

## Governance for development or loyalty? reading the Zimbabwean colonial court records, 1935-1980

Livingstone Muchefa  
National Archives of Zimbabwe  
Email: [muchefa@gmail.com](mailto:muchefa@gmail.com)  
and  
George Bishi  
University of Free State, South Africa  
Email : [georgebishie@gmail.com](mailto:georgebishie@gmail.com)

### Abstract

*Information has always been an essential component for societal development. Strides towards use of technology in information gathering and dissemination have accelerated in the 21st century in Africa. Traditionally, before institutionalization of information centres in Africa, information and knowledge management was everyone's responsibility in terms of storage, retrieval and dissemination. With modernization of African societies alongside sprouting legislation for governance of both the society and the information management profession inevitable cultural conflicts between western standards of development against the African transpired. The Royal Charter of 1889 granted to the British South Africa Company (BSAC) by the British Government subsequently resulted in the establishment of Southern Rhodesia as a colony in 1890. The Charter granted the mandate to the BSAC to maintain law and order as one of its key responsibilities. This formed the legal basis for the governance of the colony. This mandate provided the inauguration of justice delivery systems (legislation and courts). The British felt it was their responsibility to develop the colony which conflicted with the African perspective of development. This paper therefore, seeks to analyse how eventually the 1935 established National Archives of Southern Rhodesia ended up acquiring, preserving and disseminating information that reflected a record of violation of legislation and not necessarily unravel*

*the underneath social and cultural conflicts between the European and the African. It submits to the argument that the African was placed on a precarious position of loyalty to the systems of governance as opposed to the pseudo development calls compared to those specially preserved for the European race. This paper is inclined to the view that the colonial archive reflects how information for development was heavily enshrined in racial tensions and deliberate colonial intentions to place the African as a second class citizen hence the need to be very critical and analytical when using the colonial archive for development purposes.*

**Key words:** court records, governance, colonial records, Zimbabwe

### Introduction

The essence of this paper is to bring out the notion that colonial criminal court records in archival institutions do not show racial tensions that existed in a colonial state. Most colonial court records are subjective because they simply show criminal charges laid against the offender. The period under review (1935 – 1980) marks the establishment of an archive in Southern Rhodesia and the end of colonial rule. The backdrop to this research is the fact that most so-called political convicts such as Charwe popularly known as Mbuya Nehanda, Robert Mugabe, Joshua Nkomo among others became heroes in post independent Zimbabwe. This development is a direct challenge to the racial colonial victimhood shown by colonial records. The same records that prove the convictions are today used to turn the offenses into heroic actions. This paper first gives an overview

of the methodology used. This is followed by definition of the key terms – information and development. Secondly it will seek a broader appreciation of the establishment of colonial laws in Africa before explaining the Southern Rhodesian case. To fully understand how information for development worked, colonial court records of Nehanda and Daniel Madzimbamuto are used as examples to critically address the question of information for development or loyalty by the colonial society which is the theme of this paper.

## **Methodology**

This paper relied more on review of scholarly work and use of primary data (archival sources). The main reason was to find insights and a critical understanding of concepts of development and information. The paper also made use of archival records especially the Nehanda and Daniel Madzimbamuto court files. Two cases are selected because of their historical significance even though they are not the only ones in the custody of National Archives of Zimbabwe (NAZ). The main reason for using specifically two files was to compare two different time frames, personalities and crimes committed. The files are easily accessible at NAZ in their original paper format and not digitized for easy accessibility online. They are in legal terminology. Their authenticity is undoubted. Interesting to review is the verdicts given to these two cases from a revisionist point of view.

## **Definition of terms: information and development**

The term information has many interpretations and what is referred to as information is contextual. Information is often confused with knowledge. Chaim Zins

(2007) argues that many scholars claim that data, information, and knowledge are part of a sequential order. Data being the raw material for information, and information is the raw material for knowledge. The term information represents a set of phenomena. These can be classified into three groupings: (a) anything perceived as potentially signifying something (such as printed books); (b) the process of informing; and (c) that which is learned from some evidence or communication. All three are valid uses (in English) of the term “information.” In other words information derives its meaning from data that in turn inform knowledge. The Encyclopaedia of Cognitive Sciences define information as the reduction of uncertainty. This simple definition is derived from Claude Shannon’s information theory. When the recipient receives the message or information it reduces uncertainties to him/her. For the purposes of this paper, information shall be reduced to mean the state of consciousness or awareness between the ruler and the ruled. It shall be used to refer to power relations in a colonial society where the colonial state introduced judicial systems to govern the African people in Southern Rhodesia between 1890 and 1980. The process of imposing legal frameworks to enforce law and order by the colonial officials was an endeavour to develop the African. If the African was able to abide to colonial legal standards he or she was then considered modernised or better put – developed. Resistance to colonial encroachments was seen as ‘rebellion, retrogressive and barbarism’. Colonial laws in the process protected the coloniser than the colonised and tried to reduce resistance by dogmatic punitive measures for African offenders hence enforcing loyalty. The process of legal litigation through courts tilted favourably for the European.

Explaining development is complex because it can be used to refer to many issues generally contextual. In general terms, “development” means an “event constituting a new stage in a changing situation.” In this way development is desirable and is positive. Lorenzo Bellu (2014) argues that “when referring to a society or to a socio-economic system, “development” usually means improvement, either in the general situation of the system, or in some of its constituent elements.” If development means improvement then we need to ask who is saying this is improvement. Development should be assessed in relation to time and place. In most cases it is a western perception to call that a society is developed or is changing as in most cases they form the greater part of agents of development. On another hand development has been defined not limited to economic phenomenon, but rather a multi-dimensional process involving reorganization and reorientation of entire economic and social system. It refers to the process of improving the quality of all human lives. If development is modernity, a critical appreciation of the term modernity is called for. Frederick Cooper (2005) argues that ‘scholars should not try for a slightly better definition so that they can talk about modernity more clearly. Instead they should listen to what is being said in the world. If modernity is what they hear, they should ask how it is being used and why?’ In other words, modernity should be defined in the context of time, place and who is saying this is modernity. Development is seen as a deliberate attempt by the colonial administration to modernize or develop the *unlawful and uncivilized* African to adopt European way of conduct. If the African failed to abide by modern laws the result had legal implications.

## The Establishment of Law and Order and the Quest for Loyalty

The establishment and development of colonial laws in Africa and elsewhere has received criticism. Alka Jauhari (2011) argues that the British observed the rule of law and practiced accountability only to make the British rule look less oppressive. The British colonial administration was equally oppressive but in a subtle way. After Nigerian independence in 1960, Jauhari (2011) blames the political instability on the legacy of the British rule in the country that left the country more divided than ever before. Implementation of colonial laws was part of maintaining law and order by the colonial state to govern its subjects. David Killigray (1986) argues that the imposition of new laws in colonies was part of information for development to force the colonial subjects to a state of forced loyalty. Colonial rule created new 'crimes', many of which were offences against the imposed structure of colonial management. Killigray further argues that ‘certainly colonial government did seek to curb and punish wrongful acts by one person against another but an essential feature of colonial law and policing was enforcing colonial rules and punishing those who breached them.’ In most colonial societies, the imposition of state control through laws resulted in indigenous people victimised as they were expected to adapt to the new legal structures. Establishment of colonial authority in African colonies was achieved through the implementation of laws. In other words, the introduction of judiciary systems was part of information for development – information on new laws would develop the African while at the same time promoting governance. However, colonial archival court records of offenders do not capture racial tensions that resulted

in the implementation of legal information for development.

The occupation of Mashonaland by the Pioneer Column in 1890 marked the official colonization of the Mashonas. It was not later than 1893 when Matabeleland was eventually overrun that had been left unmolested because of its military strength by the Pioneer Column opting to first colonize Mashonaland. The incorporation of Matabeleland after the Anglo-Ndebele war of 1893 (war of dispossession) into the Mashonaland completed the colonization of the loosely packed people of 'Zimbabwe' – there was no country referred to as Zimbabwe before 1890. The first pre-occupation of the British South Africa Company was to quickly restore order in Southern Rhodesia after the 1896/7 First Chimurenga by enacting the 1898 Matabele Order-in-Council. It became the constitution that governed the colony until 1923 when Responsible Government took over. The 1898 Order in Council was the genesis of judicial governing of Southern Rhodesia along 'modern' type of administration. This was to bind both the settlers and the African majority but in essence the laws were to protect the settlers. To some extent, the African had to develop to the level of the colonial master for him to understand how modern governance worked and it took the colonizer to tutor him. This was to be achieved through obedience and loyalty to the new judicial provisions governing the land.

In explaining the origins of racial conflict in Rhodesia Mazobere (1973) precisely stated that Proclamation No.1 of 1890 made by Coughlan indicated that they would adopt the use of Cape Laws. 'The carry-over of South African laws meant that the official racial attitudes of the two white

governments would forever bear resemblance. It was no longer just a question of cultural differences but there was now added to it the factor of estrangement between the two races.' In other words laws that governed Southern Rhodesia were imported from the Cape. Samuel Huntington (1996) posits that in the post-Cold War era distinctions or antagonism between people will not be primarily ideological or economic but cultural. New patterns of conflict or partnership based on cultural lines were being formulated. Fault lines between civilizations would shape world politics. This school of thought by Huntington helps to explain how this cultural conflict emerged, transformed and manifested itself in the justice delivery system of colonial Southern Rhodesia before 1980. The laws that were enacted were primarily meant to harness and bring loyalty to the minority government at the expense of majority indigenous people who were the villains.

Under the Royal Charter, the British South Africa Company (BSACo.) was given the task of setting up courts for the administration of justice and was obliged to maintain peace and good governance in its territories. In 1891 the Law of Cape colony was introduced into Mashonaland. In the same year the courts of British Bechuanaland assumed jurisdiction over Mashonaland and the High Commissioner for South Africa received the power to appoint judges, magistrates and resident Ministers. Resident Commissioner was given powers to preside over civil and criminal cases and was later replaced by a Chief Magistrate. After the conquest of Matabeleland the volume of cases handled increased and in 1894 the High Court of Matabeleland was established. Its judges were qualified. The powers of the court

were to respect “native civil laws” as far as it was compatible with natural justice or morality and existing legislation.

According to Rogers and Frantz (1962) one of the biggest causes of racial conflict and estrangement appeared when the skeleton BSAC administration founded in 1889 was formalized in 1897 and a new department of Native Affairs was established. The Native Affairs Department assumed responsibility for the Africans while Civil Commissioners and magistrates dealt with European population. This scenario saw the powers of chiefs who presided over African civil matters reduced as they were put on government payroll and tasked with preventing rise of rebellions. As early as 1918 chiefs who were on government payroll received an annual subsidy of £24.

British judicial history in Africa had its roots in the colonial discourses that shaped it from the centuries old Roman law system. In his *Witch-Bound Africa* F. H. Melland (1923) reveals how the British rule in Africa was developed along similar lines as the Roman Empire laws based on law and order. The Romans taught Britons how to craft strict laws and how to run colonies that were considered barbaric in their terms. The introduction of judicial systems in colonial societies was meant, among other things, to govern and develop the indigenes through legal frameworks the local population had to abide by. In the process this would work in the favour of both the coloniser and the colonised. Michael Bratton (2014) noted that colonizers introduced models of government derived from the British Westminster experience that featured territorial boundaries, a unitary state, an elected parliament, written laws, and property rights, especially over land. The political rules of the colonial state failed

to match the customs of the colonized. Max Millikan (1961) also relates to these situations that contact with more advanced societies cracked and then broke up the traditional social structures of what, for want of a better term, we call the underdeveloped countries." This state of underdevelopment which in the opinion of Frantz Fanon (1963) gave rise to the wretched of the earth that was the victims of colonial rule and imperial exploitation. Paradoxically the information meant to develop the colonial state through judicial means had double edged effects. What really transpired in the process was a subtle mechanism of controlling the African population by subjecting it to a form of forced loyalty. Whilst the government was preoccupied with development in the form of Law and Order, it created a bifurcated legal structure favouring settlers in most regards. The lack of mutual understanding between the colonizer and the colonized in the early 1890s set a precedent which future developments were to assume. In this clash of civilizations it was the African who lost on legal grounds of the colonial state where ignorance of the law failed to offer protection against litigation.

The Department of Justice underwent considerable changes since its inception as a Legal Department in 1891 to Law Department in 1892. Between 1897 and 1902, it was named Law Department of the Attorney General and after 1902 it was renamed Department of Justice. In 1954 it was expanded to Ministry of Justice and Internal Affairs until it separated in 1963 to Ministry of Justice, Law and Order concerned with all matters related to the courts such as the High Court, Regional Courts, Magistrate courts, Prisons, Office of the Registrar of Companies, Patents and Trade Marks, Water Court and Liquor and

Licensing Board. Justice department was then responsible for enforcing laws meant to promote governance in Southern Rhodesia together with the police. These two arms of government were tasked to ensure that laws were applied and justice was maintained.

According to Terence Ranger (1982) when the British entered Makoni district in 1890 they found Chingaira holding the paramount chieftainship of Makoni but after the rebellion of 1896, Chingaira was disposed and a loyalist Ndafunya put in place. Afterwards, the Native Commissioner made sure that the chieftainship remained in Ndafunya's house. The house of Ndafunya held the chieftainship from 1896 – 1952. In 1957 Zambe son of Chingaira was recommended on basis of loyalty for he had served well as a messenger in the Native Department for 10 years. These among many other circumstances hinged of loyalty created the basis for colonial governance. Stan Morris who was secretary for African Affairs subsequently named Internal Affairs was removed for being a moderate person who was reluctant to do the government's bidding. He was replaced by Hostes Nicolle an advocate of apartheid and dedicated to keep the "Africans in their place". The realization that research is key to any form of development has been continuously been appreciated globally. Brown (1978) explains how archival institutions started becoming key to modern research as opposed to pre 1960 era. He argues that archival centres were mainly the bastions of historical researchers in traditional political and military history. The old nineteenth-century maxim that "history is past politics" was generally perceived as largely defining the scope of archival research resources. According to Brown there was that shift by historians from writing that political history

and the 'drum-and-trumpet military' towards newer social, economic and cultural history. The archival collection will be used in this paper to bring out the historical cultural conflicts that existed in the colonial period. These records have been there but their main interpretation has to shift from being statistics, records of occupation and land distribution to anthropological and social scientific.

The establishment of judicial institutions in Southern Rhodesia to try cases of all classes was part of development processes on the part of the government by maintaining order. When the African was subjected to new laws that were unfamiliar to him/her it was part of the 'civilizing' mission in the eyes of the colonial authorities. The process of bringing the African into the legal and constitutional code of living in a 'modern' society had many huddles the government had to meet. The most notable shortcoming was the question of language in courts to try African offenders of the law. At the beginning of the 1890s and a period beyond that the issue of language was important among the employees of the Native Affairs Department (NAD) and the Legislation members responsible for African affairs in the colony. Naturally many whites were attracted to the high paying NAD leaving the irksome task of being employed by the Magistrate offices. Working as an interpreter was boring while an understanding of the local vernacular was important. Inevitably the manner in which laws had been formulated and implemented by colonial authorities to govern the country for law and order development could not be implemented with smoothness. The period between 1890 and 1930s was characterized by language difficulties in the courts that even saw an examination on local language set where members of the police force and

army were to sit. Diana Jeater (2001) gave an intriguing analysis where a rape case was tried in Melsetter that was marred by language misunderstanding. What is important at stake is that the local African population was caught in a situation just like the European overloads were also stuck on the linguistic cross roads in implementing the laws.

Sir Eric Thomas wrote an interesting article in 1955 about one Mashona man named John Tapedza who was popularly known as 'John Tapedza the Prince of Interpreters' (NADA 1955). John Tapedza was raised at Chishawasha Mission and his godparent was Mrs Edith Pauling who looked after him and his education. His father had been massacred in the village by the Matebele impi. What he vividly recalled was that his mother was a Mashona, but had lost all memory about his father since he had died when he was still a baby in arms. Mrs Pauling would buy him a bag of sweets when he was young and he would say 'tapedza' (a Mashona word which means we finished). He got his surname Tapedza from his regular use of the word. He joined the BSAP in 1907 where his remarkable gift as a linguist was identified. It marked his commencement of services as an interpreter and saw him being seconded to work in courts. At the time of John Tapedza's death he had 47 years of service as an interpreter that were unequalled to any other public servant. In his article Sir Eric Thomas remarked; apart from Johnnie's command of English, which he spoke fluently and faultlessly, what distinguished him from other interpreters whether European or African, was the amazing knowledge he had acquired of court procedures and rules of evidence – which was the envy of many a practitioner. At his death Governors, Bishops, Chief Native Commissioners,

Judges, senior government officials, headmen and representatives of every section of the country gathered. The story of John Tapedza explicitly brings out the victory of settlers in acculturating an indigenous person. John Tapedza having been initially raised by his mother as slaves among the Ndebele meant that he acquainted with the English, Ndebele and Shona language and cultures.

When the people of the British stock represented by Cecil John Rhodes colonized Southern Rhodesia it was innate for them to put laws to develop the 'rebellious' Africans especially after the 1896/7 Chimurenga. The people they presided over had their own traditional judicial structures that were not codified into a written constitutional format. The establishment of the courts in Southern Rhodesia was a positive development in maintaining law and order especially after the 1896/7 risings. The British South Africa Police (BSAP) that had been formed prior to the pioneer column continued with its policing preoccupation in the new colony. The BSAP was tasked with both military and civil functions. The following were also part of their civil functions that inevitably created conflict between BSAP and indigenous people; collection of tax, inspection of licenses, supervision of cattle dips, prosecution of offenders in magistrates courts among other functions. Most of the cases that ended up in the courts were primarily a result of conflicting ideology and culture. It ended in 1924 through the findings of a commission of inquiry for BSAP to have both military and civil functions through the 1925 Defence Act no. 23.

The presence of judicial systems in Southern Rhodesia in a way inaugurated an age of 'information for development' – the African

was to be initiated into a world governed by laws and regulations for the development of the country and the 'native' African too. The archives keep records but the same records do not bring out issues of ideological misunderstandings that resulted in the generation of such records. It requires a critical approach when reading not only colonial court records but most of archival documents. A look at the trial court record of Nehanda may help to clearly illustrate this idea.

### **The 'Trial' of Nehanda**

During the First Chimurenga Nehanda and Kaguvi helped to organize the combined resistance effort and resolved to defeat the white settlers by the Shona and Ndebele people of Zimbabwe. Nehanda or Charwe (her real name), is identified as of the Hera people but she operated in the area around Mazoe presently near Harare. Her male counterpart, Gumboreshumba or Kaguvi is identified to be Rozvi by totem, was operating in the Hartley area – presently Chegutu area. However, the most remembered of the two is Nehanda that even saw her influence regenerated during the Second Chimurenga (war of resistance) in the 1960s to 1979. Terence Ranger argues (1967) that "her great injunction was that African people should touch nothing that belonged to the Whiteman". This is one of the utterances she is said to have spoken together with her famous 'my bones shall raise again remarks'. However, the Chimurenga was lost and Nehanda was sentenced to death by the white Rhodesian government. Describing the predicament of Nehanda and Kaguvi, Ruramisai Charumbira (1999) pointed out that Nehanda was then captured by the British, "tried" and sentenced to death by lynching, for treason and instigating civil unrest in the

country. They were lynched on a hill near what is now the capital city - Harare. She was executed in 1898 on the 27th of April 1898. Her death signalled the subjugation of Rhodesia's African peoples to the white settlers. Despite her execution, David Lan (1985) reminds us that Nehanda remained an important role model, and "a powerful and prolific oral tradition grew up around her name". Villains assumed the mantle of heroism in the post-independence era.

The role of Nehanda during the 1896/7 risings did not only claim political space but it even also grabbed a meaningful academic debate among historians. The debate started 69 years later after Nehanda had been executed, by Terence Ranger in 1967, when he described the role played by the spirit mediums and claimed that there was a unified Mwari cult. University lecturers and writers who seemed to promote African interests were victimized and at times deported. According to Ian Phimister (2012), Ranger's book became the foundation on which much nationalist and 'patriotic' historiography rests but whose crude nationalist underpinnings were first exposed by Julian Cobbing's (1976) scholarly account of the Ndebele rising and David Beach (1998) who subjected Ranger's work to forensic scrutiny. So influential was the Nehanda name that not only did it cause throw backs in academics, but it also grabbed political limelight.

The revival of Nehanda's spirit medium proved instrumental in mobilizing male and female peasants in the Second Chimurenga in the 1970's. Not only Nehanda, the most well-known of the spirit mediums, but also other spirit mediums, were credited with helping with battle plans, instructing where to hide loads of arms for safe collection at a later time, and providing hope and



encouragement for the guerrillas. ZANLA's Chief Political Commissar, Josiah Tungamirai (Martin and Johnson 1981), whose Catholic background made him doubt spirit mediums, later confessed how the influence of Nehanda helped to recruit and mobilize the much needed manpower and support for the war effort. He recalled that "once the children, the boys and girls in that area, knew that Nehanda had joined the war, they came in large numbers." This allowed new alliances with rural Africans to be built. In the north-east part of the country, the fact that Nehanda and other spirit mediums were supporting the liberation struggle gave it credence and legitimacy and worthy supporting. The same notion of invoking the Nehanda spirit is done by the current government to claim legitimacy and sanction to rule the country despite calls for regime change by opposition political outfits, civil societies, human rights pundits and western countries. In other words the government claims to have been given a sacred mandate to guard the country against any form of colonialism, neo-colonialism and to protect the gains of the liberation struggle by the spirit world.

So far there has been on tracing how the legacy of Nehanda in Zimbabwean politics from colonial era to date. Now the focus is on the court record of Nehanda that forms the most important part of this paper. What is at stake here is the court record of the trial of Nehanda itself that is under the custody of the National Archives of Zimbabwe. The record is written in law lexicography spelling out the fate of Nehanda with the High Commissioner approving her execution. The court record or the file was generated under the circumstances that favoured the protection of the new colony against rebellion from the

African people whose fate had been sealed by their defeat during the 1896/7 risings.

When the National Archives of Southern Rhodesia was later established on the 1st of September 1935, the record was put under its custody for posterity. Since then it remained under the custody of National Archives of Zimbabwe (NAZ) under the Public Archives and Research Section responsible for all Public Archives and Records. The trial of Nehanda is one of the first classical attempts of demonstrating how justice worked. It did, however, not aptly explain the clash of civilizations associated with the highly esteemed judicial superiority of the Company rule. When reading the court case of Nehanda, the charges against her were summed up in the following words, "she was duly convicted of the crime of murder and was sentenced by the Judgment of the High Court to be hanged by the neck until she be dead at such place of execution and at such time as His Honour the Administrator should be pleased to appoint." The murder of the Native Commissioner Pollard based at Mazoe appeared to be the main case cited in the file as also evidenced by the native messenger quoted in the case. The matter as written in the court case file is simple only the hand written scripts are a bit difficult to read. The court record resembles power relations in a colonial society where laws were made from the top. When reading the colonial court record now 117 years later, it still carries the same valance it had then. However, this is not to say the record is useless. It still has historical significance. In as much as the ex-Rhodesia celebrates their conquest and adventure in Mashonaland and so many of their soldiers decorated with so many accolades, the same is true of the esteem we attach to these African fighters.

The Nehanda colonial court record is in its original form capturing the charges laid against Nehanda and the final rulings as mentioned above. It is a historical court record as it marked the first public prosecution of politically motivated crime as it was defined against the state and murder. It is now 117 years after the record was generated, what does it tell to the users of the colonial archive or just someone who does not know the circumstances surrounding the record? First it is a court record of murder and instigating violence. Nehanda is portrayed as a blood thirsty woman who is against development – civilization in other words! The court record does not capture the circumstances around Nehanda's grievances against Pollard. Pollard had instructed that the Chief of Mazowe be whipped before the Native Commissioner for failing to report rinderpest outbreak in his area. This according to Nehanda and African culture was a taboo, Nehanda then instructed retaliation against Pollard. The record does not also capture how Nehanda had warmly allowed the settlement of whites. This then becomes a deliberate ploy to undermine her influence and bring out clearly her victimhood.

NAZ has a right to keep the record in its original form and shape while at the same time providing it to researchers. When it is retrieved it comes in its crude form of simply being a court record of Nehanda, a record of murder, neither race nor power relations. Thirdly, the colonial court record is not much revealing to submit itself to racial underpinnings it was generated – clash of civilizations, suppression of African rights to defend their country. NAZ has no other court records of Europeans who killed Africans during the 1896/7 war, but it has a record of Nehanda, what differentiates her

from Company troops and police that killed Africans? After the war they were heroes worth medals of service while Nehanda emerged with a court record of murder to her name. Justice Watermeyer did his litigating job with the blessing of the High Commissioner. Was Nehanda a murderer and was the law justified to define her as one as per the record considering the circumstances of the war where everyone was involved? Unfortunately in the light of the colonial court record she was. These questions are insightful in understanding how users of the colonial archive should read the colonial court record with a critical mind – a pinch of salt. The colonial court record of Nehanda in this case does not provide how far Nehanda was aware of the new Administration's law spelling that fighting for your independence was now murder. In the contrary, fighting for colonial possession was legal. Considering that Company Administration was trying to establish its authority on the Africans, to advance development of modern government, the resistance to colonialism and domination was tainted to mean rebellion. Morgenstern (2011) explicitly pointed out that use of court records usually hinders re-integration of ex-offenders back into society and finding another job. The labels that are given to citizens through these records bring a lot of negativity. The point to make is that these records for the sake of good governance and accountability must be used contextually.

### **The Madzimbamuto case**

The case of Madzimbamuto vs Lardner Burke stands out to be one that explicitly brings out how the courts have always been manipulated by the executive to bring about loyalty of the African population. Daniel Madzimbamuto was a nationalist, fighting

alongside others, for majority rule, whilst Mr Lardner-Burke was Minister in charge of Justice in the Smith government. Madzimbamuto was detained under a state of emergency shortly before the Smith regime announced Unilateral Declaration of Independence (UDI) which came along with a new constitution to replace the 1961 Constitution. Under the Old Constitution, the State of Emergency under which Madzimbamuto was being detained was due to automatically expire after three months. As that deadline approached, the Smith government extended its duration and to maintain the detention of individuals detained under the previous emergency.

Daniel Madzimbamuto was detained under the first State of Emergency Regulations and was to stay a prisoner/detainee/restrictee at Khami, Marandellas, Selukwe, Gwelo, Salisbury, Wha-Wha and Gonakudzingwa for most of his life from 1959 until final freedom in 1975. Stella Madzimbamuto (wife to Daniel) brought a legal challenge on behalf of her detained husband. Mrs Madzimbamuto argued that all actions and laws made under the UDI Constitution lacked legal validity in light of the existence of the Old Constitution. The reality on the ground however, was that, for all intents and purposes, the Smith regime retained effective control of the country, including the civil service and the security structures. Pekeshe (2014) acknowledged the 'bravery of Madzimbamuto's wife who almost single handedly took the Smith regime in one of the fiercest legal challenges ever mounted in this country.' The Madzimbamuto case laid against the constitutionality of Southern Rhodesia was a brave and bold step taken by Stella, the wife to Daniel Madzimbamuto who exposed its weaknesses. Magaisa (2015) reiterates that the judicial faced undue pressure from the executive. Magaisa

further notes that judges in the Rhodesian courts were therefore being asked to make a hard decision, one that brought into sharp focus the clash between allegiance to legal principle and the demands of political expediency. The extension of state of emergency by the Smith government was based on security issues meant to protect the state from nationalist agitations. Magaisa indicates that the Smith government failed to realise that 'the "insecurity" to which they referred was a result of people trying to assert their civil rights'. The Smith government refused to accept the verdict of the UK Privy Council and forced judges to ignore the verdict and press on charges. Justice Fieldsend protested against that and resigned but was later appointed Chief Justice of Zimbabwe after 1980 as a way of acknowledging his heroic act to uphold the law. The Madzimbamuto case clearly brings out how in the 1960s Southern Rhodesian laws continued to foster servitude and loyalty on the African subjects.

The Madzimbamuto and Nehanda case exemplifies how a government of the minority can desperately arm-twist judicial systems so as to maintain authority. The colonial criminal court records of Nehanda and later that of Madzimbamuto respectively had similar post-colonial implications. After 1980, the figure of Nehanda took a new dimension from villain to heroin. Her name grabbed a meaningful share of praises in the political circles unlike it did in the 1890s when she was labeled as a rebel and murderer. Madzimbamuto later assumed the honour of hero status yet previously he was a villain in a settler colonial state. Like Nehanda, Madzimbamuto in a way was fighting for his political right but it was unacceptable by the Rhodesian government. Legal information passed by the state was supposed to force

Africans into loyalty thus promoting law and order in the country. The state's legal information for development continued to be perpetuated. It was easy to be convicted of any offense against the state because the government was concerned with developing the "savage African" that needed control through legal means. When reading the archival colonial court records today researchers should be critical because they do not tell what transpired in the implementation of information for development in colonial societies.

## Conclusion

Colonial court records in African archival institutions continue to carry the adage of colonial prejudices. The advent of colonial rule in most Francophone or Anglophone countries was done under the auspices of information for development. This paper has tried to show how the colonial clash affected the African through legal means forcing them to be loyal. Colonial archival criminal records do not reveal this clash but simply show how Africans failed to abide to new rules and regulations governing their countries. Archival institutions continue to maintain colonial legacies through colonial criminal court records in their original format. However, the same criminal court records do not bring to surface how information for development worked that resulted in the incarceration of Africans as offenders of laws. Another interesting dimension is how colonial offenders of the law were later celebrated as heroes as shown like Nehanda and Madzimbamuto in Zimbabwe. The use of criminal colonial records in archival institutions should be treated critically because they fall short in giving a detailed account of racial tensions and the shortcomings of legal information for development.

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