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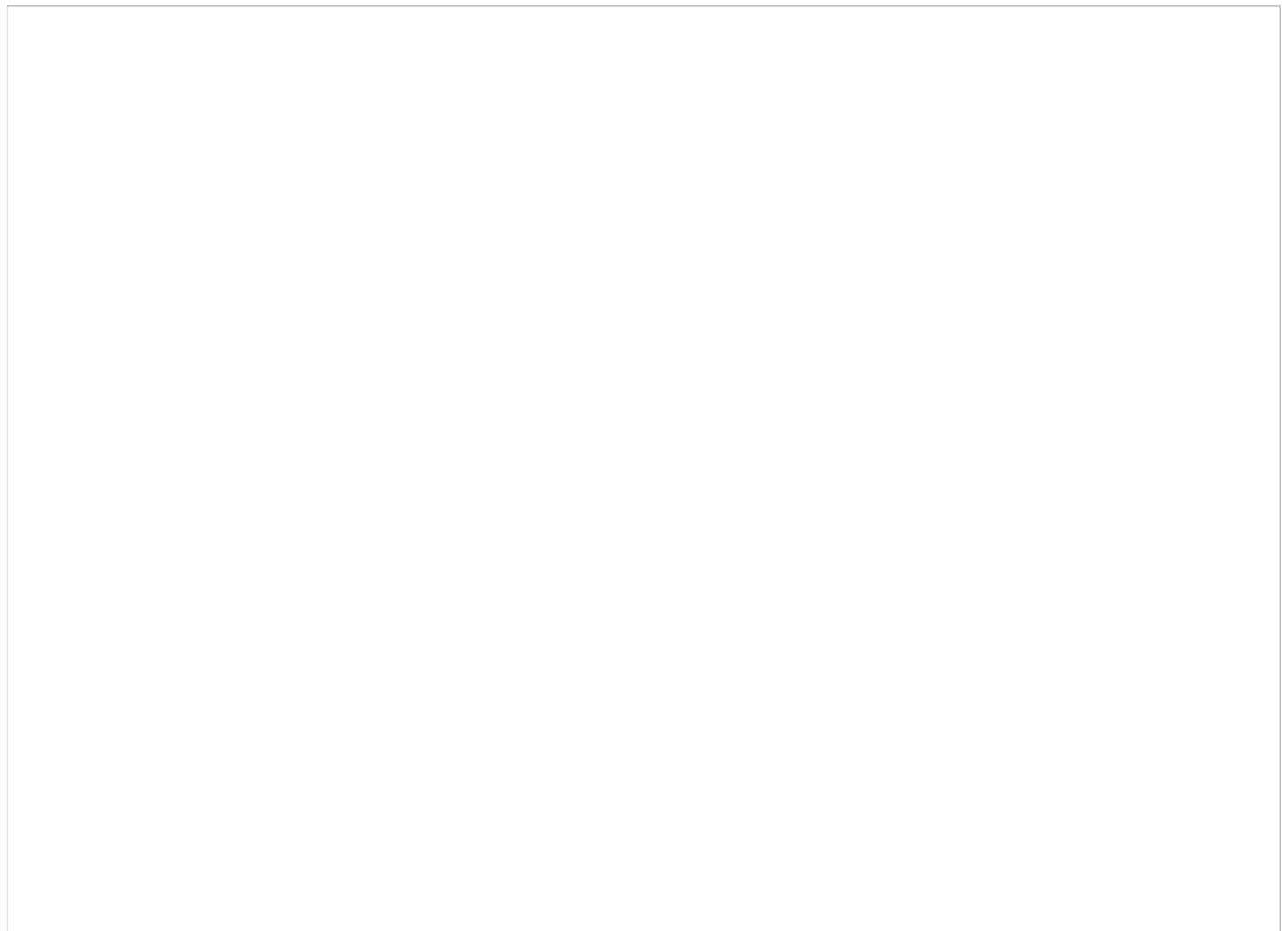
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Impunity and Cycles of Violence in Zimbabwe



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Two years since the formation of a power-sharing government that was expected to end human rights abuses and restore the rule of law, politically motivated violence and the lack of accountability for abuses remain a serious problem in Zimbabwe. Members of the security forces, the former ruling party, the Zimbabwe African National Union-Patriotic Front (ZANU-PF), and groups allied to ZANU-PF continue to commit human rights violations, including arbitrary arrests and abductions, beatings, torture, and killings of members and supporters of the former opposition party, the Movement for Democratic Change (MDC), and those critical of the ZANU-PF and its officials.

There has been little or no accountability for these crimes. Cases of political violence that have been filed by victims or their relatives have been largely ignored by the police, or have stalled in the courts. The government has failed to respond to calls by local nongovernmental organizations for the government to investigate these abuses. Ending impunity for past and ongoing abuses is essential if Zimbabwe is to end violence and firmly establish the rule of law.

The power-sharing government comprised of ZANU-PF and the two factions of the MDC, claimed a commitment to human rights reform, but has shown no political will to address longstanding impunity for human rights abuses. With a referendum and elections planned for this year, the lack of accountability and justice for past abuses raises the specter of further violence, and poses a significant obstacle to the holding of free, fair, and credible elections.

For more than a decade, elections in Zimbabwe have been marked by widespread human rights violations committed by the security forces and supporters and allies of ZANU-PF, such as youth militia and war veterans. Thousands of MDC supporters, officials, and human rights activists have been targets of abuses with little or no accountability, encouraging further attacks.

This report highlights the impunity that prevails in Zimbabwe. It provides an update on illustrative cases of political killings, torture, and abductions that took place during the presidential election run-off in 2008 and in the aftermath of the elections. Human Rights Watch's June 2008 report on the violence, *Bullets for Each of You: State-Sponsored Violence since Zimbabwe's March 29 Elections*, documented how the ZANU-PF-led government, at the highest levels, was responsible for widespread and systematic abuses that led to the killing of up to 200 people, the beating and torture of 5,000 more, and the displacement of about 36,000 people. Instead of pursuing accountability for the crimes committed by the security forces and other ZANU-PF sympathizers, since the release of that report, the government has not made any genuine effort to investigate, much less discipline or prosecute any of the individuals responsible.

The power-sharing government has also failed to hold to account security agents who abducted and tortured over 40 MDC officials and human rights activists in November and December 2008, despite court rulings that acts of torture were committed, and the activists having identified some of the agents responsible.

The top leadership of Zimbabwe's security forces, including the armed forces, police, prison service, and Central Intelligence Organization, remain partisan and aligned to President Robert Mugabe and ZANU-PF. The leaders of the security forces who previously publicly declared their support for ZANU-PF and who were implicated in serious human rights violations associated with electoral violence in 2008 have not been disciplined, removed from their posts, or charged with criminal offenses.

Local human rights groups have reported that those who committed serious crimes during the 2008 elections often continue to live in the same communities in which they committed the crimes, sometimes next door to their victims. In some cases security agents and ZANU-PF supporters who tortured and beat people during the 2008 election run-off have threatened victims with further violence, ahead of a proposed referendum and new elections scheduled for 2011.<sup>[1]</sup>

The victims of human rights abuses continue to be denied their right to justice and an effective remedy, as required under international human rights law. At the same time, perpetrators of abuses enjoy de facto immunity from prosecution by virtue of their association with ZANU-PF. President Mugabe has also politicized use of the powers under the constitution to grant pardons, amnesty, or clemency to those implicated in or convicted of serious human rights violations. A compromised judiciary and a highly partisan police force, whose members have also been implicated in abuses, leave little hope of justice for victims of abuses.

The failure of the power-sharing government to end impunity—the difficulties involved notwithstanding—has further complicated the prospects of restoring the rule of law in Zimbabwe. Unless the power-sharing government finds the political will to impartially investigate, prosecute, and ensure appropriate punishment and reparations, human rights violations will continue.

Human Rights Watch calls on the power-sharing government to immediately embark on credible, impartial and transparent investigations into serious human rights abuses and discipline or prosecute those responsible, regardless of their position or rank. The government should put transitional justice mechanisms in place while reforming the criminal justice system to ensure that it meets international legal standards.

This report is based on Human Rights Watch research conducted in Zimbabwe in September and November 2010 and provides an update of cases previously investigated between May and July 2008. Human Rights Watch researchers visited the capital, Harare, and Manicaland province, and interviewed 35 victims and witnesses of human rights violations, human rights defenders, MDC officials, human rights lawyers, and representatives of nongovernmental organizations (NGOs). Human Rights Watch researchers also interviewed five MDC activists in Johannesburg, South Africa, and conducted five telephone interviews with NGO representatives in Harare and Johannesburg in October 2010.

Human Rights Watch researchers sought but were unable to get appointments to interview officials of the Government of National Unity and ZANU-PF officials.

Human Rights Watch gathered updated information on further cases that highlighted impunity which were filed by local human rights organizations in Mashonaland, Midlands, and Masvingo provinces. Human Rights Watch researchers examined court records and documents, police affidavits, relevant domestic laws, medical reports, media accounts and reports by local and international human rights organizations.

In addition, materials from previous Human Rights Watch research missions in 2008 contributed to this report. This report follows earlier field research and advocacy on accountability for human rights abuses published in *Bullets for Each of You: State-Sponsored Violence since Zimbabwe's March 29 Elections* (June 2008), *They Beat Me Like a Dog: Political Persecution of Opposition Activists and Supporters in Zimbabwe* (August 2008), and *Our Hands Are Tied: Erosion of the Rule of Law in Zimbabwe* (November 2008).

The interviews for this research were conducted in English and Shona.

For security reasons, names of some victims have been changed and full details of locations withheld when such information could place a person at risk.

Zimbabwe's history has been marked by impunity for grave human rights abuses.

In the 1970s, Rhodesian African nationalist guerrillas waged a civil war for independence against the Rhodesian government. In the course of this armed conflict, both the Rhodesian army and nationalist guerrillas committed widespread abuses against civilians.<sup>[2]</sup> The perpetrators from both sides were never prosecuted or otherwise held to account after Zimbabwe's independence in 1980.<sup>[3]</sup> Instead, senior Rhodesian officials from the Central Intelligence Organization (CIO) and other high-ranking military and police commanders who participated in serious human rights violations were allowed to keep their positions in the newly independent Zimbabwe.<sup>[4]</sup>

In the early 1980s, President Robert Mugabe ordered the Zimbabwe National Army to conduct counter-insurgency operations against dissident ex-guerrilla fighters in the Matabeleland and Midlands provinces.<sup>[5]</sup> In the course of this fighting, the army's Fifth Brigade was involved in the deaths of at least 10,000 civilians and the enforced disappearances of many others.<sup>[6]</sup> In addition, the Zimbabwe National Army arbitrarily detained, beat and tortured thousands of civilians. The report of the Commission of Inquiry set up by the government to investigate the events in Matabeleland and Midlands was never published.<sup>[7]</sup>

The scale and nature of the involvement of Zimbabwe's security forces in human rights abuses has varied over time since the 1980s. However, the unwillingness of the Mugabe government to hold members of the security forces and those linked to ZANU-PF youth militia, war veterans and ZANU-PF officials and supporters to account has been a constant.

Violence around elections has intensified since the MDC emerged as a strong political contender to ZANU-PF in 1999. Few of the perpetrators of this violence have been held to account. In the run-up to the parliamentary elections of June 2000, human rights organizations documented extrajudicial executions, torture, beatings and abductions mainly committed by ZANU-PF supporters and state security agents, including the police and CIO officers.<sup>[8]</sup>

Zimbabwe's 2002 presidential elections were similarly marked by widespread abuses by ZANU-PF supporters and state security agents.<sup>[9]</sup> Local and international human rights organizations reported that those who had committed abuses in 2000 were also implicated in human rights violations during the 2002 elections.<sup>[10]</sup> Few if any of those responsible for these crimes were ever prosecuted.

During the general elections and presidential run-off in 2008, Human Rights Watch documented widespread atrocities by the military, state security agents, war veterans,<sup>[11]</sup> and ZANU-PF supporters, including the killing of at least 200 people and the beating and torture of 5,000 others.<sup>[12]</sup>

As this report will show, there have been few prosecutions for the serious human rights abuses that took place during those elections. The perpetrators remain at large, in some cases continuing to live in the same communities as their victims.

The Zimbabwean governments' repeated failure to act against human rights violations by its security forces and others acting on behalf of the government has created a crisis of impunity. International human rights law places obligations on states to end impunity for serious human rights violations by undertaking prompt, thorough, and impartial investigations of violations of human rights law, ensuring that those responsible for serious crimes are prosecuted, tried and duly punished, and providing an effective remedy for victims.<sup>[13]</sup>

Impunity has been defined as the impossibility, in law or in fact, of holding perpetrators of human rights violations accountable. *De facto* impunity takes place when the state fails to prosecute human rights abusers due to lack of capacity or political will. *De jure* impunity occurs when laws or regulations providing immunity or amnesty extend and strengthen the impact of *de facto* impunity by limiting or making it impossible to prosecute a perpetrator for human rights abuses.<sup>[14]</sup> Zimbabwe has suffered from both forms of impunity, which has led to grave human rights violations by allowing past perpetrators to commit future crimes, and it has undermined faith in the government, the security forces, and the criminal justice system.

By permitting a climate of impunity, Zimbabwe has failed to meet its obligations under international human rights law. International treaties impose on Zimbabwe the obligation to deter and prevent gross violations of human rights, and to investigate, prosecute, and remedy abuses.<sup>[15]</sup> This also entails addressing the victim's rights to justice, knowledge, and reparations.<sup>[16]</sup>

The International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe is party, requires that states adopt measures, including through the legal system, to protect fundamental rights.<sup>[17]</sup> According to the UN Human Rights Committee, the independent expert body that monitors compliance with the ICCPR, a state's failure to investigate and bring perpetrators to justice, particularly with respect to crimes such as killings, torture and other ill-treatment, could in itself be a violation of the Covenant.<sup>[18]</sup> Similarly, the African Charter on Human and Peoples Rights places obligations on states to ensure protection of charter rights, and for individuals to have rights violations against them heard by competent national institutions.<sup>[19]</sup>

Various international standards also seek to promote state efforts to obtain justice for victims. For instance, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions call upon states to remove officials implicated in such crimes from direct or indirect power over the complainants and witnesses, as well as those conducting the investigation.<sup>[20]</sup> The UN Declaration against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that the competent authorities impartially investigate allegations of torture even if there has been no formal complaint, and to institute criminal proceedings if torture appears to have been committed.<sup>[21]</sup>

Combating impunity requires the identification of the specific perpetrators of the violations. The doctrine of superior or command responsibility imposes liability on superiors with either de jure or de facto command for the unlawful acts of their subordinates, where the superior knew or had reason to know of the unlawful acts, and failed to prevent or punish those acts.<sup>[22]</sup>

In addition to the obligation to investigate and prosecute, states have an obligation to provide victims with information about the investigation into the violations. Victims should be entitled to seek and obtain information on the causes and conditions resulting to rights violations against them.<sup>[23]</sup> The former UN Commission on Human Rights adopted principles that irrespective of any legal proceedings, victims, their families and relatives have the imprescriptible right to know the truth about the circumstances in which violations took place.<sup>[24]</sup>

Under the ICCPR, states also have an obligation to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy.<sup>[25]</sup> The ICCPR imposes on states the duty to ensure that any person shall have their right to an effective remedy determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy.<sup>[26]</sup> The state is under a continuing obligation to provide an effective remedy; there is no time limit on legal action and the right cannot be compromised even during a state of emergency.<sup>[27]</sup>

Since independence in 1980, the government of President Robert Mugabe has used various amnesty and clemency provisions under the constitution to unjustifiably prevent the prosecution or reduce the punishments of members of the state security forces and ZANU-PF allies responsible for serious human rights violations. Mugabe's misuse of these provisions for partisan political purposes has added to the pervasive climate of impunity in the country, keeping rights violators in positions of authority and sending a message that accountability is irrelevant. The Zimbabwe constitution in section 31(i) empowers the president to exercise the prerogative of mercy by granting amnesty, pardons or clemency to those implicated in or convicted of a crime.<sup>[28]</sup>

While no legal or judicial limits have been placed on this power in Zimbabwe, the UN Human Rights Committee has repeatedly stated that amnesties and other legal measures that prevent investigation, prosecution, and punishment of perpetrators of human rights violations and hinder the victims of such violations from being granted reparations are incompatible with a state's obligations under the ICCPR.<sup>[29]</sup> The Committee stated that where public officials have committed serious crimes such as killings, torture and enforced disappearances, governments may not relieve perpetrators from personal responsibility, as has occurred with certain amnesties.<sup>[30]</sup>

Mugabe has used his presidential power of clemency to improperly excuse or reduce the punishments of individuals for politically motivated human rights violations. He issued Clemency Order No. 1 of April 18, 1988, with respect to all human rights violations committed by the state security forces and so-called dissidents between 1982 and the end of 1987.<sup>[31]</sup> This clemency was part of the Unity Accord between the Zimbabwe African National Union (ZANU) and the Zimbabwe African Peoples Union (ZAPU), which led, in 1987, to the creation of ZANU- Patriotic Front. Those who benefitted from the clemency were mainly members of the state security forces involved in serious human rights violations.

In October 2000, Mugabe issued Clemency Order No. 1 of 2000, which granted general amnesty for all political crimes, including torture and kidnappings committed by ZANU-PF supporters, youth militia and state security forces exempting only rape, murder and fraud.<sup>[32]</sup>

Clemency Order No. 1 of 2008, issued in June 2008, covered those arrested between March 29 and June 16, 2008, from the day of the general elections to the eve of the presidential run-off. Among other things, it granted indemnity to all prisoners convicted of culpable homicide and given a determinate sentence as of June 16, 2008,<sup>[33]</sup> thus covering those who were convicted of acts such as torture and abductions, excluding murder, rape, and fraud. Most abuses committed by ZANU-PF supporters, officials and soldiers took place in the period between the general elections in March and the presidential run-off on June 17, 2008.<sup>[34]</sup> However, as indicated in this report, there were few, if any, prosecutions for the serious crimes committed during this period. It is therefore highly unlikely that any of those involved in the pre and post election violence benefitted from this clemency.

Zimbabwe's criminal justice system has promoted impunity by rarely providing justice for serious human rights violations. The police and judiciary are severely compromised and have largely ignored calls for investigations into past and recent human rights abuses.<sup>[35]</sup> Police who fail or refuse to file criminal complaints by victims of political violence are rarely investigated or disciplined. The ZANU-PF government, which remains in charge of the judiciary under the GNU, has routinely undermined its independence by appointing partisan judges to hear cases, disregarding high court orders and threatening and attacking independent judges and magistrates.<sup>[36]</sup>

ZANU-PF supporters, war veterans, and the armed forces killed up to 200 people following the 2008 general elections.<sup>[37]</sup> They subjected those accused of supporting the MDC to severe beatings and torture with heavy wooden sticks and iron bars, often resulting in fatal injuries. Others were abducted and then murdered. To Human Rights Watch's knowledge, there have been no serious investigations let alone prosecutions for the serious crimes that took place during this time.

Human Rights Watch followed up on a number of politically motivated killings that it previously documented in 2008. In many of these cases in which police reports were filed, even when alleged perpetrators were named by their victims or witnesses, the police failed to follow up on the cases, as highlighted below:

Archiford Chipiyo and two friends were killed by a group of alleged ZANU-PF supporters on June 18, 2008. A police report was filed and police requested a post mortem report from a government doctor, which indicated that all three had died from skull fractures and head injuries due to gunshot wounds.

The failure of police to act has left many communities, in provinces around the country, vulnerable to further violence. Many victims and their family members believe that they remain at risk because of the failure of the police to prosecute perpetrators, some of whom still live in the areas in which they committed the crimes.<sup>[38]</sup> The Zimbabwe Human Rights NGO Forum, which has filed hundreds of civil law suits across the country on behalf of victims of the 2008 election-related violence, informed Human Rights Watch that the majority of perpetrators named in its lawsuits continue to live in the same communities in which they had perpetrated the violence. Said a representative of the Forum: Perpetrators in most of the cases we are working on, were named by their victims, and in most cases were people the victims knew who lived in the same community.<sup>[39]</sup> The Forum has documented cases where alleged perpetrators threatened their victims with further violence after court summons were issued against them. In one case, an alleged perpetrator assaulted his victim



after a civil law suit was filed against him.[\[40\]](#)

In Headlands, Manicaland, Farai C. told Human Rights Watch that no one was arrested or prosecuted for killing her 45-year-old son on June 22, 2008, even though members of the community knew the perpetrators who were ZANU-PF officials and supporters and that most of the perpetrators lived in neighboring villages. Farai C. told Human Rights Watch:

In another case, on June 25, 2008, a group of ZANU-PF officials, supporters, and soldiers abducted and beat to death four elderly people in Manicaland province whom they suspected of voting for the MDC during the elections.

James D., whose parents were among the four people killed, told Human Rights Watch:

James D. informed Human Rights Watch that police came once, on July 1, 2008, to take a statement, but did not return. He said that many of the alleged perpetrators were from the surrounding areas and one of those who led the beatings actually lived next door to James D. and his family.

Tendai L., whose parents were also killed in the incident, told Human Rights Watch:

Tendai L.'s brother Richard informed Human Rights Watch that the family had received further threats. He said, One of the perpetrators has threatened us several times. He keeps saying that we are the ones who are left who need to be dealt with. They are going around saying that by the time of the next elections we shouldnt be in this area.[\[44\]](#)

Plaxedes Ndira, whose husband Tonderai was abducted and killed in May 2008 by alleged ZANU-PF supporters and officials told Human Rights Watch: Forgiveness isnt enough because they left wounds that cant be healed. They need to go to jail for the rest of their lives. If this doesnt happen when elections come next year, it [violence] will start again.[\[45\]](#) Despite filing a police report in 2008, Ndira has received no response from the police.

Because of the police's failure to investigate reports of political violence, local organizations have filed legal complaints and written letters to various government agencies calling for investigations on behalf of victims, but the organizations said the police have not responded. For example, in November 2010, lawyers for Zimbabwe Lawyers for Human Rights, representing 12 victims of political violence from Muzarabani district, northeast of Harare, wrote to Attorney General Johannes Tomana, the police in Muzarabani, and the Minister of Home Affairs, calling for an investigation into the cases. Tomana ignored their letters,[\[46\]](#) instead, he was quoted by the Zimonline news site as saying that the letter was political and trivial and that he would not bother looking at the dossier because it was not compiled by the police.[\[47\]](#)

On August 20, 2009, the MDC sent a letter to the attorney general that listed 183 victims of political killings by name and location of the killings. The letter called on the Attorney General to use his constitutional powers to order the Commissioner General of police to investigate the killings. Over a year and a half later, the MDC has not received a response from Tomana.[\[48\]](#)

The use of torture by state agents is endemic in Zimbabwe. In the aftermath of the 2008 general elections, Human Rights Watch reported that the army established bases across the country to torture people as a form of punishment for voting for the MDC.[\[49\]](#) The police have also routinely arrested human rights activists and journalists and subjected them to torture, cruel, degrading and inhumane treatment. The torture and ill-treatment inflicted has included severe beatings on the back, buttocks and soles of the feet with blunt objects, forcing victims to sit or stand in uncomfortable positions for hours on end, as well as false executions and threats of death. The government has repeatedly refused to investigate allegations of torture by police and other state agents, despite court orders.[\[50\]](#)

The Zimbabwe constitution guarantees freedom from torture and inhuman or degrading treatment.[\[51\]](#) Zimbabwe is party to several international agreements that prohibit the use of torture and other forms of ill-treatment, including the ICCPR,[\[52\]](#) and the African Charter on Human and Peoples Rights.[\[53\]](#) As noted above, a state's failure to investigate and bring perpetrators of torture and ill-treatment to justice can be a violation of the ICCPR.[\[54\]](#) The African Union Guidelines and Measures for the Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (also known as the Robben Island Guidelines) also state that there should be no immunity from prosecution for nationals suspected of torture and that those responsible for acts of torture or ill-treatment be subject to legal process.[\[55\]](#)

In October 2009, Manfred Nowak, the then UN Special Rapporteur on torture, and other cruel, inhuman or degrading treatment was deported from Harare International Airport after he was invited by Prime Minister Morgan Tsvangirai to investigate cases of torture.[\[56\]](#) The ZANU-PF wing of the government claimed that it had withdrawn its invitation to Nowak because it was engaged in a consultative process in Harare.[\[57\]](#)

In a case that has received widespread international attention, Human Rights Watch documented the abduction or arbitrary arrest and torture of prominent human rights activist Jestina Mukoko and 14 other activists by state agents between October and December 2008. In total, state agents abducted or arbitrarily arrested 43 people including MDC officials in that period. The authorities later accused them of involvement in acts of banditry and training others in banditry, sabotage and insurgency.[\[58\]](#) The activists were held in secret detention for periods ranging from two to eight weeks, before being handed over to the police. They reported that state agents subjected them to various acts of torture and ill-treatment, including beatings on the soles of the feet and denial of food and medication.

On September 28, 2009, the Supreme Court upheld an application by Jestina Mukoko, in which she argued that her constitutional rights to liberty, full protection of the law, and freedom from torture had been infringed.[\[59\]](#) The court dismissed terrorism charges against Mukoko and the other activists and ordered a permanent stay of prosecution in the criminal case against them. However, at the time of writing more than a year later, a full report of the judgment has not been released.

In a series of civil law suits, Mukoko and other activists filed complaints against the Attorney General, the Minister of Home Affairs, and several other senior CID, police and CIO officers as being responsible for their abduction, torture, and ill-treatment.[\[60\]](#) At the time of writing, the court has not reached a decision in Mukoko's case.

Chris Dhlamini, MDC security head who was one of the 43 abducted, told Human Rights Watch that during a month in solitary confinement, state agents tortured him on several occasions. He said that he was beaten with blunt objects, subjected to a fake execution and simulated drowning, and hanged upside down on a tree, in order to force him to confess that he was involved in the training of bandits in Botswana. He said that on a number of occasions he was tortured in front of several senior police officers, two of whom he identified by name. Although Dhlamini named the senior police officers in his complaint to the authorities and the Supreme Court ruled that the activists were tortured, the government has not investigated or arrested any of the security agents and police officers accused of organizing and carrying out the abduction of Mukoko, Dhlamini, and other activists. None of the men named by Dhlamini in his formal complaint have been removed from their posts or prosecuted.<sup>[61]</sup>

In August 2010, Mapfumo Garutsa, another activist abducted at the same time, brought a civil law claim against the state.<sup>[62]</sup> Garutsa made the claim for unlawful arrest and detention, and malicious prosecution and has accused state agents of subjecting him to torture, inhuman and degrading treatment, including beatings on the soles of his feet and denying him medical treatment. In his claim, Garutsa named seven ministers and security force commanders in their official capacities and seven police, CID and CIO officers in their personal capacities. The case is ongoing.

In a number of cases, the rights of those who were subjected to torture and other ill-treatment in the aftermath of the 2008 general elections have been violated by the same security agents who beat and tortured them. Several people informed Human Rights Watch that they had since received threats of further violence which they believe is related to this year's proposed referendum and elections.

Fatsirai N., a 50-year old MDC official who was arrested and tortured by police and central intelligence officers in June 2008 told Human Rights Watch:

Josiah K., who was held and tortured at a base in Mashonaland East by ZANU-PF officials and soldiers for two days in 2008, told Human Rights Watch:

International human rights law obligates Zimbabwe's power-sharing government to promptly, impartially and credibly investigate serious violations of human rights, prosecute those implicated by the evidence, and, if their guilt is established following a fair trial, impose proportionate penalties. Implied in this is that all victims shall have the opportunity to assert their rights and receive a fair and effective remedy, that those responsible stand trial, and that the victims themselves obtain reparations. Human Rights Watch is unaware of serious investigations by the power-sharing government into serious human rights violations, let alone prosecuting and convicting the perpetrators, or providing remedies and reparations to the victims.

Zimbabwe's Global Political Agreement (GPA), which led to the formation of the power-sharing government in 2009, was signed by the two factions of the MDC and ZANU-PF on September 15, 2008, at a time when scores of victims of human rights abuses were seeking justice and accountability for abuses that took place during the 2008 elections.<sup>[65]</sup> In the preamble to the agreement, the parties agreed to end polarization, divisions, conflict and intolerance that had characterized Zimbabwean politics and society.<sup>[66]</sup> They further expressed determination to act in a manner that demonstrated respect for the democratic values of justice, fairness, openness, tolerance, equality, and respect for all persons and human rights.<sup>[67]</sup>

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

In the end, the power-sharing agreement only made a passing reference to this central issue, noting the duty of all political parties and individuals to respect and uphold the Constitution and other laws of the land, and adhere to the principles of the rule of law.<sup>[68]</sup>

In accordance with GPA provisions to promote issues of concern to the general population, the new government set up the Organ for National Healing, Reconciliation, and Integration, comprising three ministers of state, one from each of the three main political parties.<sup>[69]</sup> However, local human rights organizations have criticized the absence of justice and accountability in the organ's mandate.<sup>[70]</sup> The cases in this report make clear that national healing has not been interpreted by the government to mean justice and reparations for victims of serious abuses.

Progress in implementing many aspects of the GPA has been slow. The main obstacles are ongoing disputes of key provisions of the GPA, and a lack of trust between the MDC and ZANU-PF. This lack of progress has had a direct impact on the human rights situation and the climate of impunity.

Two years into Zimbabwe's power-sharing government, the former opposition party, the MDC lacks real power to end human rights abuses and end impunity. President Mugabe and ZANU-PF, through the use of politicized and partisan senior government officials and state security forces, continue to maintain power and dominate government institutions such as the police, army and the judiciary.

The MDC's lack of effective power and its apparent prioritizing of the survival of the power-sharing government over all else is severely inhibiting the party's ability to push for accountability and justice. The MDC has not forcefully insisted on justice and accountability for human rights abuses, nor has it attempted to bring the perpetrators of those abuses to book. At a press conference in Johannesburg, South Africa, on September 16, 2010, Prime Minister Morgan Tsvangirai ruled out any criminal prosecution of Robert Mugabe and allies of ZANU-PF after they left office. He told journalists that the power-sharing deal and the possibility of a new constitution were processes of finding reconciliation and that a retributive agenda would be counterproductive to such a process. Tsvangirai stated that, Reconciliation is the only solution for that country to have assured stability, peace and progress.<sup>[71]</sup>

As currently constituted, any national healing process that does not address issues of justice, accountability for past abuses, impunity, and redress for victims weakens the country's ability to end the cycle of impunity and violence. The power-sharing government should take the lead in ending abuses and impunity by putting in place mechanisms to ensure that those who have committed abuses in the past and those who continue to do so, are held to account for their crimes.

With a referendum and elections proposed for the coming year, the current atmosphere of impunity raises the specter of further violence, not only committed by the same perpetrators, but by the targets of violence as well. Local human rights activists have argued that the lack of accountability for serious crimes that took place in 2008 could lead to acts of revenge by victims. Rashid Mahiya, the director of Heal Zimbabwe Trust, an organization which works with victims of political violence, told Human Rights Watch, There should be a consequence for committing a crime. If people don't feel this they will find another form of justice and it may not be within the law.<sup>[72]</sup>

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Thomas Gilchrist, research assistant; Rachel Nicholson and Charlene Harry, associates in the Africa division edited and formatted this report. Grace Choi, Kathy Mills, and Fitzroy Hepkins prepared the report for publication.

Human Rights Watch is grateful to all the individuals who provided information for this report, including: Heal Trust Zimbabwe, the Zimbabwe Human Rights NGO Forum, and Zimbabwe Lawyers for Human Rights.

<sup>[1]</sup> The referendum and elections may not be held this year, due to disagreements between the MDC and ZANU-PF over the constitution, the timing of the elections and other issues.

<sup>[2]</sup> See, for example, Brian Raftopolous and Aloys Mlambo, eds., *Becoming Zimbabwe: A History from the Pre-Colonial Period to 2008*, ([Harare]: Weaver Press, 2008); War in Rhodesia, 1965-1980, Joseph Mtisi, Munyaradzi Nyakudya, and Teresa Barnes. pp. 141-66.

<sup>[3]</sup> Catholic Commission for Justice and Peace in Zimbabwe and Legal Resources Foundation in Harare, *Gukurahundi in Zimbabwe: A Report on the Disturbances in Matabeleland and the Midlands, 1980-1988* ([Johannesburg]: Jacana Media, 2007), p. 43.

<sup>[4]</sup> Ibid. pp 43

<sup>[5]</sup> Brian Raftopolous and Aloys Mlambo, eds., *Becoming Zimbabwe: A History from the Pre-Colonial Period to 2008*, ([Harare]: Weaver Press, 2008); War in Rhodesia, 1965-1980, Joseph Mtisi, Munyaradzi Nyakudya, and Teresa Barnes. pp. 141-66

<sup>[6]</sup> Catholic Commission for Justice and Peace in Zimbabwe and Legal Resources Foundation in Harare, *Gukurahundi in Zimbabwe: A Report on the Disturbances in Matabeleland and the Midlands, 1980-1988* ([Johannesburg]: Jacana Media, 2007), p. 43

<sup>[7]</sup> Shari Eppel, Gukurahundi: The need for truth and reparation, in Brian Raftopolous and Tyrone Savage, eds., *Zimbabwe: Justice and Political Reconciliation*, ([Cape Town]: Institute for Justice and Reconciliation, 2004). pp 43 - 46

<sup>[8]</sup> Amnesty International, Zimbabwe: Terror tactics in the run-up to parliamentary elections, AI Index: AFR 46/014/2000, June 2000, <http://amnesty.name/en/library/info/AFR46/014/2000/en> (accessed January 4, 2011).

<sup>[9]</sup> See various reports on the elections, including Commonwealth Observer Report, Preliminary Report of the Commonwealth Observer Group to the Zimbabwe Presidential Election, 910 March 2002, March 14, 2002, [http://www.afrol.com/Countries/Zimbabwe/documents/commonw\\_elections\\_group.htm](http://www.afrol.com/Countries/Zimbabwe/documents/commonw_elections_group.htm) (accessed October 14, 2010); Preliminary Statement on Presidential Elections by the Norwegian Observer Team, Oslo, March 13, 2002, [http://www.afrol.com/Countries/Zimbabwe/documents/commonw\\_elections\\_group.htm](http://www.afrol.com/Countries/Zimbabwe/documents/commonw_elections_group.htm) (accessed October 14, 2010); and Statement on the Zimbabwe Elections, SADC Parliamentary Forum Observer Mission, Harare, March 13, 2002, <http://www.africaaction.org/docs02/zim0203.htm> (accessed October 14, 2010).

<sup>[10]</sup> Amnesty International, Zimbabwe: The toll of impunity, AI Index: AFR 46/034/2002, June 25, 2002, <http://www.amnesty.org/en/library/info/AFR46/034/2002> (accessed October 11, 2010).

<sup>[11]</sup> The term war veteran refers to those who fought during Zimbabwe's liberation struggle in the 1970s. However, many of the war veterans implicated in recent abuses are believed to be individuals hired by the government to commit abuses under the guise of being war veterans. Many are too young to be genuine war veterans or have fought during the liberation struggle.

<sup>[12]</sup> Human Rights Watch, *Bullets for Each of You: State-Sponsored Violence since Zimbabwe's March 29 Elections*, ISBN: 1-56432-324-2, June 2008, <http://www.hrw.org/node/40484>.

<sup>[13]</sup> See UN Commission on Human Rights, Report of the independent expert to update the set of principles to combat impunity, E/CN.4/2005/102/Add.1, February 8, 2005, para. 19.

<sup>[14]</sup> The UN Commission on Human Rights has defined impunity as the impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims. UN Commission on Human Rights, Report of the independent expert to update the set of principles to combat impunity, E/CN.4/2005/102/Add.1, February 8, 2005 para. A. p.6.

<sup>[15]</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Zimbabwe August 13, 1991; African [Banjul] Charter on Human and Peoples Rights (African Charter), adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 REV.5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, ratified by Zimbabwe May 30, 1986.

<sup>[16]</sup> See Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 15 ("States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights" protected by the ICCPR). See also Impunity Principles, principle I; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of

International Humanitarian Law ("Reparations Principles"), adopted December 16, 2005, G.A. res. 60/147, U.N. Doc. A/RES/60/147 (2005), principle 11.

[17] ICCPR, article 2(2) & (3).

[18] Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States under the Covenant, CCPR/C/21/Rev.1/Add.13, May 26, 2004, articles 15 & 18.

[19] African Charter, articles 1 & 7.

[20] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions: Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989, <http://www2.ohchr.org/english/law/executions.htm> (accessed January 4, 2011), principle 15.

[21] Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 3452 (XXX), annex, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975), articles 9 & 10..

[22] See *Prosecutor v. Delalic*, International Criminal Tribunal for the former Yugoslavia (ICTY), Case No. IT-96-21-T, November 16, 1998, para. 346 (Celebici). In Celebici, the Trial Chamber of the ICTY traced the development of the concept of superior responsibility from its first international judicial recognition in the Nuremberg and Tokyo trials of World War II. The Trial Chamber broke down the principal of superior responsibility into three essential elements: (i) the existence of a superior-subordinate relationship; (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof. See also Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, *entered into force* July 1, 2002, article 28.

[23] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, paras. 11(c) and 24.

[24] Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, October 2, 1997, adopted by the UN Commission on Human Rights, E/CN.4/Sub.2/1997/20/Rev.1, principle 3.

[25] ICCPR, art. 2(3)(a).

[26] ICCPR, art. 2 (3)(b). Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, principle II.3.(d): The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (d) Provide effective remedies to victims, including reparation, as described below.

[27] Human Rights Committee, General Comment 29, States of Emergency (art. 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 14 (Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the [ICCPR] to provide a remedy that is effective.).

[28] Constitution of Zimbabwe, 1979, as amended, art 31(i). Although the constitution does not use the word amnesty, it refers to pardons of any person concerned in but not convicted of a crime, which is what an amnesty is.

[29] See UN Human Rights Committee, General Comment No. 20, Prohibition of Torture and Cruel Treatment or Punishment (Forty-fourth session, 1992), , para. 15. See, e.g. UN Human Rights Committee, "Consideration of Reports Submitted under Article 40 of the Covenant, Comments of the Human Rights Committee, Argentina," CCPR/C/79/Add.46, 1995, <http://www1.umn.edu/humanrts/hrcommittee/ARGENTNA.htm> (accessed January 23, 2011), paras. 3 and 11; "Consideration of Reports Submitted by State Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Argentina," CCPR/CO/70/ARG, November 3, 2000, "Consideration of Reports Submitted by State Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, France," CCPR/C/79/Add.80, August 4, 1997, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.80.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.80.En?Opendocument) (accessed January 23, 2011), para. 13; and "Consideration of Reports Submitted by State Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Croatia," CCPR/CO/71/HRV, April 30, 2001, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.HRV.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.HRV.En?Opendocument) (accessed January 23, 2011), para. 11.

[30] UN Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, May 26, 2004, para. 18.

[31] Shari Eppel, Gukurahundi: The need for truth and reparation, in Brian Raftopolous and Tyrone Savage, eds., *Zimbabwe: Justice and Political Reconciliation*, [Cape Town]: Institute for Justice and Reconciliation, 2004).pp 45-46; See also Amnesty International, The Toll of Impunity AFR46/034/2002, June 25, 2002, <http://www.amnesty.org/en/library/info/AFR46/034/2002> (accessed October 11, 2010).

[32] Shari Eppel, Gukurahundi: The need for truth and reparation, pp.50

[33] General Notice 85A/2008 - Clemency Order No. 1 of 2008.

[34] Ibid.



[35] Since 2000, the ZANU-PF led government has appointed to the bench judges with previous connections and known sympathies to ZANU-PF. To ensure their loyalty the government allocated land seized under its controversial land reform program to judges. Similarly, ZANU-PF has appointed senior policemen with known sympathies to the party and purged the police force of those police perceived as not being loyal to ZANU-PF.

[36] Human Rights Watch, *Our Hands are Tied: Erosion of the Rule of Law in Zimbabwe*, November 2008, <http://www.hrw.org/en/reports/2008/11/19/our-hands-are-tied>.

[37] Human Rights Watch, *Bullets for Each of You: State Sponsored Violence since Zimbabwe's March 29 Elections*, June 2009, <http://www.hrw.org/reports/2008/zimbabwe0608>.

[38] Human Rights Watch interview with Rashid Mahiya, Director, Heal Zimbabwe Trust and Cleto Manjova, Senior Programmes Officer, Heal Zimbabwe Trust, Harare, September 9, 2010. Human Rights Watch telephone interview with representative of Zimbabwe Human Rights NGO Forum, Harare, October 29, 2010.

[39] Human Rights Watch telephone interview with representative of Zimbabwe Human Rights NGO Forum, Harare, October 29, 2010.

[40] Ibid.

[41] Human Rights Watch interview with Farai C, Manicaland province, September 15, 2010

[42] Human Rights Watch interview with James D, Manicaland province, September 15, 2010

[43] Human Rights Watch interview with Tendai L, Manicaland province, September 15, 2010

[44] Human Rights Watch interview, Manicaland province, September 15, 2010

[45] Human Rights Watch interview with Plaxedes Ndira, Harare, November 24, 2010.

[46] Human Rights Watch interview with lawyers from Zimbabwe Lawyers for Human Rights, Harare, September and November 2010; see also Tererai Karimakwenda, Attorney General Dismisses Lawyers Call to Prosecute Political Violence, SW Africa Radio, November 19, 2010, <http://allafrica.com/stories/201011200108.html> (accessed on January 12, 2011).

[47] Sebastian Nyamhangambiri, Lawyers want rights abusers prosecuted, ZimOnline, November 18, 2010, <http://www.zimonline.co.za/Article.aspx?ArticleId=6454> (accessed on January 12, 2011).

[48] Human Rights Watch interview with Lawrence Paganga, MDC Information and Publicity Coordinator, Harare, November 22, 2010.

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

[50] The international prohibition against torture includes the intentional infliction of severe mental or physical pain or suffering against an individual by or involving a public official *for punishing or intimidating the individual or others*. See [Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), G.A. res. 3452 (XXX), annex, 30 U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975); [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987.

[51] Zimbabwe Constitution, article 15.

[52] ICCPR, article 7.

[53] African Charter on Human and Peoples Rights, article 5.

[54] Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States under the Covenant, CCPR/C/21/Rev.1/Add.13, May 26, 2004, articles 15 & 18.

[55] Guidelines and Measures for the Prohibition of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, October, 2002, article 1 (b), [http://www.achpr.org/english/declarations/declaration\\_robbeislands\\_en.html](http://www.achpr.org/english/declarations/declaration_robbeislands_en.html) (accessed October 4, 2010), article 16 (b)..

[56] U.N. rights expert Nowak deported from Zimbabwe, Reuters, October 29, 2009, <http://www.alertnet.org/thenews/newsdesk/WEA7394.htm> (accessed October 29, 2009).

[57] Ibid.

[58] See Human Rights Watch news releases, [Zimbabwe: Investigate Whereabouts of Abducted Human Rights Activist](#), December 3, 2008, <http://www.hrw.org/en/news/2008/12/03/zimbabwe-investigate-whereabouts-abducted-human-rights-activist>; [Zimbabwe: Free Detained Rights Activist](#), December 24, 2008, <http://www.hrw.org/en/news/2008/12/24/zimbabwe-free-detained-rights-activist>; [Zimbabwe: Drop Politically Motivated Charges Against Activists](#), May 6, 2009, <http://www.hrw.org/en/news/2009/05/06/zimbabwe-drop-politically-motivated-charges-against-activists>.

[59] Misa/IFEX, Supreme Court Verdict Quashes Case against Human Rights Activist, September 30, 2009, [http://www.ifex.org/zimbabwe/2009/09/30/application\\_upheld/](http://www.ifex.org/zimbabwe/2009/09/30/application_upheld/) (accessed October 29, 2010).

[60]Voice of America, Zimbabwe Party Leaders, Security Chiefs Sued by Former Detainees, August 31, 2010, <http://www.voanews.com/english/news/africa/Zimbabwe-Party-Leaders-Security-Chiefs-Sued-by-Former-Detainees-101884088.html> (accessed August 31, 2010). On July 27, Jestina Mukoko filed for compensation for her torture and mistreatment while in detention. Mukoko listed the Ministry of State Security, Lands, Land Reform and Resettlement and its Minister Didymus Mutasa in his individual capacity. Co-Ministers of Home Affairs Ministers, Kembo Mohadi and Giles Mutsekwa, Defence Minister Emmerson Mnangagwa, Commissioner General of Police Augustine Chihuri, Chief Superintendent Magwenzi, Attorney General Johannes Tomana and Brig. Gen. Asher Tapfumaneyi were also cited as respondents.

[61]Human Rights Watch interview with Chris Dhlamini, Harare, September 13, 2010.

[62] Human Rights Watch interview with Mapfumo Garutsas lawyers, Harare, September 13, 2010. See also, Alex Bell, SWRadio Africa, ZANU-PF Torture Trial Postponed, September 1, 2010, <http://allafrica.com/stories/201009020014.html>, (accessed September 1, 2010).

[63] Human Rights Watch interview with Fatsirai N, Harare, September 13, 2010.

[64]Human Rights Watch interview with Josiah K, Harare, November 23, 2010.

[65] Human Rights Watch, *False Dawn: The Zimbabwe Power-Sharing Governments Failure to Deliver Human Rights Improvements*, August 2009, <http://www.hrw.org/en/reports/2009/08/31/false-dawn>

[66]Agreement between the Zimbabwe African National Union Patriotic Front (ZANU-PF) and the two Movement for Democratic Change formations, on resolving the challenges facing Zimbabwe, September 15, 2008, [http://www.kubatana.net/docs/demgg/mdc\\_zpf\\_agreement\\_080915.pdf](http://www.kubatana.net/docs/demgg/mdc_zpf_agreement_080915.pdf) (accessed January 30, 2011)

[67]Ibid.

[68]Agreement between the Zimbabwe African National Union Patriotic Front (ZANU-PF) and the two Movement for Democratic Change formations, on resolving the challenges facing Zimbabwe, article XI (a), September 15, 2008, [http://www.kubatana.net/docs/demgg/mdc\\_zpf\\_agreement\\_080915.pdf](http://www.kubatana.net/docs/demgg/mdc_zpf_agreement_080915.pdf) (accessed January 30, 2011)

[69] Human Rights Watch, False Dawn

[70] Human Rights Watch interview with local NGO representatives, Harare, September 9 and 13, 2010.

[71]David Smith, Morgan Tsvangirai praises Robert Mugabe the hero, *The Guardian* (London), September 16, 2010, <http://www.guardian.co.uk/world/2010/sep/16/morgan-tsvangirai-praises-robert-mugabe> (accessed October 21, 2010)

[72]Human Rights Watch interview with Rashid Mahiya, Harare, September 9, 2010.

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