Lardner Burke, conceded that Rhodesia was not "at war" but in a "state of unrest".

In any event there is a world of difference between an Indemnity Act passed before and one passed after the events to which it relates. To exonerate the security authorities before they have committed illegalities amounts almost to an invitation to excesses. As Sir Robert Tredgold, Chief Justice of the former Rhodesian Federation, pointed out in a letter to the *Rhodesia Herald* on 3 September 1975, with the single and significant exception of the South African Act of 1961, all previous Indemnity Acts:

" . . . have been passed after the war or insurrection to which they were related was over, and when all the facts that were ever likely to be known were available to Parliament. There is a vital distinction between these and giving an indemnity against future occurrences—a distinction that is analogous to giving a blank cheque, as opposed to a cheque for an ascertained amount."

Sir Robert Tredgold went on to say:

“The rule of law is an essential pillar of our democratic system, and these two laws—the South African Statute and our new Act—outrage the rule of law and thus strike at the very roots of democracy.”

and later,

“The white man’s claim to be in Rhodesia and to retain power here is sometimes based upon dubious and outdated grounds. His strongest claim rests upon the fact that he brought, and has striven to maintain, a new and better system of law and government for all its people. Every time he makes an inroad into that system he seriously weakens his right to be here.”

It may be mentioned that the Rhodesia Bar Council which had unctuously stated on 24 August 1974, that the citizens who had suffered an assault always had a remedy in the courts, has remained silent during and since the passage of the Indemnity and Compensation Bill.

Karima Kraal

The need for impartial investigations of complaints against the security authorities continues.

On 14 June 1975, a security force communiqué was issued as follows:

“. . . On the night of June 12 a security force patrol was alerted by the sound of a man being clubbed in his kraal. On approaching the kraal to investigate the incident the patrol came under fire from a terrorist group. In the ensuing fight 20 persons were killed. The victim of the terrorist atrocity was a local headman who survived his vicious assault. He was rescued by the patrol and is receiving medical attention. The injured were evacuated to hospital by air at first light the next morning. This is yet another example of innocent persons in the operational area being forced at gun point to witness atrocities committed against their tribal leaders. There were no security force casualties.”

On 1 August 1975, the Justice and Peace Commission issued a statement giving a very different version and demanding a judicial inquiry into the incident, which occurred at Karima Kraal in the Kandeya TTL about 20 km. from Mount Darwin. According to this version, the tribespeople were called to a meeting by eight terrorists. About 50 tribespeople attended. The Kraalhead was accused by the terrorists of being a sell-out (informer) and he was beaten with a stick till he cried out. He was then taken by some of the terrorists behind his hut. As the other terrorists were leaving the gathering, a grenade exploded near the tribespeople and the Rhodesian security opened fire at about 10 metres range from the direction in which the terrorists were walking. The tribespeople scattered and some ran into a hut. The shooting by the security forces continued, penetrating the hut and people ran from it. Intermittent firing from the security forces continued until daylight. No firing from the terrorists was heard. Next day the Kraalhead appeared, uninjured, in the company of soldiers and the District

Commissioner. The injured were taken to hospital and the dead were removed by the security forces, who later told relatives that the bodies had been burnt a few kilometers away. Empty shells showed that over 200 rounds had been fired, all from weapons of the type used by the security forces. Of the 20 persons killed, nine were children including some babies, and four were women. Of the injured, five were children and eight women. There were no casualties among the security forces or, apparently, among the terrorists.

A government spokesman said that the Justice and Peace Commission's allegations were "completely untrue" and that the facts were as stated in the security forces' communiqué. The Justice and Peace Commission replied in the *Rhodesia Herald* of 13 August 1975, again demanding a judicial enquiry and saying it would welcome being prosecuted by the State for circulating false information, as this would afford an opportunity for a judicial enquiry. There has been no enquiry and no prosecution. The African members of Parliament set down a motion to "deplore the atrocities being committed by the Security Forces", but the government used its majority to prevent the debate taking place.

On 12 September 1975, the Anglican Bishop of Mashonaland, the Right Reverend Paul Burrough, repeated his call for independent enquiries into allegations of "acts of inhumanity" by Rhodesian security forces (*Rhodesia Herald*, 13/9/75). Thus far the government has not only shown no inclination to respond to these appeals, but had done all in its power to prevent any judicial investigation, including introducing retrospective legislation which, as has been seen, violates the canons of the Rule of Law.

The reluctance of the authorities to submit these matters to judicial investigation is understandable. The only occasion when the issue of brutality by the security authorities has been adjudicated upon in the courts is when accused persons have challenged the admissibility of their alleged confessions on the grounds that they had been obtained by beatings or electric shocks or other forms of physical duress. In these circumstances the burden of proof lies upon the accused to prove the duress, and in most cases the allegations against the police have been rejected. In one case reported in the *Rhodesia Herald* on 15 September 1973, Mr. Justice Beck appears to have been satisfied that ill-treatment had occurred. The accused said he had been beaten while suspended wearing leg irons during his interrogation. (See Appendix D.) In another case reported in the *Rhodesia Herald* on 10 October 1975, a 22-year old youth was acquitted on charges of attempting to attend a terrorist training course and of recruiting and encouraging others to attend. He alleged that he had been assaulted under interrogation. During the "trial within the trial" on the issue of the admissibility of the confession, the prosecution abandoned the confession, which would seem to indicate that the accused had succeeded in establishing his allegation against the police.

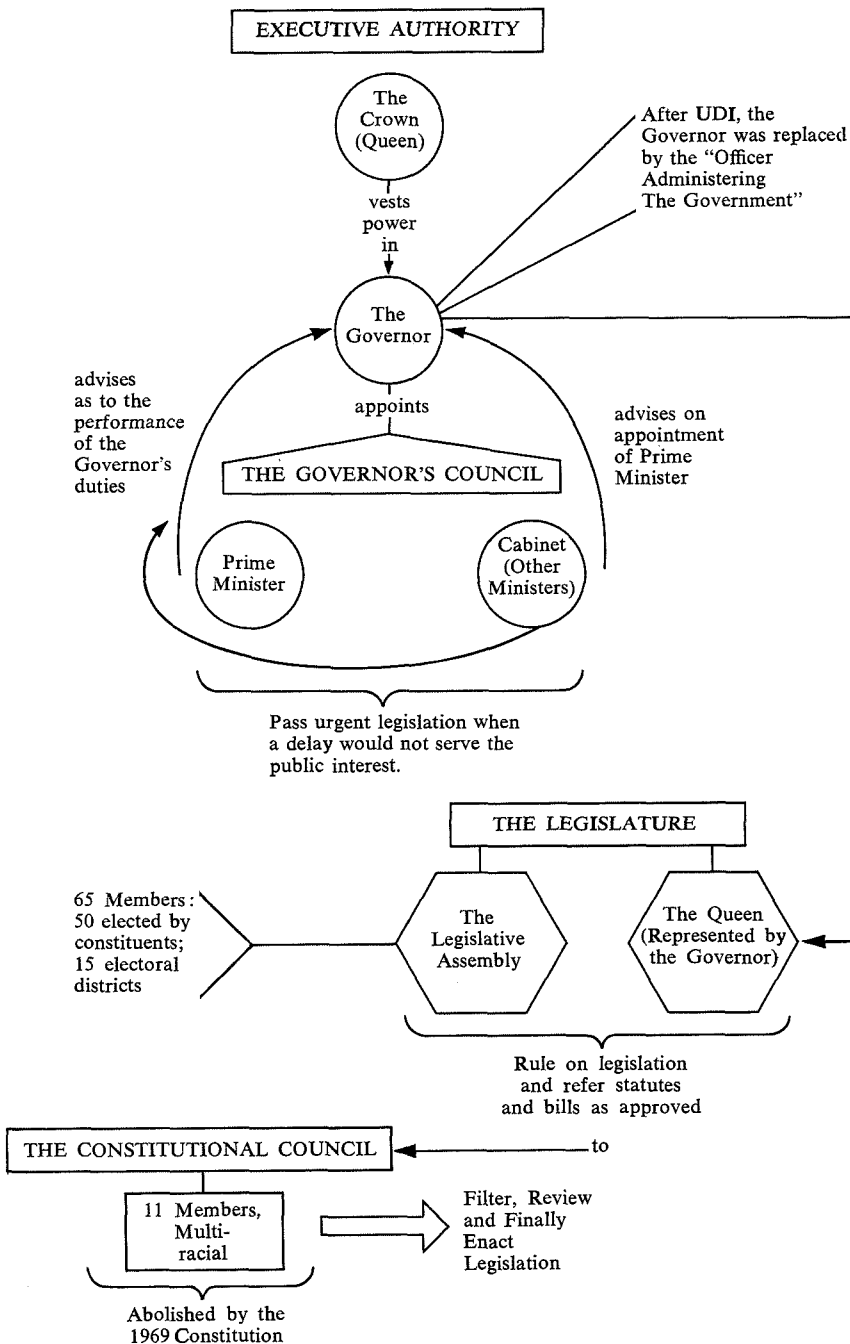


FIGURE 1

CONSTITUTIONS AND ELECTORAL LAWS 1961-1975

The qualifications for voting privileges are based on a complex scale of educational, financial and property ownership requirements. The basic principle underlying these requirements is as follows: the lower the income or property requirements, the higher is the required educational qualification. The statutes governing these provisions are couched in non-racial language but when the lower standard of living of the Africans is considered, the effect is clearly seen to be discriminatory.

The central government therefore provides little opportunity for non-European representation. Due to the division of Rhodesian property, the same situation prevails at local levels because Africans are allowed to participate solely in their own rural areas.

The Central Government

The government of Rhodesia was modelled after and in many ways parallels the British system. The diagram in Figure 1 illustrates its structure under the 1961 Constitution.

Actions directed at minority domination of the Legislative machinery of Rhodesian government can be broken down into (1) the pre-UDI period, (2) the post-UDI period, up to (3) the enactment of the 1969 Constitution.

(1) The 1961 Constitution:

The main law-making body of government comprised the Legislative Assembly and the Constitutional Council (later replaced by the Senate Legal Committee). Under the 1961 Rhodesian Constitution, the country was divided into 50 constituencies and 15 electoral districts. Each constituency and each electoral district elected one Legislative Assembly member. The Assembly itself consisted of 65 members: fifty-one Europeans, thirteen Africans, and one Asian.

Two separate registers of voters were set up, known respectively as the "A" Roll and the "B" Roll. Different qualifications applied to each Roll as follows:

- | <i>A</i> | <i>B</i> |
|---|---|
| I Income not less than £792/year or immovable property valued at not less than £1,650 | I Income not less than £264/year or immovable property valued at not less than £495 |
| <i>OR</i> | <i>OR</i> |
| IIa Income not less than £528/year or immovable property valued at not less than £1,100 | IIa Income not less than £132/year or immovable property valued at not less than £275 |
| <i>PLUS</i> | <i>PLUS</i> |
| b Completion of a primary education of a prescribed standard | b Completion of 2 years secondary education of a prescribed standard |
| <i>OR</i> | <i>OR</i> |
| IIIa Income not less than £330/year or immovable property valued at not less than £550 | III Persons over 30 years of age having: |
| <i>PLUS</i> | a an income of not less than £132/year or ownership of immovable property |
| b 4 years secondary education | <i>PLUS</i> |
| <i>OR</i> | b primary education |
| IV Appointment to the Office of Chief or Headman | <i>OR</i> |
| | IV Persons over 30 years of age with incomes not less than £198 |

Based on these requirements, just prior to UDI the number of registered voters was:

	<i>"A" Roll</i>	<i>"B" Roll</i>
Africans	2,263	10,466
Europeans	89,278	608
Asians	1,231	114
Coloureds ¹	1,308	176
Total	94,080	11,364

Each voter had two votes, one in a constituency and one in an electoral district. A system of cross-voting was instituted under which, in a constituency election, total "B" Roll votes could not exceed 25% of the "A" Roll votes cast in that election. The converse applied in electoral district. The effect, therefore, was that the A Roll would control the constituencies,

¹ In Rhodesia, the term "Coloured" is used to designate a non-African or non-Asian who possesses, however, African or Asian blood.

with the B Roll dominating the electoral districts.

A Declaration of Rights was embodied in this new Constitution, expressing five general principles which purported to: (1) prescribe those fundamental rights and freedoms that should be secured to every individual of any community; (2) ensure that such rights be applied without distinction of race, colour, or creed; (3) eliminate any possibility that the exercise of any such rights by one individual would prejudice the exercise of similar rights by others; (4) enable the state, nevertheless, to assume and exercise whatever powers might be necessary (in peace as well as in war) for the purposes of defence and public safety, law and order, and public health and morality; and (5) invalidate any law, regulation, by-law or other subsidiary legislation, passed after the enactment of the new constitution, which might be in opposition to the Declaration of Rights.

The Constitution contained two supposed safeguards for Africans. First, a two-thirds majority vote of the Assembly was required to pass any amendments affecting their rights. Therefore, any changes to laws regarding the Tribal Trust Lands or human rights, as well as the voting requirements themselves required two-thirds concurrence in the Legislative Assembly. Secondly, they had to receive assent in a referendum of the four principal racial communities mentioned previously. All African adults with the necessary qualifications would be eligible for referendum vote, with each group polling separately; if two-thirds of those registered within each group gave their approval, the proposed amendment would be promulgated.

Further provisions were incorporated which would enable any individual to question a law's validity in the Courts if in his or her opinion such a law was contrary to the Declaration of Rights.

Eleven persons elected by an electoral college were to form the Constitutional Council—a body with the intended purpose of examining all legislation prior to implementation to ensure that it conformed to the Declaration of Rights. The Council was to be composed of at least 2 jurists, 2 Europeans, 2 Africans, 1 Asian and 1 Coloured person. Their function, however, was merely advisory and any recommendations ensuing from their deliberation could be overruled by the Assembly.

There was one immense drawback to the 1961 Constitution. Section 70 contained a saving provision for existing legislation. It provided that nothing done in or under the authority of any law in force should be held inconsistent with the Declaration of Rights. This meant that the discriminatory provisions and practices in the fields of land allocation and housing, education and employment, as well as the repressive machinery of the Law and Order (Maintenance) Act and other legislation could not be challenged as unconstitutional. Many thought that there would be a review of all such legislation in order to bring it into line with the principle of the Declaration of Rights,² but nothing of the sort occurred.

² See Leo S. Baron, *Southern Rhodesia and the Rule of Law*, *Journal of the I.C.J.*, Vol. VI, No. 2, 1965, at p. 221.

Among the discriminatory and repressive laws which were then and which remained in force were the Land Appointment Act of 1930, the Law and Order (Maintenance) Act of 1960, the Unlawful Organisations Act of 1959 and the Emergency Powers Act of 1960.

(2) The 1965 (UDI) Constitution and Other Statutory Amendments:

Because the 1961 Constitution *did* envisage majority rule at a future time (though not until sometime during the 21st century), the opinion of white Rhodesian politicians was that it “sounded their death knell”.³ This adverse reaction resulted in a new document which extended the scope of powers afforded the Legislature.

UDI marks the repudiation by Europeans in Rhodesia of Britain’s authority in regulating internal affairs. But, more importantly, it altered the amendment process to the detriment of all Africans by removing the requirement of a racial referendum. Since the minority has continued to control more than two-thirds of the Assembly, this deletion of referendum procedure destroyed the Africans’ previous potential to block any proposed changes to laws which might adversely affect the rights of their race. Thus the passage of future discriminatory legislation was ensured.

Apart from the modification described above, few changes were made to the 1961 Constitution.

Within one year of removing the requirement of racial referenda, a two-thirds majority of the Assembly passed the Constitution Amendment Act (1966). This Act permitted the trial of Africans in tribal criminal courts,⁴ and it allowed the Government to determine which tribesmen could occupy Tribal Trust Land as well as the manner in which the land could be utilized.⁵

Designed to diminish potential African influence on the Legislature, the 1967 Electoral Amendment Act No. 7 called for the preparation of new “Rolls” and a re-registration of voters. The number of African voters was thereby decreased—partly because the government refused to institute a “campaign” to facilitate re-registration and partly because there was a subsequent boycott on the part of potential registrants. The reduction in African voters was as follows:

	<i>Africans on Old Roll</i>	<i>Africans on New Roll</i> ⁶
“A” Roll	2,263	1,645
“B” Roll	10,466	4,280

³ Mr. D. Lardner-Burke, Minister of Justice, in *Rhodesia Parliamentary Debates*, Vol. 75, col. 1352, 10 October 1969.

⁴ Constitution Amendment Act (1966), Act No. 49, Sections 2 and 4.

⁵ *Ibid.*, Section 104(2).

⁶ Claire Palley, *Law and the Unequal Society: Discriminatory Legislation in Rhodesia under the Rhodesian Front from 1963 to 1969*, Part I, Race, Vol. XII, No. 1, 1970, p. 22.

(3) The 1969 Constitution

The 1969 Constitution and associated Acts engendered an entirely new course, that of consciously institutionalizing European political and economic power. The necessity for approving a new Constitution (and for abandoning the principle of majority rule) was expressed as follows:

African majority rule would result, firstly, in the removal of all European political influence and thereafter in a battle for power between the two largest African tribes.⁷

and is epitomized by such statements as:

The 1965 Constitution, as was the case with its predecessor, leads inevitably to African majority rule and contains no guarantee that Government will be retained in responsible hands . . . its provisions could well lead to the Government of Rhodesia passing into irresponsible hands. This possibility has, quite naturally, led to a great deal of uncertainty, particularly among Europeans because they have seen, near at hand in other African countries, what had happened to the European standards and civilization which had been built up in those countries. They have been dismayed and saddened by the reversion to savagery, chaos and violence when European influence has been removed.⁸

So, on June 20 1969, the Rhodesian electorate,⁹ approved the adoption of a new Constitution whose major provision redefined the Legislative branch of government. Therein, the Legislature was defined as being comprised of the "Head of State" and a Parliament encompassing: (1) a 23-member Senate consisting of 10 white members elected by an electoral college of European members, 10 African chiefs elected by the Council of Chiefs (see "Local Government", below), and 3 persons of any race appointed by the Head of State; and (2) a 66-member House of Assembly comprised of 50 whites elected by the European electorate, 8 Africans elected by four tribal electoral colleges, and 8 Africans elected by registered African voters.

Whereas the 1961 and 1965 Constitutions provided for a gradual transition to majority rule, the Constitution of 1969 at best provides for eventual equality in government participation. Provision was made for the number of African seats in the Assembly to be increased as African contributions to the national revenue increased. Parity would occur when (and *only when*) the African share amounted to half the total European and African contributions combined. Thereafter further increases would not occur. However, for this purpose, only the revenue collected by direct taxes (e.g. income tax) as opposed to indirect taxes (sales and excise taxes, etc.) is taken into account. The substantial indirect tax burden of the Africans, who constitute

⁷ Mr. D. Lardner-Burke, in *Rhodesia Parliamentary Debates*, Vol. 75, col. 1044, 2 October 1969.

⁸ *Ibid.*

⁹ Note that of the 90,794 registered voters, only 6,645 Africans out of 4.8 million met the voting requirements.

95% of the population, is ignored. Also the fact that the European tax contribution would rise continually was disregarded. Acknowledgment was made in 1969 that at their "present rate of income tax contribution, Africans would not be entitled to a single seat in Parliament".¹⁰

Further changes upgraded the financial and educational requirements necessary to qualify under the "Voting Franchise", again restricting African chances of obtaining suffrage. "To qualify for the African roll an African needs to have (a) an income of £300 for two years or immovable property worth £500, or (b) an income of £200 for two years or immovable property worth £400, AND two years' secondary education. Provision is made for increasing these amounts to keep pace with inflation and for increasing them from time to time as the number of African members of the House of Assembly increases."¹¹

Yet another change, supposedly in an attempt to prevent inter-racial competition, stipulated that Parliamentary representatives were to be elected only by their respective racial communities—Africans were not allowed to vote for Europeans and *vice versa*. Cross-voting was also eliminated, again lessening African political influence: in cases where two Europeans fought in a constituency for the same seat, Africans previously might have held the balance of power.

Another safeguard of the rights of individuals was removed by the abolition of the Constitutional Council. It was supplanted by the Senate Legal Committee whose members, nominated at periodic intervals by the Senate President, issued from the European-dominated Senate itself. In this way the primary means whereby individual and racial interests were to have been protected was discarded. If the Senate Legal Committee declare the provisions of a Bill to be inconsistent with the Declaration of Rights, the Senate is not bound by its opinion, and may in any event pass the Bill, notwithstanding the conflict, if it decides that its enactment is "in the national interest" (section 44).

In addition, adverse modifications were made to the Declaration of Rights. Unlike those set forth in previous constitutions, the rights embodied in the 1969 model were not enforceable—no court was given the power to inquire into or make rulings regarding any law's validity based on its inconsistency with the Declaration of Rights. The qualifications to the supposed rights have been conveniently summarised as follows:—

- the right to life is qualified to permit the use of force "Where it is reasonably justifiable in the circumstances for the purpose of suppressing terrorism";
- the right to personal liberty is qualified to authorise preventive detention and restriction;

¹⁰ *Rhodesia Parliamentary Debates*, Vol. 75, col. 1343, 2 October 1969.

¹¹ Electoral Act No. 56 of 1969, Sections 20, 24 and 26.

- protection from deprivation of property excepts deprivation “authorised by law;”
- protection from search and entry is qualified to permit the authorisation by law of search and entry “where there are reasonable grounds” for offence or for lawful arrest;
- previous provisions permitting laws to control communications media are extended to permit laws “for the regulation of newspapers” and other publications;
- executive or administrative acts of discrimination on the grounds of race, tribe, political opinion, colour or creed are not subject to scrutiny and report by the Senate Legal Committee and are therefore outside the scope of the Declaration”.¹²

Because the Declaration of Rights is not justiciable, the courts cannot challenge the validity of legislation or delegated legislation which is *intra vires*. The courts have been rendered virtually powerless regarding the matter of discriminatory practices.

The foregoing shows how, by means of constitutional changes, the Rhodesian Front have sought to extend and perpetuate their power. Following the unlawful declaration of independence, the *apartheid* ideology borrowed from South Africa has been further adapted and included within the legal mechanism. Although the move towards virtual abolition of African political rights followed an extremely tortuous path, what has emerged is now seen clearly as a system of racial privilege and superiority, supported by a readiness on the part of the government to employ the most authoritarian methods in achieving its goals.

The Local Government

Measures designed to secure European political dominance by provisions relating to the control of administrative and legislative powers exist at local as well as central government levels. The strengthening of the central government provided the basis for the manipulation of local government. Additionally, African collaboration became an instrument of white rule in controlling outlying local areas.

In the white areas there is a system of elected local government bodies for Municipalities in the larger towns, Town Management Boards in the smaller towns and, in rural areas, Local Boards. There are also appointed Local Committees at village level. By contrast, the African areas are administered separately by a special government department controlled by whites.

The white minority government rules Africans through its Ministry of Internal Affairs (formerly Native Affairs), through the agency of District Commissioners and chiefs and headmen. It operates on the assumption that

¹² E.E.M. Mlambo, *Rhodesia: The British Dilemma, International Defence and Aid Fund*, London, 1971, p. 33.

Africans are non-urban, and that the urban black proletariat is a transitory phenomenon. Consequently Africans in towns "inhabit a form of administrative limbo (enjoying, at the most, an advisory relationship with the white municipalities which 'manage' the black townships) because they are away from the area where the system assumes them to be for purposes of government."¹³

The Africans who live and work in the towns in the white areas are excluded from any part in local government. This is so even though the Africans constitute the great majority of the population in these towns. As at 30 June 1975, there were 420,000 Africans in a population of 557,000 in Salisbury, and 270,000 out of 340,000 in Bulawayo.¹⁴ The townships are established and controlled by the central government, the Municipalities or the Town Management Boards, but they are located outside the municipal or town boundaries. Consequently, even where Africans own freehold properties of the requisite rateable value, they do not qualify for a local government vote. In some townships African Advisory Boards have been established, but these have proved a failure and are of no significance. As any visit to a township will show, the standards of services in the townships are far below those in the white areas and constitute little burden on the ratepayers. In the Highfield township in Salisbury, the revenues from the beer halls alone exceed the annual public expenditure on services in the township.

In the African rural areas there is a form of local government based upon the traditional tribal structures. Under the Native Councils Act No. 19 of 1957 the Minister may, if satisfied that there is a general wish for it among the inhabitants of the area, establish a Council presided over by the District Commissioner and including all Chiefs and Headmen (unless specifically excluded by warrant). African chairmen may be appointed by warrant and in 1964 this had been done in 25 of the 52 Councils then established. Under the Act the Central Government retains considerable control over the Councils, quite apart from its power to set them up and to abolish them.¹⁵ Chiefs, Headmen and Kraalheads are identified with the Council by having to publish its by-laws, directions and notices, collect its rates and fees, and enforce its by-laws and communal services.

In addition, under the Council of Chiefs and Provisional Assemblies Act No. 58 of 1961, provision was made for establishing advisory Provincial Assemblies of Chiefs. Five were established, and from these are elected the 26 members of the National Council of Chiefs, also an advisory body. The functions of the Council of Chiefs are "to make representations to the Minister with regard to the needs and wishes of the tribesmen living on Tribal Trust Lands; to consider any representation made to it by a Provin-

¹³ *Op. cit.*, p. 67.

¹⁴ *Monthly Digest of Statistics*, Salisbury, January 1976.

¹⁵ See Claire Palley, *op. cit.*, p. 663 *et seq.*

cial Assembly and in its direction to report thereon to the Minister; and to consider and report on any matter referred to it by the Minister or Board of Trustees for consideration".¹⁶

All these bodies in the Tribal Trust Lands have served to harness the tribal chiefs and headmen as instruments of the central government, and to provide a carefully controlled oligarchical and 'loyal' structure to take the place of any democratic political representation.

Political activity in the Tribal Trust Lands is rigorously controlled. Under the African Affairs Act of 1928, Section 46 (1), it was illegal to "hold, preside at or address any meeting, gathering or assembly at which twelve or more Africans are present at any one time in any Tribal Trust Land or other tribal area" without the written permission of the District Commissioner. Since August 1975 this permission is required for any political meeting in a Tribal Trust Land, even if there are less than twelve present.¹⁷

The *African Affairs Amendment Act*, introduced in 1966, the *Constitutional Amendment Act* of the same year and the *African Law and Tribal Courts Act* No. 24 of 1969 exemplify the policy of subjecting Africans through the influence of the chiefs. These Acts gave a degree of autonomy to Africans, and provision was made for the constitution of tribal courts with both civil and criminal jurisdiction, of course over Africans only. There is a right of appeal to a tribal appeal court and to a magistrates court. These Acts actively supported tribalism. Africans were encouraged to draw up legislation to protect their own culture and mode of living. The African Affairs Amendment Act provided the chiefs with certain limited powers, making them responsible for the administration of their people, for whom they were to serve as the only available medium of communication with upper echelons.

1967 saw the enactment of the *Tribal Trust Land Act*, which re-introduced minority involvement regarding the allocation of land to tribesmen. Subject to the direction of the Minister of Internal Affairs, a chief and other tribesmen appointed by him were to control the occupancy and use (agricultural as well as natural resource utilization) of the tribe's land. Formerly this had fallen within the province of duties entrusted to the African Councils. With the consent of the Minister, the tribal authorities could enact by-laws, but the Minister could in turn repeal them at any time.¹⁸ Finally, the Minister could dismiss a chief if neglect of his responsibilities occurred or if such dismissal were necessary to preserve peace and order within a tribal area. Quite obviously, those chiefs insufficiently tractable would not be tolerated. Chief Shumba, for example, was forced to

¹⁶ Council of Chiefs and Provincial Assemblies Act (Chap. 111), s. 8.

¹⁷ See p. 37 above.

¹⁸ The Tribal Trust Land Act, Section 5.

resign his post after signing an anti-minority independence petition.¹⁹ The chiefs, in essence, have been used to create a facade of local government, while the Rhodesian Minister has retained control.

The 1969 Constitution, by "formalizing" tribalism, emphasizing the differences between various tribal communities, had the effect of permanently impeding the development of African consciousness. The two main groups of tribes in Rhodesia are the Shona and the Ndebele. These tribes came to Rhodesia at different times and from different locations in Africa, the Shona peoples arriving and settling there first. Over sixty per cent of the African population of Rhodesia are members of the Shona tribes, while the Ndebele comprise some 30 per cent. While the government argued that "the Rhodesian African traditional tribal structure integrated into the new Rhodesian Constitution presents a more realistic picture than that obtained through the so-called democratic process . . .",²⁰ the arrangements drawn up in the 1969 Constitution resulted in a permanent, perhaps unbridgeable social rift. The Ndebele and Shona were geographically segregated from one another. Supposedly, this action was to ensure that each would be permitted to develop its own customs and culture without encroaching upon the traditions of the other. At the same time, each was accorded equal representation at the central government level. At the local level, this segregation prevented formation of a united African front. The Ndebele, constituting the African minority, have subsequently become more cooperative and more closely aligned with the Administration. In this way the new Constitution helped to "divide and rule" the two tribal groups.

Finally each chief is paid a salary augmented by a bonus to be awarded by the District Commissioner. The amount of the bonus is assessed according to the chief's personal attributes, his administrative ability and the effectiveness of his control and authority over his people, and, significantly, by his cooperation with the prevailing administrative policies. The Minister of Internal Affairs has repeatedly refused to disclose the amounts of any payments of this nature made to various individuals. The result is that many chiefs are distrusted and even regarded as traitors by their own people; as a consequence, some have insisted upon security measures to protect their positions. Particularly noteworthy is the fact that, under the 1966 Constitutional Amendment, the chiefs themselves are permitted to adjudicate on their own behalf:

. . . a tribal court shall not be deemed to be dependent or partial by reason only of the fact that any or all of the members of the court are interested parties.²¹

¹⁹ E. Mlambo, *Rhodesia: The Struggle for a Birthright*, C. Hurst & Co., London, 1972, p. 50.

²⁰ W. H. H. Nicolle, *Rhodesian Secretary for Internal Affairs*, South African Press Association (transcript), 17.11.1969.

²¹ Constitution Amendment Act (No. 49 of 1966), Section 4.

Clearly, "tribalism in Africa is an enduring and powerful force . . ." ²² The white Rhodesian minority has harnessed this force, caused the polarization of inter-tribal factions, and thereby impeded the progress of African society. An adequate system of elected local councils is non-existent in African areas, and in districts where councils have been created their main functions have been merely advisory.

Civil Service

The Public Services Act was an outgrowth of the European desire to maintain control of the government's administrative machinery. Prior to 1960, this Act contained a clause stipulating that "any native or coloured person" would be prohibited from entry into the Service, and at that time Africans held only temporary or extremely menial posts. This clause was rescinded with the Public Services Amendment Act in 1960, by which—in accordance with policies of a more liberal (and short-lived) regime—the Service was opened to all Africans. However, when the Rhodesian Front party gained control in 1963, an announcement was made that standards regulating recruitment of African civil servants would not be lowered as had been planned, all but paralysing African hopes of appointment to administrative positions therein. Henceforth, only clerical openings in the lower grades were available for African placement. Further, applicants were not appointed to positions that might provide a stepping-stone to executive responsibility. The Government List of 1967, an enumeration of all higher-level employees within the Civil Service, showed fewer Africans listed (there being only one) than in 1964. Since this time, African clerks have been banned from attending training courses, thereby eliminating any chances for advancement.

From 1965 to 1969 total Africans in the service dropped from 1,652 to 802. ²³ Of these only 44 received salaries commensurate with those paid to whites holding similar posts.

In 1969 there was not a single African District Commissioner or District Officer. No Africans were found in senior positions within the Ministry of Internal Affairs, nor did African commissioned officers exist within the police forces.

African doctors and nurses are allowed to enter the Service, but their employment, too, is so restricted that many find it necessary to seek jobs abroad. As long as Europeans are available to fill Civil Service openings within the higher grades, Africans will continue to be relegated to positions of less prestige where their influence will be minimized.

²² *Rhodesia Parliamentary Debates*. Vol. 75, Col. 1047, 2 October 1969.

²³ Palley, *op. cit.*, "Law and the Unequal Society", p. 25.

COLD COMFORT FARM

The story of the Cold Comfort Farm Society clearly illustrates the Salisbury regime's violent opposition towards any attempt at racial partnership and African community development.

The Society was a community of blacks and whites working a farm together in the European area of Rhodesia. It was formed in 1965 and dissolved by the illegal regime in 1971 after being declared an unlawful organisation. Its story is told in the book *Cold Comfort Confronted*¹ by Guy Clutton-Brock, treasurer of the Society who was deported at the time of its dissolution.

The project began at the initiative by Didymus Mutasa and a handful of young Africans who sought an alternative to life in the townships or reserves with neither work nor opportunity for further education. Didymus Mutasa had had experience in an earlier development project at the Saint Faith's Mission village cooperative, where Clutton-Brock had also worked. That multi-racial community had aroused considerable uneasiness among white colonialists, but nothing to compare with the reaction the Cold Comfort Farm was later to receive.

As Clutton-Brock was able to write at the time, "There is nothing odd or special about the Cold Comfort Farm Society, except that it exists in Southern Africa today".² The Society's aims, as stated in its Constitution, were "to promote understanding, friendship, cooperation and development among people, through undertaking practical projects designed to increase production from natural resources . . .".³ With three white trustees holding a never-exercised controlling vote, and careful attention to the terms of the Land Apportionment Act, the Society complied in every detail with the law. A police inspector once told the members, "You seem to have found a loophole in the Land Apportionment Act". Clutton-Brock comments. "In this honest remark, he revealed the colonist assumption that maintenance of white supremacy is the first commandment. Legislation is to support it. If any should abide by the law but prejudice the higher unwritten imperative, he has 'found a loophole' in the written law".⁴

The small group started out with much enthusiasm and little experience, but grew to about forty persons who built a successful farming system on

¹ *Cold Comfort Confronted*, Mowbrays, London, 1972.

² *The Cold Comfort Farm Society* (Gwelo, Rhodesia, 1970).

³ *Cold Comfort Confronted*, p. 120.

⁴ *Cold Comfort Confronted*, p. 121.

land near Salisbury, purchased with the aid of the World Council of Churches and others. They grew food crops which their customers, mostly from the poor African townships, came to reap for themselves; they also raised sheep, cattle, chickens and other livestock. The life was simple and cooperative. Decisions were made by consensus and everyone felt free to speak his or her mind. Clutton-Brock's description of the farm emphasizes that it was a place where Europeans and Africans shared a common life; people of different races, ages and education lived together with understanding and respect for each other.

Concerning the political outlook of the Society, members would explain, "By living and working together, we feel that we are practising the right politics. Political feeling is mostly concerned with justice".⁵ On the subject of religious motivation, according to Mutasa "there seemed a great deal of value in what the Bible says and they were beginning to put some of this into practice".⁶ The farm was rightly seen by the authorities as a challenge to the values on which the regime is based. This in turn increased its significance. Members of the Society would explain to visitors: "Gradually we are becoming more concerned with the good of the country than with ourselves. This place must be of value to Africans because we have built it up ourselves and the government is against it. The more we are attacked, the stronger we become together. The attacks on us in Parliament have strengthened us a lot. . . . We hope to see many more projects like this in the future all over the country."⁷

Assistance to the Society came from various parts of the world; so did many visitors. Among the guests at the farm were African political leaders, tribal groups, Rhodesian Front members, and, frequently, police officers.

Members were outspoken in public about injustice and racialism. They gave relief and legal aid to the detained members of the Zimbabwe liberation movements and to the harassed members of the Tangwena tribe. Always they referred to the Smith regime as illegal and refused to recognize the validity of its acts. While sharing the aims of the liberation fighters, they disagreed with their methods. Clutton-Brock vigorously asserts, "It was obvious that the longer members stayed on the farm, the more opposed to violence they became, especially the violence of the rebel regime."⁸

Cold Comfort Farm came under heavy attack in Parliament, particularly from the Minister of Internal Affairs. In 1970, the government finally changed the land laws to ensure that the Cold Comfort Farm and other efforts like it could no longer find loopholes to escape the overall policy of white supremacy. The new Land Tenure Act provided that a minister

⁵ *Ibid.*, p. 146.

⁶ "Down into political hell with a Rhodesian prisoner", Interview with Didymus Mutasa, *The Listener*, 19 September 1974.

⁷ *Cold Comfort Confronted*, p. 146.

⁸ *Ibid.*, p. 164.

could declare any tenure unlawful and evict if, in his opinion, it evaded the purpose of the Act or was contrary to its principles.

Nevertheless, it was not under the Land Tenure Act that the regime moved against the Cold Comfort Farm Society. In late 1970, Didymus Mutasa, the Chairman, was detained without trial under the Emergency Regulations on the basis of a minister's opinion that he might commit acts endangering the public order of Rhodesia. Clutton-Brock, treasurer, received a notice depriving him of his Rhodesian citizenship. He was deported to Britain. In 1971, the Cold Comfort Farm Society was declared to be an unlawful organisation because of its "communist inspiration" and because it "actively supports the terrorist cause as a means of overcoming the government".⁹ After this proclamation, the regime could imprison for five years anyone who continued to play a part in the organisation. The farm and buildings became a restricted area occupied by police. A liquidator took control of the farm and all its assets without compensation. The members were evicted.

Mutasa remained in solitary confinement in Sinoia prison until he was temporarily released in 1972 on condition that he go to Britain to study. Clutton-Brock lives in Britain, to which he was forcibly deported. Two members of the Society were brought to court in Rhodesia on alleged offences. Another, Arthur Chadzingwa, became Organising Secretary to the African National Council and in February, 1973, was detained in Whawha prison;¹⁰ Moven Machachi is in prison on charges carrying the mandatory death sentence. Mr. G. C. Grant, aged 70, a trustee of Cold Comfort Farm, and his wife Ida Madeleine, were declared prohibited immigrants on 17 February 1976 and ordered to leave Rhodesia within 10 days. Mrs. Grant, daughter of the former Chief Justice Russel, has lived in Rhodesia since 1915 and her husband since 1931. Others, deprived of their property and their means of living, are scattered across Rhodesia. Some have gone to the Nyafaru cooperative farm in the homeland of the Tangwena tribe. But this community, too, is in danger of being dissolved and being told, as was the Cold Comfort Farm Society by a distinguished white Rhodesian lawyer, "Your real offence is turning yes-men slaves into independent human beings".¹¹

⁹ The *Rhodesia Herald* asked in an editorial of 16 January 1971, why the members of the society were not being prosecuted for encouraging terrorism and violence. The members replied in a letter to the editor "the answer is simple. The allegation is quite untrue and there is no honest evidence to support it. The police must know this very well. We are a society of young farmers who live well with our neighbours. We grow food greatly needed by our neighbours in the townships, some of whose children die of Kwashiorkor. We help our neighbours, white or black, in every way we can. There is plenty of evidence to support this. We totally repudiate the allegations made against us. We therefore deeply resent the fact that our property is suddenly being taken away by force and that our co-operative way of life and means of living are being destroyed."

¹⁰ He was eventually released in January 1976.

¹¹ *Cold Comfort Confronted*, p. 9.

THE TANGWENA TRIBE

The Tangwena are a small tribe, formerly part of the Barive tribe. Their land is a narrow stretch of mountainous country of about 50 square miles along the Mozambique border east of the Rhodes Inyonga National Park. It lies in one of the richest agricultural regions of Rhodesia, but on the hill slopes where the tribe live agriculture is more difficult. They have been described as "a tough and sturdy people, well-adjusted to the remote steep rainswept hills with bare granite outcrops, from which they wrest a living; elsewhere they feel out of place".¹ The forefathers of the present Tangwena tribesmen had lived on this land for many generations. Their chiefs are buried at Machena which is considered holy ground by the tribes-people.

In 1905, a few years after Rhodes' British South Africa Company established their rule, it sold 250,000 acres, which included a major section of Tangwena country, to the Anglo-French Matabeleland Company. The Tangwena people were not informed of this transaction. In 1930, Tangwena country was officially listed as a "European area" under the Land Apportionment Act, as was the majority of other fertile land. No steps were taken at that time to remove the Tangwena from their land.

In 1944, the Anglo-French Matabeleland Company ceded 58,000 acres of Tangwena country to the Gaeresi Ranch Company. Some of the Tangwena signed labour agreements with the ranch owner, Mr. William Hanmer, in return for the right to continue living on the land. As has been seen, this was lawful under Section 43 of the Land Apportionment Act as they were in the employ of the person, a European, who owned the land.

In 1962, the Rhodesian Front Party came to power on a platform of stricter segregation. The government encouraged farmers to evict those "squatters"² who did not work for them. Accordingly, in 1965, Mr. Hanmer told all the Tangwena people who were not in his employ but who were living on the land to move out. They ignored his order.

He brought a prosecution against their Chief, Reyaki, for unlawfully occupying European land contrary to section 42 (1) (a) of the Land Appor-

¹ *Rhodesia, the Ousting of the Tangwena*, International Defence and Aid, London, January 1972.

² The definition of "squatter" in section 2 of the Land Apportionment Act includes an African who "is occupying land, other than land which is Tribal Trust Land, in any circumstances which are not expressly provided for in this Act; and includes every person who is occupying any such land and is a member of the family of such African".

tionment Act. Reyaki was convicted in June 1967 and fined £30, but he still remained on the ranch. In November 1967 he was again summoned on the same charge and was again fined £30 with an alternative of 3 months imprisonment with hard labour. On this occasion he was represented by counsel, and appealed on the grounds that Gaeresi Ranch was "crown land" and accordingly Chief Reyaki and his people could not be evicted unless and until a Proclamation was made by the government in the terms of section 86 of the Land Apportionment Act. This argument succeeded, and both convictions against Chief Reyaki were quashed. In February 1969 the government issued a proclamation under Section 86 of the Act. The proclamation, which was signed by the Prime Minister and issued in the name of the Queen, ordered that all Tangwena had to depart from the ranch by August 31 of that year.

The tribe was offered new huts and a beer-hall in a nearby African area; and the chief was promised recognition of his chieftainship, which would bring a government salary of £30 a month. The Tangwena still refused to abandon their ancestral land. This was followed by an offer to resettle the tribe at Bende in the Nyangui Forest, 14 miles to the north. The offer was of better land but it was not suitable for the crops the tribe were used to growing. Moreover it was land belonging to a former vassal of the Tangwena and a move there would call into question the status of the Tangwena tribe. Again the offer was refused. Government opinion on the matter was expressed by the Minister of Internal Affairs in his speech before the Parliament on August 26, 1969:

"We have offered the Tangwena people a home for all their tribe in perpetuity. We have offered them school opportunities, the chance of forming an African council to govern all their domestic issues themselves with the consequent provision of clinics and other services. In fact, we are taking this opportunity of re-organizing a higgledy-piggledy mess—which is a credit to no one—into an organized tribal unit with a planned agricultural economy. It is no more inhuman than the clearance of a slum in a European capital and moving the people to an ordered housing estate".³

Finally, just before dawn on September 18, 1969, the police arrived to evict the people and when they resisted, nine police land-rovers and a bulldozer moved in to flatten their huts, crops and fruit trees.

The people rebuilt their huts and planted new crops but in October and November they were again destroyed by the police. The Tangwenas still refused to submit and fled to the mountains of their ancestral land where many remain in hiding to this day. Of the 3,000 Tangwena, about 400 of the tribesmen are still living there defiantly with their chief. Their way of life is described by a recent visitor: "Lookouts on the hills keep a 24-hour watch for police and army patrols, while the rest of the tribe shelter in

³ Parliamentary Debates, House of Assembly, 26 August 1969.

small groups, never staying more than a few months in one place. They live off wild fruits, roots, bulbs and when they can get supplies, sadza (maize meal). There are days when the 65-year-old chief goes without food. 'I used to feed my pigs and eat them,' he said. 'Now I feed on wild things as if I were a pig.'"⁴ Many members of the tribe are working in surrounding areas, and some as far away as Salisbury and Bulawayo. They send money regularly for the support of those in hiding, and those in nearby Tribal Trust Lands frequently visit them, so that their number constantly fluctuates.

Government attempts to dislodge them from their hiding places have included the seizure of their cattle in 1970 and the abduction in July 1972 of 115 Tangwena children who were left by the Tangwena in the care of the local African co-operative farm, the Nyafaru Development Company.⁵ Government Welfare Officers came to the farm and forcibly removed the children to welfare centres. Those who had been looking after them in the cooperative farm were not told where they had been taken, and their mothers who came out of hiding to visit them were unable to find them. The children, ranging in age from 4 to 13, were in fact split up and placed in 9 different mission stations where they remain to this day. Sixteen are now at secondary schools.

The Rhodesian army patrols the mountain area constantly and incidents occur, as when a Rhodesian soldier shot a Tangwena man. He was found by other Tangwena in a shallow hole in the ground, covered with leaves. His arm was broken, his left jaw missing as was a part of the skull bone.

Chief Reyaki Tangwena who has led his tribesmen in their efforts to resist the eviction has vowed to stay on in the mountain and to fight. He vehemently asserts: "The government has raped me of my land. They have taken away my heritage. They have guns and I don't. I see no point in talking to this government. First they took my land, then my cattle and lastly my children, yet they say that they are a Christian government . . .".

The defiance of the Tangwena people has become a symbol of the struggle of Rhodesian Africans.

⁴ Michael Holman, *Last hide-out for the Tangwena*, "Observer Magazine", London, 6 July 1975.

⁵ A school established at the farm for these children had been closed down in 1970.

SUMMARY OF CASES RELATING TO
"TERRORISTS"

as reported in the Rhodesia Herald
between September 1973 and October 1975

Note: Under government regulations the reporting of these cases may be severely restricted by the Minister of Justice and Law and Order. Sometimes he orders that the name of the accused be not published; in others he prohibits the publication of any facts identifying the date or place of the incident concerned.

The dates in the margin are the dates of the reports in the Rhodesia Herald. The cases reported are only some of those tried. Many, especially those tried by magistrates, go unreported."

* * *

15.9.73 A 15 years old unnamed youth accused of the murder of a Mrs. Kleynhans alleged in his trial that he was beaten while suspended wearing leg irons during his interrogation. He took off his shirt and showed marks on his body.

Beck J. said that the court condemned such methods for the purpose of gaining self-incriminating evidence, but "because the circumstances have not been exhaustively canvassed I shall not comment on the morality involved in the employment of what counsel has called methods of strenuous interrogation for the purpose of gaining information that could facilitate the tracking down of unlocated terrorists who pose a continuing threat to the lives of innocent people". Later he said, "The true extent of the ill-treatment of this particular accused has not been fully explored nor have the essential motives for it nor the persons involved therein been fully explored." (It seems from this passage that the judge accepted that there had been some ill-treatment and that he condemned ill-treatment for the purpose of obtaining confessions; he left open, however, the question whether torture and ill-treatment was justifiable for the purpose of obtaining military information.)

The youth was sentenced to 12 years for taking part in a terrorist raid. His part was to act as "cook and general skivvy" for 2½ weeks. There was no evidence that he took part in the actual attack.

- 15.9.73 Four men were hanged, two of them named Magne and Chiredzo for possessing arms and burying land mines; the other two were common criminals who had murdered a policeman when trying to rob a beer hall.
- 22.9.73 A FROLIZI gang leader, Guvamatanga, aged 38, was sentenced to death for the murder of a Wedza farmer, Mr. Joubert. The accused had been trained in the Soviet Union and Zambia. He denied the murder but admitted a weapon offence. The court rejected his allegations of torture. He was hanged on 15.12.73.
- 27.9.73 One Murtagh was refused leave to appeal against a 25-year sentence for bringing offensive weapons and materials into Rhodesia.
- 28.9.73 Fanuel Kambeu (23) pleaded guilty to committing acts of terrorism or sabotage in looting and setting fire to a store in the Kandeyo TTL and placing a land mine near the store. The judge accepted that he did not voluntarily join the gang but was impressed into it at gun point by terrorists. He had not taken a direct part in the planting of the land mine but had remained with the gang for 25 days when he could have deserted. He was sentenced to imprisonment.
- 28.9.73 Charles Nkomo (22), deputy leader of a FROLIZI gang which had entered Rhodesia in February, pleaded guilty to possessing offensive weapons and materials. It was said that he had been forcibly abducted at the age of 17 and indoctrinated. After his capture he expressed anti-terrorist views to the press and on radio and television.
- 8.10.73 An appeal was dismissed against a death sentence imposed by Beck J. on 17 July 1973, on a coloured, Robinson (25), and two Africans, Gumborinotaya and Subanda, who had participated in the killing of a reservist named Stacey in Mukwicki TTL, though none of the accused fired the fatal shot. They pleaded guilty to possession of arms. They were hanged on 19.10.73.
- 24.10.73 A trial was held in camera against 3 terrorists. One, Dube, was sentenced to death and the other two, Barikayi and Mabongo, to 30 years imprisonment following "an engagement with Rhodesian security forces". There was ballistic evidence that Dube had fired on the security forces but not the other two. Dube was hanged on 1.3.74.
- 19.11.73 One Nyati was sentenced to death at Bulawayo on two counts of murder. He was hanged on 1.3.74.
- 1.12.73 One Makuzku was sentenced to 12 years hard labour for undergoing a course of training abroad. It was stated that "the accused was arrested outside Rhodesia". No publication of place names was allowed. The accused pleaded guilty and was not legally represented. It was said that he had been abducted by night to join the terrorists, and had shown contrition and cooperated with

- the police since his arrest. He had remained with the terrorists for 10 months when he could have escaped.
- 6.12.73 An unnamed adult was sentenced to death for participation in a raid on April 25. He was executed on 1.3.74.
- 7.12.73 Following a trial in camera an unnamed defendant was sentenced to death for taking part in an attack with rockets and grenades on an empty farm homestead. His automatic rifle was shown not to have been fired. The defendant asked if his parents abroad could be informed, and the court directed the prison authorities to forward a message to them.
- 11.12.73 One Kanunungwa of Dotito TTL, Mount Darwin, was sentenced to 20 years hard labour for being in possession of offensive weapons while with a terrorist group for 7 years. He had been abducted by them.
- 12.12.73 Kagwa and Gutsari of the Mount Darwin district were sentenced to 20 years hard labour for sabotage and terrorism when with a terrorist group who laid a landmine on the Hoya Road in the Northeast between 1 and 20 December 1972.
- 15.12.73 One Chimunondo was hanged for the murder of a Mr. Jelligoe at Centenary on 5 February. He did not fire the fatal shot.
- 19.12.73 An announcement by the British Government that all executions, like all acts of the present authorities in Rhodesia, are illegal was published in the Rhodesia Herald.
- 21.12.73 It was announced that 13 terrorists had been hanged and at least 13 others sentenced to gaol sentences and that 58 tribesmen had been convicted of giving aid to terrorists. (This was presumably a summary of sentences given since the beginning of the guerrilla campaign in December 1972).
- 22.1.74 2 unnamed Africans were sentenced to 7 years and 4 years imprisonment for harbouring and failing to report terrorists at Que Que.
- 14.2.74 An appeal was dismissed against a death sentence on an unnamed African for firing rocket projectiles and other explosives in an attack on a farm homestead at Sipolilo on April 24.
- 14.2.74 An unnamed African was sentenced to 9 years hard labour for failing to report the presence of terrorists.
- 15.2.74 The appeals were dismissed of three unnamed terrorists, one sentenced to death and two to 30 years imprisonment. The one sentenced to death had fired shots at 2 policemen attempting to arrest him. It was said that one of the defendants had attempted to escape from the terrorists and had been severely beaten by them, but that once he had entered Rhodesia he had "made common cause" with the terrorist aims, and that he had had ample opportunity to escape.
- 26.2.74 One Muropo was sentenced to 30 years imprisonment for being

- a member of a terrorist gang engaged by security forces. He had been shot through the chest. He had been found with a hand grenade, rifle and ammunition and a landmine. The court accepted that he had initially been abducted by terrorists.
- 6.3.74 Nine unnamed terrorists were sentenced to death. Five were hanged and the sentences of the other 4, aged 16 to 17 years, were reduced on appeal to light imprisonment on 7.6.74. They all pleaded guilty to having arms of war, including rocket projectiles, mortar bombs, TNT, rifles and pistols in the Sipolilo district in June 1973. One of the defendants alleged that he had been beaten and subjected to electric shock but later withdrew the allegation. On the appeal MacDonald J. said "I am dismayed that a sentence of death should be thought appropriate in the case of the 9th appellant", and suggested that he should be released on licence "within a reasonable time". Nevertheless, the sentence of death against this appellant was upheld by the majority of the Court (see page 58 above).
- 12.3.74 Chawasarira of Kuruyana was sentenced to five years for failing to report terrorists in the Mount Darwin area. One of the witnesses was a boy who had been abducted and held by terrorists tied to a tree, blindfolded and tortured.
- 12.3.74 An unnamed African was sentenced to 8 years imprisonment with labour for failing to report terrorists.
- 22.3.74 The appeal was dismissed against a sentence of death passed on 4.2.74 on one Gombwe for murdering a headman, Kandeya, on 17 August in the Northeast. The defendant's allegation of electric shock and beating by the police was rejected by the court. The defence counsel said he was unable to examine on this issue as the defendant's allegation was so at variance with his instructions.
- 30.3.74 Sentences of death were passed on Mutandiro and Phiri (a Zambian) for carrying arms and firing on South African police in an engagement in which three terrorists were killed in September 1973. Their appeal was reported dismissed on 1.6.74 and they were hanged on 21.6.74.
- 11.4.74 Three unnamed Africans, after a trial in camera, were sentenced to imprisonment, one for 10 years and two for 7 years, for assisting terrorists and failing to report them.
- 20.4.74 An unnamed African was sentenced to three years with labour (two years suspended) for assisting terrorists.
- 23.4.74 Three unnamed Africans tried in camera were sentenced to imprisonment. Two were sentenced to 8 years for harbouring, concealing or assisting terrorists and failing to report their presence. The third was sentenced to 5 years for failing to report the presence of terrorists in September 1973.

- 26.4.74 An unnamed African was sentenced to 9 years with hard labour for failing to report terrorists in the North East in January.
- 27.4.74 Two unnamed Africans were sentenced to 8 years and 6 years for harbouring, assisting and concealing and failing to report terrorists in the North East in January.
- 21.5.74 An unnamed African (under 19) was sentenced to 30 years for possessing an AK assault rifle. He was wounded by the police patrol before he could fire. It was alleged that there were 4 girls with his gang.
- 22.5.74 The appeal court allowed an appeal and imposed suspended sentences of imprisonment in the case of 5 unnamed Africans, four of them school teachers, who had been convicted of failing to report. The appeal court accepted that they had been terrorised.
- 23.5.74 5 unnamed African bus drivers and conductors were sentenced to an unnamed period of imprisonment for failing to report as soon as reasonably practicable the presence of terrorists in the North East area. The magistrate accepted that the reason they had not reported their presence at the time was because they were afraid their passengers would denounce them to the terrorists. They did report the incident to the company management on their return to Salisbury. All had good records.
- 28.5.74 An unnamed "fringe" terrorist was sentenced to death for killing with an axe a person who had expressed anti-terrorist views and for helping terrorists to place a landmine. His appeal was dismissed and he was hanged on 16.8.74.
- 1.6.74 An unnamed African was sentenced to 30 years imprisonment for harbouring terrorists, failing to report their presence, and stealing goods from a store and setting fire to it. He was arrested by South African police after an action in which a terrorist was killed. It was said that he had been forcibly abducted by terrorists.
- 7.6.74 An unnamed African was sentenced to 9 years for "recruiting or encouraging within or outside Rhodesia" three African men for a political objective using "physical force, violence, sabotage, intimidation, civil disobedience to the law and unlawful means".
- 12.6.74 An unnamed African (18 or 19) was sentenced to death for acting as a porter and deputy commander for a terrorist group, for firing at a truck on January 19, for murdering a Mrs. Fletcher at a farm on February 17, and for killing a police reservist the following day. It was said that he had been abducted and trained by Frelimo. His appeal was dismissed and he was hanged on 30.8.74.
- Another 15 years old African who was with him was sentenced to 30 years imprisonment.
- 6.7.74 Two unnamed tribesmen were sentenced to 8 years and 6 years (3 suspended) for having "harboured, concealed or assisted" and

- having failed to report terrorists. They were tried in a magistrate court in Bulawayo area.
- 6.7.74 An 18 year old African, Clemence Simon, was sentenced to 6 years imprisonment (3 suspended) for failing to report terrorists and for bringing food to their camp and joining in singing banned songs and hand clapping.
- 12.7.74 W. Mariga (28) was sentenced to 6 months with labour (3 suspended) and T. Masona (24) to 1 year (suspended) for being in possession of books and publications of a banned organisation.
- 20.7.74 W. James was acquitted of assisting terrorists. The terrorists had lined up 30 tribesmen and beat two of them to death. One of the tribesmen who had given a false name was identified to the terrorists by the accused. The magistrate found that the defendant was not criminally responsible as "had the terrorists discovered that the deceased, aided by the silence of all the others, was trying to bluff them, everybody might have been killed".
- 15.8.74 5 unnamed ANC branch officials were sentenced to 25 years imprisonment for recruiting four others in Harare for terror training.
- 28.8.74 It was reported that the Rhodesian police had investigated 1,311 cases of terrorism in the North East area during the last year, leading to the clearing of 1,124 cases and the arrest of 1,262 accused. These included cases of Africans failing to report terrorists.
- 6.9.74 A statement was made by Mr. Lardner-Burke, Minister of Justice and Law and Order in reply to a suggestion in a letter to the Rhodesia Herald that summary trial and public execution of terrorists by the security forces in the North East should be introduced. The Minister said that this "would be an admission that Rhodesia had lost control of the situation there, and would be a breach of the country's civilised standard". He added "if we were to set up the special courts, which is virtually martial law, we would then be admitting that we have lost control in that part of the country, and that is why I consider the sophisticated democratic method of law should be maintained".
- 18.9.74 An unnamed tribesman was sentenced to death for inciting terrorists to murder by pointing out to them a "sell-out" (informer) who had collaborated with the authorities and whom the terrorists had killed on 27 May 1974. The defendant was hanged on 30.11.74.
- 25.9.74 Staben Gurure (20) was sentenced to 12 years with labour and two unnamed Africans (17 and 18) were sentenced to 20 years and 8 years respectively for assisting a terrorist going in beating up three District Assistants, one of whom was killed. The 17 year old defendant was said to have burned the ear of one of the

- District Assistants with a lighted cigarette. The defendant's allegations that their confessions had been obtained by electric shock were rejected.
- 2.10.74 Karios Furaya pleaded guilty to undergoing terrorist training and having an assault rifle in the North East area. He had run away from the terrorists in January and was working as a gardener in Salisbury when arrested by the security forces. He was sentenced to 25 years imprisonment.
- 2.10.74 Morris Matepa was sentenced to death for associating with a gang who beat to death two Africans informers and had beaten another (a woman).
- 12.10.74 Mahobo Kabondo and Eriya Kamire from the Mzarabani TTL were sentenced to death for beating to death two men and acting as accomplices in the murder of a third in December 1972 after an African helping the terrorists said he did not want to see the three victims again. Both defendants alleged they had been subject to electric shocks by the police. Their appeal was dismissed, and they were executed on 28.1.75.
- 5.11.74 Three unnamed Africans were sentenced to death for committing unspecified acts of terrorism and possessing arms. They were executed on 28.2.75.
- 5.11.74 Three unnamed Africans were sentenced to imprisonment; one, aged 18, to 12 years with labour for aiding and abetting a group of terrorists who had murdered an African informer with an axe, another in his twenties to five years, and a third aged 50 to six years for failing to report the terrorists and supplying them with food.
- 23.11.74 The appeal was dismissed against the death sentence of an unnamed terrorist sympathiser for complicity in beating two Africans to death.
- 28.11.74 An unnamed African was sentenced to 25 years imprisonment with labour for possessing arms of war.
- 17.12.74 12 unnamed Africans were sentenced as follows for failing to report the presence of terrorists: 5 to 4 years (4 with 2 years suspended and one with one year suspended); 6 to 3 years (4 with 18 months suspended and 2 with one year suspended) and 1 to 2 years with labour (one year suspended).
- 8.1.75 29 Africans (including kraal heads) from the Mrewa district received sentences ranging from 5 to 10 years for failing to report terrorists. All but 7 pleaded guilty. According to the prosecution evidence they gave food to terrorists and had been threatened by them with death if they reported their presence. One of the kraals had been visited by the terrorists on 33 occasions. The Mtoko magistrate said he did not accept that there was more than the minimum degree of intimidation by the terrorists, and commented

- “Had you been so minded you could have reported their presence”.
- 19.1.75 Clever Mabonzo, 31, a terrorist leader, was sentenced to death for the murder of a member of the Government Veterinary Department on 17 April 1974. It was said that he had been a freedom fighter since 1966, and a district commander. At the time of his capture he was shot in the back and received 15 fragment wounds when a grenade exploded near his left leg. His lower leg was amputated. His appeal was dismissed on 7.3.75 and he was hanged.
- 25.1.75 28 unnamed Africans received sentences ranging from 2 to 8 years for failing to report terrorists.
- 1.2.75 Kanan Matongo and Sani Takavaraska, both in their early twenties, from Mount Darwin, were sentenced to 20 years each for the murder of a tribesman and for being with terrorists when the lips were cut off another man and woman for acting as informers. The court accepted that the defendants were not “principal offenders in any of the charges”.
- 28.2.75 Two unnamed Africans were sentenced to death for unspecified acts of terrorism and for possession of unspecified arms of war. Another convicted on similar charges was sentenced to 25 years with labour.
- 28.2.75 16 tribesmen from Mrewa and Mtoko areas pleaded guilty to feeding terrorists, and in one case sending girls to them for “entertainment”. They received sentences from 5 to 7 years. Another two were sentenced to 18 months (12 suspended) for failing to report the presence of terrorists.
- 5.3.75 Maxwell Nyanbandu (24) and Chiwiye Mapfundiro (mid-twenties) were sentenced to death for murdering a Shamva farmer, Louis Bernard Couve, on 7.6.73. Both claimed they had been abducted by terrorists 5 or 6 months after the murder. Both alleged their statements had been induced by assaults by the police. It was said that they formed part of a group of nine terrorists who raided the farm store. The two accused remained outside. Both were captured about a year later.
- 7.3.75 The appeal against his death sentence on 29.1.75 of Baya Tsauki (25) was dismissed. He was sentenced as a member of a gang of 15 terrorists, of whom 8 had been killed, who had acted as an execution squad for three tribesmen convicted of murder by the terrorists and lined up in front of their wives and children and shot. They were also convicted of firing at a vehicle of the Roads Department.
- 13.3.75 An unnamed African was sentenced to 18 years with labour for possessing weapons. He surrendered without firing his AK rifle when a fellow terrorist was killed. He was also in possession of

- ammunition and a Chinese stick grenade. The judge found that he was "a reluctant terrorist, but had done what he was told".
- 13.3.75 An unnamed kraal head was sentenced 15 years imprisonment for participation in the murder of a woman. He had indicated to a terrorist that she was a "sell-out".
- 18.3.75 It was announced that a complete ban had been imposed on reporting a trial which had begun in the High Court in Salisbury.
- 19.3.75 The leader of a terrorist group, Blley Wandiana, was sentenced to death for a murder in the Darwin area (of which no details were given) and for an act of terrorism in firing on the security forces.
- 21.3.75 Two unnamed Africans were sentenced to life imprisonment with labour for unspecified acts of terrorism and for possession of arms of war.
- 22.3.75 The appeal against the death sentence on Kariba Herbert Tobias was dismissed. He was sentenced for murdering a "sell-out", for ambushing a vehicle and for possessing arms of war.
- 2.4.75 An unnamed tribesman was sentenced to 10 years imprisonment for conspiring to cause bodily injury or endanger the safety of other people. He had made three lists naming 30 girls and their families for punishment by terrorists, alleging that they were "sell-outs" or people who had associated themselves with government ideals and beliefs.
- 22.4.75 The Minister of Justice and Law and Order announced that he had decided to stop making public announcements after executions of convicted murderers, because the question of executions was an "emotive" one. (Nationalist leaders had claimed that the government was breaking the terms of the Lusaka agreement by continuing to hang guerrillas.) A spokesman from the Ministry said that when an appeal against a death sentence is turned down, "it must be accepted the sentence has been carried out". (This statement implies that a decision has already been taken that there will never be a grant of clemency.)
- 2.8.75 A 16-17 year old African was sentenced to 25 years imprisonment for possessing arms of war. He had been abducted at the age of 14. After capture he showed the authorities where there was an arms cache and his information led to other terrorists being killed or captured.
- 7.8.75 On appeal the death sentences of two unnamed Africans were confirmed and the death sentence of a third reduced to life imprisonment for the part they played in laying a landmine which had killed a passenger on a trailer. Two of the men had alleged that their confessions were induced by assault by the police and had shown marks on their bodies to the magistrate at the preparatory examination. On the appeal the Chief Justice said that it

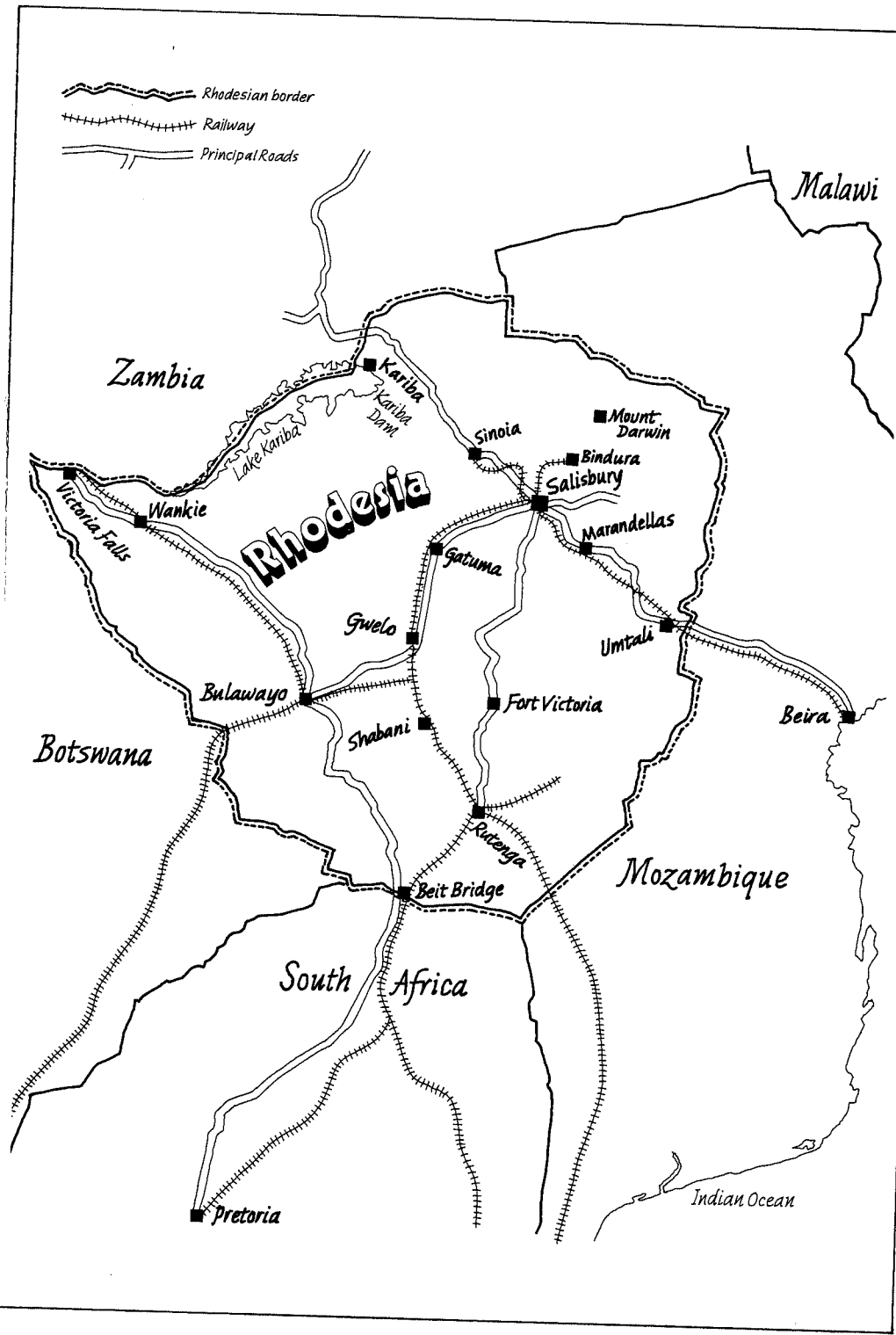
was "most unfortunate" that he had not been immediately examined by a medical practitioner. The court said that they had ignored the confession on the appeal. The third defendant, whose sentence was reduced to life imprisonment, "had been intimidated by terrorists, and compelled to act against his better judgment", and the part he played was "minimal".

- 16.8.75 Benson Neube and Robbie Nyambabva were sentenced to death for recruiting or encouraging six juveniles to undergo terrorist training. Two others, Kefari Mavura and Charles Mujuru, were sentenced to 15 years imprisonment for the same offence. The offences were committed in Gatooma between 1 and 25 February 1975.
- 17.9.75 Philip Foya, a bookkeeper employed at Epworth Mission, was sentenced to 17 years imprisonment for helping on four separate occasions to transport a total of 17 African youths on their route abroad for terrorist training. He acted as chauffeur.
- 17.9.75 Movin Mahachi, managing Director of the Nyafaru Development Company (a non-profit making cooperative farm near the Mozambique border), was sentenced to 15 years imprisonment, 6 suspended, for helping to recruit a total of 48 African youths (including 4 girls) for terrorist training from March 1975 onwards. The facts that he was not responsible for the original recruitment, and that it would have been difficult for him to refuse to cooperate, were held to constitute special circumstances saving him from the death penalty.
- 20.9.75 Crispin Mobira (19) and Goliath Mushore (17) were sentenced to 25 years imprisonment for possessing arms of war, laying a landmine, and firing at a Rhodesia Air Force helicopter in an operational area. It was stated that both had given useful information after capture.
- 10.10.75 William Makiwa (22) was acquitted on charges of attempting to attend a terrorist training course and of recruiting and encouraging others to attend. He alleged he had been assaulted by the police. During the "trial within the trial" on the issue of the admissibility of the confession, the prosecution abandoned the confession.
- 10.10.75 Geshoni Nyoni (18) and Ben Mangena (16) were refused leave to appeal against their sentences of 16 years for undergoing terror training. Naphat Mangena and Sifelani Mangena were granted leave to appeal against their sentences of 12 years.
- 16.10.75 John Sibanda (19) was sentenced to life imprisonment for possessing arms of war and being a member of a group of 30 terrorists. He pleaded guilty. He had received a year's training outside Rhodesia. The weapons included a rifle, landmine, rocket and ammunition.

- 16.10.75 Chiereso Waine was sentenced to death for a raid on a European farm in October 1974, when bullets were fired into a bedroom and a mortar attack made on the farm, setting it on fire and causing \$3,000 damage. The defendant was also sentenced to death for the murder of Kaitano Phiri in the Mount Darwin area on November 1, 1974.
- 18.10.75 Shadreck Machisa (30) was sentenced to death for recruiting a youth of 17 to attend a course of terrorist training.
- 31.10.75 John M. Hlengani (65) of Bazela Kraal in Nuanetsi District of Victoria was sentenced to death for recruiting his two nephews for terrorist training.
- 31.10.75 Tarewa O. Muzerewa was sentenced to 15 years imprisonment (6 suspended) for recruiting 7 African youths for terrorist training. Two co-defendants, Makore D. Ushe and Rev. Tafadzwa J. Nderere were acquitted. The evidence showed that the youths had been returned from Mozambique.
- 8.11.75 Elliot Dube (22), Reza Nyamarupa (18) and Ignatius Moto (17) were sentenced to death for killing three members of the security forces in an engagement on April 2, 1975, and for possessing arms of war. A fourth defendant, Reggie Muzika, who was paralyzed, was held not fit to stand trial.
- 11.11.75 Charles Mayahle (33) a teacher at Mwacheta School, Chipinga, was acquitted on a charge of recruiting youths for terrorist training. The evidence of the youths "varied considerably" with "grave discrepancies". The case was not proved beyond a reasonable doubt.
- 13.11.75 William Hkundwa Ndhlovu (28) was sentenced to 20 years imprisonment for encouraging 4 African youths to join him for terrorist training outside Rhodesia. The special reasons, which avoided a death sentence, were that the part he played "did not appear to be politically organised", and the youths concerned refused to go for training.
- 15.11.75 Francis Tafirenyika Mudzindike Pasipanodya, a school teacher, was sentenced to life imprisonment for recruiting 12 students for terrorist training across the border.
- 15.11.75 John Mutasa of Rusape was sentenced to 20 years for recruiting for terrorist training.
- 15.11.75 Manu Marufu Masaure and Obert Dandawa were sentenced to 10 years with labour (2 years suspended) for attempting to undergo terrorist training. They pleaded guilty. They said they had tried to join the ANC in Zambia but had been told they must join either ZANU, ZAPU or FROLIZI. When they refused, they were deported back to Rhodesia.
- 15.11.75 Kembo Muhadi (26), former school teacher, was sentenced to 15 years for undergoing terrorist training in Russia and returning

- with a pistol and 28 rounds of ammunition. He pleaded guilty.
- 18.11.75 Jervas Karinda (20), a teacher, 25 years imprisonment for recruiting six school pupils for terrorist training. The "special circumstances" were that he brought back two of the youths from Mozambique and had resumed work as a teacher.
- 19.11.75 Morris Nyagumbo (50), former organising secretary of ZANU who had attended the Lusaka Conference in 1974, was sentenced to 15 years (five suspended) for recruiting Africans for terrorist training. The "special circumstances" were that his part was merely to lend his car for taking the man to the border; he had not incited, instigated or advocated recruitment.
- 22.11.75 Amon Chinyoko and Edmos Twala were sentenced to 20 years for receiving terrorist training in Tanzania and returning with weapons (8 AK rifles, a light machine gun, 16 hand grenades, 1,606 rounds of ammunition, 3 landmines and 10 mine detonators and activators). On their return they were told by ZAPU not to take the offensive during the settlement talks.
- 22.11.75 11 Gokwe tribesmen, one 72 years old, were sentenced to effective totals of between 18 months and 5 years for failing to report the presence of terrorists. They said they were told they would be killed if they reported them.
- 27.11.75 Kurewahndada Muzheri (25) was sentenced to death for recruiting 8 persons for terrorist training. (The sentence is reported to have been reduced on appeal to 18 years' imprisonment). His co-defendant, Richard Sikaunda Zaba (51), school teacher, was sentenced to 14 years (6 suspended) for conspiracy in connection with recruiting.
- 11.12.75 Jacob Ndifeni, school teacher and former chairman of the Midlands North Province of the ANC, sentenced to 14 years (6 suspended) for encouraging terrorist recruits to undergo training. The special circumstances were that the defendant had assisted the youths because they were to oppose a rival ANC faction, and not in order to conflict with the security forces.
- 13.12.75 Rekisi Pikili Brantino Neube was sentenced to death for the murder of two Bulawayo men and 25 years imprisonment for entering Rhodesia with offensive weapons (rifle, grenade, detonators, bandolier and ammunition). The defendant was one of a gang who shot the men while riding in a car in northern Matabeleland on April 11. The trial was held in camera.
- 13.12.75 Phineas Domboko and Chabaya Gabriel from Musoruro Kraal in Chikwiso TTL were found not guilty of the murder of a Mr. Kamuchacha by informing terrorists that he was collaborating with the authorities. The court rejected the defendants' allegations that their confessions had been obtained by beating, by electric shocks and by having a human skull rubbed on their lips, but

nevertheless held that "the genuineness of the statements allegedly made by the accused to the police had not been satisfactorily proved".



--- Rhodesian border
+ + + + + Railway
— Principal Roads

Malawi

Zambia

Rhodesia

Botswana

Mozambique

South Africa

Indian Ocean

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Since UDI Rhodesia has been moving inexorably towards open racial conflict. With the closure of the Mozambique border and the intensification of guerrilla activity, this conflict is entering a new and bloody phase. Yet the government of Mr. Ian Smith remains implacably opposed to majority rule. The 'bloodbath' predicted by Zambia's President Kaunda now seems inevitable. It has its roots in the illegitimacy of the regime and the discriminatory and repressive legislation enacted in a futile attempt to maintain the power and privilege of the white minority.

This report from the **International Commission of Jurists** methodically examines the injustices of the system—ranging from the denial of civil liberties to the detention, torture and killings of civilians. In particular, the report highlights the massacre at Karima kraal in which 20 people, including 9 children and 4 women, were killed allegedly by Rhodesian security forces.

Mr. Smith would have us believe that his only quarrel with black nationalists is over the pace at which change should take place. The actions of his government, however, belie this rhetoric. The report shows conclusively that the policies of the Rhodesian government, rather than moving, however gradually, towards racial equality, are "the intensification of the repression and the growing adoption by Southern Rhodesia of the laws and values of the apartheid system in South Africa".