

**ZIMBABWE:  
HUMAN RIGHTS  
AGENDA FOR  
THE  
GOVERNMENT,  
2013 - 2018**

**AMNESTY  
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# 1. INTRODUCTION

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 urges 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.
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.

## ABOUT THIS REPORT

This report is based on Amnesty International's ongoing monitoring and documentation of the human rights situation in Zimbabwe since 2000, which includes numerous field trips to interview human right defenders and victims of human rights violations, as well as meetings with government officials. Amnesty International's last field trip to Zimbabwe was conducted in July-August 2013.

During the Government of National Unity (February 2009 to August 2013) Amnesty International delegations met several senior government officials from across the political divide and raised the organization's concerns on critical human rights issues. The delegates urged these officials to take concrete measures to fulfil Zimbabwe's obligations under international human rights law.

## 2. BACKGROUND

From February 2009 to August 2013, Zimbabwe was governed by a three-party coalition government made up of President Mugabe's ZANU-PF party and the two formations of the Movement for Democratic Change (MDC). The coalition government was put in place following inter-party talks facilitated by the President of South Africa on behalf the Southern African Development Community (SADC) after the second round of Zimbabwe's presidential election in 2008 was marred by political violence.

The inter-party dialogue culminated in the September 2008 Global Political Agreement (GPA). This set the reform agenda for the coalition government, including the adoption of a new Constitution, institutional reforms and improving the political environment. However, inter-party tensions and mutual mistrust resulted in delays in the reform processes. In the case of security sector reform, very little was achieved. By the time of the July 2013 elections, the parties in the coalition government were still at loggerheads over issues outstanding from the GPA.

However, the GNU was credited for delivering a new constitution with greater protection of human rights and creating the environment for a relatively peaceful election on 31 July. It also stopped Zimbabwe's economic decline and brought about some sense of stability, including improvement in food and fuel supply.

Before the creation of the GNU, Zimbabwe's economy had been in rapid decline. The 2005 government programme of mass forced evictions, known as Operation Murambatsvina, had directly resulted in about 700,000 people losing their homes, their livelihoods, or both, driving them deeper into poverty. In 2007 the country's education system ground to a halt, with schools opening for less than 30 days. A cholera outbreak that started in 2008 killed over 4,000 people. Western governments, the country's main trading partners before the beginning of the crisis in 2000, increased Zimbabwe's international isolation by imposing sanctions or targeted measures against individuals in government and state enterprises.

During the same period, the human rights situation in the country deteriorated significantly. Civil and political rights were routinely and blatantly violated, especially those of real or perceived government critics, including human rights defenders, journalists, lawyers and opposition supporters. The situation worsened between April and July 2008 when ZANU-PF lost its parliamentary majority during elections held in March that year. Following a wave of state-sponsored political violence, about 250 people died, some 12,000 were injured and tens of thousands were displaced. The perpetrators continued to enjoy total impunity for their crimes. The situation was arrested when the GNU was sworn in, although violations continued at a low level and laws regulating freedom of expression, association and peaceful assembly were selectively applied. Numerous journalists, human rights defenders and political activists were arbitrarily arrested and unlawfully detained.

### 3. INTERNATIONAL AND NATIONAL HUMAN RIGHTS OBLIGATIONS

Zimbabwe has international legal obligations to respect, protect and fulfil human rights for everyone within its jurisdiction, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Amongst the human rights that Zimbabwe is obliged to protect includes: the right to life; the right to freedom of expression, including freedom to seek, receive and impart information and ideas; the right to freedom of association; the right to freedom of assembly; the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; and the right to an adequate standard of living.

Zimbabwe has explicitly accepted its human rights obligations through ratifying several regional and international human rights treaties. Some of these rights are also explicitly provided for in Section 4 of the May 2013 Constitution.

Zimbabwe is a state party to:

- African Charter on Human and Peoples' Rights (ACHPR)
- African Charter on the Rights and Welfare of the Child (ACRWC)
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- UN Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW Convention)
- International Convention on the Rights of the Child (CRC)
- UN Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Although Zimbabwe has not ratified the UN International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Section 53 of the country's Constitution provides for the right to "freedom from torture or cruel, inhuman or degrading treatment or punishment." This right is also provided for in the ACHPR.

The new Constitution provides for a wide range of human rights under the Declaration of Rights (Chapter 4). The range of rights includes legally enforceable economic, social, cultural, civil and political rights. It also provides for the establishment of independent commissions, including the Zimbabwe Human Rights Commission, the National Peace and Reconciliation Commission, and the Gender Commission.

Although Zimbabwe is party to the key regional and international human rights treaties, it has a poor record in upholding all the rights enshrined in these treaties. Since 2000, Amnesty International has documented systematic suppression of the rights to freedom of expression, association and assembly, especially of human rights defenders and political opponents. It



has also documented the impact of the 2005 mass forced evictions on the affected people's economic, social and cultural rights.

## 4. HUMAN RIGHTS AGENDA FOR THE NEW GOVERNMENT

### 4.1 ABOLITION OF THE DEATH PENALTY

Amongst the human rights Zimbabwe is obliged to respect are the right to life, the right not to be tortured or ill-treated, and the right to a fair trial. As stated above, Zimbabwe has explicitly accepted obligations in regard to these rights in international and regional human rights treaties. The application of the death penalty in Zimbabwe violates the rights enshrined in these treaties.

In November 2008, the African Commission on Human and Peoples' Rights at its 44<sup>th</sup> Ordinary Session in Abuja, Nigeria, adopted a resolution calling on states parties to the ACHPR to observe a moratorium on the death penalty.<sup>1</sup> This followed the adoption of a similar resolution by the UN General Assembly (UNGA) in December 2007,<sup>2</sup> which was backed up by three subsequent resolutions, most recently UNGA resolution 67/176 of 20 December 2012. In April 2012, the Working Group on the Death Penalty of the African Commission reaffirmed the necessity of abolishing capital punishment and recommended, among other things, the imposition of a moratorium on executions.<sup>3</sup>

Zimbabwe took some steps to reduce the application of the death penalty in the new Constitution. It decreased the number of capital crimes from three to one, excluded all women as well as men under the age of 21 at the time of the crime or who are over 70, and prohibited mandatory death sentences. However, this has so far had very little impact on the people on death row, most of whom are men. At the time of writing this report in October 2013, two women and 87 men were on death row.<sup>4</sup> In early 2013, a new hangman was appointed, filling a post that had been vacant since 2005, the year that the country's last execution took place. Meanwhile, death sentences continue to be handed down.

Amnesty International welcomes the statement by the Minister of Justice, Legal and Parliamentary Affairs, Hon Emmerson Mnangagwa, at an event in Harare to commemorate World Day against the Death Penalty on 10 October 2013, in which he set out his commitment to abolish the death penalty. This followed earlier promising signs. During the Universal Periodic Review (UPR) process at the UN Human Rights Council in 2011, the then Minister of Justice, Hon Patrick Chinamasa, stated that Zimbabwe was taking steps during the Constitution-making process towards abolition. In March 2012, the government indicated its support for recommendations to take measures to abolish the death penalty and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

Section 48 of the new Constitution states that:

*(1) Every person has the right to life.*

- (2) *A law may permit the death penalty to be imposed only on a person convicted of murder committed on aggravating circumstance, and –*
- (a) *the law must permit the court a discretion whether or not to impose the penalty;*
  - (b) *the penalty may be carried out only in accordance with a final judgement of a competent court;*
  - (c) *the penalty must not be imposed on a person –*
    - i. *who was less than twenty-one years old when the offence was committed; or*
    - ii. *who is more than seventy years old;*
  - (d) *the penalty must not be imposed or carried out on a woman; and*
  - (e) *the person sentenced must have a right to seek pardon or commutation of the penalty from the President.*

While it is disappointing that the new Constitution did not abolish the death penalty, the retention of this ultimate cruel, inhumane and degrading punishment does not mean that this option has to be exercised. In addition, Zimbabwe can achieve total abolition through amendment of the Criminal Law (Codification and Reform) Act, Criminal Procedure and Evidence Act, Genocide Act, Defence Act and the Geneva Conventions Act. It is not unusual for national parliaments to first repeal the death penalty in statutory law, before relevant constitutional provisions are amended.

As an organization concerned with the victims of human rights violations and abuses, Amnesty International recognizes the suffering of victims of crime and their families. However, studies have shown that the death penalty has no uniquely deterring effect, and is disproportionately imposed on the poorest, least educated and most vulnerable members of society. It takes the lives of offenders who might otherwise have been rehabilitated. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated. Amnesty International therefore welcomes all steps by governments to end the use of the death penalty. Amnesty International stresses that any punishments that replace the death penalty must be compatible with international human rights standards.

According to information gathered during Amnesty International's campaign for abolition of the death penalty in Zimbabwe, including direct engagement with the major political parties, religious groups, traditional and other civic leaders, the media and members of the public, there is significant support for abolition in the country.

It is time Zimbabwe follows the regional trend to abolish the death penalty in law and practice. Other countries within SADC with similar histories, such as Angola, Mozambique, Namibia and South Africa, have abolished the death penalty despite experiencing high levels of violence after achieving majority rule. Since 2000, Burundi, Cote d'Ivoire, Gabon, Senegal, Rwanda and Togo have also abolished the death penalty for all crimes.

## 4.2 FREEDOM OF EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY

The rights to freedom of expression, association and peaceful assembly have been systematically suppressed since 2000 and during the tenure of the GNU in Zimbabwe. Amnesty International has documented numerous cases involving hundreds of human rights defenders and political activists who have been arbitrarily arrested and unlawfully detained for exercising their rights to freedom of expression, association and assembly. Several human right defenders were prosecuted and later acquitted while others are still facing charges

arising from their legitimate work to promote human rights.

Suppression of the rights to freedom of expression, association and assembly has continued during the first 100 days of the new government.

## **POLICE IN HARARE AND BULAWAYO USE EXCESSIVE FORCE TO BREAK UP PEACEFUL MARCHES BY WOZA MEMBERS IN SEPTEMBER 2013**

On 19 September anti-riot police violently broke up a peaceful march outside parliament, organized by the women's social justice movement, Women of Zimbabwe Arise (WOZA), to present a petition to parliament. Three WOZA leaders – Jenni Williams, Magodonga Mahlangu and Taurai Nyamanhindi – and a journalist were arbitrarily arrested and detained for about three hours before being released. During the arrests, women were beaten with batons, resulting in injury that required medical treatment. The anti-riot police did not observe the rights of those arrested and detained as set out in Section 50 of the Constitution. In particular, police violated the rights of arrested people to be “treated humanely and with respect for their inherent dignity.”<sup>5</sup> The activists were released only after the commendable refusal to detain them by police at Harare Central Police station.

The following day, Jenni Williams, Magodonga Mahlangu and four other WOZA activists were arrested in Bulawayo after police stopped another peaceful protest. Police also used excessive force to disperse scores of WOZA activists who had gathered outside Bulawayo Central Police station following the arrest of their leaders. The activists were later released without charge.

## **21 OUT OF 29 MDC-T ACTIVISTS ARRESTED AND ACCUSED OF MURDER IN 2011 ACQUITTED BY THE HIGH COURT**

On 19 September, the High Court in Harare acquitted 21 people following two years of trial in relation to the death of a police officer in Glen View suburb of Harare. The 21 activists were acquitted at the close of the state's case because the prosecution had failed to present a *prima facie* case against them. Most of the activists had spent at least one year in remand prison. Amnesty International had raised concern in the past with Zimbabwean authorities over arbitrary arrests and police conduct that is not consistent with international standards on policing. Specifically, Amnesty International raised concerns about the politicization of police investigations and arbitrary arrests.

Amnesty International remains concerned about politically motivated violations of the rights to freedom of expression, association and assembly, especially during elections and other political processes in Zimbabwe. People living in rural areas often do not have any form of protection against politically motivated discrimination, harassment and intimidation. The land tenure system in rural areas renders people perceived to hold views different to those of the ruling party susceptible to internal displacement, eviction and violence. Police are often unwilling or unable to protect those targeted. Perpetrators of these violations enjoy total impunity as police are unable or unwilling to bring them to justice.

Following the general elections on 31 July, human rights monitors recorded at least 150 people who became internally displaced following threats by village heads after they refused to be assisted to vote, which would have compromised the secrecy of their vote. Cases of politically motivated internal displacements were recorded in Mashonaland East, Mashonaland West, Mashonaland Central and Midlands provinces as well as in Harare.

### **SIX WOMEN AND 11 CHILDREN DISPLACED FROM MUKUMBURA DISTRICT, MASHONALAND CENTRAL PROVINCE**

During the first week after the harmonized elections on 31 July, Amnesty International delegates interviewed six women and their children who had been forced to leave their homes in Mukumbura district, Mashonaland Central province, following repeated threats by their village heads. The six women and their children, some of school age, sought temporary shelter in Harare fearing for their safety. They told Amnesty International that they were targeted because they had campaigned for the Movement for Democratic Change-Tsvangirai (MDC-T) during the elections. On election day, the women defied orders from their village heads to request assistance when casting their vote. The women told Amnesty International delegates that their husbands had temporarily fled their homes and were sleeping in nearby hills, fearing attacks on their homesteads at night.

### **ELECTION PARTY AGENT AND FAMILY FLEE HARASSMENT AND INTIMIDATION IN MARAMBA-PFUNGWE, MASHONALAND EAST PROVINCE**

Wellington Sandi, who was the chief election agent for the MDC-T in Maramba-Pfungwe constituency, Mashonaland East province, was forced to flee his home with his family following repeated threats of violence. The threats increased after he had given an interview to the media alleging election irregularities on the day of the ballot.<sup>6</sup> He was quoted in an article that appeared in *Newsday* newspaper on 1 August. On 9 August his house was set on fire by suspected political opponents. All seven members of his family were displaced following these threats and some had to find temporary shelter in Harare.

### **NINE MDC-T PARTY ACTIVISTS IN HARARE WEST CONSTITUENCY FLEE FOLLOWING REPORTS OF MYSTERIOUS VEHICLES WITH NO REGISTRATION PLATES**

In August, soon after the election, Amnesty International delegates interviewed nine MDC-T activists from Harare West constituency who had to seek temporary shelter after receiving reports that unidentified people in two vehicles without registration plates were asking about their whereabouts. Scores of MDC-T supporters in 2008 were abducted by unidentified people in unregistered vehicles, with some later found dead. More than 250 people died during the 2008 state-sponsored violence. A climate of fear spread throughout Harare West constituency in August 2013 following the reports. Some of the activists reported the case to the police at Mabelreign Police station under case number OB 6496/13. All nine activists had actively campaigned for the MDC-T in the run-up to the 31 July election, while others had represented the party at polling stations on election day.

#### 4.3 IMPROVE THE ENVIRONMENT FOR CIVIL SOCIETY ORGANIZATIONS AND NGOS

Amnesty International is concerned about the continuing use of the law, in particular the Public Order and Security Act, the Miscellaneous Offences Act, the Criminal (Codification and Reform) Act, the Private Voluntary Organizations Act and the Electoral Act, to undermine the ability of human rights defenders to promote and protect human rights. The police have categorized as criminal all legitimate activities of human rights defenders, as recognized in the United Nations Declaration on Human Rights Defenders<sup>7</sup> and affirmed by the African Commission on Human and Peoples' Rights in its Resolution on the Protection of Human Rights Defenders in Africa.<sup>8</sup>

Article 12 of the UN Declaration on Human Rights Defenders recognizes the right of everyone *“individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.”* It places an obligation on the state to *“take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any others arbitrary action as a consequence of his or her legitimate exercise of the rights.”*

Human rights defenders are people who act to promote and protect human rights. They may be victims and survivors of human rights violations themselves, or friends or relatives of victims of human rights violations seeking redress. Alternatively, they may be journalists, lawyers, members of human rights organizations or politicians who speak out against government repression, who are working for the promotion and protection of human rights for all. They are human rights defenders for what they do, not because of their job or profession.

Amnesty International is concerned about the restrictive environment facing human rights defenders in Zimbabwe. The space in which human rights defenders can operate is restricted in two ways – firstly, through arbitrary arrests and unlawful detentions of perceived government critics, which may be followed by prosecutions; and secondly, through the actions of non-state actors, including traditional leaders and local party activists who enjoy impunity for harassing and intimidating human rights defenders to prevent them from freely carrying out their legitimate work in their communities.

The restrictions are fuelled by deep-seated mistrust and suspicion between the ruling party and human rights defenders, and have negatively affected operations of human rights defenders in rural areas and poor urban neighbourhoods. For example, the ruling ZANU-PF party, at its 13<sup>th</sup> National People Conference in December 2012, resolved to *“ensure that Government enforces the de-registration of errant [read critical] NGOs deviating from their mandate.”*<sup>9</sup> Amnesty International is concerned that, if enforced, this resolution will violate the rights to freedom of expression and association and will negatively impact on human rights work and development programmes, mainly in rural areas. Furthermore, enforcement of this resolution would be a direct attack on the right to freedom of association, which is enshrined in the new Constitution and in regional and international human rights treaties to which Zimbabwe is a state party.

In February 2012, the then governor for Masvingo province, Titus Maluleke, held a press conference and announced the suspension of operations of 29 NGOs that had not complied with his earlier order to register with his office. Given that Masvingo is an arid province prone

to drought, and that many communities depend on food aid, water, medication and other forms of support provided by humanitarian organizations, such actions by government officials put the lives of many beneficiaries of development programmes at risk.

In the run-up to the 31 July elections Amnesty International documented a systematic clampdown on the rights to freedom of expression, association and peaceful assembly directed at civil society organizations (CSOs). Police raided the offices and seized equipment of CSOs carrying out election-related activities, including voter education and domestic election observation, as well as those perceived to be critical of government policies. Members of several CSOs were arbitrarily arrested, unlawfully detained, faced trumped-up criminal charges, and unreasonably denied bail. Some spent long periods in remand prison awaiting trial. In all the cases documented, the activists were acquitted or the state abandoned the cases, or the cases are pending. This pattern has been documented since 2000, indicating that the police in Zimbabwe abuse the law to silence dissent.

The organizations targeted by police in the run-up to the elections include the Zimbabwe Peace Project, Zimbabwe Human Rights Association, Counselling Services Unit, Zimbabwe Election Support Network, Election Resource Centre and Radio Dialogue.<sup>10</sup>

## **ELECTION RESOURCE CENTRE PROSECUTED FOR ENCOURAGING YOUNG PEOPLE TO REGISTER TO VOTE**

The Election Resource Centre, represented by its director, Tawanda Chimhini, was charged with contravening Section 40(c) of the Electoral Act in the run-up to the 31 July elections for allegedly conducting voter education without the approval of the Zimbabwe Election Commission. Tawanda Chimhini was arrested together with Farai Saungweme, Wadzanai Previous Nyakudya and Moses Chikora, who were similarly charged. At the time of writing, the case was still before the courts.

## **ABEL CHIKOMO, DIRECTOR OF THE ZIMBABWE HUMAN RIGHTS NGO FORUM, WAS CHARGED WITH RUNNING AN 'ILLEGAL' ORGANISATION AFTER CONDUCTING A SURVEY ON TRANSITIONAL JUSTICE, ONLY TO BE ACQUITTED AFTER NEARLY 3 YEARS**

Since February 2011, Abel Chikomo, the director of the Zimbabwe Human Rights NGO Forum, had been facing charges of contravening Section 6(3) of the Private Voluntary Organisation (PVO) Act Chapter 17:15 for allegedly conducting activities without being registered with the Social Welfare Department under the PVO Act. The charges were brought against him after his organization conducted a survey on transitional justice in Harare's Highfield suburb. Abel Chikomo denied the charges. Abel Chikomo's trial had many false starts and was revived in the run-up to the 31 July election. The trial resumed on 13 November but Abel Chikomo was subsequently acquitted on 22 November when the Magistrate ruled that he had no case to answer.

## **ZIMBABWE HUMAN RIGHTS ASSOCIATION OFFICIALS ARBITRARILY ARRESTED, DETAINED, DENIED BAIL AND THEN ACQUITTED**

Between December 2012 and February 2013 two human rights defenders from the Zimbabwe Human Rights Association (ZimRights) spent time in custody following politically motivated charges of committing forgery and conspiracy to commit fraud or publishing false statements prejudicial to the State. Leo Chamahwinya, a ZimRights' employee, was arrested on 13 December 2012 after police raided the organization's offices in Harare. He spent about two months in remand prison and was repeatedly denied bail. Okay Machisa, the organization's director, was arrested in January 2013 and spent two weeks in remand prison. Prosecutors alleged that the two men and ZimRights created fake copies of voter registration certificates between May 2012 and January 2013 in a bid to defraud the Registrar General's office. The two activists and ZimRights were acquitted on 21 June 2013 at the close of the state's case.

### **4.4 ENDING FORCED EVICTIONS AND PROVIDING EFFECTIVE REMEDIES FOR VICTIMS OF OPERATION MURAMBATSVINA**

Forced evictions<sup>11</sup> are a human rights violation. They leave people more vulnerable to other human rights violations and, frequently, drive the poor and other disadvantaged people deeper into poverty.

Since 2005, Amnesty International has been monitoring and documenting the human rights impact of Operation Murambatsvina. For most affected households, Operation Murambatsvina resulted in violations of a wide range of economic, social and cultural rights. Thousands of the victims settled in Operation Garikai/Hlalani Khuhle settlements created by the government as a remedy for the victims of Operation Murambatsvina live without access to education, healthcare, roads and means of livelihood. Most face the threat of losing the unserviced plots of land they were allocated in Operation Garikai because they cannot afford the fees to renew the lease agreements.

In 2010, Amnesty International documented an alarming number of reported deaths of newborn babies at Hopley settlement, one of the Operation Garikai/Hlalani Khuhle settlements in Harare. Amnesty International's research suggested a link between the deaths and the government's failure to provide effective remedies for Operation Murambatsvina victims, including its failure to ensure access to essential, life-saving healthcare.<sup>12</sup>

Amnesty International's research shows that the government of Zimbabwe, over the last eight years, has done little to nothing to remedy the violation of the right to education for thousands of children living in Operation Garikai settlements who were directly affected when their schools were destroyed or were forced to leave school during Operation Murambatsvina. These violations of the victims' right to education are ongoing.<sup>13</sup> The government failed to build a single school in Operation Garikai settlements, forcing thousands of children to attend unregistered, makeshift or backyard schools started by community leaders or individuals. The schools lack books, trained teachers and buildings, and do not receive government funding.



Violations of economic, social and cultural rights for people living in Operation Garikai settlements have gone largely unnoticed. This is mainly due to the lack of a government mechanism to monitor the situation in these settlements and respond to the basic needs of those affected by the mass forced evictions. There is a huge gap between the reality as lived by the affected communities and the stated government policies to address the situation.

Under the African Charter on Human and Peoples' Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, states are obliged to provide effective remedies to victims of human rights violations. As Zimbabwe is bound by these obligations, it is imperative that Zimbabwe provides effective remedies to all those affected.

## 5. CONCLUSION

The Constitution adopted in May 2013 offers a good starting point for the new government of Zimbabwe to break from a culture in which human rights are trampled on with impunity. The government must use the Constitution to build a culture of human rights observance. It must vigorously work towards ensuring that all the rights in the Constitution are enjoyed in accordance with the principle of non-discrimination.

The ZANU-PF government will be judged on its performance in improving the country's human rights record and the standard of living of everyone in Zimbabwe. The government must therefore endeavour to implement fully and effectively its obligations under human rights treaties.

## 6. RECOMMENDATIONS

Some of the following recommendations involve measures that need to be taken urgently to allow everyone in Zimbabwe to enjoy all the human rights under Section 4 of the Constitution. Other recommendations focus on longer-term measures to address past human rights problems in Zimbabwe and to ensure redress for victims and non-recurrence of such violations.

In order for such measures to be effective, they require wide-ranging consultations with civil society, victims of human rights violations and the international community. To ensure their sustainability, they need to be embedded in legislative and administrative reforms.

Where the government is unable to fulfil its obligations under international human rights law, it is required to seek international assistance. For its part, the international community should work in a coordinated way to assist the government to fulfil its obligations and commitments under international human rights treaties and standards. However, all international assistance must be given in a transparent manner and beneficiaries selected on a non-partisan basis.

### TO THE GOVERNMENT OF ZIMBABWE

#### **To improve the general human rights situation, the government must:**

- Take effective measures to address past human rights violations, including those related to the 2008 election violence, with a view to establishing the truth and giving access to justice to victims, bringing perpetrators to account, and providing remedies to the victims, including access to compensation and treatment;
- Investigate all reports of human rights violations regardless of the political affiliation of the victims or suspected perpetrators, and ensure that those responsible are brought to justice;
- Ensure non-recurrence of human rights violations, by continuing with the programme of institutional and other reforms that were started during the GNU to ensure respect for the rule of law and foster and sustain a culture of respect for human rights. This reform programme should be developed through a process of broad public consultations, including the participation of victims and civil society;
- Repeal or amend legislation and administrative regulations, including the Public Order and Security Act, that have contributed to or legitimized human rights violations or are not consistent with the new Constitution;
- Provide public officials and employees, in particular those in the security forces, with comprehensive and ongoing training in human rights standards and their implementation;
- Implement all the recommendations agreed during the UN Universal Periodic Review process in 2011 and confirmed in March 2012;
- Allocate adequate financial and material resources to the Zimbabwe Human Rights Commission and the National Peace and Reconciliation Commission so they can fully and effectively fulfil their constitutional mandates;
- Ratify the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; African Charter on Democracy, Election and Governance; Protocol on the Statute of the African Court of Justice and Human Rights; and Protocol to the African

Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, and make a declaration that would allow individuals and NGOs direct access to the court.

**In relation to the death penalty, the government must:**

- Immediately establish an official moratorium on executions with a view to abolishing the death penalty;
- Abolish in national legislation the death penalty for all crimes;
- Commute without delay all death sentences to terms of imprisonment;
- Ratify without reservations the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty.

**In relation to ending forced evictions and providing effective remedies for victims of Operation Murambatsvina, the government should:**

- Immediately and unconditionally withdraw all threats of forced evictions by the new government and compensate all those affected;
- Commit itself to end forced evictions by immediately declaring an official moratorium on mass evictions until all legal and procedural safeguards required under international human rights law and standards are in place;
- Undertake a comprehensive review of Operation Garikai/Hlalani Khuhle with the aim of providing effective remedies for victims of Operation Murambatsvina;
- In the context of providing effective remedies, ensure that people who have not paid for the renewal of their leases to land allotted to them under Operation Garikai/Hlalani Khuhle are not evicted for non-payment of dues or forced to pay the renewal fees. This land was allocated as a remedy for Operation Murambatsvina and affected people must not be required to pay for its use;
- The government must guarantee security of tenure to the leaseholders under Operation Garikai and ensure access to minimum essential levels of education, healthcare, water and sanitation, including through the provision of humanitarian assistance where applicable.

**In relation to creating an enabling environment for the enjoyment of freedom of expression, association and peaceful assembly, the government should:**

- Remove all restrictions, de facto and de jure, to allow free operations of all NGOs and CSOs, including human rights organizations in both urban and rural areas;
- Repeal or amend all media legislation, including the Access to Information and Protection of Privacy Act, Broadcasting Services Act, and bring them in line with the Constitution;
- Immediately start a process to open the airwaves, and issue broadcasting licences on a non-partisan basis, including for community broadcasting services;
- Allow free political expression and repeal all laws that criminalize freedom of expression, including insult laws that have been used in the past to arrest and detain individuals for criticizing the President;
- Invite the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and association to visit Zimbabwe to investigate the situation in the country.

**In relation to ending violations of the rights to freedom of expression, association and peaceful assembly by the Zimbabwe Republic Police, the government should:**

- Publicly condemn arbitrary arrest and detention, torture and other ill-treatment, and excessive use of force by police when policing peaceful assemblies;

- Immediately review and amend existing crowd control rules that facilitate unjustified use of force, in order to bring them into full compliance with the UN Basic Principles on the Use of Force or Firearms by Law Enforcement Officials. Specifically, the police should ensure that, where force is used against peaceful assemblies, all incidents are thoroughly and independently investigated, and that disciplinary measures are promptly effected against police officials found to have breached the rules;
- Invest in the training of officials from the Zimbabwe Republic Police in understanding and responding appropriately to crowd behaviour, and methods of persuasion, negotiation and mediation with a view to limiting the use of force and firearms in line with Basic Principle 20 of the UN Basic Principles on the Use of Forces and Firearms by Law Enforcement Officials;
- Where injury is caused by use of force, police must ensure that assistance and medical aid are rendered to the injured or affected person at the earliest possible moment, in accordance with Article 5 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

**In relation to improving the operational environment for human rights defenders and NGOs, the government should:**

- Immediately and unconditionally drop all charges against human rights defenders who are facing prosecution for carrying out their legitimate work to promote and protect human rights;
- Repeal or amend sections of the Public Order and Security Act and other laws that place unnecessary restrictions on human rights defenders exercising their rights to peaceful assembly and freedom of association. All national laws should be compatible with international human rights standards;
- Invite the Special Rapporteur on Human Rights Defenders in Africa and the UN Special Representative on Human Rights Defenders to visit Zimbabwe to investigate the situation of human rights defenders in Zimbabwe;
- Create platforms for regular interaction between government officials and human rights defenders to build trust between CSOs and the government.

## TO THE INTERNATIONAL COMMUNITY

Amnesty International urges the international community, in particular the African Union (AU) and SADC, through bilateral and multilateral engagements, to encourage Zimbabwe to respect and fulfil its obligations under human rights treaties to which it is a state party. Specifically, the AU and SADC must continue to urge the new government to implement the institutional reforms that it agreed during the inter-party dialogue to ensure that state institutions operate on a non-partisan basis.

# ENDNOTES

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1 Resolution 136(XXXVIII).08, adopted at the 44th Ordinary Session in Abuja, Nigeria, on 24 November 2008. The African Commission had already adopted its first resolution on the death penalty, which included a call to consider establishing a moratorium on executions, at its 26th Ordinary Session in November 1999 in Kigali, Rwanda.

2 UN General Assembly resolution 62/149.

3 African Commission on Human and Peoples' Rights, "Study on the question of the death penalty in Africa", 10 April 2012, adopted by the African Commission at its 50th Ordinary Session in 2011, [http://www.achpr.org/files/news/2012/04/d46/study\\_question\\_deathpenalty\\_africa\\_2012\\_eng.pdf](http://www.achpr.org/files/news/2012/04/d46/study_question_deathpenalty_africa_2012_eng.pdf) (accessed 25 October 2013).

4 Statement by Hon Emmerson Dambudzo Mnangagwa, Minister of Justice, Legal and Parliamentary Affairs at an Amnesty International event in Harare to commemorate World Day against the Death Penalty, 10 October 2013.

5 Constitution of Zimbabwe, Section 50(1)(c).

6 <https://www.newsday.co.zw/2013/08/01/thousands-turned-away-forcibly-assisted-to-vote-by-zanu-pf/>

7 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly in 1998.

8 Resolution on The Protection of Human Rights Defenders in Africa 74.ACHPR/Res.69(XXXV)04

9 [http://www.zanupf.org.zw/index.php?option=com\\_content&view=article&id=214](http://www.zanupf.org.zw/index.php?option=com_content&view=article&id=214)

10 See Amnesty International report, Walk the Talk: Zimbabwe must respect and protect fundamental freedom in the 2013 harmonized elections, Index: AFR 46/009/2013, July 2013.

11 A forced eviction is the removal of people against their will from the homes or land they occupy without legal protections and other safeguards. The prohibition of forced evictions does not apply to evictions carried out in accordance with the law, and in conformity with international human rights standards.

12 Amnesty International, No Chance to Live, Newborn Deaths at Hopley Settlement, Zimbabwe, Index: AFR 46/018/2010, December 2010

13 Amnesty International, Left behind: The Impact of Zimbabwe's mass forced evictions on the right to education, Index: AFR 46/019/2011, October 2011.



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