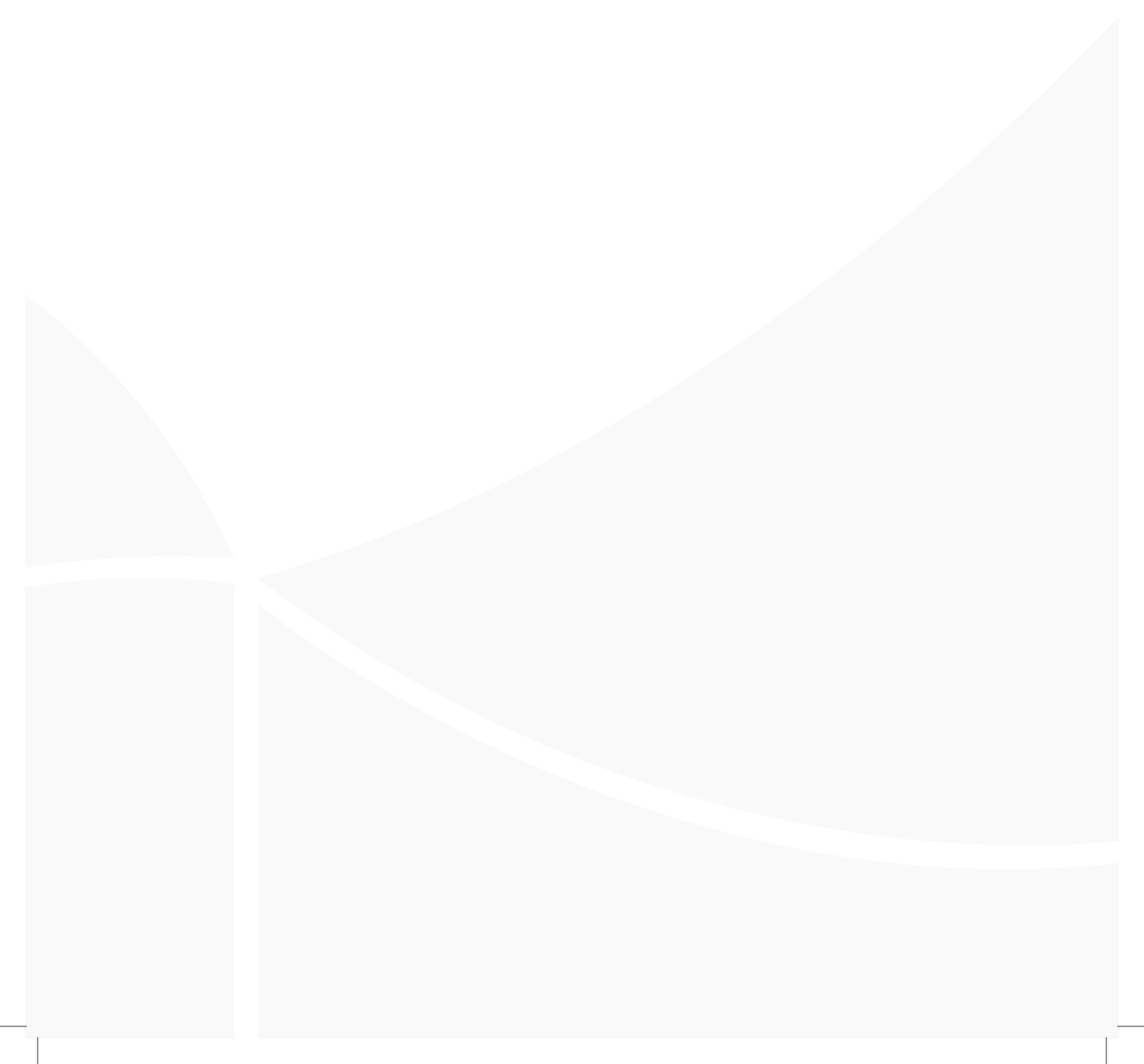


# Zimbabwe

Human Rights, Rule of Law & Democracy 2013

The 2013 collaborative Report of the Zimbabwe Human Rights Forum's members including the Zimbabwe Peace Project, Zimbabwe Lawyers for Human Rights, The Media Monitoring Project of Zimbabwe, the Research & Advocacy Unit and partners including Veritas Trust and Zimbabwe Election Support Network.



# Foreword

This report is the product of a great deal of collaborative work involving a consolidation of major reports and statements made throughout 2013 by the Zimbabwe Lawyers for Human Rights (“ZLHR”), VERITAS Trust, Media Monitoring Project for Zimbabwe (“MMPZ”) Zimbabwe Peace Project (“ZPP”), and the Research and Advocacy Unit (“RAU”).

The overall aim of this report is to give you both a broad policy picture and a detailed inventory of events relating to human rights, rule of law and democracy that took place in Zimbabwe during 2013. The report mainly covers those themes, which, in the Editor’s view and also given limited resources, were the most relevant during the year. These include rights relating to respect for the integrity of the person, respect for civil liberties, including freedom of speech and press, freedom of association and assembly and respect for political rights; elections and political participation. Zimbabwe’s performance on each of the human rights categories, up to 31 July will be benchmarked against the Global Political Agreement (“GPA”), which was incorporated under the old constitution under amendment 19 and thereafter under the new constitution, which substantially incorporates most of the rights, which the GPA sought to promote and protect.

We hope you will find this report as being both informative and useful to your work, the work of human rights organisations but that above all it serves as a genuine and robust record of what transpired during a year of such great consequence in respect of the areas covered. However, we always want to seek ways to improve which is only made possible through your generous feedback, suggestions and continuous dialogue.

On behalf of the Forum and all its members whose work constitute the basis of this report, I would like to thank our International Liaison office team for compiling this report as well as Judit Getu and Lindani Chirambadare for painstakingly proof reading the report.

**Abel Chikomo, Executive Director**

# Report Summary

## Key findings and recommendations

Although cases of politically motivated murders, abductions, disappearances, torture and intimidation had been lower this year than in previous years, the overall situation was still far from perfect. There were ongoing serious human rights abuses, including the selective application of the law, massive corruption and tight control of electronic media. The military loomed large and constantly threatened that they would not accept any transfer of power away from Mr Mugabe's party, ZANU-PF.

Despite a fairly successful constitutional referendum, the elections were seriously flawed. Both the constitutional referendum and the subsequent elections were preceded by and held in an environment which witnessed an unprecedented clampdown on civil society organizations and human rights defenders including lawyers in private practice. All this implicated the rights related to respect for the integrity of the person, and civil liberties which include the rights to freedom of speech & access to information and assembly and association, which are all fundamental cornerstones of the development of democracy.

When this is viewed as part of the wider reform discourse - for example the government's lack of political will to implement agreed reforms and ZANU-PF's control and manipulation of the political process - this effectively negated the right of citizens to change their government.

At the close of the year, the number of reported cases of politically motivated violence and torture continued to be on a downward trajectory. However, violations assumed new forms, with the primary abuses taking the form of post-election reprisals including the demolition of houses, threats of eviction, partisan distribution of food aid and agricultural inputs, and hate speech.

The last quarter of 2013 also witnessed other positive developments relating to the acquittal of leading human rights defenders and the resolution of other long outstanding criminal cases such as that of the Glen View 29. The reforms of the Attorney General's office were also viewed positively but did not go far as the incumbent retained office. The Human Rights Commission made its first steps towards human rights awareness when it commemorated the international human rights day jointly with civil society organizations.

Food and water insecurity and other social vulnerabilities such as poor healthcare continued.

These were worsened by the government, which continued to pursue economic policies based on exclusion and in some cases overt racism. This all led to closure of businesses and flight of capital.

When viewed as a whole, 2013 continued with the institutionalization of a culture of lawlessness termed 'jambanja' that began in 2000. This had a profound effect on the lives of ordinary citizens. Finally, whilst human-perpetrated violence declined, another major threat to human rights emerged in 2013 as the state used technology to undermine both human rights and democracy. Examples included the inaccessibility of the electronic electoral roll and the massive surveillance of political opponents which not violated their individual rights to privacy but also undermined their election strategies and plans.

Overall, like the previous years, 2013 was disappointing as it was characterized by institutional failures and the undermining of rights in ways that ranged from subtle to devious and cunning. What makes it even more disappointing is that such underhand tactics are now ZANU PF's preferred political strategy. Such strategy mainly characterized by state institutions complicity in denying people their rights has rendered most of these state institutions inaccessible and unable to deliver on public goods. In addition, such institutions lack the capacity, both in terms of core competencies and attitudes, to effectively arbitrate political and economic contests.

**Arthur Gwagwa, Editor**

## Specific Findings

### Section 1: Rights relating to respect for the Integrity of the Person

During 2013, the number of cases of politically motivated murder, violence, abduction, disappearance, torture and intimidation was lower than it has been in previous years. Despite this, the overall situation was still far from perfect. There were ongoing serious human rights abuses, including a disappointing lack of policy reforms and the continuously selective application of the law. Although the new constitution guaranteed rights for criminal defendants, criminal procedure laws were not aligned with the constitution; thus overt attacks on the legal profession, such as the arrest and detention of Beatrice Mtetwa, continued to be seen despite the separation of the offices of the attorney general and Prosecutor General, as the incumbent remained in office. Several political opponents - or those perceived to be such - were arrested and brought to court where due process safeguards were not guaranteed, with trials characterized by multiple delays calculated to harass defendants. With regard to organized violence, although the amount of overt violence was low, cases of institutional intimidation and harassment continued, with food related violations and post-election reprisals also occurring.

### Section 2. Respect for Civil Liberties

The new constitution guarantees civil liberties including freedom of speech, press and media and assembly and association. However, there were ongoing serious human rights abuses, including the tight control of electronic media and further controls on mobile telephone communications. Such mass surveillance affected the ability of opposition political parties to organize, and the lack of privacy afforded to them had a huge bearing on democratic progress. Legislative and institutional reforms were not priorities for the government, and repressive laws such as the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) continued to be used selectively by unreformed state institutions and actors to prevent constitutional freedoms from being exercised due to lack of political will and failure to censure heavy-handed action whenever it occurred. There were attacks on the media, judges and lawyers, use of repressive laws against targeted civil society organizations (CSOs) and human rights defenders (HRDs) and criminalization of free speech. There were 60 cases in which Section 33 of the Criminal Law (Codification and Reform) Act was arbitrarily applied on individuals who were charged with allegedly "insulting or undermining the authority of the President" since 2010.

The ongoing and escalating assault on NGOs involved in civic education, human rights monitoring, public outreach and service provision – all of which are lawful activities and noble endeavours - were highlighted by local NGOs. Free protests were quashed and met with disproportionate force. With regard to citizenship rights, a lack of clarity prevailed despite the signing into law of the new constitution which allows dual citizenship and restored citizenship rights to a lot of people who had been disenfranchised.

### Section 3. Respect for Political Rights

The old constitution provided citizens with the right to change their government peacefully. Section 23A of the new constitution under which the 2013 elections were held explicitly provides for the right to vote. Despite this affirmation, the right was restricted in practice. The political process continued to be biased heavily in favor of ZANU-PF, which has dominated politics and government and manipulated electoral results since the country gained independence in 1980. During the 2013 harmonised elections held on 31 July 2013 substantial electoral irregularities were reported by domestic and regional observers, which rendered the result an in-credible expression of the will of the Zimbabwean people. The election was reported to be the culmination of a deeply flawed process: there were irregularities in the provision and composition of the voters roll; the political parties had unequal access to state media; the security sector did not safeguard the electoral process on an even-handed basis; and the government failed to implement the political reforms mandated by Zimbabwe's new constitution, the Global Political Agreement, and the region.

## Section 4. Open Governance

The government did not demonstrate any commitment towards openness in governance. With regard to corruption, on 16 November 2013, Afrobarometer found that nearly a third of Africans in 34 countries including Zimbabwe were forced to pay bribes, including for medical treatment. The government lacked accountability and transparency especially in relation to revenue flows. As a demonstration of general lack of revenue transparency, the government did not fully implement the economic management programme agreed with the International Monetary Fund (IMF) in June 2013, as a pre-condition for re-engagement. There remained secrecy around diamond mining and revenue. The government was not accountable and neither did it take responsibility for economic decline, and continued misleading the nation on the sanctions issue.

## Section 5. Attitudes towards international community

In 2013 Zimbabwe had a very poor record of responding to visit requests by international bodies and there were at least eight pending visit requests by the United Nations Human Rights Council (UNHRC) special mandates. Numerous statements and requests were also issued by international NGOs and intergovernmental organizations such as the UN and the EU for the government to respect its obligations under international law, to which there were no positive responses.

## Section 6. Economic, Social and Cultural Rights

The new constitution includes economic, social and cultural rights, and specifically water rights. The state continued to suppress workers' rights especially the right to picket and organize. Working and living conditions deteriorated substantially. The abuse of employees' rights by employers were also acute in the diamond industry. The government continued to pursue economic policies based on the exclusion of particular social groups, which threatened direct foreign investment thereby undermining means of livelihoods. Access to water and sanitation remained poor. At the close of the year, the economy was nearing collapse, threatening to lead the country into further poverty.

## Recommendations

### To the Government of Zimbabwe

Generally the government should take concrete steps to fulfill its international legal obligations and commitments relating to economic, social, cultural, civil and political rights as spelled out in various international charters and treaties to which Zimbabwe is party. In order for this to happen, the government should take immediate steps to improve its responsiveness to requests for visits and cooperation by international community and institutions such as the UNHRC, the IMF - specially the Staff Monitoring Project - and the European Union under various articles of the Cotonou agreement.

The government should also take concrete steps to fulfill the country's human rights obligations. They included the need to reaffirm the rights provisions in the new constitution, ensure justice and accountability for past abuses, uphold activists' rights to organize and operate freely without government harassment, and strengthen the Zimbabwe Human Rights Commission.

These specific steps should include, but are not limited to, measures to:

1. Align all laws that are inconsistent with the New Constitution
2. Improve the operating environment for human rights defenders, opposition parties and every person in Zimbabwe to enable them to enjoy their rights to freedom of expression, association and peaceful assembly.
3. End forced evictions and ensure the full and effective enjoyment of the right to adequate housing, including pursuing effective remedies for those people affected by the 2005 mass forced evictions (known as Operation Murambatsvina) and other cases of forced evictions that have taken place.

4. Continue with the institutional reforms that started under the Government of National Unity to ensure that all government institutions, including law enforcement agencies, operate in a professional and non-partisan manner and respect international human rights standards. For example, and without limitation, government must ensure that the Zimbabwe Republic Police fully respects and protects all the rights contained in the Declaration of Rights in the Constitution, including by: (a) conducting all its operations on a non-partisan basis; (b) fully upholding the rights of all arrested persons in line with Section 50 of the Constitution; and (c) training anti-riot police on how to police non-violent demonstrations in line with international standards. The government must ensure the independence of the judiciary by fully implementing the Judicial Services Commission code of ethics.
5. Fulfil all commitments made by the government during the Universal Periodic Review of Zimbabwe in March 2012 and subsequent thereto such as acceding and domestication of the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”) and its First Optional Protocol and also immediately impose an official moratorium on executions with a view to abolishing the death penalty, and commute all death sentences.
6. Institute election related reforms. This should include accepting, ratifying and domesticating the African Charter on Democracy, Elections and Good Governance (The African Charter on Democracy) that came into force on 15 February 2012 Secondly implementing institutional and technical measures to ensure that future elections have integrity and that they meet both regional and international standards. This may include but without limitation, implementation of biometrics technology.
7. Pursue a rights based approach to the economy in order to advance the national objectives in the constitution based on the concept of progressive realization of all economic and social rights as spelt out in the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Geneva Programme of Action of 1993.
8. Advance and institutionalize the human rights values of participation and citizens’ engagement as the next step in the process of constitutional renewal, creation of a constitutional culture, definition of national values and ensuring that government policy is underpinned by collective national aspirations. The dialogues, for example, could be rooted in the existing frameworks such as the proposed constitutional outreach.

## **Recommendations to the international community**

### **Principles & Considerations**

1. Under all circumstances first, second and third diplomatic channels should be given a chance.
2. There is need for multi-level dialogues on various issues. For example, while acknowledging that the government hasn’t done much to institute reforms, the European Union should consider moving beyond article 96 to article 8 dialogue. There should also be an article 13 dialogue.
3. High level first track engagements must ideally be based on reciprocity and concessions and where such concessions are made, the same should be accompanied by clear, verifiable and transparent programmes of action.
4. Decisions must balance principle, evidence and reality, the overarching consideration being the plight of the ordinary Zimbabweans.
5. Being perceived as rewarding bad conduct discourages those working on reforms and emboldens and encourages human rights violations
6. There is need for clear messaging spelling out reasons for decisions.

7. While taking into account Zimbabwe's unique circumstances, international benchmarking can ensure consistency in decision making, for example, drawing lessons from states such as Burma in encouraging reforms.

## **Social & Economic Rights**

1. Continue to support economic policies and sustainable development rooted in respect for human rights.
2. Ensure that the most vulnerable in society have access to nutritious food and health facilities, but with a long term goal of creating both social and economic resilience and reduction of vulnerabilities.
3. Identify, Support and strengthen channels for aid distribution to ensure that such aid reaches the most needy.

## **Civil & political rights and institutional reform**

4. Work collaboratively with government, civil society and the region towards the advancement of the specific recommendations identified above.

## **Civil Society & NGOs**

5. Continue supporting organizations and individuals working towards the advancement of human rights out of an acknowledgement that the full realization of these ideals may take several years to achieve.

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# Rights relating to respect for the Integrity of the Person



Including rights relating to respect for the Integrity of the Person, including freedom from arbitrary arrest or detention, arrest procedures and treatment while in detention, denial of fair public trial, trial procedures, civil judicial procedures and remedies, regional human rights court decisions, and policy developments relating to the above (conveniently labelled “Rule of Law”), and politically motivated and organised violence as well as torture in its wide definition, disappearance, abductions and extra judicial killings (conveniently labelled “organised violence and torture”. The section is divided into sub-sections with 1a covering rule of law and 1b covering organised violence and torture.

## Summary

*During 2013, cases of politically motivated murders, violence, abductions, disappearances, torture and intimidation had been lower than in previous years. However the overall situation was still far from perfect. There were on going serious human rights abuses, including a disappointing lack of policy reforms and the selective application of the law. Although the new constitution guaranteed rights of criminal defendants, criminal procedure laws were not aligned with the constitution; there were overt attacks on the legal profession such as the arrest and detention of Beatrice Mtetwa, despite the separation of the offices of the attorney general and Prosecutor General, the incumbent continued in office. Several political opponents or those perceived to be such were arrested and brought to court where due process safeguards were not guaranteed with trials characterised by several delays calculated to harass defendants. In respect of organised violence, although overt violence was low, cases of institutional intimidation and harassment continued, as well as food related violations and post lecture reprisals.*

## IN DETAIL

### Section 1a: Rule of law

The section on specific violations was compiled mainly from information obtained from Zimbabwe Lawyers for Human Rights (ZLHR). ZLHR and also VERITAS Trust contributed to the section on policy-related developments, with additional supplement from the editor. The entire section outlines developments that impinged on the rights relating to the rule of law between January 2013 and December 2013.

### Policy reforms

On a policy level the then Inclusive Government was meant to institute reforms under the SADC Road Map, which was made up of a brief introduction and a table divided into eight parts to cover the following eight issues: Sanctions, Constitution, Media Reform, Electoral Reform, Rule of Law, Freedom

of Association and Assembly, Legislative Agenda and Commitments and Actual Election.

Most of the activities listed in the Road Map relating to the rule of law failed to engender consensus among all three parties. The two that did, (i) and (vi), were phrased in vague and general terms, with action to be undertaken by the Inclusive Government principals and timeframes to be determined by them. The following outlines the proposed reforms vis-à-vis the overall response to them emanating from the three parties;

(i) concerning the Attorney-General and security force chiefs: The principals were to meet the officials concerned to ensure “full commitment” by the Attorney General, Commissioner-General of Police and heads of other security and intelligence institutions “to operate in a non-partisan manner consistent with the GPA”. There were some efforts on the part of the MDC but none were successful.

(ii) security forces were to be told to publicly pledge their respect for the Constitution, rule of law etc. No agreement reached over this and no action was executed.

(iii) state-sponsored violence was to end. There was no agreement reached over this and no action was executed. However there was a reduction in overt violence during the elections

(iv) deployment of security personnel for political purposes was to be stopped. There was no agreement reached over this and no action was executed.

(v) a special Act for the Central Intelligence Organization was to be passed. There was no agreement reached over this and no action was executed.

(vi) impartiality of State institutions. There was no agreement reached over this and no action was executed. The principals were to put in place mechanisms to ensure the impartiality and observance of the rule of law by State organs and institutions as required by GPA Article 13, including special training for the uniformed forces in human rights and objective, impartial performance of their duties. Statements by senior police and military officers, and overall police and military conduct, justified the conclusion that there had been little, if any, serious effort to bring about the changes envisaged by these activities.

Zimbabwe subsequently passed into law a new constitution on May 22, 2013. The New Constitution subsumed some of the provisions in the GPA, which subsequently came to an end on 31 July 2013 when elections were held. On 22 May the Bill of Rights immediately came into force, while some of the constitutional provisions were staggered, with most of them coming into force at the end of the 7th parliament on 30 June 2013.

## Legislative incompatibility with the new constitution

The new constitution contained an extensive bill of rights, which addressed the rights of arrestees and detainees as well as court procedures.

Since the signing of the new constitution on 22 May, there was an urgent need to amend the Criminal Procedure and Evidence Act [the CP&E Act] to ensure that suspects and accused persons, i.e. defendants, in criminal proceedings are accorded the rights to which they are entitled under sections 50 and 70 of the new Constitution<sup>1</sup>.

Accused persons have been entitled to these rights ever since the Declaration of Rights in the new Constitution came into force on 22nd May, but they are not yet reflected in the CP&E Act, which regulates the way in which criminal proceedings must be conducted. Until the Act is amended, criminal trials conducted in accordance with its provisions are liable to be set aside on review or appeal on the ground that the accused persons were denied their fundamental rights guaranteed by the new Constitution.

Under pre-trial Procedures, for example upon arrest, section 50 of the new Constitution gives people who have been arrested a number of important rights which are not reflected in the CP&E Act. These rights, for example, include the right to contact relatives, advisers etc, the right to visitors, the right to

<sup>1</sup> VERITAS' Constitution Watch 35/2013 dated 23<sup>rd</sup> September 2013

silence without inferences being drawn, the right to be informed of their rights, to be released after 48 hours, and the right to be released on bail in the absence of “compelling reasons. In respect of trial Procedures, the right to prosecute criminal cases on behalf of the state, under section 258 of the new Constitution, has been transferred from the Attorney General to a new National Prosecuting Authority [NPA] headed by a Prosecutor-General. Accused persons also have a right to legal aid under section 70(1) (e) and (f) of the new Constitution. Section 70(1) (i) of the Constitution confers the right to “remain silent and not to testify or be compelled to give self-incriminating evidence”. This is an extension of the right to silence given to arrested persons under section 50. Under section 70(1) (l) of the new Constitution, accused persons cannot be convicted of conduct which has ceased to be criminal, which means that if a person commits a crime and the crime is subsequently abolished, the person cannot then be prosecuted for the crime.

Under section 70(3) of the new Constitution, evidence that has been obtained in violation of the Declaration of Rights, e.g. through illegal searches or monitoring of communications in violation of section 57, must be excluded in criminal trials if allowing the evidence to be given would render the trials unfair or would be detrimental to the administration of justice or the public interest. In respect of sentence, section 48 of the new Constitution, the death penalty is restricted and can be imposed only for “murder committed in aggravating circumstances” [whatever that means], a court must have a discretion whether or not to impose it and only on men between the ages of 21 and 70.

In respect of post-trial Rights, section 70(5) of the new Constitution gives convicted persons the right, “subject to reasonable restrictions prescribed by law”, to appeal to a higher court against conviction and sentence, contrary to section 36 of the High Court Act and section 11 of the Supreme Court Act which prohibit convicted persons from conducting their appeals in person, i.e. without a lawyer, unless a judge has certified that there are reasonable grounds for appeal. Such a blanket restriction on the right of appeal can hardly be described as reasonable, in view of the fact that most people in Zimbabwe cannot afford to engage a lawyer.

The above-recommended amendments should have been in place on the 22nd May, when the Declaration of Rights in the new Constitution came into force. Delay in effecting the amendments is not only prejudicial to accused persons but is also unfair to police officers, prosecutors and judicial officers who, when trying to carry out their duties in accordance with the law, unwittingly infringe the Constitution.

## Separation of the functions of the Attorney General and the Prosecution Authority

On 13 November 2013, the government implemented the long overdue separation of the functions of the Attorney General and the National Prosecuting Authority (“NPA”). It further said, ‘this is a good practice that will allow for increased public scrutiny of, and accountability for, the actions of the prosecutorial authority’<sup>2</sup>.

The new Constitution of Zimbabwe sets out a clear procedure for the appointment of a Prosecutor-General. It includes advertising the post, allowing public nominations, and requiring public interviews of prospective candidates. This enhances the transparency of the appointment process, whilst contributing to ensuring the credibility and professionalism of the nominees through scrutiny of their record of service and past conduct’.

Mr. Johannes Tomana was sworn in as the Prosecutor-General (the head of the NPA) on Wednesday 13 November 2013. By operation of transitional provisions in the Sixth Schedule of the Constitution, the current Attorney General becomes the Prosecutor General without operation of the previously outlined requirements. Mr. Tomana has therefore been saved and shielded from the constitutionally mandated process of public scrutiny, which is regrettable.

It was nevertheless necessary to continue to monitor how the Prosecutor-General carries out his mandated functions as he is constitutionally obliged not to act in a partisan manner; not to further the

<sup>2</sup> the Zimbabwe Lawyers for Human Rights (ZLHR) statement

interests of any one political party or cause; not to prejudice the lawful interests of any other political party or cause; not to be an active member of any political party; and not to violate the fundamental rights or freedoms of any person. Given his comments on the Morgen Komichi case that he would like to appeal the lenient community service sentence, this is most unlikely<sup>3</sup>.

ZLHR expect the political neutrality of the Prosecutor-General and the officers in the NPA to be urgently legislated by way of an Act of Parliament as part of the harmonization of laws with the new Constitution, as this is a critical issue which is in the national interest and which will improve public confidence in the justice delivery system.

## Insult and defamation laws

Just like in 2012, 2013 witnessed a rise in the abuse of police powers and court procedures clamping down on civil liberties. Since 2010, there has been a dramatic increase in the arbitrary application of Section 33 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] (the Criminal Law Code), where individuals have been charged with allegedly “insulting or undermining the authority of the President” with ZLHR attending to 65 cases where clients have fallen foul of this law.

One such example concerned the address at a rally by Paul Madzore, out of prison custody and on bail at the time and who allegedly called President Mugabe “a limping donkey” who should be retired. Due to continued delays in the justice delivery system, most of the cases were pending although two have since been finalised, with the beneficiaries being acquitted. In other instances, clients have been removed from remand due to failure by the State to prosecute timeously. The constitutionality of this provision has been challenged on several occasions, on the basis that it infringes upon the freedom of expression, particularly that of a public figure, and one who must be subject to scrutiny as a political candidate. However, the Supreme Court, sitting as a Constitutional Court, is yet to make a determination on these cases<sup>4</sup>.

## Attacks on the legal profession

The year also saw an increase in the attack on lawyers and judges. State-controlled and other partisan media attacked the personal and professional judge of the High Court of Zimbabwe (Justice Charles Hungwe), and the integrity of the judiciary and legal profession. Hate speech and false reporting was not only tolerated, but was in fact encouraged to continue with complete impunity. The state also attacked Beatrice Mtetwa by leveling unfounded allegations while Tonderai Bhatasara was castigated by a judge. MDC Lawyers were reported to the prosecuting authority by Justice Bhunu during the hearing of the MDC election urgent chamber application requesting the production of the voters’ roll, when the Judge imputed Morgan Tsvangirai’s criticism of the Constitutional court to his lawyers.

In response to this pattern of abuse, ZLHR issued a statement that reiterated the functions and duties of lawyers as officers of the court underscoring their indispensability to proper and effective justice delivery. ZLHR emphasised that the protection of lawyers in the execution of their professional duties had been expanded nationally, regionally and internationally. The Constitution of Zimbabwe in sections 70(1)(d), 69(4), 50(b)(i) and (ii) of the Declaration of Rights, guarantees the rights to legal representation of one’s choice in criminal and civil matters as part of ensuring the fundamental right to protection of the law. The African Charter on Human and Peoples’ Rights (to which Zimbabwe is a State Party), and the African Union Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa both reaffirm these rights. These Principles and Guidelines further stipulate that every accused person has the right to an effective defence and representation, and that the independence of lawyers shall be guaranteed. Furthermore various United Nations (UN) instruments, which are expanded particularly in the UN Basic Principles on the Role of Lawyers bind Zimbabwe, of which the State, a member state of the UN is well aware of.

3 <http://www.zimbabweelection.com/2013/11/23/tomana-wants-komichi-jailed/>

4 ZLHR

In the light of the attacks there must be, among other things, the creation of an enabling environment for the legal profession as well as the other stakeholders in justice delivery, the Judicial Service Commission must monitor and ensure compliance with the values, standards and practices set out in the Judicial Service (Code of Ethics) Regulations of 2012. This would maintain public confidence in an independent and effective judiciary that adheres to the highest standards of integrity and delivers justice to all, without fear or favour.

## Specific violations

In regards to observance of the rule of law, 2013 witnessed an unprecedented rise in reports of security forces arbitrarily arresting political and civil society activists. The government continued to use arbitrary arrest and detention as tools of intimidation and harassment, especially against non-ZANU-PF government officials, political activists, civil society members, student activists, and journalists.

Details relating to the arrest and detention of journalists are recorded under the section on free speech and media rights. Examples of abuses, police summons, and judicial persecution are recorded below in reverse order by month;

### November

On 19 November 2013, police in Nyanga, Manicaland province arrested and detained six villagers after they protested against the partisan distribution of some farming inputs sourced under a government-run scheme. The five villagers Lovemore Kenende, Gumisai Kenende, Norman Madakwenda, Chrispen Tabwa, Lawrence Madakwenda and Charity Katerere, who was breastfeeding her toddler were arrested and charged with theft in contravention of Section 113 of Criminal Law Code. The police claimed that the six villagers stole 10kg bags of maize seed, which were meant to be given to some villagers under the government-run agricultural inputs assistance scheme. However the six villagers, who denied the charges, argued that they were denied access to the maize seed after they were accused of supporting the MDC-T party instead of President Robert Mugabe's Zanu PF party.

On 13 November, the trial of the Zimbabwe Human Rights Forum Executive Director Abel Chikomo commenced with the human rights campaigner pleading not guilty to charges of running an "unregistered" organisation in a court hearing viewed as yet another official harassment of civic organisations and human rights defenders. Chikomo was arrested in 2011 on charges of contravening Section 6 (3) of the Private Voluntary Organisation (PVO) Act (Chapter 17:15) which took almost three years to be brought to trial. The case was postponed several times including on 14 & 28 October 2013, and prior to that on 11 July 2013, when Chikomo had been served with summons by two police officers only identified as Detective Gandidzanwa and Chipwanya to stand trial on 01 August 2013 at Harare (Rotten row) Magistrates Court but on 1 August the case failed to take place. On Tuesday 19 November the trial was postponed to Friday 22 November after a top government official, Sydney Mhishi, failed to show up in court to testify as a State witness. In his defence the human rights campaigner stated that Section 2 of the PVO Act exempts "anybody or association of persons, corporate or unincorporated the benefits from which are exclusively for its own members. "He said the Zimbabwe Human Rights NGO Forum is a forum, association and common law universitas of 20 member organisations. On Tuesday 19 November the trial was postponed to Friday 22 November after a top government official, Sydney Mhishi, failed to show up in court to testify as a State witness.

### October

On 14 October, Mutare Magistrate Chiwundura acquitted 36 year-old Nicholas Manditsera, an employee of the state-run National Railways of Zimbabwe (NRZ) who had been on trial on charges of undermining authority of or insulting President Robert Mugabe. Manditsera had been put on trial after he was arrested in September and charged with contravening Section 33 of the Criminal Law Code, a law that has been routinely used to target political and human rights activists as well as members of the public. Manditsera had allegedly insulted President Mugabe by uttering unprintable

insults referring to the octogenarian leader and his family. The magistrate ruled that there were several inconsistencies between the two State witnesses who testified during the trial. In his defence, Manditsera, denied uttering the offensive words and charged that Murenje, Manditsera's supervisor was determined to incriminate him by bringing up the insult charges Manditsera . Furthermore he objected to being supervised by his superior while at a bottle store.

On 11 October, four women were badly injured and hospitalised. One of the women who had been brutalised by an armed officer of the Zimbabwe Republic Police, was admitted to intensive care under critical condition. She had been protesting against the State-owned coal miner Hwange Colliery Company who had failed to pay their husbands' salaries for several months. Zimbabwe Lawyers for Human Rights (ZLHR) moved in to assist the women when the demonstration broke out on Monday 7 October and secured the release of the two women who had been detained at Hwange Police Station.

On 11 October, human rights lawyer Denford Halimani, a member of Zimbabwe Lawyers for Human Rights was still to be granted access to his client, James Chidhakwa, an Information Technology officer and the Secretary for Security and Defence in the MDC-T party's Youth Assembly, who was detained at Harare Central Police Station after being taken from his work offices in Harare on Friday morning it took over four hours for Halimani to be allowed access to see his client.

## September

On 28 September, Zimbabwean police arrested a woman and her toddler in connection with the alleged bombing of some Zanu PF sub-offices in Harare's high-density suburb of Highfield. Spiwe Pambayi aged 32, together with her one year-old baby, Clifford Mbewe, were forced to spend two nights in police custody, first at Machipisa Police Station and then at Harare Central Police Station. Police alleged that an informant overheard the 32 year-old Pambayi, a self-employed vendor, saying "fire-fire operation yatakaita nezuro yakabudirira," which the police translated as, "the fire-fire operation that we conducted yesterday was a success". Pambayi denied the allegation when police detectives recorded a cautioned statement from her in the company of her lawyer, which was released on Monday 30 September after the detectives indicated that they would carry out further investigations. According to media reports, the Zanu PF offices were allegedly petrol-bombed during an attack that reduced the offices together with an adjacent supermarket, Grocery World Supermarket to ashes.

On 20 September, a Harare Magistrate Tendai Mahwe acquitted the MDC-T election agents after ruling that State prosecutors had failed to establish a prima facie case against Anna Bvute and Phillip Mabika, who were arrested and charged with destroying the country's roll of registered voters on the eve of the July 31 elections. They had been arrested on 30 July being accused of stealing voters' roll from Tauyanarwo Makuza, the Budiriro constituency elections officer. Their lawyers applied for discharge at the close of the State's case on the basis that the State had failed to prove that the election agents had committed an offence during the first stage of their trial.

On 19 September, High Court Judge, Justice Bhunu passed a not guilty verdict on twenty-one of the twenty-nine Glen View activists who included Cynthia Manjoro, Solomon Madzore, Stanford Maengahama, and others. He acquitted them after determining that the State had failed to prove a prima facie case against the human rights and political activists and that nothing would be gained by the State by placing them on their defence.

The activists had been arrested in 2011 and charged with contravening Section 47 of the Criminal Law Code for allegedly murdering Inspector Mutedza at a bar in Harare's high density suburb of Glen View. They were also charged with committing public violence in contravention of Section 36 of the Criminal Law (Codification and Reform) Act Chapter 9:23. Justice Bhunu criticised police officers for their unprofessional conduct in arresting human rights campaigner Cynthia Manjoro and MDC-T youth assembly president Solomon Madzore along with the other activists as they did not have credible evidence linking them to the commission of the offence. The judge said the police had arrested Manjoro as an inducement for her boyfriend to surrender himself to the police in connection with the commission of the offence.

## August

On 15 August, police resumed their onslaught against journalists by devoting two days to interrogate Jan Raath, a veteran foreign correspondent for The Times, a British newspaper over the publication of a story alleging that the government had orchestrated a (secret) deal to export uranium raw materials to Iran for the manufacture of nuclear weapons. Detective Chief Inspector Run'anga led the interrogation in which the police expressed concern over what they claimed to be "publication or communication of false statements prejudicial to the State." On Thursday 15 August, the veteran journalist returned to Harare Central Police Station's Law and Order Section, where he appended his signature to an affidavit detailing his contribution to the newspaper article after interrogations, which lasted for an hour.

## July

On 28 July, Morgen Komichi, the outgoing Deputy Minister of Transport, Communication and Infrastructure Development was arrested and charged with committing fraud in contravention of Section 136 of the Criminal Law or alternatively for allegedly destroying or opening a pack of ballot papers without authority in contravention of Section 85 of the Electoral Act [Chapter 2:13]. Komichi was sentenced to a wholly suspended 18-month jail term after a full trial before Harare provincial magistrate Tendai Mahwe.

Prosecutors alleged that Komichi approached the Zimbabwe Electoral Commission (ZEC) on 25 July and handed the elections management body an envelope containing a stray ballot paper cast in his MDC-T party's favour by Constable Mugove Chiginya stationed at the Zimbabwe Republic Police General Headquarters' transport administration section to support his party's claims that ZEC rigged the Special Voting process in Zanu PF's favour. However, the prosecutors charged that the State proved through examining Chiginya's fingers using an Ultra Violet light detector that the police officer had failed to cast his vote during the chaotic Special Voting process conducted on 14 and 15 July, contrary to Komichi's testimony to ZEC.

Komichi spent a 100 days in remand prison from the time of his arrest on 28 July. Mahwe reduced the sentence by 8 months on the condition that he wouldn't commit a similar offence in the next 5 years. He further suspended the balance of the sentence on the condition that the senator performed 350 hours of community service at Mabelreign Clinic in Harare.

However, on the 23 November 2013, the State decided that they would appeal against Komichi's community service sentence, which they viewed as 'lenient' demanding a custodial sentence instead.

More than thirty Zimbabweans, mostly MDC supporters were arrested, detained and charged for pulling down President Robert Mugabe's Zanu PF party's political campaign posters in contravention of the country's electoral laws. Authorities in Mashonaland Central province appeared to be enforcing the clampdown on dissent as the mining town recorded the highest number of Zimbabweans charged with committing electoral transgressions. The following incidents were recorded:

On 8 July, Nqobani Ngwenya and Charles Ncube, MDC-T party activists were arrested in Victoria Falls, Matabeleland North Province for wearing MDC T-shirts. However, they were released without a formal charge being levelled against them. The police indicated that they were conducting further investigations and would summon the two activists if need be.

On 16 July, Memory Nyambuya, MDC-N member stood trial after she was arrested and charged with contravening Section 152 (1) of the Electoral Act in that she allegedly removed a Zanu PF campaign poster bearing the picture of Innocent Benza, an aspiring parliamentary candidate representing the former ruling party in Mutasa Central constituency on 16 July at Mutasa District Community grounds.

On 25 July Godfrey Munyama, an MDC member and the party's aspiring parliamentary candidate for Mutasa South constituency stood trial after he was arrested on Saturday 20 July for allegedly breaching Section 152 (1) of the Electoral Act. Prosecutors alleged that Munyama unlawfully and intentionally defaced a poster displayed by Irene Zindi a ZANU PF aspiring parliamentary candidate

contesting to represent the same constituency. Munyama denied the allegations and argued that he was arrested while he was pasting his own political campaign posters.

Ordinary residents whose political affiliations were not known were also targeted as can be testified by Thembelisi Ndhlovu, who was arrested on suspicion of removing posters. However, police did not have any evidence against her and proceeded to release her after being profiled indicating that they would summon her after conducting further investigations.

Another ordinary resident Johnson Mlambo of Bulawayo was assaulted by some Zanu PF youths after he refused to take some flyers that they were handing out to people during a campaign programme.

The bulk of the victims consisted of Tsvangirai supporters, this included Tapiwa Dandajena, who was arrested on 10 July and scheduled to stand trial in August for allegedly placing an MDC-T poster at Shamwarijoe Hotel in Mvurwi, Mashonaland Central province.

In Bindura, some unidentified MDC-T activists were also apprehended and charged for allegedly spray-painting some bridges with graffiti.

Other MDC-T victims include Johannes Chipadaza of Rusape, who was remanded out of custody on \$100 bail on 7 August and Stanley Chawira, who was released on free bail by Magistrate Feresi Chakanyuka.

On 16 July, Simbarashe Mberenga of Bindura was arrested and charged with disorderly conduct in a public place as defined in Section 41 (a) (b) of the Criminal Law (Codification and Reform Act). The State alleged that Mberenga uttered an MDC-T party slogan "Chinja maitiro maitiro chinja" whilst passing close to some Zanu PF party supporters who were receiving T/Shirts and caps from an aspiring Councillor one Innocent Zvigumbu. He returned to court on 1 August for commencement of his trial.

Also up for disorderly behaviour in a public place as defined in Section 41 (a) (b) of the Criminal Law (Codification and Reform) Act are Ronald Mapfumo and Fanuel Tangi who were arrested at a shopping centre for allegedly wearing MDC-T T/shirts with the portrait of their party leader Morgan Tsvangirai.

In Karoi, Mashonaland West province, six MDC-T party supporters including Ophias Chiputire were arrested and charged with criminal insult after they were accused of insulting Zanu PF member Frank Ndambakuhwa while they were pasting their party campaign posters.

Still in Karoi, police (only) released some campaign material for Blessing Mandava, the MDC-T parliamentary aspiring candidate for the Hurungwe East constituency, which had been seized as some parents claimed that he was conducting some campaigns within Kasimhure Primary School, after the intervention of lawyers. The police confiscated Mandava's consignment of campaign material, which he stored at his house at Kasimhure Primary School where he was teaching.

Several Chinhoyi residents including Charles Mashonganyika, Calisto Mukucha, Farai Chisakambwi, Desmond Charuza, Lucky Kautende, Defend Chisango, Jeffa Twaya, together with Bezel Tsunge and Patrick Magadzire of Karoi were arrested for pasting political party campaign posters in Mashonaland West province.

In Chitungwiza, Unganai Dickson Tarusenga, the MDC-T aspiring legislator for St Mary's constituency was charged with violating Section 40 of the Criminal Law (Codification and Reform) Act after he allegedly distributed his posters with the support of two youths when more supporters started to assist him during the elections.

In Bulawayo, Oswald Rusike was spared to stand trial after the complainant in his matter elected to withdraw charges of contravening Section 153 of the Electoral Act before plea. Rusike had been arrested and detained at Luveve police station on 16 July on allegations that he defaced a Zanu PF political campaign poster.



On 19 July, police arrested human rights lawyer Arnold Tsunga, the MDC-T aspiring parliamentary candidate for Dangamvura-Chikanga constituency together with his campaign team after accusing them of embarking on an unlawful procession in the high density suburb. They were detained at Dangamvura Police Station and the police indicated their intention to transfer them to Mutare Central Police Station.

On 17 July, police banned another human rights lawyer, Jacob Mafume, an aspiring legislator for Harare South constituency from holding a campaign rally at an open space in Southlea Park suburb on Saturday 20 July 2013.

On 10 July, two Beitbridge residents were held in remand prison after a prosecutor vetoed a bail order granted in their favour. The residents Itai Gombe and Alice Mugariro were arrested in Beitbridge in Matabeleland South province on 10 July and charged with assault on allegations that they physically attacked and tore the clothing of two ZANU PF members they fell into disagreement with. Gombe and Mugariro, who were represented by attorneys from Zimbabwe Lawyers for Human Rights (ZLHR), were granted \$50 bail each when they appeared at Beitbridge Magistrates court on 12 July.

However prosecutors invoked the infamous Section 121 of the Criminal Evidence and Procedure Act (CPEA) to suspend the bail order which had been granted to the two residents. The invocation of Section 121 of the CPEA immediately suspended Gombe and Mugariro's bail order for seven days pending the filing of an appeal by the State in the High Court.

Evidence compiled by ZLHR makes it clear that, in the majority of the cases recorded, the State had not filed an appeal after the expiry of the statutory seven days. In the isolated cases in which an appeal was pursued, rarely has an appeal filed by the Attorney General's Office succeeded.

ZLHR noted that Section 121 of the CPEA has been selectively and unlawfully applied by the AG's Office against human rights defenders and legitimate political activists in order to persecute these individuals, even where courts have found no evidence that they would pose a threat to the interests of justice, society or the State, if they were to be released on bail. ZLHR felt that there is an urgent need for intervention in order for such repressive and unconstitutional practices to be brought to an end and for accused persons to be afforded their basic rights and freedoms.

On 12 July, Knowledge Uranda, Leo Mutema, Tinashe Mutepfai and Evans Gogo were arrested and charged with defacing property for political purposes in contravention of Section 153 of the Electoral Act. They spent three nights in police cells at Harare Central Police Station, and were freed on Monday 15 July on \$100 bail each.

On 11 July, MDC-T Budiro aspiring legislator Costa Machingauta, remained in police custody at Harare Central Police Station after he was arrested on Wednesday 10 July and charged with contravening Section 89 of the Criminal Law (Codification and Reform) Act. Machingauta was scheduled to appear in court on Friday 12 July.

In Chivhu, the State was asked to conduct further investigations in a case in which the police arrested an MDC-T member, Simbarashe Zindove, on Tuesday 9 July 2013 and charged him with contravening Section 89 of the Criminal Law (Codification and Reform) Act for allegedly assaulting a person who had been found removing Prime Minister and MDC-T leader Morgan Tsvangirai's posters at a Business Centre in Chivhu and disposing them in a nearby pit latrine nearby. Zindove appeared at Chivhu Magistrate Court where the prosecutor was advised to proceed by way of summons once its house is in order.

On 8 July, Mutare Magistrate Noah Gwatidzo freed four human rights campaigners namely Sydney Chisi, Masimba Nyamanhindi, Tichafa Musana and Taziva Machiwana who were arrested on Saturday 6 July 2013 and charged with contravening Section 40 (c) of the Electoral Act for allegedly conducting voter education at a concert that was held in Mutare without clearance from the Zimbabwe Electoral Commission. They were brought to court on Monday after two nights in police detention. The Magistrate asked the four campaigners to deposit \$50 each with the Clerk of the Mutare Magistrates Court

## June

On 24 June the trial of Regis Kandawasvika, a Chiredzi man who allegedly undermined the authority of President Robert Mugabe after he allegedly struck the octogenarian leader's portrait in a bar in frustration over failing to secure employment, was due to commence on Tuesday 25 June at Chiredzi Magistrates Court.

Kandawasvika, 35 years-old was arrested on Tuesday 30 October 2012, and charged with contravening Section 33 (2) (b) of the Criminal Law (Codification and Reform) Act after he allegedly held President Mugabe accountable for failing to secure employment despite having obtained six Ordinary Level subjects.. He allegedly said the following; "Ndiri kutambura nokuda kwehutongi hwezimudhara iri Robert Mugabe. Ndine masabhujekiti six pa"O" Level kasi handina basa rekuita. Handidi kana kumboriona zimudhara irori. Ikozvino gwendo runo riri kuenda kamwe chete", which the police translated to mean "I am suffering because of the ruling of this old man Cde Robert Mugabe. I have six "O" level subjects but I have no job. I don't want to see this old man. This time he is going one way". The State says the alleged utterances were unlawful, abusive, indecent and obscene.

On 4 June, Police in Mutare freed three Zimbabwe Human Rights Association (ZimRights) officials whom they had taken in for questioning over some information, education & communication materials after the intervention of ZLHR. Police officers interrogated Reverend Stephen Maengamhuru, the human rights grassroots organisation's Regional Coordinator, his assistant Cecelia Marovha and Victor Dhliwayo after alleging that they were in possession of some promotional materials on human rights issues which they intended to use at a workshop planned for Honde Valley on Tuesday. The police released the promotional materials, which they had seized, which included T-shirts and pamphlets and retained possession of some promotional Compact Discs, which they advised Nyamaropa that they would want to conduct further scrutiny on them.

On 3 June, police in Hwange summoned ZESN officials to answer charges of allegedly conducting voter education in the province. Sergeant Dzvimbu who spoke to the ZESN Director made the telephone call. Later in the day yesterday, two police details visited the Hwange offices of a ZESN member organisation, Legal Resources Foundation (LRF) offices and arbitrarily confiscated hundreds of ZESN posters and flyers meant for distribution in the province. The materials were confiscated following unsubstantiated and false allegations that ZESN had conducted voter education from the 13th to the 17th of May 2013 without the approval and accreditation from the Zimbabwe Electoral Commission (ZEC).The materials that were confiscated included posters and flyers meant to encourage Zimbabweans to register to vote in the July elections. According to Mr Settie Ncube, the ZESN taskforce Chairperson for Matabeleland North, the two police officers who were in plain clothes demanded to know the persons responsible for distributing the materials before confiscating the posters and flyers. The police officers did not have a search warrant.

On 21 June Harare Magistrate Don Ndirowei acquitted two human rights campaigners; ZimRights Director Okay, his workmate Leo Chamahwinya and ZimRights as an organisation charged with forgery and conspiracy to commit fraud or publishing false statements prejudicial to the State under Sections 31, 136 and 137 of the Criminal Law Code for allegedly attempting to defraud the Registrar General's Office by forging and manufacturing counterfeit copies of certificates of voter registration between May 2012 and January 2013. ZLHR applied for discharge at the close of the State case. Magistrate Ndirowei freed the human rights activists after ruling that there was no evidence linking them to the commission of the alleged offence.

## May

On 21 May, the Zimbabwe Republic Police (ZRP) convicted three police officers for allegedly breaching the Police Act after they reportedly attended an MDC-T political rally held in Mashonaland Central Province in April. Courage Manyengavana, Marshal Zindoga and Lovemore Mupedzapasi were tried and convicted for contravening the Police Act for allegedly acting in a manner, which brought disrespect to the ZRP. The ZRP claimed that the three police officers attended an MDC-T rally held at Mushumbi Business Centre in Mashonaland Central Province on Sunday 27 April 2013,

where Solomon Madzore, the head of the MDC-T party youth wing reportedly compared President Robert Mugabe to a lame donkey. The three police officers were reportedly detected at the MDC-T rally while in civilian attire by members of the ZRP's Police Internal Security and Intelligence (PISI) unit. Zindonga and Mupedzapasi were tried by a "trial officer", a senior police officer in Guruve at the beginning of the month while Manyengavana's trial was conducted in Harare, after which they were all sentenced to serve 14 days in detention at Chikurubi Support Unit Camp. The three police officers were tried and convicted within the police internal disciplinary processes that are provided for under the Police Act.

## March

On 17 March, Mr Mpofu's residence was raided. The police also raided MDC offices along Bath Road in Avondale suburb. Beatrice was taken to Harare Central Police by the police who also arrested Mpofu, On 27 March. High Court Judge Justice Bhunu granted bail to four of Prime Minister Morgan Tsvangirai's aides who had been detained at Harare Remand Prison since 19 March. Justice Bhunu set aside the dismissal of Tsvangirai's aides' bail application by Harare Provincial Magistrate Marehwanazvo Gofa. The Magistrate dismissed the bail application filed by four officials working in Prime Minister Morgan Tsvangirai's Office among them Thabani Mpofu, Felix Matsinde, Councillor Warship Dumba and Mehluli Tshuma, who were charged with contravening Section 4 of Official Secrets Act for allegedly receiving or communicating secret information, Section 179 (1) of the Criminal Law (Codification and Reform) for alleged impersonation and Section 40 (1) of the Criminal Law (Codification and Reform) Act for possession of articles for criminal use. They were remanded to 3 April. Magistrate Gofa also dismissed Mpofu's application for bail on the charges of contravening Section 4 (1) of the Firearms Act for allegedly failing to renew a firearm certificate; and Section 28 (2) of the Firearms Act for allegedly keeping a firearm in a non-secure place and remanded him in custody to 27 March.

On 17 March, police arrested prominent human rights lawyer Beatrice Mtetwa in Harare's Avondale suburb on allegations of obstructing or defeating the course of justice Mtetwa's arrest and detention which provoked widespread condemnation was defined by a lengthy and precarious process. However on the 26 September 2013 Magistrate Rumbidzai Mugwagwa delivered a verdict of not guilty where charges of contravening Section 184 (1) (g) of the Criminal Law (Codification and Reform) Act for allegedly defeating or obstructing the course of justice had been levelled against the human rights lawyer.

Mtetwa, who rendered legal assistance to Mr Thabani Mpofu, the Director of Research and Development in Prime Minister Morgan Tsvangirai's Office, was charged for allegedly defeating or obstructing the course of justice. She was accused of interfering with a search conducted at one of Tsvangirai's offices in Harare. Mtetwa argued that she had asked to be shown a search warrant by the police officers to substantiate their actions.

On Tuesday 19 March, Mtetwa was condemned to a third night in detention after Harare Provincial Magistrate, Marehwanazvo Gofa remanded her in custody to Wednesday 20 March to allow the State to make its submissions in response to the bail application.

On Wednesday 20 March, Gofa condemned Mtetwa to remain in prison after she dismissed her bail application.

On Friday 5 April, the state served Mtetwa's lawyers with new concocted allegations together with State papers prepared for her trial, which was scheduled to commence on the 27 May at Harare Magistrates Court.

On Monday 27 May, Magistrate Tendai Mahwe postponed the trial to Saturday 8 June in Court 4 after a day of high courtroom drama as the State's representatives Tawanda Zvekare, the Acting Director of Public Prosecutions in the Attorney General's Office and Michael Mugabe, the chief law officer did not arrive on time.

On Monday 2 September, the trial resumed at the Harare Magistrates Court with the second witness out of nine lined up by the State testifying. Detective Assistant Inspector Wilfred Chibage, testified as the second witness before Harare Magistrate Rumbidzai Mugwagwa after Mtetwa and her lawyer Harrison Nkomo finished cross examining Chief Superintendent Luckson Mukazhi. Chibage appeared to be damaging the State's evidence which it relied upon to secure a conviction after he indicated that Mtetwa could not have interfered with the police search of outgoing Prime Minister Morgan Tsvangirai's research and communications office located in Avondale suburb as she was under arrest, handcuffed and detained in a police vehicle.

On 26 September, Harare Magistrate Rumbidzai Mugwagwa adjourned the hearing to 4 October after State witnesses failed to turn up in court.

On 23 October, the trial, which had seen the State leading all its witnesses, was postponed to allow for an inspection-in-loco at former Prime Minister and MDC-T leader Morgan Tsvangirai's research and communications office located in Harare's Avondale suburb, where State prosecutors claimed that Mtetwa hindered the police from carrying out their operations.

On 24 October, the trial of Beatrice Mtetwa resumed at Harare Magistrates Court (Rottenrow)

The trial was adjourned on 26 October when the State led by Tawanda Zvekare closed its case against Mtetwa, who described the charges as fabricated.

On 16 March, ZLHR continued to be actively involved in following the referendum day events and providing related legal support services. On Saturday 16 March, ZLHR lawyers provided legal assistance to several people who were arrested and subsequently detained as they exercised or attempted to exercise their right to vote during the referendum:

In Mashonaland West province, four MDC-T members including Nomatter Makwasha, Vincent Mpofo, and William Zvavahera were arrested in Kariba and detained at Mahombekombe police station on allegations of pasting "Vote YES" campaign posters close to a polling station. The police reportedly searched for George Masendu who was in connection with the same offence.

In Harare, Makario Chinongwa, the Zimbabwe Human Rights Association assistant advocacy officer and Tariro Mhende, the personal assistant to Director Okay Machisa, were arrested for allegedly taking pictures at a polling station at Eastridge Primary School. The two were taken to the Law and Order section at Harare Central police station. Chinongwa was detained while Mhende was released after she was forced to pay an admission of guilt fine to secure her release.

Chipo Zuze of the Election Resource Centre was arrested and detained at Glen View South police station for allegedly asking to see the election results at a polling station.

In Masvingo's Rujeko suburb, Tapiwa Renias Winslow was arrested and charged with disorderly conduct in a public place after he questioned the presence of some police officers in a polling station whilst he was attempting to cast his vote. Winslow, who was assaulted while in police detention, was detained at Masvingo Central police station. Crispin Masenda was also arrested in Masvingo on allegations of pasting campaign posters close to a polling station.

Christopher Chirigise of Shamva in Mashonaland Central province was arrested at Mushambanyama, ward 20 and detained at Shamva police station for wearing a "Vote Yes" t-shirt inside his shirt. ZLHR member Ernest Jena was working towards Chirigise release.

In Manicaland province, Samson Magumura, the MDC-T Headlands District Secretary, was arrested and detained at Nyazura police station. ZLHR member Leonard Chigadza had to wait to be granted access to his client.

The Zimbabwe Human Rights NGO Forum reported that in Mbare six members of the MDC were assaulted and injured by a mob of ZANU PF supporters when they were putting up posters calling for a 'Yes' referendum vote.

On 7 March police renewed their onslaught against prominent human rights campaigner Jestina Mukoko and summoned her to report at Harare Central Police Station for allegedly operating an “unregistered” organisation. Detective Chief Inspector Run’anga and Chief Superintendent Charles Ngirishi on Wednesday 06 March and 07 March telephoned Mukoko’s lawyer, Beatrice Mtetwa, summoning her to report at Harare Central Police Station to answer charges of running an “unregistered” organisation.

However, Mtetwa advised Run’anga that the Zimbabwe Peace Project’s (ZPP) board had resolved that it be represented by Dr Solomon Zwana, the organisation’s chairperson and not by Mukoko, since she was simply an employee of ZPP and that she could not answer registration queries as she did not have authority from the board to speak or act on behalf of ZPP. However, Run’anga insisted that the police were interested in having Mukoko at their “offices”.

Mtetwa also advised Run’anga that ZPP is a registered organisation and had provided its registration papers and Constitution to the police last month.

In her conversations with the police Mtetwa also reminded them that Mukoko had been a victim of State sponsored torture following her abduction by State security agents in December 2008, where she found herself in the custody of officers from the CID’s Law and Order Section at Harare Central Police Station, who have to date refused to disclose how she came into their custody and who her captors and tormentors were.

In February, the police raided the ZPP offices in Harare’s Hillside suburb and seized several documents and other materials after searching the organisation’s offices for “subversive material and illegal immigrants”. The police officers who carried out the raid charged that there were reasonable grounds that the Mukoko-led ZPP was in possession of some articles which the organisation intended to use for criminal use in contravention of Section 40 of the Criminal Law Code

The police also suspected ZPP to have contravened the Immigration Act by permitting some unidentified illegal immigrants to enter the country without a work permit and to have smuggled some undisclosed goods in breach of Section 182 (1) of the Customs and Excise Act [Chapter 23:03] (the Customs and Excise Act). After the three-hour raid and search the police seized some documents and other items such as mobile phone handsets, wind up radios, files with donor information, political violence reports and DVD’s. No one was arrested but the police indicated that they were going to “study” the information.

On 14 January, Zimbabwe Human Rights Association (ZimRights) Director, Okay Machisa was charged with publishing falsehoods, fraud and forgery as authorities intensified the onslaught against non-governmental organisations. Machisa was arrested and charged with contravening Section 31, 136 and 137 of the Criminal Law (Codification and Reform) Act for allegedly attempting to defraud the Registrar General’s Office by forging and manufacturing counterfeit copies of certificates of voter registration. Faith Mamutse, who was employed as a secretary at ZimRights was released after the police interrogated and recorded a statement from her. Machisa, who was also the Crisis in Zimbabwe Coalition chairperson handed himself to the police, accompanied by his lawyer, Beatrice Mtetwa a member of the ZLHR Board. His arrest followed the apprehension of Leo Chamahwinya, the ZimRights Education Programmes Manager, who was arrested on 13 December 2012 together with Dorcas Shereni, the ZimRights Highfields Local Chapter Chairperson and Farai Bhani and Tatenda Chinaka, whom he charged as not connected to the grassroots human rights organisation.

On 28 January, Justice Felistas Chatukuka presided over the Machisa bail application, which had not been determined after four false starts; consequently the ruling was postponed to Tuesday 29 January.

On Tuesday 29 January, Justice Chatukuta granted ZimRights Director Okay Machisa bail. Justice Chatukuta ordered Machisa to pay \$500 bail, surrender his passport and report once every week at Harare Central Police Station and whilst continuing to reside at his residence. The Judge also ordered Machisa to surrender his title deeds to an immovable property worth more than \$50 000 as security.

## Section 1b. Organised Violence and Torture

The section on specific violations was compiled mainly from information obtained from ZPP with additional supplement from the editor. The whole section outlines developments that occurred between January 2013 and December 2013 that impinge or are likely to impinge on the rights relating in relation to the rights not to be subjected to organised violence, torture, extra-judicial killing etc. The section was compiled from information obtained mainly from the ZPP with additional supplement from the editor. The whole section outlines developments that occurred between January 2013 and December 2013 that impinge or are likely to impinge on the rights relating in relation to the rights not to be subjected to organised violence, torture, extra-judicial killing etc. As the summaries below show trends, patterns and causes of violence with a few specific examples provided, you may visit ZPP's communal portal with all the detailed report on the following link: [http://www.zimpeaceproject.com/index.php?option=com\\_phocadownload&view=category&id=9:2013-reports&Itemid=107#](http://www.zimpeaceproject.com/index.php?option=com_phocadownload&view=category&id=9:2013-reports&Itemid=107#)

On 22 January 2013, the Zimbabwean major political parties signed the political code of conduct on political violence. The agreement of the National Healing, Reconciliation and Integration, according to the political parties, will see political party leaders being held accountable for their supporters' violent conduct, a move which the ZPP believed was in the right direction towards ending the culture of violence and impunity.

### November

On 6 November, the government began demolishing housing structures, which it alleged were illegally built. The demolished structures included convenience shops (tuck-shops) in Ruwa and Dama falls. The government warned that the programme would be rolled out in all urban centers throughout the country.

Various human rights groups including Heal Zimbabwe Trust (HZZT) warned that if the Government of Zimbabwe carried on with its cleanup operation known as Murambatsvina 2 in Chitungwiza and other parts of the country, thousands of families including women, children and people living with HIV would be left homeless. In the impending Thousands of the 2005 victims never managed to secure adequate accommodation to date.

During the week beginning 4 November 2013, Tonderai Nemaungwe, an MDC member from Nyahava in Rusape was severely attacked by over 20 armed Zanu PF youth militia for receiving maize seed distributed under the government loan scheme.

The Zanu PF supporters were led by brothers; Loverage, Forget, Reston Manjinga and one Gude.

According to Nemaungwe, he was on his way to the chairperson for Village 29, to receive his allocation of maize seed when the Zanu PF supporters attacked him with wooden logs leaving him in critical condition.

During the attack, he was asked why he was going to receive the government seed, which according to them was only meant for known Zanu PF supporters. After the assault, he was dragged and dumped in an isolated bushy area. He was found and assisted by some locals who took him to Rusape hospital for treatment. Nemaungwe's medical report shows that he received second-degree injuries on the head, which had to be stitched and his left hand put in a plaster.

### October

The levels of politically motivated human rights violations continued on a downward trend throughout the country with the majority of recorded cases being of discrimination and the politicisation of the distribution of farming inputs.

There were 313 recorded incidents of human rights violations during the month of October down from the 389 cases witnessed during the month of September.

The post-election retribution cases continued throughout the country with hundreds of families reportedly left homeless as a result of forced evictions. Hundreds of families in Banket, Mashonaland West were left homeless after police allegedly set their houses on fire during the month of October claiming they were illegal settlers. Coupled with the rainy season, families were pushed into a desperate situation as police claimed they were illegally settled on a farm owned by a senior police officer. The main officer was reportedly stationed in Chinhoyi. The families claimed they were resettled at the farm located in Mapinga near Banket just before the July 31 harmonised elections but the situation changed after the elections as they were ordered to vacate the property.

In a related incident, a Zanu PF chairperson identified as Albert Nzitsa served 10 families from Mukoko Farm in Mazowe South, Mashonaland Central with eviction orders. The ten families were to vacate there to pave way for the expansion of Batanai Primary School. The victims however said they were being targeted since they were actively involved in supporting the MDC-T during the elections.

On 7 October, eight families were left homeless after a “new farmer” evicted them from their lodgings following a protest they staged for non-payment of their wages. Felix Pambukani, who took over Wakefield Farm in Chegutu, Mashonaland West province during the government endorsed land grab exercise, teamed up with his family members, some plot holders in the surrounding farming area and other sympathetic farm workers to conduct the unlawful eviction during a period preceding the harsh summer season without a valid court order in violation of Section 74 of the Constitution of Zimbabwe which provides for freedom from arbitrary eviction.

During the eviction, some of the families’ property was destroyed – walls and windowpanes were removed from their residences exposing their possessions to the harsh weather. Pambukani and his associates, used truncheons to batter the employees. Four farm workers were hospitalised after sustaining injuries from the assault. The farm workers and their families were forced to camp in the open along the Harare-Chegutu highway with their young children and possessions. Meanwhile, the Zimbabwe Republic Police on 06 October began recording statements from the farm employees after the workers’ lawyer Kennedy Masiye from Zimbabwe Lawyers for Human Rights filed a report at Chegutu Police Station on Saturday 5 October on behalf of the eight families. The police had been reluctant in taking action.

The Zanu PF restructuring exercise provided a new source of conflict during the month under review with accusations of rigging and vote buying being recorded in Manicaland, Midlands and Bulawayo provinces. Intra-party violence was recorded in the period leading up to the election day in Manicaland where an aspiring provincial youth chairperson Innocent Madya reportedly assaulted Josphat Muridzo at Buhera business centre accusing him of failing to submit his nomination papers to the election directorate because he belonged to a rival faction.

Police reacted violently to a peaceful demonstration by Hwange Colliery Mine Workers’ wives demanding that the company pays their husbands’ salaries. The women argued their children had been expelled from school for non-payment of school fees after their husbands went for over 5 months without pay. Over one hundred women were subjected to violent manhandling resulting in many being injured with four being hospitalized at Hwange Colliery Hospital.

Conflicts that erupted during the month of September in Bikita West were subdued following a Constitutional Court ruling that ordered the reinstatement of Munyaradzi Kereke as the MP for Bikita West. The ConCourt ruled in favour of Kereke on 23 October. Zanu PF had earlier on called for the ouster of Kereke on the pretext that he defied the party’s hierarchy by standing against the Zanu PF’s preferred candidate of Elias Musakwa.

#### Food and other forms of aid related violations

The Presidential Inputs Scheme was the most abused aid scheme during the month under review by the Zanu PF leadership, war veterans and traditional leaders throughout the country. Under the scheme each household was entitled to 10kg of seed maize, 50kg compound D, 50kg ammonium nitrate and 50kg lime while those in more arid areas would receive 5kg each of sorghum or millet seed in place of maize.

From Manicaland's Mupambwi Village in Buhera West, village head Keresencia Danda denied three MDC-T supporters access to fertilizer and maize seed on 18 October, claiming that victims should get inputs from their own party. In Makoni West, headman Bvekerwa also denied suspected MDC-T supporters access to maize seed and fertilizer from what was being distributed through the Grain Marketing Board (GMB). The trend was in all districts like Mutasa, Mutare Chimanimani and Chipinge.

The trend was the same in Mashonaland West where two MDC-T agents for Chegutu West were not allowed to register for inputs by Zanu PF chairperson and information officer at Waze Township on 10 October. From Hurungwe North, John Uramba a security member of Zanu PF denied four people who were accused of being MDC-T agents' inputs at Karuru Township on 8 October.

Almost all districts in the Matabeleland North province were in dire need of food aid. Although there were certain NGOs which were carrying out feeding programmes in the province this was not enough as they normally targeted certain groups in communities such as people living with HIV and AIDS, the elderly and children. The contribution that came from the government through the GMB was heavily politicized in favour of Zanu PF.

In Ward 29 Nkayi South constituency two MDC supporters were denied rice and wheat, which was being distributed by GMB on 15 October. It was reported that the villagers had all contributed \$1 for the transportation of the food aid to the area. Upon arrival at the distribution centre the survivors had been told to go away by some Zanu PF officials led by losing candidate for the House of Assembly in the constituency Stars Mathe and Charter Mguni who had control over the process.

## September 2013

The month of September 2013 witnessed a significant decline in the number of politically motivated human rights violations as compared to the August figures. There were 378 incidents recorded down from the 525 incidents witnessed during the month of August. During the month under review cases of physical political violence remained generally low. This could be attributed to the fading election fever, which had gripped the nation for a couple of months.

Despite a significant decline in incidents of political violence during the month of August, cases of land/property invasions, displacements and malicious damage to property especially arson had been on the increase in Mashonaland East and Manicaland provinces. The major sources of conflict during the period under review revolving around post-election issues, ranged from harassment, arson, land invasions and displacements mainly perpetrated by Zanu PF supporters.

Inter and intra party issues also came to a head during the month especially within the MDC-T where some councillors from the MDC-T reportedly "sold out" to Zanu PF by entering into a deal with Zanu PF to vote its candidate as the deputy mayor much to the chagrin of MDC-T leadership. The mayoral elections were allegedly sold in Redcliff, Mutare, Victoria Fall and Gweru towns.

Zanu PF continued to be the main perpetrator of human rights violations as its supporters did not allow other parties political space. The chaotic land redistribution exercise was another major source of conflict with people being forced off their plots for having voted for other political parties other than Zanu PF. The evictions were mainly witnessed in Mhangura and Chegutu in Mashonaland West and in Muzarabani, Shamva and Mazowe in Mashonaland Central.

Evictions in the newly resettled farms took precedence in Mashonaland West, Mashonaland Central and Manicaland affecting also Zanu PF supporters. It was alleged in other circles that the government was trying to create some form of order by evicting those without offer letters.

The month also witnessed a number of celebration parties in different parts of the country as Zanu PF celebrated its victory. At some celebration parties some people mostly MDC-T supporters were threatened with eviction. Home seekers were evicted from their homes on allegations of setting up illegal settlements. People from major cities who had bought land from the war veterans or kraal heads without the authority of the Ministry of Lands were under threat of losing their houses to demolitions by the local authorities in Harare and Chitungwiza. Unaffected by the eviction threats,



Zanu PF Harare provincial youth chairperson Jim Kunaka allegedly sold residential stands to Zanu PF card carrying members in Glen Norah for \$12-00.

The police intervened and destroyed the illegal structures evicting the people.

Traditional leaders remained at the fore front of acting partisan and violating their constitutional mandate of being neutral and non partisan in their work. Food related violations had been at a minimum since humanitarian organisations responsible for relief had been stopped from issuing food to hungry villagers across the country.

However, the period under view witnessed cases of food related violations in Matabeleland North, Mashonaland Central and Manicaland. The government food relief programmes especially through the Grain Marketing Board (GMB) were the most abused, constituting the majority of the reported violations. For example in Buhera, at Rusununguko village, a food relief registration exercise by a named International organisation (name supplied but withheld) was reportedly hijacked by John Kufandada who demanded that any would be beneficiary was supposed to be confirmed as a genuine Zanu PF activist before registration.

On 19 September, several villagers including Tom Mhlanga in Mukhuyu village, Chipinge South failed to access their GMB maize which they had paid for six months ago when Gibson Mhlanga and Chief Sigauke claimed that only genuine Zanu PF activists would benefit.

In Matabeleland North Ward 20, Zinyangeni, Nkayi South constituency, three villagers were discriminated and denied food aid by Zanu PF members. It is reported that all villagers had contributed a \$1 and R4 towards the scheme but when the rice was delivered the villagers were told to go to MDC-T to get the rice since they had voted for it. Zanu PF members led by one Mveliswa Ncube reportedly controlled the process. The incident happened on the 23 September. It is also not clear where the rice was coming from but it is suspected that it was from the GMB.

With the dire food situation, however, very few cases of partisan distribution and access to food were reported mainly due to the fact that food relief activities long stopped some time before elections. The Minister of State for Provincial Affairs in Matabeleland South Abedinico Ncube also threatened to throw out of the country all NGOs that engage in political activities moving away from their mandate of providing food aid.

## Reprisals

On 5 September, two children escaped unhurt when a house belonging to Adam Katsiga, suspected Zanu PF militia attacked the MDC chairperson for ward 9 in Mutoko East. The suspects were identified as Ishmael Chikweto, the Zanu PF youth chairperson for ward 9 and Phineas Katsiga the Zanu PF ward councillor. The two had earlier issued threats to the victim that they were going to handle him first before turning to other MDC supporters. A police report was filed at Makosa Police Station in Mutoko but no action was taken.

Another attack in Mahusekwa involved an expensive property was destroyed. The residence of MDC parliamentary candidate for Marondera West, McDonald Muchetwa, was destroyed by fire in another clear case of political violence.

On 6 September, war veterans led by Muzondiwa Mamutse, made a statement at the funeral wake for Kumbirai Kangai at Queens Hall in Mutare. Kumbirai, a former cabinet minister, Zanu-PF provincial chairman and Politburo member, argued that Tsvangirai should be denied entrance to Buhera district as he was against the people's revolution.

## August

The month of August succeeding the harmonised elections was defined by intense political activity. During the month under review the country witnessed the announcement of the winners of the elections, the Heroes' Day celebrations, the winning Zanu PF celebrations, the inauguration of President Robert Mugabe and the election court challenges from the MDC-T. Further, the country co-hosted the UNTWO with Zambia.

The July 31 harmonised elections were declared as free and peaceful and that they were a reflection of the will of the people of Zimbabwe in preliminary reports by several observer missions including SADC, AU, and the Chinese. The elections proved to some that Africa (Zimbabwe in particular) had outlived the ghosts of election violence, human rights abuse and that the July 31 elections would serve as a template for other countries in the region on how to conduct elections.

The trend observed over the year has been that human rights violations usually arise two months before the election, decrease during the election month and escalate soon after the election. The post-election retribution thus is directly felt a month or the period directly after the elections. This trend continued to play out and violations did not rise that much across the country in August when compared to July. With a total of 525 incidents having been recorded compared to 496 witnessed in July 2013. Manicaland recorded the highest number of violations, 120, followed by Mashonaland Central with 87, Midlands with 82. Matabeleland South and Bulawayo had the least violations recording 5 and 7 cases respectively.

An interesting but nagging issue that came after the election that may have far reaching consequences for citizens is the conduct through some pronouncements made by Zanu PF winning candidates and some traditional leaders. President Mugabe led the discord when in one of his graveside speeches (Mike Karakadzai's burial) he disowned Harare and Bulawayo for not voting for him during the elections.

However, the President was not alone as other winning candidates from his party such as Joseph Chinotimba, MP for Buhera South threatened MDC-T members with severe suffering since he is now "panyanga" -in control- in a speech on heroes day at Murove village. Chinotimba is alleged to have said that he would never work or assist any MDC-T member and that Zanu PF was "chiranga mapenzi" (disciplinarian of villains). The period under review witnessed a rise in the number of post-election violence. A large number of people were displaced and others were threatened with evictions for allegedly voting wrongly. Sadly, one person died in Mashonaland East under as yet unclear circumstances.

An MDC-T activist was found dead on the 9 August near Two Boys Shopping Centre in a suspected case of political violence. The incident happened in Marondera East Constituency, Masemela village, ward 20. Before his death, just a week before the harmonized elections, the deceased had reportedly told his parents that his life was in danger after being threatened by a named Zanu PF activist with death if Zanu PF won the elections since no one will be arrested for the act as he will enjoy protection and impunity.

All the Mashonaland Provinces, Manicaland, Masvingo and Midlands witnessed cases of displacements targeting MDC-T candidates and their election agents. Harare, being the most affected with thirty five incidents, followed by Mashonaland Central with eighteen cases. Cases of malicious damage to property also rose as a number of houses belonging to MDC-T members were set on fire or destroyed by suspected Zanu PF supporters.

From Harare and in Mbare's Matererina, Nyenyere, Magaba, Manyame and Tagarika flats more than nine families were evicted from the houses and others were threatened with eviction for supporting MDC-T by

Zanu PF supporters. In Headlands, Manicaland, four families were displaced on the 13 of August after a group of Zanu PF activists on their way from attending Didymus Mutasa's birthday bash visited their homes in ward 8- Inyati demanding that they leave the area. In Rushinga and Mt Darwin (Mash Central) 18 families found themselves displaced accused of being either MDC-T election agents or supporters.

On 30 August, Gift Kapawu the MDC local council candidate for Ward 5 in Maramba Pfungwe in the 31 July elections fled his home after a group of Zanu PF supporters led by Wilford Katsande who was a contestant in the same ward attacked his homestead, in a clear case of retribution. The Zanu PF militia, which was heavily armed with knobkerries and machetes, accused Kapawu for daring to contest against their Zanu PF candidate in the disputed elections. The Zanu PF supporters went on to destroy Kapawu's homestead and stole some household goods.

Traditional leaders remained in the fore front of acting partisan and violating their constitutional mandate of being neutral and non partisan in their work. Reports show that during the period under review, traditional leaders such as Chief Mahenye from Chipinge South for example summarily dethroned 22 village heads whom he accused of allowing their subjects to vote for MDC-T during elections which caused Zanu PF to lose the ward. In Gutu North, at Makumbe village ward 12 on 28 August the village head chased away an MDC-T member from a GMB food distribution scheme saying he should go and get food from the MDC T. The village head categorically told him that he and other MDC- T activists would never get food as long as Zanu PF was in power. In Insiza South (Mat South) on the 19 August all kraal heads for ward 4 were called by Headman Maputo to be told how they would operate with the winning Zanu PF councillor Lawrence Maphosa whose home stead was situated in Insiza North ward 15. In a related incident, on 12 August, Rebecca Mafikeni, one of the remaining MDC-T (Glen 29) activists detained inside Chikurubi Maximum Security Prison for nearly two years passed away. Mafikeni died at Parirenyatwa Hospital where she was admitted after her condition deteriorated.

## July

The month of July was defined by the impending general election which was to be held on 31 July. It was a period marked by uncertainty as to whether elections would be held or not. Zanu PF declared that elections would be held unconditionally. On the other hand, the MDC-T contested the whole election arrangement; its legality and other administrative issues regarding the elections and thirdly SADC's position of wanting the elections to be postponed by another two weeks. The month commenced with a number of court cases, voter registration, special voting, and party campaign meetings and concluded with the election itself, which resulted in Zanu PF and President Mugabe being declared winners with a 61% win. However, the MDC-T immediately refused to concede defeat citing a plethora of issues.

In terms of human rights violations, the period under review recorded the least number of violations in the last three months with 496 violations. Manicaland with 115 violations had the highest violations followed by Masvingo (78) Mashonaland West (64). Matebeleland North had the lowest figures recording just 10 violations. Although the country projected a semblance of 'peace and tranquillity' experts in peace studies such as Johan Galtung, the founder of the Peace Research Institute Oslo point out that "peace is not the absence of physical violence." Therefore when assessing the pre-election environment that existed, examining other variables rather than just one aspect of physical violence is paramount. Other forms of violence such as structural violence were employed against people. For example, the presence and partisan actions of structures such as war veterans, military personnel, the police, terror bases, traditional leaders and the denial of food have to be weighed against the mainstream depiction of the elections as being just, free and fair.

As the political antagonism increased, civil and political rights of citizens were compromised. Becoming intricately intertwined with party campaigns. Shops and businesses closed when President Robert Mugabe addressed star rallies in specific areas such as Chitungwiza and Mutare. Furthermore, people's livelihoods were disrupted due to being forced to attend rallies regardless of whether they wanted to or not. Zanu PF was accused of being the main violator in this regard. For example, on the 25 July people were ferried to Mucheke stadium in Masvingo in lorries, buses, kombis and even a train was assigned for attendance purposes. Some of the villagers came from far off places such as Chirumhanzu, Mwenezi and Chiredzi. However, after the rally they were left without transportation and food.

Freedom of assembly and association, the right to vote and secrecy of the vote was seriously compromised. Zanu PF's long term investment in structures of coercion in the form of war veterans, traditional leaders, youths and security members appeared to be effective. Zanu PF applied these structures of coercion across the country towards the elections. On 22 July, in Zoma area ward 1 Gutu west, Masvingo, a colonel and war veteran from the Zimbabwe National Army reportedly addressed his community warning them against voting for the MDC-T. He reportedly mentioned some names of people from ward 1 and 2 who had been killed and told the people that Zanu PF was prepared to kill. In Mazowe West, Mashonaland Central, Zanu PF militia bases were established at

Watakai Farm. Youths were recruited for a door to door campaign meant to force people to vote for Zanu PF.

On the day of the election, incidences of voters being herded to polling stations by Zanu PF activists such as traditional leaders, war veterans and youths were reported throughout the country. Teachers were forced to vote as assisted voters. In areas such as Mutare South, Mazowe, and other areas, Zanu PF leaders and traditional leaders had books “Zanu PF supervisor’s election data book” where voters were entered after voting. According to Zimbabwe Electoral Commission figures the number of assisted voters nationally amounted to 206 901 regardless of the fact that Zimbabwe boasts of a 96% literacy rate. This high number of assisted voters compromised the integrity and secrecy of the ballot.

## June

The operating environment for Civil Society Organisations (CSOs) remained tense as the Zimbabwe Electoral Commission moved slowly in processing the application by NGOs to do voter education. This delay led to a number of organisations’ activists being arrested by the police for violating electoral laws. Political parties in the inclusive government continued with the primary elections resulting in a number of people’s civic and political rights being systematically violated. In a number of cases, Soldiers and police in civilian clothes were deployed in the communities to organize election campaigns. For example, police officers at Rujeko, Masvingo central were conducting the voting process. Zanu PF chose to openly defy the Minister of Education David Coltart’s guidance that political parties should not use schools as venues for their political activities, as schools across the country had been used as primary election centres.

In terms of violations, Manicaland and Midlands lead the violations pack with 133 and 115 violations respectively. Bulawayo registered the least number of violations followed by Harare, which recorded 10 violations. Men were the majority perpetrators recording a whopping cumulative 606 while women were not a busy lot as perpetrators with 80. When disaggregated, Zanu PF men were the most active perpetrators with 588 actors followed by the MDC-T, which had a total of 98 male perpetrators. MDC had 3 perpetrators. In terms of victims, MDC-T recorded the highest number of victims of 355 followed by Zanu PF with 189.

During the period under review, two deaths were reported in Manicaland. The first death happened in Nyanga South where a 25 year old MDC-T activist from Muwi-Dzenbe village died after he was assaulted by his brother who accused him of attending MDC-T meetings while refusing to join Zanu PF, his choice of party. The second took place in Chiadzwa diamond fields in Mutare west on 22 June where a twenty five year old man was shot and killed by diamond security guards. Another of his colleagues reportedly died of gunshot wounds at Mutambara Mission hospital.

Zanu PF held its primary elections on June 25 and 26. A process that had been billed to be complete in a single day had to be extended as a result of delays. There were shortages of ballot papers in some instances and accusations of imposition of candidates and cheating. As a result there were demonstrations at the party’s headquarters in Harare. Elections in some areas like Chimanimani had to be adjourned due to the disputes. Zanu PF candidates in Chimanimani West complained to the Zanu PF election directorate that one of the contestants, a saving army detail (Muresherwa) had deployed soldiers who were intimidating people to vote for ‘a soldier’ or face the consequences. The Zanu PF Chegutu East candidates, were party political commissar Webster Shamu and Mashonaland West provincial chairperson John Mafa. John Mafa had wanted to address people in the area but they were told not to attend by Shamu’s supporters. People did not attend for fear of victimisation. The intra-party violence experienced within the MDC-T resulted in the party fielding two candidates in the Dangamvura-Chikanga constituency. By nomination day the MDC-T had not resolved the dispute resulting in Housing Minister Giles Mutsekwa and human rights lawyer Arnold Tsunga filing their papers on an MDC-T ticket. In Hurungwe West the MDC-T primary elections had to be postponed twice as people were disgruntled by polling agents who arrived late and wanted people to vote at night. People accused aspiring candidate Wilson Makanyaire of bringing people from the other wards to vote in ward 24 and ward 11 on different occasions. Supporters refused to vote until there

was transparency. In Bulawayo, Felix Magalela Sibanda (aka Felix Mafa), accused MDC-T leadership in Bulawayo of tribalism after he was dropped as an elected candidate for Pelandaba constituency. Mafa claimed that the Gordon Moyo led Committee denied him victory after he had been declared the winner. The leadership claimed that they “miscounted” some votes and after a recount, ousted Mafa by three votes.

## Voter registration

Despite the fact that there was a “deafening outcry” at the manner in which the Registrar of Voters conducted the previous mobile registration process, ZEC as mandated by the new constitution embarked on a thirty day voter registration exercise ,however the same challenges of secrecy and partisanship continue to mark the process. For example on 18 June at Matezwa school in Musikavanhu constituency, Zanu PF activists reportedly dictated to ZEC officials as to who or not to register after they developed a code which had to be endorsed on all letters, proof of residence and affidavits. Bearers of letters, affidavits which did not bear the code were turned away. In Mutoko South, at Kushinga Secondary School in Hoyuyu Resettlement Scheme, village 16, police assaulted villagers purporting to be controlling the queue during a registration of voters.

## Nomination Court

In pursuance to the election proclamation, a nomination court for aspiring legislators, councillors and Presidential candidates was held on 28 June. The nomination court began at the same time as serious intra party political conflicts over the election process and result, between the two major political parties MDC-T and Zanu PF surfaced. After the nomination court, a new term describing those who dared to challenge the MDC-T/Zanu PF establishment were coined “Rebels” and many faced serious political backlash from their parties with threats of dismissal from the parties being peddled. Some quickly retracted their candidacy like Mike Madiro and Dorothy Chitima.

## Major sources of conflict

From the onset, the period under review was marked by heightened political tensions. Former green zones such as Matabeleland provinces turned yellow on the violations map. Only one district, Rushinga in Mashonaland Central remained ‘green’. Inter and intra party fights for the right to represent parties in the coming elections, constituted a major cause of conflict. Political tensions brought about by primary elections were the main borne of contention as political actors attempted to win the ticket to represent their parties in local government or parliament. Zanu PF and MDC-T remained the major actors and the conflicts were mostly internal. However, as a result of the conflicts having manifested internally, the battles fought were dirty and unprincipled. For both Zanu PF and MDC-T, rigging claims and violence were rampant

The majority of incidents documented included harassments and intimidation, forced attendances of political party meetings mostly by Zanu PF, and harassment by traditional leaders of people perceived to be MDC T.

Another source of conflict was the clamp down on political space of other players such as the two MDCs and Civil Society organizations. This was coupled with the selective application of law in favour of Zanu PF, which saw the detention of ZimRights staffers, by police on 4 July 2013 at Mutare central police. The two staffers where accused of holding voter education workshops

In June, ZANU PF Deputy Minister Edward and Chairman of the Committee that reported on the diamond sector stated that Chindori-Chininga died in a mysterious car accident. Rumors had begun surfacing on Facebook two weeks before his death that he would be assassinated for exposing government corruption.

His death followed the release of a parliamentary committee report about Zimbabwe’s diamond sector, with details about the involvement of ZANU PF officials and allies in the industry. The report exposed the level of corruption evident at the Chiadzwa diamond fields, where millions of dollars in profits, meant to be earned by the national Treasury, were unaccounted for. According to Alan Martin

from Partnership Africa Canada, who communicated extensively with Chindori-Chininga, the ZANU PF MP knew he was a “marked man” and that his work as chairman of the parliamentary committee on mines and energy had ended his political career in the party.

## May

The month under review witnessed a renewed assault on civil society organizations; sustained intra party divisions especially within the MDC-T and Zanu PF. Midlands and Manicaland provinces recorded the highest number of violations during the month under review. Of the 511 violations recorded in May, Manicaland and Midlands shared 263 violations. This figure constitutes more than half the violations recorded during the period under review. However, the three Matabeleland provinces (Mat north, Mat South and Bulawayo) recorded the least violations. These three provinces recorded just 28 violations.

The main sources of conflict during the period under review mainly revolved around the mobile voter registration exercise, intra party conflict as primary elections loomed in Zanu PF and MDC-T, forced meetings by Zanu PF members and traditional leaders, military involvement in political and civic affairs and continued raids and harassment of civic society organisations and activists by the police.

The Zimbabwe Electoral Commission (ZEC) embarked on a mobile voter registration exercise towards the end of April until mid May. The process was marred with controversy as it was not sufficiently publicised. This false start by the Registrar of Voters did not go down well with many including civil society leaders who demanded that ZEC must redo the voter registration process. Even ZEC’s chairperson Justice Rita Makarau admitted that the process was undermined by a host of inadequacies. At a meeting with civil society, Justice Makarau announced that the new constitution would provide for a 30 day voter registration and voters’ roll inspection. She confirmed that the process would restart on June 10.

During the registration process, some traditional leaders from Zaka East constituency ward 20, reportedly extorted money from poor villagers between 17 and 19 May. This involved demanding a dollar each from every family disguised as ‘voter inspection fees’. In Chegutu, some youths were arrested at Ameva Farm by police accused of unlawfully mobilizing people to go and register to vote. Election Resource Centre (ERC) Director Tawanda Chimhini was also arrested for breaching “voter education rules’ during the period under review.

As the parliamentary term was coming to a close, incumbent MPs, Senators and Councillors from across the political divide began to cling to power. The bid by most outgoing politicians to be retained caused rifts within the political parties as chaos reigned. In Manicaland for example, the MDC-T had to postpone primary elections by a week as politicians turned on the heat against each other. Three senior politicians Prosper Mutseyami, Pishai Muchauraya, Lloyd Mahute were arrested on allegations of public violence. In Gweru, MDC-T was reported to be divided into the Madzibaba and Jatrofa factions.

Although Zanu PF had neither released any dates for their primary elections nor the rules governing the process, the internal strife in the party escalated with Zanu PF party stalwarts such as Secretary for Administration Didymus Mutasa confronting fellow party members like Mike Madiro (suspended chairperson in Manicaland). The month of May also saw Zanu PF vigorously continuing with its door to door campaign across the country. This exercise raised political tensions since the majority of the campaigners were using coercion to approach members of the public. They breached privacy and trespass laws by unlawfully entering people’s homes and used intimidation tactics to gain votes which was evident in Mashonaland West (Mutorashanga- Kashwao farm). This is where Zanu PF activists under the leadership of the local ward councillor devised a strategy called “Batai Munhu” operation loosely translated to “catch the culprit” whereby people were given Zanu PF data forms to fill, then asked to register to vote and then declare in public that they would vote for Zanu PF in the upcoming elections. Furthermore, in Mashonaland East, Manicaland and Mashonaland Central, reports suggested that Zanu PF urged traditional leaders to hold at least two Zanu PF meetings a week.

Members of the security forces, mostly soldiers were reportedly being deployed in Mutoko, Maramba

Pfungwe and Mudzi. They were travelling on motor cycles labelled LONCIN campaigning for Zanu PF.

Operating space for civil society across the country continued to shrink as the criminalisation of civic society work continued unabated. During the period under review, a number of civil society actors were either harassed or detained by the police. In Hwange, police who were reportedly searching for voter education material raided offices of Legal Resources Foundation. In Buhera South, at Kufakwatenzi village, a ZimRights workshop was abandoned after Zanu PF activists chose to end it by labelling the organisation as a front of the West, despite the fact that the workshop had been cleared by the police.

Cases of partisan distribution of food declined significantly during the period under review. One reason for this decline is the fact that many people had been harvesting their crops and as a result food relief distribution has gone down. Despite the decline, many parts of the country indicated that they would need relief intervention as the country was experiencing erratic rainfall together with a shortage of inputs.

## April

The resounding success of the COPAC driven constitutional referendum held on 16 March set the stage for the holding of the hallmark elections that would lead to the end of the four and half years old inclusive government in Zimbabwe. The three major political parties in the inclusive government embarked on a vigorous agenda in launching their political party campaigns in preparation for the watershed elections that resulted in an increase in incidents of politically motivated violence.

There were 519 violations recorded during the month of April a significant increase from the 382 witnessed during the month of March. The MDC-T immediately launched its door to door campaigns across the country while Zanu PF continued with its voter registration drive targeting 1 million first time voters.

As a result of the door to door campaigns and the voter registration drive 19 residents were arrested in Harare's Hatcliffe on April 25 and charged with contravening Section 179 of the Criminal Law (Codification and Reform) Act for allegedly impersonating public officials. Police officers claimed that the residents who were wearing T-shirts usually worn by officials from the Ministry Home Affairs had three copies of the voters' roll and between 18 to 25 April went around the high density suburb asking other residents to check and confirm if their names were noted on the voters roll and advising them to register to vote if their names were missing. The police charged that the 19 residents misrepresented themselves as officials from the Registrar General's office.

The voter registration exercise provided a fresh source of conflict as Zanu PF's Mashonaland East leadership accused the MDC-T of tampering with the voters' roll. State Security Minister Sydney Sekeramayi who is also the Zanu PF secretary for security claimed that they had identified massive irregularities on the voters' roll where suspected MDC-T officials registered their supporters using other people's addresses and unoccupied, condemned hostels.

The internal party fight between Zanu PF and the MDC-T continued during the month as politicians fought to represent their respective parties in the forthcoming general elections. Zanu PF's intra-party fights intensified in Manicaland with the party's secretary for administration Didymus Mutasa being accused of interfering with grass-root structures - described as likely to "disrupt preparations for the forthcoming harmonized elections".

The same could also be said for the MDC-T in Manicaland as the party's provincial executive was divided over the selection of candidates to stand in the forthcoming elections. Close to a 100 MDC-T supporters in March demonstrated outside their party provincial offices in Mutare against the disqualification of Mutasa South parliamentary candidate Regai Tsunga. The divisions within the MDC-T in Manicaland manifested themselves through the fight between former Daily News Editor and aspiring MDC-T MP Geoffrey Nyarota and Makoni South MP Pishai Muchauraya, with Nyarota having accused the sitting MP of threatening to kill him.

About six Hurungwe traditional chiefs from Mashonaland West allegedly petitioned President Robert Mugabe asking him to sack Hurungwe East legislator Sarah Mahoka on allegations of disregarding traditional customs and stealing presidential inputs. Mahoka a survivor of intra-party political violence was assaulted by a group of youths allegedly led by Themba Mliswa in February 2013.

A group of former liberation war fighters led by Retired Army Captain David Juro compiled a document which alleged internal strife, candidate imposition and meddling by the Central Intelligence Organization (CIO) in Zanu PF Midlands Provincial politics ahead of the elections.

The month under review was also marred with reports of defections and counter defections as the political parties moved to showcase their alleged and perceived growing support bases ahead of the polls. The defections were mainly reported from the southern provinces of the country with reported defections within the two MDC formations.

The Independence Day celebrations involved a series of violations across the country as villagers were forced to contribute towards the celebrations. However, the 2013 celebrations were however held in a relatively peaceful manner with political party supporters from across the political spectrum attending. Villagers from Mashonaland East were ordered to donate US\$2 or 5kg of maize meal towards the celebrations.

War veterans' leader Jabulani Sibanda allegedly threatened political violence while addressing a public lecture at Chinhoyi University of Technology (CUT) on April 9. Sibanda likened MDC-T leader and Prime Minister Morgan Tsvangirai to the devil accusing him of sabotaging the country.

The police from Masvingo on Wednesday 24 April prohibited the Zimbabwe Congress of Trade Unions from staging a procession on Wednesday 1 May in commemoration of Workers Day. The ZCTU had written to the police notifying them of their intention to hold a procession from Craft Centre to Mucheke Stadium, where the labour union would commemorate the Workers Day festivities in Masvingo Province. But the police turned down the ZCTU procession and ordered them to confine themselves to just gathering at Mucheke Stadium adding that the Zimbabwe Republic Police could not sanction the procession "due to security reasons".

During the month under review the country witnessed very few incidents (27) of food and other forms aid violations which were only concentrated in the Midlands Province. This could be attributed to the fact that this is the period when farmers normally harvest their crops and do not require any additional sources of aid.

## March

The constitutional referendum held on March 16, was a step towards the holding of the impending elections but the event also provided the government with an opportunity to test its electoral systems. The referendum enabled political parties to hold rallies in support of the document leading to people's rights being violated. The number of politically motivated incidents of violence declined significantly during the month mainly because the country's major political parties were all in support of the draft constitution. There were 382 incidents recorded in March down from the 421 cases witnessed in February.

While the major political parties were able to freely urge their supporters to vote yes in the referendum, it was not the case for other actors such as the National Constitutional Assembly (NCA) and its allies who were campaigning for a no vote. The NCA had one of its meetings blocked by the police in Chipinge on the pretext that they had not sought police clearance.

Furthermore, the referendum exercise proved to be a source of conflict during the period under review as citizens were forced to attend rallies in support of the constitutional draft. Several reports of traditional leaders gathering their subjects and ordering them to vote yes were received from Manicaland and Masvingo provinces.

The police continued to target human rights NGOs with the arrest and detention of Zenzele Ndebele, the Editor of Radio Dialogue on allegations of smuggling solar-powered and wind- up radio sets into



the country in contravention of Section 182 of the Customs and Excise Act or alternatively with failure to produce a listeners' licence. Ndebele, who was arrested on Friday 1 March and then released into the custody of his lawyers, was interrogated by the police over the possession of 180 radio sets which the police allegedly seized from the Radio Dialogue offices in Bulawayo.

Zimbabwe Peace Project National Director Jestina Mukoko voluntarily handed herself to the police at Harare Central Police Station on March 8 after the Zimbabwe Republic Police claimed in a public statement on state radio and television that she was on the run. Commissioner General of Police Augustine Chihuri also mentioned that police were looking for Mukoko. She was subsequently charged with two counts of contravening the Private Voluntary Organisations Act Section 6 (2) and (3) of the PVO Act [Chapter 17:05]. Furthermore, the police preferred additional charges which included contravening the Broadcasting Services Act Section 38E (1) (a) for allegedly refusing or failing to register as a dealer and Section 182 of the Customs and Excise Act for allegedly smuggling radios and cell phones.

A warned and cautioned statement was recorded from Mukoko in the presence of her legal team. Mukoko denied all the charges and explained to the police that none of ZPP's activities were in any way illegal. In her statement to the police she also raised the irregularity of the charges and more importantly that she could not be charged in her personal capacity. Mukoko was then released into the custody of her lawyers after the interrogation and the police indicated that they would advise of any further action after assessing the docket.

In the period under review the Zimbabwe Electoral Commission also found reason to disqualify organizations such as the Zimbabwe Peace Project and the Zimbabwe Human Rights Association from observing the referendum on the basis that the organizations were under police probe. However, ZPP eventually received a letter authorizing it to observe the referendum weeks after the referendum.

On 17 March, police arrested four members of Prime Minister Morgan Tsvangirai's office. They were arrested and charged with impersonation after they were found in possession of dockets on corruption. Their lawyer Beatrice Mtetwa who had been called to attend a raid at the residence of Thabani Mpofu's, who was one of the staffers, was also arrested for obstructing the course of justice by allegedly asking for a search warrant. Mtetwa was held in custody and only released a week later on bail despite a High court ruling by Justice Charles Hungwe to release her. Mtetwa was only released on 25 March 2013 after High Court Judge Justice Joseph Musakwa ruled that a Harare magistrate had erred in denying her bail.

Pressure on civic society continued in the country with demands for Memoranda of Understanding by government officials being recorded in Masvingo and Matabeleland South provinces. Despite the fact that the numbers of politically motivated human rights violations remained subdued, political tensions were very high as political parties moved to prepare for the upcoming harmonised elections. Moreover, political factions emerged within the MDC-T party and Zanu PF parties related to the selection of candidates. For example the MDC-T intra-party conflict between Morgan Komichi and Xavier Edziwa was evidenced after Morgan Komichi allegedly declared that other party members should not contest against him as he should be respected as a national leader. However, Edziwa argued that the MDC-T is for democracy and therefore no one was immune. The MDC-T Sanyati District, reported to be against Komichi allegedly signed a petition, which was sent to the national executive challenging Komichi's decisions.

On 29 March, intraparty conflict intensified as violence erupted at Mubaira Township when two Zanu PF factions reportedly clashed. The two factions emerged in January when a candidate only known as Shamuyarira made known his intentions to challenge sitting MP Sylvester Nguni. Zanu PF provincial youth chairperson known as Dommy and other supporters of Nguni allegedly attacked Zanu PF youths campaigning for Shamuyarira. Two people were seriously injured in the attack and were taken to hospital and released the following day. Property at some shops was damaged during the attack but no one was arrested in connection with the violence.

Analysis of the trend in violations show that March 2013 witnessed the lowest number of human rights violations since 2008 despite the fact that there was an election in the form of the constitutional

referendum. The highest number of recorded violations during the month of March was in 2009 just a month after the formation of the inclusive government with 1552 cases.

## February

On 4 February, police in Lupane, Matabeleland North Province, arrested two National Youth Development Trust (NYDT) members and charged them with contravening the Criminal Law (Codification and Reform) Act for allegedly possessing voter registration receipts. The NYDT members Brilliant Goboza (22) and Ray Ncube (19) were arrested and charged with “possession of articles for criminal use” after they were allegedly found with a number of receipts issued at the Registrar General’s Office when one registers as a voter. The two were later freed on Wednesday 6 February 2013 after spending two nights in police custody.

On 6 February – p police intensified the onslaught against civil society organisations after they raided the offices of the National Youth Development Trust (NYDT) in Bulawayo in search of some “voter registration certificates”. Four police officers, who were led by Detective Inspector Boora and who were armed with a search warrant permitting them to conduct the search, raided NYDT offices at LAPF House in Bulawayo, where they confiscated some workshop schedule documents including a registration form filled in and signed by some workshop participants.

Again on 6 February, police interrogated two Habakkuk Trust leaders for allegedly inciting hatred among employees of the Zimbabwe National Water Authority (ZINWA) after participants who attended a meeting convened by the organisation demanded improved service delivery in the area.

On 11 February, police intensified their crackdown on civil society organisations by raiding the offices of the Zimbabwe Peace Project (ZPP) and seized several documents and other materials. The 7 police officers led by Detective Assistant Nyoni charged that there were reasonable grounds that ZPP was in possession of some articles which the organisation intended to use for criminal use in contravention of Section 40 of the Criminal Law (Codification and Reform) Act. According to the search warrant the police were searching for “any subversive material, documents, gadgets or recordings, any illegal immigrants” After the three-hour raid and search, the police seized some documents and other items including 4 mobile phone handsets, solar powered and wind up radios that receive both short wave and frequency modulation, files with donor information, political violence reports and DVD’s. The mobile phones that were confiscated like all other smart phones that are used by the majority of citizens in Zimbabwe had Geographic Positioning System (GPS). No-one was arrested on the day of the raid but the police indicated that they were going to “study” the confiscated information.

On 13 February, police officers from Police Reaction Group (PRG) arrested and assaulted nine members of the Women of Zimbabwe Arise (WOZA), who staged a protest outside Parliament building in Harare CBD before releasing them the same day. The police assaulted the WOZA members, who included leader Jenni Williams, before being taken to the Harare Central Police Station. The WOZA members, who sustained injuries during the attack, filed a complaint for assault against the police officers who instigated the attack.

On 15 February, the police intercepted a workshop being conducted by the Centre for Community Development in Zimbabwe (CCDZ) at the Church of Christ in Chegutu. They arrested the CCDZ Programme Officer George Makoni and his local contact person Gift Konjani for organising an illegal political meeting. The police detained them for three days.

On 19 February, the police raided the offices of the Zimbabwe Election Support Network (ZESN) and confiscated several documents belonging to the country’s largest election monitoring body. Eight police officers led by Detective Assistant Inspector J.P Mudyirwa put down a security wall at the ZESN head office in Belgravia, where they searched the organisation’s offices for “subversive material, documents, gadgets, recordings and illegal immigrants”. The police officers, who were armed with a search warrant searched and confiscated several documents from the ZESN offices including the organisation’s media strategy, a draft communication policy, a distribution plan for the Ballot Update, its newsletter and some other materials.

## Section 1c. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Zimbabwe Human Rights Forum recently took a consortium research that assessed the extent to which Zimbabwe's current state of policy and practice breaches the right to privacy through its political intelligence and communications surveillance of particular social groups perceived to be opposed to the interests of the Zimbabwean Government (thereafter called Human Rights Defenders or HRDs). The research also looks at what gaps, if any, are present in bringing the current policy, legislative and practice frameworks in line with international standards and norms, and other comparable national and regional regulatory standards that exhibit more conducive practices. Cross-reference is made to that research. In addition, most cases covered under the Rule of Law section above and under the Civil Liberties section below also implicate the right to privacy.

# 2

## Respect for Civil Liberties

**Including: a. Freedom of speech and press: policy and legislative developments, violence and harassment of journalists, censorship or content restrictions, misinformation, libel laws/national security, internet freedom, access to information, academic freedom and cultural events, b. Freedom of peaceful assembly and association, citizenship etc.**

### Summary

*The new constitution guarantees civil liberties including freedom of speech, press and media and assembly and association. However there were on going serious human rights abuses, including tight control of electronic media and further controls on mobile telephone communications. Legislative and institutional reform was not a priority for the government and repressive laws such as POSA and AIPPA continued to be used selectively by unreformed state institutions and actors to prevent constitutional freedoms from being exercised due to lack of political will and failure to censure heavy-handed action whenever it occurred. There were attacks on the media, judges and lawyers, use of repressive laws against targeted civil society organizations (CSOs) and human rights defenders (HRDs) and criminalization of free speech. There were 60 cases in which section 33 of the Criminal Law (Codification and Reform) Act was arbitrarily applied on individuals who were charged with allegedly “insulting or undermining the authority of the President” since 2010.*

*The sustained and escalating assault on NGOs involved in civic education, human rights monitoring, public outreach and service provision – all of which are lawful activities and noble endeavours were highlighted by local NGOs. Free protests were quashed and met with disproportionate force.*

### IN DETAIL

#### 2a. Freedom of Speech and of the Press

The section on specific violations was compiled mainly for information obtained from the Media Monitoring Project of Zimbabwe (“MMPZ”) while ZLHR and VERITAS Trust contributed to the section on policy-related developments, with additional supplements from the editor. The section outlines developments that occurred between January 2013 and December 2013, which impinge or are likely to impinge on the public’s freedom of expression rights. These include freedom of speech and of the press: policy and legislative developments, violence and harassment of journalists, censorship or content restrictions, misinformation, libel laws/national security, internet freedom, access to information, academic freedom and cultural events.

MMPZ’s recorded violations are based on violations reported in the media and other sources such as partner organisations like the Media Institute of Southern Africa (“MISA”). A violation of freedom of information entails anything that unjustifiably stifles the public’s access to information by, for example,

misinformation, closing down channels for accessing such information, threats and harassment of media workers, or curtailing the public's rights to freedom of expression, assembly and association.

## Progress on reforms

At policy level, the GPA provided for media Reform and this part of the Roadmap listed eight agreed activities:

(i) Appointment of new board for the Zimbabwe Broadcasting Corporation which was not done. According to VERITAS Trust, as the government is the only shareholder this should have been straightforward.

(ii) Appointment of new board for the Broadcasting Authority of Zimbabwe (BAZ), which was not done. The existing appointments were irregular – for instance, the necessary Parliamentary preliminaries for appointing some BAZ members were not carried out.

(iii) Licensing of new broadcasters was not effectively done. This reform was only nominally implemented, by the licensing of two new broadcasters, which are widely regarded as not truly independent. No community radio stations have been licensed.

(iv) Appointment of new trustees for the Mass Media Trust have not been made. This Trust holds the controlling interest in the company owning the State-controlled newspaper group and is government appointed. The Government has previously changed body and trustees, so this could have been done.

Items (i), (ii) and (iv) above were accepted by the negotiators, by Cabinet, and by the GPA principals. Nevertheless the ZANU PF Minister of Media, Information and Publicity refused to implement these three agreements.

(v) Establishment, by October 2011, of the Media Council of Zimbabwe. This was done, the Council having been set up very late but remains inactive. The Media Commission under the Access to Information and Protection of Privacy Act appointed the Media Council in September 2012, nearly a year after the target date of 1st November 2011. The Council should have drawn up a code of ethics for the media sector [not done] and be investigating alleged breaches of the code – which it obviously cannot do until the code is produced.

(vi) Calling on foreign governments to stop hosting/funding external radio stations broadcasting into Zimbabwe. This was not achieved. Other parties in the inclusive Government considered that for this to be done these stations needed to be given licenses to broadcast from within the country and that until then they will be hosted elsewhere.

(vii) Encouraging the return of Zimbabwean broadcasters running or working for external radio stations was not done. A ZANU-PF-controlled Ministry has blocked the reforms that might have encouraged these broadcasters to return.

(viii) Prohibition of "hate speech" in the State media has not been achieved. State media organs, both print and broadcasting, have conspicuously failed to honour this in respect of MDC-T and MDC Ministers.

There continued to be a failure by the government to implement media-related reforms, especially rolling back the regime of censorship and secrecy that were the hallmarks of the previous colonial era. There has been no review of repressive legislation such as the Access to Information and Protection of Privacy Act [Chapter 10:27] (AIPPA), the Public Order and Security Act [Chapter 11:17] (POSA) and the Criminal Law (Codification and Reform) Act [Chapter 9:23], (the Criminal Law Code), among others and these continue to stifle media freedoms and have resulted in the arrests of journalists, citizen journalists and several citizens<sup>5</sup>.

5 ZLHR statement on World Press Freedom Day on 3 May 2013 under the theme "Safe to Speak: Securing Freedom of Expression in All Media"

5 Reporters Without Borders 3 May 2013 statement

Legislative and institutional reform was not a priority for the government and such repressive laws continued to be used selectively by unreformed state institutions and actors to prevent constitutional freedoms from being exercised due to lack of political will and failure to censure heavy-handed action whenever it occurred. There were attacks on the media, judges and lawyers, use of repressive laws against targeted civil society organizations (CSOs) and human rights defenders (HRDs) and criminalization of free speech. There were 60 cases in which section 33 of the Criminal Law Code was arbitrarily applied since 2010 on individuals who were charged with allegedly “insulting or undermining the authority of the President” .

The Broadcasting Services Act [Chapter 12:06], (the Broadcasting Services Act) continued to be used to stifle lawfully operational alternative media and voices. Through it, the police, since the beginning of the year, arbitrarily sought to “ban” alternative sources of media – namely short-wave radios thereby depriving people in rural communities of alternative sources of information as they could not afford to buy newspapers, and in most cases, there is no frequency for state controlled broadcasting.

President Robert Mugabe was nominated onto the list of the ‘world’s predators of information’ as the world commemorated Press Freedom Day.<sup>6</sup> The nomination was based on the grounds that for ten years he suppressed freedom of expression ahead of the elections and prevented the creation of any independent radio or TV station in Zimbabwe, thereby ensuring that the state-owned Zimbabwe Broadcasting Corporation (ZBC) kept its monopoly of broadcasting. He , exercised strict control over the state media, through his ministers and his party, constantly harassed privately owned print media through their ministerial and executive organs, and prevented the power-sharing government from functioning properly, thereby blocking media reforms.

Government tightened its control on electronic media. On 01 October 2013, it enacted the Postal and Telecommunications (Subscriber Registration) Regulations, 2013, (Statutory Instrument 142 of 2013) which permit its security agencies to spy into people’s telephone call records, text messages and internet communication. Previously, government could only have access to people’s phone records when it was absolutely necessary, usually when following up criminal or other serious offences<sup>7</sup>. This was on top of the banning of wind up radios and bulk text messaging reported below.

However in a slightly positive gesture, on 9 October 2013, Information, Media and Broadcasting Services Minister, Professor Jonathan Moyo toured the Associated Newspapers of Zimbabwe facilities in Harare to get an appreciation of the Daily News’ operations. He had also met Trevor Ncube, a private media mogul in a meeting whose agenda was for the government and private media to bury the hatchet and have a new start. Speaking during the visit, he said Government would assist media houses, including private ones, to overcome challenges they are encountering in their operations. He also said every media house in the country was having challenges in the importation of newsprint, printing material and equipment and a business approach was needed to address the problems. Critics construed his talks with Trevor Ncube as a move to close ranks and silence critical media.

Yet on 25 October 2013, the Deputy Minister of Information, Supa Mandiwanzira in responding to a question from Mashonaland Central Senator Alice Chimbudzi (Zanu-PF) on what Government was doing to deal with private radio stations apparently said “The Ministry considers these pirate radio stations as a nuisance that we must get rid of. In the majority of cases the Zimbabweans who listen to these pirate radio stations do so out of desperation because they are unable to get a signal of the Zimbabwe Broadcasting Corporation in the area they stay. So they have no choice and end up, by default, listening to these pirate radio stations.”<sup>8</sup> The same Deputy Minister has a controlling stake in Star FM, a private radio station not opposed by the ZANU-PF controlled ministry that he is deputy of.

On a positive note, on 08 November 2013, Zimbabwe’s highest court declared unconstitutional a law which makes it a crime to insult the president. In this matter, Deputy Chief Justice Luke Malaba

<sup>6</sup> <http://www.zimeye.org/?p=90871>

<sup>7</sup> <http://www.davidcoltart.com/2013/10/david-coltart-blog-ministry-of-information-appears-determined-to-violate-zimbabwes-constitution/#sthash.yfekhufl.dpuf>

<sup>8</sup> Free & Fair elections article; Zim man sentenced as Mnangagwa fights to defend insult laws dated 21 November 2013 accessible here <http://www.zimbabweelection.com/2013/11/22/zim-man-sentenced-as-mnangagwa-fights-to-defend-insult-laws/>

rebuked state prosecutors for abusing the country's insult laws, which have seen over 60 people facing legal action since 2010 for allegedly 'undermining' the authority of the President. In May, opposition activist Solomon Madzore was arrested for allegedly calling Mr. Mugabe a "limping donkey". He denied a charge of insulting the president. Under Section 33 of Zimbabwe's Criminal Law Code, a person can be jailed for up to a year or fined \$100 (£64) for insulting the president's office.

Malaba, while commenting on an 'insult' case before the Constitutional Court, admonished the National Prosecuting Authority (NPA) and discouraged it from "... prosecuting matters in which statements were uttered in drinking halls and other social places, as the pursuit of such frivolous matters only served to bring disrespect on the Office of the President."

Justice Malaba on the same day also moved to challenge the constitutionality of other sections of the Criminal Law Code, including one used to arrest journalists on allegations of publishing 'falsehoods'. He made the ruling in a case in which two journalists challenged the Act, under which they were prosecuted. He said a law could not be used to restrict the exercise of freedom of expression under the guise of protecting public order when what is protected is not public order. The court also appealed to the Minister of Justice, Emmerson Mnangagwa to appear before it "to show cause why" sections of the Act should not be invalidated. Mnangagwa argued in his heads of argument that the Constitutional Court had "failed" to carefully take a correct approach by 'confining itself' to the particular cases before it.

Although Zimbabwe witnessed a slight improvement in media plurality, for example the commissioning of community radios in 2012, the state continued its tight control over electronic media and the government did not match rhetoric with action as shall be seen in cases of violations especially arrests and detentions detailed below. One blogger aptly put it 'there may be freedom of speech in Zimbabwe but there is certainly no freedom after speech'. On 20 November 2013 the Broadcasting Authority of Zimbabwe (BAZ) invited applications for local commercial radio broadcasting services in 25 areas of the country including all major cities and towns such as Bindura, Chegutu, Chipinge, Chiredzi, Chirundu, Gwanda, Hwange, Lupane, Marondera, Plumtree, Redcliff, Rusape and Zvishavane.

While MMPZ welcomed this invitation, it complained that there were several reasons why they remained sceptical of the sincerity of government's intention to genuinely free the airwaves. Chief among them was the fact that BAZ was inviting applications under the same old discredited legal and institutional framework. This law, for instance, rules out applicants who are "wholly or partly funded by foreign donations or contributions" and compelled applications to "provide proof and particulars of source of funding". Political parties and organizations were also barred from applying for licences, among other strict conditions.

Section 61 of the Constitution declares that: "Every person has the right to freedom of expression, which includes freedom to seek, receive and communicate ideas and other information" and that the broadcasting and other electronic media of communication "have freedom of establishment, subject only to State licensing procedures that are necessary to regulate the airwaves and other forms of signal distribution", and are "independent of control by government or by political or commercial interests".

The legitimacy of BAZ itself has been a subject of serious debate, as the Media and Information Minister at the time, Webster Shamu, unilaterally appointed it in September, 2009 during the existence of the coalition government. Notably, the BAZ board he constituted was made up of former military men and ZANU PF allies, thus compromising its independence from political influence.

The Zimbabwean media battle was also seen within ZANU PF with the battle being centered on which faction should control information and publicity both within the party and in the country at large. The Mnangagwa faction apparently seized control of The Herald and other state media outlets. The pro-Mnangagwa, Prof Jonathan Moyo maneuvered this move by sacking the entire Zimbabwe Broadcasting Corporation Board and Management while the Mujuru faction seized the party's Information and Publicity department<sup>9</sup>.

9 <http://www.thezimbabwemail.com/zimbabwe/19248-zanu-pf-succession-battle-mnangagwa-s-faction-ceases-state-media.html>

## Specific violations

On 13 December 2012, The Zimbabwean reports that Community news activist Kudakwashe Matura is acquitted of charges of criminal defamation brought by Sam Mawuwa over a story carried by the Kariba News newsletter.

18 January 2013, SW Radio Africa reports that Freelance journalist Bernard Chikoto was summoned by the police for questioning allegedly with the intention of charging him with criminal nuisance following a complaint filed by one "Mrs Mukodza" regarding photographs that Chikoto allegedly took of a house in Hob-House suburb of Mutare. Charges were not preferred / pressed.

21 January 2013 Media Alliance of Zimbabwe ( MISA)- Zimbabwe Alert follow-up to summoning of Chikoto for questioning after he took photographs of a house mistakenly thought to belong to Tawanda Mukodza, a former Zanu PF Youth League provincial chairman for Manicaland. The complainants, who are the owners of the house in question, are distant relatives of the former Zanu PF Youth chairman. The criminal nuisance charges are withdrawn following an out of court agreement between Chikoto's lawyer, Passmore Nyakureba of the Media Lawyers Network and the complainants, Mr and Mrs Mukodza.

On 23 January 2013 MISA- Zimbabwe Alert reports the story of Newsday Features and Supplements editor Ropafadzo Mapimhidze who is summoned to appear at Masvingo magistrates' court on charges of contravening Section 88 of the Postal and Telecommunications Services Act (year). She is accused of telephonically abusing Chief Nhema by repeatedly calling him while following up on leads to reports that the chief allegedly orchestrated political violence in his area. Section 88 of the Postal and Telecommunications Services Act [ Chapter 12:02] criminalises offensive or false telephone messages and "any telephone call or series or combination of telephone calls without reasonable cause for the purpose of causing annoyance, inconvenience or needless anxiety".

On 30 January 2013 NewsDay reports on the acquittal of Mapimhidze as the magistrate said the State failed to prove its case beyond reasonable doubt.

On 19 February 2013 SW Radio Africa reports that suspended Zanu PF Manicaland provincial youth chairman Tawanda Mukodza reportedly threatened NewsDay's Obey Manayiti with death in Mutare for reasons that could not be immediately established.

Manayiti was arrested and detained on charges of criminal insult at Mutare Central Police station where he had gone to report the death threat. This followed an earlier report by Mukodza, claiming the reporter had insulted him. Manayiti was expected to appear in court on 19 February 2013. Obey Manayiti was taken back into police custody at Mutare police station on 19 February and according to NewsDay he was set free on 21 February after the State decided not to proceed with the matter to court. The police would proceed by way of summons.

On 20 February 2013 the Herald reports that Police on 19 February 2013 banned possession of "specially designed radios" and other communication devices on suspicion they are being used to communicate hate speech ahead of Zimbabwe's referendum and general elections. The specific nature of the illegal devices and the relevant laws that criminalise their possession not specified.

On 1 March 2013 the Zimbabwean reports that on 1 March 2013 the police raided and confiscated 180 radio sets from the civil rights NGO, Radio Dialogue, and detained and questioned the production manager Zenzele Ndebele before releasing him.

Ndebele was expected to appear in court on 4 March 2013 charged with possession of smuggled goods in contravention of Section 182 of the Customs and Excise Act Section 38B of the Broadcasting Services Act [Chapter 12:06] does not make it illegal to possess shortwave radio receivers. The police ban therefore appears aimed at unjustifiably curtailing citizens' rights to access alternative information

On 4 March 2013, soldiers allegedly denied Daily News sports reporter Blessings Mashaya entrance into Rufaro Stadium to cover a charity soccer match between army side Black Rhinos and CAPS United saying that since it was only a charity match, they did not require media coverage especially



from the Daily News. According to the law, duly accredited journalists should not be hindered in performing their work.

On 8 March 2013, according to the Daily News, ZBC radio and television presenter Hazvinei Sakarombe is suspended for allegedly stating that President Mugabe is of Malawian origin with his other surname being Matibiri. ZBC editor-in-Chief Tazzen Mandizvidza said Sakarombe was suspended for broadcasting “wrong information” about Mugabe, in contravention of “ZBC’s work conduct and policy that does not allow false information about people to be aired”. Report highlights the pitfalls of failure to fully disclose information about public officials resulting in speculation and the resulting unfair labour practice.

On 10 March 2013, Daily News, reported that radio presenter Nonkululeko Vundla was allegedly forced to resign from broadcaster Star FM for allegedly stating that President Robert Mugabe was of Malawian origin. Report highlights the pitfalls of failure to fully disclose information about public officials resulting in speculation and the resulting unfair labour practice.

On May 7, NewsDay reports that Zimbabwe Independent Editor Dumisani Muleya and Chief Reporter Owen Gagare are arrested and charged with contravening section 31A.3 of the Criminal Law Code for allegedly “publishing statements prejudicial to the state”. This follows a story published two weeks before claiming the MDC was in negotiations with the military and police service chiefs

Gagare and Muleya were charged and released on the same day, with police set to proceed by way of summons.

On May 20 The Herald reports that MDC-T leader Morgan Tsvangirai threatened media houses that write negatively about his party that they risked closure should his party prevail at the elections. Political parties are encouraged to desist from statements that may encourage intolerance against journalists given the already insecure environment in which they already work.

On 1 June NewsDay, United Family International Church security personnel briefly confiscated a camera of Henry Maradzika of the Newsday while Makandiwa’s visiting spiritual father Ghanaian Victor Kusi Boateng attacked local media for portraying his spiritual son negatively.

On 8 June NewsDay reports that MDC-T youths allegedly assaulted Zimbabwe Independent journalist Herbert Moyo and barred him from covering a demonstration at Harvest House.

On 12 June the ZLHR said that the front-page article in The Herald edition of 12 June 2013 authored by Caesar Zvayi and entitled “MDC-T launches litigation crusade” breached their clients’ rights to file court proceedings and interfered with their client-lawyer relationship, breached journalistic ethics and therefore went beyond permissible expression rights boundaries.

On 14 June the Zimbabwe Independent reports that Chronicle reporter Mashudu Netsianga was detained and questioned by MDC-T security personnel for allegedly gate crashing a meeting between Prime Minister Morgan Tsvangirai and the business community in Bulawayo. They confiscated his notebook and mobile phone.

On 17 June the NewsDay reports that Freelance Journalist Paul Pindani was reportedly abducted from his home in Chinhoyi on 14 June 2013 and severely assaulted by three unknown assailants who left him for dead.

On 17 June SW Radio Africa reports that Masvingo Mirror reporter Bernard Mapwanyire was allegedly manhandled by MDC-T security staff while covering the party’s primary elections on June 8th.

On 17 June SW Radio Africa reports that Journalist left for dead is 4th reporter to be attacked in one week in an overview of attacks that have occurred against journalists in the month of June.

On 19 June NewsDay reports that a group of suspected ZANU PF youths stormed Media Holdings newsstand in Mbare and allegedly confiscated 40 copies of the paper.

On 24 June Nehanda Radio reports that Wendy Muperi and Wonai Masvingise, journalists with

privately-owned newspapers, Daily News and NewsDay respectively, were briefly detained by ZANU-PF security personnel while covering a demonstration at the party's headquarters.

On 3 July 2013 MISA- Zimbabwe Media Alert reports that Bulawayo-based freelance journalist Busani Ncube was on 2 July 2013 detained and questioned at Nkulumane police station in connection with a case involving his father's house that was allegedly petrol bombed last month.

On 9 July 2013 SW Radio Africa reports that, while taking photographs of the voter registration process at the Registrar General's Offices, Leopold Munhende, a journalist with The Mirror was arrested by police.

On 23 July 2013 MISA Zimbabwe Alert, reports that Albert Ncube, a correspondent journalist with the Southern Eye was on 20 July 2013 harassed by two men who claimed to be Central Intelligence Office (CIO) agents at a ZANU-PF rally addressed by President Robert Mugabe at Phelandaba stadium in Gwanda.

On 26 July News24 Kenya reports that Kenyan journalist Charles Omondi was arrested at the Harare International airport allegedly on account of the fact that his clearance and accreditation papers were not in order.

On 26 July NewsDay reports that the Postal and Telecommunications Regulatory Authority of Zimbabwe (Potraz) reportedly bans bulk text messages from international gateways until after the July 31 poll.

On 30 July 2013 MISA Zimbabwe Alert, Kwelaz community radio board member Eric Musesengwe and volunteer staffer Annie Maseko appeared in court on 30 July 2013 charged with breaching section 7 of the Broadcasting Services Act, which outlaws broadcasting without a license; and s.78 (2) of AIPPA which criminalises the practice of journalism without accreditation, respectively.

On 31 July MISA Zimbabwe Media Alert Elias Mambo and Phylis Mbanje both reporters with the Zimbabwe Independent and The Standard newspapers respectively are questioned by police over their intended coverage of the election voting process in Gutu.

On 31 July Mr Chimhini of the Election Resource Centre was arrested together with Farai Saungweme, Wadzanai Previous Nyakudya and Moses Chikora and charged with contravening Section 40 (c) (1) (g) of the Electoral Act ahead of the July 31 harmonised elections for allegedly conducting voter education without the approval of the Zimbabwe Electoral Commission (ZEC). Civil society organisations in Zimbabwe have argued that ZEC has no capacity to conduct voter education alone and other players must be allowed to assist.

On 1 August Radio VOP reports that three journalists and board members working for a community radio station, Radio Kwelaz, Emmy Maseko (Reporter), Paul Gundani and Howard Masaninga, were arrested and charged for contravening the BSA and AIPPA by operating without a licence.

On 1 August Zimbabwe Situation reports that war veterans in Bikita confiscated thousands of MDC-T's campaign posters at Dewure Shopping Centre after they were delivered from the party's provincial offices. The war veterans, led by one "Cde Gudo", dumped the posters in Dewure River.

On 1 August both The Eye and NewZimbabwe.Com report that a primary school teacher in Gutu appeared in court for insulting President Mugabe and Police Commissioner-General Augustine Chihuri through a text message that he sent to Chihuri's mobile phone. The message read: "Chihuri and Mugabe you are idiots and a disgrace to Zimbabwe. You will die mose naMugabe (together with Mugabe). I don't fear you. Come to Batanai Primary, Charles Dondo.

On 1 August thebeardedman.blogspot.com reports on allegations by the MDC-T that ZANU PF, aided by the Central Intelligence Organisation (CIO) and Chinese allies, crippled Internet services as the country voted.

From 1-6 August Africa press review, the continent.org, humanitariannews.org, Africaville magazine. com & Africanentertainer.com report that a Chegutu man is sentenced to four months in prison for

sending obscene messages to Police Commissioner Augustine Chihuri and ZANU PF parliamentary candidate for Chegutu West, Dexter Nduna, after acquiring their numbers from popular Facebook blogger Baba Jukwa.

On 1 and 2 August Star FM, AllAfrica.com, and NewsDzeZimbabwe.com report that a suspected MDC-T supporter, John Munyikwa, was arrested for shouting 'bhora musango!' (Protest Vote!)", 30 metres away from a polling station in Epworth. He was arraigned before a Harare magistrate and sentenced to six months in prison for contravening the Electoral Act

On 5 & 6 August NewsDay & Zi FM reports on the SADC Electoral Commission Forum expressing concern over the partisan and biased coverage that was given to some political parties and candidates by both the public and the private media.

On 6 and 7 August the NewsDay & Daily News report that Innocent Mundanga (MDC-T Activist) in Chivi appeared before a local magistrate for allegedly confronting and accusing two police officers of helping ZANU PF rig elections.

On 7 August the Daily News carried Reports of Women of Zimbabwe Arise deputy director Magodonga Mahlangu (WOZA Deputy Director) threatening an MDC-T official for campaigning for Morgan Tsvangirai. WOZA members in Bulawayo were said to have distributed fliers urging residents not to vote for Tsvangirai.

On 11, 15 & 16 August the Sunday Mail, NewsDay, SW Radio Africa & Star FM carry news of the police in Harare launching a manhunt for British journalists, Jerome Starkey and Jan Raath, for allegedly spreading 'falsehoods' that Zimbabwe signed a secret deal to export uranium to Iran for the manufacture of "a nuclear weapon". Raath was eventually arrested at his home in Harare and detained at Harare Central Police station.

On 8 and 14 August, NewsDay & SW Radio Africa reports on the arrest and detention of two local SABC correspondents for allegedly taking video footage of the open space where the MDC-T had its cross over rally 48 hours before the elections.

On 21 August the Herald reports that Maison Mereki, relative of the late Irvine Mereki, assaulted Tafadzwa Chigwede, a ZBC cameraman, who was filming the transportation of the two dead bodies to the mortuary.

On 24 August Zimpapers' Group CEO castigated some sections of the private media for questioning the state-run news stable for rewarding its staff after ZANU PF's victory in the elections. He was quoted saying, "After all, the so-called independent media is not so independent. The world knows where their allegiance lies. We have seen it over the years that the private media is nothing more than an end of the extended hand they stand for"

On 30 October the Zimbabwe Lawyers for Human Rights announced that the National Prosecuting Authority had withdrawn the insult charges brought against Tendai Danga. The State claimed that Danga had questioned the integrity of the President and also uttered unprintable words criticizing him.

On 18 October NewsDay & SW Radio Africa report that Police arrested a 33-year old man, Norman Shamyarira, for denigrating Mugabe by labelling him a 'hobo/rombe' after he was denied food at a ZANU PF victory celebration function in Mahusekwa.

On 16 October, ZiFM & The Herald report that some members of the MDC-T who attended Mkoba legislator Amos Chibaya's victory celebrations at Mkoba stadium in Gweru on 13 October allegedly assaulted freelance journalist Harry Taruva during the course of his work.

On 22 October the NewsDay reports that a NewsDay photojournalist was assaulted for taking pictures at the funeral of a robber, Boris Mushonga. The news crew was also ejected from the cemetery after being accused of trying to make money from news of the funeral.

On 28 October the NewsDay reports that a news crew covering a government-sponsored input scheme in Mutasa on October 26 was forced by unnamed people to delete some of the pictures they had taken of the chaotic food distribution process.

On 14 October the NewsDay reports that Kwekwe mayor Matenda Madzoke and Kwekwe Central MP, Masango Matambanadzo both of ZANU PF, were barred by a ZANU PF councillor from addressing a Press Club meeting in his ward, saying he should have been consulted first.

On 30 October the NewsDay reports that at least 100 war veterans on October 29 fought running battles with anti-riot police after staging a demonstration at Liquenda House in Harare, demanding money to pay for their children's school fees. Police arrived in a Land Rover Defender truck and ran after the group of elderly men and women, beating some of them in the process.

On 28 October SW Radio Africa reports that Former Energy Minister Elton Mangoma has demanded a retraction and an apology from the state-run Herald after the newspaper accused him of plotting to 'kill' the country's sole power utility firm. On October 24 and 25, The Herald ran two stories headlined "Plot to kill ZESA flops" and "No plans to unbundle ZESA: Mavhaire". The paper sensationally claimed: "The planned unbundling and privatization – which was reportedly being orchestrated by some officials at the Energy and Power Development Ministry in cahoots with former minister Mr Elton Mangoma – would have effectively put the critical power sector into the hands of unknown Western investors picked at Mr Mangoma's discretion". These allegations have incensed the former minister who, through his legal team, has written a letter demanding The Herald to retract the "false" and "malicious" allegations.

On 1 November, Harare Magistrate Tendai Mahwe was due to deliver his ruling on an application in which the Election Resource Centre (ERC) wants its matter to be referred to the Constitutional Court to test the constitutionality of some provisions of the Electoral Act which criminalises freedom of expression and breaches the organisation and its employees' fundamental rights. Magistrate Mahwe made the determination after ERC lawyer, Trust Maanda, a member of Zimbabwe Lawyers for Human Rights filed an application seeking to declare as unconstitutional Section 40 of the Electoral Act for being in breach of Section 61, 62, 64 and 67 of the Constitution of Zimbabwe. The ERC represented by the organisation's director Tawanda Chimhini also wants the Constitutional Court to declare Section 40 of the Electoral Act as void for being overbroad, vague and imprecise. It also wants proceedings to be stayed pending the determination by the Constitutional Court of the above-mentioned questions.\

On 15 November "Marondera's brave and long suffering fighter for democracy and change", Ian Kay, was suspended from the MDC for five years after comparing the MDC to a football team and saying that when the coach consistently fails to produce a win he should be changed. Ian Kay is a humble, quiet, gentle man. On 18 November, The MDC-T said the decision by the party's Mashonaland East leadership to suspend Ian Kay for five years was not valid.

## 2b. Freedom of Association and Assembly

This part of the Roadmap covered complaints from the MDC parties about abuse of the Public Order and Security Act (year) [POSA] by the police. Only activity (i) was agreed:

(i) Meetings of the GPA Principals and the GPA negotiators with the Commissioner-General of Police were not achieved. If any full structured meetings ever took place, they seem to have been ineffective. Complaints have continued from civil society and political parties [except ZANU-PF] about police administration of POSA provisions about meetings and processions, even during the lead-up to the Referendum of 16th March, when "No Vote" campaigners found their activities frustrated by police and also towards the elections.

(ii) POSA Amendments were not agreed to. MDC-T and MDC proposals for amendments to or review of POSA were rejected by ZANU-PF. And the MDC-T's Chief Whip's Private Member's Bill to amend POSA, introduced in late 2009 and actually passed by the House of Assembly, has been effectively blocked by ZANU-PF manoeuvring in the Senate.

There were international calls for government to cease clamping down on the rights to freedom of association and assembly<sup>10</sup>. The Government of Zimbabwe was urged to respect international human rights norms and standards pertaining to freedoms of association, of peaceful assembly and of expression in the run up to the constitutional referendum on 16 March and subsequent elections, which took place in July. The UNHRC received increasing numbers of reports about acts of intimidation and harassment, physical violence and arrests against civil society actors, mostly working on human rights issues<sup>11</sup>. EU MEPs condemned the arrests of Human Rights Association workers Okay Machisa, Dorcas Shereni and Leo Chamahwinya in their Zimbabwe offices in December 2012, shortly after they denounced the growing police brutality across Zimbabwe and called for action by the competent authorities. MEPs called on the Zimbabwean authorities to release anyone detained for defending human rights and to end their judicial harassment.<sup>12</sup>

The sustained and escalating assault on NGOs involved in civic education, human rights monitoring, public outreach and service provision – all of which are lawful activities and noble endeavours were highlighted by local NGOs. In describing the clampdown, they said methods of attack included character assassination through the partisan and state-controlled media, disruption of lawful activities and meetings, violent disruption of peaceful protests, and invasion of organisational premises through the use of vague and generalised search warrants as well as suspicious break-ins and thefts. These violated African Union and the United Nations norms which clearly protect the rights of HRDs to associate, organise and carry out peaceful activities, and the right of human rights organisations to exist and be protected by law. Such rights are further enshrined in the Constitution and laws of Zimbabwe. CSOS called on the state and its institutions and actors, to immediately cease attacks against NGOs and HRDs, and to open space to allow civil society to continue with their critical activities. They highlighted that failure of this inclusive government to come to its senses painted a negative picture of the pre-election environment, and would be recorded accordingly for those in the region and further afield to take note<sup>13</sup>.

## Specific violations (Some covered under Rule of Law)

On 5 February, police in Lupane, Matabeleland North Province, arrested two National Youth Development Trust (NYDT) members and charged them with contravening Section 40 of the Criminal Law Code for allegedly possessing voter registration receipts.

The NYDT members Brilliant Goboza (22) and Ray Ncube (19) were arrested on Monday 4 February 2013 in Lupane and charged with “possession of articles for criminal use” contravention of Section 40 of the Criminal Law Code after they were allegedly found with a number of receipts issued at the Registrar General’s Office when one registers as a voter. Initially, the police detained 40 people who were later released leaving Goboza and Ncube in custody. The police indicated that the two NYDT members will be taken to court on Wednesday 6 February 2013.

On 11 February police intensified their systematic crackdown on civil society organisations by raiding the offices of the Zimbabwe Peace Project (ZPP) and seized several documents and other materials.

The five police officers from the Criminal Investigation Department stationed at Harare Central Police Station’s Law and Order Section, who included Detective Assistant Inspector Ben Justen, Nyabuwa, Mugogodi and Mapara were armed with a search warrant issued by Superintendent Jeremiah Murenje which permitted the search for “subversive material, documents, gadgets, recordings and illegal immigrants”.

The police officers charged that there were reasonable grounds that the Jestina Mukoko-led ZPP was in possession of some articles which the organisation intended to use for criminal use in contravention of Section 40 of the Criminal Law Code.

10 <http://www.hrw.org/node/114291>, 19 March 2013

11 Joint Statement by United Nations Special Rapporteurs on 27 February

12 European Parliament Resolution, 8/2/2013: <http://www.europarl.europa.eu/ep-live/en/plenary/search-by-date>

13 ZLHR

The police also suspected ZPP, which was once raided in December 2008, to have contravened the Immigration Act by permitting some unidentified illegal immigrants to enter the country without a work permit and to have smuggled some undisclosed goods in breach of Section 182 (1) of the Customs and Excise Act. The police seized some documents and other items such as mobile phone handsets; wind up radios, files with donor information, political violence reports and DVD's. No one was arrested but the police indicated that they were going to "study" the information.

On 19 February 2013, police raided the offices of Zimbabwe Election Support Network in Belgravia (ZESN), and searched for and seized documents.

On 19 September 2013 the Zimbabwe Republic Police defied the country's new Constitution by breaking up a demonstration organised by Women of Zimbabwe Arise (WOZA) and banned a peace march organized by MDC-T youths to commemorate International Peace Day. Police officers armed with truncheons intercepted some WOZA protestors as they marched on Parliament building in Harare to present their petition calling for improved service delivery in all of the country's local authorities and demanding an enabling operating environment for civic society organisations. At Parliament, the police arrested WOZA leaders Jenni Williams, Magodonga Mahlangu and Taurai Nyamanhindi together with freelance journalist Tawanda Karombo, who was accused of taking pictures outside Parliament building. The four were taken to Harare Central Police Station where they were detained for close to three hours. Developments relating to this case at the regional level are covered below<sup>14</sup>. On 4 December 2014, WOZA women successfully handed over a petition to parliament in Harare, which emphasized the relationships between violence and peace and development. However police in Bulawayo had disbanded their march and set dogs on the women protestors. In their statement WOZA said 'WOZA express dismay that the police in Bulawayo seem to have not had the same training on the new 'right to petition' as the Harare police officers seem to have had. Once again the Bulawayo police officers have shown that there is selective harshness in responding to protests in Bulawayo. WOZA members are still shocked that Bulawayo police bosses ordered the deployment of police dogs to run the peacefully protesting members out of town'.

On 19 September 2013, the ZRP banned MDC-T youths from staging a march to commemorate International Day of Peace, which is observed on 21 September 2013. MDC-T youth leader Solomon Madzore had notified the ZRP through a letter, of his party's planned peace march scheduled for 20 September 2013, but in response to Madzore's letter, the ZRP turned down the notification claiming that the obtaining "environment" is not conducive for such commemorations.

On 12 September High Court Judge Justice Nicholas Mathonsi overturned a ban imposed by the police on a procession organised by the Zimbabwe Congress of Trade Unions (ZCTU) scheduled for Saturday 14 September 2013. The ZCTU had notified the Zimbabwe Republic Police (ZRP) of their planned procession and even had the courtesy to request police escort for the commemoration aimed at celebrating trade union rights to organise and the workers struggle for emancipation and recognition. The labour federation also intended to hold a clean-up campaign at Copacabana commuter omnibus terminus in Harare and thereafter stage a lunchtime march.

But the ZRP which on Tuesday 20 August 2013 had granted the ZCTU authority to hold the procession later withdrew the permission on the basis that the political situation obtaining in the country was not conducive to hold the commemoration. The ZRP through Chief Superintendent Saunyama charged that some unscrupulous elements might take advantage of and hijacks the whole programme and insisted that according to the intelligence they had gathered there were some unidentified people who were waiting to hijack the march. In the urgent chamber application, ZLHR lawyers argued that the ZRP's refusal for the ZCTU to hold its procession in commemoration of workers' rights is beyond what is prescribed by the obnoxious Public Order and Security Act as it is a violation of the labour federation's right to freedom of assembly and association as enshrined in the Constitution of Zimbabwe.

On 27 July The Zimbabwe Republic Police (ZRP) reversed its ban of an MDC-T final election campaign rally set for Monday 29 July 2013 and imposed a stringent code of conduct and

<sup>14</sup> Robert F Kennedy Centre, Press Release Demonstrators Assaulted during International Day of Peace Event in Zimbabwe, <http://rfkcenter.org/demonstrators-assaulted-during-international-day-of-peace-event-in-zimbabwe-2?lang=en>

conditions to be adhered to by the conveners and party supporters. In an incident which stoked up tensions between President Robert Mugabe and his long-time rival turned coalition government partner Prime Minister Morgan Tsvangirai, ahead of the elections, the ZRP through Chief Superintendent Titus Chagwedera, the Officer Commanding Harare Central District on Friday 26 July 2013 turned down the MDC-T's notification to hold its final election campaign rally near Rainbow Towers in Harare on the grounds that the law enforcement agency did not have enough police personnel to cover the rally after deploying them to polling stations around the country to secure some election material.

Chief Superintendent Chagwedera said the ZRP also feared that the MDC-T rally could "culminate in political violence." However, in a major U-turn, Chagwedera on Saturday 27 July 2013 reversed the ban and sanctioned the MDC-T to proceed although he imposed some stringent conditions for the rally.

On 19 July, ZLHR filed ex-parte applications at the Tredgold Magistrates Court in Bulawayo, seeking to overturn the ban imposed by the Zimbabwe Republic Police (ZRP) on the holding of election debates in Midlands, Matabeleland South and Matabeleland North.

The ZRP blocked six election debates organised by Bulawayo Agenda in Gweru, Plumtree, Tsholotsho and Lupane. The meetings were supposed to be held in early July and meant to facilitate interface between various political party candidates running for parliamentary office from across the political divide and the public so as to promote citizen participation in elections.

The police told the organisers of the election debates that they were only allowing political parties to conduct their campaigns during the three weeks period leading to the harmonised elections as they claimed not to have enough manpower to ensure public order at civic society meetings.

On 27 July 2013, Mutare Magistrate Noah Gwatidzo released on \$30 bail Shuwa Mudiwa, the MDC-T aspiring parliamentary candidate for Mutare West constituency, who was arrested early in the morning for allegedly convening a meeting without securing police authority. Mudiwa was charged with contravening Section 25 (1) (b) of the Public Order and Security Act after he allegedly convened a meeting at Mashukashuka Business Centre, Marange, in Manicaland province on 26 July 2013.

On 16 November ZANU PF youths staged a demonstration in front of the U.S embassy. On his facebook page Ambassador Bruce Wharton says, 'I strongly support the right of peaceful protest and hope that all institutions and organizations in Zimbabwe will join in protecting that right'.

On 22 November, a Harare magistrate acquitted the Zimbabwe Human Rights NGO Forum Director, Abel Chikomo of charges for running an illegal organisation. The Magistrate noted that this was a case that should not even have been brought before the court because there was no evidence or merit. Please refer to full coverage of this case under "Rule of Law" above.

## 2c. Citizenship rights

On 16 May 2013, Zimbabweans signed into law a new constitution that allows dual citizenship and restored citizenship rights to a lot of people who had been disenfranchised.

On 26 June 2013, the new Constitutional Court of Zimbabwe has upheld dual citizenship. In the matter of Mutumwa Dziva Mawere v Registrar General & Another<sup>15</sup>, prominent businessman Mutumwa Mawere who holds South African citizenship and had lost his Zimbabwean citizenship applied to the court for an order declaring him a Zimbabwean citizen notwithstanding that he was also a South African citizenship. The court agreed with Mawere that the promulgation of the new constitution created new rights and that citizenship rights had been restored to those who were Zimbabweans by birth. Mawere filed an urgent Constitutional Court application asking the court to confirm constitutional provisions on dual citizenship and to stop the 30-day voter registration exercise until his case is finalized.

<sup>15</sup> Constitutional Court of Zimbabwe case number 30/13

On 22 October 2013 it was reported that scores of applications for citizenship, which was meant to be recognized and guaranteed by the new constitution, had been denied in recent weeks, with a lack of clarity on the laws causing chaos. It was hoped that with the creation and gazetting of a new constitution, the confusion over who is entitled to citizenship would finally be clarified.

According to that new charter there are three types of recognised citizenship including citizenship by birth and by descent. The law states that if you were born in Zimbabwe and your mother or your father was a Zimbabwean citizen, you are a citizen by birth. The same applies if you were born in Zimbabwe and neither of your parents was a Zimbabwean citizen, but any of your grandparents was a citizen by birth or descent<sup>16</sup>.

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<sup>16</sup> <http://www.davidcoltart.com/2013/10/zim-citizenship-rules-in-chaos-as-nationals-denied-documentation/#sthash.v9FH1q4v.dpuf>. See also <http://www.swradioafrica.com/2013/06/26/mawere-wins-dual-citizenship-case/>



# Respect for Political Rights

# 3

## Including the Right of Citizens to Change Their Government: Elections and Political Participation

### Summary

*The old constitution provided citizens with the right to change their government peacefully, Section 23A of the new constitution under which the 2013 elections were held explicitly provides for the right to vote. Despite the affirmation the right was restricted in practice. The political process continued to be biased heavily in favor of ZANU-PF, which has dominated politics and government and manipulated electoral results since independence in 1980. During the 2013 harmonised elections held on 31 July 2012 there were substantial electoral irregularities reported by domestic and regional observers, which rendered the result not to be a credible expression of the will of the Zimbabwean people. The election was reported to be a culmination of a deeply flawed process. There were irregularities in the provision and composition of the voters roll. The political parties had unequal access to state media. The security sector did not safeguard the electoral process on an even-handed basis and the government failed to implement the political reforms mandated by Zimbabwe's new constitution, the Global Political Agreement, and the region.*

### IN DETAIL

The Electoral Reform section of the SADC Roadmap listed six activities, five of which all parties agreed on. There was no consensus reached with ZANU-PF in relation to the sixth. The six activities coupled with their outcomes are listed as follows:

- (i) enactment of agreed electoral amendments. This was partly done – having taken effect well after the August 2011 deadline, by the enactment of the Electoral Amendment Act of 2012. But this signified only a start, as a result of the provisions in the new Constitution for proportional representation, and elected metropolitan and provincial councils, extensive further amendments to the electoral law have become essential under Legislative Agenda [see G. below]
- (ii) voter education – 30 days duration
- (iii) mobilisation for voter registration – 60 days duration
- (iv) preparation of new voters' roll – 60 days duration
- (v) inspection of voters' roll – 45 days duration

The above were either not done or impartially done: (ii) to (v) which were agreed on were closely related activities that required special voter registration efforts. However nothing substantial was done until the mobile voter registration exercise, which took place between on 29 April and 19 May.

There is a special provision for voter registration in paragraph 6 of the Sixth Schedule of the new Constitution: "The Registrar-General of Voters, under the supervision of the Zimbabwe Electoral

Commission, must conduct a special and intensive voter registration and a voters' roll inspection exercise for at least thirty days after the publication day" ("publication day" is the day the Act for the new Constitution is gazette), this was not properly done, please see section on elections below.

vi) Staffing of Zimbabwe Election Commission (ZEC) was not agreed and not done. There was no agreement reached on this issue. ZANU-PF negotiators rejected MDC-T's proposal to have ZEC staff recruited afresh by the new Zimbabwe Electoral Commission. ZEC key senior staff remained largely as the same team that managed the problematic 2008 elections.

### 3a. New constitution and referendum

On 31 January 2013, the Parliamentary Select Committee (COPAC) published the final draft of the proposed Zimbabwean Constitution with 345 sections.

#### Pre-Referendum environment

##### On compliance with article VI of the GPA:<sup>17</sup>

- There was a consistent failure by the Constitutional Parliamentary Committee (COPAC) to adhere to the timelines stipulated in Article VI and the process lagged severely behind time. A process that the IG agreed would be completed in 18 months was extended to over 4 years; timelines were violated with impunity.
- There was a general lack of sufficient and timely information from COPAC about the unfolding processes and developments resulting in the general population being largely unaware of the status quo.
- Civil society organisations (CSOs) were largely side lined throughout the process as they failed to independently and actively participate in the formal activities organised by COPAC. During the stages in which they participated, such as the Second All-Stakeholders' Conference, they did so largely as proxies of the three political parties to the IG, and there was little to no room for alternative input relating to issues that were of lesser concern to political parties, but of vital importance to other societal stakeholders.
- The tampering of the draft produced as a result of the outreach process by the political parties to the GPA, and the subsequent finalisation of the draft constitution (including the "parked" issues) by the Principals was a process which was outside the mandate of, and which violated, the agreed Article VI process.
- The fast-track adoption of the draft by Parliament without substantive debate, and the subsequent fast-track gazetting of the draft and referendum date after periods of such long delays in the earlier stages raised concerns and questions around the democratic and popular nature of scrutiny and debate of the draft.
- Essentially 3 weeks were provided to disseminate, publicise and educate the nation on the contents of a voluminous and intricate legal document. The numbers of copies of the draft constitution, translations, and the simplified COPAC version, were insufficient to ensure comprehensive awareness of the draft. Concerns were also raised about the accuracy of the contents of the simplified COPAC version as compared to the full draft, as well as poor attendance at the sensitisation meetings carried out by COPAC.
- COPAC representatives utilised public and donor funds not only to sensitise and educate the public on the contents of the draft, but also to actively encourage the public to vote "YES". In addition, pressure was brought to bear on CSOs to sign a Memorandum of Agreement (MoA) with COPAC in order to be allowed to carry out civic education under threat of disruption of activities of those without a MoA. Further, such organisations were made to agree to promote a YES vote. Such practices are inconsistent with fundamental rights and freedoms, and with democratic standards of

<sup>17</sup> ZLHR, 15 March, 2013 Report

civic education that enlighten people without putting pressure on them to advocate or vote for one position or another.

- Several incidents of intimidation, arrest and vilification of those advocating a NO vote were reported, and this is contrary to promotion of a free environment in which dissenting opinions are encouraged and welcomed.

## On the legislative environment persisting during the pre-referendum period

- The GPA clearly stipulated that laws impacting negatively on fundamental rights and freedoms of expression, assembly, association and movement were to be amended to ensure a conducive legislative environment. These undertakings were ignored, if not violated, with impunity.
- The position taken by COPAC representatives, that they would encourage law enforcement agents to “suspend” the application of the Public Order and Security Act to allow a conducive environment for education and debate on the draft constitution to take place, was startling. This was a clear indication from COPAC that such laws repress freedoms. However suspension is no sufficient and these laws should ultimately be dismantled. The subsequent disruption of civic debates on the draft constitution, and heavy-handed police action to prevent political players including the Prime Minister himself from carrying out such activities was a clear indication that legislative and institutional reform was not a government priority and such repressive laws would only continue to be used selectively by unreformed state institutions and actors to prevent constitutional freedoms from being exercised due to lack of political will and failure to censure heavy-handed action whenever it would occur
- The publicly owned but state-controlled media (print and electronic) failed to provide programming and content to enlighten people in a comprehensive and educative manner about the contents of the draft constitution. There was inequality of access to such media by representatives offering dissenting views. Reform of the public broadcaster and state-controlled media remained outstanding despite their urgency and the GPA requirement that this is a priority for the IG.
- Other repressive laws continued to be abused and selectively applied against targeted CSOs and human rights defenders (HRDs) during the pre-referendum period. There was an increase in the criminalisation of free speech through the abuse of insult laws, and the reliance on the Broadcasting Services Act to stifle lawfully operational alternative media and voices. In relation to the latter, since the beginning of 2013, the Zimbabwe Republic Police (ZRP) had arbitrarily sought to “ban” alternative sources of media, namely short-wave radios. This was followed by the confiscation of radios from CSOs and communities that were searched or found to possess such gadgets. The unlawful confiscation of radios witnessed, is directly linked to the closing up of access to diverse information and leads to a situation where people in communities are not able to get any alternative sources of information as they cannot afford to buy newspapers, and in most cases there is no frequency for state controlled broadcasting. This is a blatant violation of the right to freedom of expression and access to information

## On the role and readiness of the Zimbabwe Election Commission (ZEC)

- The ZEC was not consulted prior to the referendum date being set. Although they had worked comprehensively to prepare for rolling out the poll, the short notice had an impact on its ability to fully manage the referendum process and ensure adequate resources to carry out its constitutionally mandated duties.
- The new referendum regulations were gazetted shortly before the date of the referendum, and included provisions altering some key aspects of the observation process in a manner that impacts good practices.

- The failure by ZEC to abide by the principles of natural justice and its refusal to accredit observers from ZPP and ZimRights adversely affected preparations by such organisations and observers ahead of the referendum day detracting focus and time away from proper preparation for the referendum, both by ZEC and the affected organisations, due to on going negotiations and litigation. These organisations and observers were essentially found guilty before trial by a body not qualified or empowered to act in such a manner.
- The reduction in numbers of international observers and refusal to accredit those not considered “friendly” was also problematic.

On the operating environment for civil society organisations and Human Rights Defenders

- The continued clampdown on CSOs and HRDs prior to the referendum had a negative impact on the pre-referendum environment. The assault on CSOs was strategic, intentional, well planned, well resourced and well implemented. It targeted organisations which were carrying out lawful activities these included mobilisers, civic educators, human rights monitors, and service providers.
- Since November 2012, police, amongst others, raided premises of 5 major CSOs, namely Counseling Services Unit, Zimbabwe Human Rights Association, Zimbabwe Peace Project, Zimbabwe Election Support Network, and Radio Dialogue. These searches were conducted in terms of search warrants that were broad, vague and subject to legal challenge. As a result of these searches, personnel and Board members were charged with varying offences that ranged from operating unregistered organisations, committing forgery, fraud and other related offences. A total of 358 HRDs from CSOs since November 2012 were either harassed through interrogation, arrest and detention, with the majority of them being subsequently released without charge. Only 18 out of the 358 HRDs from CSOs were charged and taken to court where in most cases, prosecutors declined to prosecute.
- The ZRP used several public platforms, including an appearance in Parliament and press conferences to intimidate and issue threats and false information against CSOs – some named, and some unnamed. The GPA requirement for reform of such institutions and actors, and a cessation of politically motivated attacks, was largely ignored.
- The state-controlled media and aligned outlets stepped up their defamatory and false publications against these same CSOs as part of the sustained assault. Hate speech and incitement against CSOs and HRDs further intensified, whilst the slow process of achieving legal redress and general impunity of such state media practitioners and media houses continued.

One of the overriding challenges during the run up to the referendum was the preoccupation of the three political parties with the IG ensuring that the draft constitution was incorporated into the national referendum. This caused the IG to render secondary key reforms and processes outlined in the GPA. These included substantive legislative and institutional reform as well as the stemming of bad administrative practices and the escalating impunity for violations of laws and current constitutional safeguards. In particular, the assault on civil society needed to be comprehensively addressed if the country was not to lose its only remaining independent voice ahead of the elections.

In spite of the challenges that faced this constitution-making process, a step forward had been taken in terms of generating debate and a greater interest in constitutional matters, as well as debate around issues of constitutionalism. The process took place in an extremely difficult environment; nonetheless, there was an overriding general willingness and interest in the pursuit of a better constitution for Zimbabwe. However, key issues of concern remained unresolved regarding the impending elections which included: an environment that was not conducive to free debate, agents who continued with their old practices of violating fundamental rights and freedoms with impunity, and preventing the sharing and dissemination of information. No efforts were taken towards correcting this in preparation for a free and fair election .

## Pre-referendum and by election litigation

The period in the run up to the Constitutional referendum was heavily contested. On 13 March, Zimbabwe's influential human rights, labour and social justice activists responded to the Zimbabwe Electoral Commission (ZEC) and President Robert Mugabe by inundating the Supreme Court with a lawsuits.

This period witnessed a litany of litigations, for example, the NCA challenged the appointment of ZEC acting chairperson Joyce Kazembe, arguing that ZEC was improperly constituted and could not competently run any election or referendum until a substantive chairperson or a suitably qualified acting chairperson was newly appointed.

In a related case, on 13 March, the Supreme Court set aside High Court Judge President George Chiweshe's ruling in which he stated that the powers conferred upon President Mugabe are not justiciable and ruled that Justice Chiweshe should have assumed jurisdiction to enquire into the issue of the irrationality and gross unreasonableness of President Mugabe's proclamation of 16 March as the referendum date. However, the Supreme Court dismissed the NCA's appeal to delay the weekend referendum on the merits.

On 13 March, Majongwe, Gwisai, Yuba and ISO, who identified themselves as proponents of the "VOTE NO" campaign filed a constitutional application arguing that they had been denied their right to a free and fair referendum due to the limited amount of time available to them to conduct their campaigns and hence requested an extension of time before the draft governance charter would be put to the vote.

In a separate by election case, 15 April 2013 the Supreme Court granted an application filed by three former legislators Abednico Bhebhe, Njabuliso Mguni and Norman Mpofu to hear their appeal against the dismissal of their petition in the High on an urgent basis. The Supreme Court had in 2012 ordered President Mugabe to gazette dates for by-elections in the trio's former constituencies. In October, Justice Chiweshe then granted a reprieve to President Mugabe to comply with the court's order until 31 March 2013. But President Mugabe then filed papers authorising him not to comply with the order, on the basis that it would be a waste of taxpayers' money given that the Parliament was to end on 29 June, a claim lawyers deny arguing that the life of Parliament will end on 29 October.

Justice Chiweshe granted the application without giving his reasons after fierce resistance by the three former MPs' lawyers. The Judge President said he would hand down the reasons for his ruling on Monday 8 April 2013.

### Constitutional Referendum outcome

On 13 March 2013, Zimbabweans voted in a referendum for a new constitution with a resounding YES vote. The Zimbabwe Election Support Network (ZESN) highlighted that while voting had been fairly quiet and peaceful there were recurring incidents of political parties recording details of voters concerned over the presence of police officers at the polling stations with some police officers assisting voters contrary to the law. There was a violation of secrecy in voting with instances of those who offering were assistance shouting out the voter's choice and some ZESN observers being barred from covering the constituency collating centres

On 27 March 2013 the Referendum results were gazetted in the General Notice 201A/2013 signed by the Minister of Constitutional and Parliamentary Affairs.

On 22 May 2013 Mugabe signed the new constitution into law

## 3b. Elections

The new constitution provided for universal adult suffrage as a fundamental right at the same level as other fundamental rights that can be enforced easily by direct access to the highest court. In March 2013, the ACHPR passed a provisional measure allowing exiled Zimbabweans and those living

abroad to vote in the March Referendum and the general elections scheduled thereafter regardless of whether or not they were in the service of the government.

On 22 May President Mugabe through the Presidential Powers (Temporary Measures) Act proclaimed 28 June 2013 as the date for the sitting of the nomination court and 31 July 2013 as the Election Day. In response to this proclamation, the Prime Minister Morgan Tsvangirai issued a statement calling the proclamation an attack of the Constitution. He said his response would be to challenge the proclamation in the Constitutional Court, as it was a matter governed by law. Please follow this link for the audio of the full statement<sup>18</sup>.

## An audit of the Elections 31 July 2013

The Election Roadmap was signed at Harare on 6th July 2011 by the six party negotiators and subsequently endorsed by the party principals and SADC.

The election conducted on the 31st July 2013 was fraught with very serious breaches of Zimbabwe's Electoral Act, Constitution and SADC Guidelines. The manipulation of the electoral process by Zanu PF and its functionaries within Government and the military had a defining impact on the result. An analysis of Reports produced by the Zimbabwe Election Support Network, civil society organizations; views of ordinary Zimbabweans, professionals and lawyers identified a number of breaches, which included the following baseline:

Breaches relating to the Electoral Act and Constitution

### Pre-election

#### 1. *Illegal proclamation of the Election itself*

President Mugabe's proclamation of the election date was in breach of section 31H of the previous Lancaster House Constitution (which provision was still in force at the time the proclamation was made) in that he did not consult the Cabinet before making the declaration, as he was obliged to.

#### 2. *Illegal use of the Presidential Powers Act and regulations to amend the Electoral Act*

On 13th June 2013 President Mugabe amended the Electoral Act by means of three Electoral Amendment Regulations (Statutory Instruments 87, 88 and 89 of 2013). He made these amendments in terms of the Presidential Powers (Temporary Measures) Act. The amendments introduced wide-ranging changes to Zimbabwe's electoral law and practice. In doing so President Mugabe was in breach of Section 157(1) of the Constitution and Section 4(2)(c) of the Presidential Powers (Temporary Measures) Act itself. These both specifically state that the Electoral law cannot be made by regulations promulgated in terms of the Presidential Powers Act and must be made by a specific Act of Parliament.

#### 3. *Breach of Section 6(3) of the 6th Schedule as read with section 155 (2) (a) of the Constitution*

Voter registration exercise

Section 6(3) of the 6th Schedule of the Constitution states that "the Registrar General, under the supervision of the Zimbabwe Electoral Commission, must conduct a special and intensive voter registration and a voters roll inspection exercise for at least 30 days after the publication day) of the new Constitution)". The Registrar General of Voters seriously breached this provision across the country. Most urban centres across the country were affected. The Registrar General located insufficient numbers of registration centres in urban areas, often in remote sites where the processing of applications was extraordinarily slow. This resulted in tens, if not hundreds, of thousands of citizens effectively being disenfranchised countrywide because they were not given an opportunity to register in urban areas. Serious anomalies resulted because of this with, for example, rural provinces such as

<sup>18</sup> <https://soundcloud.com/human-rights-forum/press-statement-by-prime> <http://www.bbc.co.uk/news/world-africa-22889406>

Mashonaland West (in the past a Zanu PF stronghold) registering almost 3 times the numbers of new voters than Harare the capital (an MDC T stronghold). The Constitutional provision was clear – it was to be “intensive” and was to last “30 days”.

Voters roll

An analysis conducted by the Research and Advocacy Unit of the only available electronic voters roll prepared prior to the intensive voter registration exercise, revealed serious discrepancies between information and statistics from the census and that appearing on the voters’ roll.

#### **4. Disproportionate increase of number of Polling Stations around 1 Brigade Barracks**

Whilst the ZEC was entitled to determine the number and location of polling stations its actions in determining the location of new polling stations were highly contentious.. The disproportionate increase in the number of polling stations around the Barracks was inexplicable. The increase in the number of polling stations around the Barracks was completely disproportionate to the general trend of increasing the number of polling stations. One possible conclusion to be drawn was that the number of polling stations situated close to the Barracks was specifically selected to enable security forces to manipulate the vote.

#### **5. Breach of Section 61(4)(b) and (c) of the Constitution – freedom of expression and the media**

Sections 61(4) (b) and (c) of the Constitution state that all “State owned media of communication” must be “impartial” and afford a “fair opportunity for the presentation of divergent views and dissenting opinions”. However independent radio and television stations in Zimbabwe are prohibited. The only television station is the State owned ZBC. Although there are two nominally independent radio stations, namely Star FM and ZiFM, the former is owned by the Zimpapers Group, which is essentially State owned, and the latter is owned by Supa Mandiwanzira the Zanu PF candidate for Nyanga South.

During the entire electoral period, the ZBC news bulletins were undeniably partisan. ZBC TV and radio were unequivocally biased in favour of Zanu PF undermining a fair opportunity for the presentation of divergent and dissenting opinions. The meetings of MDC Presidential candidate Professor Welshman Ncube had gone unrecognised by the ZBC. Although more coverage was allocated to MDC T Presidential candidate Morgan Tsvangirai, the coverage remained biased and was not given the fair opportunity guaranteed by the Constitution.

#### **6. Biased application of Section 152 of the Electoral Act**

Section 152 of the Electoral Act states that “from the date on which an election is called until its result is declared, no person shall deface or remove any billboard, placard or poster published, posted or displayed by a political party or candidate contesting the election.” It was this provision, which was used by the ZRP against the MDC election campaign distribution coordinator Malthus Ncube. He was arrested, detained overnight and prosecuted.

There were no prosecutions for ZANU PF operatives and supporters who tore down MDC posters especially in Hatfield, Harare.

#### **7. Breach of Section 21(6) and (7) of the Electoral Act by the ZEC**

Zimbabwe’s Electoral Act obliges the ZEC to supply both contesting parties and candidates with copies of both paper and electronic copies of the voters roll. Access to the voters roll is arguably the most important right in any democratic election.

Section 21(6) and (7) of the Electoral Act states as follows:

(6) Within a reasonable period of the time after nomination day in an election, the Commission shall provide .

(a) free of charge, to every nominated candidate, one copy in electronic form of the constituency voters roll to be used in the election for which the candidate has been nominated; and

(b) at the request of any nominated candidate, and on payment of the prescribed fee, one copy in printed form of the constituency voters roll to be used in the election for which the candidate has been nominated.

(7) Where a voter's roll is provided in electronic form in terms of subsection (3), (4) or (6), its format shall be such as allows its contents to be searched and analysed:

Provided that—

(i) the roll may be formatted so as to prevent its being altered or otherwise tampered with;

i. the Commission may impose reasonable conditions on the provision of the roll to prevent it from being used for commercial or other purposes unconnected with an election."

Despite repeated requests made in writing and verbally both to the ZEC by the two MDC's neither were supplied with an electronic copy of the voters roll as was their right prior to the election or at all. Indeed one week after the election there was still no sign of the electronic voters roll. ZEC cited logistical problems for its failure to comply with the law. The failure by the ZEC to comply with Section 21 of the Electoral Act constitutes a very serious breach of the Act but also of the entire electoral process. The provision of a voters roll forms the bedrock of the electoral process in all democracies but especially in Zimbabwe where repeated elections over the last 13 years have been marred by allegations and proof of electoral fraud centered on the manipulation and distortion of the voters roll. In short the failure by ZEC to comply with Section 21 (6) and (7) of the Electoral Act rendered the entire election illegal and at the very least meant that it could no longer be viewed as free and fair.

## Post commencement of voting

### 1. *Turning away of voters*

On 31 July 2013 at least 300 000 potential voters were turned away for various reasons, ranging from their names being moved from their wards to other constituencies while names of many others were not on the roll despite having been registered or having inspected the voter's roll prior to the elections. A substantial number of people voted using fake voter registration slips even though their names did not appear on the voters' roll. The ZEC itself admitted that 304890 voters were turned away countrywide.

### 2. *Poor quality ink and poor lighting in tents*

The ink used to mark voters in terms of Section 56 (4) (b) of the Electoral Act (to indicate that a voter has voted) was sub standard and washed off easily. Each voter was required to dip a finger in pink ink. However this ink came off very easily and even using normal soap it came off with a few washes. Anyone using an appropriate chemical would be able to easily remove the ink and then vote again, and again.

That situation was compounded by the fact that many of the polling stations were in tents with very poor lighting even at midday, which made it virtually impossible for polling officers to adequately check that potential voters did not vote more than once.

### 3. *Absence of ultraviolet light detectors*

Historically polling stations in Zimbabwe have always had ultraviolet light detecting machines to check whether potential voters have ink on their fingers. These machines of course provide the most secure manner of checking whether a potential voter has already voted. For reasons, which have not been explained by the ZEC, there was not a single machine used in most constituencies. The absence or non-application of these machines seriously compromised the legitimacy of the elections and would have been a key component in the facilitation of double voting.



#### 4. *Presence of Police during the count in breach of Section 62 of the Electoral Act*

Zimbabwe's Electoral Act makes it clear that the roll of the Police is solely confined to keeping order at polling stations. Despite these clear provisions of the law police officers were heavily involved in the process in every single polling station

#### 5. *Breach of SADC Guidelines, sections 68 & 69 of the constitution and rules of natural justice*

SADC guideline 2.1.7 provides for the independence of the Judiciary and impartiality of the electoral institutions. The approach and attitude of the High Court toward the MDC applications for information and material that was necessary for the prosecution of the petition demonstrated the uneven playing field upon which they were expected to operate thus confirming the fear of judicial complicity in manipulating the electoral process.

Section 69 of the new constitution guarantees the right to a fair hearing. It provides that "in the determination of civil rights and obligations, every person has a right to a fair, speedy and public hearing within a reasonable time before an independent and impartial court, tribunal or other forum established by law".

The conduct of ZEC and its senior officers cited in the petition was inconsistent with the requirements for administrative justice as provided for in Section 68 of the new constitution. That provision provides that "every person has a right to administrative conduct that is lawful, prompt, efficient, reasonable, proportionate, impartial and substantively and procedurally fair".

On lawfulness, ZEC failed to provide the MDC with material such as an electronic copy of the voters' roll despite the fact that the MDC had a legitimate expectation that ZEC would discharge its functions fairly and efficiently but this clearly was not the case.

## Conclusion

From this report it will be apparent that the electoral process was subverted through a detailed and carefully laid plan executed with military precision by a variety of Government offices and institutions. This involved the systematic and deliberate breach of a variety of laws contained in both the Electoral Act and the Constitution. At the core of this was the non-availability of the voters roll in electronic format which, had it been available, would have exposed much of the electoral fraud.

## Other election issues worth separate mention

### Election funding

On 12 April 2013 ZANU PF and MDC-T were embroiled in a fight over the visit of a United Nations (UN) election assessment team amid reports that Justice minister Patrick Chinamasa had blocked the visit. Recommendations made by the UN could have resulted in the body funding the country's forthcoming polls. On 17 April 2013 the Government cancelled the poll-funding request.

### Voters' roll issues

On 19 July lawyers delivered a formal notification and warning to Tobaiwa Mudede, the Registrar-General of Voters to withdraw his urgent chamber application filed in the High Court on 17 July barring the Research and Advocacy Unit (RAU) from launching an audit of the country's roll of registered voters as it was premised on an erroneous understanding of facts.

In a letter written and delivered to Mudede's lawyers, RAU's lawyers asserted that the application and subsequent provisional order, which he obtained from High Court Judge Justice Joseph Mafusire, were based on a factual inaccuracy. The lawyers stated that Mudede's lawyers were given the correct facts and a demand was made for the withdrawal of their matter.

On 31 July, High Court judge Joseph Mafusire ordered the ZEC to furnish Prime Minister Morgan Tsvangirai's MDC party with a hard copy of the voters' roll by 12pm that day. MDC secretary general Tendai Biti had filed an urgent court application demanding an electronic voters' roll in line with the Electoral Act.

Biti cited ZEC and Registrar of Voters Tobaiwa Mudede as respondents. He said despite numerous and persistent demands, they had been denied access to the voters' roll.

In the application, Biti said his party's access to the voters' roll was critical and indispensable for it to be able to verify the outcome of the elections, "without access to the voters' roll there is no way a credible election can be conducted."

However, ZEC told the court that its system had developed a technical fault, which rendered it unable to provide the MDC with an electronic voters' roll. Bhatasara told the Daily News that ZEC was to provide with an electronic voters' roll to MDC once its system was fixed.

## Role of Israeli company Nikuv

According to various unverified reports, in particular the MDC election dossier<sup>19</sup>, the ZANU PF assigned Nikuv, an Israeli firm to spearhead, control and direct the rigging mission through working with the Registrar General on the processes of voter registration and preparation of the voters' roll.

Nikuv Projects were granted a contract to help rig the 2013 elections by Mugabe himself in June 2012 on the strength of previous work that the Israeli firm had carried out for the Zanu PF regime since elections in 2002.

CEO for the Israeli firm, Emmanuel Antebi visited Mugabe in June 2012 as a culmination of meetings and engagements with Emmerson Mnangagwa and other senior Zanu PF officials in the rigging high command. The contract for rigging the 2013 elections was estimated to be worth US\$13million, which the Zanu PF regime paid in staggered instalments and batches, starting from November 2012.

The Registrar's failure to produce the voters' roll has meant that the above allegations have largely remained unverified.

## Responses to the elections

### U.S.

On 3 August 2013, the U.S. government issued a statement on the elections that "Zimbabweans voted in their country's first national elections this week since the violent and disputed polls in 2008. These elections were an opportunity for Zimbabwe to move forward on a democratic path and provide a foundation for growth and prosperity. The people of Zimbabwe should be commended for rejecting violence and showing their commitment to the democratic process. But make no mistake: in light of substantial electoral irregularities reported by domestic and regional observers, the United States does not believe that the results announced today represent a credible expression of the will of the Zimbabwean people."

Though the US government was restricted from monitoring the elections, the balance of evidence indicates that the announcement was the culmination of a deeply flawed process. There were irregularities in the provision and composition of the voters roll. The parties had unequal access to state media. The security sector did not safeguard the electoral process on an even-handed basis. And the government failed to implement the political reforms mandated by Zimbabwe's new constitution, the Global Political Agreement, and the region. The U.S government urged the SADC and the AU to address their concerns in relation to the electoral process, as well as those raised by domestic monitoring groups. The Government of Zimbabwe needs to chart a way forward that will

<sup>19</sup> <http://www.myzimbabwe.co.zw/gossip/7391-mdc-t-releases-detailed-election-rigging-report-mudede-instructed-to-work-with-nikuv.html>

give the people of Zimbabwe the opportunity to express their most fundamental democratic right in a free and fair environment. They called on all parties to refrain from violence during this period and during the aftermath of the elections.

The United States affirmed that they shared the same fundamental interests as the Zimbabwean people: a peaceful, democratic, prosperous Zimbabwe that reflects the will of its people and provides opportunities for them to flourish. For that to happen, the Government of Zimbabwe should heed the voices of its citizens and implement the democratic reforms mandated by the country's new constitution.

On 19 August 2013, despite a unanimous endorsement of the elections by Southern African leaders, the United States State Department said it believed that Zimbabwe's July 31 election was flawed and it did not plan to loosen sanctions against President Robert Mugabe's government until it saw signs of change in the country.

On 12 September 2013, The United States House Committee on Foreign Affairs discussed the U.S. and Zimbabwe relations following the disputed July 31 general election. According to a statement from the Congress Sub-committee on Africa, Global Health, Global Human Rights and International Organizations, the committee heard a testimony on how U.S policy had failed to "provoke reforms that would have ensured respect for human rights by the regime of Robert Mugabe."

The hearing examined U.S policy, especially in relation to the effect of existing sanctions imposed on Harare following the 2002 presidential elections, in the aftermath of yet another "problematic election and in light of pressure from the region to remove sanctions against the Mugabe government". The panelists were Deputy Assistant Secretary Bureau of African Affairs in the State Department Shannon Smith, Senior Deputy Assistant Administrator Bureau for Africa USAID, Todd Amani and Zimbabwe Human Rights NGO Forum International Advocacy Coordinator Arthur Gwagwa.

The U.S targeted sanctions imposed on the Zimbabwean government include President Mugabe, members of his inner circle and selected companies alleging human rights abuses in Zimbabwe. The U.S had promised to remove the sanctions if Zimbabwe held what it would consider free and fair elections. Washington condemned the July elections saying they did not represent the will of the Zimbabwean people.

## Norway

On 6 August 2013, Norway issued the following statement, which we have abridged "Norway is pleased that the elections in Zimbabwe passed off peacefully, in contrast to the previous elections in 2008. This is a step in the right direction. But unfortunately there are clear indications that these elections were marred by so many irregularities that they cannot be called open and fair," said Minister of Foreign Affairs Espen Barth Eide.

"After many years of insecurity and poverty, the people of Zimbabwe deserve a better life. Unfortunately, these election flaws make it difficult to view the election results as an expression of the will of the people," said Minister of International Development Heikki Eidsvoll Holmås. The African election observers have not yet published their final report. The opposition MDC-T will consider whether to take legal action and demand new elections.

Both the final report by African election observers and MDC-t's decision as to whether they would demand new elections or not were unresolved at the time of the Norwegian government's statement being made: "We are now awaiting the outcome of these processes, which will also affect Norway's relations with Zimbabwe in the years ahead. It is very important for Norway that countries we cooperate with show a genuine willingness to promote democracy and human rights," Mr Eide said.

## Botswana

On 5 August 2013, the Government of Botswana issued the following statement on the elections "In its previous statement of the 1st August 2013 on the 2013 harmonised elections held in the Republic

of Zimbabwe, the Government of Botswana stated that it was continuing to monitor the electoral process and would announce its position on the matter after receiving the findings of its election observers, who were then still deployed within Zimbabwe.”

As part of the Southern African Development Community’s (SADC) collective commitment to observe the electoral process in Zimbabwe, the Government of Botswana dispatched an 80 member election observer team to Zimbabwe. The team, which was led by His Honour the Former Vice President, Lt. General Mompoti Merafhe, consisted of distinguished citizens drawn from a wide range of experience in the conduct of elections including former diplomats, senior civil servants and politicians, as well as academics, civil society and religious leaders.

The team returned on the 3rd of August 2013 and shared its findings with Government. In this context, and consistent with the preliminary statement released on behalf of the SADC Electoral Observer Mission (SEOM), the Botswana observer team reported that the election day itself was free of overt intimidation and violence. However, various incidents and circumstances were revealed that call into question whether the entire electoral process, and thus its final result, can be recognised as having been fair, transparent and credible in the context of the SADC Principles and Guidelines Governing Democratic Elections within the Community. That is why the SEOM described the elections as “free and peaceful” as opposed to “free and fair,” the latter being the criteria for credible elections.

Evidence of possible shortfalls include the fact that the voters’ rolls were released on the 29 July 2013 only in hardcopy two days before the election; questions about both the inclusion and exclusion of people on the rolls; questions over the forms of identification required to vote in the election; as well as credible allegations of people otherwise being denied the. Concerns were also raised about the conduct and integrity of the Special Voting Process that was carried out on 14th-15th of July 2013. “There are many other examples that our observers shared with Government that clearly indicate that the process was undermined by these and other irregularities. Our observers are currently compiling a report of such incidents for submission to SADC, the African Union (AU) and other concerned stakeholders.”

Furthermore the Botswana government affirmed, “It is the position of the Government of Botswana, that it is in the common interest of SADC Members States, including in this instance Zimbabwe, to observe the SADC Community’s shared Election Guidelines so as to ensure transparency and credibility of the entire electoral process. In this respect, the door should not be left open for others either within or outside the Community to disparage our collective commitment to our common principles on democracy in general and the conduct of free and fair elections in particular.”

Further to the above, the Government of Botswana stated that in the context of the preliminary findings of SEOM, as well as the initial report of their own observer team, there is an overriding need for an independent audit of the July electoral process in Zimbabwe. According to them, such an audit would shed light on the conduct of the July elections and indicate any shortcomings and irregularities that could have affected its result, as well as the way forward. “This will ensure that all involved in future elections would be aware of what to look out for and that there is no repeat of the same.”

They made clear that what had been revealed by their observers could not be considered as an acceptable standard for free and fair elections in SADC: “the Community, SADC, should never create the undesirable precedent of permitting exceptions to its own rules.”

## European Union

On 1 August 2013 the EU Spokesperson, Catherine Ashton, High Representative of the European Union for Foreign Affairs and Security Policy and Vice-President of the European Commission, issued the following statement that recognised the importance of the elections for Zimbabwe and for the SADC region as a whole. She commended the people of Zimbabwe for turning out in large numbers to cast their votes, in what were broadly peaceful elections. She called upon on all parties to maintain calm and order as the results of the poll become known. The High Representative thanked SADC and the African Union for their efforts and encouraged them to continue supporting the process.

The EU maintained that they remained in close consultation with SADC, the AU and other observers including civil society, in advance of the official results. The EU would “await the assessment of SADC and the AU on the process and reported irregularities, as well as the Zimbabwe Electoral Commission’s official announcement of the results, before announcing its own assessment.”<sup>20</sup>

## Morgan Tsvangirai

On 11 August 2013 Morgan Tsvangirai posted a statement on his Facebook page, which he immediately deleted for fear of contempt of court charges and the statement read “My case has been so seriously undermined that it has become impracticable for me to proceed. It is a decision I took with a heavy heart to withdraw the Constitutional Court case challenging the results of the July 31 fraudulent elections. Primarily, the failure by the Electoral Court to deliver judgment in a case in which I was demanding electoral records to use as evidence has severely undermined the Constitutional Court case, which was going to be heard tomorrow in the absence of key material such as an electronic copy of the voters’ roll, full set of presidential results per constituency and special voting records. The delay in making a determination on the availability of the material seriously undermined the presidential challenge. It leaves me with serious reservations on the credibility of the court process in the absence of the crucial material. As I said before, it’s flabbergasting that I had to go to court to force ZEC, a public body, to release records, which should be readily available to the public. The Electoral Court’s actions worsened the situation. It is shocking that the court, in its wisdom, chose to sit on such a crucial matter in an act, which effectively sabotaged my case. The battle is far from over though. I have repeatedly talked about our courts and how we need other options to win this fight. Those alternatives have always been on the table and we will be rolling them out soon.”

## African Union

On 1 November 2013, the African Union Election Observer Mission finally released its final report on Zimbabwe’s elections, in which it endorsed the process as having conformed to continental standards on the conduct of elections, and an accurate expression of the will of Zimbabweans.

The report came as no surprise to many observers as it simply confirmed the position taken by the AU observer mission head Olusegun Obasanjo, who pronounced the Zim poll as being credible and legitimate a few days after 31 July.

The report included some concerns and recommendations which related to what civil society groups and the MDC formations argued as being “serious anomalies that discredited the electoral process such as the absence of the voters’ roll, inequitable access to the media and recommended liberalization of radio and television ownership, thereby providing a broader platform for all stakeholders to voice their opinions, consistent with the stipulations of the new Constitution.”

## Subsequent Elections challenge issues

On 6 November 2013, the Zimbabwe Electoral Commission (ZEC) rejected a request by Jameson Timba, the MDC-T losing parliamentary candidate for Mt Pleasant constituency and the party’s secretary for international relations to open and examine election materials used in his constituency during the disputed July harmonized elections.

On 11 November Zimbabwe’s Registrar General, Tobaiwa Mudede said he was ‘unable’ to provide an electronic copy of the voters role used in the July 2013 elections because the machines were ‘broken’. In response to ZAPU leader Dumiso Dabengwa’s efforts to obtain as is required in law, the exact electronic copy that was used in the elections, Rita Makarau told the ZAPU leader there would not be an electronic copy anytime soon<sup>21</sup>.

20 [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/138489.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/138489.pdf)

21 <http://www.zimeye.org/?p=94082>

# 4

## Open Government

### Including Corruption, Accountability & Transparency

#### Summary

*The government did not demonstrate any commitment towards openness in governance. With regard to corruption, on 16 November, Afrobarometer found that nearly one-third of Africans in 34 countries including Zimbabwe were forced to pay bribes, including for medical treatment. The government lacked accountability and transparency especially in relation to revenue flows. As a demonstration of general lack of revenue transparency, the government did not fully implement the economic management programme agreed with the IMF in June 2013, as a pre-condition for re-engagement. There remained secrecy around diamond mining and revenue. The government was not accountable and neither did it take responsibility for economic decline, and continued misleading the nation on the sanctions issue.*

#### IN DETAIL

##### G. Legislative Agenda and Commitments

This part of the Roadmap called for legislation on actions (i) to (vi) and action by the President on (v):

(i) re-alignment of laws with new Constitution, and addressing of transitional arrangements. This was not achieved. The timeline agreed in the Roadmap was “within 60 days from Referendum” the target date being 16 May 2013. As the substantive provisions of the draft constitution had been known since 2012, the legislation should have been ready. But there was no sign of any significant development of the necessary Bill for amending the Electoral Act, or of Bills dealing with the new metropolitan and provincial councils and changes to local government laws, or any other transitional issues. [See Constitution Watch 26/2013 of 8th May for an outline of necessary legislative changes.]. On 6 September 2013, Zimbabwe National Liberation War Veterans Association chairperson Cde Jabulani Sibanda said the new constitution should be amended to reverse all compromises that do not sit well with ZANU PF.

(ii) enactment of Human Rights Commission Bill by September 2011. This was done late and unsatisfactorily with the Bill being enacted, in 2012, well after the deadline. But the Act that emerged lacked provisions ensuring the independence of the Commission fell short of international legal standards of human rights institutions, and financial support to operationalize it was not forthcoming. This led to the resignation of the Commission’s distinguished and experienced chairperson, Professor Reg Austin.

(iii) amendment of section 121(3) of the Criminal Procedure and Evidence [CPE] Act to confine it to specific prescribed offences was not done. This called for an agreement by September 2011 on amendments to restrict the application of section 121(3) of the Act, the provision hitherto much abused by prosecutors to block grants of bail by magistrates. But no agreement was reached, and an MDC-T Private Member’s Bill to repeal section 121(3) had stalled.

(iv) enactment of agreed amendments to the Electoral Act by September 2011 was done but late with necessary changes to be made still outstanding. This now duplicates activity (i) under E. Electoral Reform [see comment under that head].

(v) appointment of Anti-Corruption Commission by September 2011 was done. There was an existing Anti-Corruption Commission, which was replaced with new commissioners within the deadline.

## Parts of the GPA Election Roadmap complied with.

### A. Sanctions

This part of the Roadmap clearly indicated three points of focus: the reactivation of the Inclusive Government's Re-Engagement Committee, lobbying for the removal of sanctions by the Re-Engagement Committee and the implementation of these resolutions and sanctions by SADC (These resolutions called for the lifting of "Western sanctions" on Zimbabwe and for SADC leaders to engage the international community on the sanctions issue). Neither the Roadmap, nor the corresponding article of the GPA, targeted the actual lifting of sanctions, obviously in recognition of the fact that neither the Inclusive Government nor SADC could compel foreign sovereign states to lift them (although ZANU-PF has always described the sanctions as "illegal" because they are not imposed by the United Nations) Those applying sanctions insist that they do so in the exercise of their sovereign rights to regulate foreign trade and entry into their territory.

In July 2012, the EU suspended appropriate measures against Zimbabwe under article 96 of the Cotonou agreement although the same are still valid<sup>22</sup>. On 25 March 2013, the EU subsequently lifted most of its restrictive measures against Zimbabwe following the constitutional referendum<sup>23</sup>.

## Constitution

The Road Map called for the remaining seven stages of the constitution-making process described in the GPA, which in July 2011 had not been done, to be expedited. All of the stages were implemented, at the cost of being behind schedule and engendering intense contestation.

## Accountability

The Government's commitments to accountability were most revealed in its attitude towards investigations of human rights violations. On 16 May 2013 the dormant Human Rights Commission pleaded with legislators to resource the institution to enable it to execute its mandate of promoting and protecting human rights.

ZHRC chairperson Commissioner Jacob Mudenda disclosed that the Commission was saddled with a lot of challenges that Parliament could help resolve through imploring the government to channel financial resources towards making it fully operational. Commissioner Mudenda appeared before the Senate Thematic Committee on Human Rights chaired by Senator Misheck Marava, where he gave oral evidence on the operations of the Commission. The ZHRC Chairperson also urged Parliamentarians to amend some sections of the Zimbabwe Human Rights Commission (ZHRC) Act, which he reasoned interfered with the Commissioners' independence and impartiality. He said amendments to the ZHRC Act were pertinent to make the Commission more independent of the government particularly in the investigation of violated or alleged violated human rights as well as being solely accountable for its finances as a corporate body.

Commissioner Mudenda told the Senate Thematic Committee on Human Rights that ZHRC had received some financial assistance from the Danish Institute for Human Rights (Danida) which would be applied towards capacity building workshops, scheduled for 22 and 23 May 2013, provincial stakeholder meetings focused on addressing human rights in relation to elections and to produce information, education and communication materials.

<sup>22</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/131955.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/131955.pdf)

<sup>23</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/cfsp/136501.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/cfsp/136501.pdf)

Commissioner Mugwadi disclosed that ZHRC had engaged the Zimbabwe Republic Police regarding the need for the Commission to input into the police syllabus on human rights during the cop's training programmes. To further show its commitment to the promotion and protection of human rights, on 17 December the Zimbabwe Human Rights Commission (ZHRC) invited civil society organisations to jointly commemorate the international human rights day, in a move widely viewed by many to be a positive move by the government to acknowledge and recognize the importance of the international human rights day as a day set aside to bring the attention of the 'peoples of the world' to the Universal Declaration of Human Rights (UDHR) as the common standard of achievement for all peoples and all nations in relation to human rights promotion and protection.

Commissioner Japhet Ndabeni-Ncube pledged that the Commissioners would not resign in protest over clauses that compromised their independence and impartiality but would press for the amendment of the offensive sections in the ZHRC Act, which in December 2012 frustrated former chairperson Reg Austin into resigning.

Secondly, the state interfered with the independence of Judges, for example on 2 April the Herald attacked High Court of Zimbabwe (Justice Charles Hungwe), in addition to the broader and more disturbing assault on the independence and integrity of the judiciary and legal profession in Zimbabwe.

The judges' ability to assert their views and comments in cases that were placed before them, except through their judgments was severely restricted as state-controlled and other partisan media outlets abused their position by reporting on such cases and attacking the person and integrity of a judge. The attack on judicial officers for performing their constitutional functions eroded the protection that is offered by this independent arm and the public's confidence in the judiciary to act without fear or favour was severely undermined. Further, such blatant attacks on a judicial officer consequently meant that other judicial officers would not feel that they could rely on being protected during instances where they had to assert their independence and deliver justice in a professional and fearless manner<sup>24</sup>.

In regards to the separation of powers between the executive and prosecuting authority, the long overdue implementation of the separation of the functions of the Attorney General and the National Prosecuting Authority (NPA) was partially implemented when Mr Johannes Tomana was sworn in as the Prosecutor-General (the head of the NPA) on Wednesday 13 November 2013.

Nevertheless, by operation of transitional provisions in the Sixth Schedule of the Constitution, the current Attorney General became the Prosecutor General without operation of the previously outlined requirements in the new Constitution of Zimbabwe, which sets out a clear procedure for the appointment of a Prosecutor-General. It includes advertising the post, allowing public nominations, and requiring public interviews of prospective candidates. This enhances the transparency of the appointment process, whilst contributing to ensuring the credibility and professionalism of the nominees through scrutiny of their record of service and past conduct.

Although the separation was viewed by rights groups<sup>25</sup> as a good practice that would allow for increased public scrutiny of, and accountability for, the actions of the prosecutorial authority, they felt they would nevertheless continue to monitor how the Prosecutor-General carries out his mandated functions as he is constitutionally obliged not to act in a partisan manner; not to further the interests of any one political party or cause; not to prejudice the lawful interests of any other political party or cause; not to be an active member of any political party; and not to violate the fundamental rights or freedoms of any person.

Rights groups also expected the political neutrality of the Prosecutor-General and the officers in the NPA to be urgently legislated by way of an Act of Parliament as part of the harmonisation of laws with the new Constitution, this was critical regarding the national interest and would improve public confidence in the justice delivery system.

<sup>24</sup> ZLHR, 2 April, 2013

<sup>25</sup> *ibid*



Parliament also suffered from serious accountability issues. On 11 November the Research and Advocacy Unit (RAU) published its analysis titled 'MPs were 'occasional visitors' to Parly', which accessed the performance of the Seventh Parliament, noted that the legislators did not attend sessions. The patterns of non-attendance in the Senate were stark. Out of a possible 50 sittings in the Senate, the average rate of attendance was only 33%," read part of the first of a three part series of an intensive analysis on the performance of the Seventh Parliament running from June 2012 to June 2013.

The shortest sitting in the House of Assembly lasted five minutes, while the shortest in the Senate lasted only four minutes. This scenario cast a shadow on the competencies of the legislators, which became more questionable when a baseline survey on Specific Capacity Building Requirements for Committees of Parliament revealed that the Seventh Parliament had a 70% skills gap.

The study revealed that it failed largely to deliver its full mandate to the general public.

"Beyond civil and political reforms, there was an expectation for improvements to the social and economic status of citizens, including improvements to access to health care, education, housing, and food security. Expectations for visible development in communities, such as improvements to roads and other infrastructure also existed among the population."

The larger part of the role of the parliamentarians would have been to represent their constituencies by attending sessions and contributing effectively. Parliamentarians thus have a duty to be available to represent the communities that elect them. Such representation is possible if they attend parliamentary sessions, participate effectively, and seek to influence policy in ways that respond to the needs of their constituencies.

The analysis also looked into the issue of then having a technocratic government. A technocratic government is a government in which the ministers of government are not career politicians, and, in some cases, they will not even be members of political parties.

Individuals appointed are skilled, capable, and perform their duties in an objective, unbiased, and non-partisan manner.

Currently, selection of ministers is based on their political affiliation and their loyalty to the president of the party. This is despite the fact that it contravenes the selection criteria set out in the new Constitution, that ministers must be chosen for their "professional skills and competence, with considerations made to regional and gender balance. Instead of their level of loyalty to the political party nominating them and their seniority within the party<sup>26</sup>.

The current parliament doesn't seem to have learnt from lessons of the past, for example, on 5 November 2013 chaos broke out in Parliament when Zanu PF MPs twisted the motion on Zesa by Mabvuku Tafara MP James Maridadi and instead started debating sanctions and urine. The conflict in the House of Assembly started when Kwekwe Central MP Masango Matambanadzo said MDC-T MPs had labeled him 'uneducated', and that regardless of all their degrees they were failing to see that sanctions had destroyed Zesa. Speaking in the vernacular Shona language, Matambanadzo accused MDC-T MPs of being rowdy elements at university known for urinating into food plates and attending lectures in Western countries where they were offered "mafia intelligence" lessons<sup>27</sup>.

## Transparency

The major issues relating to transparency were most evident in the diamond sector. Controversy, which had been the norm during the inclusive government era, continued to dominate the diamond-mining sector with conflicting reports from the Finance and Mines and Mining Development ministries over remittance of diamond mining revenue<sup>28</sup>. The Minister of Finance, Patrick Chinamasa told parliamentarians in Victoria Falls at a 2013 Budget Review Seminar that out of a targeted

<sup>26</sup> <http://www.zimbabwееlection.com/2013/11/11/mps-were-occasional-visitors-to-parly/>

<sup>27</sup> <https://www.newsday.co.zw/2013/11/06/mps-spend-day-discussing-urine/>

<sup>28</sup> Opacity haunts diamond mining's Treasury remittances, 17 November, 2013, <http://zimbabwedemocracy.com/?p=12910>

US\$40 million expected from diamond sales, nothing had been received as at September 2013. But Mines and Mining Development minister Walter Chidhakwa told Zimbabwe Independent that his ministry had been remitting funds to treasury. These developments led to new mines minister, Walter Chidhakwa, on 12 December dissolving the management boards of the Zimbabwe Mining Development Corporation (ZMDC), the Minerals Marketing Corporation of Zimbabwe (MMCZ) and Marange Resources<sup>29</sup>.

Such conflicting statements were the order of the day between 2009 and the July 31 elections this year when Obert Mpofu held the position for Mines minister and MDC-T secretary general Tendai Biti held the Finance portfolio. In addition, there were allegations funds, which were being diverted to fund Zanu PF's campaigns and sabotage Biti, who had expressed that diamond mines were under-remitting funds to the Treasury.

However there were some positive developments, on 29 October 2013 Kwekwe

Mayor Matenda Madzoke turned down an offer by the local authority to buy him a new 4×4 Toyota D Tec at a time service delivery has almost collapsed<sup>30</sup>.

<sup>29</sup> <http://www.swradiofrica.com/2013/12/12/questions-surround-dissolution-of-zim-mining-boards/>

<sup>30</sup> <http://www.davidcoltart.com/2013/10/mayor-rejects-luxury-vehicle/#sthash.Jl67w6MP.dpuf>

# International obligations

# 5

## Including governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

### Summary

*In 2013 Zimbabwe had a very poor record of responding to visit requests by international bodies and there were at least 8 pending visit requests by the UNHRC special mandates. Numerous statements and requests were also issued by international NGOs and intergovernmental organisations such as the UN and the EU for the government to respect its obligations under international law, to which there were no positive responses.*

### IN DETAIL

Based on historical reasons there are two distinct covenants, on civil and political rights (ICCPR) and economic, social and cultural rights (ICESCR), however there is only one set of human rights, as originally outlined in the Universal Declaration of Human Rights.

UN Member States, including Zimbabwe, agreed at the World Conference on Human Rights in Vienna in 1993 that “all human rights are universal, indivisible and interdependent and interrelated,” and that “the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.” This implied recognition that no human right can be achieved fully without the enjoyment of other rights<sup>31</sup>.

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On 19 March 2013, as police continued to clamp down on the rights of the public, Human Rights Watch issued a statement urging SADC to press for democratic space ahead of the elections<sup>32</sup>.

On 27 February 2013, in Geneva, prompted by an increasing number of human rights violations reports coming from Zimbabwe, three United Nations Special Rapporteurs issued a rare public joint statement addressed to the Government of Zimbabwe. The statement urged the Government of Zimbabwe to respect international human rights norms and standards pertaining to freedoms of association, of peaceful assembly and of expression in the run up to the constitutional referendum on 16 March and subsequent elections.. “In the context of proposed constitutional reforms and the elections, it is disturbing and shocking to learn that civil society organizations that have been operating for years, including election monitoring groups which aim to promote free and fair

31 Navi Pillay, the United Nations High Commissioner for Human Rights at the University of Zimbabwe, May 24, 2012, <http://www.newzimbabwe.com/opinion-8073-Full%20text%20UN%20rights%20chiefs%20lecture%20at%20UZ/opinion.aspx>

32 <http://www.hrw.org/node/114291>

elections, have been searched by police,” said the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai. “Search procedures must not be applied selectively, and the right to privacy needs to be respected. Otherwise, the independence of associations and the safety of their members will be seriously at risk,” he emphasized. The experts also voiced their concern at the police’s use of force against, and arrests of, peaceful protesters taking part, and handing out roses and teddy bears, in an annual Valentine’s Day protest outside Parliament in Harare on 14 February 2013.

On 8 February 2013, the European Parliament adopted a resolution on the arrests of ZimRights leaders. MEPs condemned the arrests of Human Rights Association workers Okay Machisa, Dorcas Shereni and Leo Chamahwinya in their Zimbabwe offices in December 2012, shortly after they denounced the growing police brutality across Zimbabwe and called for action by the competent authorities. MEPs call on the Zimbabwean authorities to release anyone detained for defending human rights and to end their judicial harassment.

MEPs also deplored the lack of a human rights clause in the EU’s recently concluded interim Economic Partnership agreement with four African States, including Zimbabwe, and asked the EU to include such clauses in future economic partnership negotiations with the country<sup>33</sup>.

There was continued failure by the Government of Zimbabwe regarding the values of unity, promotion of common values of peace, security, stability and prosperity agreed at the formation of the Organisation of African Unity now known as the African Union 50 years ago<sup>34</sup>.

The Government of Zimbabwe failed to adopt and implement concrete measures to promote democratic principles and institutions, popular participation and good governance in accordance with the minimum standards set within the AU framework.

Furthermore, it continued to procrastinate in implementing recommendations of the AU organs such as the African Commission on Human and Peoples’ Rights which had delivered a landmark ruling directing the Harare administration to allow its citizens in the diaspora to vote in the March constitutional referendum and forthcoming national elections.

There also continued to be a deafening silence and no significant progress towards accepting through ratification and domestication of one of the key instruments that would advance democracy, peace and security in Zimbabwe, the region, and the continent as a whole, the African Charter on Democracy, Elections and Good Governance (The African Charter on Democracy) that came into force on 15 February 2012.

The African Charter on Democracy seeks to promote adherence by African states to the universal values and principles of democracy and respect for human rights premised upon the supremacy of the constitution and the respect for the rule of law. The African Charter on Democracy seeks to usher in a new era on our continent that establishes a link between free and fair elections, good governance and the enjoyment of human rights by the citizens. It further proclaims a new dawn of democracy rooted in the rule of law and gives further impetus to Africa’s commitment to the principles of transparency and accountability in government. It reaffirms the primacy of the rule of law and calls on state parties to initiate appropriate measures, including legislative, executive and administrative actions to bring State Parties’ national laws and regulations into conformity with the African Charter on Democracy.

On 13 April, 2013, following ceaseless arrests, harassments and intimidation, and physical assaults without any effective domestic remedies, Women of Zimbabwe Arise (WOZA), filed a communication at the African Commission on Human and People’s Rights (ACHPR), through the ZLHR and the RFK Centre<sup>35</sup>.

In the communication, which was filed on Saturday 13 April 2013 during the 53rd ordinary session of the ACHPR, WOZA sought to challenge the pattern of impunity which had resulted in continued

<sup>33</sup> The full text of the resolution: <http://www.europarl.europa.eu/ep-live/en/plenary/search-by-date>.

<sup>34</sup> ZLHR Africa day statement, 25 May, 2013

<sup>35</sup>

arrests, harassment, intimidation and physical assaults despite the rendering of a judgment by the Supreme Court in 2010, which stated that the rights of WOZA members had been violated, when the State arrested, detained, and prosecuted them for engaging in peaceful protest through public demonstrations. It was expected that after this judicial pronouncement, authorities would cease the persecution of WOZA, but authorities continued with the harassment of WOZA members, charging them under various sections of the Criminal Law (Codification and Reform) Act for offences ranging from disturbing the peace to criminal nuisance and bizarrely kidnapping among other provisions of the Criminal Law (Codification and Reform) Act.

On 19 November, 2013, WOZA received formal notification from the African Commission on Human and Peoples' Rights (ACHPR) that their communication had been accepted during the 14th Extraordinary Session held from July 20–24, 2013 in Nairobi, Kenya. By accepting the communication, the ACHPR requested that the Zimbabwean government respond to the rights violations included in the document.

On 19 April 2013, The Robert F. Kennedy Centre for Justice & Human Rights (RFK Center), Zimbabwe Lawyers for Human Rights (ZLHR), and the Zimbabwe Human Rights NGO Forum (NGO Forum) hosted a gathering of over 50 of Africa's top human rights advocates in Banjul, The Gambia to discuss the current shrinking space for civil society in Zimbabwe.

The event, held on the side-lines of the NGO Forum in advance of the session of the African Commission on Human and Peoples' Rights (ACHPR), convened an expert panel that included Dzimbabwe Chimbga (ZLHR), Susan Mutambasere (NGO Forum), Mabassa Fall (International Federation for Human Rights, FIDH), Hassan Shire (Pan-African Human Rights Defenders Network), and Wade McMullen (RFK Center).

Wade McMullen, Staff Attorney for the RFK Center, expressed deep concerns regarding the rights to freedom of expression and freedom of assembly as Zimbabwe cracked down on any group seemingly critical of the government. Moreover Zimbabwe had banned shortwave radios and suppressed the rights of groups such as Women of Zimbabwe Arise (WOZA) to engage in peaceful protest and public demonstration. "There is a clear pattern of violation of these fundamental rights protected by the African Charter on Human and Peoples' Rights and other international treaties," McMullen said, "In turn, this pattern of suppression imperils the rights of all Zimbabweans to participate freely in the government of their country."

Several key issues were brought to the fore in the ensuing discussion, including the need for solidarity across the African continent and international community in advance of the impending elections in Zimbabwe. In response, pledges of solidarity, information sharing, and technical support came from across the region, including from human rights advocates in Kenya, Malawi, Senegal, South Africa, Swaziland, and Uganda. In particular, the discussion highlighted the need of SADC to both monitor and ensure that Zimbabwe's electoral environment would be free and fair during the months leading up to the vote.

On 18 March Zimbabwe, The African Lawyers for the Defense of Civil Society Network called for the immediate release of Beatrice Mtetwa who was unlawfully arrested and detained on the 17th March 2013 in Harare, a few hours after the constitutional referendum.

The African Lawyers for the Defense of Civil Society Network stood in solidarity with Beatrice Mtetwa, her lawyers, and others calling for a stand against the intimidation and harassment of human rights lawyers and underscores the right of these lawyers to carry out their professional duties without hindrance, vilification and degradation.

In March 2013, the ACHPR passed a provisional measure allowing exiled Zimbabweans and those living abroad to vote in the Referendum slated for Saturday 16 March 2013 and the general elections scheduled thereafter. The ACHPR ordered the government to allow Zimbabweans living abroad to vote in the March 16 Referendum and the general elections that will follow, irrespective of whether or not they are in the service of the government.

The ACHPR passed the decision at its just ended 13th extraordinary session which was held in Banjul, The Gambian capital from 19 to 25 February 2013 after scrutinizing the country's voting laws, which prevent Zimbabweans living in foreign countries from participating in polls. The decision of the ACHPR followed a complaint filed on 27 December 2012 by ZLHR acting on behalf of Shumba, Muchemwa, Chamunorwa, Zimbudzana and Chikohwero against the Republic of Zimbabwe, which is a State party to the African Charter on Human and Peoples' Rights.

On 4 September Human Rights Watch announced that the incoming government should take concrete steps to fulfill the country's human rights obligations. In a letter to President Robert Mugabe, HRW identified key human rights priorities in its letter. They included the need to reaffirm the rights provisions in the new constitution, ensure justice and accountability for past abuses, uphold activists' rights to organize and operate freely without government harassment, and strengthen the Zimbabwe Human Rights Commission<sup>36</sup>.

On 22 November, following the acquittal of Abel Chikomo, Amnesty International told the Zimbabwean authorities not to let such conduct by police tarnish the new government's pledges to improve their human rights record and urged the government to end and publicly denounce the malicious use of spurious charges and trials against human rights defenders. Abel Chikomo has consistently denied the charges against him. His trial had many false starts and postponements before being revived in the run-up to elections in July 2013<sup>37</sup>.

On 25 November Amnesty International released a new report, to mark 100 days of the new government in Zimbabwe.

The report reflects on Zimbabwe's human rights record and makes recommendations on how it can be improved in the coming five years. There is a particular focus on the right to freedom of expression, association and assembly, the rights of survivors of forced evictions and the need to abolish the death penalty. In its introduction the Reports reads, 'As the new government of Zimbabwe approaches its first 100 days in office, Amnesty International reflects on the country's human rights record and outlines some of the opportunities available to the ZANU-PF government to improve it.

The government's term started on 22 August, when President Robert Mugabe took oath of office for a new five-year term, following the harmonized elections held on 31 July. President Mugabe's ZANU-PF party received more than a two-thirds majority in the eighth parliament of Zimbabwe, which was sworn in on 17 September.

This report urged the new government to take concrete steps to fulfil its international legal obligations and commitments relating to economic, social, cultural, civil and political rights. These steps should include, but are not limited to, measures to:

1. Immediately impose an official moratorium on executions with a view to abolishing the death penalty, and commute all death sentences.
2. Repeal or amend all laws not consistent with the Constitution of Zimbabwe that was adopted on 22 May 2013.
3. Improve the operating environment for human rights defenders, opposition parties and every person in Zimbabwe to enable them to enjoy their rights to freedom of expression, association and peaceful assembly.
4. End forced evictions and ensure the full and effective enjoyment of the right to adequate housing, including pursuing effective remedies for those people affected by the 2005 mass forced evictions (known as Operation Murambatsvina) and other cases of forced evictions that have taken place.
5. Continue with the institutional reforms that started under the Government of National Unity to ensure that all government institutions, including law enforcement agencies, operate in a professional and non-partisan manner and respect international human rights standards.

36 <http://www.hrw.org/news/2013/09/04/zimbabwe-human-rights-agenda-president-mugabe>

37 <http://www.amnesty.org/en/news/zimbabwe-s-acquittal-activist-small-step-against-climate-intimidation-2013-11-22>

6. Ensure that the Zimbabwe Republic Police fully respects and protects all the rights contained in the Declaration of Rights in the Constitution, including by: (a) conducting all its operations on a non-partisan basis; (b) fully upholding the rights of all arrested persons in line with Section 50 of the Constitution; and (c) training anti-riot police on how to police non-violent demonstrations in line with international standards.

7. Fulfil all commitments made by the government during the Universal Periodic Review of Zimbabwe in March 2012.

8. Ratify the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>38</sup>.

<sup>38</sup> <http://www.hrforumzim.org/publications/human-rights-agenda-for-the-gov-of-zimbabwe-2013-18/>

# 6

## Economic, Social and Cultural Rights

### Including Worker Rights: Working conditions, Freedom of Association and the Right to Collective Bargaining and living and working conditions

#### Summary

*The new constitution includes economic, social and cultural rights, and specifically for water rights. The state continued to suppress workers' rights especially the right to picket and organise. Working and living conditions deteriorated substantially. Government continued to pursue economic policies based on exclusion of other social groups and that threatened direct foreign investment thereby undermining means of livelihoods. Access to water and sanitation remained poor. At the close of the year, the economy was nearing collapse, leading the country into further poverty.*

#### IN DETAIL

##### 6a. Workers civil liberties

##### State suppression of rights

Overzealous members of the Zimbabwe Republic Police (ZRP) continued to act with impunity by interfering with legitimate trade union activities in cases where they are not legally mandated to intervene.

To prove their unrepentant nature, some members of the police continued to deny workers and other citizens the right to exercise their constitutionally guaranteed and recognised fundamental rights and freedoms of association and assembly.

On 24 April 2013 the police unilaterally prohibited the Zimbabwe Congress of Trade Unions (ZCTU) from staging a procession scheduled for Wednesday 1 May 2013 in commemoration of Workers' Day. The ZRP sought to "ban" the ZCTU procession and ordered the labour unionists to confine themselves to just gathering at Mucheke Stadium after indicating that the ZRP could not sanction the procession due to unspecified "security reasons". It was only after legal intervention that the procession will be allowed to proceed.

The inclusive government did not implement labour law reforms and the recommendations of the International Labour Organisation's Commission of Enquiry Report on violations of trade union rights, and reduce the high levels of income tax that are a millstone on beleaguered workers of Zimbabwe.

On September 12, 2013 during the Congressional Hearing: Troubling path ahead for U.S.-Zimbabwe relations, Imani Countess Africa Region Program Director, Solidarity Center (AFL-CIO) Before the House Committee on Foreign Affairs, Subcommittee on Africa, Global Health, Global Human Rights and International Organizations, gave a testimony which summarized the state of Labour in Zimbabwe. The testimony can be accessed here: <http://docs.house.gov/meetings/FA/FA16/20130912/101286/HHRG-113-FA16-Wstate-CountessI-20130912.pdf>



## 6b. Working and living conditions for workers

During 2013, thousands of Zimbabwean workers continued to grapple with grinding poverty, slave wages in much of the public and private sector, and continued to suffer from assaults on their fundamental rights and freedoms. This is despite the right to work having been enshrined in Article 23.1 of the Universal Declaration of Human Rights and being recognised in the International Covenant on Economic, Social and Cultural Rights and in the African Charter on Human and Peoples' Rights<sup>39</sup>.

Both private and public sector workers continued to receive slave wages five years after the formation of the inclusive government and despite endless promises by politicians to review and improve their torrid working conditions. While there were workers struggling to survive on wages ranging between \$150 and \$300 per month members of the government, were enjoying expensive lifestyles. They elected to be blind to the workers' plight because they are covered by the unfair salary structures and the allowances they amass from sometimes superfluous foreign excursions and other questionable activities including the opaque accounting for the country's mineral wealth.

There were reports that the suspended ZBC chief executive Happison Muchechetere was earning \$27,000 per month along with a monthly allowance of \$3,000 and another \$2,500 for his domestic staff. Added to the hefty pay packet, the CEO was also entitled to 5 business class air tickets with his family, three air tickets within the region and unlimited air travelling in Zimbabwe, yet ZBC had failed to pay its workers for six months as it teeters on the brink of collapse<sup>40</sup>. This followed the revelation that the current economic policies are benefiting a few individuals as revealed by ZANU PF Phillip Chiyangwa unexplained wealth which include over 100 properties and farms countrywide, 40 businesses<sup>41</sup>.

Rights groups called upon all employers and the government to respond to the workers' plight by paying all workers a minimum wage above the PDL, and improving their working conditions including access to life-prolonging anti-retroviral drugs and functional health facilities. Responsibility for the failure to remunerate workers with Poverty Datum Line (PDL) linked salaries and improve their working conditions lies squarely and fully on the shoulders of the inclusive government. They have proven that almost five years after presiding over the state of the country's affairs they are simply unconcerned with the challenges faced by workers and those outside their ivory towers.

## 6.c General economic and social rights

Although for historical reasons there are two distinct covenants, on civil and political rights (ICCPR) and economic, social and cultural rights (ICESCR), there is only one set of human rights, as originally outlined in the Universal Declaration of Human Rights.

UN Member States, including Zimbabwe, agreed at the World Conference on Human Rights in Vienna in 1993 that "all human rights are universal, indivisible and interdependent and interrelated," and that "the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis." This implied recognition that no human right can be achieved fully without the enjoyment of other rights<sup>42</sup>.

The government of Zimbabwe acceded to the International Covenant on Economic Social and Cultural Rights (ICESCR) in August 1991. However the old constitution did not include economic, social and cultural rights as part of the bill of rights.

The new constitution includes economic, social and cultural rights, such as language and cultural rights, freedom of profession, trade or occupation, labour rights; property rights; rights to agricultural land; environmental rights right to education, health care; and right to food and water. The bill of rights also includes a clause which states that the bill of rights is not a closed list and allows for the

39 ZLHR, May Day Statement

40 <http://allafrica.com/stories/201312100464.html>

41 <http://www.swradioafrica.com/2013/11/29/chiyangwas-divorce-reveals-his-wealth/>

42 Navi Pillay, the United Nations High Commissioner for Human Rights at the University of Zimbabwe, May 24, 2012, <http://www.newzimbabwe.com/opinion-8073-Full%20text%20UN%20rights%20chiefs%20lecture%20at%20UZ/opinion.asp>

recognition of other rights which may be conferred by for instance international law, as long as the rights so created are consistent with the constitution. The national objectives in the constitution are also based on the concept of progressive realization of all economic and social rights. However the same national objectives are subjected to the limitation of the availability of resources. However, notwithstanding these positive provisions of the new constitution particularly in relation to economic, social and cultural rights, the rights are punctuated with provisos, which subject the rights to the limitation of available resources<sup>43</sup>.

The new Constitution as published on 22 May 2013, also protected the right to water in section 77, which provides that every person has a right to safe, clean and potable water. Zimbabwe is also a signatory to the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples' Rights. These instruments oblige the government to ensure that citizens have the highest attainable state of physical health. Without water, one cannot achieve this status. The United Nations has also through UN Resolution 64/292, now recognized that water is a human right and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights.

Zimbabwe had been known for accusing CSOs and NGOs for overly concentrating on civil and political rights at the expense of economic and social rights. Navi Pillay addressed the issue at length during her visit to Zimbabwe in May 2012, according to her , 'the right to vote or to freely assemble does not mean too much to someone who is suffering from hunger or ill health because she cannot afford decent health care'. At the same time, as the noted Nobel Laureate Amartya Sen has so aptly argued, no famine has ever occurred in a functioning democracy. It seems that the full, active and meaningful participation in designing and implementing government policies by those affected enables early warning of a crisis and the formulation of the most appropriate policy responses. Likewise, access to information, including through a free press, enables people to better prepare and protect themselves against such crises<sup>44</sup>.

## Access to Water

Water also remained one of the major issues. Two major hospitals in Harare, Parirenyatwa and Harare Hospitals, lacked a continuous supply of water<sup>45</sup>. Access to potable water is not only a fundamental right, but lack thereof can have a negative effect on other rights. ZLHR raised concerns that the chronic water shortage at these two hospitals was totally unacceptable. It undermined the progressive realization of the right to water and negatively impacts on patients' ability to progressively realize the best attainable state of physical and mental health.

Authorities did not show a commitment to address the water situation. For more than 7 years, Zimbabweans continued to tolerate lack of access to basic services – such as potable water - by authorities. Such dereliction of duty was not only seen as irresponsible but has caused wanton loss of life in previous years due to the spread of water-borne diseases such as cholera and typhoid.

Rights groups, recommend urgent measures be taken by the state to provide alternative and uninterrupted sources of water to the two hospitals until such time as a constant and reliable supply has been restored; the state, through its Ministry of Water Resources and Development, local councils, and the Zimbabwe National Water Authority (ZINWA), must take effective measures to ensure adequate and regular provision of clean water, and must publicly disclose such measures to the general public;

Investigations must be made into culpability for this disruption of service and failure to deliver, and those responsible must be made accountable forthwith; Government to, after comprehensive consultation with all stakeholders, adopt and implement a sustainable strategy that includes a clear plan for provision of clean water to all communities, and regular monitoring and evaluation of progress and challenges, and for Management at Parirenyatwa and Harare Hospitals to take responsibility and prioritise the welfare of patients working closely with central government and other

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44 Christmas, T, Justiciability of Ecosoc rights in Zimbabwe, November 2013

45 The Standard of 8 September 2013

relevant stakeholders to ensure that there is adequate and continuous clean water supply at the two hospitals.

On 11 November, the MDC 99 leader Job Sikhala reported that in terms of Section 77 of our national constitution, I have decided to engage Zimbabwe Lawyers for Human Rights to take the government and the Municipality of Chitungwiza, to enforce the right of the people of Chitungwiza to have safe, clean and portable water. Section 77(a) calls upon the state to take reasonable measures to achieve the progressive realization of this right. Rather than for the government to come to pronounce the demolition of people's homes, we are demanding our right to water as the constitution demands

On 1 October, the International Liaison Office of the Zimbabwe Human Rights Forum published an economic blue print consultation document titled 'what can Fishmongers do next in Zimbabwe? The document is offline.

On 6 November the UN World Food Programme reported that 2.2 million Zimbabweans will be needing food assistance in the pre-harvest period from January to March 2014. The government has gone out to ask for help from the international community

In terms of the country's economic trajectory, on 15 November, MMPZ published a Report that highlighted private media coverage of post election economic decline<sup>46</sup>.

On 17 November the minister of finance said the government would adopt a flexible approach in the implementation of the indigenization policy, which would see foreign investors in crucial sectors such as banking, manufacturing and infrastructural development being spared the requirement of ceding 51% shareholding to the state or indigenous Zimbabweans.<sup>47</sup>

However on 22 November, it was reported that Economic Empowerment Secretary George Magosvongwe issued a warning in parliament regarding sectors of the economy reserved for blacks: retail and wholesale business, hairdressers, beauty salons, bakers, employment agencies, agriculture, transport, estate agencies and advertising agencies and owners of businesses found without indigenisation compliance certificates would face a fine or imprisonment if they were found to still be operating.<sup>48</sup>

46 <http://www.hrforumzim.org/publications/private-media-finds-zimbabwe-economy-in-decline-mmpz/>

47 <http://www.zimbabweelection.com/2013/11/17/govt-further-softens-indigenisation/>

48 <http://www.bbc.co.uk/news/world-africa-25053618>