



“Our Hands Are Tied”

Erosion of the Rule of Law in Zimbabwe

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“Our Hands Are Tied”

Erosion of the Rule of Law in Zimbabwe

I. Summary.....	1
II. Recommendations	5
To the Future Government of Zimbabwe	5
To the Chief Justice	6
To the Office of the Attorney General	6
To the Commissioner General of the Zimbabwe Republic Police.....	6
To the Southern African Development Community and the African Union.....	6
To International Donors (including the US, UK and other EU members, etc.).....	7
III. Methodology.....	8
IV. Background.....	9
Brief History of ZANU-PF’s Repression since 1980	9
Political Situation before and after the March 2008 Elections	10
Political Impasse Persists.....	11
Establishment and Functions of the Judiciary, Prosecutors and Police	11
V. A Compromised Judiciary.....	13
VI. Magistrates and Prosecutors under Pressure	19
Intimidation, Threats and Attacks against Magistrates	19
Political Interference by the Office of the Attorney General and Public Prosecutors	21
VII. A Politicized and Partisan Police Force	24
Police Inaction when ZANU-PF and Allies are Implicated in Political Violence	25
Police Persecution of MDC Leaders, Supporters and Perceived Supporters	31
Police Response to Court Rulings	33

Police Harassment of Civil Society Leaders and Activists	34
Attacks, Harassment and Abuse of Lawyers Taking up Political Cases	35
Police Engagement in Partisan Politics	37
Police Complicity in ZANU-PF Abuses	39
Police Abuses since the Power-Sharing Agreement.....	41

VIII. Restoring the Rule of Law and Addressing Accountability under a New Government	44
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IX. Acknowledgements.....	47
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I. Summary

Our hands are tied. We cannot do anything where ZANU-PF is involved. However, if your case was not political we could have helped you—all political violence matters are off limits for the police.

—A Police officer in Chegutu, Mashonaland West province, declining to investigate a political violence complaint, June 2008.

Over the last decade, Zimbabwe's ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), has progressively and systematically compromised the independence and impartiality of Zimbabwe's judiciary and public prosecutors, and instilled one-sided partisanship into the police. Since 2000 it has purged the judiciary, packed the courts with ZANU-PF supporters and handed out "gifts" of land and goods to ensure the judges' loyalty. It has provided instructions to prosecutors to keep opposition members in jail for as long as possible. It has transformed Zimbabwe's police force into an openly partisan and unaccountable arm of ZANU-PF.

The power-sharing agreement between ZANU-PF and the Movement for Democratic Change (MDC), signed on September 15, 2008, provided an opportunity to begin fundamental changes within the judiciary and police. However, in failing to recognize the collapse of respect for fundamental rights and the rule of law in Zimbabwe, the agreement sidesteps the urgent need for reforms. As this report demonstrates, ZANU-PF lacks the necessary commitment to end its improper and unlawful involvement in the justice system, let alone to be entrusted with instituting the necessary reforms.

Police partisanship has contributed heavily to Zimbabwe's disastrous human rights situation. Serving police officers told Human Rights Watch that between April and July 2008, police across Zimbabwe were issued with specific instructions not to investigate or arrest ZANU-PF supporters and their allies implicated in political violence. Human Rights Watch also found that of at least 163 politically motivated extrajudicial killings—almost entirely of MDC supporters—since the March 29, 2008

general elections, police have only made two arrests, neither of which led to prosecutions.

Members of the ZANU-PF militia who killed six people in Chaona on May 5 continue to walk free. The ZANU-PF supporters who killed MDC councilor Gibbs Chironga and three others in Chiweshe on June 20 have not been investigated. The murder of Joshua Bakacheza, an MDC driver, on June 24 has not resulted in any arrests. The police refuse to investigate the abduction and beating by ZANU-PF youth of Kadombo Chitokwa and thousands of others.

Police have arbitrarily arrested and detained hundreds of MDC leaders and activists. MDC leaders subjected to arbitrary arrest and detention include Tendai Biti—arrested at the airport on June 12—Ian Kay and Eric Matinenga. Human Rights Watch also documented cases of police officers openly engaging in partisan politics in contravention of the Police Act. In several provinces where armed ZANU-PF members have unlawfully taken policing duties upon themselves—carrying out arrests, investigations and meting out punishment—government authorities have refused to intervene.

The power-sharing agreement has not ended the violence. Human Rights Watch found that police continue to routinely and arbitrarily arrest and detain opposition activists, using harassment and detention without charge as a form of persecution. On October 16 police in Bulawayo assaulted, arrested and detained several members of Women of Zimbabwe Arise (WOZA). All the women were later released without charge except for their two leaders—Jenni Williams and Magondonga Mahlangu—who have been denied bail and who at this writing remain in jail. Police detain accused persons beyond the 48-hour statutory limit, show contempt for court rulings and frequently deny detainees access to legal representation or relatives. On September 18 police arrested the president of the Progressive Teachers' Union of Zimbabwe (PTUZ), Takavafira Zhou. He was held without charge in solitary confinement for four days without access to water, a toilet or blankets, before being released on September 22. Several former detainees have reported that police officers frequently beat or otherwise mistreat those in custody.

This report finds that legal accountability and the rule of law in Zimbabwe have been seriously eroded under the ZANU-PF government through its interference in the criminal justice system. It shows that victims of human rights abuses—mainly MDC supporters—continue to be denied their right to justice and an effective remedy. At the same time, perpetrators of human rights abuses enjoy de facto immunity from prosecution by virtue of their association with ZANU-PF.

At the time of writing, over a month after the power-sharing agreement was signed, there has been no substantive movement towards implementation nor towards forming a new government. The two main parties have sharp differences over the allocation of new cabinet positions. On October 11 ZANU-PF, without the agreement of the MDC and contrary to the power-sharing agreement, published a list of new cabinet positions. President Robert Mugabe allocated all senior ministries—including Home Affairs and Justice, as well as Defence, Foreign Affairs and Finance—to ZANU-PF members. The ZANU-PF list was rejected by the MDC, which released its own alternative list. Human Rights Watch is concerned that any settlement of the current political crisis must address the need for reforms in the criminal justice system and the pervasive climate of impunity, and that this cannot be achieved so long as ZANU-PF controls the Home Affairs and Justice Ministries.

As the people of Zimbabwe confront an ever more rapidly deteriorating economic situation, with more than five million facing severe food shortages and inflation, at the time of writing, running at 2.79 quintillion,¹ expressing serious concern over the erosion of key justice institutions might seem a step away from the lives and concerns of the public at large. However, the fact is that despite the rearguard ethical action of some of those within them, these institutions have been transformed by ZANU-PF into critical agents of repression. Their reform is fundamental to the restoration of normality and respect for human rights, not just in Zimbabwean political affairs, but also in the lives of ordinary Zimbabweans.

Human Rights Watch calls upon any new government in Zimbabwe to undertake an independently managed program of reform of the judiciary and police with clear

¹ “New Hyperinflation Index (HHIZ) Puts Zimbabwe Inflation at 2.79 Quintillion Percent,” The CATO Institute, October 31, 2008, <http://cato.org/zimbabwe> (accessed November 5, 2008).

timelines. Priorities should include independent and impartial investigations into past human rights abuses and the problem of impunity, a review of police organizational structure and practices, and revisions of criminal justice legislation to ensure compliance with international legal standards. Human Rights Watch urges donor states and institutions to support genuine reform efforts, but also to maintain existing sanctions until reforms are implemented.

II. Recommendations

To the Future Government of Zimbabwe

- End impunity for election-related political violence. Set up an independent commission of inquiry to investigate serious rights abuses by state security forces and others that occurred since the March 29 elections and present recommendations on how best to ensure justice and accountability.
- Restore judicial independence. Create an independent and impartial judicial commission to investigate infringements of judicial independence and provide public recommendations for judicial reform. Examine in particular reforms that prevent the distribution of unlawful payments or gifts to judges.
- Enforce the principle of equality under law. Convene an independent body to examine past practices of the Office of the Prosecutor to devise measures to ensure that the office operates in a non-partisan fashion. Revise or abrogate section 121 of the Criminal Procedure and Evidence Act, which permits prosecutorial appeals of bail rulings, to limit the possibility of abuse.
- End partisanship in the police force. Create a special body under the Office of the Prosecutor to impartially investigate allegations of human rights abuses by members of the police force. Discipline, dismiss or prosecute, as appropriate and in accordance with due process standards, those police personnel responsible for abuse. Put the police under a new, non-partisan and professional leadership, itself accountable to an independent supervisory board.
- Improve respect for human rights by government officials at all levels. Seek international assistance to provide appropriate training and education to members of the police and other state agencies on human rights. All training should be consistent with international human rights standards, such as the United Nations Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

To the Chief Justice

- Defend judges against political pressure. Adopt measures to promote adherence by government officials to the UN Basic Principles on the Independence of the Judiciary.
- Take appropriate steps to promote adherence by judges and judicial officers to the UN Basic Principles.

To the Office of the Attorney General

- Re-commit to professional and impartial discharge of duties; conduct an independent and comprehensive audit of prosecutors, focusing on ethical conduct and respect for due process.
- Ensure that policies and practices do not violate the principle of presumption of innocence and other international due process and fair trial standards.
- Promote adherence by government officials to the UN Guidelines on the Role of Prosecutors.

To the Commissioner General of the Zimbabwe Republic Police

- Publicly condemn and bring an end to partisanship by police officers, including by ending selective application of the law and targeted harassment of opponents of ZANU-PF. Take appropriate disciplinary action against those who act improperly.
- Fully and impartially investigate and arrest those responsible for acts of politically motivated violence following the March 29 elections.
- Take all appropriate steps to ensure that the police respect court orders concerning the rights of persons arrested and detained.

To the Southern African Development Community and the African Union

- Urgently convene an extraordinary summit to discuss and help resolve the Zimbabwe crisis.
- Urgently review the effectiveness of the SADC mediation initiative. Ensure that it is led and staffed so as to lend it maximum effectiveness and that it has specific benchmarks and a timeline for resolving the Zimbabwe crisis.

- Facilitate greater involvement in the mediation process by the AU and the UN, in order to bring additional expertise to bear on problems in Zimbabwe.
- Call upon the new government of Zimbabwe to promptly adopt measures to ensure respect for human rights and the rule of law.
- Insist upon full accountability for the perpetrators of human rights abuses, including prosecutions, and press for appropriate remedies to victims of abuses.

To International Donors (including the US, UK and other EU members, etc.)

- Withhold non-humanitarian development aid to Zimbabwe in the absence of clear progress in promoting respect for human rights, including reforms of key government institutions and agencies; set specific benchmarks and closely monitor progress.
- Maintain targeted travel sanctions and asset freezes against ZANU-PF and its leadership until it meets specific human rights and good governance benchmarks.
- Carefully provide effective support for fundamental reforms to the criminal justice system, including strengthening judicial independence, providing appropriate rights-relevant training for the police, and improving the administration and financial auditing of justice institutions.

III. Methodology

This report is based on research conducted in Zimbabwe from August 18 to 30, 2008. Human Rights Watch researchers visited Harare, Mashonaland East, Mashonaland Central, Mashonaland West, Manicaland and Masvingo provinces and carried out over 80 interviews. Among those interviewed were victims of political violence, human rights lawyers, academics, serving and retired magistrates, and police officers. Human Rights Watch also reviewed court records and documents, police affidavits, newspaper accounts and reports by local human rights organizations.

Additionally, material from two previous Human Rights Watch research missions to Zimbabwe, in April, May and June 2008, contributed to the production of this report.

For security reasons, some details about individuals and locations of interviews have been withheld when such information could place a person at risk.

IV. Background

Brief History of ZANU-PF's Repression since 1980

ZANU-PF and its political allies have a long history of resorting to manipulation and repression to maintain themselves in power. Since the country gained independence in 1980, ZANU-PF has used its supporters, as well as the army and the police, to commit acts of violence against opponents and has also used state institutions for political ends. For instance, in an attempt to destroy Joshua Nkomo's opposition party, the Zimbabwe African People's Union (ZAPU), the Fifth Brigade of the Zimbabwean army carried out systematic and widespread atrocities such as torture and extrajudicial executions of more than 3,000 persons in Matebeleland and Midlands provinces between 1980 and 1987.² Successive election periods, particularly in the years 2000, 2002, 2005 and 2008, were characterized by widespread political violence mainly perpetrated by ZANU-PF and its allies.³

In 2000, with support from the government, ZANU-PF and its allies carried out violent invasions of white-owned farms in which several farmers and farm workers were killed.⁴ In 2005 the government carried out an unprecedented campaign of forced evictions in urban areas, causing a massive internal displacement crisis in which an estimated 700,000 people lost their shelter, livelihood or both.⁵ In 2007 incidents of police violence and intimidation increased significantly, culminating in the arrest and beating of more than 50 opposition activists in police custody.⁶

² The Catholic Commission for Justice and Peace and The Legal Resources Foundation, *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matebeleland and the Midlands, 1980 to 1988* (Harare: The Catholic Commission for Justice and Peace and The Legal Resources Foundation, 1997).

³ See Human Rights Watch, *All Over Again: Human Rights Abuses and Flawed Electoral Conditions in Zimbabwe's Coming General Elections*, vol.20, no.2(A), March 2008, <http://www.hrw.org/reports/2008/zimbabwe0308/>; and Amnesty International, "Terror tactics in the run-up to elections," June 2000, <http://www.amnesty.org/en/library/info/AFR46/014/2000/en> (accessed November 3, 2008).

⁴ David Harold-Barry, ed., *Zimbabwe: The Past is the Future*, (Harare: Weaver Press Ltd., 2004), p. 193; and International Crisis Group, "Blood and Soil: Land, Politics and Conflict Prevention in Zimbabwe and South Africa," (Brussels: 2004).

⁵ Human Rights Watch, *Evicted and Forsaken: Internally displaced persons in the aftermath of Operation Murambatsvina*, December 2005, <http://www.hrw.org/reports/2005/zim1205/>; and UN Special Envoy on Human Settlement Issues in Zimbabwe, Anna Kajumulo Tibaijuka, "Report of the Fact-Finding Mission to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina," July 22, 2005.

⁶ Human Rights Watch, *All Over Again*.

Political Situation before and after the March 2008 Elections

In response to police violence against opposition members and human rights defenders in March 2008, and an ever-deepening economic crisis, SADC mandated then-South Africa President Thabo Mbeki to mediate talks between ZANU-PF and the MDC.⁷ The talks failed to yield significant results and ZANU-PF and MDC went into the March 2008 general elections in an environment of increasing repression and manipulation of state institutions by ZANU-PF, thereby making the playing field uneven in ZANU-PF's favor.⁸

Despite this, for the first time since independence, ZANU-PF lost its parliamentary majority and its presidential candidate, Robert Mugabe, lost to opposition candidate Morgan Tsvangirai. However, according to the Zimbabwe Electoral Commission (ZEC) Tsvangirai did not get at least "50 plus 1" percent of votes cast, making a presidential run-off necessary.

As Human Rights Watch has previously documented, ZANU-PF and its allies unleashed a systematic and widespread campaign of terror to intimidate the electorate into voting for Robert Mugabe in the runoff election held on June 27.⁹ When Morgan Tsvangirai pulled out of the poll citing widespread political violence against MDC supporters, Mugabe went ahead with the election and declared himself the winner. For the first time, several African states voiced condemnation.

On July 21 ZANU-PF and MDC leaders signed a memorandum of understanding which led, on September 15, to a power-sharing agreement between the parties.¹⁰ However, talks stalled over how to share executive power. Efforts by the SADC, through the mediation of Thabo Mbeki, have failed to break the political impasse.

⁷ Communiqué from the 2007 SADC Extra-Ordinary Summit of Heads of State and Government held in Dar es Salaam, Tanzania, March 28-29, 2007.

⁸ Human Rights Watch, *All Over Again*.

⁹ Human Rights Watch, *"Bullets for Each of You": State-Sponsored Violence since Zimbabwe's March 29 Elections*, June 2008, <http://www.hrw.org/reports/2008/zimbabwe0608/>.

¹⁰ "Memorandum of understanding between ZANU-PF and MDC, Harare," July 21, 2008.

Political Impasse Persists

SADC attempted to make further progress by convening a meeting of SADC Organ of Defence and Security on October 28. The meeting failed to break the impasse and announced that it was calling for a summit of all SADC member states to try to resolve the Zimbabwe crisis. Chances of forming a government of national unity are fading fast and the situation looks increasingly precarious. Should ZANU-PF unilaterally form a government without the MDC, there is a serious risk of a resurgence in violence and human rights abuses. ZANU-PF has maintained control over state institutions that it has traditionally used to perpetrate abuses such that, even if a government of national unity is formed, ZANU-PF will most likely continue to determine Zimbabwe's political direction.

Establishment and Functions of the Judiciary, Prosecutors and Police

Zimbabwe's justice language is established by the country's constitution which enshrines rule of law principles, including judicial independence and fair trial guarantees, as well as for the establishment of a professional and non-partisan police force.¹¹ Zimbabwe has ratified the African Charter (Banjul)¹² on Human and People's Rights and the International Covenant on Civil and Political Rights (ICCPR), which obliges the government to respect due process and fair trial rights.¹³

Chapter 8 of the Constitution sets out the structure, jurisdiction and appointment of Zimbabwe's judiciary.¹⁴ Article 79B guarantees the independence of the judiciary. Conditions of service for judges are set out in article 88, which provides that the remuneration of judges shall be charged to the Consolidated Revenue Fund and may not be reduced during a judge's tenure.

¹¹ The Constitution of Zimbabwe was published as a Schedule to the Zimbabwe Constitution Order 1979 (S.I 1979/1600 of the United Kingdom). It has since been amended 18 times. Chapters 4, 5 and 8 provide for separation of powers among three main pillars of state—the executive, the legislature and the judiciary—and the checks and balance mechanisms that keep them independent of each other.

¹² African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Zimbabwe May 30, 1986.

¹³ International Covenant on Civil and Political Rights (ICCPR), G.A.res.2200 A (XXI), U.N.Doc.A/6316 (1966), entered into force in March 1976, acceded to by Zimbabwe August 13, 1991.

¹⁴ Constitution of Zimbabwe, art. 79A.

The judiciary consists of the chief justice as head of judiciary, judges of the Supreme Court, judge president and judges of the High Court, as well as judges of special courts. The Supreme Court is Zimbabwe's superior court of record and final court of appeal; it also has original jurisdiction in cases where violation of constitutional rights is alleged.¹⁵ The High Court is a superior court of record in Zimbabwe and has original jurisdiction over all criminal matters in Zimbabwe.¹⁶ Magistrates' courts are the courts of first instance in all criminal matters.

The Office of the Attorney General (AG) is established under the Constitution and charged with instituting and undertaking criminal proceedings before any court in Zimbabwe. The Attorney General carries out this duty through public prosecutors.¹⁷

Article 93 of the Constitution provides for a police force to have the function of "preserving the internal security of and maintaining law and order in Zimbabwe."¹⁸ The Zimbabwe Republic Police (ZRP) operates under the direct command of the Commissioner of Police, under the control of the Ministry of Home Affairs. The administration of the ZRP and terms and conditions of service are set out in the Police Act, which prohibits serving members of the police force from engaging in partisan politics.¹⁹

¹⁵ Constitution of Zimbabwe, arts. 24 and 80.

¹⁶ Constitution of Zimbabwe, art. 81.

¹⁷ Constitution of Zimbabwe, art. 76.

¹⁸ Specific duties are set out in the Chapter 11:10 of the Police Act.

¹⁹ Schedule to Police Act, art. 48.

V. A Compromised Judiciary

The ZANU-PF government has undermined the independence of the judiciary. This process began in earnest in 2000 when judges, on a number of occasions, ruled that the government's land reform program was unlawful. In a bid to revive fast-dwindling political fortunes from February 16, 2000, ZANU-PF organized and instigated war veterans to invade and occupy white-owned commercial farms.

The initial ruling on the matter was made in response to an application to the High Court by the Commercial Farmers Union, an organization representing white farmers, to have the "invasion" of farms declared illegal. On March 17, 2000, Justice Paddington Garwe declared that the occupation of farms by squatters was unlawful, ordered all squatters to vacate the farms within 24 hours, and directed the Commissioner of Police Augustine Chihuri to instruct his officers and members to enforce the order.²⁰ The Court also ordered Chihuri to disregard any instruction from any "person holding executive power in Zimbabwe" that countered the eviction order. Commissioner of Police Chihuri appealed against the order, arguing that the police did not have sufficient resources to enforce the order. On April 10, 2000, Justice Moses Chinhengo dismissed the commissioner's appeal and upheld Justice Garwe's order.²¹ However, police still did not take enforcement action.²²

On November 10, 2000, the Supreme Court granted an order by consent declaring that the entry of uninvited persons on commercial farming properties was unlawful and that police must remove all squatters from the farms.²³ The order was again not implemented. On December 21, 2000, the Supreme Court ruled that the government's land reform program was unconstitutional and violated article 16 of the Constitution, which guarantees property rights.²⁴

²⁰ See *Commissioner of Police vs. Commercial Farmers Union* (HC 3985/2000).

²¹ Address delivered by the Chief Justice Anthony R. Gubbay at the opening of the legal year in the High Court, Harare, January 8, 2001.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

In response to the court rulings, the government used various strategies to bring the judiciary under its direction and control.²⁵ These included a combination of attacks and inducements to make the judiciary more malleable. On November 24, 2000, war veterans forcibly entered the Supreme Court building where judges were about to hear a constitutional application brought by the Commercial Farmers Union; the war veterans shouted ZANU-PF political slogans and called for judges to be killed.²⁶ In December 2000 President Mugabe described judges as guardians of “white racist commercial farmers.”²⁷

Then-Minister of Information Jonathan Moyo accused the Supreme Court, particularly Chief Justice Anthony Gubbay, of being biased in favor of white landowners.²⁸ In January 2001 Mugabe intensified attacks on the judiciary when he publicly accused Gubbay of aiding and abetting racism.²⁹ Minister of Justice Patrick Chinamasa told Chief Justice Gubbay that the government no longer had confidence in him and asked him to step down. As a result, Gubbay resigned in March 2001, well before his term of office had expired. Following the chief justice’s resignation, ZANU-PF members of Parliament passed a vote of no confidence in the Supreme Court, and the Minister of Justice encouraged remaining Supreme Court judges to resign.³⁰

In an unprecedented move, Gubbay’s was replaced by Godfrey Chidyausiku (a former deputy minister of justice in the ZANU-PF government and a beneficiary of the government’s land reform program), who was appointed chief justice ahead of more senior judges.³¹ Political interference and intimidation led to the resignation of several judges, including Justice Michael Gillespie (who resigned and went into exile

²⁵ Zimbabwe Human Rights NGO Forum, *Who Guards the Guards? Violations by Law Enforcement Agencies in Zimbabwe, 2000 to 2006*, (December 2006); see also *The State of Justice in Zimbabwe*, A Report to the International Council of Advocates and Barristers by Five Common Law Bars into the state of Justice in Zimbabwe, December 2004.

²⁶ Address by Chief Justice Anthony Gubbay, January 8, 2001.

²⁷ Robert Martin, “The rule of law in Zimbabwe,” *The Commonwealth Journal of International Affairs*, vol. 95, iss. 384, April 2006, p. 251.

²⁸ Harold-Barry, *Zimbabwe: The Past is the Future*, p. 205.

²⁹ Robert Martin, “The rule of law in Zimbabwe.”

³⁰ Harold-Barry, *Zimbabwe: The Past is the Future*, p. 208.

³¹ *The State of Justice in Zimbabwe*, p. 50.

shortly after Gubbay's resignation)³² and Justice Ishmael Chatikobo (who came under pressure after ruling in favor of a private radio station. President Mugabe later issued a presidential decree overturning his ruling and banning the radio station).³³ Justice Sandra Mungwira went into exile after acquitting three MDC activists accused of murder.³⁴ Justices Ahmed Ibrahim, James Devittie and Nick McNally were also forced into exile after receiving threats of violence when they accused the government of undermining the judiciary.³⁵ In 2004 Justice Michael Majuru fled into exile and faxed his resignation after he was publicly criticized and threatened with investigation by the government when he ruled in favor of an independent daily newspaper that the government had banned.³⁶

Since 2000 the government has appointed to the bench judges with previous connections and known sympathies to ZANU-PF. To ensure their loyalty, the government allocated land seized under its controversial land reform program to judges. According to Eric Matinenga, a former judicial officer and MDC member of parliament who carried out an extensive study of the judiciary in Zimbabwe, up to 95 percent of judges have been allocated farms that were forcibly seized from white commercial farmers.³⁷ A lawyer based in Harare told Human Rights Watch:

Information on how government allocated farms seized from commercial farmers is not readily available, but I know that an overwhelming majority of judges received farms from government.³⁸

Another lawyer told Human Rights Watch:

³² Hativagone Mushonga, "Mugabe Moulds Pliant Judges," Institute of War and Peace Reporting, May 31, 2006, http://www.iwpr.net/?p=acr&s=f&o=321302&apc_state=heniacr2006 (accessed November 5, 2008).

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ "Zimbabwe judge quits, goes into exile," *The New Zimbabwe*, January 29, 2004, <http://www.newzimbabwe.com/pages/majuru.1373.html> (accessed November 5, 2008).

³⁷ Human Rights Watch interview with Eric Matinenga, Harare, August 29, 2008.

³⁸ Human Rights Watch interview with lawyer, Harare, August 29, 2008.

To my knowledge, most of the judges got farms from government. For example, for judges based in Harare, there is only one judge who has not received a farm from government.³⁹

An independent survey of the state of justice in Zimbabwe in 2004 by lawyers representing five common law bars found that “some Supreme Court and High Court Judges have been allocated land under the government’s... scheme and hold that land at nominal rents and at the government’s pleasure.” The survey concluded that Zimbabwe’s justice system had, as a result, ceased to be independent and impartial.⁴⁰

The government has further undermined Zimbabwe’s judiciary by disregarding a series of High Court orders and making frequent public pronouncements attacking both the judiciary in general and individual judges in particular.⁴¹ For example, in 2005 when Justice Tendai Uchena ruled that Roy Bennet, a jailed MDC member of parliament, was eligible to contest the March 2005 election from jail, President Mugabe described the decision as “stupid” and asked ZANU-PF supporters to ignore the ruling.⁴² Justice Uchena subsequently reversed his own judgment and disqualified Bennet from participating in elections.

In August 2008—amid the current political crisis and an economic collapse that has seen inflation rise to 2.79 quintillion percent at the time of this writing⁴³—the government acted to ensure the judges’ continued support. On August 1 the government, through the Reserve Bank of Zimbabwe (RBZ), announced in the state-run newspaper *The Herald* that it had bought and delivered luxury cars, plasma television sets and electricity generators to all judges.⁴⁴ The government explained

³⁹ Human Rights Watch interview with lawyer, Harare, August 29, 2008.

⁴⁰ *The State of Justice in Zimbabwe*, pp. 4-5.

⁴¹ In 2004 the government disregarded three court rulings in favor of Associated Newspapers of Zimbabwe to enable a banned daily newspaper to publish in Zimbabwe. The then-information minister, Jonathan Moyo, dismissed one of the judgments as academic and therefore unenforceable. “Mugabe undermines Judiciary,” *The Zimbabwe Independent*, September 1, 2004.

⁴² “Mugabe undermining Electoral Court, say lawyers,” Zimonline, March 18 2005, www.zimonline.co.za (accessed September 15, 2008).

⁴³ “New Hyperinflation Index (HHIZ) Puts Zimbabwe Inflation at 2.79 Quintillion Percent,” *The CATO Institute*, October 31, 2008, <http://cato.org/zimbabwe> (accessed November 5, 2008).

⁴⁴ “[Reserve Bank Governor] Gono buys cars, TVs, generators for judges,” *The Herald*, August 2, 2008.

that the expensive products were to enable judges to focus more on their work and to enable them to work from home in the event of the frequent power cuts. There is an established pattern of such “gifts,” which are obviously intended to ensure the loyalty of pro-ZANU-PF judges or win over those who seek to maintain their impartiality, particularly in matters involving the government or the opposition.

Lawyer Harrison Nkomo told Human Rights Watch:

The RBZ itself is a potential litigant. It may find itself before the same judges who are recipients of its gifts. Notwithstanding that the tenure of judges is secure; these perks expose judges to undue influence by politicians... The donations have heavily compromised judges and have damaged their standing in the eyes of the public.⁴⁵

The RBZ has also allocated houses to judges and is directly augmenting their salaries over and above constitutionally guaranteed remuneration from the Consolidated Revenue Fund.⁴⁶ Beatrice Mtetwa, president of the Law Society of Zimbabwe, explained that while the Law Society supports proper remuneration for judges, remuneration by the Reserve Bank compromises the administration of justice.⁴⁷

On August 15, 2008, RBZ Governor Gideon Gono responded to criticism of the gifts by saying that the Reserve Bank Act legally authorizes the Central Bank to assist government programs. He added that the conditions of service for the country’s judiciary had deteriorated to levels that did not promote operational efficiencies.⁴⁸ Similarly, Master of the High Court Charles Nyatanga claimed that the RBZ was merely “[giving] judges essential tools to necessitate them to work effectively.”⁴⁹

⁴⁵ Human Rights Watch interview with lawyer Harrison Nkomo, Harare, August 18, 2008.

⁴⁶ “RBZ Splurges on Judges,” *The Zimbabwe Independent*, August 7, 2008.

⁴⁷ Human Rights Watch interview with a human rights lawyer and senior member of the Law Society of Zimbabwe, Bindura, August 19, 2008.

⁴⁸ “Enhancement of Working Conditions for the Judiciary,” Reserve Bank of Zimbabwe press statement, August 15, 2008. See also the *Sunday Mail*, August 17-23, 2008).

⁴⁹ Makamure, “RBZ Splurges on Judges,” *The Zimbabwe Independent*.

Dr. Lovemore Madhuku, a constitutional law expert and senior lecturer at the University of Zimbabwe's Faculty of Law, told Human Rights Watch:

Judges must not only be independent, but they must be seen to be independent; and as such, RBZ action erodes public confidence in the administration of justice and in the independence of the judiciary.⁵⁰

The government's practice of providing extra-legal "gifts" to judges has an impact beyond how it might affect the rulings of judges in individual cases. This deeply rooted corruption undermines public confidence in the judiciary, which as recently as a decade ago was one of the most respected in Africa. Restoring trust in the judiciary will by necessity be a long-term endeavor that will not be resolved merely by a change in government.

⁵⁰ Human Rights Watch interview with Dr. Lovemore Madhuku, Harare, August 18, 2008.

VI. Magistrates and Prosecutors under Pressure

Intimidation, Threats and Attacks against Magistrates

The government has taken a different approach to the country's magistrates than it has with the judges. While there is no evidence that the government has attempted to purge the magistracy or replace independent magistrates with ruling-party sympathizers, available information points to both threats and intimidation intended to cow magistrates into toeing the ruling party line and to the misuse of judicial procedure to circumvent their authority.⁵¹

The government's strategy has been effective in smaller towns and rural areas where ZANU-PF formerly had total control. Human Rights Watch learned of attacks on magistrates by ZANU-PF members and its allies in small towns such as Bindura, Rusape and Gutu. But the government's strategy has not worked well in the two major cities, Harare and Bulawayo, where the majority of junior magistrates still display some independence.⁵² There, magistrates routinely grant bail to detained MDC activists, contrary to the wishes of the government.⁵³

As a counter-measure, government prosecutors often invoke section 121 of the Criminal Procedure and Evidence Act (CPEA), which provides prosecutors with the opportunity to file a notice of intention to appeal against a bail ruling.⁵⁴ By noting an intention to appeal, a magistrate's order to release a suspect is immediately suspended, giving the prosecution seven days to prepare an appeal, during which time the accused must remain in police custody.⁵⁵

⁵¹ Human Rights Watch interview with three former magistrates, Harare, August 29, 2008. All three said they felt compelled to resign following threats to their lives by suspected ZANU-PF supporters and lack of assurances of protection from government.

⁵² Human Rights Watch interview with serving magistrate, Harare, August 18, 2008: most junior magistrates have not benefited from government's patronage, therefore ensuring some independence in their ranks. However, some senior magistrates were allocated land under the government's land reform program, thus compromising their independence.

⁵³ Human Rights Watch interview with serving magistrate, Harare, August 18, 2008: "Our power as magistrates to grant bail has completely been usurped by prosecutors, because the mere noting of an intention to appeal by a prosecutor means that a magistrate's power to grant bail is immediately cancelled and the accused is sent to remand prison."

⁵⁴ Criminal Procedure and Evidence Act, Chapter 9:07, sec. 121 (1).

⁵⁵ Human Rights Watch interview with a former magistrate, Harare, August 28, 2008.

According to magistrates and lawyers whom Human Rights Watch interviewed, in rural areas the government does not now take chances when MDC supporters and activists are arrested. It dispatches a delegation of partisan senior magistrates and prosecutors from Harare to handle “political cases” wherever they occur.⁵⁶ When police arrested Ian Kay, an MDC member of parliament for Marondera Central province, the resident prosecutor for Marondera instructed the police to release him. However, a senior prosecutor sent from Harare intervened and insisted that Kay should be charged and detained.⁵⁷

In a case that demonstrates the perils faced by an impartial judicial officer, Musaiona Shortgame, a resident magistrate in Gutu, Masvingo province, was harassed and victimized by government agents for allegedly handing down judgments viewed by the government as contrary to the result it was seeking.⁵⁸ The persistent persecution of Shortgame culminated in an attack on his property on April 21, 2008, when unidentified persons entered his homestead and set fire to his vehicle. The attack followed threats from ZANU-PF supporters in the area.⁵⁹

In Bindura, Mashonaland Central province, on June 23, 2008, a group of ZANU-PF youths severely assaulted senior magistrate Felix Mawadze as he left a supermarket. Their stated reason for the assault was that he granted bail to detained MDC activists accused of political violence.⁶⁰ To date no arrests have been made in this case, even though police reports were filed.⁶¹

Dr. Lovemore Madhuku told Human Rights Watch how some magistrates were persecuting MDC and civil society activists:

The general pattern is that an accused person in political cases is arrested without a proper investigation or charge, denied bail for up to

⁵⁶ Human Rights Watch interviews with several lawyers, Harare, August 25 and 26, 2008.

⁵⁷ Human Rights Watch interview with Ian Kay, Harare, August 22, 2008.

⁵⁸ Joint Appeal by the Law Society of Zimbabwe, Zimbabwe Lawyers of Human Rights and International Commission of Jurists on the situation of lawyers, human rights defenders and civil society organizations, June 2008.

⁵⁹ Ibid.

⁶⁰ Human Rights Watch interview with Shepherd Mushonga, Harare, August 19, 2008.

⁶¹ Ibid.

two weeks or more... [They are] eventually... granted bail... after having already suffered arbitrary arrest and unlawful incarceration. The greatest scope for persecuting [MDC] activists is in refusal of bail and keeping accused persons in custody. When a matter eventually gets to the trial stage, judicial officers attempt to apply the law as it is, but of course, very few cases ever get to the trial stage since the objective of [the] harassment and persecution... would have [already] been achieved.⁶²

On several occasions members of Women of Zimbabwe Arise and the Zimbabwe National Students Union (ZINASU) were subjected to arbitrary arrests and unlawful incarceration.⁶³ In May 2007 the MDC reported to Human Rights Watch that more than 600 of their supporters had been subjected to arbitrary arrest, abduction or assault since the beginning of that year.⁶⁴

Political Interference by the Office of the Attorney General and Public Prosecutors

Human Rights Watch believes that, in normal circumstances, such as where “non-political” cases are concerned, prosecutions in Zimbabwe are generally impartial. However, in “political” cases, there is clear evidence that some prosecutors abuse the law to persecute and harass perceived MDC supporters, particularly in applications for bail.

Section 117 of the Criminal Procedure and Evidence Act states that bail should not be refused unless there is clear evidence that the accused is likely to commit other offenses, interfere with witnesses or abscond.⁶⁵ Remand procedures and denial of

⁶² Human Rights Watch Interview with Dr Lovemore Madhuku, Harare, August 18, 2008.

⁶³ Human Rights Watch interview with WOZA Coordinator Jenni Williams and ZINASU President Clever Bere, London, September 16, 2008.

⁶⁴ McDonald Dzirutwe, “Zimbabwe’s Tsvangirai wants talks, says 600 tortured.” *Rueters*, April 12, 2007. <http://www.alertnet.org/thenews/newsdesk/L12205103.htm> (accessed November 3, 2008).

⁶⁵ While section 117 of the (CPEA) sets out conditions for granting bail to an accused, section 121 empowers the prosecutor to overturn the granting of bail by a magistrate; when a prosecutor gives notice of intention to appeal against bail, the effect is to suspend the ruling granting bail pending the noting of the appeal.

bail should not be used as substitute detention mechanisms.⁶⁶ Denying bail in order to punish an accused person contravenes the principle that an accused person shall be presumed innocent until proven guilty by a competent court of law. This is enshrined in article 18 of Zimbabwe's Constitution and in the ICCPR.⁶⁷

Contrary to the legal provisions on bail, the Office of the Attorney General has adopted policy and practice in "political" cases to oppose bail in all circumstances, regardless of the merits of each individual case. According to *The Herald*, Deputy Attorney General (Criminal Division) Johannes Tomana instructed all prosecutors on May 20, 2008, to ensure, as a matter of policy and as a deterrent to other "would-be offenders," that no person accused of committing or inciting political violence should be granted bail.⁶⁸

Public prosecutors have subjectively used Tomana's directive to deny bail for MDC activists, but to our knowledge never to any ZANU-PF activists accused of political violence. MDC Member of Parliament Eric Matinenga told Human Rights Watch that he applied for bail when he was arrested on May 30, 2008. According to Matinenga, the public prosecutor told the court at the outset that he would oppose bail irrespective of the conditions offered by Matinenga in his application. The public prosecutor allegedly stated that it was the attorney general's official policy that bail in cases of alleged political violence would be opposed regardless of the merits of the application.⁶⁹ When the magistrate granted Matinenga bail, the public prosecutor immediately invoked section 121 of the CPEA. Matinenga remained in custody pending appeal.

In other cases against civil society activists, the prosecutors did not make reference to the Tomana directive, but appeared to have been guided by it to oppose all bail. Following the arrest of 14 Women of Zimbabwe Arise activists on May 28, 2008, the public prosecutor, Public Mpfu, said that he would oppose granting bail to the

⁶⁶ *State vs. Dube* (HH 133/89).

⁶⁷ ICCPR, art 14(2) which states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

⁶⁸ "AG's Office gets tough on political violence," *The Herald*, June 9, 2008.

⁶⁹ *Eric Matinenga vs. Commissioner General of Police and others* (HC 3049/08).

accused. When the magistrate ruled in favor of granting bail, Mpofu invoked section 121 of the CPEA and the accused were sent on remand to Chikurubi prison.⁷⁰

Several magistrates interviewed by Human Rights Watch cited this policy and indicated that the intention was to punish an accused as a deterrent measure.⁷¹ For instance, on April 22, 2008, Harare magistrate Gloria Takundwa said, when denying bail to an MDC activist facing political violence charges:

The Court is of the view that it is not in the interest of justice to admit the accused to bail. The situation in the country at the moment is very volatile. While the presumption of innocence operates in favor of the accused it is necessary though unfortunate that those who are brought on allegations of such public violence be kept in custody to sound a warning... Bail is thus denied.⁷²

⁷⁰ Report by Legal Practitioners acting for WOZA, report reviewed August 25, 2008.

⁷¹ For instance, several rulings in available documents where bail is denied, magistrates have made reference to this policy as authority for their decisions.

⁷² See *State vs. Ranganai Dzinchito* (CRB 2796/2008).

VII. A Politicized and Partisan Police Force

Despite the strictures of the Police Act, since 2000 the Zimbabwe Republic Police (ZRP)—especially its senior officers—has become increasingly partisan on matters of a political nature. As long ago as January 15, 2001, Police Commissioner Chihuri stated openly that he supported ZANU-PF because it was the party in government, and that he would resign if another political party came to power.⁷³

Beyond statements, however, this partisanship manifests itself in repressive, politicized policing. When a judge or a magistrate rules contrary to the government in “political” cases, the police frequently ignore court orders. Even well-intentioned prosecutors who have sought to prosecute all offenders have been undermined by the police, who as a matter of policy in “political” cases only arrest MDC activists. ZANU-PF activists and their allies who commit crimes in the context of political matters go free.

In a report following a fact-finding mission to Zimbabwe in June 2002, the African Commission on Human and Peoples’ Rights condemned the ZRP’s partisan stance and its routine abuse of human rights. The Commission noted that the Law and Order unit was the worst problem and called for it to be disbanded. It said that the unit seemed to “operate under political instructions and without accountability to the ZRP command structures.”⁷⁴ The Commission urged Zimbabwe to “avoid any further politicization of the police service.”⁷⁵

Human Rights Watch investigations into subsequent police behavior show that this advice went unheeded. The ZANU-PF-led government has never condemned partisan policing nor taken action against police abuse of power. The cue has come from the highest level. In September 2006, following police beatings of Zimbabwe Congress

⁷³ “Chihuri trashes impartiality of police,” *The Daily News (Zimbabwe)*, January 16, 2001.

⁷⁴ The African Commission Mission Report, *Executive Summary of African Commission’s Fact-Finding Mission to Zimbabwe 24 to 28th June 2002*, (2002).

⁷⁵ Ibid.

of Trade Union (ZCTU) leaders while in custody, President Mugabe said “when the police say move, move. If you don’t move, you invite the police to use force.”⁷⁶

By 2007 Zimbabwe’s police force had become notorious for supporting ZANU-PF and harassing and torturing opposition and civil society leaders. For example, police and state security officers arrested and severely beat opposition and civil society leaders on March 11, 2007, in an attempt to prevent a prayer meeting at Zimbabwe Grounds in Highfield, Harare.⁷⁷ President Mugabe boasted about these beatings and publicly supported the police’s conduct. Addressing a ZANU-PF rally on March 29, 2007, Mugabe said, “of course he [MDC leader Tsvangirai] was bashed. He deserved it... I told the police to beat him.”⁷⁸

Police Inaction when ZANU-PF and Allies are Implicated in Political Violence

Human Rights Watch interviewed serving police officers who spoke of a national-level policy to not pursue ZANU PF militia and other allies of ZANU-PF implicated in political violence. Such a policy violates Zimbabwe’s obligations under international law to ensure that victims of human rights violations “have an effective remedy.”⁷⁹ According to the UN Human Rights Committee, which monitors state compliance with the ICCPR, “[a] failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”⁸⁰

A detective inspector in the Law and Order Section (Criminal Investigation Division) based in Harare explained to Human Rights Watch the approach of the police in “political” matters:

⁷⁶ “You deserve the beatings, Mugabe tells trade unionists,” *Association of Zimbabwe Journalists*, http://www.zimbabwejournalists.com/story.php?art_id=1043&cat+4 (accessed November 5, 2008).

⁷⁷ Human Rights Watch, *Bashing Dissent: Escalating Violence and State Repression in Zimbabwe*, vol. 19, no. 6(A), May 2007, <http://hrw.org/reports/2007/zimbabw0507/>.

⁷⁸ Ibid.

⁷⁹ International Covenant on Civil and Political Rights (ICCPR), G.A.res.2200A(XXI), U.N.Doc.A/6316 (1966), Article 2(3)(a).

⁸⁰ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15.

You do not deal with a political or politically sensitive case without first getting clearance from your superior on duty, and usually these superiors are members or active supporters of ZANU-PF who decide the matter and give directions based on their political affiliation. In fact, it is classified as misconduct for a junior police officer to deal with a political matter without consulting a superior. For instance, you cannot just extract information from a witness in matters involving MDC without clearance and directives from your superior.⁸¹

A police constable serving in Mashonaland East province told Human Rights Watch how senior police officers addressed several police camps in Mashonaland East on April 7, 2008, and in each case issued clear instructions on how to handle political violence cases:

Senior police officers came to address us. We knew by the rank displayed on their clothes that they were senior, but they were not introduced to us. They probably came from police headquarters in Harare. One of them said, “You are under instruction not to arrest ZANU-PF supporters who may be implicated in political violence or whom you may come across committing acts of political violence. Do not use force when dealing with them. At most, you may, when you find them in the act of committing political violence, gently disperse them, but make no arrests, I repeat, do not arrest ZANU-PF supporters.”⁸²

Not only did senior officers announce this directive, they also said that ZANU-PF supporters were fully aware of this position and acted in the full knowledge that law enforcement agents were not going to act against them. A member of the ZANU-PF militia, operating a base in Epworth in Harare, openly boasted to Human Rights Watch that no ZANU-PF member spends a night in police custody no matter what crime they committed.⁸³ He told Human Rights Watch:

⁸¹ Human Rights Watch interview with a Police Detective Inspector, Harare, August 28, 2008.

⁸² Human Rights Watch interview with a police constable, Marondera, August 21, 2008.

⁸³ Human Rights Watch interview with a member of ZANU-PF youth militia, Epworth, August 27, 2008.

I can assure you that no member of ZANU-PF, no son of the revolution gets to spend a night in police custody no matter what crime they commit, the police belong to ZANU-PF so they cannot arrest their comrades. If they do, ZANU-PF leaders will order immediate release of any ZANU-PF member arrested.⁸⁴

Lack of Investigations into Extrajudicial Killings after the March 29 Elections

Human Rights Watch investigations have already documented widespread state-sponsored political violence in Zimbabwe after the March 29, 2008 elections.⁸⁵ This violence claimed at least 163 lives—nearly all of whom were MDC supporters—in extrajudicial killings perpetrated by ZANU-PF supporters and their allies. Thousands of MDC supporters were also brutally assaulted. Since then, Human Rights Watch is unaware of a single prosecution, let alone a conviction, for any of the killings.

Police have made arrests in only two cases; even in these, the accused were quickly released without charge.⁸⁶ Police made arrests in the cases of Tapiwa Mbwanda from Hurungwe, who was killed on April 5, allegedly by ZANU-PF youths and self-styled war veterans and in the case of former police officer Kingsley Muteta from Mashonaland East province, who died at a private hospital in Harare on July 26 following an attack by 12 suspected ZANU-PF youths at his home in Mudzi. In the Mbwanda case, the four accused were set free after a local ZANU-PF leader had demanded their release; while in the Muteta case, those implicated were released under unclear circumstances.⁸⁷

Although police reports were filed in all the other cases, Human Rights Watch is not aware of the police conducting even a rudimentary investigation, let alone making arrests. In most of the cases, victims' families or eyewitnesses even supplied the names of suspected perpetrators to the police.

⁸⁴ Ibid.

⁸⁵ See Human Rights Watch *"Bullets for Each of You"*; Human Rights Watch *"They Beat Me Like a Dog": Political Persecution of Opposition Activists and Supporters in Zimbabwe*, August 2008, <http://hrw.org/reports/2008/zimbabwe0808/>

⁸⁶ Human Rights Watch interviews with Tawanda Mbwanda, Harare, August 22, 2008, and with persons familiar with the killing of police officer Kingsley Muteta, Harare, August 29, 2008.

⁸⁷ Ibid.

A survivor of attacks by ZANU-PF militia and “war veterans” on Chaona village in Mashonaland Central province on May 5 that left six men dead⁸⁸ told Human Rights Watch:

[The] perpetrators...are well known. We made several reports to police and gave the names of the perpetrators to police but no arrests have been made. These people who tortured me and killed my uncle and five other villagers are still roaming freely in our community, boasting about their evil deeds with not a single word from the police. In fact these killers are walking as “heroes” in the community, seemingly above the law.⁸⁹

On June 20 a group of ZANU-PF supporters killed MDC Councilor Gibbs Chironga, and three others in Chiweshe, Mashonaland Central province.⁹⁰ Gibbs’s sister told Human Rights Watch that the police had neither investigated nor arrested anyone in connection with the death of her brother and three others.⁹¹

Deputy Mayor for Harare and MDC Councilor for Ward 42 Emmanuel Chiroto, has been unable to get police to investigate the abduction and subsequent murder of his wife by a suspected ZANU-PF militia on June 16.⁹² Chiroto told Human Rights Watch:

The police have not been cooperative at all. [They] refuse to follow all the leads. For instance, at Borrowdale police station they are aware that when my wife was abducted on the fateful day, the people who abducted her also took a bag containing various certificates. A certain man recently brought back the certificates but police have not questioned him on where he found [them].⁹³

⁸⁸ Human Rights Watch, *Bullets for Each of You*, p. 38.

⁸⁹ Ibid. p.36.

⁹⁰ Human Rights Watch, *“They Beat Me like a Dog”: Political Persecution of Opposition Activists and Supporters in Zimbabwe*, August 2008, <http://www.hrw.org/reports/2008/zimbabw0808/>, p.10.

⁹¹ Human Rights Watch interview with Chironga’s sister, Harare, August 27, 2008.

⁹² The killing of Chiroto’s wife is documented in Human Rights Watch, *“They Beat Me like a Dog.”*

⁹³ Human Rights Watch interview with Emmanuel Chiroto, Harare, August 28, 2008.

Human Rights Watch interviewed Philimon Chipiyo, MDC deputy mayor of Chitungwiza, about progress in the investigation of the killing of his son and three other young men in Chitungwiza on June 19. Chipiyo told Human Rights Watch:

When ZANU-PF supporters came to attack my house on... June 19—when they also shot and killed my son and three other young men—I was able to identify a community police officer who came driving his truck. I only know his first name, Farai. When I went to report the case at Chitungwiza police station the following day, the team that came to investigate came in Farai’s car with Farai driving the same car that I had seen when my son was killed. One police officer who came to my house said, “Your report is false, we shall conduct our own investigations in due course.” They never returned to carry out investigations and no one has been arrested in connection with the murders that took place at my house.⁹⁴

Likewise, police refused to investigate the killing of Joshua Bakacheza, an MDC driver who was abducted on June 24 by suspected ZANU-PF supporters and whose body was later found on July 5 dumped in Beatrice (about 50 kilometers south of Harare) in an advanced state of decomposition.⁹⁵ Despite reports of his abduction, police insisted that Bakacheza’s death was “non-political.” No arrests have been made.

Lack of Investigation into Other Post-Election Abuses

On June 12 during the run-off election campaign period, following a presidential campaign visit to Chegutu by MDC leader Morgan Tsvangirai, several houses belonging to senior MDC officials were petrol-bombed by known ZANU-PF militia members. One house belonged to Gift Konjana who filed a report with the police to no avail. He told Human Rights Watch:

⁹⁴ Human Rights Watch Interview with Philimon Chipiyo, Chitungwiza, August 24, 2008.

⁹⁵ Human Rights Watch interview with Bakacheza’s brother, Chegutu, August 29, 2008.

When we went to Chegutu police station to report that our houses....had been destroyed and we gave names of the ZANU-PF militia who had destroyed our houses to police, they did not even bother to take down our statement. One police officer said, “Our hands are tied. We cannot do anything where ZANU-PF is involved. However, if your case was not political we could have helped you—all political violence matters are off limits for the police.”⁹⁶

The same sentiments were echoed by a police officer operating in Mashonaland West province who told Human Rights Watch:

We have the dockets ready. We know all the ZANU-PF culprits in this area who are responsible for various acts of political violence. We see them every day. We are ready to arrest if the order is given. Otherwise one cannot just go out and arrest a ZANU-PF supporter without...clearance. It is like walking into a lion’s den; that is just not done.⁹⁷

The case of Kadombo Chitokwa illustrates the police’s continuing unwillingness to investigate crimes against MDC activists. He told Human Rights Watch:

I was abducted by ZANU-PF youths on June 24 and taken to a base at a Shamva farm where I was beaten, verbally abused and detained for 42 days. I was released on August 7. On August 9 I went to make a report at Shamva police station. The police told me to go home as they would come and investigate the matter as soon as possible. After four days...I went back to the police...since they had not come to my home. This time the police told me, “We cannot investigate your case. Consider it a thing of the past. It is over now. It is time now to focus on the ongoing talks between ZANU-PF and MDC.”⁹⁸

⁹⁶ Human Rights Watch interview with Gift Konjana, Chegutu, August 29, 2008.

⁹⁷ Human Rights Watch interview with police officer, Chinhoyi, August 25, 2008.

⁹⁸ Human Rights Watch Interview with Kadombo Chitokwa, Bindura, August 19, 2008.

Harrison Mudzuri, MDC member of parliament for Zaka West in Masvingo province, whose homestead was attacked by alleged ZANU PF militia on August 14, went to a police station in his constituency to inquire about progress on the case, which he had previously reported. He told Human Rights Watch:

At the police station I discovered that the officer-in-charge... had recently been transferred to another part of the country. The new officer-in-charge told me, “I am new at this post, and have no record of any political violence ever being reported at this police station. If you wish to pursue a matter that was reported before I took office...get in touch with the former officer in charge. Unfortunately, I do not know where he has been posted.” No investigations have been carried out and no arrests have been made and I have no hope that the people who attacked my home and my family will ever be brought to justice.⁹⁹

Police Persecution of MDC Leaders, Supporters and Perceived Supporters

Human Rights Watch has gathered extensive accounts of police arbitrarily arresting and detaining MDC leaders and activists. The systematic nature of these cases indicates intent by the police force to persecute perceived ZANU-PF opponents.

Several activists and their lawyers have also alleged that the police have conjured elaborate and fictional “high-risk security” cases in order to justify the arrest and detention of MDC supporters.¹⁰⁰ An MDC lawyer, Alec Muchadehama, told Human Rights Watch that the standard police pattern was to randomly arrest known MDC activists without carrying out proper investigations. If it turned out the person was falsely accused, then a team of police was tasked to create a case against the accused.¹⁰¹

⁹⁹ Human Rights Watch interview with Harrison Mudzuri, Harare, August 21, 2008.

¹⁰⁰ Human Rights Watch interview with Alec Muchadehama, Harare, August 19, 2008.

¹⁰¹ Ibid.

Already in August 2004, Justice Sandra Mungwira had drawn attention to the police's propensity to arrest MDC activists on trumped-up charges. In acquitting six MDC supporters charged with the murder of a war veteran, Justice Mungwira had found that the 14 police officers tasked with investigating the case had "spewed untruths," their records were "an appalling piece of fiction," and they had acted shamefully when they tortured MDC activists to force them to confess to a crime they did not commit.¹⁰² A police constable, who was part of a team tasked with fabricating evidence against MDC activists in Harare after the March 29, 2008, elections, told Human Rights Watch:

The officer-in-charge of Law and Order Section, Harare Charge Office, made it clear to all nine police officers in my team that we had to arrest and detain MDC activists by any means necessary, and that it was our responsibility to make up cases against MDC activists since we are "at war" with MDC.¹⁰³

Marvellous Khumalo, MDC member of parliament for St Mary's Chitungwiza, told Human Rights Watch:

On four occasions between March and July 2008 I was arrested by police at St Mary's police station when I had gone there to enquire about detained MDC supporters from my constituency. On each of those four occasions the police accused me of inciting political violence in my constituency. MDC victims of political violence now fear to go to police because the police tend to arrest the victims and not the perpetrators of violence.¹⁰⁴

On April 25, 2008, more than 40 armed men raided the MDC headquarters in Harare where victims of political violence from around the country, numbering some 250,

¹⁰² "Mugabe moulds pliant judges," Institute of War and Peace Reporting, (May 30, 2006), http://www.iwpr.net/?p=acr&s=f&o=321302&apc_state=heniacr2006 (accessed October 30, 2008).

¹⁰³ Human Rights Watch interview with police constable, Harare, August 29, 2008.

¹⁰⁴ Human Rights Watch interview with Marvellous Khumalo, Chitungwiza, August 26, 2008.

had sought refuge.¹⁰⁵ Police arrested all the occupants and detained them at several police stations in Harare.

The government's stated aim was to arrest persons suspected of committing acts of assault and arson around the country.¹⁰⁶ Yet, among those detained were elderly people, young children accompanying their arrested mothers and mothers who had suckling babies and toddlers. When Evelyn Masaiti, MDC member of parliament for Dzivarasekwa, went to Harare Central Police to find out about the arrested mothers and babies, she too was arrested.¹⁰⁷ A lawyer representing the MDC supporters told Human Rights Watch:

Here we have a case where victims are being punished for being victims, a true case of double jeopardy. They escape from the wrath of marauding war veterans and ZANU-PF militia only to fall into the wrath of rampaging armed policemen.¹⁰⁸

Police Response to Court Rulings

As noted earlier in this report, police refused to enforce a series of court orders handed down by the High Court and Supreme Court declaring farm invasions illegal and directing police to remove the occupiers.¹⁰⁹ On June 22, 2008, police defied a High Court order and banned an MDC presidential campaign rally in Harare from taking place. Police officers beat MDC supporters who had turned up for the rally. The MDC was forced to cancel the rally, one of many incidents contributing to its decision to pull out of the presidential run-off election.¹¹⁰ On the same occasion, police watched as ZANU-PF supporters went on a rampage, beating MDC supporters

¹⁰⁵ "Zimbabwe: Surge in State-Sponsored Violence," Human Rights Watch news release, April 25, 2008, <http://www.hrw.org/english/docs/2008/04/25/zimbab18653.htm>.

¹⁰⁶ Evelyn Masaiti and others vs. Minister of Home Affairs and others (HC 2381/2008).

¹⁰⁷ Ibid.

¹⁰⁸ Human Rights Watch interview with Jeremiah Bamu, MDC lawyer, Harare, August 27, 2008.

¹⁰⁹ See section on the judiciary above.

¹¹⁰ Human Rights Watch interview with an MDC official Harare, June 22, 2008.

and seriously injuring scores of them. No arrests of ZANU-PF supporters were made.¹¹¹

On June 14, 2008, the police defied a High Court order to present detained MDC Secretary General Tendai Biti in court by 10 a.m. that day.¹¹² Instead, the police brought prosecutors from the Office of the Attorney General, who told the court that they had not brought Biti because they doubted the authority of the High Court order. Eventually Biti was produced.¹¹³

In the case of the arbitrary arrest and detention of lawyer and MDC Member of Parliament Eric Matinenga in June 2008, the police and prosecution repeatedly refused to comply with a High Court order directing his immediate release.¹¹⁴

Police Harassment of Civil Society Leaders and Activists

On August 28, 2008, Assistant Inspector Mwenje of Rhodesville Police Station in Harare issued orders to riot police to stop the Crisis in Zimbabwe Coalition (CZC) Annual General Meeting from proceeding on the grounds that the meeting violated section 4 of the Public Order and Security Act.¹¹⁵

WOZA activists have also been subjected to frequent arrests, police harassment and brutality. Since February 14, 2003, WOZA Coordinator Jenni Williams has been arrested and detained by police 32 times, invariably under the Public Order and Security Act. Williams told Human Rights Watch that police routinely assaulted her and other WOZA members during arrest and in custody. On as many as 28 occasions, arresting officers told her they were acting on orders from above and had no knowledge of the crime she was alleged to have committed.¹¹⁶

¹¹¹ Human Rights Watch interview with lawyer, Alec Muchadehama, who served the Court Order on the police and witnessed police defying the order, Harare, August 18, 2008.

¹¹² Court reports on file with Mbidzo, Muchadehama and Associates Legal Practitioners, reviewed on August 25, 2008.

¹¹³ Ibid.

¹¹⁴ *State vs. Eric Matinenga*, Rusape magistrates court (CRB 840/08).

¹¹⁵ Section 4 of the Public Order and Security Act invoked by the police in this case does not require police to grant permission for a meeting, but simply to be notified. CZC had duly sent notification to police. However, as in many other cases involving civil society, police appear to deliberately misinterpret this provision in order to stop civil society meetings.

¹¹⁶ Human Rights Watch interview with Jenni Williams, London, September 16, 2008.

On June 21 police in Bulawayo assaulted and arrested two WOZA members and held them for two days before releasing them without charge. On August 13 nine women members of WOZA were arrested in Bulawayo; they were released without charge on August 16.¹¹⁷

On June 3 five senior police officers from the Law and Order Section of the Criminal Investigation Division, Harare, visited Abel Chikomo, executive director of the Zimbabwe Human Rights NGO Forum, at his offices in Harare and warned him and his organization not to continue working in the area of human rights advocacy or they would face unspecified consequences.¹¹⁸

On June 11 police ordered several NGOs in Gweru to shut down on the authority of a letter banning food aid operations from Minister of Public Service, Labour and Social Welfare Nicholas Goche.¹¹⁹ On June 9 armed police, Central Intelligence Organization officers, and soldiers raided a building that houses various church-based civic groups and arrested 10 people, charging them with possessing subversive material. The 10 were released on June 13 without going to court after the attorney general's office refused to prosecute them, citing lack of evidence.¹²⁰

Attacks, Harassment and Abuse of Lawyers Taking up Political Cases

According to the president of the Law Society of Zimbabwe, most lawyers were now unwilling to take on so-called political cases for fear of the personal hazards associated with confronting the government in representing MDC and civil society activists.¹²¹

A small number of lawyers do buck this trend.¹²² But they have adopted a strategy of not visiting police stations alone, taking at least two colleagues who can alert other

¹¹⁷ Ibid.

¹¹⁸ Human Rights Watch interview with Abel Chikomo, London, September 16, 2008.

¹¹⁹ "Zimbabwe: Crackdown Intensifies on Opposition Leaders and NGOs," Human Rights Watch news release, June 14, 2008, <http://www.hrw.org/english/docs/2008/06/13/zimbab19131.htm>

¹²⁰ Ibid.

¹²¹ Comments made by Law Society of Zimbabwe President Beatrice Mtetwa, in an address to the England and Wales Law Society, London, October 2007, on file with ZLHR, reviewed August 29, 2008.

¹²² Human Rights Watch interview with lawyer, Harrison Nkomo, Harare, August 24, 2008.

lawyers who can trace them following their arrest and detention.¹²³ Lawyers report that such harassment is mainly at the hands of police in the Law and Order unit of the Criminal Investigations Division, which has frequently been accused of abusing the rights of detainees and their lawyers in political cases.¹²⁴ Previously, the African Commission had criticized the same Law and Order Section for serious human rights abuses.¹²⁵

According to the Law Society of Zimbabwe, police are frequently uncooperative and hostile to lawyers, and many have long since ceased to respect the country's legal profession.¹²⁶ In May 2007 police arrested lawyers Andrew Makoni and Alec Muchadehama on spurious charges of "attempting to defeat course of justice through a falsehood during the course of a bail application."¹²⁷ The two often represent the MDC and others in political cases.

A human rights lawyer told Human Rights Watch how, on June 10, 2008, he was made to search for clients accused of political violence at more than 13 police stations in Harare simply because arresting police officers at the Law and Order unit, Harare Central Police Station refused to give accurate details of where his clients were being held.¹²⁸ Eventually, after more than 10 hours of searching, driving from one police station to another, he located the clients at Avondale Police Station, where, at the beginning of the search he had been told emphatically that his clients were not there. His clients told him that they were held at that particular police station for the whole day.¹²⁹

Police arrested MDC Secretary General Tendai Biti at Harare airport on June 12, 2008, on his return from South Africa and immediately whisked him away. His lawyers spent several days trying to locate where the police were holding him. After receiving

¹²³ Human Rights Watch interviews with lawyers taking up political cases, Harare, August 21, 22, and 23, 2008.

¹²⁴ Human Rights Watch interviews with lawyers, Marondera, August 27, 2008.

¹²⁵ The African Commission Mission Report, *Executive Summary of African Commission's Fact-Finding Mission to Zimbabwe 24 to 28th June 2002*, (2002).

¹²⁶ Arnold Tsunga and Otto Saki, *Persecution of Lawyers in Zimbabwe*, Law Society of Zimbabwe, 2007.

¹²⁷ Human Rights Watch interview with Lawyer, Alec Muchadehama, Harare, August 18, 2008.

¹²⁸ Human Rights Watch interview with lawyer, Harare, August 29, 2008.

¹²⁹ Ibid.

information that Biti was being moved among several police stations—including Harare Central, Machipisa, Avondale, Goromonzi and Matapi police stations—the lawyers resolved to make a habeas corpus application to force the police to produce Biti in court.¹³⁰ The court granted an order directing police to produce Biti in court which the police eventually did after initially ignoring the court order.

Police Engagement in Partisan Politics

Contrary to provisions of the Police Act,¹³¹ several senior police officers are openly ZANU-PF supporters and act principally in the interests of ZANU-PF.

In Manicaland province in May 2008 the officer-in-charge forced all personnel in a police camp to wear ZANU-PF T-shirts while carrying out their duties.¹³² In several other camps, police were instructed to refer to each other not by their rank but by the title “comrade”—a term used almost exclusively by ZANU-PF supporters.¹³³

This open support for a political party does not extend to the opposition. At a police camp in Mashonaland Central province, 15 police officers were arraigned before an internal police court on April 17, 2008, to face allegations that they “celebrated an MDC victory” on March 29.¹³⁴

A police officer based in Harare told Human Rights Watch:

Since March 29 a ZANU-PF branch was set up within the camp and it holds weekly meetings on a Thursday evening. Attendance at these meetings is mandatory. I make it a point to attend each weekly meeting and say a few words each time because if I do not attend I risk being labeled an MDC supporter. Once you are labeled an MDC

¹³⁰ Court reports on file with Mbidzo, Muchadehama and Associates Legal Practitioners, reviewed August 25, 2008.

¹³¹ Police Act [Chapter 11:10] Schedule of Offences, sec. 48 (1) provides: Actively participating in politics constitutes an offence. This includes wearing clothing bearing political messages.

¹³² Human Rights Watch interview with Police Officer in Manicaland, August 26, 2008.

¹³³ Reports of such instructions were received in several provinces across the country.

¹³⁴ Human Rights Watch interview with police officer, Mashonaland Central, August 19, 2008. The police officers were issued with written warnings about their “alleged conduct” and were informed that they would be kept under surveillance.

supporter, you are victimized and you can be guaranteed that you will never be promoted. Promotion in the police now is not on merit, but is based on active participation in ZANU-PF meetings and activities. That is what in police circles is called “defending the country.”¹³⁵

According to a police officer based in Mashonaland province, feigning support for ZANU-PF is a crucial survival skill within the police force. He explained to Human Rights Watch:

Most of us low-ranking officers, we are just as fed up with this ZANU-PF government as everyone else, but circumstances force us to obey orders to harass MDC supporters. It is dangerous to appear to be openly professional when dealing with political cases. If...there is even the slightest suspicion that you are sympathetic to opposition forces then you may even lose your job. I know that the officer-in-charge of Mazowe Central Police Station, was forcibly and on short notice transferred to another station in Centenary as punishment for appearing to be sympathetic to MDC supporters. Again, just before end of April 2008, the officer-in-charge for Shamva tried by all means to be professional and non-partisan, but was dismissed from his job because ZANU-PF leaders in the area complained about him.¹³⁶

According to a police officer present, on April 29, 2008, Assistant Commissioner Musarashana Mabunda of the Law and Order Section of the Criminal Investigations Division called and addressed a meeting of all police officers and their spouses at Mutare Main Camp. He reportedly told the police officers that they must all support ZANU-PF or resign immediately.¹³⁷

¹³⁵ Human Rights Watch interview with police officer, Harare, August 27, 2008.

¹³⁶ Human Rights Watch interview with police officer, Bindura, August 19, 2008.

¹³⁷ Human Rights Watch interview with a police officer present at the Mutare police camp, Marondera, August 27, 2008.

Police Complicity in ZANU-PF Abuses

In several provinces, members of ZANU-PF militia have unlawfully taken up “policing duties,” carrying out arbitrary arrests, investigations and at times meting out punishment on MDC supporters and other Zimbabweans. One militia member told Human Rights Watch of an agreement with the police in the Mbare suburb of Harare that gave the militia exclusive control of vast areas of Mbare where police no longer venture:

We reached a cordial agreement with the police in Mbare through Matapi officer-in-charge, that police will let ZANU-PF Chipangano [a youth militia]¹³⁸ be responsible for administering justice and maintaining order at the main bus terminus at Mbare Musika, and the surrounding... markets at Mupedzanhamo. Our job is to make sure that the area is free of MDC people; no MDC supporter is allowed to become a trader at Mupedzanhamo or at Mbare Musika.

We also patrol all blocks of flats... to make sure that all occupants have ZANU-PF membership cards. If a crime is committed in our area, a report is made to us and we deal with the matter, not the police. Only two days ago, a man was caught stealing from a bus and we arrested him and took him to Mbare 3 base. We beat him and “sentenced” him to clean our offices for two weeks as punishment.¹³⁹

One notable example of the alliance between ZANU-PF militia, the army and the police involves a 23-year-old man from Manicaland province who was kidnapped by ZANU-PF militia on May 27, 2008. They accused him of being an MDC activist and attempted to kill him by throwing him onto a bonfire three times. He told Human Rights Watch:

¹³⁸ ZANU-PF Chipangano is a youth militia group that operates in the Mbare suburb of Harare. The group was largely responsible for spearheading the ZANU-PF 2008 election campaign in Mbare. Chipangano has been accused by local human rights groups of waging a terror campaign against MDC supporters in Mbare since 2003.

¹³⁹ Human Rights Watch interview with ZANU-PF Chipangano member, Harare, August 29, 2008.

When I jumped out of the fire for the third time they tied my hands on my back and one of them inserted a burning log into my anus, at which point I passed out. The militia then took me to an army base at Tsanzaguru where I was handed over to members of Zimbabwe National Army who also beat me for two days. After that the... army... handed me over to Rusape Police Station where I was promptly charged with committing political violence, endured a further two weeks in custody before being released on bail.¹⁴⁰

On June 25, 2008, 63 Mbare families were evicted from their homes by the Chipangano militia. The militia told them that they were being evicted because they supported the MDC in the March 29 elections. On June 26 three family members went to file a report at Matapi police station in Mbare. When the report was made, the officer-in-charge allegedly first phoned the ZANU-PF youth leader in the area before directing complainants to go and meet with the youth leader at Mudyanadzo Bar in Shawasha Flats, Mbare.¹⁴¹ One of those bringing a complaint told Human Rights Watch:

When the Chipangano youths came at Mudyanadzo, they said, “We now want to teach you that we are above the police—they can do nothing about us, they cannot help you.” Then they proceeded to beat us using hosepipes, iron bars, knobkerries and sjamboks from 9 a.m. until 1 p.m., after which they let us go. They remained in their office laughing. We went to hospital and reported the assault, this time, at Mbare Police Station. Since that day no arrests have been made and yet I know the people who evicted us and beat us and these people are also known to the police in Mbare. Even now, ZANU-PF activists are staying in our homes from where they evicted us.¹⁴²

A police officer based in Harare told Human Rights Watch that police had no control over ZANU-PF youths operating in Harare:

¹⁴⁰ Human Rights Watch interview with victim, Marondera, August 25, 2008.

¹⁴¹ Human Rights Watch interview with victim, Harare, August 23, 2008.

¹⁴² Ibid.

They go around arresting people for various offenses... and hand them over to us at Harare Central. I have personally witnessed this on a number of occasions. The problem is that they do not know the law at all and they are not authorized to do that. But we cannot stop them because at all times they will be in the company of a senior police officer.¹⁴³

Police Abuses since the Power-Sharing Agreement

Since the signing of a power-sharing agreement between ZANU-PF and the MDC on September 15, there is no evidence that the conduct and attitude of the police towards critics of ZANU-PF have changed.

On the day of the signing, police beat up and arrested several MDC supporters who came to witness the signing ceremony at Rainbow Towers in Harare and who later clashed with ZANU-PF supporters outside the venue.¹⁴⁴ The police did not arrest any of the ZANU-PF supporters, while several MDC supporters were arrested and briefly detained.¹⁴⁵ The MDC supporters were later released without charge on the same day.

On September 17 riot police violently broke up a peaceful protest march by students at Bindura University (north of Harare) and detained 10 student leaders for more than 12 hours without food or water.¹⁴⁶ The students, including seven women, were assaulted by police in custody. The police repeatedly told them that their mission was to “flush out and deal with the little MDC troublemakers at the institution.” The police also said the agreement between ZANU-PF and MDC was not relevant to police work. The students were later released without charge.¹⁴⁷

In Masvingo on September 18 police arrested the president of the Progressive Teachers’ Union of Zimbabwe (PTUZ), Takavafira Zhou. He was held without charge in solitary confinement for four days without access to water, a toilet or blankets,

¹⁴³ Human Rights Watch interview with a police officer, Harare, August 29, 2008.

¹⁴⁴ Human Rights Watch telephone interview with eyewitness to the arrests, September 15, 2008.

¹⁴⁵ Human Rights Watch telephone interview with an eyewitness, September 15, 2008.

¹⁴⁶ Human Rights Watch telephone interview with one of the arrested student leaders, September 21, 2008.

¹⁴⁷ Ibid.

before being released on September 22.¹⁴⁸ An executive member of PTUZ told Human Rights Watch that the arrest was political persecution following PTUZ's call for a national teachers' strike to protest low salaries.¹⁴⁹

In yet another sign of unchanged attitudes, Human Rights Watch received information that a police disciplinary committee on September 24, 2008, ordered the detention of serving police officer and former national football star Masimba Dinyero for 21 days for criticizing ZANU-PF leader Robert Mugabe in a casual discussion with fellow officers.¹⁵⁰

At the same time, media reports suggest that Police Commissioner Chihuri met Mugabe and again threatened to resign if MDC were assigned the Home Affairs Ministry in a new government of national unity, stating that he was not prepared to work directly under any MDC minister.¹⁵¹ A dispute between MDC and ZANU-PF over who should serve as home affairs minister is one reason why the September 15 power-sharing agreement has reached the point of collapse.

More recently, on October 16, police arrested several WOZA supporters in Bulawayo, briefly detained them and later released all but two without charge.¹⁵² The two who remain in custody are the leaders of WOZA, Jenni Williams and Magondonga Mahlangu who have been charged with disturbing peace and are being denied bail.¹⁵³

On October 27 police tear-gassed and beat about 150 activists from the Women's Coalition of Zimbabwe (WCoZ) and the Zimbabwe National Students Union (ZINASU) who were holding a peaceful demonstration in Harare. The police arrested 42 women from the WCoZ. The demonstrators were calling for a resolution to the political

¹⁴⁸ Human Rights Watch telephone interview with an executive member of PTUZ familiar with the case, September 27, 2008.

¹⁴⁹ Human Rights Watch telephone interview with an executive member of PTUZ, September 27, 2008.

¹⁵⁰ Human Rights Watch telephone interview with a police officer familiar with the case, October 4, 2008.

¹⁵¹ "Chihuri threatens to resign," *The Zimbabwean*, October 2, 2008, http://www.thezimbabwean.co.uk/index.php?option=com_content&view=article&id=15562:chihuri-threatens-to-resign&catid=31:top%20zimbabwe%20stories&Itemid=66 (accessed October 10, 2008).

¹⁵² "Williams and Mahlangu remain in custody in Mlondolozhi Prison – third week," WOZA Press Statement, November 3, 2008, www.wozazimbabwe.org (accessed November 3, 2008).

¹⁵³ Ibid.

impasse between ZANU-PF and the MDC so that the country's leaders can address the severe food shortages in the country.¹⁵⁴ The arrested women were forced to pay an on-the-spot fine and were later released the same day.

¹⁵⁴ "Zimbabwe: End Crackdown of Peaceful Demonstrators," Human Rights Watch news release, October 28, 2008, <http://hrw.org/english/docs/2008/10/28/zimbab20087.htm>.

VIII. Restoring the Rule of Law and Addressing Accountability under a New Government

In a country where millions are facing severe food shortages and where inflation is running at 2.79 quintillion percent—a country where half the population is uncertain where food will come from in the coming weeks—restoring the rule of law and addressing accountability may seem an elitist concern divorced from the priorities of ordinary people. But during 2008 Zimbabweans have shown their determination to challenge those in power and have demanded change through the ballot box. The reality is that over a long period of time, ZANU-PF has been transforming the institutions of justice into critical agents of repression and, in 2008, they have been deployed as shock troops in its resistance to change. The reform of the judiciary and the police is fundamental to the restoration of normality and respect for human rights not just in Zimbabwean political affairs, but also in the lives of ordinary Zimbabweans.

Zimbabwe has a history of violent elections since attaining majority rule in 1980. It also has a history of granting amnesty to perpetrators of political violence, who are invariably ZANU-PF supporters. Granting broad amnesties to those implicated deprives victims of the right to a remedy, sends a message that the government condones politically motivated crimes, and encourages rather than deters future political violence.

In 1988 the government of Zimbabwe issued Clemency Order Number 1, pardoning all people involved in human rights violations committed between 1982 and 1987, benefiting mainly state security forces.¹⁵⁵ In 1993 President Robert Mugabe granted amnesty to two state agents convicted of attempted murder of an opposition candidate—Patrick Kombayi who represented Zimbabwe Unity Movement in Gweru Urban—in the 1990 elections.¹⁵⁶ In 1995 President Mugabe again issued amnesty for all politically motivated crimes and human rights abuses, including beatings, arson,

¹⁵⁵ Clemency Order Number 1 of 18 April 1988.

¹⁵⁶ Amnesty International, *Zimbabwe: Toll of Impunity*, AFR 46/034/2002, June 25, 2002, <http://www.amnesty.org/en/library/info/AFR46/034/2002>.

kidnapping and torture.¹⁵⁷ On October 6, 2000, following widespread political violence during parliamentary elections, President Mugabe pardoned those responsible for politically motivated crimes committed during the January-July 2000 campaign.¹⁵⁸

Although to date no formal amnesty has been granted for politically motivated crimes in the 2008 elections, the lack of judicial independence and the partisanship of the police already amounts to a de facto amnesty for ZANU-PF supporters who participated in political violence.

Zimbabwe's power-sharing agreement was signed at a time when scores of victims of human rights abuses were seeking justice and accountability. In the preamble to the agreement, the parties dedicated themselves to permanently putting an end to polarization, divisions, conflict and intolerance that had characterized Zimbabwean politics and society.¹⁵⁹ On signing the agreement President Robert Mugabe said, "We are committed to the deal. We will do our best." Prime Minister-designate Morgan Tsvangirai said, "I have signed this agreement because I believe it represents the best opportunity for us to build a prosperous Zimbabwe."¹⁶⁰ In the text of the agreement, the parties further expressed determination to act in a manner that demonstrated respect for the democratic values of justice, fairness, openness, tolerance, equality, and respect for all persons and human rights.

Despite such words, it remains evident that ZANU-PF is continuing to use the justice administration system as a weapon against its perceived opponents—the MDC and critical elements of civil society. The institutions of repression remain intact and there is no evidence of change in the conduct and attitude of the police, senior judges or other security organs.

¹⁵⁷ Clemency Order Number 1 of 1995.

¹⁵⁸ Clemency Order Number 1 of October 6, 2000.

¹⁵⁹ "Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the two Movement for Democratic Change (MDC) formations, on resolving the challenges facing Zimbabwe" (Agreement between ZANU-PF and MDC), Harare, September 15, 2008.

¹⁶⁰ Statements by Robert Mugabe and Morgan Tsvangirai on signing the power-sharing agreement, Harare, September 15, 2008.

Sadly, the agreement was largely silent on the issue of justice. Crucially, it did not lay out clear steps or timelines for fundamental justice system reforms that would help restore fundamental human rights protections and the rule of law. Human Rights Watch has long called for justice-centered policies in Zimbabwe, and had hoped the power-sharing agreement would at least send a clear message to abusers on the likelihood of accountability and offer the hope of justice to victims of human rights violations.

In the end, the power-sharing agreement only made a passing reference to this central issue, noting the duty of all political parties and individuals to “respect and uphold the Constitution and other laws of the land, and adhere to the principles of the rule of law.”¹⁶¹

The main obstacle to implementing the agreement is the allocation of cabinet positions. Mugabe had unilaterally allocated all senior ministries—including Justice and Home Affairs, as well as Defense, Foreign Affairs and Finance—to ZANU-PF members. Human Rights Watch believes that ZANU-PF’s retaining control of the Justice and Home Affairs ministries would undermine any hope in Zimbabwe for genuine reforms for justice and accountability and an end to impunity.

Human Rights Watch urges members of the Southern African Development Community, the African Union and the wider international community to press ZANU-PF to make a clean break with the past and take clear and decisive steps that demonstrate commitment to judicial and police reform. Such steps are vital to restore fundamental respect for human rights in Zimbabwe. And this must happen before any lifting of targeted sanctions or resumption of non-humanitarian development assistance to the new government.

¹⁶¹ Agreement between ZANU-PF and MDC, art. 11.

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