



A PROMISE IN PERIL:

HOW WIDESPREAD RIGHTS VIOLATIONS
UNDERMINE ZIMBABWE'S ELECTIONS

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I. SUMMARY

Zimbabwe is in the midst of an uncertain transition. Since the formation of the Government of National Unity (GNU) in February 2009, key reforms contained in the Global Political Agreement (GPA), which was in part meant to lay the groundwork for peaceful democratic elections, remain unimplemented. During this time period there has also been an increasingly limited democratic space, evidenced by the systematic intimidation, threats, violence, and arbitrary detention of human rights activists and civil society leaders, and the continued violations of freedom of expression and access to information. The prevailing electoral environment in Zimbabwe, which is characterized by clear breaches of international law, has seriously imperiled the rights of all citizens to vote and to participate freely in public affairs.

The principal GNU partners were expected to cooperate in good faith to promote an electoral environment consistent with the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections, specifically Article 4, which stipulates that “human rights, democracy, and the rule of law are principles guiding the acts of its members.”¹ The failure to meet this standard rests largely with the Zimbabwe African National Union – Patriotic Front (ZANU-PF) – led by 89-year-old president Robert Mugabe – which has stifled democratic progress and continues to selectively repress the legitimate activities of civil society, media professionals, and the Movement for Democratic Change (MDC). While President Mugabe signed into law a long-awaited new constitution on 22 May 2013 that curbs executive powers and clears the way for new elections, worries about continued democratic backsliding persist to this day.

President Mugabe, the military, police, and security sector have abridged the human rights of the Zimbabwean people with impunity. Those who challenge President Mugabe’s directives are routinely branded “enemies of the state” and “agents of regime change.” These arbitrary labels have allowed authorities to arrest individuals and initiate often baseless criminal actions to stifle peaceful assembly, association, and freedom of expression. The criminalization of human rights defenders and democracy activists throughout the country has coincided with disappearances, extrajudicial killings, and murder to deter legitimate or otherwise legal democratic activities.

Despite the existent power sharing agreement, ZANU-PF maintains control over important ministerial portfolios pertaining to defense, home affairs, the security sector, and mines and mining development, further enabling the overall oppressive environment. What is more, ZANU-PF has recently succeeded in placing party stalwarts to manage and oversee important state institutions, including the Zimbabwe Electoral Commission (ZEC) and the Zimbabwe Human Rights Commission (ZHRC).

¹ “SADC Principles and Guidelines Governing Democratic Elections.” Electoral Institute for Sustainable Democracy in Africa. 1992. <<http://www.eisa.org.za/PDF/sadcguidelines.pdf>>

This report takes stock of these and other pertinent developments to highlight the severely compromised electoral environment that exists in Zimbabwe today. This overall assessment is bolstered by several recurring themes that arose during a March 2013 international delegation to Zimbabwe that was organized by the Robert F. Kennedy Center for Justice and Human Rights (RFK Center). The main concerns of domestic actors in Zimbabwe included:

- 1. A lack of progress on reforms outlined in the Global Political Agreement;**
- 2. Increased intimidation, threats, and violence against civil society; and**
- 3. Violations of the rights to freedom of expression and access to information.**

II. RECOMMENDATIONS

TO THE GOVERNMENT OF ZIMBABWE

- Fully implement the GPA to create an electoral environment that allows for the peaceful political participation of all citizens, regardless of political affiliation;
- Guarantee, promote, and protect the rights to freedom of expression, assembly, and association;
- Cease immediately the harassment, intimidation, and violence perpetrated against civic actors and allow them to perform their legitimate and lawful work;
- Adhere to regional and international legal conventions to which Zimbabwe is a party or state signatory to, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People's Rights (ACHPR), and the Declaration of Principles of Freedom of Expression in Africa (Banjul Declaration);
- Enforce the rule of law and declare publicly that the police and prosecuting authorities exercise the utmost professionalism in carrying out their duties and immediately cease and desist from the intimidation of civil society through unwarranted persecution;
- Immediately reform the military, police, and security sector, replacing key figures with non-partisan, accountable, and professional individuals, and holding perpetrator's of past crimes legally accountable;
- Ensure transparency and accountability in Zimbabwe's mining sector, including the publication of contracts and agreements entered into between diamond mining companies and government authorities, and cease without delay the militarization and human rights abuses taking place at mining sites;
- Ensure the professional and non-partisan functioning of key electoral institutions, namely the Zimbabwe Electoral Commission and the Office of the Registrar General;
- Direct political parties to strictly adhere to the Organ on National Healing, Truth and Reconciliation's Code of Conduct, and duly hold political leaders legally accountable for any violence or intimidation that is committed;
- Accredite both domestic and international election observers to monitor the upcoming polls, ensuring an electoral environment that is duly consistent with the SADC Principles and Guidelines Governing Democratic Elections;

- Mandate equal access to television, radio, print, and electronic media for all political parties in the lead up to elections;
- Ensure that the police and related security officers, uniformed or otherwise, remain outside the vicinity of polling stations during the entirety of the electoral process.

TO THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

- Hold leaders in Zimbabwe accountable for a lack of progress in implementing the GPA, including the prospect of sanctions and suspension of membership to regional mechanisms and institutions;
- Urge the government of Zimbabwe to allow domestic civil society to conduct their legitimate democratic activities without intimidation, harassment, and arrests from state authorities;
- Make certain that SADC officials are deployed with a long-term mandate to observe vital electoral processes, including an in-country pre-election team, a nationwide presence on election day, and a post-election mandate;
- Actively advocate for the Zimbabwe Electoral Commission to accredit an international observation team outside of SADC and the African Union (AU) to better ensure a credible, peaceful, free, and fair election;
- Publicly certify before the polls that electoral conditions are consistent with SADC Principles and Guidelines Governing Democratic Elections.

TO THE INTERNATIONAL COMMUNITY AND THE UNITED STATES

- Continue to support and provide solidarity with the citizens of Zimbabwe and their democratic aspirations, and maintain a spotlight on the country's human rights crisis;
- Fully support the facilitation efforts led by SADC as it seeks to ensure the full and timely implementation of the GPA;
- Urge political leaders in Zimbabwe to cultivate an electoral environment that is conducive to credible, peaceful, free, and fair elections;
- Maintain restrictive measures on ZANU-PF officials associated with or otherwise implicated in human rights violations, including asset freezes and travel bans until necessary political, legal, institutional, and human rights reforms are genuinely implemented, including a sustainable and long-term implementation plan.

III. METHODOLOGY

This report is based on research and information that was gathered by means of interviews and meetings conducted during an international delegation organized by the RFK Center in March 2013. The information contained in this report also draws on research conducted by the RFK Center, as well as previous in-country visits and ongoing advocacy initiatives. At the time of this writing, the Constitutional Court of Zimbabwe imposed a 31 July 2013 deadline for the holding of elections.

The RFK Center delegation comprised Kerry Kennedy (United States), President, RFK Center; Santiago A. Canton (Argentina), Director, RFK Partners for Human Rights; Alfre Woodard (United States), actor and activist; Maureen White (United States), former Senior Advisor on Humanitarian Issues in the Office of the Special Representative to Afghanistan and Pakistan; Jorge Taiana (Argentina), Director General of the International Centre for Political Studies at the San Martin University in Argentina and former Minister of Foreign Affairs; Scott and Christy Wallace (United States), Co-Chairs, Wallace Global Fund; Jeffrey Smith (United States), Advocacy Officer, RFK Center; and Stephanie Postar (United States), Advocacy Assistant, RFK Center. Rafael Marques de Morais (Angola), journalist and anti-corruption campaigner was denied a business visa and therefore unable to participate.

The RFK Center delegation met with a range of civil society leaders and employees, legal practitioners, and human rights defenders, including representatives from: National Constitutional Assembly; Crisis in Zimbabwe Coalition; Media Centre - Harare; Zimbabwe Electoral Support Network; Labor and Economic Development Research Trust; Zimbabwe Congress of Trade Unions; Alternatives to Neo-Liberalism in Southern Africa; Habakkuk Trust; Victory Siyanqoba Trust; Bulawayo Agenda; National Youth Development Trust; Radio Dialogue; Zimbabwe Human Rights Association; Institute for Democratic Alternatives in Zimbabwe; Zimbabwe Alliance; Zimbabwe Organization for the Youth in Politics; Women of Zimbabwe Arise²; Zimbabwe Lawyer's for Human Rights; and Amnesty International.

The RFK Center delegation also met with leading government officials, including: Prime Minister Morgan Tsvangirai (MDC-T); President of the Movement for Democratic Change (MDC-N) and Minister of Industry and Commerce, Welshman Ncube; Co-Home Affairs Minister Theresa Makone (MDC-T); Senator and Minister of Education, Sport, Art, and Culture David Coltart (MDC-N); and Secretary for International Relations and Cooperation, Jameson Timba (MDC-T). Outreach efforts to

² In November 2009, the Robert F. Kennedy Center for Justice and Human Rights (RFK Center) awarded Magodonga Mahlangu and Women of Zimbabwe Arise (WOZA) with its annual Human Rights Award at a ceremony held in the East Room of the White House. The RFK Center Award honors courageous and innovative human rights defenders throughout the world who stand up against injustice, often at great personal risk. For more on the 2009 ceremony and the human rights award in general, see: <<http://wozazimbabwe.org/?p=470>> and <http://rfkcenter.org/human-rights-award-6?id=869&lang=en&option=com_content&view=article>.

ZANU-PF officials, including President Robert Mugabe and the Co-Home Affairs Minister, as well as the chairperson of the Zimbabwe Electoral Commission (ZEC) were unsuccessful.

The costs incurred by the delegation, including all related travel costs, were funded by individual participants or directly by the RFK Center.

IV. BACKGROUND

On 17 April 1980 then Prime Minister Robert Mugabe addressed a fervent crowd in the soon to be independent nation of Zimbabwe. Following a protracted and brutal liberation struggle against white minority rule, Mugabe seemingly embraced the ideals of peace, reconciliation, and democracy, ostensibly vanquishing in one fell swoop the ugly specter of colonialism, racism, and hatred that had come to define the country formerly known as Rhodesia. It was during this raucous environment when Mugabe famously declared:

“Democracy is never mob-rule. It is and should remain disciplined rule requiring compliance with the law and social rules. Our independence must thus not be construed as an instrument vesting individuals or groups with the right to harass and intimidate others into acting against their will. ... On Independence Day, our integrated security forces will, in spite of their having only recently fought each other, be marching in step together to herald the new era of national unity and togetherness.”

Hopes around the world were high that Zimbabwe – under the direction of an educator turned liberation icon – might represent a bastion of democracy. Mugabe’s promising rhetoric, however, would soon ring hollow. The calls for peace and social cohesion did not match the aggressive and violent actions undertaken by government forces. By July 1980, a state of emergency – in place since 1965 – was renewed and by October, a mere six months after achieving independence, Mugabe tasked Zimbabwe’s Fifth Brigade to murder and execute an estimated 20,000 civilians in the predominantly Ndebele regions of Zimbabwe during the run up to the 1985 parliamentary elections.³ The Gukurahundi massacre officially ended in 1987 after the signing of a unity accord that established the Zimbabwe African National Union – Patriotic Front (ZANU-PF) as Zimbabwe’s de facto ruling party. No official investigation into the mass killing has ever been conducted, thereby precluding the national unity that Mugabe spoke so eloquently of on the eve of Zimbabwe’s independence.

Gukurahundi marked the beginning of an era characterized by violence and impunity in Zimbabwe, which has been particularly acute during domestic electoral processes. In 1990, when the Zimbabwe Unity Movement (ZUM) emerged to challenge ZANU-PF at the polls, its leaders and supporters were met with repeated violence; and during the 1996 elections, the two main opposition parties – the United Parties (UP) and the Zimbabwe African National Union (ZANU-Ndonga) – withdrew due to electoral irregularities and acts of intimidation. These and subsequent transgressions have largely been perpetrated by Zimbabwe’s military, police, and associated security forces, all of which act as appendages of ZANU-PF. Indeed, ZANU-PF necessarily designates

³ For a comprehensive overview and history, refer to *Breaking the Silence, Building True Peace: A Report on the Disturbances in Matabeleland and Midlands 1980 to 1988*. First published February 1997. The Catholic Commission for Justice and Peace in Zimbabwe and The Legal Resources Foundation. Available in PDF format here: <<http://davidcoltart.com/wp-content/uploads/2006/10/breakingthesilence.pdf>>

dissenters, opposition political parties, as well as watchdog and advocacy groups as enemies of the state. To the minds of those who comprise the ZANU-PF regime the liberation struggle is still very much alive, having been distorted in a manner that legitimizes the brutal and illegal tactics employed against perceived threats.

During the late 1990s, at a time of staggering unemployment and inflation⁴, as well as an overall increase of authoritarianism, the Movement for Democratic Change (MDC) – an alliance of youth, civic, and labor leaders, including many white farmers – challenged Mugabe’s grip on national political power. The newly-formed MDC, led by trade unionist Morgan Tsvangirai, would soon rally voters to reject a state-sponsored constitution, handing Mugabe a rather unexpected defeat, his first since assuming power in 1980. Among the many provisions contained in the 2000 draft constitution, which was ultimately defeated 55% to 45%, was a clause that would have empowered the government to forcibly acquire land without compensation for its occupants. Although Mugabe was defeated at the ballot box that did not prevent the swift implementation of a “fast track resettlement program,” during which a wave of violence was unleashed on the countryside.⁵

Initially, the land invasions were a protest led by Zimbabwe’s liberation war veterans against the Mugabe government’s failure to coherently deal with the question of land redistribution. Mugabe had made promises for two decades to compensate the country’s war veterans for their participation in the liberation struggle against white colonial rule. While a disability fund had been established for this purpose, it was purportedly looted by ZANU-PF officials, leaving many deserving veterans to live in poverty.⁶ The later direct involvement and then control of the land invasions by Mugabe and ZANU-PF was a counter measure to control the widespread protest and redirect the ire on commercial white farmers who emerged as expedient scapegoats. Under the program, ruling party militias inflicted violence on farm owners, farm workers, and, used occupied farms as bases for attacks against residents in neighboring areas.⁷

⁴ Throughout the 1990s, the government accepted stringent conditions from the International Monetary Fund (IMF), restructuring the economy and redefining living standards through severe cuts to public spending. The economic downfall can certainly be explained, in part, by these outside factors.

⁵ Later, in 2005 the government added Amendment 17 to the constitution, allowing the state to seize agricultural land after it had been “gazetted,” meaning a notice of seizure was published in the state-run newspaper. The issue of land ownership remains controversial and has not been resolved by the new constitution. Chapter 16 (Agricultural Land) fails to provide strong protections for ownership, allowing government acquisition of land without due legal process and falling short of international norms of non-discrimination; for example, compensation for expropriated land will depend on whether the landholder is “indigenous.” For a more thorough analysis, see the Zimbabwe Lawyer’s for Human Rights (ZLHR) analysis from February 2013: <<http://www.hrforumzim.org/wp-content/uploads/2013/02/ZLHR-Analysis-of-COPAC-Draft-Constitution-Feb-2013-Final.pdf>>

⁶ The War Victims Compensation Fund was suspended in March 1997 due to an investigation that ultimately uncovered evidence that high-level government officials and their relatives looted more than 112 billion Zimbabwe dollars (US\$450 million). See: “Anti-Corruption Group Calls for Prosecution of Mugabe” *SW Radio Africa*, September 19, 2012 <<http://www.swradioafrica.com/2012/09/19/anti-corruption-group-calls-for-prosecution-of-mugabe/>>

⁷ “Fast Track Land Reform in Zimbabwe,” March 2002, Human Rights Watch, <<http://www.hrw.org/reports/2002/zimbabwe/ZimLand0302.pdf>>

While land redistribution continues to be a priority in Zimbabwe,⁸ the illegal and violent manner in which the program has thus far been conducted leaves much to be desired. In 2008, the Southern African Development Community (SADC) Tribunal – the highest policy and legal mechanism in the region – ruled in favor of a group of white farmers, calling Zimbabwe’s land program “discriminatory” and “against the rule of law.”⁹ The judgment ordered the Zimbabwean government to protect farms from redistribution, but Mugabe publicly disregarded the ruling, saying, “[l]and distribution will continue. It will not stop. The few remaining white farmers should quickly vacate their farms as they have no place there. ... Our land issues are not subject to the SADC tribunal.”¹⁰ Subsequently, there has been thirteen consecutive years of food deficit in Zimbabwe, and in 2013 the United Nations (UN) appealed for more than \$100 million dollars to feed two million citizens in danger of starvation.¹¹

Despite the emergence of an increasingly vibrant political opposition, Mugabe and ZANU-PF exercised nearly unchecked political power throughout the 2000’s, altering the constitution over a dozen times, ultimately vesting more power in the office of the President and employing state-sponsored violence to systematically intimidate opponents. It was for these reasons that the 2002 elections were condemned as fraudulent by a range of countries and international observer missions.¹² It was also during this time period when the Mugabe government implemented a number of highly repressive pieces of legislation that curtailed the legitimate work of independent journalists, media practitioners, and civil society.

The Access to Information and Protection of Privacy Act (AIPPA), the Public Order and Security Act (POSA), and amendments made to the Private Voluntary Organization (PVO) Act constrained an already compromised democratic space. AIPPA provided the ZANU-PF Information Minister sweeping powers to decide who can work as a journalist in the country and essentially outlawed foreign personnel from operating domestically.¹³

POSA forbids criticism of the president, limits public assembly and association rights, and allows the police to impose arbitrary curfews.¹⁴ According to the Zimbabwe Lawyer’s for Human Rights

⁸ At the time, an estimated 700,000 black farmers were confined to only 53% of the country’s farmland, while 6,000 white farmers resided on 46% of quite often the most arable land. For the most recent positive assessment of Zimbabwe’s land reform agenda, see: Hanlon, Joseph, and Jeanette Manjengwa, and Teresa Smart, *Zimbabwe Takes Back Its Land*. (West Hartford: Kumarian Press, 2012) 245.

⁹ “Campbell v Zimbabwe SADC Tribunal Case No. 2/2007.” November 28, 2008. The South African Legal Information Institute. <<https://www.documentcloud.org/documents/217664-campbell-v-zimbabwe-case-no-2-2007-decision.html>>

¹⁰ “Mugabe: White Farmers Must Leave,” *Al Jazeera*, March 1, 2009,

<<http://www.aljazeera.com/news/africa/2009/02/20092281921141234.html>>.

Largely as a result of Mugabe’s intransigence, the 2012 SADC summit resolved to limit the jurisdiction of the SADC Tribunal to “disputes between member states,” thereby barring individual access to the court.

¹¹ For more information on Zimbabwe’s food insecurity, see the United Nations World Food Program: <https://wfp.org/countries/zimbabwe/overview>

¹² “Zimbabwe at the Crossroads: Transition or Conflict.” March 22, 2002. International Crisis Group.

<<http://www.crisisgroup.org/~media/Files/africa/southern-africa/zimbabwe/Zimbabwe%20At%20The%20Crossroads%20Transition%20Or%20Conflict.pdf>>

¹³ The 2003 case of Andrew Meldrum is illustrative. Meldrum was a US citizen who had lived in Zimbabwe for over two decades and held a permanent residency permit. He was found not guilty by a Harare court of publishing falsehoods under AIPPA, but then immediately deported. Meldrum was the last foreign resident correspondent operating in Zimbabwe. “Deported Journalist Accuses Zimbabwe.” May 17, 2003. BBC News <<http://news.bbc.co.uk/2/hi/africa/3033637.stm>>

¹⁴ Most recently, POSA was used as pretext to arrest and detain the long persecuted MDC-T Youth Assembly President, Solomon Madzore on May 2, 2013.

(ZLHR), at least 60 Zimbabwean citizens have been arrested for allegedly insulting Mugabe since 2010.¹⁵ Ironically, to date President Mugabe remains only one of three individuals that have been arrested and subsequently jailed under POSA (then the Law & Order Maintenance Act in Rhodesia).¹⁶ POSA has severely inhibited the work of civic activists throughout the country, perhaps most prominently Women of Zimbabwe Arise (WOZA), whose leadership has been arrested and beaten upwards of 50 times. In 2007, public demonstrations were banned in some parts of the country, leading to massive demonstrations organized by the Save Zimbabwe Campaign. A March prayer rally resulted in nearly 50 arrests and the use of force against leaders of both the MDC and civil society, seriously injuring among others Lovemore Madhuku, President of the National Constitutional Assembly (NCA). The same day, NCA activist Gift Tandare was killed by Zimbabwean police, who also opened fire during his funeral.¹⁷

Several provisions of, and subsequent amendments made to, the PVO Act – a relic of colonial-era law – makes it nearly impossible for domestic NGOs to legally register with the government, thereby permitting the police to harass, intimidate, and arrest civil society members with impunity. The International Center for Not-for-Profit Law (ICNL) has carefully documented numerous barriers to freedom of speech, advocacy, international contact, and funding as a result of the PVO Act, which has often crippled domestic civil society organizations.¹⁸ In a similar move, the ZANU-PF Minister for Youth Development, Indigenization, and Economic Empowerment recently approved regulations that require all youth organizations to register with the Zimbabwe Youth Council or risk being banned. Under these new rules, youth organizations are forced to pay high annual fees and submit detailed work plans, budgets, and donor information to council leaders.¹⁹

In June 2005, Zimbabwe was again rocked by an outburst of state-sponsored violence. Operation Murambatsvina, which means “drive out the trash” in the Shona language, was publicly billed by Mugabe and its ZANU-PF overseers as a “slum clearance operation,” though many analysts concluded it was a retributive attack against perceived MDC supporters. Indeed, at the time most of the MDC's 41 parliamentary seats were located in constituencies targeted by the operation. According to a prominent civic group, the “clean-up effort” displaced between 300,000–1 million

See: Gonda, Violet, “MDC Youth Leader Arrested for ‘Insulting’ Mugabe.” May 2, 2013. SW Radio Africa. <<http://www.swradioafrica.com/2013/05/02/mdc-youth-leader-arrested-for-insulting-mugabe/>>

¹⁵ “60 Arrested for Insulting Mugabe,” *Newsday*, May 7, 2013 <<http://www.newsday.co.zw/2013/05/07/60-arrested-for-insulting-mugabe/>>

¹⁶ In October 2012, Nkosilathi Moyo, director of the Zimbabwe Organization for Youth in Politics (ZOYP), was convicted under POSA for organizing a civic education workshop without receiving “permission” from the police. In May 2013, a university lecturer was sentenced to a 3-month prison term for allegedly calling President Mugabe a “rotten old donkey.” See: Bell, Alex, “Lecturer jailed after Mugabe ‘donkey’ jibe,” *SW Radio Africa*, May 20, 2013, <<http://www.swradioafrica.com/2013/05/20/lecturer-jailed-over-mugabe-donkey-jibe/>>

¹⁷ The crackdown was denounced by Ms. Reine Alapini-Gansou, Special Rapporteur of the ACHPR on human rights defenders in Africa and by the EU Presidency, which condemned the “violent and continued repression of the freedoms of opinion and assembly, and of fundamental freedoms.” (See “EU President’s Statement on the Violent Break-up of a Peaceful Rally in Zimbabwe,” March 12, 2007, <http://www.eu2007.de/en/News/CFSP_Statements/March/0312Zimbabwe.html >

¹⁸ “NGO Law Monitor: Zimbabwe.” June 6, 2013, International Center for Not-for-Profit Law, <<http://www.icnl.org/research/monitor/zimbabwe.html>>

¹⁹ Manyukwe, Clemence, “Zimbabwe: Kasukuwere’s Regulations Unlawful,” *Financial Gazette (Harare)* May 8, 2013, <<http://allafrica.com/stories/201305090961.html>>

people, causing hundreds of thousands more to lose their earnings in the informal sector.²⁰ To date, the perpetrators have not been held accountable.

In the lead up to the 2008 election, life in Zimbabwe was again characterized by growing militarization and violent crackdowns on the political opposition, including hundreds of arrests and scores of beatings by security forces and associated ZANU-PF militias.²¹ When the Zimbabwe Electoral Commission (ZEC) finally released the election results in May 2008 – nearly five weeks after polls had officially closed – it revealed that Tsvangirai had outpolled Mugabe, 47.9% to 43.2%, thereby necessitating a presidential runoff. The MDC also won a majority of elected seats in parliament, picking up 73 seats in the lower House of Assembly and 24 in the Senate. The prospect of ZANU-PF ruling in perpetuity was seriously challenged for the first time. A widespread campaign of terror was then set loose during which ZANU-PF militias – under the guidance of some 200 senior army officers – battered the political opposition and civil society under the banner of CIBD, which stood for: Coercion. Intimidation. Beating. Displacement.²²

Overall, the violence in the months leading to the June 2008 presidential runoff resulted in approximately 300 deaths and 5,000 cases of torture, with more than 10,000 individuals requiring medical treatment. A major civic group at the time documented an additional 4,000 human rights violations.²³ Morgan Tsvangirai – who ultimately sought refuge in the Dutch embassy for fear of his life – withdrew from the contest, allowing Mugabe to sail to a convincing victory. On 29 June, in a hastily organized inauguration ceremony, President Mugabe swore himself into office for a sixth consecutive time.

International criticism over the manner in which the runoff was administered was swift and unequivocal. SADC concluded that the election “did not represent the will of the people of Zimbabwe” and a committee of the Pan-African Parliament, the legislative branch of the AU, reported that killings, intimidation, and violence were common and that the election was neither transparent nor impartial.²⁴ The outcry eventually resulted in a mediated solution called the Global Political Agreement (GPA). On 15 September 2008, the GPA ushered in the Government of National Unity (GNU) that permitted Robert Mugabe to remain as president, with Morgan Tsvangirai installed as prime minister and Arthur Mutambara, leader of a breakaway MDC faction, deputy prime minister. Several months later in January 2009, the Joint Monitoring and Implementation Committee (JOMIC) – comprising four senior members from ZANU-PF and the two MDC formations – was established to ensure the implementation of the GPA and to establish trust and understanding between the concerned political parties.

²⁰ “Operation Murambatsvina: An Overview and Summary.” June 18, 2005. Sokwanele.
<http://www.sokwanele.com/articles/sokwanele/opmuramb_overview_18june2005.html>

²¹ For more information, refer to Freedom House’s annual *Freedom in the World* surveys from 2006–2009.

²² Timberg, Craig, “Inside Mugabe’s Violent Crackdown.” *Washington Post* July 5, 2008
<<http://www.washingtonpost.com/wp-dyn/content/article/2008/07/04/AR2008070402771.html>>

²³ “Post-Election Report,” Zimbabwe Peace Project, May 2008,
http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=15:2008-reports&Itemid=107#

²⁴ Khumalo, Marwick T., “Election Not Fair or Free-PAP,” *The Zimbabwean* June 30, 2008
<<http://www.thezimbabwean.co.uk/news/13829/election-not-fair-or-free-pap.html>>

The GPA was meant to "create a genuine, viable, permanent, sustainable and nationally acceptable solution to the Zimbabwe situation," though evidence suggests that it merely emboldened an already brazen ZANU-PF. Only several months later a prominent human rights campaigner and director of the Zimbabwe Peace Project (ZPP), Jestina Mukoko, was abducted from her home, tortured, and held incommunicado for three weeks by assailants believed to be affiliated with ZANU-PF.²⁵ In addition, scores of MDC members, at both the local and national levels, were targeted for arrest and in some cases torture by state agents. The growing list of those persecuted includes, Prime Minister Morgan Tsvangirai, Finance Minister and MDC-T Secretary General Tendai Biti, MDC-T Treasurer General Roy Bennett, Youth Assembly President Solomon Madzore, Energy and Power Development Minister and MDC-T Deputy Treasurer Elton Mangoma, and former MDC-T head of security Chris Dhlamnini.

The grim state of affairs in Zimbabwe continued throughout the autumn of 2008 when the government launched Operation Hakudzokwi, or "You will not return," meant to secure the recently discovered Marange diamond fields. Human Rights Watch, among other international and domestic watchdog groups, have documented grave and repeated instances of state-sponsored violence and rights abuses, including forced child labor and an estimated 200 murders.²⁶ Domestic critics who spoke out on the abuse taking place and those who helped highlight the concerns of local residents have paid a steep price. Farai Maguwu, director of the Center for Natural Resource Governance (CNRG), was arrested in 2010 after meeting with a representative from the Kimberly Process Certification Scheme (KPCS), the world's diamond control body. He was charged with providing "false information" about killings and torture by military officials, imprisoned for more than a month, routinely denied medical care, and illegally transferred to multiple prison locations. Mr. Maguwu was ultimately cleared of any wrongdoing in October 2010, but was again detained a year later and continues to experience threats of violence, intimidation, and harassment.

Other independent groups, including Global Witness and Partnership Africa Canada (PAC), have uncovered evidence to suggest that revenue from the diamond fields – recently estimated at \$2 billion – largely flow to ZANU-PF bank accounts.²⁷ Investigative reports have also uncovered an opaque network of companies that have "made a killing" in Marange with the help of the Zimbabwe government, and the Mugabe family in particular.²⁸ Tendai Biti, Zimbabwe's Finance

²⁵ For more on this ordeal, see Howden, Daniel. "Jestina Mukoko: 'Mugabe's henchmen came for me before dawn'" The Independent January 17, 2009 <<http://www.independent.co.uk/news/world/africa/jestina-mukoko-mugabes-henchmen-came-for-me-before-dawn-1418260.html>>

²⁶ See: Human Rights Watch reports, "Zimbabwe: End Repression in Marange Diamond Fields" Human Rights Watch June 26, 2009 <<http://www.hrw.org/news/2009/06/26/zimbabwe-end-repression-marange-diamond-fields>>; Deliberate Chaos: Ongoing Human Rights Abuses in Zimbabwe's Marange Diamond Fields Human Rights Watch June 20, 2010 <<http://www.hrw.org/reports/2010/06/21/deliberate-chaos>>; and "Zimbabwe: Rampant Abuses in Marange Diamond Fields" Human Rights Watch August 30, 2011 <<http://www.hrw.org/news/2011/08/30/zimbabwe-rampant-abuses-marange-diamond-fields>>

²⁷ Refer to the report by Partnership Africa Canada (PAC) entitled, "Reap What You Sow: Greed and Corruption in Zimbabwe's Marange Diamond Fields" November 2012 <http://www.pacweb.org/Documents/diamonds_KP/Reap_What_You_Sow-eng-Nov2012.pdf> and a report by Global Witness called, "Diamonds: A Good Deal for Zimbabwe?" February 13, 2012. <<http://www.globalwitness.org/library/diamonds-good-deal-zimbabwe>>

²⁸ "Mugabe Man Cashes in on Diamond Fields" Mail and Guardian, September 7, 2012 <<http://amabhungane.co.za/article/2012-09-07-mugabe-man-cashes-in-on-diamond-fields>>

Minister, has acknowledged on a number of occasions that perhaps hundreds of millions of dollars worth of diamond revenue has gone missing.²⁹ Most recently, in June 2013, the ZANU-PF head of Zimbabwe's Portfolio Committee on Mines and Energy, Edward Chindori-Chininga, released a damning report about the alleged criminal involvement of ZANU-PF officials and allies in the diamond industry.³⁰ Mr. Chininga, now known as "Zimbabwe's diamond whistleblower," would soon thereafter die in a 19 June car crash after reporting to friends and family members that he felt as if he were a "marked man."³¹

As Zimbabwe moves towards elections in 2013, political fear is at an all-time high. Nearly 9 out of 10 people feel that political competition in the country "often" or "always" leads to violent conflict. Furthermore, 6 out of 10 fears becoming a victim of intimidation or violence.³² According to Amnesty International, 300 people were injured as a result of politically motivated acts of torture or other violence in calendar year 2012 and at least eight people died in police custody under circumstances that suggest that they were tortured or summarily executed.³³

Given this environment, the UN Office of the High Commissioner for Human Rights (OHCHR) issued a public statement in January 2013, citing increased concerns about the "crackdown on non-governmental organizations" and "dissenting voices seen as critical of President Robert Mugabe's rule," as well as taking stock of an upsurge of "politically motivated prosecutions."³⁴ Fears of political violence have further escalated due to ZANU-PF campaigns in rural areas to identify the political allegiance of private households. Stickers have been placed on the doors of homes in Masvingo province, among others, in an effort widely believed to identify homes for intimidation and those that should be "skipped" from being provided agricultural inputs and food assistance.³⁵ The recent death of twelve-year-old Christpower Maisiri³⁶ in a suspected politically motivated arson attack and the continuing disappearance of prominent human rights activist Paul Chizuze³⁷ also provide stark reminders to all Zimbabweans that the ghost of political violence and impunity have yet to be exorcized.

²⁹ For instance, the government received only \$40 million from the diamond sector in calendar year 2012, a mere fraction of the \$300 million that Treasury had initially estimated. See: Bell, Alex, "Biti Slams Lack of Diamond Remittances" *SW Radio Africa* April 15, 2013 <<http://allafrica.com/stories/201304160132.html>>

³⁰ The full parliamentary report may be accessed here: <<http://petergodwin.com/wp-content/uploads/2013/06/Chininga-Parliament-Report-on-Marange-Diamond-Mining-June-2013.pdf>>

³¹ "Zimbabwe's diamond 'whistleblower' Chindori-Chininga dies in car crash" *SW Radio Africa*, June 20, 2013 <<http://www.swradioafrica.com/2013/06/20/zanu-pfs-diamond-whistleblower-chindori-chininga-dies-in-car-crash/>> "Mystery Surrounds Chininga Death" *News Day*, June 21, 2013 <<http://www.newsday.co.zw/2013/06/21/mystery-surrounds-chininga-death/>>

³² Bratton, Michael and Eldred Masunungure, "Voting Intentions in Zimbabwe: A Margin of Terror?" *Afrobarometer Briefing Paper No. 103* August 2012 <<http://www.afrobarometer.org/publications/afrobarometer-briefing-papers/609-bp-103>>

³³ Amnesty International Annual Report 2013. Zimbabwe: <http://www.amnesty.org/en/region/zimbabwe/report-2013>

³⁴ The OHCHR statement can be read in full here: <<http://www.un.org/apps/news/story.asp?NewsID=43954&Cr=Zimbabwe&Cr1=#.UYqjKkyDG8>>

³⁵ "Security Forces in Zimbabwe Deployed as Historians." United Nations Office for the Coordination of Humanitarian Affairs (December 19, 2012) <<http://www.irinnews.org/Report/97081/Security-forces-in-Zimbabwe-deployed-as-historians>>

³⁶ Christpower was the son of Shepherd Maisiri, an aspiring Member of Parliament for Headlands and MDC-T Deputy Organizing Secretary for the district.

³⁷ "A Year On, Where is Paul Chizuze?" *Radio Dialogue Online* February 13, 2013 <<http://www.radiodialogue.com/a-year-on-where-is-paul-chizuze/>>

Nevertheless, Zimbabweans in general continue to express a persistent optimism that the democratic tide will ultimately change, and in particular, that the forthcoming elections will be a positive watershed moment.³⁸ It is against this backdrop that the Robert F. Kennedy Center for Justice and Human Rights undertook the delegation to Zimbabwe in March 2013. During the visit, several main concerns arose with regularity: 1) a lack of progress on reforms outlined in the Global Political Agreement; 2) increased intimidation, threats, and violence against civil society; and 3) violations of the rights to freedom of expression and access to information. It is to these specific issues that the report will now turn.

³⁸ "Change and 'New' Politics in Zimbabwe," Freedom House June–July 2012
<<http://www.freedomhouse.org/sites/default/files/Change%20and%20New%20Politics%20in%20Zimbabwe.pdf>>

V. KEY FINDINGS OF THE DELEGATION

1. A LACK OF PROGRESS ON REFORMS OUTLINED IN THE GLOBAL POLITICAL AGREEMENT

A central function of the Global Political Agreement (GPA) was to both induce and establish necessary reforms in order to avoid a repeat of the violence and chaos experienced in the past and lay the foundation for credible elections.³⁹ The strengthening of democracy and stimulating international support to revive the country's collapsed economy were also considered paramount objectives. ZANU-PF and the two MDC formations resolved to "put Zimbabwe first and give the people a genuine chance of rebuilding and reconstructing their livelihoods." There has been some democratic progress made, reflected for instance in the 2013 Freedom in the World survey, which is produced annually by Freedom House.⁴⁰

The creation of four new national commissions, including the Zimbabwe Electoral Commission (ZEC), the reconstituted Zimbabwe Media Commission, the Anti-Corruption Commission (ACC), and the Zimbabwe Human Rights Commission (ZHRC) are also positive steps forward. However, while these vitally important institutions exist in name, there has been little concrete action to demonstrate a meaningful commitment to reform. The ZHRC is a case in point; the highly regarded chairperson, Professor Reginald Austin, resigned in December 2012, citing frustrations over a lack of commitment from the government to uphold human rights. Although formed in 2009, the ZHRC was only given constitutional status in 2012 and even then a clause blocking it from investigating abuses before the 2008 election rendered it ineffective. The current chairperson Jacob Mudenda is a former ZANU-PF governor, though he too has voiced criticism over a lack of funding.⁴¹ Similarly, the newly installed ZEC commissioner, Rita Makarau, is a former non-constituency minister who was appointed by President Mugabe.⁴² Several senior ZEC officials also serve in the country's security forces drawn from the Central Intelligence Organization (CIO), which convenes high-ranking members from the army and police.

Authorities in Zimbabwe, like the Registrar General's Office, have also not advanced efforts to audit Zimbabwe's vastly outdated voters' roll. Several reports indicate that upwards of 40,000 voters are over the age of 100 – in a country where 51 is the average life expectancy – and that perhaps one-third of registered voters are in fact deceased. These so-called "ghost voters" included, up to very

³⁹ The GPA can be viewed in full on the Constitution Select Committee (COPAC) website: http://www.copac.org.zw/index.php?option=com_content&view=article&id=19&Itemid=128. It should also be noted that the latest elections can take place, according to the new constitution, is October 29, 2013.

⁴⁰ While Zimbabwe remains 'Not Free,' both in terms of political rights and civil liberties, the country did register a slight overall improvement: <<http://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet.pdf>>

⁴¹ "Zimbabwe Activists Urge Harare to Financially Support Human Rights Commission." *Voice of America* May 20, 2013. <<http://www.voazimbabwe.com/content/zimbabwe-human-rights-commission/1664698.html>>

⁴² The MDC is on record, at times, calling Chairwoman Makarau as a "moderate" and a "principled judge."

recently, former Rhodesian Prime Minister Ian Smith who died in 2007.⁴³ There are also increasing reports of registered voters having their names removed or otherwise misspelled, including very recently the MDC-T Co-Home Affairs Minister Theresa Makone.⁴⁴ Efforts by civil society organizations to independently inspect the voters' roll have been stifled as a result of its exorbitant cost; indeed, until April 2013 it cost \$30,000 to purchase an electronic version, while the printed version was recently reduced to \$5,000.⁴⁵ Severe problems also persist in the issuance of national identity documents and mobile voter registration efforts, with increasing allegations that the process is being manipulated to favor ZANU-PF.

A primary reason why the GPA has not been complied with is the lack of political will on the part of ZANU-PF to implement aspects of the agreement that could limit their power. Indeed, ZANU-PF continues to command an unchecked monopoly of power and influence over the military, police, and related security forces. Article 13 of the GPA affirms that "state organs and institutions do not belong to any political party and should be impartial in the discharge of their duties." To date, this provision has remained unimplemented. The Minister of Justice, Patrick Chinamasa, has been quoted as saying it is a "constitutional right" of soldiers to participate in politics, a clear contravention of the GPA. In addition, the Zimbabwe Defense Forces Chief of Staff and several brigadier generals and high-ranking officers have openly supported ZANU-PF, vowing to not salute anyone without liberation war credentials, even if that person won elections.⁴⁶ General Augustine Chihuri, the current police commissioner, also recently ordered the police to ensure that ZANU-PF wins upcoming elections, referring to the MDC as "surrogates of imperialists."⁴⁷

Calls by SADC to expedite the process of reform have largely been ignored, despite several high profile visits to the country by President Jacob Zuma of South Africa. According to one recent report, if the militarization of the state persists on its current path, it will pose significant risk, either stagnating or reversing altogether the democratization efforts made by SADC.⁴⁸

What is more, amendments to repressive laws – including the Access to Information and Protection of Privacy Act (AIPPA); the Public Order and Security Act (POSA); the Criminal Law (Codification and Reform) Act; and the Private Voluntary Organization Act (PVO); Presidential Powers (Temporary Measures) Act – have stalled, with little chance of reform before elections. According to one international watchdog group, comprehensive legislative and institutional reforms to end the pro-ZANU-PF partisanship of state institutions – a main concern addressed by Article 13 of the GPA –

⁴³ "Ian Smith is Finally Removed from Voters' Roll." *New Zimbabwe* April 17, 2013 <<http://www.newzimbabwe.com/news-10856-Ian+Smith+removed+from+voters+roll/news.aspx>>

⁴⁴ "ZANU PF, MDCs Fight over Voters' Roll." *Zimbabwe Independent* April 26, 2013 <<http://www.theindependent.co.zw/2013/04/26/zanu-pf-mdcs-fight-over-voters-roll/>>

⁴⁵ "Bottlenecks in Voter Registration Removed." *SW Radio Africa* April 24, 2013 <<http://www.swradioafrica.com/2013/04/24/bottlenecks-in-voter-registration-removed/>>

⁴⁶ "Generals Can Meddle in Politics." *The Standard* May 27, 2012 <<http://www.thestandard.co.zw/2012/05/27/generals-can-meddle-in-politics-chinamasa/>>

⁴⁷ "Zim Cop Orders ZANU PF Victory." *Mail and Guardian* March 8, 2013. <<http://mg.co.za/article/2013-03-08-00-zim-cop-orders-zanu-pf-victory>>

⁴⁸ "Zimbabwe's Global Political Agreement Implementation," *Zimbabwe Europe Network et al.* September 15 2012 <<http://www.zimbabwееurope.org/sites/default/files/ZIMBABWE%20GPA%20IMPLEMENTTION.pdf>>

are necessary to level the playing field and create an environment conducive to the holding of credible elections.⁴⁹ To date, ZANU-PF has not embraced such reforms, but has in fact actively resisted them.

A recent report by the International Crisis Group (ICG), which has closely monitored developments in Zimbabwe, concludes that “continued violations of the [GPA], reform deficits, limited institutional credibility, and the rejection of a UN election needs assessment mission underscore the continued absence of conditions for peaceful and credible elections, despite the new constitution adopted in March 2013.”⁵⁰ The Zimbabwe Human Rights NGO Forum concluded much of the same, stating that “the GPA remains a troubled coalition characterized by bickering and stalemate,” a reality that has adversely affected the governance capacity of the country and has constrained peaceful political participation.⁵¹ The fact that Zimbabwe consistently ranks in the bottom ten of the Ibrahim Index of African Governance – which takes into account respect for human rights and the rule of law – is further testament to this fact.⁵² The Crisis in Zimbabwe Coalition, the largest grouping of civic organizations in the country, has also registered its concerns, which includes unacceptable levels of political violence, harassment and arrests of civic leaders, and a lack of respect for basic human rights.⁵³

With another election looming in the short-term, ZANU-PF has seemingly intensified efforts to safeguard its political survival. In February 2013 alone, over 400 instances of political violence – a vast majority of which were perpetrated against MDC supporters – were documented by the Zimbabwe Peace Project.⁵⁴ The bulk of political violence in Zimbabwe typically involves state security agents and is further fueled by the failure of the police and the judiciary to hold accountable the perpetrators of serious abuses and provide justice for victims. Article 18 of the GPA states that “the government shall apply the laws of the country fully and impartially in bringing all perpetrators of politically motivated violence to book;” however, the Office of the Attorney General has largely operated along partisan lines, abusing its authority to repeatedly persecute MDC activists while protecting ZANU-PF allies implicated in political violence and other rights abuses. For example, the MDC presented evidence of political violence in 2008 that resulted in the deaths of 200 party supporters. To date, the attorney general has been unwilling to investigate this matter, let alone prosecute the perpetrators.⁵⁵

⁴⁹ “Race Against Time: The Need for Legal and Institutional Reforms Ahead of Zimbabwe’s Elections” Human Rights Watch, January 2013 <<http://www.hrw.org/sites/default/files/reports/zimbabwe0113webwcover.pdf>>

⁵⁰ “Zimbabwe: Election Scenarios.” International Crisis Group, May 6, 2013 <<http://www.crisisgroup.org/en/regions/africa/southern-africa/zimbabwe/202-zimbabwe-election-scenarios.aspx>>

⁵¹ “Zimbabwe Human Rights NGO Forum Mid-Year Political Violence Report (January–June 2012).” Zimbabwe Human Rights NGO Forum July 2012 <<http://www.hrforumzim.org/wp-content/uploads/2012/11/Mid-year-political-violence-report3.pdf>>

⁵² 2012 Ibrahim Index of African Governance, Mo Ibrahim Foundation 2012 <<http://www.moibrahimfoundation.org/interact/>>

⁵³ For recent press statements and reports, see Crisis in Zimbabwe Coalition: http://www.crisisinzimbabwe.org/index.php?option=com_content&view=category&id=59&Itemid=215

⁵⁴ “ZPP Monthly Monitor,” Zimbabwe Peace Project February 2013 <<http://reliefweb.int/report/zimbabwe/zpp-monthly-monitor-february-2013>>

⁵⁵ “MDC-T pushes for arrests for 2008 murders.” SW Radio Africa January 16, 2012 <<http://www.swradioafrica.com/2012/01/16/mdc-t-push-for-arrests-of-2008-murderers/>>

One notable civic group has systematically documented breaches of the GPA, the results of which show that ZANU-PF is responsible for an overwhelming majority. The most recent reporting period shows upwards of 21,000 separate violations of the GPA committed by ZANU-PF, as opposed to slightly over 1,000 by the two MDCs combined.⁵⁶ The most common offenses relate to the rule of law, promotion of equality and national healing, state organs (security sector violations), and prevention of violence. As the numbers indicate, there has been scant progress on a number of prominent issues contained in the GPA; namely, reforms that are meant to facilitate the holding of peaceful, democratic, and credible elections.

⁵⁶ See Sokwanele's "Zimbabwe Inclusive Government Watch:" <<http://www.sokwanele.com/zigwatch>>

2. INCREASED INTIMIDATION, THREATS, AND VIOLENCE AGAINST CIVIL SOCIETY

The pattern of arrests, intimidation, and violence, against employees of civil society organizations and human rights leaders is a chronic obstacle that has undermined the electoral environment in Zimbabwe. Since August 2012, dozens of civil society organizations have been targeted by the Zimbabwe Republic Police (ZRP). Taking stock of these escalating challenges, over 70 domestic civil society organizations in early 2013 issued a joint statement, which read in part, “[we] condemn the unashamed intimidatory and repressive tactics being employed by the state against civil society organizations and leaders in Zimbabwe.”⁵⁷ Of particular concern is the fact that ZANU-PF publicly resolved to de-register “errant” civic groups who “deviate from their mandate,” during its annual party congress in December 2012.⁵⁸ Such resolutions in the past have laid the inevitable groundwork for increased arrests and intimidation of civic activists, as well as the banning of independent nongovernmental organizations.

The arbitrary arrest and unlawful detention of renowned lawyer Beatrice Mtetwa on 16 March 2013 is the most notable example of the escalating repression in Zimbabwe. Ms. Mtetwa was charged with “obstruction of justice” after legally demanding a search warrant at a client's home. Ms. Mtetwa would ultimately spend eight days in a cramped cell with 17 other inmates, despite a High Court ruling that immediately ordered her release.⁵⁹ Ms. Mtetwa was ultimately granted bail on 25 March. State prosecutors during the week of 8 April 2013 served Ms. Mtetwa's attorneys with new criminal allegations, together with court papers to prepare for her trial, which has been tentatively slated for the end of June 2013. Ms. Mtetwa now faces 20 fresh allegations by the State in its criminal case against her in what has been described as a “desperate act of embellishment by a range of impartial observers.”⁶⁰

The clampdown on civic organizations that are engaged in voter registration and mobilization campaigns is also telling and particularly worrisome. The Zimbabwe Association of Human Rights (ZimRights) and the National Youth Development Trust (NYDT), for example, have been continuously raided, their meetings disrupted, and their leaders arrested on spurious grounds, often on the pretext of “fabricating voter registration documents” and for conducting “activities that threaten national security.” This pattern of harassment combined with what appears to be a strategy of targeting “safety net” organizations like Counseling Services Unit, ZPP, and now

⁵⁷ “CSOs Joint Statement on the Criminalization of CSOs and Their Work in Zimbabwe.” *Crisis in Zimbabwe Coalition* January 18, 2013 <http://www.crisiszimbabwe.org/index.php?option=com_content&view=article&id=1742:csos-joint-statement-on-the-criminalisation-of-csos-and-their-work-in-zimbabwe&catid=59:our-statements&Itemid=215>

⁵⁸ For a complete list of ZANU-PF resolutions, see: “Resolutions of 2012 ZANU PF Conference,” *New Zimbabwe* October 12, 2012 <<http://www.newzimbabwe.com/opinion-9772-Resolutions%20of%202012%20Zanu%20PF%20conference/opinion.aspx>> 1(k) “[i]nstructs the party to ensure that Government enforces the de-registration of errant NGOs deviating from their mandate.”

⁵⁹ Justice Charles Hungwe is now being persecuted by forces loyal to President Mugabe and ZANU-PF in an effort to remove him from the Court. See: Bell, Alex, “Government Urged to Intervene in Persecution of Justice Charles Hungwe.” *SW Radio Africa*, April 4, 2013 <<http://www.swradioafrica.com/2013/04/04/govt-urged-to-intervene-in-persecution-of-justice-charles-hungwe/>>

⁶⁰ “Mtetwa Faces 20 New Allegations as Trial Date Set.” *SW Radio Africa* April 8, 2013 <<http://www.swradioafrica.com/2013/04/08/mtetwa-faces-20-new-allegations-as-trial-date-set/>>

individual lawyers, is of grave concern. These groups provide vital support to citizens across the country that experience political violence and injustices perpetrated by state authorities. Deliberately undercutting these services, particularly in a country with an established history of state-sponsored violence, gives rise to fear and severely compromises the integrity of Zimbabwe's political, social, and electoral landscapes. A recent press statement by the European Union (EU) summed up the situation well, stating that "[i]t is critical that [Zimbabwean] authorities demonstrate impartiality, including in their relation to civil society, and contribute to generating confidence in these important political processes."⁶¹

While certainly not an exhaustive catalog of persecution,⁶² the RFK Center delegation takes stock of the following instances, which collectively form a clear pattern of attack against civil society, one that is especially focused on groups engaged in election-related activities.

- Three volunteers from the Election Resource Centre (ERC), a nonpartisan organization, were arrested on 11 May 2013 for "conducting voter education" as part of its nationwide voter registration drive. Two days later, ERC director Tawanda Chimhini handed himself in to the police in a bid to secure the release of the three volunteers and was himself arrested. During the same weekend, six members of the Youth Agenda Trust were arrested on similar charges and detained for twelve hours.
- On 23 April 2013, Advocacy Officer Trevor Murai from Student's Solidarity Trust (SST), was arrested and detained after making a presentation on elections during a workshop organized by the Zimbabwe Christian Alliance (ZCA). Under the amended Electoral Act of 2012, "voter education" can only proceed under authority of the Zimbabwe Electoral Commission, a body that is notoriously staffed by Mugabe and ZANU-PF loyalists.
- On 19 February 2013, the headquarters of the Zimbabwe Electoral Support Network (ZESN) were raided by police, breaking down the organization's main security gate in the process. During the same day, ZESN's regional office in Masvingo was also broken into by unknown individuals, but largely believed to be the work of the partisan police and related security forces. Police came armed with a warrant in search of "subversive material." On 21 February, the Masvingo office was broken into again, with a security guard reporting that armed persons "entered the premises and broke a window, taking the field officer's desk drawers which included over 800 t-shirts, power adapters, and a blackberry phone." In December 2012, on International Human Rights Day, two ZESN employees were detained for organizing an "unsanctioned public meeting."
- On 11 February 2013, plain-clothed police officers raided the Hillside office of the Zimbabwe Peace Project (ZPP), which documents instances of police misconduct, human rights abuses, and political violence across the country. Police claimed to have a warrant for

⁶¹ "Local EU Statement on Recent Incidents of Harassment of Civil Society Organisations (22/02/2013)": http://eeas.europa.eu/delegations/zimbabwe/press_corner/all_news/news/2013/20130222_02_en.htm

⁶² For a comprehensive list from September–December 2012, see the "Biannual Human Rights and National Institutions Report," published by the Zimbabwe Human Rights NGO Forum: <http://www.hrforumzim.org/wp-content/uploads/2013/01/Bi-Annual-Report-12-12-online-pdf.pdf>. The December 2012 report issued by the Observatory for the Protection of Human Rights Defenders is also useful: <http://www.fidh.org/ZIMBABWE-Ongoing-risks-for-human-12482>

“illegal entry of goods, persons or communications equipment.” According to several reports, police confiscated ZPP’s violence incidence reports, as well as upwards of 60 phones and 60 wind-up radios that are frequently used by ZPP staff during grassroots outreach activities. Police returned again that night, demanding entry into the director’s office. ZPP is led by Jestina Mukoko, a former newscaster and prominent human rights activist who, in December 2008, was abducted, tortured, and held incommunicado for nearly a month. The seeming vendetta against Jestina Mukoko escalated in early March 2013 when the national police commissioner, Augustine Chihuri, stated on national television his intent to detain Mukoko and requested the public’s help in “tracking her down.” Mukoko presented herself before state authorities on 8 March 2013, during which she was formally charged with “running an unregistered organization,” “smuggling radio sets and mobile phones,” and “broadcasting without a license.”

- Also on 11 February, police raided the offices of the Community Tolerance, Reconciliation, and Development Group (COTRAD) and the National Association of Nongovernmental Organizations (NANGO), one the largest civil society coalitions in Zimbabwe. Two employees were arrested and later detained during these raids.
- On 6 February 2013, police raided the National Youth Development Trust (NYDT) on the grounds that the group was in possession of “subversive material” and for allegedly “conducting illegal voter registration activities.” The raid came two days after two other members from NYDT were arrested in Lupane after being found in possession of voter registration receipts. The police initially detained 40 people affiliated with NYDT, but were later released. On 10 April 2013, three additional NYDT members were arrested for mobilizing residents in Pumula to register to vote. A life skills workshop organized by NYDT in September 2012 was barred from taking place without reason by the local police, the second such instance in less than a month when an event was dispersed. On both occasions, NYDT employees were detained and later harassed by local authorities.
- On 14 January 2013, Okay Machisa, director of the Zimbabwe Human Rights Association (ZimRights) was arrested and charged with “conspiracy to commit [voter registration] fraud, forgery, and publishing falsehoods.” The arrest followed the December 2012 arrest of another high-ranking ZimRights official, Leo Chamahwinya, also for allegedly conducting “illegal voter registration” activities.⁶³ Three other individuals who are not ZimRights employees have been implicated in the case as well, and were repeatedly denied bail and access to lawyers.
- On International Human Rights Day in December 2012, two leaders of the Zimbabwe Congress of Trade Unions (ZCTU), the largest grouping of labor activists in the country, were arrested as they attempted to participate in a planned peaceful march through the city center of Bulawayo.

⁶³ For more information, see successive RFK Center press releases: “RFK Center Condemns Zimbabwe’s Widening Crackdown on Human Rights Activists” (December 13, 2012): <http://rfkcenter.org/rfk-center-condemns-arrest-of-leo-chamahwinya-9?lang=en> and “RFK Center Denounces Arrest of ZimRights Director” (January 15, 2013): <http://rfkcenter.org/rfk-center-denuncia-larresto-del-direttore-di-zimrights-9?lang=en>

- On 5 November 2012, three employees from the Counseling Services Unit (CSU), a nonprofit organization that provides support to victims of torture and political violence, were arrested and detained for allegedly being in possession of “offensive and subversive material.” The three individuals were eventually charged with causing “malicious damage to property” in contravention of Section 140 of the Criminal Law (Codification and Reform) Act, four days after their arrest.
- In October 2012, Nkosilathi Moyo, director of the Zimbabwe Organization for Youth in Politics (ZOYP), was convicted under POSA for organizing a civic education workshop without first receiving “permission” from the police. Police disrupted the workshop and arrested Mr. Moyo, along with Maureen Gombakomba and Beloved Chiweshe from the Crisis in Zimbabwe Coalition. The Crisis officials were released the same day, but Mr. Moyo was detained, charged, and ultimately found guilty by a Kwekwe magistrate. He received a 12-month jail sentence; six months were suspended with a \$500 fine, on condition that he does not commit the same crime again for the next five years.
- In September 2012, police arrested a dozen members of Women of Zimbabwe Arise (WOZA) during a peaceful protest and again during a November 13 altercation during which police officers verbally referenced the Gukurahundi massacres and ordered WOZA members to not speak in their native Ndebele language. National Coordinator Jenni Williams and Programs Coordinator Magodonga Mahlangu were arrested and later released without charge.⁶⁴ On December 11, upwards of 80 WOZA members were again arrested, physically assaulted, and detained at Bulawayo Central police station for staging a peaceful protest about the deteriorating water situation in the city. Most recently, during a peaceful protest on 13 February 2013, police assaulted and arrested nine WOZA members, including Ms. Williams. WOZA members filed an official complaint due to the harsh treatment they received; all members were released without charge.⁶⁵
- On 28 September 2012, the president of the Zimbabwe National Students Union (ZINASU) was arrested, along with three colleagues, for organizing and an “illegal demonstration.” The four individuals were denied access to food, lawyers, and their respective family members for extended periods of time while in police custody.
- In August 2012, the headquarters of the Gay and Lesbian Alliance of Zimbabwe (GALZ) was repeatedly raided and ransacked by the police and security operatives.⁶⁶ On one such occasion, visibly drunk riot police physically assaulted several GALZ employees and illegally seized office materials. Authorities later attempted to shut down GALZ operations altogether, charging a co-chairperson with running an “unregistered organization,” the

⁶⁴ For more information, see RFK Center press statement: “Rise of Police Violence in Zimbabwe Sparks Serious Concern” (November 29, 2012): <http://rfkcenter.org/rise-of-police-violence-in-zimbabwe-sparks-serious-concern-5?lang=en>

⁶⁵ For more on this incident, see: “RFK Center Deeply Concerned Over Attacks on Peaceful Demonstrations in Zimbabwe” (February 14, 2013): <http://rfkcenter.org/rise-of-police-violence-in-zimbabwe-sparks-serious-concern-5?lang=en>

⁶⁶ See: Smith, Jeffrey, “Zimbabwe’s Assault on LGBTI Group Indicative of Larger, Worrisome Trend.” *Huffington Post*. August 28, 2012 <http://www.huffingtonpost.com/jeffrey-t-smith/zimbabwes-assault-on-lgbt_b_1838088.html>

same rationale used to arrest and detain the director of the Zimbabwe Human Rights NGO Forum the previous month.

3. VIOLATIONS OF THE RIGHTS TO FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

Violations to freedom of expression, access to information, and press freedom are enshrined in a host of regional and international instruments to which Zimbabwe is a signatory or state party to, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and People's Rights (ACHPR), and the Declaration of Principles of Freedom of Expression in Africa (Banjul Declaration). The ACHPR, in particular, recently called upon all state parties to "[r]espect their obligations under the African Charter, in addition to other regional and international human rights conventions, and take all necessary measures to preserve and protect the credibility of the electoral process."⁶⁷

Nevertheless, rampant violations of these recognized rights have continued unabated, particularly since election-related rhetoric began to rise in August 2012.⁶⁸ It has in fact become tradition for journalists in Zimbabwe to face intimidation around elections, leading the Zimbabwe Union of Journalists (ZUJ) to hire a team of standby lawyers to defend professionals who may be arrested.⁶⁹ With elections approaching, many observers fear that if essential media reforms – as outlined in the GPA – are not implemented, journalists, civic activists, and average citizens will be headed for inevitable clashes with the country's national security officers.

Indeed, on 19 February 2013, Assistant Police Commissioner Charity Charamba banned shortwave radios, claiming that they would be used to "communicate hate speech" ahead of the constitutional referendum and elections. The Media Institute of Southern Africa (MISA) roundly condemned the decision, stating that "access to information was a fundamental part of freedom of expression, which would assist citizens to make informed decisions and choices during ... the forthcoming elections." Similarly, the Zimbabwe Lawyer's for Human Rights (ZLHR), which is currently mounting a legal challenge to the ban, issued a press statement which read in part:

***"The lengths to which state institutions and actors are now going to deny fundamental rights and freedoms and act outside the law are alarming and typical of paranoid state authorities who are contemptuous of any diversity of opinion and information."*⁷⁰**

⁶⁷ "Resolution on Elections in Africa." [African Commission on Human and People's Rights](http://www.achpr.org/sessions/13th-eo/resolutions/232/) February 25, 2013 <<http://www.achpr.org/sessions/13th-eo/resolutions/232/>>

⁶⁸ For more information see Freedom House's overview report, entitled, "Press Freedom in 2012: Middle East Volatility Amid Global Decline:" <<http://www.freedomhouse.org/sites/default/files/Booklet%20Essay.pdf>>

⁶⁹ "ZUJ to Approach ZEC on Safety of Journalists." [The Zimbabwean](http://www.thezimbabwean.co.uk/news/zimbabwe/65162/zuj-to-approach-zec-on.html) April 23, 2013 <<http://www.thezimbabwean.co.uk/news/zimbabwe/65162/zuj-to-approach-zec-on.html>>

⁷⁰ "Zimbabwe Police Ban Radios." [Media Institute of Southern Africa \(MISA\)](http://qa.misa.org/news-feeds/item/1110-zimbabwe-police-ban-radios) February 2013 <<http://qa.misa.org/news-feeds/item/1110-zimbabwe-police-ban-radios>>

Currently in Zimbabwe there is no such law that proscribes ownership and distribution of shortwave radios, and local nongovernmental organizations have distributed them since at least 2005. According to local journalists, the ZANU-PF dominated government has demonstrated a clear and repeated willingness to crack down on such devices ahead of election cycles in an effort to limit independent news coverage. It is widely suspected that the ban is part of a ZANU-PF agenda to hinder the dissemination of information from the likes of Short Wave Radio Africa and Voice of America's Studio 7, which have become increasingly popular at the expense of the state-controlled Zimbabwe Broadcasting Corporation (ZBC).⁷¹

The police declaration that banned "specially designed radios" prompted a number of raids on private homes, as well as Radio Dialogue, a community radio station based in Bulawayo. The production studio of Radio Dialogue was raided by police and officers from the CIO on 1 March 2013 and its staff accused of "smuggling illegal goods" and for allegedly using radios to incite violence and disseminate propaganda. Police confiscated an estimated 180 shortwave receivers and later broke into the station editor's personal residence looking for similar devices. The editor in question, Zenzele Ndbele, was later interrogated by police for several hours and asked to appear before a magistrate the following week. In another report, police allegedly went door to door in Gandanzara, located in Ward 23 of Makoni South constituency, in search of individuals who were in possession of such devices. ZPP was also raided by plain-clothed police, who confiscated a number of handheld radios and other office equipment, stating that the organization was engaging in "espionage" and "activities that threatened national security."

The March 2013 physical assault on BBC correspondent Andrew Harding, and an aspiring MDC candidate he was interviewing at the time, is further testament to Zimbabwe's hostile media environment.⁷² An award-winning photojournalist with dual United Kingdom and New Zealand citizenship was detained and deported in April 2013 as he reported on migration between Zimbabwe and South Africa.⁷³ There have also been an increasing number of documented cases of harassment and intimidation against domestic journalists and civil society activists in the execution of their duties. From December 2012–March 2013, the Media Monitoring Project of Zimbabwe (MMPZ) recorded eight violations, including attacks on independent newspapers, as well as private and community radio stations.⁷⁴ This trend prompted three UN Special Rapporteurs in early 2013 to issue a joint statement that urged the government of Zimbabwe to respect international norms and standards pertaining to freedom of expression. Frank La Rue, the UN Special Rapporteur on the right to freedom of opinion and expression, stated that "Zimbabwean authorities must ensure that

⁷¹ "Zimbabwe: Ban on Radio Receivers Sparks Outcry." The Standard February 24, 2013 <<http://allafrica.com/stories/201302240246.html?viewall=1>>

⁷² "Zimbabwe MDC Politician Attacked on Campaign Trail." BBC News March 15, 2013 <<http://www.bbc.co.uk/news/world-africa-21808172>>

⁷³ "Zimbabwe Detains, Deports Award-Winning Photojournalist." Committee to Protect Journalists May 18, 2012 <<https://www.cpj.org/2012/05/zimbabwe-detains-deports-award-winning-photojourn>>

⁷⁴ "Media Monitoring Project Information Rights Violations Report (December 2012–March 2013):" <http://www.mmpz.org/sites/default/files/Info%20Rights%20Violations%20Report%202013.pdf>

... everyone is guaranteed the right to speak freely without fear of persecution, arrest, and intimidation.”⁷⁵

An additional cause for concern is the continued persecution of journalists employed by independent newspapers. On 8 May 2013 police filed criminal charges against two journalists on accusations that they published “false statements prejudicial to the state” – in contravention of Section 31 of the Criminal Law (Codification & Reform) Act – for a story that revealed secret discussions between military leaders and the MDC.⁷⁶ Police entered the offices of the privately-owned Zimbabwe Independent, demanding that editor Dumisani Muleya and chief reporter Owen Gagare report to Harare Central police station the next day, after which they were questioned for seven hours in an attempt to force the two to reveal their sources. Responding to this latest attack on freedom of expression, the independent Zimbabwe National Editors' Forum issued a statement that likened Zimbabwe to an active “police state.”⁷⁷ This latest incident is particularly alarming for media professionals, as it pertains to the military and therefore conjures a 1999 episode during which members of the military detained and mistreated two journalists who reported on dissent within its ranks. Mark Chayunduka and Ray Choto of the Standard newspaper⁷⁸ were held incommunicado by the military for over a week, during which they were severely beaten and allegedly tortured. Most recently, MDC security professionals in June were implicated in several attacks against both independent and freelance journalists as they attempted to cover party primary elections and a protest by party activists.⁷⁹

Overall, despite new and improved constitutional provisions that protect freedom of expression and access to information, the lawful activities of journalists and independent media outlets are constantly limited. The government, through the Mass Media Trust holding company, controls the two main daily newspapers, the Chronicle and the Herald, and the state-controlled Zimbabwe Broadcasting Corporation (ZBC) runs all broadcast media, which are subject to political interference and censorship. Compounding the situation further is long-standing repressive legislation, including AIPPA, the Official Secrets Act, POSA, and the Criminal Law (Codification and Reform) Act, all of which severely limit what journalists may publish.

The control that ZANU-PF exerts over the domestic media landscape could tighten in the coming months before elections. Already, the banning of shortwave radios – an important source of information for Zimbabwe’s estimated 65% rural population – and the continued persecution of

⁷⁵ “Zimbabwe must respect fundamental freedoms in run-up to constitutional referendum, warn UN rights experts” Office of the High Commissioner for Human Rights. February 27, 2013

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13055&LangID=E>>

⁷⁶ For the story in question, see: “MDC-T engages army chiefs.” Zimbabwe Independent April 26, 2013

<<http://www.theindependent.co.zw/2013/04/26/mdc-t-engages-army-chiefs/>>

⁷⁷ “Zimbabwe Youth Leader in Jail for Mugabe Slur.” Associated Press May 8, 2013 <<http://news.yahoo.com/zimbabwe-youth-leader-jail-mugabe-slur-121313624.html>>

⁷⁸ “Attacks on the Press 1999: Zimbabwe.” Committee to Protect Journalists. March 22, 2000

<<https://www.cpj.org/2000/03/attacks-on-the-press-1999-zimbabwe.php>>

⁷⁹ “Zimbabwe Journalists Suffer Attacks Ahead of Elections.” The Guardian June 18, 2013

<<http://www.guardian.co.uk/media/greenslade/2013/jun/18/journalist-safety-zimbabwe>>

media personnel has compromised not only the media environment in Zimbabwe, but the social, political, and electoral contexts as well.

III. VIOLATIONS OF INTERNATIONAL LAW

Article 13(1) of the ACHPR states that “[e]very citizen shall have the right to participate freely in the Government of his country, either directly or through freely chosen representatives.” Article 25(a)-(b) of the ICCPR likewise states that every citizen shall have the right and the opportunity “[t]o take part in the conduct of public affairs, directly or through freely chosen representatives,” and “[t]o vote and to be elected at genuine periodic elections... guaranteeing the free expression of the will of the electors.” The prevailing electoral environment in Zimbabwe, which is characterized by clear and widespread rights violations, has seriously imperiled the rights of all Zimbabwean citizens to vote and to participate freely in public affairs.

The Human Rights Committee – the treaty body charged with interpreting the rights and obligations contained within the ICCPR – has determined that citizens participate in the conduct of public affairs by “exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves,” and that “this participation is supported by ensuring freedom of expression, assembly, and association.”⁸⁰ Further, according to the Human Rights Committee “[f]reedom of expression, assembly, and association are essential conditions for the effective exercise of the right to vote and must be fully protected.”⁸¹

Rather than protecting these fundamental rights, the Zimbabwean government – which is overwhelmingly dominated by President Mugabe and ZANU-PF – has actively violated these rights with absolute impunity. Indeed, Zimbabwe has engaged in a pattern of suppression that violates the rights to freedom of assembly and association, particularly targeting groups that are engaged in voter registration, education, and mobilization efforts. The Human Rights Committee has unequivocally held that voter registration “should be facilitated and obstacles to such registration should not be imposed” (emphasis added), and further, “[a]ny abusive interference with registration or voting as well as intimidation or coercion of voters should be prohibited by penal laws and those laws should be strictly enforced.”⁸²

The continued violations of freedom of expression in the time period preceding elections, including rampant media censorship and an effective ban of short-wave radios, also result in a violation of the rights to vote and to participate freely in the participation of public affairs. While interpreting Article 19 of the ICCPR, the Human Rights Committee emphasized that “free communication of information and ideas about public and political issues between citizens, candidates, and elected representatives is essential. This directly implies a free press and other media able to comment on

⁸⁰ Office of the High Commissioner for Human Rights General Comment (1996) No. 25, para. 8. <<http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb>>

⁸¹ Office of the High Commissioner for Human Rights General Comment (1996) No. 25, para. 12

⁸² Office of the High Commissioner for Human Rights General Comment (1996) No. 25, para. 11

public issues and to inform public opinion without censorship or restraint.”⁸³ Likewise, “[t]he right of access to information includes a right whereby the media has access to information on public affairs and the right of the general public to receive media output.”⁸⁴ In contrast to the current situation in Zimbabwe, “citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members.”⁸⁵

Lastly, in addition to respecting the rights to freedom of expression, assembly, and association, Zimbabwe’s international legal obligations require the establishment, of “[a]n independent electoral authority... to supervise the electoral process and to ensure that it is conducted fairly, impartially, and in accordance with established laws which are compatible with [Zimbabwe’s international human rights obligations]” (emphasis added).⁸⁶ While the existence of the Zimbabwe Electoral Commission (ZEC) is a necessary cornerstone towards fulfilling this obligation, the appointment of longtime ZANU-PF stalwart Rita Makarau and senior ZEC officials from the Central Intelligence Organization (CIO), seriously calls into question the supposed impartiality of ZEC and its ability to carry out its function in compliance with Zimbabwe’s international legal obligations.

⁸³ Human Rights Committee General Comment (2011) No. 34, para. 20.
<<http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>>

⁸⁴ Human Rights Committee General Comment (2011) No. 34, para. 8

⁸⁵ HRC communication No. 633/95, *Gauthier v. Canada*

⁸⁶ Office of the High Commissioner for Human Rights General Comment (1996) No. 25, para. 20

VI. ACKNOWLEDGEMENTS

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⁸⁷ For more information on the broader advocacy work of the RFK Center in Zimbabwe, see: <<http://rfkcenter.org/jeffrey-smith?lang=en>>

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