



ZIMBABWE’S SECURITY SECTOR – WHO CALLS THE SHOTS?

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"In terms of expertise, someone who can say things without thinking, I am the right man."

– Brigadier-General Nyikayaramba.¹

"Tsvangirai doesn't pose a political threat in any way in Zimbabwe, but is a major security threat. He takes instructions from foreigners who seek to effect illegal regime change in Zimbabwe. This is what has invited the security forces to be involved [in politics] because we want to ensure we protect our national security interests."

– Brigadier-General Nyikayaramba²

There are various definitions of a country’s “security sector” each encompassing different institutions and individuals. This paper considers the Army, Air Force Police and “Central Intelligence Organisation”³ only and is confined to consideration of the formal statutory structures of the sector.⁴

The Army and Air Force

The Army and Air Force⁵ are collectively known as the Defence Forces and are established and governed by the Constitution of Zimbabwe⁶ and Defence Act⁷ respectively. The Constitution

¹ Nyikayaramba arguing why he should remain part of the COPAC constitution making process, quoted in The Herald 22.06.11 (*Nyikayaramba Booted Out of Copac*).

² Quoted in The Herald (*Generals Respond to Tsvangirai*) 23.06.11.

³ This is the term generally used to describe Zimbabwe’s secret service. The name has been carried over from the pre-independence period, but the organisation is more correctly the “Department of State for National Security”.

⁴ Several political commentators have suggested in private conversations that the actual hierarchy within the security sector continues to reflect the rank and status attained by individuals within the nationalist forces during Zimbabwe’s independence war.

⁵ The Constitution provides that other bodies may be established by an Act of Parliament for the purpose of defending Zimbabwe, but no other bodies have been so established.

⁶ Section 96(1).

⁷ Chapter 11:02.

provides that the Defence Forces are established for “the purpose of defending Zimbabwe”.⁸ However, in terms of Section 37 of the Public Order and Security Act,⁹ the Commissioner-General of Police may request the Minister of Defence to authorise the Defence Forces to assist the Police in the exercise of their functions under that Act.¹⁰ Furthermore, in terms of the Defence Act,¹¹ the Minister of Defence may attach or second any member of the Regular Force to the Public Service and soldiers have been deployed to assist in agricultural production¹² and similar such “public duties”. To the extent that these provisions and deployments do not involve “the defence of Zimbabwe”, they are of doubtful constitutionality.¹³ Similarly, it is difficult to see how the August 1998 deployment of the Defence Forces to support the government of Laurent Kabila in the Democratic Republic of Congo falls with the mandate to “defend Zimbabwe”.

Chain of Command

a) The President.

The President has “the supreme command of the Defence Forces” as “Commander-in-Chief”.¹⁴ As such, the President has plenary power to determine the operational use of the Defence Forces.¹⁵ He also has the power to proclaim or to terminate martial law¹⁶ and to declare war and make peace.¹⁷ In the exercise of these latter two functions the President must act on the advice of Cabinet.¹⁸

Presidential discretion in relation to the operational use of the Defence Forces, comprising an estimated 30 000 to 35 000 members,¹⁹ is framed by the Defence Act. The Defence Act prescribes the organization, administration, and discipline of the Defence Forces, including the appointment of persons to offices or ranks in the Defence Forces, their removal from office or reduction in rank, their punishment for breaches of discipline, and the fixing of their conditions of service.²⁰

⁸ Section 96(1).

⁹ Chapter 11:17.

¹⁰ Once so deployed, a member of the Defence Forces has the same rights, duties and responsibilities as a member of the Police force.

¹¹ Section 29 of the Defence Act.

¹² Known as Operaton Maguta (“replete”).

¹³ The army was widely deployed to violently suppress food riots which occurred in January 1998 and the motivation for this provision was probably the need to legitimise such deployments.

¹⁴ Section 27(1) of the Constitution.

¹⁵ Section 96(2) of the Constitution.

¹⁶ Unlike the declaration of a state of emergency (section 31J(2) of the Constitution), the declaration of martial law does not require Parliamentary approval.

¹⁷ Sections 31(H)(4)(c) and (d) of the Constitution.

¹⁸ Section 31H(5) of the Constitution. It is unclear whether the provisions of section 31K of the Constitution apply to this provision. Section 31K precludes any court from inquiring into the nature of any advice or recommendation tendered to the President by any “person or authority” or the manner in which the President has exercised his discretion.

¹⁹ The army is believed to consist of about 30 000 members against a target strength of 40 000 and the airforce somewhat less than the target strength of 5000. Southern Africa Report p3 & p7.

²⁰ As per section 96(5) of the Constitution.

The President appoints the Minister of Defence, and, with the agreement of the Prime Minister,²¹ the Commander of the Defence Forces, and the Commanders of the Army and Air Forces. These individuals follow the President in the legislative hierarchy of the Defence Forces in descending order. The President also has the power to appoint any person to a commissioned rank²² and the exclusive power to appoint or promote any person to a rank above major or squadron leader.²³ Similarly, provided due process has been followed, he has the power cancel the commission of any officer who must then be discharged by the Commander of the Defence Force.²⁴ Resignations of officers require the acceptance of the President, before the member may be relieved of his or her duties, unless the Minister exempts the member from obtaining presidential approval.²⁵

The President may place any commissioned officer on a “*retired list*”, who then, notwithstanding such retirement, is entitled to retain his or her rank and to wear his or her uniform on “appropriate occasions”.^{26/27}

Many military bodies provide for general courts martial and district courts martial, with the former having greater punitive jurisdiction and often different procedures. The distinction has been retained in the Zimbabwe Defence Act, though the difference in punitive jurisdiction has not. Both have plenary punitive jurisdiction which includes the death penalty. However, only the President has the power to convene a general court martial. The President exercises review powers over general courts martial (see below).²⁸ Where the death penalty is imposed, and is to be executed in Zimbabwe, the President may order that it be carried out by firing squad.²⁹

b) The Minister of Defence.³⁰

While the consent of the Prime Minister is required before any person is appointed as a Minister,³¹ the allocation of a portfolio to that Minister, such as that of the Ministry of Defence, remains the prerogative of the President, subject only to prior “*consultation*” with the Vice Presidents, Prime Minister and Deputy Prime Ministers.³²

²¹ See below.

²² Zimbabwe follows the almost universally accepted international military ranking system, including the distinction between commissioned and non-commissioned personnel.

²³ Section 15(1) of the Defence Act.

²⁴ Section 18 of the Defence Act.

²⁵ Section 17(1) of the Defence Act.

²⁶ Section 16 of the Defence Act.

²⁷ Since serving officers may not be Members of Parliament, local authorities or statutory bodies it would probably be deemed inappropriate for them to wear military uniform at the formal events of these institutions should they become part of any of these bodies on retirement -Section 32(2) of the Defence Act.

²⁸ Sections 2, 49 and 63 of the Defence Act.

²⁹ This power is only exclusive to the President when carried out in Zimbabwe. Where the penalty is imposed “in the field” it is always to be carried out by firing squad – section 75 of the Defence Act.

³⁰ Presently Emmerson Mnangagwa.

³¹ Schedule 8 to the Constitution, Article 20.1.3(p).

³² Schedule 8 to the Constitution, Article 20.1.3(l).

The Minister of Defence, who administers the Defence Act,³³ may be regarded as following next in the formal legislative hierarchy of the Defence Forces, as in many respects he acts as an intermediary between the Commander of the Defence Forces and the President. Hence, while the President is the Commander-in-Chief, it is to the Minister that the Commander of the Defence Forces proffers advice on matters of general policy relating to the Defence Forces and to whom the Commander of the Defence Forces reports on the quotidian aspects of his duties.³⁴ The duties which the President requires the Commander of the Defence Forces to carry out are conveyed to him through the Minister and the Commander of the Defence Forces accounts to the Secretary in the Ministry of Defence for expenditure of funds.³⁵

The Commander of the Defence Forces is appointed by the President “after consultation” with the Minister (see below). The President also must consider the advice of the Minister in making any promotion or appointment to any other commissioned rank. The Minister tenders such advice after consultation with the Commander of the Defence Forces. The Minister may himself appoint or promote members to the rank of major or squadron leader or any lower commissioned rank, but must do so “*on the advice of*” the Commander of the Defence Forces.³⁶ The Units³⁷ and Reserve Forces³⁸ of the Defence Forces are determined by the Minister in consultation with the Commander of the Defence Forces.³⁹ The Minister sets the conditions of service for members of the Defence Forces, after consultation with the Defence Forces Service Commission⁴⁰, and has a general power to make other regulations which in his opinion are “*necessary or convenient for securing the discipline and good government of the Defence Forces*” including regulations concerning discipline and boards of enquiry.⁴¹ He may place commissioned officers of or below the rank of major or squadron leader on the “*retired list*”.⁴²

c) The Commander of the Defence Forces and Commanders of the Army and Air Force.

The Constitution requires the appointment of a Commander of the Defence Forces and allows for the appointment of Commanders of the Army and Air Force in terms of an Act of Parliament.⁴³ The appointments are made by the President acting after consultation with the Minister, who tenders advice or makes a recommendation to the President after consultation with a Board established for this purpose. In the case of the Commander of the Defence Forces, the Board

³³ S.I. 41 of 2010.

³⁴ Section 9(2) of the Defence Act.

³⁵ Section 9(3) of the Defence Act.

³⁶ Section 15(3) of the Defence Act.

³⁷ Units are defined as any contingent, corps, departmental service, detachment, force, regiment, battalion, company, squadron, military organization, formation or headquarters of the Army or the Air Force.

³⁸ Members of the ZANU PF aligned Zimbabwe National Liberation War Veterans Association are formally part of the Reserve Forces, and graduates of the National Youth Service are given preference in recruitment – see *Zimbabwe’s Security Forces Southern Africa Report July 2011* (“the Southern Africa Report”).

³⁹ Sections 5 and 6 of the Defence Act.

⁴⁰ Section 27 of the Defence Act.

⁴¹ Section 113 of the Defence Act.

⁴² Section 16(1) of the Defence Act.

⁴³ A Commander for each branch is established by the Defence Act, Section 11.

comprises the Chairman of the Defence Forces Service Commission⁴⁴ (see below), the Permanent Secretary in the Ministry of Defence, the retiring Commander of the Defence Forces and one other person appointed by the President.⁴⁵ All the *ex officio* members of the Board are themselves Presidential appointees. In the case of the appointment of a Commander of the Army or Air Force, a Board is established in the same way, though with the incumbent Commander of the Defence Forces sitting rather than the retiring Commander. The Presidential non-*ex officio* appointee to this Board may or may not be the same as the person appointed to the Board with which the Minister consults in regard to the appointment of the Commander of the Defence Forces. The President may give a direction to either Board that in making a recommendation it takes into account that there should be “*suitable representation of the various elements of the population in the Defence Forces*”.⁴⁶

In summary then, the process for appointing a Commander requires that the President makes the appointment “*after consultation*” with the Minister, who himself acts “*in consultation with*” a Board comprising solely Presidential appointees, possibly acting in accordance with a directive from the President to take Zimbabwe’s ethnic composition into account when considering the appointment.

Since the advent of Zimbabwe’s Inclusive Government, and for so long as such “unity” Government subsists, there is an important adjunct to this procedure. Article 20.1.3(p) of Schedule 8 to the Constitution (which overrides any provisions elsewhere in the Constitution to the contrary) requires that any appointment made in terms of the Constitution (as in the case of the Commander of the Defence Forces), or appointment in terms of any Act of Parliament (as in the case of the Commanders of the Army or Air Force), be made only after the **consent** of the Prime Minister has been first secured.⁴⁷

The term of office of each Commander is four years, or such shorter period as the President may determine.⁴⁸ The current Commander of the Defence Forces, Constantine Chiwenga, was appointed to replace the ailing Vitalis Zvinvashe in January of 2004, and Philip Sibanda was appointed to replace him as Commander of the Army. Their appointments would have been renewed in January 2008 before the provisions requiring the consent of the Prime Minister had been enacted. However, the next renewal of their appointments in January 2012⁴⁹ will require the Prime Minister’s consent. The reappointment of the Commander of the Air Force, Perence Shiri will also fall due in September 2012, and the same considerations apply.

⁴⁴ Who also chairs the Board. The Chairman of the Defence Forces Services Commission is the chair of the Public Services Commission – section 97(1)(a) of the Constitution. The incumbent, Mr. Mariyawanda Nzuwa, is also a Presidential Appointee section 74(1) of the Constitution.

⁴⁵ Where there is no available retiring Commander, the President appoints an additional member to the Board – Section 12(1) of the Defence Act (incorrectly cross-referenced in the Act as Section 11).

⁴⁶ Section 22(1) of the Defence Act.

⁴⁷ Schedule 8 to the Constitution, Article 20.1.3(p). Such appointments are to be made “in consultation” with the Prime Minister - “in consultation” is defined in the Constitution to mean “after securing the agreement or consent of the person so consulted” (section 115(1)).

⁴⁸ Section 8(1) – for the Commander of the Defence Forces – section 11(3) other Commanders.

⁴⁹ The Zimbabwe Government’s Defence Forces web page suggests that the appointments were made in December 2003 see http://www.mod.gov.zw/index.php?option=com_content&view=article&id=51&Itemid=57. However, elsewhere the appointments were reported as made in late November 2003, to be with effect from 01.01.04 – *Chiwenga Appointed ZDF Commander* – The Herald 29.11.03.

The rank and terms and conditions of service of each Commander are set by the President, subject to the Act.

d) The Commander of the Defence Forces.

In addition to the responsibilities of the Commander of the Defence Forces to the President and Minister outlined above, it is also his⁵⁰ duty to implement such measures as he may consider necessary to command and control the members and equipment of the Defence Forces and using them to best advantage; to maintain proper discipline within the Defence Forces; to improve or simplify the organization, methods and procedures of the Defence Forces; and to secure the most economic and efficient utilization of the resources provided for the maintenance of the Defence Forces.⁵¹

The Commander of the Defence Forces may promote or appoint a member to the rank of captain or flight lieutenant⁵² or any lower commissioned rank.⁵³ He may only discharge at his own instigation members held to be unfit to be part of the Defence Forces if they are non-commissioned officers – the power to cancel the commission of a commissioned officer lies only with the President (see above).⁵⁴ The power of Commander of the Defence Forces in this regard overlaps with that of the Commanders of the Army and Air Force.

e) The Commanders of the Army and Air Force.

The Commanders of the Army and the Air Force report to the Commander of the Defence Forces on all matters affecting the Army and the Air Force respectively, and each are obliged to carry out any directions given by the Commander and to ensure that his branch fulfils its role within the Defence Forces.⁵⁵

Each Commander has the power to promote or appoint any member to a non-commissioned rank, to reduce their rank or dismiss the member.⁵⁶

Discipline

All members of inferior ranks must obey the lawful commands of a member holding superior rank.⁵⁷

The First Schedule to the Defence Act sets out a detailed list of military offences which apply only to members of the Defence Forces, and retains draconian pre-independence provisions, such as the offence of spreading reports related to military operations “*calculated to create*

⁵⁰ Presently a male, Constantine Chiwenga.

⁵¹ Section 9(1) of the Defence Act.

⁵² The equivalent of captain in the Air Force.

⁵³ Section 15(4) of the Defence Act.

⁵⁴ Section 26(1).

⁵⁵ Sections 11(6) and (7) of the Defence Act.

⁵⁶ Section 19 of the Defence Act.

⁵⁷ Section 7 of the Defence Forces (Discipline) Regulations, Statutory Instrument 205 of 2003.

*despondency or unnecessary alarm*⁵⁸ and other nebulous offences such as “*conduct unbecoming an officer and a gentleman*”⁵⁹ The more serious military offences are tried by court martial presided over by “*qualified officers*”.⁶⁰ Lesser charges are dealt with summarily or by superior officers, and disciplinary regulations⁶¹ provide a complicated hierarchy of which members may impose what penalties on whom depending upon rank.

The jurisdiction given to military courts to try offences under the Defence Act does not oust the jurisdiction of civil courts to try such offences⁶², though each court is enjoined to take into account the sentence passed by the other court when imposing a penalty, and the rules of “double jeopardy” will prevent an accused being tried twice for the same offence in both civil and military courts.⁶³ The Commander of the Defence forces may, however, direct that a military court may not exercise jurisdiction over any matter he is satisfied will be dealt with by a civil court.

The President exercises general powers of review over general courts martial as the “*confirming authority*” (see above) while the “*qualified*” officer⁶⁴ convening a district court martial is the confirming authority for that court.⁶⁵ Appeals from courts martial lie to a Court Martial Appeals Court comprising not less than two judges appointed by the Chief Justice.⁶⁶ No further appeal, such as to the Supreme Court, is provided for by the Defence Act.

The Commander of the Defence Forces has plenary power to discharge or dismiss any member, other than an officer, if he “*is satisfied, after the holding of such inquiry as [he] may consider to be necessary or expedient for the purpose, that the member is inefficient or otherwise unfit to remain in the Defence Forces*”.⁶⁷ If the member has been found guilty of an offence by a civil court the dismissal may be “*with ignominy*” and no further inquiry need be held.⁶⁸ If the lack of fitness rests on medical grounds a finding in this regard must first be made by a medical board. Appeals lie to the Defence Forces Commission, whose decision is final.⁶⁹

In the case of officers, as noted above, all officers hold their commissions at the pleasure of the President,⁷⁰ who may cancel the commission after hearing representations made by the officer concerned or holding an inquiry.⁷¹ Once the Commission is cancelled the Commander of the

⁵⁸ Paragraph 7.

⁵⁹ Paragraph 36 of the First Schedule.

⁶⁰ A person of or above the rank of major or squadron leader – Section 2 of the Defence Act.

⁶¹ Defence Forces (Discipline) Regulations, Statutory Instrument 205 of 2003.

⁶² Section 47(1) of the Defence Act.

⁶³ Sections 46(2)) and 87. Thus instances where one court must pay regard to the sentence of the other should rarely arise.

⁶⁴ The officer must be above the rank of major or squadron leader – Section 2 of the Defence Act.

⁶⁵ Section 50(1)(c) of the Defence Act.

⁶⁶ Sections 79 and 80 of the Defence Act.

⁶⁷ Section 26(1) of the Defence Act.

⁶⁸ Section 26(2) of the Defence Act. The discharge is also by the Commander of the Defence Forces and may be with ignominy if made pursuant to the judgment of a court martial Section 26(3).

⁶⁹ Section 26(5) of the Defence Act.

⁷⁰ Section 18(1) of the Defence Act.

⁷¹ Section 18(2) of the Defence Act.

Defence Forces must discharge the officer from the force.⁷² There is no appeal from the decision of the President.

The Police

The Police Force⁷³ is established and governed by the Constitution of Zimbabwe⁷⁴ and Police Act⁷⁵ respectively, and operates under the title of the Zimbabwe Republic Police.⁷⁶ It is believed to comprise about 22 000 members.⁷⁷ The Constitution provides that the Police Force is established for “*the purpose of “preserving the internal security of and maintaining law and order” in Zimbabwe.*” The Police Act is similar in many respects to the Defence Act in both structure and substance. A Police Services Commission, for example, performs identical functions to that of the Defence Forces Services Commission⁷⁸ (see below), and many of the offences which may be committed by serving members are similar – such as the offence of “*making or spreading reports calculated to cause alarm or despondency*”. The Police Force comprises the Regular Force, Constabulary Force and Ancillary members, the latter two of which are reserve forces whose function is to assist the Regular Force and whose members are appointed by the Commissioner.⁷⁹ The only qualification for a member is that the Commissioner believes the person to be “*fit and proper*”.⁸⁰

Police officers are not permitted to actively participate in politics, and are thus enjoined to maintain a clear division between their duties as police officers and political affiliations and sympathies.⁸¹ A member is regarded as in breach of this injunction if he or she joins or associates himself or herself with a political organization; canvasses any person in support of, or otherwise actively assists, a political organization; displays or wears political regalia; attends a political meeting or assembly when wearing the uniform of the Police Force or any part of such uniform likely to identify him or her as a Regular Force member unless as part of his or her duties; asks questions from the floor at a political meeting; publishes views of a political character or causes them to be published in any manner or media; or does any other act whereby the public or any member thereof might reasonably be induced to identify him or her with a political organization. This requirement of the Police Act seems to have escaped the current Commissioner-General when he announced:

⁷² Section 18(5) of the Defence Act.

⁷³ Some democracies have preferred to refer to a “police service” rather than force to suggest a role which is civic in nature rather than militaristic and repressive.

⁷⁴ Section 93.

⁷⁵ Chapter 11:10.

⁷⁶ Section 3 of the Police Act.

⁷⁷ ISS Paper 199 September 2009 *Security Sector Reform in Zimbabwe* Cheryl Hendricks and Lauren Hutton (“ISS Paper”) p6.

⁷⁸ Both are established in terms of the Constitution, sections 94 and 97 respectively.

⁷⁹ In the case of ancillary members Ministerial approval is required.

⁸⁰ Sections 26 and 27 of the Police Act respectively.

⁸¹ Paragraph 48(1) of the Schedule to the Police Act.

*"Many people say I am ZANU PF. Today, I would like to make it public that I support ZANU PF because it is the ruling party. If any other party comes to power, I will resign and let those who support it take over."*⁸²

The Police Force is divided into three main branches - Crime/Operations, Administration and Personnel – each headed by a Deputy Commissioner-General.⁸³

Chain of Command

a) The President.

With the agreement of the Prime Minister,⁸⁴ the President appoints the Commissioner-General of Police, who has general command of the Police Force. The power to remove the Commissioner-General from office is that of the President alone, and he may do so “*for any reason*” - though in so doing must consult with Cabinet⁸⁵ and must cause Parliament to be informed as soon as is practicable of the removal. The President has a broadly defined power in relation to the Commissioner and “*may give the Commissioner such general directions of policy as he considers necessary in regard to any matter relating to the Police Force*”.⁸⁶ The President has the exclusive power to appoint a member to a commissioned rank – that of inspector or above – or reduce the rank of a commissioned officer, though he exercises this power with “*due regard to*” the advice of the Minister, which the Minister tenders “*after*” consultation with the Commissioner-General. He may “*create*” and dispense medals and decorations to members of the police force.⁸⁷

b) The Minister(s) of Home Affairs.

As noted above, the presidential appointment of a person as a Minister requires the consent of the Prime Minister, though the allocation of particular portfolios does not. Two co-Ministers of Home Affairs have been appointed to administer the Police Act,⁸⁸ one a ZANU PF nominee and one from the MDC-T.⁸⁹ Authority is given to the co-Ministers to establish, by way of regulations, the various branches of the Police Force. The Ministers may also disband or re-establish the Constabulary at any time, on the advice of the Commissioner-General.⁹⁰

⁸² Quoted in *Dogfight for Chihuri's Job Intensifies* The Financial Gazette 29.06.10.

⁸³ Southern Africa Report *ibid*.

⁸⁴ See above for a note on the Prime Minister's power in this regard.

⁸⁵ This is “*after*” rather than “*in*” consultation with cabinet – section 7 of the Police Act.

⁸⁶ Section 11(1) of the Police Act.

⁸⁷ Section 69(2) of the Police Act.

⁸⁸ S.I. 37 of 2010. The Act defines “*Minister*” as the “*Minister*” (singular) to whom the administration of the Act has been assigned. The appointment of co-ministers is thus arguably *ultra vires* the Act.

⁸⁹ Theresa Makone and Kembo Mohadi from MDC-T and ZANU PF, respectively.

⁹⁰ Section 27(2) of the Police Act.

In terms of section 8 of the Police Act, the co-Ministers may give the Commissioner-General “*general directions of policy*” pertaining to his command, superintendence and control of the Police Force, appointment of members and promotions, reduction in rank and dismissals.⁹¹ This power overlaps with that of the President, though there is confusion in regard to the extent of the overlap and whether directions given by the Ministers must be in writing. While Section 8 makes the Commissioner-General’s overall command subject to the general directions the Ministers of Home Affairs “*may*” give, Section 11 provides that where the Ministers give general directions in regard to “*the appointment, promotion, training and disposition of members of the Police Force and the maintenance of the Police Force in a high state of efficiency*”, such directions must be in writing, and “*not inconsistent with directions given by the President.*” If the ambit of the directions under section 8 is regarded as being broader than those of Section 11, the requirement to place directions in writing is confined to the narrower functions of the Commissioner-General referred to in section 11. However, if section 8 is intended to cross reference Section 11, to be read in conjunction with it and the word “*may*” read as permissive rather than subjunctive, the Ministers’ only have the power to give general directions in relation to the aspects of the Commissioner-Generals’ responsibilities set out in section 11.

If the Ministers are regarded as having a broad power to give general directions to the Commissioner-General relating to “*command, superintendence and control*” provided for by section 8 and which are not confined to the “*appointment, promotion, training and disposition of members of the Police Force and the maintenance of the Police Force in a high state of efficiency*” as provided for in section 11, their power overlaps with that of the President to a greater extent.⁹² Where power to give general directions results in conflicting instructions and is not a matter which falls under section 11, the directions of the President will take precedence by virtue of the Constitution.⁹³

However, the following quote by co-Minister of Home Affairs Theresa Makone suggests that both the MDC-T co-Minister and Commissioner-General of Police have adopted the more restrictive interpretation of the Ministers’ powers to give directions:

*I’m a Minister merely in charge of policies. My situation then becomes very difficult to become answerable for someone to who you cannot give a direct command. The Commissioner-General is answerable to the President. If I have to ask him to do something I have to put it in writing and this process becomes cumbersome. Most times you write letters but nothing happens.*⁹⁴

In terms of the Police Act, however, the Commissioner-General must “*forthwith take all necessary steps to ensure due compliance with any directions*” given to him by the Ministers or

⁹¹ Section 8(1) of the Police Act.

⁹² The President’s power to give general directions extends to *any* matter relating to the Police Force, while that of the Ministers is restricted by the reference to specific functions of the Commissioner-General (those in section 8 or section 11) in relation to which such directions may be given.

⁹³ “The President shall take precedence over all other persons in Zimbabwe” – Section 27(2) of the Constitution.

⁹⁴ ‘Mugabe can stop violence if he wants to’ says Theresa Makone SWRadio 04.02.11. <http://www.swradioafrica.com/news040211/mugscanstop040211.htm>.

President.⁹⁵ The Commissioner-General is also obliged to submit an annual report to the Ministers detailing the activities of the Police Force in the preceding year; the results of any policy directions given to him during the preceding year; and results of any cases which the Attorney-General has, in the previous year, required him to investigate (see below).⁹⁶ The Commissioner-General may also submit special reports to the Ministers on any matter he deems necessary. The annual report (and the special report if the Commissioner-General so requests) must be laid before Parliament by the Ministers.⁹⁷ The Police Service Commission must likewise submit to the Minister an annual report, and any special report it deems necessary, which are laid before Parliament in the same way.

The Ministers may make regulations “for all matters which in terms of [the Police Act] are required or permitted to be prescribed or which, in [their] opinion, are necessary or convenient to be prescribed for carrying out or giving effect to” the Police Act, including setting the conditions of service for members. However, the Ministers’ power to make regulations is more limited than that of the Minister of Defence as in so doing they must not only consult with the Police Service Commission, but they must be made “with the approval of the Commissioner-General”. This is a somewhat odd provision given that the Commissioner-General is subject to the directions of the Minister in relation to the matters which the Minister may regulate. Regulations required to implement a direction given to the Commissioner-General, with which he is bound to comply, should not require the Commissioner-General’s approval.

c) The Attorney-General.⁹⁸

The Attorney-General is appointed by the President “after” consultation with the Judicial Services Commission, a body comprised of presidential appointees or presidential appointees to other bodies or offices who form part of the Commission *ex officio*. As a constitutional appointment the consent of the Prime Minister is required during the subsistence of the unity government. Prior to the enactment of the provision requiring the Prime Minister’s consent,⁹⁹ an agreement between ZANU PF and the MDC formations required that the appointment be made “in consultation” with the Morgan Tsvangirai.¹⁰⁰ The appointment of the current incumbent is controversial as it was made without such consultation having taken place.¹⁰¹

For the present purposes the importance of the Attorney-General lies in his power to require the Commissioner-General to investigate and report on any matter which relates to any criminal offence and the Commissioner-General must “forthwith” comply with such requirement.¹⁰² The current Attorney-General’s claim that he can only direct the Commissioner-General to investigate a matter where the “system has failed” is incorrect.¹⁰³ The Attorney-General also has

⁹⁵ Section 11(3) of the Police Act.

⁹⁶ Section 13(1) of the Police Act.

⁹⁷ Section 13(3) of the Police Act.

⁹⁸ Currently Johannes Tomana.

⁹⁹ By virtue of Constitutional Amendment 19, discussed above.

¹⁰⁰ Article 20.1.3(p) to the Interparty Political Agreement, more commonly referred to as the GPA – the Global Political Agreement.

¹⁰¹ See generally on this D. Matyszak: Law, *Politics and Zimbabwe’s ‘Unity’ Government* Chapter 8.

¹⁰² Section 76(4a) of the Constitution and section 12 of the Police Act.

¹⁰³ *Tomana Dismisses MDC-T’s Claims Document* <http://www.theindependent.co.zw/> 26.08.10.

the power to institute or discontinue any criminal prosecution. In exercising these powers the Attorney-General is not “subject to the direction or control of any person or authority.”¹⁰⁴

d) Commissioner-General of Police.

In December, 2007, the title of the head of the police was changed from that of the Commissioner of Police to the Commissioner-General of Police as part of a raft of constitutional amendments.¹⁰⁵ It is possible that the intention is that the Commissioner be seen as being of equal status to the Defence Force Commanders who all hold the rank of General. As noted above, the Commissioner-General is appointed by the President, after securing the consent or agreement of the Prime Minister. Before making the appointment the President must also consult with a Board established for this purpose. The Board comprises the chairman of the Police Service Commission;¹⁰⁶ the retiring Commissioner-General; and one other member appointed by the President from among the Secretaries of Ministries.

The term of office of the Commissioner-General is a maximum four years, though this may be renewed yearly for no more than 12 months at a time, if the President believes this to be in the “*public interest*”. Although such an extension of the Commissioner-General’s incumbency is a renewal rather than an appointment, the agreement of the Prime Minister must nonetheless be first obtained. This is because an “*appointment*” by the President in terms of any Act requires the Prime Minister’s consent¹⁰⁷, and the Constitution specifically provides that any reference to the power to make an appointment is to be construed as including the power to “*reappoint*.”¹⁰⁸ The current Commissioner-General holds office by virtue of the provision allowing renewals of 12 months. The last formally gazetted reappointment was in February, 2008 indicating that such reappointments must be made in February of each year. The press, however, has suggested that the terms expire at the end of August each year.¹⁰⁹ It does not appear, however, that the President has complied with the requirement that he gain the Prime Minister’s consent before making the reappointments or that the Prime Minister has attempted to enforce this provision. Whether the 12 month reappointments have been in the “*public interest*” is contentious.

Discipline

The Police Act establishes three means by which members of the Police Forces may be subject to disciplinary procedures – a trial by a Board of Officers,¹¹⁰ a trial by a single officer of or above the rank of superintendent¹¹¹, or a Board of Inquiry.¹¹² Like the Defence Act, offences committed by members of the Police Forces are not subject to the exclusive jurisdiction of the tribunals of the Police Force, but may, in addition to the tribunals established by the Police Act, be

¹⁰⁴ Section 76(7) of the Constitution.

¹⁰⁵ Constitution of Zimbabwe Amendment (No 18) Act 11 of 2007) .The corresponding change was only made to the Police Act in May 2011 by way of the Second Schedule to General Laws Amendment Act, No 5 of 2011.

¹⁰⁶ This is, again, the Chair of the Public Services Commission.

¹⁰⁷ Article 20.1.3(p) of Schedule 8 to the Constitution as discussed above.

¹⁰⁸ Section 113(5) of the Constitution.

¹⁰⁹ *Chihuri to Go?* The Financial Gazette 19.08.10.

¹¹⁰ Section 29A(1)(c) of the Police Act.

¹¹¹ Section 29A(1)(d) as read with section 34 of the Police Act.

¹¹² Section 50 of the Police Act.

adjudicated upon by either the High Court or Magistrates Court.¹¹³ This jurisdiction of the civil courts in relation to offences by a member of the Police Force is, however, more extensive than that under the Defence Act, as a member may specifically opt to be tried by a Magistrates Court rather than a Board of Officers.¹¹⁴ Furthermore, the High Court exercises an automatic power of review over the decisions of the Board of Officers where a sentence greater than a level three fine¹¹⁵, or imprisonment of more than month, has been passed¹¹⁶, and hears appeals against decisions of the Board of Officers¹¹⁷ in the same way as if the judgment had been delivered by a Magistrates Court. The punitive jurisdiction of each adjudicating tribunal or court is hierarchical. The High Court may impose penalties not exceeding a level ten fine,¹¹⁸ five years imprisonment or both,¹¹⁹ as may a Magistrate's Court, though the punitive jurisdiction may be constrained by the level of punitive jurisdiction of the particular Magistrate's Court, depending for example, whether an ordinary, senior, provincial or regional magistrate is seized with the issue. A Board of Officers may impose a fine not exceeding level five¹²⁰ and imprisonment not exceeding six months or both, and an officer may impose a fine not exceeding level two¹²¹ or imprisonment not exceeding 14 days. No fellow officer may be tried by an officer other than when that officer is sitting as part of the Board of Officers. The trial of a non-officer by an officer is reviewed by the Commissioner of Police, who may confirm or reduce the sentence. If he feels a greater punishment is required, he must forward the matter to the Attorney-General who will decide whether the matter should be placed before a judge for this purpose.

A Board of Inquiry is convened by the Commissioner-General of Police and comprises not less than three officers of or above the rank of Superintendent.¹²² It may inquire into whether a member is unsuitable or inefficient in the discharge of his or her duties and the suitability or fitness of a Regular Force member to remain in the Regular Force or to retain his or her rank, seniority, or salary. If the member is found to be unfit, unsuitable, or inefficient, and is not an officer, he or she may be discharged from the force or face a reduction in rank or salary by the Commissioner-General of Police.¹²³ Only the President may discharge an officer found to be unfit, but, in so doing, must act on the advice of the Minister tendered after consultation with the Commissioner-General of Police.¹²⁴

There are thus limited checks on possible abuses of junior officers by their superiors in some instances. However, it should not be overlooked that a single police officer may order the imprisonment of a member for 14 days, subject only to review by the Commissioner-General of

¹¹³ Section 29(1)(a) and (b) of the Police Act.

¹¹⁴ Section 32 of the Police Act.

¹¹⁵ Currently US\$20.

¹¹⁶ Section 31(1) of the Police Act.

¹¹⁷ Section 33 of the Police Act.

¹¹⁸ Currently \$700 the equivalent of approximately four month's wages for the most junior officer at current pay levels.

¹¹⁹ Section 29 of the Police Act.

¹²⁰ Currently US\$200.

¹²¹ Currently US\$10.

¹²² Section 50(1) of the Police Act.

¹²³ Section 50(3) of the Police Act.

¹²⁴ Section 49(b).

Police, who may himself be an interested party.¹²⁵ Although the sentence may be reviewed by or appealed to the High Court, the 14 day sentence is likely to have been served before this process is complete. Furthermore, often members are punished informally through re-assignment to less desirable duties or placements and the safeguards provided by the Act are thus by-passed.¹²⁶

The “Central Intelligence Organisation”

The CIO emerged out of the former “Special Branch” of the police in the 1960s¹²⁷, and operated under this name throughout the UDI period.¹²⁸ There are no statutory provisions governing this body whose operations are opaque. Even the name under which it currently operates is not generally known. The institution is established as a Department in the Office of the President. There is no specific provision for such Departments in the Constitution, and there are very few cross references to the body in Zimbabwe’s statutes, with only one legally precise reference indicating the formal name of the body. This appears in the Zimbabwe National Security Council Act¹²⁹ where it is referred to as the “*Department of State for National Security*.” There are two other references - one in the Rural District Councils Act,¹³⁰ where it is euphemistically referred to as the “*President’s Department*”¹³¹ and similarly in the Provincial Councils Act¹³² where it is referred to as “*the organization known as the Central Intelligence Organization*”.¹³³

The Department presumably falls under the general administrative authority of the “*Minister of State in the President’s Office responsible for National Security*.”¹³⁴ This Minister is not allocated any specific Acts to administer, but various Acts concerning security have been assigned to the “*Office of the President and Cabinet*”¹³⁵ including the Emergency Powers Act¹³⁶ the Interception of Communication Act¹³⁷ and the Zimbabwe National Security Council

¹²⁵ See for example *Chihuri Case: Lawyer Denied Court Papers* Daily News 12.05.11 reporting on an appeal against sentence by three police sergeants charged after a theft at the Commissioner-General house they had been assigned to guard.

¹²⁶ See for example *Chihuri Crushes Avondale Police* The Standard 17.10.10 where 78 police officers were reportedly transferred on account of actions which displeased the Commissioner-General but did not form part of formal charges under the Police Act.

¹²⁷ Southern Africa Report *ibid* p11.

¹²⁸ The Unilateral Declaration of Independence, unrecognized by Britain, when Ian Smith’s Rhodesia Front party was in government.

¹²⁹ Chapter 11:22.

¹³⁰ Chapter 29:13.

¹³¹ Section 60(1)(d)(iii) where an officer thereof is described as forming part of each Rural District Development Committee.

¹³² Chapter 29:11.

¹³³ Section 26(1)(c)(ii) where a senior officer is described as forming part of each Provincial Development Committee. It is obviously egregious that intelligence officers are part of development committees, but, as will be seen, the intelligence body is closely linked with local governmental bodies and administration.

¹³⁴ Currently Sydney Sekeremayi. The Minister is referred to as such in the Zimbabwe National Security Council Act, section 3(1)(b)(i).

¹³⁵ The validity of the assignment of the administration of Acts to the Office of the President rather than a specified Minister is questionable as such assignment is neither provided for by the Constitution nor the Acts themselves.

¹³⁶ Chapter 11:04.

¹³⁷ Chapter 11:20.

Act.¹³⁸ The body (also referred to here as “*the CIO*” for convenience) is headed by Happton¹³⁹ Bonyongwe, a retired army major, and his position is referred to as that of “*Director-General*.” It may reasonably be assumed that he and other senior officers within the CIO attain and hold their positions and ranks at the pleasure of the President.¹⁴⁰ The Director-General has some 3,000 operatives under his control and a wide network of paid informers. Most of these are recruited from ZANU PF youth activists, the National Youth Service or are relatives of senior ZANU PF officials.¹⁴¹

The CIO is believed to be divided into five branches.¹⁴² Each, except the administrative branch, is itself divided into two units:

- i) the Internal Branch, responsible for internal security, is regarded as the most senior and most politically active CIO branch with a “*B desk*” specifically tasked with gathering intelligence on political parties¹⁴³ and is divided into Counter Intelligence (CI) and Serious Crimes Unit (SCU);
- ii) the External Branch, responsible for external security, divided into Analysis and Liaison units, the latter handling CIO operatives attached to Zimbabwe’s diplomatic missions abroad;
- iii) the Security Branch with responsibility for VIP security and important government installations, divided into the Close Security Unit (CSU) and Government Protection Security Inspectorate (GPSI);
- iv) the Economics Branch, advising the government on economic policy, divided into the Policy Planning Unit and the Economic Analysis Unit;
- v) the Administrative Branch, divided into Personnel, Training, Finance, Resource Management and Transport, and responsible for providing essential logistical support.¹⁴⁴

The involvement of the CIO in Rural and Provincial Councils has been noted and the organisation’s hierarchy reflects this with representation at provincial level by a Provincial Intelligence Officer, known as a PIO, in each of Zimbabwe’s 10 provinces. Next in the hierarchy are District Intelligence Officers, DIOs, and below them the broad net work of informers and agents know as Ground Coverage Teams. CIO operations coordinate and overlap with those of the police in the form of Police Internal Security and Investigations (PISI) and Law and Order Maintenance within the Police Force and ZNA military intelligence in the Defence Force. These units report directly to the CIO on issues which are “*political*” by-passing their own statutory

¹³⁸ This is notwithstanding the fact that the Act itself does not provide for administration by a Minister, the definition section lacking the usual definition indicating that “the Minister” means “the Minister assigned to [a particular portfolio]” or to whom the administration of the Act may be assigned.

¹³⁹ Sometimes referred to as Happyton.

¹⁴⁰ This is supported by press reports - see *Mugabe Appoints New Deputy Spy Chief* <http://www.thezimbabwean.co.uk> 13.07.11.

¹⁴¹ This and most of the information which follows is sourced from the Southern Africa Report.

¹⁴² The South African Institute for Security Studies however list nine divisions Branch One (former Special Branch Operations); Counterintelligence; Internal Intelligence; External Intelligence; Military Intelligence; Branch Six – Government facility protection; State Security; Technical (formerly the Government Telecommunications Agency); Administration - see ISS Paper p8.

¹⁴³ *President Confirms Using CIO to Spy on Foes* Zimbabwe Independent 15.04.11.

¹⁴⁴ Southern Africa Report p11 -12.

hierarchies and legislated chain of command. In collaboration with unelected local government authorities (traditional leaders), some members of these groups assist in the running and operations of militia bases, used by ZANU PF to gain political control over rural communities.¹⁴⁵

The CIO is financed by a budget line providing for the Office of the President and Cabinet, which is not subject to audit by the Comptroller-General or any parliamentary oversight. The allocation in the last budget was approximately US\$102 million or 3.7% of the total budget.¹⁴⁶

While there is no legislation governing the duties, responsibilities and activities of the organisation, it is obvious that in a constitutional democracy (as in South Africa, for example) the function of a body the name of which suggests that it is responsible for national security, and which is funded by the tax payer, should serve the security interests of the country rather than the interests of a particular political party. This is not presently the case and something of which Zimbabwe's current President appears oblivious. Speaking at the funeral of the Deputy Director of the CIO Mennard Muzariri he stated:

*Are all the members who are in Zanu PF really party members? What do you do in the dark? Some run to our enemies and divulge our secrets. Muzariri and company would tell us who was selling out. **The party's** intelligence does not come from books but intelligence officers who talk to people and drink with them.¹⁴⁷*

This candid and unabashed admission that the CIO is used to support ZANU PF is corroborated abundantly elsewhere, but perhaps most cogently by two reports issued by the Police Force. These obviously propagandistic documents issued by it not only in themselves indicate a diversion by the Police Force itself from its statutory mandate to one serving ZANU PF interests, but contain naive admissions which reveal the political partisanship of the Police Force and the CIO. Entitled "*Opposition Politics in Zimbabwe: A Trial of Violence*" and *Opposition Forces in Zimbabwe: The Naked Truth, Volume 2*. The documents are "cut and paste" compilations (often with little editing) of reports filed by operatives tasked with the gathering of intelligence about people and groupings perceived as hostile to ZANU PF. Hence, reports of the burning of a single bus noted by three different operatives is presented as three different incidents of violence, not withstanding the fact that accompanying photographs show the registration number of the bus to be the same in all these "three" incidents. A report of a minor road traffic accident involving the then MDC-M leader is included as part of the "trail of violence".¹⁴⁸ More importantly, for present purposes, also included is a report of an operative detailing a meeting by Zimbabwe Congress of Trade Union officials. The report notes that only nine people were present at the meeting.¹⁴⁹ Apart from the fact that this disclosure somewhat unprofessionally renders discovery of the identity of the erstwhile undercover agent facile, it reveals the extent to which the CIO keeps institutions deemed antagonistic to ZANU PF under surveillance. An analysis of the Police

¹⁴⁵ See the report *The Anatomy of Terror* for extensive detailing of this available at <http://www.sokwanele.com/node/2334>

¹⁴⁶ Veritas Bill Watch 50/2010.

¹⁴⁷ Zimbabwe Independent *ibid*.

¹⁴⁸ *Opposition Politics in Zimbabwe: A Trial of Violence* ZRP March/April 2007 p11.

¹⁴⁹ *Opposition Politics in Zimbabwe: A Trial of Violence* ZRP March/April 2007 p30.

reports revealed that 80% of the activities reported by security operatives and included in the report, such as public meetings and non-violent demonstrations, are normal democratic activity rather than part of a “trial of violence”.¹⁵⁰ The Police reports have since been withdrawn from the internet.

Oversight?

- a) The Zimbabwe National Security Council.

A National Security Council was established pursuant to a decision of Cabinet in 1992, with the responsibility “to oversee and review national policies on security in its very broad and wide sense to encompass, not only issues of defence, law and order, but also issues pertaining to the economy”.¹⁵¹ The body had no statutory authority. The Inter-Party Political Agreement between ZANU PF and the MDC formations, and which gave rise to Zimbabwe’s current “unity Government” (more commonly referred to as the GPA¹⁵²), made two references to this body in the context of Mugabe chairing it and Tsvangirai being a member. However article 13.1 of the GPA provided that “State organs and institutions do not belong to any political party and should be impartial in the discharge of their duties” and the MDC was anxious to give this provision teeth by passing a National Security Council Act. MDC Minister Biti stated during the debate on the Bill:

Mr. Speaker, for so many years our country has been traumatised by the pain of violence and intolerance amongst Zimbabweans. Not only that, our country has been ravaged by a violence and vandalism of state institutions. So the motive of this Bill is to ensure that there is no state organ, there is no government department, there is no state institution that can exist as an extension of a political party – the purpose of this Billis to ensure that constitutional bodies, state bodies, remain loyal to one institution only and that is the state.¹⁵³

However, several key provisions the MDC had sought to include in the earlier drafts of the Bill in order to achieve the objective stated by Minister Biti had been removed by the time the Bill was presented to Parliament. The current Act, the Zimbabwe National Security Council Act, is incapable of ensuring any oversight or restraining function in relation to Zimbabwe’s security sector. The council comprises:

- i) the President as chairperson;
- ii) the two Vice-Presidents;
- iii) the Prime Minister;
- iv) the two Deputy Prime Ministers;

¹⁵⁰ *At Best a Falsehood at Worst a Lie* Zimbabwe Human rights NGO Forum June 2007.

¹⁵¹ Per the Minister of Justice, Legal and Parliamentary Affairs during the parliamentary debate on the Zimbabwe National Security Bill 10.02.09.

¹⁵² Global Political Agreement.

¹⁵³ Finance Minister Tendai Biti during the parliamentary debate on the Zimbabwe National Security Bill 10.02.09.

- v) the Ministers responsible for Finance, the Defence Forces and the Police Force;
- vi) one Minister nominated by each of the three political parties participating in the Interparty Political Agreement;
- vii) the Minister of State in the President's Office responsible for National Security;
- viii) the Chief Secretary to the President and Cabinet;
- ix) the Secretary to the Prime Minister;
- x) the Commander of the Defence Forces;
- xi) the Commanders of the Army and Air Force;
- xii) the Commissioner-General of Police;
- xiii) the Commissioner of Prisons; and
- xiv) the Director-General of the Department of State for National Security.

Of the 22 members only 6 are not affiliated to ZANU PF and 8 hold office *ex officio* and are presidential appointees in terms of various statutes. The functions of the Council are:

- i) to review national policies on security, defence and law and order, and to recommend or direct appropriate action;
- ii) to review national, regional and international security, political and defence developments, and recommend or direct appropriate action;
- iii) to consider and approve proposals relating to the nation's strategic security and defence requirements;
- iv) to receive and consider national security reports and to give general or specific directives to the security services;
- v) to ensure that the operations of the security services comply with the Constitution and any other law;
- vi) to generally keep the nation in a state of preparedness to meet any threat to security.

However, all decisions of the Council must be made by consensus.¹⁵⁴ While, according to Biti, the objective of the Act is to change the behaviour of state institutions responsible for security, the heads of those institutions all sit on the Council as *ex officio* members. Since policy directives must be by consensus, those responsible for the behaviour the Act is ostensibly enacted to prevent or change, by virtue of their presence on the Council have the power to veto proposals intended to give effect to this objective.

The MDC had intended that the Council would replace the non-statutory body known as the Joint Operations Command (JOC).¹⁵⁵ This body, established by Ian Smith's white minority government, which co-ordinated security operations against the nationalist forces and in the region, was retained after independence. Its composition is uncertain and probably fluid. While military commanders are believed to form the core component, some reports suggest that the

¹⁵⁴ Section 5(2) of the Act.

¹⁵⁵ *Zimbabwe NGOs Urge Unity Government to Bring Military Into Line on Elections* <http://www.voanews.com/zimbabwe/news/NGOs-Urge-Zimbabwe-Unity-Government-Leaders-to-Jointly-Reassure-Security-Commanders--106974413.htm>.

Commander of the Army, Philip Sibanda does not participate.¹⁵⁶ The Director-General of the CIO, the Commissioner of Prisons¹⁵⁷ are consistently reported as being members, while the Governor of the Reserve Bank and Emmerson Mnangagwa have on occasion been included as members in several reports.¹⁵⁸ The latter would not have been present in his capacity as Minister of Defence, as he is reported to have chaired the body during the turbulent and violent post March 2008 electoral period, at which time he was the Minister of Rural Housing and Social Amenities. JOC meets and reports weekly to Mugabe.¹⁵⁹ It is believed that issues relating to security, and predominantly those affecting ZANU PF, are determined by JOC with some reports suggesting that the body took full control of government following the defeat of ZANU PF and Mugabe in the March 2008 election.¹⁶⁰

The Zimbabwe National Security Council is thus little more than a forum where the six non-ZANU PF members can voice complaints in regard to the security sector, the actions and operations of which may well have been determined by many Council members sitting as members of JOC. It is thus not surprising that although the Council is required by the statute to meet no less than once a month, it has failed to do so. The statutory Council is intended to be a temporary institution only and its existence is coterminous with that of the unity government.¹⁶¹

b) The Police and Defence Forces Service Commissions.

Sections 97 and 94 of the Constitution provide for the establishment of a Defence Forces Services Commission and a Police Service Commission. The terms and conditions of office and functions are set out in the respective Acts, the sections of which follow each other exactly in wording.¹⁶² Both Commissions comprise the Chair of the Public Service Commission (a Presidential Appointee)¹⁶³ and not less than two and not more than seven other members appointed by the President, who also sets their terms and conditions of office.¹⁶⁴ Their functions are “*to tender such advice and do such other things in relation to the Defence Forces or Police Force as are provided for by this Constitution or by or under an Act of Parliament*”. No “such other things” are, however, provided by the Constitution.

Each Act, however, elaborates upon the functions of the Commissions, that is, to make recommendations to the Minister regarding salaries and the general conditions of service of members and to inquire into and deal with complaints, other than complaints relating to disciplinary action, by any member. Each may also, after consultation with the Commander of

¹⁵⁶ Southern Africa Report p10.

¹⁵⁷ Appointed by the President in terms of section 99(2) of the Constitution, currently (retired) Major General Paradzayi Zimondi

¹⁵⁸ *Mnangagwa Running ZANU-PF Campaign* Zimbabwe Independent 05.08.08; *Mujuru Opposes Violence* Zimbabwe Independent 22.05.08 cited in *Bullets For each of You* Human Rights Watch June 2008 p24.

¹⁵⁹ Southern Africa Report p10

¹⁶⁰ *Zimbabwean Generals Have ‘taken Mugabe’s power’* The Telegraph <http://www.telegraph.co.uk/news/worldnews/Africaandindianocan/zimbabwe/2080992/Zimbabwean-generals-have-taken-Robert-Mugabes-power.html>.

¹⁶¹ Section 8 of the Zimbabwe National Security Council Act.

¹⁶² Sections 31 to 38 of the Defence Act and sections 52 to 59 of the Police Act.

¹⁶³ Section 74 of the Constitution. The same person sits on the Judicial Services Commission and is to be consulted in regard to several constitutional appointments, such as ambassadors.

¹⁶⁴ Section 33 of the Defence Act and Section 54 of the Police Act.

the Defence Forces or Commissioner-General of Police, carry out any inquiry or investigation into the administrative or financial practices and procedures of the respective force in relation to these functions. In addition to these functions, the Commissions are consulted on the promotion of non-officer members and act as an appeal body in the case of the discharge or reduction in rank of a member.

The oversight role of the Commissions is thus extremely limited. Most glaring is the absence of any independent body to investigate complaints by the public relating to members of these forces, particularly the Police Force.

In addition to a Service Commission, the Defence Act provides for the establishment of a Defence Council¹⁶⁵ *“which shall consist of such persons and shall perform such functions and duties as the President may determine.”* The President has not seen it fit to make any determination in this regard. The Joint Operations Command, could, however, claim statutory legitimacy through this provision.

c) The Joint Implementation and Monitoring Committee.

JOMIC is not a statutory body having been established pursuant to the Article XXII of the GPA, and is thus merely an agreement between the three main political parties. It comprises four members from each party and has three co-chairs. For present purposes the importance of JOMIC lies in the agreement that it *“shall be the principal body dealing with the issues of compliance and monitoring of [the GPA]”* and that the MDC formations and ZANU PF undertake to channel all complaints, grievances, concerns, and issues relating to compliance with the GPA through JOMIC. One aspect of the GPA is that *“all state organs and institutions strictly observe the principles of the Rule of Law and remain non-partisan and impartial”*¹⁶⁶ JOMIC should thus be able to receive complaints relating to a lack of partisanship by the security sector, though it has little power to address these.¹⁶⁷

d) Parliament.

Parliament has no specific supervisory role over the security sector, as is the case in several democracies, and has no equivalent of, say, the Intelligence and Security Committee¹⁶⁸ of the British Parliament. It does, however, have a general power to summon any individual before a select committee to answer questions and provide information, including documentation¹⁶⁹. However, members of the military cannot be compelled to disclose classified documents or information.¹⁷⁰ There have been suggestions that Parliament may call upon members of the security sector to address concerns raised by pronouncements by members of the security sector (similar to those made by Brigadier-General Nyikayaramba cited at the head of this paper), and

¹⁶⁵ Section 13 of the Defence Act.

¹⁶⁶ Article 13(2)(b).

¹⁶⁷ The MDC-T has reportedly written to JOMIC to complain about the statements by Nyikayaramba cited at the head of this paper - see *MDC-T Reports Brigadier General To JOMIC* <http://www.radiovop.com>. 14.07.11.

¹⁶⁸ Established by Intelligence Services Act 1994.

¹⁶⁹ Privileges, Immunities and Power of Parliament Act Chapter 2:08 Section 9 and Rule 167 of the House of Assembly Standing Orders.

¹⁷⁰ Section 12(2) of the Privileges, Immunities and Power of Parliament Act.

which imply that the security sector will use its power following an election to prevent any individual of whom they do not approve assuming the office of president.¹⁷¹

Conclusion

This paper has dealt with the statutory powers of those within the security sector only. It has proceeded on the assumption that ultimately the shots are called by whomsoever has the legal authority to hire and fire. The overview of the statutory provisions reveals that the President of Zimbabwe wields an enormous amount of power over all branches of the security sector in this regard, with the power to appoint the heads of each sector and appoint, promote, or discharge any officer. The heads that he appoints have similar powers over all non-officers, subject only to a review by the service commissions comprising appointees of the President. The intelligence service, the CIO, is not subject to any regulation whatsoever, operates entirely at the pleasure of the President and is the very antithesis of open and democratic governance. It is thus extremely vulnerable to abuse - as has been borne out in practice.

Judicial oversight of the security sector is limited to offences committed by members in terms of the respective statutes. It is only to the extent that the President is democratically elected that it might be said that there is any civilian oversight of the security sector at all and that concentrated entirely in one person. However, the President's power to hire, since the advent of the "unity" government, is no longer legally absolute. The appointments of the heads of each branch of the security sector (excluding the CIO) and appointments of any commissioned officer require the consent of the Prime Minister, Morgan Tsvangirai. Since this power of the Prime Minister extends to reappointments, the Prime Minister has an indirect power to fire as well as hire. Limited as this power may be, the Prime Minister thus has a shared responsibility to ensure that no person who is unsuited to the post holds the position of a Commander or Commissioner-General in the security sector. However, in present day Zimbabwe, political considerations often trump the legal. It remains to be seen whether the Prime Minister will attempt to call the shots and exercise this power as the terms of office of each expire.

However, it can be seen that there are both political and legal avenues that can be immediately explored in order to provide an accountable security sector. Amendments to both the Defence and Police Acts can remove the overweening power of the Presidency, and, similarly, amendments to the National Security Council Act can ensure that the security sector is placed under wholly civilian oversight. In the advent of a probable election, these are steps that should be given a high priority by Parliament, and all who are concerned that such election is free from interference by partisan state agencies.

¹⁷¹ *MDC-T MP Wants Service Chiefs to Appear Before Parliament* <http://www.swradioafrica.com> 14.07.11.