



False Dawn

**The Zimbabwe Power-Sharing Government's Failure to
Deliver Human Rights Improvements**

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I. Introduction

More than six months after the formation of a transitional, power-sharing government in Zimbabwe between the Zimbabwe African National Union–Patriotic Front (ZANU-PF) and two factions of the Movement for Democratic Change (MDC), there has been little progress in instituting any promised human rights reforms and in demonstrating respect for the rule of law. ZANU-PF, the former ruling party, wields significantly more power than the MDC, and ZANU-PF supporters continue to commit abuses against their perceived political opponents with impunity.

There is mounting evidence that the new government is failing or unwilling to end serious human rights violations, restore the rule of law, institute fundamental rights reforms, and chart a new political direction for the country. Despite commitments made by all parties, the new power-sharing government has not taken any significant steps to ensure justice for victims of abuses or hold perpetrators of human rights violations to account. Police, prosecuting authorities, and court officials aligned with ZANU-PF continue to conduct politically motivated prosecutions of MDC legislators and activists.

This inaction cannot be blamed on the country's financial crisis, itself caused by ZANU-PF's years of misrule before 2009. Instead, it is due to an absence of political will. ZANU-PF retains control of all senior ministries—including the Ministries of Defence, Justice, State Security, and Foreign Affairs; and it co-chairs Home Affairs. The party therefore wields significantly more power than the MDC in the government, and is unwilling to institute human rights and governance reforms. Although the MDC has formal control of some ministries, President Mugabe unilaterally appointed permanent secretaries to all ministries, ensuring that ZANU-PF maintains control of them. Lacking real political power to effect reforms, the MDC is unable to push for human rights reforms and appears to be giving ground to ZANU-PF in order to ensure the survival of the power-sharing government.

The Global Political Agreement (GPA), signed in September 2008, calls on its signatory parties to “build a society free of violence, fear, intimidation, hatred, patronage, corruption and founded on justice, fairness, openness, transparency, dignity and equality.” Human Rights Watch endorses this insightful conclusion and calls on the power-sharing government, as well as Zimbabwe's neighbors and allies, to ensure that the country embraces progressive and sustainable change. If not, Zimbabwe risks sliding back into violence and chaos.

This report recommends a range of fundamental reforms that the power-sharing government should undertake to improve the human rights situation in Zimbabwe. Without these institutional and legislative reforms, as well as the establishment of genuine respect for the basic rights of all Zimbabweans, there can be no long-term, sustainable peace and stability in Zimbabwe. These changes will also finally allow Zimbabweans to elect leaders of their choice. And once these reforms are in place, Zimbabwe will be better placed to attract international development assistance and private sector investment.

II. Update

Human Rights Watch has been closely monitoring the human rights situation in Zimbabwe since the February 11, 2009 formation of a transitional, power-sharing government in Zimbabwe. The two parties made commitments to carry out reforms in a Global Political Agreement (GPA) signed on September 15, 2008.¹

ZANU-PF in particular has shown at best negligible commitment and willingness to implement the far-reaching reforms envisioned in the GPA. At worst, ZANU-PF's conduct has deliberately undermined efforts to restore the rule of law and accountable government in Zimbabwe. The MDC's lack of effective power and its desire to ensure the survival of the power-sharing government is severely inhibiting its ability to push for human rights reforms. For instance, 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.

To its credit, the power-sharing government has managed, with assistance from international donors and aid agencies, to bring Zimbabwe's serious humanitarian crisis under control and somewhat stabilize the country's economic situation through a range of new policies, as set out in the Short-Term Emergency Recovery Programme (STERP). These measures have helped ease the harsh socio-economic situation of Zimbabwe's most vulnerable communities, especially as regards access to food and containing the cholera outbreak, which at its peak infected more than 100,000 people and claimed more than 4,200 lives.²

These gains, however, are built on foundations of sand. Zimbabwe's economic and humanitarian crises have been essentially caused by institutionalized political repression and disregard for the rule of law.³ Unless the government makes significant improvements in its policies in these areas, including major human rights reforms, the advancements in the

¹ For more of Human Rights Watch's work on Zimbabwe published well before the power-sharing agreement, please see 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>; Human Rights Watch, *"They Beat Me Like a Dog": Political Persecution of Opposition Activists and Supporters in Zimbabwe*, ISBN: 1-56432-370-6, August 2008, <http://www.hrw.org/node/62081>; and Human Rights Watch, *"Our Hands Are Tied": Erosion of the Rule of Law in Zimbabwe*, ISBN: 1-56432-404-4 November 2008, <http://www.hrw.org/node/76102>.

² "Unicef: New Cholera outbreak 'almost inevitable' in Zimbabwe," *Mail and Guardian Online* (SA), August 19, 2009, <http://www.mg.co.za/article/2009-08-19-unicef-new-cholera-outbreak-almost-inevitable-in-zim> (accessed August 24, 2009). See also Human Rights Watch, *Crisis without Limits: Human Rights and Humanitarian Consequences of Political Repression in Zimbabwe*, ISBN: 1-56432-429-X January 2009, <http://www.hrw.org/node/79824>.

³ Human Rights Watch, *Crisis without Limits*.

humanitarian and economic situations in recent months will deliver diminishing returns and will ultimately be reversed. For example, the power-sharing government has failed to resuscitate a broken health system, thereby leaving Zimbabwe vulnerable to another major cholera outbreak.

A free media is vital to improve accountability in Zimbabwe and ensure that ongoing abuses are both exposed and remedied. The media reforms that have so far been instituted by the power-sharing government are inadequate. The government allowed international media such as the UK's BBC and the US-based CNN to resume reporting from Zimbabwe. But it continues to restrict freedom of expression for domestic media in an arbitrary fashion. For example, while the government has lifted restrictions on (but not yet granted an operating license to) a previously banned private daily newspaper—the *Daily News*—it has jailed journalists at other private media outlets.⁴

It is crucial to have a legal and regulatory framework that protects the media from unwarranted interference and harassment from state agencies. A parliamentary committee has held interviews for the proposed Zimbabwe Media Commission, but legislative reforms concerning the media, such as repealing repressive laws like the Access to Information and Protection of Privacy Act (AIPPA), have yet to be implemented.

Reforming Zimbabwe's repressive security apparatus is essential if the power-sharing government is to ensure genuine respect for human rights and restoration of rule of law. The government has held just one meeting of the Zimbabwe National Security Council, notionally the new state body to oversee Zimbabwe's various state security institutions, chaired by President Robert Mugabe with Prime Minister Morgan Tsvangirai a member. But Human Rights Watch has evidence that the old, repressive ZANU-PF security apparatus continues to operate in parallel and unchanged. At the same time that President Mugabe was publicly announcing three days of national healing in July 2009, renouncing political violence, security agencies loyal to him continued to commit unchecked violence and intimidation against his political opponents.

⁴ "Newspaper editors face charges, arrested and released on bail," Media Institute of Southern Africa (MISA) news release, Zimbabwe alert, May 14, 2009, http://www.ifex.org/zimbabwe/2009/05/14/zimind_editors_arrested/ (accessed August 24, 2009). See also "Govt gives Daily News licence to publish," *Zimbabwe Independent*, July 31, 2009.

III. Continuing Human Rights Violations

Despite signing a power-sharing agreement with the MDC, ZANU-PF members and supporters continue to intimidate, harass, and arbitrarily arrest MDC supporters and others perceived to be critical of ZANU-PF. ZANU-PF has also used its partisan control of the judicial system to jail human rights defenders and harass members of the media, all in direct contravention of the power-sharing agreement.

Political Violence against MDC Activists and Perceived ZANU-PF Critics

ZANU-PF and its allies, namely so-called “war veterans” and youth militia, continue to commit acts of political violence against MDC activists in Zimbabwe.⁵ For instance, they continue to operate sites throughout Zimbabwe that are used for torture, beatings, and harassment of MDC supporters. Additionally, ZANU-PF youth militia have been using schools across the country as centers for abuse, under the guise of being local Ministry of Youth “ward coordinators.”⁶

Recent examples show how the pattern of ZANU-PF violence has continued since the GPA was signed. On July 3, 2009, ZANU-PF supporters beat up MDC activist Ebba Katiyo of Uzumba, Mashonaland East, accusing her of being a member of the MDC. Katiyo was assaulted by assailants who punched her, kicked her with booted feet, and hit her with sticks. A week later, on July 12, Katiyo was again assaulted by ZANU-PF supporters at a public meeting on the instructions of her uncle, the local village headman and a ZANU-PF supporter.⁷

On July 13, 2009, a well-organized group of ZANU-PF supporters and “war veterans” beat up scores of MDC supporters and disrupted a national constitutional conference in the capital,

⁵ Many of the so-called “war veterans” are not genuine veterans of Zimbabwe’s liberation struggle of the 1970s, but individuals hired by ZANU-PF to commit abuses under the guise of “war veterans.” Many “war veterans” are too young to have fought during Zimbabwe’s liberation struggle in the 1970s; they are, however, largely led by genuine veterans who fought in the struggle for majority rule.

⁶ Human Rights Watch telephone interviews with local civil society activists N.D., P.H., H.G., and F.M., Harare, July 20, 2009. See also Zimbabwe Human Rights NGO Forum, *Monthly Political Violence Report*, May 2009, http://www.hrforumzim.com/frames/inside_frame_monthly.htm (accessed August 1, 2009).

⁷ MDC Weekly Bulletin, *The Changing Times Online*, July 21, 2009.

Harare. No arrests were made despite a heavy police presence.⁸ The police remain under the leadership of Augustine Chihuri, a self-proclaimed ZANU-PF supporter.

On July 22, 2009, a group of suspected ZANU-PF activists in Mvuma assaulted Athanacia Mlilo, the 73-year-old mother of the MDC's international relations coordinator, Nqobizitha Mlilo. They attacked Athanacia Mlilo with iron bars, and she was admitted for urgent medical attention at Mvuma hospital.⁹

On August 1, 2009, three soldiers assaulted Finance Minister Tendai Biti's gardener at Biti's home in Harare. The victim, Howard Makonza, was rushed to the hospital.¹⁰ While Makonza was reporting the assault at a police station, one of the soldiers who had assaulted him threatened—in the presence of the police—to assault Makonza again.¹¹ The Zimbabwe Defense Forces remain under the control of generals who support ZANU-PF, and in all the above cases, police either refused or failed to investigate these attacks despite credible allegations of criminal actions.¹² This kind of police and army misconduct is consistent with previous Human Rights Watch findings in recent years.¹³ Biti himself recently told the media that he has been the target of death threats, including having received a bullet in the mail at his home.¹⁴

Ongoing human rights abuses are not restricted to attacks on MDC supporters. On July 26, 2009, police arrested 12 members of the local civil society organization Restoration of Human Rights (ROHR) and three members of the public for taking part in a public protest against Mugabe's three-day national healing and reconciliation program, which, according to the president, was supposed to counter political violence.¹⁵

⁸ Tichaona Sibanda, "Drama as ZANU-PF disrupts all stakeholders conference in Harare," *SW Radio Africa*, July 13, 2009, <http://www.swradioafrica.com/news130709/drama130709.htm> (accessed July 17, 2009).

⁹ Human Rights Watch telephone interview with N.C., MDC Official, Harare, July 29, 2009. See also MDC Weekly Bulletin, July 28, 2009, emailed to Human Rights Watch.

¹⁰ Zimbabwe Democracy Now, <http://www.zimbabwedemocracynow.com/2009/08/02/degrees-in-violence/> (accessed August 3, 2009).

¹¹ David Smith, "Zimbabwe minister Tendai Biti reveals assassination fears," *Guardian* (UK), August 6, 2009, <http://www.guardian.co.uk/world/2009/aug/06/zimbabwe-tendai-biti-assassination-fears> (accessed August 6, 2009).

¹² Human Rights Watch telephone interviews with three lawyers familiar with the cases C.M., H.N., and T.M., August 5, 2009.

¹³ Human Rights Watch, *"Our Hands Are Tied,"* p. 27.

¹⁴ Smith, "Zimbabwe minister Tendai Biti reveals assassination fears," *Guardian* (UK).

¹⁵ Restoration of Human Rights, Zimbabwe (ROHR) statement, July 26, 2009, <http://www.thezimbabwean.co.uk> (accessed July 27, 2009).

Further, ZANU-PF officials in the new government of Zimbabwe have refused to drop politically motivated criminal charges (for banditry and trying to recruit people for training in banditry) against 15 human rights and MDC activists whom ZANU-PF loyalists in the government arbitrarily arrested from October through December 2008—after ZANU-PF and MDC factions signed the GPA on September 15, 2008.¹⁶ The 15 activists were unlawfully held in secret detention for periods ranging from two to eight weeks, before being brought to court. These delays are well outside the 48-hour deadline by which arrested persons must be arraigned, as mandated by Zimbabwean law.¹⁷

Seven other MDC activists who were abducted in October 2008, together with the 15 mentioned above, remain missing. They are: Gwenzi Kahiya, Ephraim Mabeka, Lovemore Machokoto, Charles Muza, Edmore Vangirayi, Graham Matehwa, and Peter Munyanyi.¹⁸

Politically Motivated Prosecution of MDC Legislators and Activists

Since the formation of the power-sharing government, a pattern has developed in which MDC legislators and activists are targeted for arrest by the police and the Office of the Attorney General on apparently baseless charges.¹⁹ This pattern points to a drive by ZANU-PF to overturn MDC's slender majority in Parliament. At the time of writing, at least 16 MDC legislators have been arrested by police on charges ranging from public violence to kidnapping and rape; seven of whom have already been tried and convicted in unfair trials in which the judges are known ZANU-PF loyalists.²⁰ Of the seven already convicted, four have since been suspended from Parliament under laws that provide that members of parliament (MPs) sentenced to six or more months of imprisonment shall immediately cease to exercise their parliamentary functions.²¹

Other MDC legislators also face charges that carry potential prison sentences in excess of six months and they too are at risk of losing their seats in Parliament. Finance Minister Tendai

¹⁶ "Zimbabwe: Drop Politically Motivated Charges against Activists," Human Rights Watch news release, May 6, 2009, <http://www.hrw.org/node/82928>.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Shari Eppel, Daniel Ndlela, Brian Rafotopoulos, and Martin Rupiya, *Developing a Transition Agenda for Zimbabwe*, (IDASA and Zimbabwe Institute: Cape Town, 2009), p. 9.

²⁰ The MDC legislators who have been convicted and suspended from parliament are: Matthias Mlambo, Chipinge East, Manicaland, convicted of inciting public violence and sentenced to 10 months in prison; Meki Makuyana, Chipinge South, Manicaland, convicted of kidnapping a minor and sentenced to 12 months in prison; Shuah Mudiwa, Mutare West, Manicaland, convicted of kidnapping a minor and sentenced to seven years in prison; and Ernest Mudavanhu, Zaka North, Masvingo, convicted of abusing subsidized farming inputs from the government and sentenced to 12 months in prison.

²¹ Constitution of Zimbabwe, 1979, art. 42(1).

Biti faces a treason charge that potentially carries a death sentence. Deputy Youth Minister and MP for Nkulumane Thamsanqa Mahlangu faces a charge of stealing a mobile phone and is on bail awaiting trial. Senator Roy Bennett is charged with illegal possession of “arms of war” and is on bail awaiting trial. Blessing Chebundo, Kwekwe Central MP, faces a charge of rape and is on bail awaiting trial. Trevor Saruwaka, Mutasa South MP, faces a public violence charge and is on bail awaiting judgment.²²

Five MPs face charges of abusing subsidized farming inputs. They are currently on bail awaiting judgment and are: Hamandishe Maramwidze, MP for Gutu North; Heya Shoko, MP for Bikita West; Edmore Marima, MP for Bikita East; Tachiona Mharadza, MP for Masvingo West; and Evelyn Masaiti, MP for Dzivarasekwa, Harare.²³

These prosecutions are not only politically motivated; they are also often presided over by politicized and partisan officials loyal to ZANU-PF, making a fair and impartial hearing near impossible.

Not a single ZANU-PF legislator has been arrested or prosecuted for criminal offenses since the GPA was signed, although a number are directly implicated in last year’s political violence and other serious abuses, which resulted in the killing of over 163 MDC supporters between March and June 2008.²⁴ Similarly, there has been no meaningful action to charge those responsible for brutalizing thousands more MDC supporters over that period and since. And, despite overwhelming evidence, no member of the police or armed forces has been charged with abuses in the Marange diamond fields, despite evidence of serious human rights violations there, which Human Rights Watch has documented in detail.²⁵

Politically motivated prosecutions of MDC legislators and the failure to prosecute MPs from ZANU-PF implicated in violence or other serious crimes demonstrate that the Office of the Attorney General and sections of the police under ZANU-PF control continue to abuse the judicial system for political ends.

²² “Biti in Court, Charged with Treason,” *Zimbabwe Times*, July 14, 2008.

²³ Bill Watch Special, *Veritas*, July 31, 2009, emailed to Human Rights Watch.

²⁴ Human Rights Watch, “*They Beat Me Like a Dog.*”

²⁵ Human Rights Watch, *Diamonds in the Rough: Human Rights Abuses in the Marange Diamond Fields of Zimbabwe*, ISBN: 1-56432-505-9, June 2009, <http://www.hrw.org/node/83960>.

Harassment of the Media

As mentioned above, the police in Zimbabwe continue to harass members of the media and to improperly limit the right to free expression.

In an unusual case marking the first time journalists working for state-run media have been charged under repressive media laws, on April 7, 2009, the police arrested Brezhnev Malaba, the editor of the state-run and pro-ZANU-PF provincial daily newspaper, the *Chronicle*, and one of its reporters, Nduduzo Tshuma, on charges of defaming the police in contravention of the Criminal Law (Codification and Reform) Act (CLA).²⁶ The two journalists were later released but charges against them remain on the books. The arrest of the two journalists appears to have been driven by personal reasons on the part of senior police officers named in a published article alleging corruption at the Grain Marketing Board, rather than a case of harassment on political grounds.²⁷

On May 11, 2009, police arrested Vincent Kahiya and Constantine Chimakure, editors of a privately run weekly paper, the *Zimbabwe Independent*, on charges of publishing falsehoods with the intention of undermining public confidence in law enforcement agents, in contravention of the CLA.²⁸ There was no basis for prosecuting Kahiya and Chimakure because they merely published information from indictment papers presented in court by the Office of the Attorney General, which are a matter of public record.²⁹ The trial of the two journalists is ongoing, but they have since appealed to Zimbabwe's Supreme Court on the grounds that the sections of the CLA under which they were charged are unconstitutional.³⁰

On June 7, 2009, police barred four freelance journalists from covering a regional trade summit taking place in Victoria Falls, despite their having produced a valid High Court order granting them permission to cover the event.³¹

²⁶ "GPA demands a genuine commitment towards achieving freedom of expression in Zimbabwe," *Sokwanele*, <http://sokwanele.com/thisiszimbabwe/archives/4146> (accessed July 19, 2009). See also, "Chronicle editor charged with defaming police," *Zimbabwe Times*, April 7, 2009, <http://www.thezimbabwetimes.com/?p=14797> (accessed August 5, 2009).

²⁷ Human Rights Watch telephone interview with journalists familiar with case C.M., T.Z., and J.M., August 12, 2009.

²⁸ "Independent journalists arrested," Media Institute of Southern Africa (MISA) news release, Zimbabwe alert, May 12, 2009.

²⁹ "Journalists arrest 'Affront to freedom of expression,'" *Zimbabwe Independent*, May 15, 2009.

³⁰ Human Rights Watch telephone interview with two representatives of the Media Institute of Southern Africa, Zimbabwe Chapter, N.K. and T.M., who are familiar with the case, August 7, 2009.

³¹ "Journalists barred from covering summit despite high court order," Association of Zimbabwe Journalists news release, June 8, 2009, http://www.zimbabwejournalists.com/story.php?art_id=5673&cat=1 (accessed July 7, 2009).

Persecution of Lawyers and Judicial Officers

Human Rights Watch has also found evidence that ZANU-PF loyalists in the judicial system have used prosecution to persecute, intimidate, and harass lawyers and judicial officers. On February 10, 2009, a day before Morgan Tsvangirai was sworn in as prime minister, police arrested two project lawyers with Zimbabwe Lawyers for Human Rights (ZLHR), Roselyn Hanzi and Tawanda Zhuwarara, for allegedly taking part in a public demonstration organized by Women of Zimbabwe Arise (WOZA). The two lawyers, who told Human Rights Watch that they did not take part in the demonstration, were charged with causing a breach of peace, an offense under the CLA.³² The lawyers were released on bail on February 12, 2009.³³

On May 14, 2009, police from the law and order section of the police Criminal Investigations Department arrested a prominent human rights lawyer, Alec Muchadehama, and charged him with obstruction of the course of justice, in contravention of the CLA. Police alleged that Muchadehama had connived with a judge's clerk to facilitate the improper release on bail of three accused persons (two of them were MDC officials) whom he was representing.³⁴ Muchadehama was released on bail, and went to trial where a magistrate eventually dropped the case against him.³⁵ Muchadehama has a long record of defending human rights defenders, MDC activists, and other members of civil society, and has frequently been the target of ZANU-PF harassment.

On May 22, 2009, police arrested Tapera Sengweni, a lawyer representing Blessing Chebundo, an MDC MP from Kwekwe Central, who is facing rape charges, and Kwekwe's MDC mayor, Shadreck Tobaiwa, on politically motivated charges of obstructing the course of justice, in contravention of the CLA.³⁶ Both of their trials are pending.

On March 6, 2009, police arrested Magistrate Livingstone Chipadze in the city of Mutare and charged him with criminal abuse of office under the CLA. They alleged that he improperly ordered the release on bail of MDC Senator and Deputy Agriculture Minister-Designate Roy Bennett.³⁷ Chipadze was sent to trial, but was eventually acquitted on August 4, 2009.³⁸

³² Human Rights Watch interview with Roselyn Hanzi and Tawanda Zhuwarara, Harare, February 24, 2009.

³³ Charles B. Davison, "Zimbabwe: Attacks on Lawyers 2006 to 2009," Lawyers Rights Watch Canada, July 2009.

³⁴ "Rights Lawyer Muchadehama arrested," *Zimbabwe Independent*, May 15, 2009.

³⁵ *Ibid.*

³⁶ Patience Rusere and Sandra Nyaira, "Zimbabwe Police Arrest Lawyer, Kwekwe Mayor Charging Obstruction of Justice," *Studio 7-Voice of America News*, May 22, 2009.

³⁷ Zimbabwe Human Rights NGO Forum, April 2009 report.

While police have been quick to make these kinds of arrests based on politically motivated charges, no action has been taken against those who attack MDC members and supporters.

On May 8, in connection with the case of Muchadehama cited above, police arrested High Court Clerk Constance Gambara and charged her with abuse of office for allegedly improperly facilitating the release of two MDC officials and a journalist on bail. The 26-year-old clerk was jailed, with the consequence that she had to take her nine-month-old baby to jail with her.³⁹ Although Gambara was granted bail, the prosecutor invoked article 121 of the Criminal Procedure and Evidence Act (CPEA), resulting in Gambara's remaining in remand prison with her baby for a week before eventually being released. An assistant master of High Court, Caroline Mafuka, was also arrested in connection with the same case.⁴⁰ At the time of writing the case had not yet been finalized in court.

Targeting of Commercial Farmers

Human Rights Watch has documented scores of illegal attacks on commercial farms since the power-sharing government took office. The vast majority of farm invasions were led by people with close links to ZANU-PF or by those holding senior positions within the party or government. They have used violence and threats of violence to forcibly evict sitting owners from their properties.⁴¹

The invasions typically disregarded due process of law, which stipulates that the only lawful method of removing a sitting occupier from his land is by a valid eviction order from the courts. In addition, any such order must be enforced by someone with the properly designated legal authority, usually a deputy sheriff or a messenger of court.⁴²

The power-sharing government acknowledged the problem of farm invasions and announced a ministerial fact-finding team, led by Deputy Prime Minister Arthur Mutambara, to

³⁸ "Magistrate acquitted at close of State's case," Zimbabwe Lawyers for Human Rights press statement, August 4, 2009, emailed to Human Rights Watch.

³⁹ Jan Raath, "Constance Gambara held over bail for Zimbabwe opposition MDC," *Times* (UK), May 15, 2009, <http://www.timesonline.co.uk/tol/news/world/africa/article6289709.ece> (accessed June 22, 2009).

⁴⁰ *Ibid.* See also Raymond Mhaka, "Court Official Arrested after Release of Mudzingwa," *Zimbabwe Metro*, May 8, 2009, <http://www.zimbabwemetro.com/news/court-official-arrested-after-release-of-gandhi-mudzingwa/> (accessed August 12, 2009).

⁴¹ Zimbabwe Human Rights NGO Forum, Political Violence Report, April 2009.

⁴² Peace Watch, *Veritas*, June 10, 2009, emailed to Human Rights Watch.

investigate.⁴³ The team visited a few farms in Mashonaland West province and ordered farm invasions to end.⁴⁴ However, the ZANU-PF-aligned invaders ignored that directive. As of August 2009, violent farm invasions by those with affiliations to ZANU-PF continue. In open defiance of both the political directive and the rule of law, the owner of Mount Carmel farm, one of the farms that the ministerial fact-finding team visited, was forcibly evicted from his farm soon after the ministerial team had left. No arrests have yet been made.⁴⁵ Police have refused to investigate or take any effective steps against the invaders, either to arrest them or to protect farm owners.⁴⁶

Ongoing Human Rights Abuses in the Marange Diamond Fields

Human Rights Watch has documented serious human rights violations perpetrated by Zimbabwe's security forces in the Marange diamond fields since November 2006.⁴⁷ Zimbabwe's armed forces, under the firm control of ZANU-PF, seized power in the diamond fields in late October 2008, a month after the signing of the power-sharing agreement, after killing more than 200 people.⁴⁸

The government of Zimbabwe has failed to remove its armed forces from the diamond fields and to end related human rights violations there despite calls by the global diamond industry body, the Kimberley Process Certification Scheme (KPCS), for the government to take corrective action by July 20, 2009, or face suspension from the KPCS.⁴⁹ Human Rights Watch found that instead of removing security forces from Marange and reforming its internal diamond industry, the government of Zimbabwe has rotated new army units into Marange to maintain its control. Human rights violations and smuggling continue, and witnesses to earlier abuses are being harassed and threatened.⁵⁰ Human Rights Watch continues to receive reports of serious human rights abuses in Marange; however, due to tighter military security, it has become increasingly difficult to access information.

⁴³ "Ministers hang heads in shame at farm," *Zimbabwe Times*, April 17, 2009, <http://www.thezimbabwetimes.com/?p=15303> (accessed April 27, 2009).

⁴⁴ *Ibid.*

⁴⁵ "Mutambara reads the riot act," *Zimbabwe Times*, April 20, 2009, <http://www.thezimbabwetimes.com/?p=15445> (accessed May 18, 2009).

⁴⁶ Zimbabwe Human Rights NGO Forum, Political Violence Report, April 2009.

⁴⁷ See Human Rights Watch, *Diamonds in the Rough*.

⁴⁸ *Ibid.*

⁴⁹ "Zimbabwe: Military Sustains Grip on Diamond Fields," Human Rights Watch news release, August 6, 2009, <http://www.hrw.org/node/84955>.

⁵⁰ Human Rights Watch telephone interviews with Mutare-based civil society representatives F.M., E.M., P.M., and J.M., August 1, 2009.

IV. Failure to Undertake Legislative Reforms

Pro-ZANU-PF elements in the new government continue to use repressive legislation enacted when they were the sole party in power. The police invoke laws like the Public Order and Security Act (POSA)⁵¹ to violate people's basic rights. ZANU-PF officials in the police, the prosecuting authority, the Attorney General's office and on the bench continue to abuse various provisions of these draconian laws to violate Zimbabweans' rights to liberty, peaceful assembly, association, and free expression.⁵² Despite formal commitments made under the GPA, there are still no indications that the new government will repeal or even amend these laws.⁵³

The government has begun a Parliament-led constitutional reform process, as envisaged in the GPA, which should ultimately create a framework that enshrines international human rights principles and standards.⁵⁴ However, the process itself has been riddled with controversy. Key civil society organizations, including the Zimbabwe Congress of Trade Unions (ZCTU), the National Constitutional Assembly (NCA), the Zimbabwe National Students Union (ZINASU), and the Zimbabwe chapter of Media Institute of Southern Africa (MISA), have rejected the process as not being sufficiently informed by popular will or participation.⁵⁵

Independently, Human Rights Watch has assessed the direction of the debate and controversy surrounding the process and concludes that it offers false hopes for reform. The

⁵¹ The Public Order and Security Act severely limits rights to demonstrate and criminalizes "insulting" the president of Zimbabwe and publishing "inaccurate" information. These provisions have been used to harass, arrest, and prosecute journalists. Furthermore, the police have loosely interpreted certain provisions of the POSA to justify arbitrary arrests. For instance, article 4 merely requires that the police be notified ahead of time about a public meeting; it is not required that police grant permission for a meeting to go ahead. However, the police often insist that police permission to hold public meetings or demonstrations is required, not mere notification, and often this permission is withheld on arbitrary grounds. Other restrictive laws are: the Criminal Law (Codification and Reform) Act, which criminalizes the publication of "inaccurate" information and, in article 31, provides for a maximum sentence of up to 20 years of imprisonment with hard labor for a person convicted of that offense; the Criminal Procedure and Evidence Act, whose section 121 is often invoked by prosecutors to deny accused persons bail; and the Access to Information and Protection of Privacy Act, which duplicates criminalization of "publishing falsehoods" under the POSA and severely curtails freedom of expression by requiring all practicing journalists to be registered by a partisan Media Information Commission. The Media Information Commission is set to be replaced by a new body, the Zimbabwe Media Information Commission, which has not yet been constituted.

⁵² Human Rights Watch, *A Call to Action: The Crisis in Zimbabwe*, August 2007, <http://www.hrw.org/node/77965>.

⁵³ Article 19 of the Global Political Agreement recognizes "the importance of the right to freedom of expression and the role of the media in a multiparty democracy," and anticipates an open media environment.

⁵⁴ Article 6 of the Global Political Agreement sets out the mechanisms and timeframe for Zimbabweans to make a new constitution that deepens the country's democratic values.

⁵⁵ Simplicious Chirinda, "NCA, ZCTU in parallel constitutional process," *Zimbabwe Online*, July 16, 2009, <http://www.zimonline.co.za/Article.aspx?ArticleId=4856> (accessed July 21, 2009).

process is also unlikely in its current form to deliver the new, rights-respecting constitution that Zimbabwe desperately needs in order to emerge from its long-standing crisis. Human Rights Watch believes that fundamental rights and key electoral reforms should be implemented immediately without waiting for constitutional reform due to well-founded concerns that, like the constitutional reform process of 2000, the current process may fail to deliver change.⁵⁶

⁵⁶ In February 2000 a national referendum on a proposed new constitution rejected the draft with the effect that the current constitution was retained.

V. Delay in Implementing Institutional Reforms

The top leadership of Zimbabwe's security forces, comprising the armed forces, police, prison service, and Central Intelligence Organization, remain partisan and aligned to President Mugabe and ZANU-PF.⁵⁷ 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 political violence in 2008 have not been disciplined, removed from their posts, or charged with criminal offenses.

For example, the power-sharing agreement formally abolished the so-called Joint Operations Command (JOC), the body that Mugabe and pro-ZANU-PF security chiefs had used up to 2008 to run the country, and stipulated that it be replaced by a National Security Council, made up of the same security chiefs and chaired by Mugabe but with Prime Minister Morgan Tsvangirai as a member. However, this council, which was formed at the same time as the power-sharing government, has only met once in six months; under the terms of the power-sharing agreement, it is required to meet at least once every month.⁵⁸ At the same time, ZANU-PF has continued to use the JOC's provincial structures, and JOC members continue to hold clandestine weekly meetings with Mugabe.⁵⁹ In this, as with other issues mandated under the GPA, ZANU-PF has shown no willingness to honor its commitments or change behavior.

To demonstrate an intent to respect human rights and the rule of law, and to fulfill the GPA's requirement to ensure that recruitment policies and practices are, as laid down in article 13, "conducted in a manner that ensures that no political or other form of favoritism is practiced," the power-sharing government should quickly institute reforms in the judiciary, police, prisons, and armed forces with a view to making them genuinely professional and non-partisan.⁶⁰ As a first step, it should oblige all senior office-holders to reapply for their positions alongside other candidates before an independent panel of key stakeholders. The emphasis should be placed on appointing professional leaders with a record of commitment

⁵⁷ See Human Rights Watch, "*Our Hands Are Tied.*"

⁵⁸ "Tsvangirai meets generals in groundbreaking meeting," *SW Radio Africa*, July 31, 2009, <http://www.thezimbabwean.co.uk/2009073123228/weekday-top-stories/tsvangirai-meets-generals-in-groundbreaking-meeting.html> (accessed August 3, 2009)

⁵⁹ Human Rights Watch telephone interviews with local civil society representatives E.M., N.Z., and F.M., and with senior MDC official T.S., August 2, 2009.

⁶⁰ Global Political Agreement, September 15, 2008, art. 13.

to justice and independence from political interference. These kinds of urgent personnel reforms are necessary to restore trust in Zimbabwe's public institutions.

VI. Lack of Accountability for Human Rights Violations

In accordance with GPA provisions to promote equality, national healing, cohesion, and unity, the new government of Zimbabwe set up the Organ for National Healing, Reconciliation, and Integration, comprising three ministers of state, one from each of the three main political parties.⁶¹ On July 15, 2009, President Mugabe declared a three-day period, to run from July 24 to 26, 2009, “during which the nation may dedicate the inclusive government, our newfound peace, our freedom, our new spirit of nation-building, national healing, reconciliation and integration to inspire the nation going forward.” The notice called upon all political parties in Zimbabwe and all Zimbabweans to renounce violence in all its forms, in particular violence designed to achieve political ends, and to promote values and practices of tolerance, respect, non-violence, and dialogue as sustainable means of resolving political differences.⁶²

However, as noted by the examples above, the language of healing has not been matched by the government’s actions. Impunity remains the major problem in Zimbabwe. The power-sharing government has not taken any steps to investigate allegations of human rights violations by the police, army, other state agents, or ZANU-PF and its allies—either before the formation of the new government or since—or to bring abusers to justice. Without justice or accountability for past abuses, Zimbabwe’s long-standing problem of impunity will persist and national healing in the long run will remain elusive.

Zimbabwe’s civil society set up the Civil Society Monitoring Mechanism (CISOMM) to independently monitor the performance of the power-sharing government. Early on, it noted that any attempt at national healing, reconciliation, and integration will not achieve the stated goal of holistic and sustainable peace and development in the current context of ongoing state-sponsored politically motivated violence, continued human rights abuses, political prosecutions, and biased and closed state-controlled media.⁶³

Human Rights Watch believes that, as currently constituted, any national healing process that does not address issues of justice, accountability for past abuses, impunity, and

⁶¹ Global Political Agreement, art. 7.

⁶² Declaration by President Robert Mugabe, Government of Zimbabwe Gazette Extraordinary, General Notice 92 of 2009, issued on July 15, 2009.

⁶³ Civil Society Monitoring Mechanism (CISOMM), Statement by cluster on national healing regarding the planned national dedication ceremony, July 23, 2009, emailed to Human Rights Watch.

redress for victims will fatally weaken the goal of obtaining transitional justice. Instead of asking ordinary Zimbabweans to renounce the use of violence, the power-sharing government should instead take the lead 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.

Human Rights Watch found that the bulk of Zimbabwe’s violence committed before the 2008 elections and since has been organized and implemented by ZANU-PF elements in state agencies. The perpetrators have acted—and continue to act—with impunity.⁶⁴ To overcome this abusive past, the power-sharing government should undertake fundamental reforms of its justice system, which, if implemented properly, will lead to respect for fundamental rights and restoration of the rule of law in Zimbabwe. These are essential precursors to long-term, sustainable peace and prosperity.

⁶⁴ Human Rights Watch, *“Bullets for Each of You.”*

VII. Recommendations

To the Transitional, Power-Sharing Government of Zimbabwe

- Undertake an independently managed program of police and judicial reform with clear timelines and ensure that Zimbabwean civil society enjoys significant and meaningful participation in the process.
- Place control of the police under new, non-partisan and professional leadership, accountable to an independent supervisory board. Ensure that police work is consistent with the United Nations Code of Conduct for Law Enforcement Officials and other recognized international principles.
- Ensure full accountability, including prosecutions, for the perpetrators of serious human rights violations, regardless of position or rank, and press for appropriate remedies for victims of abuses.
- Urgently repeal or amend all national legislation that is incompatible with international and regional human rights law and standards, including the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Statutes to be repealed or amended should include:
 - The Criminal Law (Codification and Reform) Act (CLA);
 - The Public Order and Security Act (POSA);
 - The Access to Information and Protection of Privacy Act (AIPPA);
 - The Broadcasting Services Act (BSA); and
 - The Criminal Procedure and Evidence Act (CPEA), particularly section 121, concerning the revocation of court-ordered bail.
- Ensure that new legislation is compatible with Zimbabwe's international obligations to respect the rights to freedom of expression, peaceful assembly, and association.
- Ensure that ZANU-PF immediately demobilizes and disarms its youth militia and war veterans groups who are responsible for abuses, and prosecute those members who have perpetrated serious human rights abuses.
- Take all necessary measures to end impunity. Set up an independent commission of inquiry, with credible civil society panel members, to investigate serious past human rights violations, including those committed during the 2008 election period and in the Marange diamond fields.

To the Member States of the Southern African Development Community

- As guarantor of the September 15, 2008 Global Political Agreement, ensure that the Zimbabwean government institutes promised human rights reforms.
- Promote compliance to the Global Political Agreement and monitor the progress of all parties in carrying out their commitments made under the agreement.
- Condition the lifting of sanctions against individuals in Zimbabwe with specific actions by ZANU-PF and the achievement of clear human rights benchmarks.
- Assist Zimbabwe in holding free and fair elections that meet international standards and publicly support full, unfettered international monitoring of future elections well in advance of polling day.
- Urge Zimbabwe to protect the credibility of the region's diamond industry by making essential improvements to its management of the Marange diamond fields, and support calls for Zimbabwe's suspension if it fails to do so.

To the European Union and the United States

- Support all genuine efforts to resolve the political and humanitarian crisis in Zimbabwe by continuing to give priority to the needs of the country's most vulnerable communities; and re-engage on a broader agenda once the transitional, power-sharing government demonstrates a pattern of concrete and irreversible improvements in policy and actions.
- Continue to withhold development aid to Zimbabwe in the absence of clear progress in implementing key human rights reforms.
- Maintain targeted travel sanctions and asset freezes against ZANU-PF and its leadership until ZANU-PF meets specific human rights and good governance benchmarks and until it becomes clear that such changes are irreversible.